

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

Ken Cooper Roofing and Gutter Systems, Central Roofing Company, C.
R.C. Roofing, Inc., Norm Armstrong Roofing, Inc., JNSJ Roofing
Incorporated, and Does 1-500

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

CONSUMER ADVOCACY GROUP, INC., in the interest of the Public,

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

Superior Court, State of California, for the County of San Francisco
Civic Center Courthouse
400 McAllister Street, San Francisco, CA 94102-4514

CASE NUMBER:
(Número de Caso)

CGC07-464039

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
REUBEN YERUSHALMI, YERUSHALMI & ASSOCIATES, 3700 WILSHIRE BLVD., SUITE 480,
LOS ANGELES, CA 90010, 213-382-3183

DATE:
(Fecha)

JUN 9 2007

GORDON PARK-LI
(Secretario)

CRISTINA E. BAUTISTA

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of *(specify):*

- 3. on behalf of *(specify):*

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
- CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
- other *(specify):*

- 4. by personal delivery on *(date):*

COPY

COPY

1 REUBEN YEROUSHALMI (SBN 193981)
2 DANIEL D. CHO (SBN 105409)
3 BEN YEROUSHALMI (SBN 232540)
4 YEROUSHALMI & ASSOCIATES
5 3700 WILSHIRE BLVD., SUITE 480
6 LOS ANGELES, CA 90010
7 Telephone: 213-382-3183

8 Attorneys for Plaintiff,
9 Consumer Advocacy Group, Inc.

ENDORSED
FILED
San Francisco County Superior Court

JUN 9 2007

GORDON PARK-LI, Clerk
BY: CRISTINA E. BALTISTA
Deputy Clerk
CASE MANAGEMENT CONFERENCE SET

NOV 2 2007 - 9:00 AM

DEPARTMENT 212

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO

12 CONSUMER ADVOCACY GROUP, INC.,)
13 in the interest of the Public,)
14 Plaintiff,)
15 v.)
16 KEN COOPER ROOFING AND GUTTER)
17 SYSTEMS, CENTRAL ROOFING)
18 COMPANY, C.R.C. ROOFING, INC.,)
19 NORM ARMSTRONG ROOFING, INC.,)
20 JNSJ ROOFING INCORPORATED, and)
21 DOES 1-500,)
22 Defendants.)

CASE NO. CGC07-464039
COMPLAINT FOR PENALTY,
INJUNCTION, AND RESTITUTION
1. Violation of Proposition 65, the Safe
Drinking Water and Toxic Enforcement
Act of 1986 (Health and Safety Code
sections 25249.5 et seq.)
Action is an Unlimited Civil Case
(Amount demand exceeds \$25,000)

23 BACKGROUND AND PRELIMINARY FACTS

24 1. In 1986, California voters approved an initiative to address growing concerns about
25 exposure to toxic chemicals. The initiative, The Safe Drinking Water and Toxic
26 Enforcement Act of 1986, codified at Health and Safety Code sections 25249.5 et seq.
27 ("Proposition 65"), helps to protect California's drinking water sources from
28

1 contamination, to allow consumers to make informed choices about the products they
2 buy, and to enable persons to protect themselves from toxic chemicals as they see fit.

- 3
4 2. Proposition 65 requires the Governor of California to publish a list of chemicals known to
5 the state to cause cancer, birth defects, or other reproductive harm (“Proposition 65-
6 Listed Chemicals”). (Health & Saf. Code, § 25249.8.) The list, which the Governor
7 updates at least once a year, contains over 550 chemicals. Proposition 65 imposes
8 warning requirements and other controls that apply to Proposition 65-Listed Chemicals.
- 9
10 3. All businesses with ten or more employees that operate or sell products in California
11 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited
12 from knowingly discharging Proposition 65-Listed Chemicals into sources of drinking
13 water (Health & Saf. Code, § 25249.5), and (2) required to provide “clear and
14 reasonable” warnings before exposing a person, knowingly and intentionally, to a
15 Proposition 65-Listed Chemical (Health & Saf. Code, § 25249.6). A business can satisfy
16 its obligations under Health and Safety Code section 25249.6 by the tendering the
17 requisite warnings through various means, e.g. labeling a consumer product, posting
18 signs, or publishing notices in a newspaper.
- 19
20 4. Plaintiff, Consumer Advocacy Group, Inc. (“Plaintiff”) is a non-profit corporation
21 qualified to do business in the State of California. It brings this action in the public
22 interest as defined under Health and Safety Code section 25249.7, subdivision (d).
- 23
24 5. In 2000 and 2001, and continuing thereafter, Plaintiff conducted research, from which it
25 identified an industry-wide practice among California companies, which install, repair, or
26 replace roofs, of exposing, knowingly and intentionally, persons to asphalt without first
27 providing clear and reasonable warnings of such to the exposed persons prior to
28

1 exposure. Asphalt is extremely toxic material, containing numerous Proposition 65-
2 Listed Chemicals.

