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ORIGINAL FILED
JUN 18 2007
LOS ANGELES
SUPERIOR COURT

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF LOS ANGELES

12 CONSUMER ADVOCACY)
13 GROUP, INC., in the interest)
14 of the Public,)

15 Plaintiff,)

16 v.)

17 THOMPSON ROOF CO.,)
18 INCORPORATED, et al.,)

19 Defendants.)

CASE NO. BC363759

~~PROPOSED~~ ORDER APPROVING
SETTLEMENT AND JUDGMENT
BETWEEN PLAINTIFF CONSUMER
ADVOCACY GROUP, INC. AND
DEFENDANT THOMPSON ROOF CO.
INCORPORATED

Judge: Richard L. Fruin

Place: Dept. 15

Date: June 18, 2007

Time: 8:30 AM

Action Filed: December 20, 2006

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23 On June 18, 2007, at 8:30 AM, the Honorable Richard L. Fruin, in Department 15 of this
24 Court, heard the motion for judicial approval of settlement of action between plaintiff,
25 Consumer Advocacy Group, Inc. ("CAG"), on one hand, and, defendant, Thompson Roof Co.
26 Incorporated ("Thompson"), on the other. Appearances are in the record. The Court, having
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1 considered the documents filed in connection with this matter and the arguments of counsel, has
2 arrived at the following conclusions and SO ORDERS:

3 A. On December 20, 2006, CAG commenced this action in Los Angeles Superior Court on
4 behalf of itself, and suing in the public interest pursuant to Health and Safety Code section
5 25249.7, subdivision (d).

6 B. CAG and Thompson have executed a [Proposed] Consent Judgment ("Proposed
7 Settlement"), fully executed as of March 16, 2007, attached to this order as Exhibit A, which
8 CAG submitted to this Court for approval pursuant to Proposition 65 (Health & Saf. Code, §§
9 25249.5 et seq.).

10 C. This Court has considered the Proposed Settlement and determined that it represents a
11 fair, reasonable, and adequate settlement between CAG and Thompson.

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13 **FINDINGS OF FACT AND ORDER APPROVING PROPOSED SETTLEMENT**

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15 1. The Proposed Settlement attached as Exhibit A provides that Thompson will:

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17 • Change its business practices in order to reduce exposures of Proposition 65-listed
18 chemicals to its employees and the public;
19 • Provide warnings to its employees that satisfy the "clear and reasonable" warning
20 requirement under Proposition 65;
21 • Pay CAG \$4,500 for its attorney fees and costs; and
22 • Pay civil penalties of \$500.

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24 2. The court grants the Motion for Judicial Approval of Settlement between CAG
25 and Thompson in its entirety pursuant to Health and Safety Code section 25249.7, subdivision
26 (f)(4) after making the following findings.
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- 1 a. CAG followed all procedural rules in seeking approval of the Proposed
2 Settlement;
- 3 b. The Proposed Settlement properly requires Proposition 65 compliant warnings
4 for extant exposures to Proposition 65-listed chemicals;
- 5 c. The award of \$4,500 in attorney fees and costs as set forth in the Proposed
6 Settlement is appropriate and reasonable under California law given the total
7 fees and costs incurred by CAG and its counsel of record in prosecuting this
8 action;
- 9 d. The Proposed Settlement provides that Thompson will pay a civil penalty of
10 \$500 that is proper in light of the criteria set forth in Health and Safety Code,
11 section 25249.7, subdivision (b)(2);
- 12 e. The terms of the Proposed Settlement are in the public interest consistent with
13 Health and Safety Code section 25249.7, subdivision (d); and
- 14 f. CAG adequately represented the public interest in entering into the Proposed
15 Settlement.
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19 **JUDGMENT**

- 20 1. The Court approves the [Proposed] Consent Judgment, an executed copy of which is
21 attached as Exhibit A, as the Judgment of this Court resolving this action between
22 plaintiff, Consumer Advocacy Group, Inc., on one hand, and defendant, Thompson Roof
23 Co. Incorporated, on the other.
- 24 2. The Court Clerk is to enter this Judgment as the Judgment of the Court as to defendant,
25 Thompson Roof Co. Incorporated.
- 26 3. Thompson Roof Co. Incorporated is dismissed with prejudice from this action.
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1 4. Except as otherwise set forth in the Proposed Settlement, all parties shall bear their own
2 attorney fees and costs.
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5 Dated: June 18, 2007
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7 Richard F. Funi
8 JUDGE OF THE SUPERIOR COURT
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

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11 CONSUMER ADVOCACY GROUP, INC.
12 Plaintiff,
13 v.
14 THOMPSON ROOF CO. INC.; et al.,
15 Defendants.

