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6 Attorneys for Plaintiffs,  
7 Consumer Advocacy Group, Inc.

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF ALAMEDA--UNLIMITED

11 CONSUMER ADVOCACY )  
12 GROUP, INC., in the interest of, )  
and on Behalf of the Public, )

13 )  
14 Plaintiffs, )  
15 )

16 v. )  
17 )

18 INTERNATIONAL PAVEMENT )  
19 SOLUTIONS, INC., ASPHALT FABRIC )  
20 AND ENGINEERING, INC., COMMERCIAL )  
PAVING & COATING, CREW INC., )  
21 CALHOUN BROTHERS GRADING & )  
PAVING, CITY SERVICE CONTRACTING, )  
22 INC., GUTAYA EQUIPMENT INC., JD )  
PAVING INC., FAGUNDES & SON INC., )  
23 J H FITZMAURICE INC, BEN'S ASPHALT, )  
HDEC INC, KERN ASPHALT PAVING )  
& SEALING, NORMAN B. HOUGE INC., )  
24 PACIFIC SURFACING INC., SHAMROCK )  
GROUP INC., SECURITY PAVING )  
25 COMPANY INC., VINCI PACIFIC )  
CORPORATION, WATTIS )  
26 CONSTRUCTION CO. INC., WT COOK )  
27 CONSTRUCTION, A & B ASPHALT, )  
G BORLOTOTOO & COMPANY, )  
28 COSTAL PAVING INC., TEICHARD INC., )

COMPLAINT FOR PENALTY,  
INJUNCTION, AND RESTITUTION

Violation of Proposition 65, the Safe  
Drinking Water and Toxic Enforcement  
Act, 1986 (commencing with Health and  
Safety Code sections 25249.5, et seq.)

1 BOND BLACKTOP, ROAD WORKS INC. )  
2 AND DOES 1-1,000, )  
3 )  
4 Defendants. )  
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6 **BACKGROUND AND PRELIMINARY FACTS**