- 3
4 6. Defendants Ken Cooper Roofing and Gutter Systems, Central Roofing Company, C.R.C.
5 Roofing, Inc., Norm Armstrong Roofing, Inc., JNSJ Roofing Incorporated, and Does 1-
6 500, are and at all times mentioned herein have been qualified to do and did conduct
7 business in the State of California.
- 8 7. Plaintiff is ignorant of the true names and capacities of defendants sued as Does 1-500.
9 Therefore, Plaintiff sues these defendants by such fictitious names. Plaintiff will amend
10 this complaint to allege their true names and capacities when ascertained. Plaintiff is
11 informed, believes, and thereon alleges that each fictitiously named defendant is
12 responsible in some manner for the occurrences and damages alleged herein.
- 13 8. At all times mentioned herein, "Defendants" include Ken Cooper Roofing and Gutter
14 Systems, Central Roofing Company, C.R.C. Roofing, Inc., Norm Armstrong Roofing,
15 Inc., JNSJ Roofing Incorporated, and Does 1-500.
- 16 9. At all times mentioned each defendant was a person within the meaning of Health and
17 Safety Code section 25249.11, subdivision (a). Plaintiff is informed, believes, and
18 thereon alleges that at all times relevant to the complaint; each Defendant had ten or more
19 employees.
- 20 10. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
21 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
22 those given by statute to other trial courts. The statutes under which Plaintiff brings this
23 lawsuit do not specify any other basis of jurisdiction.
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FIRST CAUSE OF ACTION

By Plaintiff, CONSUMER ADVOCACY GROUP, INC., and against Defendants KEN COOPER ROOFING AND GUTTER SYSTEMS, CENTRAL ROOFING COMPANY, C.R.C. ROOFING, INC., NORM ARMSTRONG ROOFING, INC., JNSJ ROOFING INCORPORATED, and DOES 1-500, for violation of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (Health and Safety Code sections 25249.5, et seq.)

11. Plaintiff repeats and incorporates by reference the preceding paragraphs of this complaint as though fully set forth herein.

12. Defendants are and at all times mentioned herein have been engaged in the business of installing, repairing, and or replacing the roofs on residential or commercial structures.

13. Defendants have been exposing persons, knowingly and intentionally, by deliberately using asphalt, to the constituent Proposition 65-Listed Chemicals of asphalt, without first giving clear and reasonable warning of such to the exposed persons before the time of exposure. (Health & Saf. Code, § 25249.6.)

14. Plaintiff mailed a separate Proposition 65 60-day Notice of intent to sue to Ken Cooper Roofing and Gutter Systems, Central Roofing Company, C.R.C. Roofing, Inc., Norm Armstrong Roofing, Inc., and JNSJ Roofing Incorporated, respectively. Such Notices stated that each respective defendant, by failing to warn persons of exposures to Proposition 65-Listed Chemicals before exposing them to Proposition 65-Listed Chemicals, had violated Proposition 65. Plaintiff mailed copies of each respective notice to the Office of the Attorney General, State of California, Department of Justice ("Attorney General"), and the County District Attorneys for each county and City

1 Attorneys for each city containing a population of at least 750,000 people, within which
2 each respective named defendant violated Proposition 65.

3
4 15. On or about June 27, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to sue
5 to JNSJ Roofing Incorporated, alleging the facts found in Paragraph 13 of this pleading.

6
7 16. On or about June 27, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to sue
8 to Ken Cooper Roofing and Gutter Systems alleging the facts in Paragraph 13 of this
9 pleading.

10
11 17. On or about June 27, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to sue
12 to Norm Armstrong Roofing, Inc., alleging the facts found in Paragraph 13 of this
13 pleading.

14
15 18. On or about April 14, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to sue
16 to C.R.C. Roofing, Inc., alleging the facts found in Paragraph 13 of this pleading.

17
18 19. On or about April 14, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to sue
19 to Central Roofing Company alleging the facts found in Paragraph 13 of this pleading.

20
21 20. Each Proposition 65 60-Day Notice of intent to sue listed above included a certificate of
22 merit executed by the attorney for the noticing party, Plaintiff. The certificate of merit
23 stated that the attorney for Plaintiff who executed the certificate had consulted with at
24 least one person with relevant and appropriate expertise who had reviewed data regarding
25 the exposure to Proposition 65-Listed Chemicals that are the subjects of the action.

26
27 Based on that information, the attorney for Plaintiff who executed the certificate believed
28 there was a reasonable and meritorious case for this private action. The attorney for
Plaintiff attached to the certificate of merit served on the Attorney General information
sufficient to establish the basis of the certificate of merit.