Case No. BC 363759

**[PROPOSED] CONSENT JUDGMENT AS
TO PLAINTIFF CONSUMER
ADVOCACY GROUP, INC. AND
DEFENDANT THOMPSON ROOF CO.,
INC.**

Date action filed: December 20, 2006
Trial date: Not set

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19 Plaintiff, CONSUMER ADVOCACY GROUP, INC., (referred to herein as "CAG"),
20 and defendant THOMPSON ROOF CO., INC. (referred to herein as "Settling Defendant"),
21 enter into this Consent Judgment as follows:

22 **1. Introduction.**

23 1.1 CAG is an entity based in Los Angeles, California that seeks to promote
24 awareness of exposures to toxic chemicals and improve human health by reducing or
25 eliminating hazardous substances contained in consumer and industrial products.
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1 1.2 Settling Defendant is a California corporation that employs ten or more persons,
2 or has employed ten or more persons during the relevant limitations period, and acts primarily
3 as a roofing contractor.

4 1.3 Settling Defendant uses roofing materials, some of which contain asphalt or coal
5 tar, the use of which is alleged to expose persons to acetaldehyde; arsenic (inorganic arsenic
6 compounds, including oxides); benz[a]anthracene; benzene; benzo[a]pyrene;
7 benzo[b]flouranthene; benzo[k]flouranthene; beryllium and beryllium compounds; 1,3-
8 butadiene; cadmium and cadmium compounds; carbazole; chromium (hexavalent compounds);
9 chrysene; dibenz[a,j]acridine; dibenz[a,h]anthracene; dibenzo[a,e]pyrene; dibenzo[a,h]pyrene;
10 dibenzo[a,i]pyrene; dibenzo[a,l]pyrene; dichloromethane (methylene chloride); formaldehyde
11 (gas); indeno[1,2,3-cd]-pyrene; lead and lead compounds; 5-methylchrysene; nickel and nickel
12 compounds; silica, crystalline; tetrachloroethylene (perchloroethylene); toluene diisocyanate;
13 trichloroethylene; carbon disulfide; mercury and mercury compounds; and toluene (hereinafter
14 the "Covered Chemicals").

15 1.4 The Covered Chemicals are identified as substances listed in the regulations
16 promulgated under the California Safe Drinking Water and Toxic Enforcement Act, California
17 Health & Safety Code sections 25249.5 *et seq.* ("Proposition 65") as chemicals known to the
18 State of California to cause cancer and/or reproductive harm. A list of the roofing products that
19 consist of, contain or result in exposure to either asphalt or coal tar and are covered by this
20 Consent Judgment (the "Materials") is provided in Exhibit A. Some of the Materials are heated
21 and/or delivered to the place of application using a kettle, tank truck or other equipment. Tank
22 trucks and kettles are collectively referred to herein as "Heating and Delivery Equipment."

23 1.5 In February 2006, Plaintiff served public enforcement agencies and Settling
24 Defendant with a document entitled "60-Day Notice of Violation" (the "Notice"), which
25 provided public enforcers and the Settling Defendant with notice that Settling Defendant was
26 alleged to have violated Proposition 65 by failing to warn its employees and other persons in
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1 California that the Materials used by Settling Defendant expose those persons to the Covered
2 Chemicals.

3 1.6 On December 20, 2006, CAG brought an action in the public interest captioned
4 as *Consumer Advocacy Group v. Thompson Roof Co. Inc., et al.*, in the Los Angeles County
5 Superior Court, Case No. BC 363759 (hereinafter the "Action"), naming THOMPSON ROOF
6 CO., INC., et al., as defendants, and alleging that Settling Defendant and John Doe defendants
7 violated Health & Safety Code section 25249.6 by exposing employees and other persons to
8 chemicals listed pursuant to Proposition 65 contained in the Materials without providing "clear
9 and reasonable" warnings. Such alleged exposures constitute "consumer product,"
10 "occupational" and "environmental" exposures within the meaning of the Proposition 65
11 implementing regulations set forth at California Code of Regulations, title 22, section 12601,
12 subdivisions (b), (c) and (d), respectively.