- 7 1. In 1986, California voters approved an initiative to address growing concerns about  
8 exposure to toxic chemicals. The initiative, The Safe Drinking Water and Toxic  
9 Enforcement Act of 1986, codified at Health and Safety Code sections 25249.5 et seq.  
10 (“Proposition 65”), helps to protect California’s drinking water sources from  
11 contamination, to allow consumers to make informed choices about the products they  
12 buy, and to enable persons to protect themselves from toxic chemicals as they see fit.
- 13 2. Proposition 65 requires the Governor of California to publish a list of chemicals known to  
14 the state to cause cancer, birth defects, or other reproductive harm (“Proposition 65-  
15 Listed Chemicals”). (Health & Saf. Code, § 25249.8.) The list, which the Governor  
16 updates at least once a year, contains over 550 chemicals. Proposition 65 imposes  
17 warning requirements and other controls that apply to Proposition 65-Listed Chemicals.
- 18 3. All businesses with ten or more employees that operate or sell products in California  
19 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited  
20 from knowingly discharging Proposition 65-Listed Chemicals into sources of drinking  
21 water (Health & Saf. Code, § 25249.5), and (2) required to provide “clear and  
22 reasonable” warnings before exposing a person, knowingly and intentionally, to a  
23 Proposition 65-Listed Chemical (Health & Saf. Code, § 25249.6.)  
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- 1 4. Plaintiff, Consumer Advocacy Group, Inc. ("Plaintiff") is a non-profit corporation  
2 qualified to do business in the State of California. It brings this action in the public  
3 interest as defined under Health and Safety Code section 25249.7, subdivision (d).  
4
- 5 5. Defendants International Pavement Solutions, Inc., Asphalt Fabric and Engineering, Inc.,  
6 Commercial Paving & Coating, Crew Inc., Calhoun Brothers Grading & Paving, City  
7 Service Contracting Inc., Gutaya Equipment Inc., JD Paving Inc., Fagundes & Son Inc., J  
8 H Fitzmaurice Inc, Ben's Asphalt, HDEC Inc, Kern Asphalt Paving & Sealing, Norman  
9 B. Houge Inc., Pacific Surfacing Inc., Shamrock Group Inc., Security Paving Company  
10 Inc., Vinci Pacific Corporation, Wattis Construction Co. Inc., WT Cook Construction, A  
11 & B Asphalt, G Borlototoo & Company; Costal Paving Inc., Teichard Inc., Bond  
12 Blacktop, Road Works Inc., AND DOES 1-1,000 (hereinafter referred to collectively as  
13 "Defendants"), are and at all times mentioned herein have been qualified to do business  
14 in the State of California, and at all times mentioned herein have conducted business  
15 within the State of California.  
16
- 17 6. Plaintiffs are ignorant of the true names and capacities of defendants sued as Does 1,000,  
18 and therefore sue these defendants by such fictitious names. Plaintiffs will amend this  
19 complaint to allege their true names and capacities when ascertained. Plaintiffs are  
20 informed, believe, and thereon allege that each of the fictitiously named defendants is  
21 responsible in some manner for the occurrences herein alleged and the damages caused  
22 thereby.  
23
- 24 7. At all times mentioned herein, "Defendants" include International Pavement Solutions,  
25 Inc., Asphalt Fabric and Engineering, Inc., Commercial Paving & Coating, Crew Inc.,  
26 Calhoun Brothers Grading & Paving, City Service Contracting Inc., Gutaya Equipment  
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1 Inc., JD Paving Inc., Fagundes & Son Inc., J H Fitzmaurice Inc, Ben's Asphalt, HDEC  
2 Inc, Kern Asphalt Paving & Sealing, Norman B. Houge Inc., Pacific Surfacing Inc.,  
3 Shamrock Group Inc., Security Paving Company Inc., Vinci Pacific Corporation, Wattis  
4 Construction Co. Inc., WT Cook Construction, A & B Asphalt, G Borlototoo &  
5 Company; Costal Paving Inc., Teichard Inc., Bond Blacktop, Road Works Inc. and Does  
6  
7 1 through 1,000.

8 8. At all relevant times, each Defendant was a person doing business within the meaning of  
9 Health and Safety Code section 25249.11, subdivision (a). Plaintiffs are informed,  
10 believe, and thereon allege that at all times mentioned herein each Defendant has had 10  
11 or more employees.

12  
13 9. In 2000 and 2001, Plaintiff conducted research, from which it identified an industry-wide  
14 practice among California companies involved in paving operations, of exposing,  
15 knowingly and intentionally, persons to asphalt paving products without first providing  
16 clear and reasonable warnings of such to the exposed persons prior to exposure. Asphalt  
17 is extremely toxic material, containing numerous Proposition 65-Listed Chemicals.  
18

19 10. Defendants have been intentionally exposing persons, by deliberately using Asphalt, to  
20 the constituent chemicals of Asphalt and related products and materials, including Hot  
21 Mix Asphalt, as listed in Paragraph 52 and designated by the State of California to cause  
22 cancer, birth defects, and reproductive toxicity, pursuant to the Code of Civil Regulations  
23 (hereinafter "CCR"), Title 22, section 12000, without first giving a clear and reasonable  
24 warning of such to the exposed persons, in violation of Health & Safety Code, § 25249.6  
25 as specifically delineated at CCR, Title 22, section 12601, et seq.  
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1 11. Plaintiff mailed a separate Proposition 65 60-day Notice of intent to sue to Defendants  
2 International Pavement Solutions, Inc., Asphalt Fabric and Engineering, Inc.,  
3 Commercial Paving & Coating, Crew Inc., Calhoun Brothers Grading & Paving, City  
4 Service Contracting Inc., Gutaya Equipment Inc., JD Paving Inc., Fagundes & Son Inc., J  
5 H Fitzmaurice Inc, Ben's Asphalt, HDEC Inc, Kern Asphalt Paving & Sealing, Norman  
6 B. Houge Inc., Pacific Surfacing Inc., Shamrock Group Inc., Security Paving Company  
7 Inc., Vinci Pacific Corporation, Wattis Construction Co. Inc., WT Cook Construction, A  
8 & B Asphalt, G Borlototoo & Company, Costal Paving Inc., Teichard Inc., Bond  
9 Blacktop, and Road Works Inc., respectively. Such Notices stated that each respective  
10 defendant, by failing to warn persons of exposures to Proposition 65-Listed Chemicals  
11 before exposing them to Proposition 65-Listed Chemicals, had violated Proposition 65.  
12 Copies of the notices were mailed to the California Attorney General ("Attorney  
13 General") and the County District Attorneys and City Attorneys for each city containing  
14 a population of at least 750,000 people, for the locations within which Defendants have  
15 allegedly violated Health and Safety Code sections 25249.5, et seq. and CCR, Title 22,  
16 sections 12000 through 14000.

