

**CONFORMED COPY**  
OF ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

OCT 26 2009

John A. Clarke, Executive Officer/Clerk

By RUGENA LOPEZ, Deputy

Reuben Yeroushalmi (SBN 193981)  
Daniel D. Cho (SBN 105409)  
Ben Yeroushalmi (SBN 232540)  
**YEROUSHALMI & ASSOCIATES**  
3700 Wilshire Boulevard, Suite 480  
Los Angeles, California 90010  
Telephone: 213-382-3183  
Facsimile: 213-382-3430

Attorneys for Plaintiffs,  
Consumer Advocacy Group, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES – CENTRAL DISTRICT

**BC 424683**

CONSUMER ADVOCACY GROUP, INC.,  
in the public interest,

Plaintiff,

v.

RANCHO ROOFING, LTD., a California  
corporation; and DOES 1-20;

Defendants.

CASE NO.

COMPLAINT FOR PENALTY,  
INJUNCTION, AND RESTITUTION

Violation of Proposition 65, the Safe  
Drinking Water and Toxic Enforcement  
Act of 1986 (*Health & Safety Code*, §  
25249.5, *et seq.*)

ACTION IS AN UNLIMITED CIVIL  
CASE (exceeds \$25,000)

Plaintiff Consumer Advocacy Group, Inc. alleges a cause of action against defendants as  
follows:

///

///

///

///

///

///

## THE PARTIES

1. Plaintiff Consumer Advocacy Group, Inc. ("Plaintiff") is a non-profit corporation qualified to do business in the State of California. CAG is a person within the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting as a private attorney general, brings this action in the public interest as defined under Health and Safety Code section 25249.7, subdivision (d).
2. Defendant Rancho Roofing, Ltd. is a California Corporation, qualified to do business and doing business in California.
3. Plaintiff is presently unaware of the true names and capacities of defendants Does 1-20, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed, believes, and thereon alleges that each fictitiously named defendant is responsible in some manner for the occurrences herein alleged and the damages caused thereby.
4. At all times mentioned herein, the term "Defendants" includes Rancho Roofing, Ltd. and Does 1-20.
5. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all times mentioned herein have conducted business within the State of California.
6. At all times relevant to this action, each Defendant was an agent or employee of each other Defendant. In conducting the activities alleged in this Complaint, each Defendant was acting within the course and scope of this agency or employment, and was acting with the consent, permission, and authorization of each of the remaining Defendants. All actions of each Defendant alleged in this Complaint were ratified and approved by every other Defendant or their officers or managing agents, and by agreeing to actively conceal the true facts as alleged herein. Alternatively, Defendants aided, conspired with and/or facilitate wrongful conduct of other Defendants.
7. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the Defendants was a person doing business within the meaning of Health and Safety Code

1 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more  
2 employees at all relevant times.

### 3 4 JURISDICTION

- 5 8. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
6 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except  
7 those given by statute to other trial courts. This Court has jurisdiction over this action  
8 pursuant to Health and Safety Code section 25249.7, which allows enforcement of  
9 violations of Proposition 65 in any Court of competent jurisdiction.
- 10 9. This Court has jurisdiction over Defendants named herein because Defendants either  
11 reside or are located in this State or are foreign corporations authorized to do business in  
12 California, are registered with the California Secretary of State, or who do sufficient  
13 business in California, have sufficient minimum contacts with California, or otherwise  
14 intentionally avail themselves of the markets within California through the manufacture,  
15 distribution, promotion, marketing, or sale of their products in California to render the  
16 exercise of jurisdiction by the California courts permissible under traditional notions of  
17 fair play and substantial justice.

### 18 19 BACKGROUND AND PRELIMINARY FACTS

- 20 10. In 1986, California voters approved an initiative to address growing concerns about  
21 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to  
22 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,  
23 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
24 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections  
25 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources  
26 from contamination, to allow consumers to make informed choices about the products  
27 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
28 fit.