13 1.7 For purposes of this Consent Judgment only, the parties stipulate that this Court
14 has jurisdiction over the allegations of violations contained in CAG's Complaint and Notice,
15 that the Court has personal jurisdiction over Settling Defendant as to the acts alleged in CAG's
16 Complaint and Notice, that venue is proper in the County of Los Angeles and that this Court has
17 jurisdiction to enter this Consent Judgment as a full settlement and resolution of the allegations
18 contained in CAG's Complaint and Notice, and of all claims which were or could have been
19 raised by any person or entity based on whole or in part, directly or indirectly, on the facts
20 alleged in the Notice, in CAG's Complaint, or arising therefrom or related thereto.

21 1.8 The parties enter into this Consent Judgment pursuant to a settlement of disputed
22 claims between the parties as alleged in CAG's Complaint and Notice for the purpose of
23 avoiding prolonged and costly litigation between the parties hereto. By execution of this
24 Consent Judgment, the parties do not admit any fact, conclusion of law, issue of law or violation
25 of law, including, but not limited to, any fact, conclusion of law, issue of law, or violation of
26 law suggesting or demonstrating any violations of Proposition 65 or any other statutory,
27 common law or equitable requirements relating to the Materials. Nothing in this Consent
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1 Judgment shall be construed as an admission by the parties of any fact, conclusion of law, issue
2 of law or violation of law. Nor shall compliance with the Consent Judgment constitute or be
3 construed as an admission by the parties of any fact, conclusion of law, issue of law, or violation
4 of law. Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy,
5 argument or defense the parties may have in this or any other or future legal proceedings.

6 Nothing in this Consent Judgment shall preclude CAG from opposing any argument.

7 Nevertheless, Settling Defendant's obligations, responsibilities and duties shall remain as set
8 forth in this Consent Judgment unless a modification has been entered by a court of law as set
9 forth in Paragraph 12, below.

10 **2. Injunctive Relief.**

11 2.1 Settling Defendant agrees to provide Proposition 65 warnings and to take actions
12 intended to prevent, reduce and mitigate exposure to the Covered Chemicals arising from using
13 the Materials, in the manner prescribed below.

14 2.2 Within ninety (90) days after entry of this Consent Judgment, Settling Defendant
15 shall provide Proposition 65 warnings to its own California employees who use the Materials by
16 fully incorporating Proposition 65 warnings into the chemical hazard warnings and training
17 provided in its hazard communication training plans, as part of compliance with the California
18 Hazard Communication Standard under California Code of Regulations, title 8, section 5194.
19 Such warnings shall include the Proposition 65 warning set forth in Exhibit B, attached hereto.

20 2.3 Within ninety (90) days after entry of this Consent Judgment, Settling Defendant
21 shall post a Proposition 65 warning sign conspicuously at each of its California places of
22 business where employees who are likely to handle, use, or store the Materials or prepare the
23 Materials for application, are likely to see and read the warning sign, such as a locker room
24 where such employees store their gear or in the proximity of a time clock where such employees
25 check in and out on a regular basis. For the purposes of this Consent Judgment, such places of
26 business shall not include job sites at which services may be performed, but which are not
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1 owned and operated by Settling Defendant. The Proposition 65 warning sign shall set forth the
2 following warning statement:

3 WARNING: CHEMICALS KNOWN TO THE STATE OF
4 CALIFORNIA TO CAUSE CANCER AND BIRTH DEFECTS OR
5 OTHER REPRODUCTIVE HARM

6 Asphalt, coal tar, and other roofing or waterproofing materials contain
7 chemicals that are known to the State of California to cause cancer and/or
8 reproductive hazards. Exposure to these chemicals occurs during the
9 installation, repair or removal of roofing and waterproofing materials
10 containing asphalt, coal tar, or other bituminous binders and other types of
11 roofing or waterproofing materials. Exposures may occur not only from
12 the roofing or waterproofing materials you are working with but also from
13 the solvents, mastics, cements, sealants, caulking compounds and other
14 products and equipment that may be used in the operation. Always
15 familiarize yourself with the hazards of the materials and equipment you
16 are using and follow the precautions indicated on product labels, Material
17 Safety Data Sheets and your health and safety training program.

18 The parties agree that this warning shall be deemed "clear and reasonable" for purposes of
19 Proposition 65 and the Proposition 65 implementing regulations set forth at California Code of
20 Regulations, title 22, section 12601(a) for any chemical contained in the Materials or to which
21 exposure occurs from use of the Materials, to the extent that such chemical presently is or in the
22 future may become listed under Proposition 65, whether as a carcinogen or reproductive toxin or
23 both.