17 12. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
18 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except  
19 those given by statute to other trial courts. Plaintiffs bring this lawsuit under statutes that  
20 do not specify any other basis of jurisdiction.  
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2 **FIRST CAUSE OF ACTION BY CONSUMER ADVOCACY GROUP, INC AND**  
3 **AGAINST DEFENDANTS INTERNATIONAL PAVEMENT SOLUTIONS, INC.,**  
4 **ASPHALT FABRIC AND ENGINEERING, INC., COMMERCIAL PAVING &**  
5 **COATING, CREW INC., CALHOUN BROTHERS GRADING & PAVING, CITY**  
6 **SERVICE CONTRACTING INC., GUTAYA EQUIPMENT INC., JD PAVING INC.,**  
7 **FAGUNDES & SON INC., J H FITZMAURICE INC, BEN'S ASPHALT, HDEC INC,**  
8 **KERN ASPHALT PAVING & SEALING, NORMAN B. HOUGE INC., PACIFIC**  
9 **SURFACING INC., SHAMROCK GROUP INC., SECURITY PAVING COMPANY INC.,**  
10 **VINCI PACIFIC CORPORATION, WATTIS CONSTRUCTION CO. INC., WT COOK**  
11 **CONSTRUCTION, A & B ASPHALT, G BORLOTOTOO & COMPANY, COSTAL**  
12 **PAVING INC., TEICHARD INC., BOND BLACKTOP, ROAD WORKS INC. AND ALL**  
13 **DOE DEFENDANTS FOR VIOLATIONS OF PROPOSITION 65, THE SAFE**  
14 **DRINKING WATER AND TOXIC ENFORCEMENT ACT, 1986 (COMMENCING**  
15 **WITH HEALTH AND SAFETY CODE SECTIONS 25249.5, et seq.**

16 13. Plaintiff CAG repeats and incorporates by reference paragraphs 1 through 12 of this  
17 complaint as though fully set forth herein.

18 14. Defendants are and at all times mentioned herein have been engaged in the business of  
19 the paving of roads, berms, pathways, parking lots, and other surfaces, or the  
20 manufacturing, selling, storing, distributing, installing, and laying of Asphalt products.

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

25 16. On or about August 23, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to  
26 sue to International Pavement Solutions, Inc alleging the facts found in Paragraph 10 of  
27 this pleading.  
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1 17. On or about March 9, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to sue  
2 to Asphalt Fabric and Engineering, Inc., alleging the facts found in Paragraph 10 of this  
3 pleading.

4  
5 18. On or about March 9, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to sue  
6 to Commercial Paving & Coating alleging the facts found in Paragraph 10 of this  
7 pleading.

8 19. On or about March 9, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to sue  
9 to Crew Inc. alleging the facts found in Paragraph 10 of this pleading.