- 1 21. Plaintiff is commencing this action more than sixty days (plus five calendar days because
2 Plaintiff mailed the notices and the place of mailing and the place of address were within
3 California) from the date that Plaintiff gave notice of the alleged violations of Proposition
4 65 to each respective named defendant, the Attorney General, and applicable district
5 attorneys and city attorneys in whose jurisdictions the violations allegedly occurred.
6
- 7 22. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
8 any applicable district attorney or city attorney has commenced and is diligently
9 prosecuting an action against the violation.
10
- 11 23. Between three years before the sending of each respective Proposition 65 60-Day Notice
12 of intent to sue and the present, in the normal course of business, Defendants installed,
13 repaired, and or replaced roofs. Defendants have been exposing, knowingly and
14 intentionally, reasonably foreseeable members of the public, including occupants of the
15 structures serviced, neighbors of the same, passersby, motorists, and inspectors not
16 employed by Defendants, to Proposition 65-Listed Chemicals by using asphalt, including
17 hot asphalt, "cold" asphalt emulsions and adhesives, asphalt shingles, and inter-ply layers
18 of asphalt or coal tar. Defendants exposed such persons without providing "clear and
19 reasonable" warnings to affected persons before exposing such persons, knowingly and
20 intentionally, to Proposition 65-Listed Chemicals. In doing so, Defendants violated
21 Proposition 65.
22
- 23 24. As to environmental exposures, Defendants failed to provide a warning either that (A)
24 appears on a sign in the affected area, (B) constitutes a posting of signs in the manner
25 described in Cal. Code Regs., tit. 3, § 6776(d), (C) is in a notice mailed or otherwise
26 delivered to each occupant in the affected area at least once in any three-month period, or
27
28

1 (D) provided by public media announcements that targets the affected area at least once
2 in any three-month period.

3
4 25. As to Occupational Exposures, Defendants failed to provide an adequate warning.

5 26. Between three years before the sending of each respective Proposition 65 60-Day Notice
6 of intent to sue and the present, in the normal course of business, Defendants installed,
7 repaired, and or replaced roofs. Defendants have also been exposing, knowingly and
8 intentionally, their employees, including roofing contractors, drivers, roofing installers,
9 and workers otherwise involved in the installation, repair, and or replacement of roofs, to
10 Proposition 65-Listed Chemicals by using asphalt, including hot asphalt, "cold" asphalt
11 emulsions and adhesives, asphalt shingles, and inter-ply layers of asphalt or coal tar.
12 Defendants exposed such employees without providing "clear and reasonable" warnings
13 to affected employees before exposing such persons, knowingly and intentionally, to
14 Proposition 65-Listed Chemicals. In doing so, Defendants violated Proposition 65.
15

16
17 27. The sources of exposures are the constituent chemicals of asphalt, as listed in this
18 complaint. The locations of the exposures include:

- 19 a. Violators' principal places of business and areas within 50 feet of the same;
20
21 b. Areas along and within 50 feet of the routes traveled between said principal
22 places of business and where Defendants stored roofing materials, such as storage
23 facilities and garage areas, wherein Defendants also prepared and heated the
24 asphalt;
25
26 c. Areas along and within 50 feet of the routes traveled between said principal
27 places of business and where Defendants performed roofing work, including
28 roofing installations, removals, and replacements; and

1 d. Areas within 50 feet of where Defendants performed roofing work or established
2 staging grounds for the performance of such work.

3
4 31. These Environmental and Occupational Exposures occurred in the California counties
5 whose district attorneys received copies of the operative 60-Day Notices relevant to each
6 respective named defendant.

7
8 32. The route of exposure for Environmental Exposures is inhalation contact whereby
9 affected persons breathed in the ambient air, which contained asphalt, asphalt smoke, or
10 associated fumes, causing contact with their mouths, throats, esophagi, and lungs.
11 Defendants possessed sufficient control over the relevant areas to control the quality of
12 the ambient air.

13
14 33. The route of exposure for Occupational Exposures is inhalation contact whereby affected
15 employees breathed in the ambient air, which contained asphalt, asphalt smoke, or
16 associated fumes, causing contact with their mouths, throats, esophagi, and lungs.
17 Defendants possessed sufficient control over the relevant areas to control the quality of
18 the ambient air. Employees also sustained inhalation contact by inhaling particulate
19 matter and other airborne constituents, including gaseous emissions released from "cold"
20 asphalt emulsions and adhesives, asphalt shingles, and inter-ply layers of asphalt or coal
21 tar, when they removed various roofing products from packaging and or tore out
22 previously installed roofing products in preparation of re-roofing. The route of exposure
23 for Occupational Exposures is also Dermal Contact, whereby employees allowed their
24 bare skin to touch, intentionally or inadvertently, asphalt products, while mixing, heating,
25 transporting, or applying the same. Dermal Contact also occurred when Employees, after
26 allowing work gloves to touch asphalt, then touched their bare skin with the asphalt-

1 impregnated work gloves. Said exposures occurred in the California counties whose
 2 district attorneys received copies of the operative notices.