24 2.4 CAG maintains that environmental and consumer product and service exposures
25 occur as a result of the presence of Covered Chemicals in the Materials, and that warnings for
26 such exposures are required. Settling Defendant disputes this. In recognition of the measures
27 adopted in Subparagraph 2.5 below and the effect those measures will have, and in
28 consideration for the adoption of these measures, the parties have agreed that warnings for
consumer product and service exposures and environmental exposures are not required.

 2.5 The parties agree that Settling Defendant shall institute certain measures in order
to reduce or mitigate alleged occupational, environmental or consumer exposure to the Covered
Chemicals arising from the use of the Materials. The parties agree to these measures with the
mutual understanding and expectation that such measures will be effective to reduce and
mitigate exposure to the Covered Chemicals arising from the use of the Materials to or within

1 the levels such that warnings for "consumer product/service" or "environmental" exposures,
2 within the meaning of the Proposition 65 implementing regulations set forth at California Code
3 of Regulations, title 22, section 12601, subdivisions (b) and (d), respectively, would not be
4 required. Within ninety (90) days after entry of this Consent Judgment, Settling Defendant that
5 uses Heating and Delivery Equipment shall do the following:

6 2.5.1 ensure that Heating and Delivery Equipment with a capacity greater than
7 200 gallons will have operational thermostatic heating controls.

8 2.5.2 incorporate the following instructions in its chemical hazard training plan
9 for employees, as part of its compliance with the California Hazard
10 Communication Standard, set forth at California Code of Regulations,
11 title 8, section 5194.

12 2.5.2.1 Employees shall restrict access to Heating and Delivery
13 Equipment in which Materials are being heated for application
14 to those employees whose job responsibilities require them to
15 be present.

16 2.5.2.2 Employees shall not heat any Material to a temperature that is
17 higher than the manufacturer's specifications for that material.

18 2.5.2.3 Employees shall verify the temperature of heated Materials
19 with a thermometer on a regular basis, to ensure that the
20 Materials are not being heated higher than the applicable
21 manufacturer's specifications.

22 2.5.2.4 Employees will work upwind from Heating and Delivery
23 Equipment whenever it is practical to do so.

24 2.5.2.5 Employees will keep kettle lids closed except when necessary
25 to: (i) add or remove Materials from the kettles, (ii) check the
26 temperature of the Materials in the kettles; (iii) the check the
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1 volume or quality of the Material in the kettles; or (iv) perform
2 similar activities.

3 2.5.2.6 Employees shall position Heating and Delivery Equipment as
4 close to the point of application as practical in order to
5 minimize heat loss.

6 Settling Defendant shall train its employees in the physical and health hazards of the Materials
7 and other substances in their work area(s), and the measures that they can take to protect
8 themselves from these hazards, including specific procedures that the employer has
9 implemented to protect employees from exposure to hazardous substances, such as appropriate
10 work practices, emergency procedures and personal protective equipment to be used. Settling
11 Defendant shall periodically monitor its employees' conduct to promote full compliance with all
12 the requirements of this Subparagraph 2.5.

13 2.6 Within ninety (90) days after entry of this Consent Judgment, Settling Defendant
14 shall provide the Attorney General with a sworn statement indicating that it has adopted a model
15 training program, that (a) complies with the terms of this Consent Judgment, and (b) includes
16 model warnings, educational program materials and monitoring timetables and procedures that
17 have already been submitted to the Attorney General.

18 **3. Monetary Relief.**

19 3.1 **Payment Pursuant to Health & Safety Code Section 25249.7(b).** Within thirty
20 (30) days after entry of this Consent Judgment, Settling Defendant shall pay CAG civil penalties
21 in the amount of \$500.

22 3.2 **Other Payments.** The parties recognize and agree that monetary relief other
23 than payments under Health and Safety Code section 25249.7(b), or in addition to such
24 payments, might be imposed or required if the Settling Defendant was found liable in this
25 matter. Such monetary relief might include payments denominated as restitution, disgorgement
26 of profits, attorneys' fees and costs, investigative costs, or other payments, as such payments
27 might be imposed under the Civil Procedure Code, or any other law. Nevertheless, as
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1 consideration for Settling Defendant's agreement to adopt the measures set forth in Paragraph 2
2 above, CAG agrees to accept a single payment from Settling Defendant in the amount set forth
3 in Paragraph 3.1, above, in complete satisfaction of any claim for such monetary relief, and
4 Settling Defendant agrees to pay this amount.