10  
11 20. On or about August 29, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to  
12 sue to Calhoun Brothers Grading & Paving alleging the facts found in Paragraph 10 of  
13 this pleading.

14 21. On or about August 23, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to  
15 sue to City Service Contracting Inc. alleging the facts found in Paragraph 10 of this  
16 pleading.

17  
18 22. On or about June 1, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to sue to  
19 Gutaya Equipment Inc. alleging the facts found in Paragraph 10 of this pleading.

20 23. On or about June 1, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to sue to  
21 JD Paving Inc. alleging the facts found in Paragraph 10 of this pleading.

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23 24. On or about August 29, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to  
24 sue to Fagundes & Son Inc. alleging the facts found in Paragraph 10 of this pleading.

25 25. On or about August 29, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to  
26 sue to J H Fitzmaurice Inc. alleging the facts found in Paragraph 10 of this pleading.  
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1 26. On or about March 9, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to sue  
2 to Ben's Asphalt alleging the facts found in Paragraph 10 of this pleading.

3 27. On or about August 29, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to  
4 sue to HDEC Inc alleging the facts found in Paragraph 10 of this pleading.  
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6 28. On or about August 29, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to  
7 sue to Kern Asphalt Paving & Sealing alleging the facts found in Paragraph 10 of this  
8 pleading.

9 29. On or about August 29, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to  
10 sue to Norman B. Houge Inc. alleging the facts found in Paragraph 10 of this pleading.  
11

12 30. On or about August 29, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to  
13 sue to Pacific Surfacing Inc. alleging the facts found in Paragraph 10 of this pleading.

14 31. On or about March 9, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to sue  
15 to Shamrock Group Inc. alleging the facts found in Paragraph 10 of this pleading.  
16

17 32. On or about March 9, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to sue  
18 to Security Paving Company Inc. alleging the facts found in Paragraph 10 of this  
19 pleading

20 33. On or about June 1, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to sue to  
21 Vinci Pacific Corporation alleging the facts found in Paragraph 10 of this pleading  
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23 34. On or about August 29, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to  
24 sue to Wattis Construction Co. Inc. alleging the facts found in Paragraph 10 of this  
25 pleading.  
26

27 35. On or about August 29, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to  
28 sue to WT Cook Construction alleging the facts found in Paragraph 10 of this pleading.



1 36. On or about August 29, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to  
2 sue to A & B Asphalt alleging the facts found in Paragraph 10 of this pleading.

3 37. On or about August 29, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to  
4 sue to G Borlototoo & Company alleging the facts found in Paragraph 10 of this  
5 pleading.  
6

7 38. On or about August 29, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to  
8 sue to Costal Paving Inc. alleging the facts found in Paragraph 10 of this pleading.

9 39. On or about August 29, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to  
10 sue to Teichard Inc. alleging the facts found in Paragraph 10 of this pleading.  
11

12 40. On or about August 29, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to  
13 sue to Bond Blacktop alleging the facts found in Paragraph 10 of this pleading.

14 41. On or about August 23, 2006, Plaintiff sent a Proposition 65 60-Day Notice of intent to  
15 sue to Road Works Inc. alleging the facts found in Paragraph 10 of this pleading.  
16

17 42. Each Proposition 65 60-Day Notice of intent to sue listed above included a certificate of  
18 merit executed by the attorney for the noticing party, Plaintiff. The certificate of merit  
19 stated that the attorney for Plaintiff who executed the certificate had consulted with at  
20 least one person with relevant and appropriate expertise who had reviewed data regarding  
21 the exposure to Proposition 65-Listed Chemicals that are the subjects of the action.  
22 Based on that information, the attorney for Plaintiff who executed the certificate believed  
23 there was a reasonable and meritorious case for this private action. The attorney for  
24 Plaintiff attached to the certificate of merit served on the Attorney General information  
25 sufficient to establish the basis of the certificate of merit.  
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1 43. 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 44. 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 ENVIRONMENTAL EXPOSURE