- 1 11. Proposition 65 requires the Governor of California to publish a list of chemicals known to  
2 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*  
3 § 25249.8. The list, which the Governor updates at least once a year, contains over 700  
4 chemicals and chemical families. Proposition 65 imposes warning requirements and  
5 other controls that apply to Proposition 65-listed chemicals.
- 6 12. All businesses with ten (10) or more employees that operate or sell products in California  
7 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited  
8 from knowingly discharging Proposition 65-listed chemicals into sources of drinking  
9 water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and  
10 reasonable” warnings before exposing a person, knowingly and intentionally, to a  
11 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).
- 12 13. Plaintiff conducted research, from which it identified an industry-wide practice among  
13 California companies that install, repair, or replace roofs, of exposing, knowingly and  
14 intentionally, persons to asphalt and its constituent Proposition 65-Listed Chemicals  
15 without first providing clear and reasonable warnings of such to the exposed persons  
16 prior to exposure. Asphalt is extremely toxic material, containing numerous Proposition  
17 65-Listed Chemicals.

18  
19 **SATISFACTION OF PRIOR NOTICE**

- 20 14. On or about October 26, 2008, Plaintiff gave notice of alleged violations of Health and  
21 Safety Code section 25249.6, concerning occupational and environmental exposures,  
22 subject to a private action to Rancho Roofing, Ltd., identified in the notice as “Rancho  
23 Roofing, Ltd.,” and to the California Attorney General, County District Attorneys, and  
24 City Attorneys for each city containing a population of at least 750,000 people in whose  
25 jurisdictions the violations alleged herein occurred.
- 26 15. Plaintiff’s notice of alleged violation included a Certificate of Merit executed by the  
27 attorney for the noticing party, Plaintiff. The Certificate of Merit stated that the attorney  
28 for Plaintiff who executed the certificate had consulted with at least one person with

1 relevant and appropriate expertise who had reviewed data regarding the exposures to the  
2 Proposition 65-Listed Chemicals, which are the subject chemicals of this action. Based  
3 on that information, the attorney for Plaintiff who executed the Certificate of Merit  
4 believed there was a reasonable and meritorious case for this private action. The attorney  
5 for Plaintiff attached to the Certificate of Merit served on the Attorney General the  
6 confidential factual information sufficient to establish the basis of the Certificate of  
7 Merit.

8 16. Plaintiff's notice of alleged violation also included a Certificate of Service By Mail and a  
9 document entitled "The State Drinking Water & Toxic Enforcement Act of 1986  
10 (Proposition 65) A Summary." *Cal. Health & Safety Code* § 25249.7(d).

11 17. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
12 gave notice of the alleged violations to Rancho Roofing, Ltd. and the public prosecutors  
13 referenced in Paragraph 14.

14 18. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor  
15 any applicable district attorney or city attorney has commenced and is diligently  
16 prosecuting an action against the Defendants.

### 17 FIRST CAUSE OF ACTION

18 **(By Consumer Advocacy Group, Inc. and against Rancho Roofing, Ltd. and Does 1-20 for**  
19 **Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986**  
20 **(*Health & Safety Code*, §§ 25249.5, *et seq.*))**

21 19. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
22 paragraphs 1 through 18 of this complaint as though fully set forth herein.

23 20. Each of the Defendants is, and at all times mentioned herein has been engaged in the  
24 business of installing, repairing, and/or replacing the roofs on residential and commercial  
25 structures.

26 21. Defendants have been exposing persons, knowingly and intentionally, by deliberately  
27 using asphalt, to the constituent Proposition 65-Listed Chemicals of asphalt without first  
28

1 giving clear and reasonable warning of such to the exposed persons before the time of  
2 exposure. *Cal. Health & Safety Code* § 25249.6.

3 22. Between three years before the sending of the Proposition 65 60-Day Notice of Intent to  
4 Sue referenced in Paragraph 14 and the present, in the normal course of business,  
5 Defendants installed, repaired, and/or replaced roofs. Defendants have been exposing,  
6 knowingly and intentionally, reasonably foreseeable members of the public, including  
7 occupants of the structures serviced, neighbors of the same passersby, motorists, and  
8 inspectors not employed by Defendants, to Proposition 65-Listed Chemicals by using  
9 asphalt, including hot asphalt, "cold" asphalt emulsions and adhesives, asphalt shingles,  
10 and inter-ply layers of asphalt or coal tar. Defendants exposed such persons without  
11 providing "clear and reasonable" warnings to affected persons before exposing such  
12 persons, knowingly and intentionally, to Proposition 65-Listed Chemicals. In doing so,  
13 Defendants violated Proposition 65.