3 34. For each type and means of exposure, Defendants have exposed and are exposing the
 4 above referenced persons to the Proposition 65-Listed Chemicals listed below.
 5

6 **CARCINOGENS**

7 Benz[a]anthracene	Chrysene	Toluene diisocyanate	Formaldehyde (gas)
8 5-Methylchrysene	Nickel and Nickel Compounds	Dichloromethane (Methylene Chloride)	Benzene
9 Lead and Lead Compounds	Benzo[b]flouranthene	Benzo[k]flouranthene	Benzo[a]pyrene
10 Indeno[1,2,3-cd]pyrene	Acetaldehyde	Beryllium and Beryllium compounds	Arsenic (inorganic arsenic compounds)
11 Cadmium and Cadmium compounds	Chromium (hexavalent compounds)	Tetrachloroethylene (Perchloroethylene)	Trichloroethylene
12 Formaldehyde (gas)	Chrysene	Dibenz[a,h]anthracene	Carbazole
13 Dibenzo[a,i]pyrene	Dibenzo[a,e]pyrene	Dibenz[a,j]acridine	Dibenzo[a,h]p
14 Dibenzo[a,l]pyrene			

16 **REPRODUCTIVE TOXINS**

17 Toluene	Carbon Disulfide	Benzene	Lead
18 Mercury and Mercury compounds	Arsenic (inorganic oxides)	Cadmium	

19 35. Each Proposition 65-Listed Chemical listed above first appeared on the Governor's
 20 Proposition 65 list more than twenty months before Plaintiff sent a Proposition 65 60-
 21 Day Notice of intent to sue to each respective named defendant. Therefore, each
 22 Proposition 65-Listed Chemical was subject to Proposition 65 warning requirements at
 23 the times of the exposures alleged herein.
 24

25 36. For the past several years, both the Attorney General as well as Plaintiff have
 26 investigated and prosecuted Asphalt Roofing entities as an industry for alleged violations
 27
 28

1 of Proposition 65. Plaintiff and its counsel poured and continue to pour significant
2 resources, including time, money, and energy, in trying to bring all members of the
3 Asphalt Roofing Industry in compliance with Proposition 65. In fact, the Attorney
4 General and Plaintiff co-litigated a previous action that resulted in a universal settlement
5 reached with over 100 Asphalt Roofing entities. That settlement had an extensive opt-in
6 period that allowed all roofing entities, including these defendants, to join the settlement
7 and end not only their continual violations of Proposition 65, but also their potential
8 liabilities for alleged violations of the statute. Accordingly, these defendants have had
9 plenty of time and opportunities to end their violations of Proposition 65 and come into
10 compliance with the law.
11

12
13 37. Instead, these defendants flouted the various opportunities they had to comply with
14 Proposition 65, and chose instead not to participate in a win-win settlement agreement
15 offered by both the Attorney General and CAG. The settlement these defendants chose
16 not to participate in would have benefited all parties involved, in that it would have
17 required defendants to significantly reduce both their employees' as well as the public's
18 exposures to deadly chemicals, and would have obligated these defendants to post the
19 required warnings. By choosing to continue their violations, these defendants have
20 significantly enlarged their potential liabilities for violating Proposition 65.
21
22

23 PRAYER FOR RELIEF


24 WHEREFORE, Plaintiff in the FIRST CAUSE OF ACTION demands against each defendant as
25 follows:

- 26 1. A permanent injunction pursuant to Health and Safety Code section 25249.7, subdivision (a),
27 and the equitable powers of the court;
28

- 1 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b) in the amount
2 of \$2,500 per day per violation;
- 3
4 3. Order to disgorge or pay restitution in an amount sufficient to restore to any person in interest
5 any money or property that Defendants may have acquired by means of violations set forth
6 herein and to prevent defendants' future use of such violations, pursuant to the equitable
7 powers of the court;
- 8 4. Costs of suit;
- 9 5. Reasonable attorney's fees and costs; and
- 10
11 6. Any further relief that the court may deem just and equitable.
- 12

13 Dated: May 22, 2007

14 YEROUSHALMI & ASSOCIATES

15
16 
17 Reuben Yeroushalmi
18 Attorneys for Plaintiff,
19 Consumer Advocacy Group, Inc.
20
21
22
23
24
25
26
27
28