12 45. Between three years before the sending of each respective Proposition 65 60-Day Notice  
13 of intent to sue and the present, in the normal course of business, Defendants conducted  
14 operations involving, relating to, or leading to, the paving of roads, pathways, berms,  
15 parking lots, and other surfaces. Defendants have been knowingly and intentionally  
16 exposing reasonably foreseeable members of the public, including neighbors and  
17 residents, passersby, motorists, engineers, and inspectors not in the direct employ of  
18 violators and found within a 100 foot radius of where paving work has been performed,  
19 using products containing the constituent chemicals of Asphalt and related products and  
20 materials, including Hot Mix Asphalt, as listed in Paragraph 52 of this Complaint and  
21 designated by the State of California to cause cancer, birth defects, and reproductive  
22 toxicity, pursuant to CCR, Title 22, section 12000, without first giving clear and  
23 reasonable warning of such to the exposed persons. Health & Safety Code, § 25249.6.  
24  
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26 46. The sources of exposures are the constituent chemicals of Asphalt and related products  
27 and materials, and the use of such, as listed in Paragraph 62. The locations of the  
28

1 exposures include the areas within a 100 foot radius of the violators' places of business,  
2 involving activities including whereby asphalt cement, a crude oil product that has been  
3 refined, and aggregate have been heated and mixed to create Asphalt or Hot Mix Asphalt,  
4 to the area along and within 100 feet of the route traveled between said places of business  
5 and the addresses where paving materials have been stored and paving work has been  
6 performed, whereby the Asphalt has been transported, and the area within a 50 foot  
7 radius to such addresses where paving work has been performed, including the street,  
8 sidewalks, and pathways within a 100 foot radius to said addresses, the vicinity of work  
9 vehicles and the immediately neighboring areas affected by the constituent chemicals of  
10 Asphalt and related products and materials, as listed in Paragraph 62, Hot Mix Asphalt,  
11 Asphalt smoke, diesel exhaust, and associated fumes that have been breathed in via the  
12 ambient air by the exposed persons causing contact with their mouths, throats, esophagi,  
13 and lungs.  
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16  
17 47. The route of exposure for environmental exposures has been the inhalation contact  
18 described above. Exposures took place in the California counties whose District  
19 Attorneys received copies of the operative 60-Day Notices.  
20

### 21 OCCUPATIONAL EXPOSURE

22 48. Between three years before the sending of each respective Proposition 65 60-Day Notice  
23 of intent to sue and the present, in the normal course of business, Defendants by  
24 manufacturing, selling, storing, distributing, installing, and laying Asphalt products, have  
25 been knowingly and intentionally exposing their employees to the constituent chemicals  
26 of Asphalt and related products and materials, including Hot Mix Asphalt, as listed in  
27 Paragraph 52 and designated by the State of California to cause cancer, birth defects, and  
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1 reproductive toxicity, pursuant to CCR, Title 22, section 12000, without first giving clear  
2 and reasonable warning of such to their employees. Health & Safety Code, § 25249.6 as  
3 delineated at CCR, Title 22, section 12601, et seq.  
4