5 **3.3 Manner of Payment.** The above-required civil penalty payment shall be made
6 payable to Yeroushalmi & Associates, 3700 Wilshire Boulevard, Suite 480, Los Angeles,
7 California, 90010 (Attn: Reuben Yeroushalmi, Esq.). Penalty monies shall be apportioned by
8 Yeroushalmi & Associates in accordance with Health & Safety Code section 25249.12, with
9 75% of these funds remitted to the Safe Drinking Water and Toxic Enforcement Fund, and the
10 remaining 25% apportioned to CAG pursuant to Section 25249.12(d).

11 **3.4 Satisfaction of Claims/No Admissions.** The payment that Settling Defendant
12 makes pursuant to this Paragraph 3 shall be in consideration for the full, final and complete
13 satisfaction of all claims for civil penalties or restitution for the alleged violations regarding the
14 Materials, up to and including the date of entry of this Judgment. Making this payment shall not
15 be construed as an admission by Settling Defendant of any fact, conclusion of law, issue of law,
16 or violation of law. Nor shall compliance with the Consent Judgment constitute or be construed
17 as an admission by Settling Defendant of any fact, conclusion of law, issue of fact, law or
18 violation of law.

19 **4. Payment of CAG's Attorneys' Fees and Costs.**

20 **4.1 Attorneys' Fees Payment.** Within thirty (30) days after entry of this Consent
21 Judgment, Settling Defendant shall pay CAG attorneys' fees and costs as follows in the amount
22 of \$4,500.

23 **4.2 Manner of Payment.** The above-required attorneys' fees and costs payment
24 shall be made payable to Yeroushalmi & Associates, 3700 Wilshire Boulevard, Suite 480, Los
25 Angeles, California, 90010 (Attn: Reuben Yeroushalmi, Esq.).

26 **4.3 Satisfaction of Claims/No Admissions.** The payment that Settling Defendant
27 makes pursuant to this Paragraph 4 shall be in consideration for the full, final and complete
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1 satisfaction of all claims for attorneys' fees or costs related to the alleged violations regarding
2 the Materials. Making these payments shall not be construed as an admission by Settling
3 Defendant of any fact, conclusion of law, issue of law, or violation of law. Nor shall
4 compliance with the Consent Judgment constitute or be construed as an admission by Settling
5 Defendant of any fact, conclusion of law, issue of fact, law or violation of law.

6 **5. Additional Enforcement Actions; Continuing Obligations.**

7 By entering into this Consent Judgment, CAG does not waive any right to take further
8 enforcement actions regarding any violations not covered by the Action or this Consent
9 Judgment. Nothing in this Consent Judgment shall be construed as diminishing Settling
10 Defendant's continuing obligation to comply with Proposition 65 in their future activities.

11 **6. Enforcement of Consent Judgment.**

12 CAG may, by motion or order to show cause before the Superior Court of Los Angeles,
13 enforce the terms and conditions contained in this Consent Judgment. In any action brought by
14 CAG to enforce this Consent Judgment, CAG may seek whatever fines, costs, attorneys' fees,
15 penalties or remedies are provided by law for failure to comply with the Consent Judgment.
16 Where said failure to comply constitutes future violations of Proposition 65 or other laws,
17 independent of the Consent Judgment and/or those alleged in the Complaints, CAG is not
18 limited to enforcement of this Consent Judgment, but may seek in another action, subject to
19 satisfaction of any procedural requirements, including notice requirements, whatever fines,
20 costs, attorneys' fees, penalties or remedies are provided by law for failure to comply with
21 Proposition 65 or other laws. However, the rights of Settling Defendant to defend itself and its
22 actions in law or equity shall not be abrogated or reduced in any fashion by the terms of this
23 Paragraph and Settling Defendant shall be entitled to raise any and all applicable defenses
24 and/or counterclaims arising in law or equity against CAG, and seek such costs, damages, and
25 attorneys' fees as may apply. In any action to enforce the terms of this Consent Judgment, the
26 prevailing party shall be entitled to and shall collect from the other party its costs and reasonable
27 attorneys' fees.

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7. Application of Consent Judgment.