14 23. Plaintiff's allegations concern "[e]nvironmental exposure[s]," which are exposures "that  
15 may foreseeably occur as a result of contact with an environmental medium, including,  
16 but not limited to, ambient air, indoor air, drinking water, standing water, running water,  
17 soil, vegetation, or manmade or natural substances, either through inhalation, ingestion,  
18 skin contact, or otherwise. Environmental exposures include all exposures that are not  
19 consumer products exposures, or occupational exposures." *Cal. Code Reg.* tit. 27, §  
20 25602(c).

21 24. As to environmental exposures, Defendants failed to provide a warning either that (A)  
22 appears on a sign in the affected area; (B) constitutes a posting of signs in the manner  
23 described in California Code of Regulations title 3, section 6776, subdivision (d); (C) is  
24 in a notice mailed or otherwise delivered to each occupant in the affected area at least  
25 once in any three-month period; or (D) provided by public media announcements that  
26 targets the affected area at least once in any three-month period.

27 25. The route of exposure for Environmental Exposures is inhalation contact whereby  
28 affected persons breathed in the ambient air, which contained asphalt, asphalt smoke, or

1 associated fumes, causing contact with their mouths, throats, esophagi, and lungs.

2 Defendants possessed sufficient control over the relevant areas to control the quality of  
3 the ambient air.

4 26. Plaintiff's allegations concern "[o]ccupational exposure[s]," which are exposures "to any  
5 employees in his or her employer's workplace." *Cal. Code Reg. tit. 27, § 25602(f)*.

6 27. As to occupational exposures, Defendants failed to provide a warning either that (A)  
7 appears on the product that employees would read and understand prior to the exposure  
8 for which warning is given; (B) appears on a sign in the workplace posted conspicuously  
9 and under conditions that employees would likely read and understand prior to the  
10 exposure for which warning is given; or (C) complies with all requirements of the federal  
11 Hazard Communication Standard.

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

27 29. Between three years before the sending of the Proposition 65 60-Day Notice of Intent to  
28 Sue referenced in Paragraph 14 and the present, in the normal course of business,

1 Defendants installed, repaired, and or replaced roofs. Defendants have also been  
2 exposing, knowingly and intentionally, their employees, including roofing contractors,  
3 drivers, roofing installers, and workers otherwise involved in the installation, repair,  
4 and/or replacement of roofs, to Proposition 65-Listed Chemicals by using asphalt,  
5 including hot asphalt, "cold" asphalt emulsions and adhesives, asphalt shingles, and inter-  
6 ply layers of asphalt or coal tar. Defendants exposed such employees without providing  
7 "clear and reasonable" warnings to affected employees before exposing such persons,  
8 knowingly and intentionally, to Proposition 65-Listed Chemicals. In doing so,  
9 Defendants violated Proposition 65.

10 25. The sources of exposures are the constituent chemicals of asphalt, as listed in this  
11 complaint. The locations of the exposures include:

- 12 a. Defendants' principal places of business and areas within 50 feet of the same;
- 13 b. Areas along and within 50 feet of the routes traveled between said principal  
14 places of business and where Defendants stored roofing materials, such as storage  
15 facilities and garage areas, wherein Defendants also prepared and heated the  
16 asphalt;
- 17 c. Areas along and within 50 feet of the routes traveled between said principal  
18 places of business and where Defendants performed roofing work, including  
19 roofing installations, removals, and replacements; and
- 20 d. Areas within 50 feet of where Defendants performed roofing work or established  
21 staging grounds for the performance of such work.

22 30. These Environmental and Occupational Exposures occurred in the California counties  
23 whose district attorneys received copies of the operative 60-Day Notice of Intent to Sue  
24 referenced in Paragraph 14.