5 49. The sources of exposures include the constituent chemicals of Asphalt and related  
6 products and materials, and the use of Asphalt, including Hot Mix Asphalt, as listed in  
7 Paragraph 52. The employees of the Defendants include, but are not limited to, paving  
8 contractors, flag persons, drivers, truck drivers, paving machine operators and workers  
9 involved in grading and raking Asphalt at locations where Asphalt is applied. Exposures  
10 occurred in locations including the storage facilities/garage areas where the Asphalt,  
11 including Asphalt cement, a crude oil product, were stored or made at the violators'  
12 places of business, as referenced above, on and in the vicinity of work vehicles  
13 transporting Asphalt, including Hot Mix Asphalt, the addresses where paving  
14 installations were performed, and the areas along the routes traveled between said places  
15 of business and the addresses where paving work was performed, by which the Asphalt,  
16 including Hot Mix Asphalt, was transported. The route of exposure for occupational  
17 exposures to the chemicals listed in Paragraph 52, by the affected persons has been from  
18 Asphalt, including Hot Mix Asphalt, Asphalt smoke, diesel smoke, and associated fumes  
19 that have been breathed in via the ambient air by the exposed persons (and was a direct  
20 result of participating in the process by which Asphalt is applied to surfaces, or being in  
21 the vicinity of where hot Asphalt was mixed, heated, or transported) causing inhalation  
22 contact with their mouths, throats, esophagi, and lungs. Defendants are also responsible  
23 for a route of exposure of dermal contact due to their employees touching the Asphalt  
24 with their bare skin while mixing, heating, transporting, and applying the Asphalt,  
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1 including hot Asphalt, to surfaces at work locations, as well as employees touching the  
2 Asphalt by inadvertently allowing their work gloves, which had touched the Asphalt, to  
3 touch their bare skin. Employees also sustained dermal contact when moving the  
4 Asphalt, including hot Asphalt, in and out of the storage facilities and garage areas where  
5 the Asphalt has been stored at Defendants' places of business. Exposures occurred in the  
6 California counties whose district attorneys received copies of the operative notices.  
7

### 8 CONSUMER PRODUCT EXPOSURE

9  
10 50. Between three years before the sending of each respective Proposition 65 60-Day Notice  
11 of intent to sue and the present, in the normal course of business, Defendants by  
12 manufacturing, selling, storing, distributing, installing, and laying Asphalt products, have  
13 been knowingly and intentionally exposing their customers to the constituent chemicals  
14 of Asphalt and related products and materials, including Hot Mix Asphalt, as listed in  
15 Paragraph 52 and designated by the State of California to cause cancer, birth defects, and  
16 reproductive toxicity, pursuant to CCR, Title 22, section 12000, without first giving clear  
17 and reasonable warning of such to their customers. Health & Saf. Code, § 25249.6 and as  
18 delineated at CCR, Title 22, section 12601, et seq.  
19

20  
21 51. The sources of exposures include the constituent chemicals of Asphalt and related  
22 products and materials, including Hot Mix Asphalt, as listed in Paragraph 52. The  
23 customers of the Defendants include persons who directly contracted with Defendants to  
24 perform paving services, and the employees, families, and other persons associated with  
25 the persons who directly contracted with Defendants, or who sold products containing  
26 Asphalt to members of the public. Exposures occurred in locations where members of  
27 the public handled Defendant's products or where parties, contracted by the public, laid,  
28

1 or otherwise permanently affixed to the earth's surface, Asphalt. The route of exposure  
2 to the chemicals listed in Paragraph 52, by the affected persons, has been by inhalation of  
3 Asphalt fumes, including Hot Mix Asphalt, Asphalt smoke, and associated fumes, and  
4 particulate matter and other airborne constituents, that have been breathed in via the  
5 ambient air by the exposed persons, and was a direct result of purchasing the products  
6 and services whereby such Asphalt was applied to surfaces, and being near where hot  
7 Asphalt was mixed, heated, and transported, causing also dermal contact with their  
8 mouths, throats, esophagi, and lungs. Defendants are also responsible for a route of  
9 exposure of dermal contact due to touching the Asphalt, or Asphalt products, with their  
10 bare skin, including Hot Mix Asphalt. Exposures have occurred in the California  
11 counties whose District Attorneys received copies of the operative notices.  
12

13  
14 52. For each such type and means of exposure, the violators have exposed and are continuing  
15 to expose the above referenced persons to:  
16