This Consent Judgment shall apply to, be binding upon and inure to the benefit of, the parties, including CAG and Settling Defendant, its divisions, subdivisions, subsidiaries, and affiliates and the successors or assigns of each of them.

8. Claims Covered.

Except as provided below, this Consent Judgment is a final and binding resolution between CAG and Settling Defendant, satisfying and releasing Settling Defendant from any and all claims, causes of action, damages, costs, penalties or attorneys' fees based upon alleged violations of:

Proposition 65, or
any other statutory or common law,
that arise from Settling Defendant's failure to provide clear and reasonable warnings, pursuant to Proposition 65, that roofing operations cause exposure to the following:

- the Materials,
- any other material containing asphalt or coal tar or any of their constituents, or
- any Covered Chemicals present in or released from the Materials, asphalt or coal tar.

This Consent Judgment shall not resolve any claim for chemicals, if any, that are contained in the Materials and are added to the Proposition 65 list of chemicals known to the State to cause cancer, or the list of chemicals known to the State to cause reproductive toxicity, after the entry of judgment. The list of Materials to be governed by this Consent Judgment (*i.e.*, for which Settling Defendant must comply with the terms and provisions of this Consent Judgment) is set forth as Exhibit A attached to this Consent Judgment.

9. Mutual Releases of Claims.

1 9.1 **CAG's Release of Settling Defendant.** This Consent Judgment shall constitute
2 a release from CAG on behalf of itself, its agents, representatives, attorneys and assigns, by
3 which they waive all rights to institute or participate in, directly or indirectly, any form of legal
4 action, and release all claims, liabilities, obligations, losses, costs, expenses, penalties, fines and
5 damages, against Settling Defendant, and its directors, officers, employees, parent companies,
6 sister companies, subsidiaries, or any other affiliated person who may use, maintain or sell the
7 Materials, and the successors and assigns of any of them, whether under Proposition 65 or other
8 law, based upon Settling Defendant's failure to warn about exposure to chemicals listed under
9 Proposition 65, before and after the entry of this Consent Judgment, resulting from the sale,
10 distribution, marketing or use of any of the Materials.

11 CAG acknowledges that it has read and waives the provisions of California Civil Code §
12 1542:

13 **"A GENERAL RELEASE DOES NOT EXTEND TO**
14 **CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR**
15 **SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE**
16 **TIME OF EXECUTING THE RELEASE, WHICH IF**
17 **KNOWN BY HIM OR HER MUST HAVE MATERIALLY**
18 **AFFECTED HIS OR HER SETTLEMENT WITH THE**
19 **DEBTOR."**

20 CAG understands and acknowledges the significance of this waiver of Section 1542 of
21 the Civil Code is that even if it discovers additional claims or causes of action, CAG will not be
22 able to enforce or prosecute those claims or causes of action. Furthermore, CAG acknowledges
23 that it intends these consequences even as to claims or causes of action that may exist as of the
24 date of this release but which CAG does not know exist, and which, if known, would materially
25 affect CAG's decision to execute this release, regardless of whether CAG's lack of knowledge
26 is a result of ignorance, oversight, error, negligence, or any other cause.

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1 9.2 **Settling Defendant's Release of CAG.** Settling Defendant by this Consent
2 Judgment, releases and waives all rights to institute any form of legal action against CAG and
3 its attorneys or representatives, for all actions or statements made by CAG, and its attorneys or
4 representatives, in the course of seeking enforcement of Proposition 65 through CAG's
5 Complaint against Settling Defendant as to the Materials that are the subject of the Notice and
6 CAG's Complaint.

7 Settling Defendant acknowledges that it has read and waives the provisions of California
8 Civil Code § 1542:

9 **"A GENERAL RELEASE DOES NOT EXTEND TO**
10 **CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR**
11 **SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE**
12 **TIME OF EXECUTING THE RELEASE, WHICH IF**
13 **KNOWN BY HIM OR HER MUST HAVE MATERIALLY**
14 **AFFECTED HIS OR HER SETTLEMENT WITH THE**
15 **DEBTOR."**

16 Settling Defendant understands and acknowledges the significance of this waiver of
17 Section 1542 of the Civil Code is that even if it discovers additional claims or causes of action,
18 Settling Defendant will not be able to enforce or prosecute those claims or causes of action.
19 Furthermore, Settling Defendant acknowledges that it intends these consequences even as to
20 claims or causes of action that may exist as of the date of this release but which Settling
21 Defendant does not know exist, and which, if known, would materially affect Settling
22 Defendant's decision to execute this release, regardless of whether Settling Defendant's lack of
23 knowledge is a result of ignorance, oversight, error, negligence, or any other cause.