25 31. For each type and means of exposure alleged herein, Defendants have exposed and are  
26 exposing the above referenced persons to the Proposition 65-Listed Chemicals listed  
27 below.



## CARCINOGENS

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

## REPRODUCTIVE TOXINS

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

32. Each Proposition 65-Listed Chemical listed above first appeared on the Governor's Proposition 65 list more than twenty (20) months before Plaintiff sent its Proposition 65 60-Day Notice of Intent to Sue as referenced in Paragraph 14. Therefore, each Proposition 65-Listed Chemical was subject to Proposition 65 warning requirements at the times of the exposures alleged herein.

33. For the past several years, both the Attorney General as well as Plaintiff have investigated and prosecuted Asphalt Roofing entities as an industry for alleged violations of Proposition 65. Plaintiff and its counsel poured and continue to pour significant resources, including time, money, and energy, in trying to bring all members of the Asphalt Roofing Industry in compliance with Proposition 65. In fact, the Attorney General and Plaintiff co-litigated a previous action that resulted in a universal settlement reached with over 100 Asphalt Roofing entities. That settlement had an extensive opt-in period which allowed all roofing entities, including Defendants, to join the settlement and

1 end not only their continual violations of Proposition 65, but also their potential liabilities  
2 for alleged violations of the statute. Accordingly, these Defendants have had plenty of  
3 time and opportunities to end their violations of Proposition 65 and come into compliance  
4 with the law.

5 34. Instead, these Defendants flouted the various opportunities they had to comply with  
6 Proposition 65, and chose instead not to participate in a win-win settlement agreement  
7 offered by both the Attorney General and Plaintiff. The settlement these Defendants  
8 chose not to participate in would have benefited all parties involved, in that it would have  
9 required Defendants to significantly reduce both their employees' as well as the public's  
10 exposures to deadly chemicals, and would have obligated these Defendants to post the  
11 required warnings. By choosing to continue their violations, these Defendants have  
12 significantly enlarged their potential liabilities for violating Proposition 65.

13 35. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
14 Proposition 65 have been ongoing and continuous to the date of the signing of this  
15 complaint, as Defendants engaged and continue to engage in conduct which violates  
16 Health and Safety Code section 25249.6, so that a separate and distinct violation of  
17 Proposition 65 occurred each and every time a person was exposed to Asphalt through  
18 Defendants' conduct.

19 36. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
20 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
21 violations alleged herein will continue to occur into the future.

22 37. Proposition 65 provides that any person "violating or threatening to violate" the statute  
23 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.  
24 "Threaten to violate" means "to create a condition in which there is a substantial  
25 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).  
26 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
27 recoverable in a civil action. *Health & Safety Code* § 25249.7(b)."  
28

1 38. Defendants are liable for civil penalties of up to \$2,500.00 per day per individual  
2 exposure to asphalt and its constituent Proposition 65-Listed Chemicals through their  
3 conduct, pursuant to Health and Safety Code section 25249.7(b).

4 39. In the absence of equitable relief, the general public and the Employees described herein  
5 will continue to be involuntarily exposed to the Proposition 65-Listed Chemicals  
6 contained in asphalt, creating a substantial risk of irreparable harm. Thus, by committing  
7 the acts alleged herein, Defendants have caused irreparable harm for which there is no  
8 plain, speedy, or adequate remedy at law.

9 40. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
10 filing this Complaint.

11  
12 **PRAYER FOR RELIEF**

13 Plaintiff demands against each of the Defendants as follows:

- 14 1. A permanent injunction pursuant to Health and Safety Code section 25249.7, subdivision  
15 (a) and the equitable powers of the Court;
- 16 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b) in the  
17 amount of \$2,500.00 per day per violation;
- 18 3. Costs of suit;
- 19 4. Reasonable attorney fees and costs; and
- 20 5. Any further relief that the court may deem just and equitable.

21  
22 Dated: October 26, 2009

YEROUSHALMI & ASSOCIATES

23  
24  
25 BY: 

26 Reuben Yeroushalmi  
27 Attorneys for Plaintiff,  
28 Consumer Advocacy Group, Inc.