17 **CARCINOGENS:** Benz[a]anthracene; Chrysene; Toluene; diisocyanate;  
18 Formaldehyde (gas); 5-Methylchrysene; Nickel and Certain Nickel Compounds;  
19 Dichloromethane (Methylene Chloride); Benzene; Lead and Lead Compounds;  
20 Benzo[b]flouranthene; Benzo[k]flouranthene; Benzo[a]pyreneIndeno[1,2,3-cd]; pyrene;  
21 Acetaldehyde; Beryllium and Beryllium compounds; Arsenic (inorganic arsenic  
22 compounds); Cadmium and Cadmium compounds; Chromium (hexavalent compounds);  
23 Tetrachloroethylene (Perchloroethylene); Trichloroethylene; ChryseneDibenz[a,h];  
24 anthracene; Carbazole; Dibenzo[a,i]pyrene; Dibenzo[a,e]pyrene; Dibenz[a,j]acridine;  
25 Dibenzo[a,h]pyrene; Dibenzo[a,l]pyrene; Acetaldehyde; Benz[a]anthracene; 1,3  
26  
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28

1 Butadiene; Diesel Engine Exhaust; Silica, crystalline (airborne particles of respirable  
2 size)

3 **REPRODUCTIVE TOXINS:** Toluene; Carbon Disulfide; Benzene; Lead; Mercury and  
4 Mercury compounds; Arsenic (inorganic oxides); Cadmium; Methyl Chloride  
5

6 53. Each Proposition 65-Listed Chemical listed above first appeared on the Governor's  
7 Proposition 65 list more than twenty months before Plaintiff sent a Proposition 65 60-  
8 Day Notice of intent to sue to each respective named defendant. Therefore, each  
9 Proposition 65-Listed Chemical was subject to Proposition 65 warning requirements at  
10 the times of the exposures alleged herein.  
11

12 54. For the past several years, both the Attorney General as well as Plaintiff have  
13 investigated and prosecuted Asphalt Paving entities as an industry for alleged violations  
14 of Proposition 65. Plaintiff and its counsel poured and continue to pour significant  
15 resources, including time, money, and energy, in trying to bring all members of the  
16 Asphalt Paving Industry in compliance with Proposition 65. In fact, the Attorney  
17 General and Plaintiff co-litigated a previous action that resulted in a universal settlement  
18 reached with over 100 Asphalt Paving entities. That settlement had an extensive opt-in  
19 period which allowed all Paving entities, including these defendants, to join the  
20 settlement and end not only their continual violations of Proposition 65, but also their  
21 potential liabilities for alleged violations of the statute. Accordingly, these defendants  
22 have had plenty of time and opportunities to end their violations of Proposition 65 and  
23 come into compliance with the law.  
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27 55. Instead, these defendants flouted the various opportunities they had to comply with  
28 Proposition 65, and chose instead not to participate in a win-win settlement agreement

1 offered by both the Attorney General and CAG. The settlement these defendants chose  
2 not to participate in would have benefited all parties involved, in that it would have  
3 required defendants to significantly reduce both their employees' as well as the public's  
4 exposures to deadly chemicals, and would have obligated these defendants to post the  
5 required warnings. By choosing to continue their violations, these defendants have  
6 significantly enlarged their potential liabilities for violating Proposition 65.  
7

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12 **PRAYER FOR RELIEF**

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

- 15 1. A permanent injunction pursuant to Health and Safety Code section 25249.7, subdivision (a),  
16 and the equitable powers of the court;
- 17 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b) in the amount  
18 of \$2,500 per day per violation;
- 19 3. Order to disgorge or pay restitution in an amount sufficient to restore to any person in interest  
20 any money or property that Defendants may have acquired by means of violations set forth  
21 herein and to prevent defendants' future use of such violations, pursuant to the equitable  
22 powers of the court;
- 23 4. Costs of suit;
- 24 5. Reasonable attorney's fees and costs; and
- 25 6. Any further relief that the court may deem just and equitable.  
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1 Dated: December 27, 2007

2 YERUSHALMI & ASSOCIATES

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5 ~~Reuben Yerushalmi~~  
6 Attorneys for Plaintiff,  
7 Consumer Advocacy Group, Inc.  
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