24 10. **Entire Agreement.**

25 This Consent Judgment contains the sole and entire agreement and understanding of the
26 parties with respect to the entire subject matter hereof, and any and all prior discussions,
27 negotiations, commitments and understandings related hereto. No representations, oral or
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1 otherwise, express or implied, other than those contained herein have been made by any party
2 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
3 deemed to exist or to bind any of the parties.

4 **11. Authorization.**

5 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the
6 party he or she represents to enter into this Consent Judgment on behalf of the party represented
7 and legally to bind that party.

8 **12. Modification.**

9 12.1 This Consent Judgment may be modified from time to time by express written
10 agreement of the parties, with the approval of the Court, or by an order of this Court in
11 accordance with law.

12 12.2 If (1) the Attorney General or CAG subsequently agree in a settlement or
13 judicially entered injunction or consent judgment (i) that certain Materials do not require a
14 warning under Proposition 65, or (ii) that a modified warning for the Materials is appropriate, or
15 (iii) to injunctive relief concerning the use, manufacture and/or sale of the Materials that differs
16 from that imposed in this Consent Judgment, or (2) a court of competent jurisdiction renders a
17 final judgment in a case brought by the Attorney General or CAG (i) that eliminates such a
18 warning requirement for Materials, or (ii) that modifies such a warning requirement for the
19 Materials, or (iii) that imposes injunctive relief concerning the use, manufacture and/or sale of
20 the Materials that differs from that imposed in this Consent Judgment, then Settling Defendant
21 shall be entitled to submit evidence to CAG demonstrating that the Materials come within the
22 scope of the agreement or ruling and (i) do not require a warning under Proposition 65, or (ii)
23 require a modified warning under Proposition 65, or (iii) require different injunctive relief under
24 Proposition 65.

25 12.3 CAG and Settling Defendant shall have ninety (90) days from the date on which
26 a Settling Defendant submits such evidence to CAG in which to confer and decide concerning
27 whether (1) to eliminate the warning requirement set forth in Paragraph 2 above or (2) otherwise
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1 to eliminate or modify the injunctive relief provisions of this Consent Judgment. If the parties
2 agree that the Materials used by Settling Defendant come within the scope of the agreement or
3 ruling, then they shall jointly move the Court for such modification.

4 12.4 If the parties are unable to agree on the elimination or modification of the
5 warning requirement of this Consent Judgment, or are unable to agree on the elimination or
6 modification of any of the injunctive relief provisions of this Consent Judgment, Settling
7 Defendant may file a motion with the Court, seeking the elimination or modification of the
8 warning requirement, or the dissolution or modification of the injunctive relief provisions of this
9 Consent Judgment, based on the agreement or the ruling. In any motion by Settling Defendant
10 under this Paragraph 12, the burden of proving, based on the agreement or ruling, (1) that the
11 Materials do not require a warning, or (2) that the warning should be modified, or (3) that the
12 injunctive relief provisions of this Consent Judgment should be eliminated or modified shall
13 remain on Settling Defendant.

14 12.5 This Paragraph 12 shall not apply to the monetary relief provisions of this
15 Consent Judgment.

16 **13. Entry of Consent Judgment Required.**

17 This Consent Judgment shall be null and void, and be without any force or effect, unless
18 entered by the Court in this matter. If the Consent Judgment is not entered by the Court, the
19 execution of this Consent Judgment by Settling Defendant or CAG shall not be construed as an
20 admission by Settling Defendant or CAG of any fact, conclusion of law, issue of law, or
21 violation of law.

22 **14. Retention of Jurisdiction.**

23 This Court shall retain jurisdiction of this matter to implement the Consent Judgment.

24 **15. Severability.**

25 In the event that any of the provisions of this Consent Judgment are held by a court of
26 competent jurisdiction to be unenforceable, the validity of the enforceable provisions shall not
27 be adversely affected.

28

1 16. **Attorneys' Fees.**

2 In the event that a dispute arises with respect to any provision(s) of the Consent
3 Judgment, and such disputes are resolved by the Court or through mediation, arbitration or other
4 alternative dispute resolution proceeding, the prevailing party in such action or proceeding shall
5 be entitled to recover costs and reasonable attorneys' fees.

6 17. **Governing Law.**

7 The terms of this Consent Judgment shall be governed by the laws of the State of
8 California.

9 18. **Notices.**

10 18.1 **All correspondence to CAG shall be mailed to:**

11 Reuben Yeroushalmi
12 Yeroushalmi & Associates
13 3700 Wilshire Blvd., Suite 480
14 Los Angeles, CA 90010

15 18.2 **All correspondence to Settling Defendant shall be mailed to:**

16 Settling Defendant's registered agent
17 with copy to

18 Stanley W. Landfair
19 McKenna Long & Aldridge LLP
20 101 California Street
21 41st Floor
22 San Francisco, CA 94111
23 Tel.: 415-267-4000
24 Fax: 415-267-4198
25
26
27
28

01-24-2007 02:07pm From: McKenna Long & Aldridge

14162874198

T-288 P.018/021 F-088

19. Counterparts and Facsimile.

This Consent Judgment may be executed in counterparts and facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

AGREED TO:

AGREED TO:

DATE: _____

DATE: 01/25/07

Lyn Marcus

Herb Thompson

Herb Thompson

President
CONSUMER ADVOCACY GROUP, INC.

THOMPSON ROOF CO., INC.
Defendant

AGREED AS TO FORM:

AGREED AS TO FORM:

YEROUSHALMI & ASSOCIATES

MCKENNA LONG & ALDRIDGE LLP

Reuben Yeroushalmi

Stanley W. Landfair

Attorneys for Plaintiff
CONSUMER ADVOCACY GROUP, INC.

Attorneys for Defendants
ARCHADEL, INC.; GORDON MOTT
ROOFING COMPANY, INC.; PREMIUM
ROOF SERVICES; THOMPSON ROOF CO.,
INC.; URBACH ROOFING, INC.

DATE: _____

DATE: _____

1 19. **Counterparts and Facsimile.**

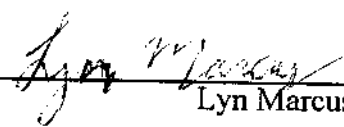
2 This Consent Judgment may be executed in counterparts and facsimile, each of which
3 shall be deemed an original, and all of which, when taken together, shall constitute one and the
4 same document.

5 **AGREED TO:**

AGREED TO:

6
7 DATE: 3/16/07

DATE: _____

8
9 
Lyn Marcus

Herb Thompson

10
11 President
CONSUMER ADVOCACY GROUP, INC.

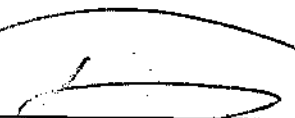
THOMPSON ROOF CO., INC.
Defendant

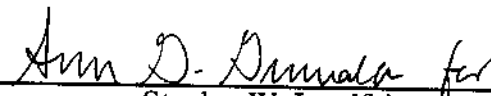
12
13
14
15 **AGREED AS TO FORM:**

AGREED AS TO FORM:

16 YEROUSHALMI & ASSOCIATES

MCKENNA LONG & ALDRIDGE LLP

17
18 
19 Reuben Yeroushalmi


Stanley W. Landfair

20 Attorneys for Plaintiff
CONSUMER ADVOCACY GROUP, INC.

Attorneys for Defendants
ARCHADEL, INC.; GORDON MOTT
ROOFING COMPANY, INC.; PREMIUM
ROOF SERVICES; THOMPSON ROOF CO.,
INC.; URBACH ROOFING, INC.

21
22
23
24 DATE: April 12/07

DATE: 4/25/07

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EXHIBIT B

WARNING: CHEMICALS KNOWN TO THE STATE OF CALIFORNIA TO CAUSE CANCER AND BIRTH DEFECTS OR OTHER REPRODUCTIVE HARM

Asphalt, coal tar, and other roofing or waterproofing materials contain chemicals that are known to the State of California to cause cancer and/or reproductive hazards. Exposure to these chemicals occurs during the installation, repair or removal of roofing and waterproofing materials containing asphalt, coal tar, or other bituminous binders and other types of roofing or waterproofing materials. Exposures may occur not only from the roofing or waterproofing materials you are working with but also from the solvents, mastics, cements, sealants, caulking compounds and other products and equipment that may be used in the operation. Always familiarize yourself with the hazards of the materials and equipment you are using and follow the precautions indicated on product labels, Material Safety Data Sheets and your health and safety training program.

I have read and understand the above warning.

Employee Signature

Dated: _____

Employee Name (printed)