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9 Consumer Advocacy Group, Inc.

ENDORSED
FILED
San Francisco County Superior Court

OCT 22 2007

GORDON PARK-LI, Clerk
BY MARIGRIE SCHWARTZ-SCOTT
Deputy Clerk

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SAN FRANCISCO

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

15 Plaintiff,)

16 v.)

17 GORDON MOTT ROOFING)
18 COMPANY, INC., et al.,)

19 Defendants.)

CASE NO. CGC-06-459064

~~PROPOSED~~ ORDER APPROVING
SETTLEMENT BETWEEN PLAINTIFF
CONSUMER ADVOCACY GROUP, INC. AND
DEFENDANT FOUR SEASONS ROOFING, INC.

Telephone Appearance

Judge: Honorable Patrick J. Mahoney

Place: Department 302

Date: October 3, 2007

Time: 9:30 a.m.

Action Filed: December 26, 2006

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22 On October 3, 2007, at 9:30 a.m., the Honorable Patrick J. Mahoney, in Department 302
23 of this Court, heard the motion for judicial approval of settlement of action between plaintiff,
24 Consumer Advocacy Group, Inc. ("CAG"), on one hand, and, defendant, Four Seasons Roofing,
25 Inc. ("Four Seasons"), on the other. Appearances are in the record. The Court, having
26 considered the documents filed in connection with this matter and the arguments of counsel, has
27 arrived at the following conclusions and SO ORDERS:
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1 A. On December 26, 2006, CAG commenced this action in San Francisco Superior Court on
2 behalf of itself, and suing in the public interest pursuant to Health and Safety Code section
3 25249.7, subdivision (d).
4

5 B. The parties have executed fully a Settlement Agreement between Consumer Advocacy
6 Group, Inc. and Four Seasons Roofing, Inc. as of July 17, 2007 ("Proposed Settlement"), which
7 CAG submitted to this Court for approval pursuant to Proposition 65 (Health & Saf. Code, §§
8 25249.5 et seq.).
9

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

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

13 1. The Proposed Settlement provides that Four Seasons will:

- 14
- 15 • Change its business practices in order to reduce exposures of Proposition 65-listed
16 chemicals to its employees and the public;
 - 17 • Give warnings to its employees that satisfy the "clear and reasonable" warning
18 requirement under Proposition 65;
 - 19 ▪ Pay CAG \$9,500 for its attorney fees and costs; and
20 ▪ Pay \$500 to an entity, CAG, in lieu of a civil penalty.
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22 2. The court grants the Motion for Judicial Approval of Settlement between CAG
23 and Four Seasons in its entirety pursuant to Health and Safety Code section 25249.7, subdivision
24 (f)(4) after making the following findings.

- 25 a. CAG followed all procedural rules in seeking approval of the Proposed
26 Settlement;
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- b. The Proposed Settlement properly requires Proposition 65 compliant warnings for extant exposures to Proposition 65-listed chemicals;
 - c. The award of \$9,500 in attorney fees and costs as set forth in the Proposed Settlement is appropriate and reasonable under California law given the total fees and costs incurred by CAG and its counsel of record in prosecuting this action;
 - d. The Proposed Settlement provides that Four Seasons will pay \$500 to an entity, CAG, in lieu of a civil penalty that is proper in light of the criteria set forth in California Code of Regulations, title 11, section 3203, subdivision (b);
 - e. The terms of the Proposed Settlement are in the public interest consistent with Health and Safety Code section 25249.7, subdivision (d); and
 - f. CAG adequately represented the public interest in entering into the Proposed Settlement.

Dated: OCT 19 2007, 2007

DIANE ELAN WICK

JUDGE OF THE SUPERIOR COURT

DIANE ELAN WICK *signing for* PATRICK J. MAHONEY

The Honorable DIANE ELAN WICK signing this document on behalf of the judge who heard the case

SETTLEMENT AGREEMENT
BETWEEN
CONSUMER ADVOCACY GROUP, INC.
AND
FOUR SEASONS ROOFING, INC.

Consumer Advocacy Group, Inc., on behalf of itself and suing in the public interest pursuant to Health and Safety Code section 25249.7, subdivision (d), ("CAG"), and Four Seasons Roofing, Inc. (collectively referred to herein as the "Parties") enter into this agreement ("Settlement Agreement") to settle the case entitled *Consumer Advocacy Group, Inc. v. Gordon Mott Roofing Company, Inc., et al.* filed on December 26, 2006, and pending in the Superior Court of California for the County of San Francisco Case No. CGC-06-459064 ("Lawsuit") as to CAG, on one hand, and Four Seasons Roofing, Inc., on the other, as follows:

1.0 Introduction

1.1 CAG alleges that it is an entity based in Los Angeles, California that seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances found in consumer and industrial products. Four Seasons Roofing, Inc. disputes this.

1.2 CAG alleges that Four Seasons Roofing, Inc. is a company that employs ten or more persons and acts primarily as a roofing contractor. Four Seasons Roofing, Inc. disputes this.

1.3 CAG alleges that Four Seasons Roofing, Inc. uses roofing materials, some of which contain asphalt or coal tar, the use of which is alleged to expose persons to acetaldehyde; arsenic (inorganic arsenic compounds); benz[a]anthracene; benzene; benzo[a]pyrene; benzo[b]flouranthene; benzo[k]flouranthene; beryllium and beryllium compounds; 1,3-butadiene; cadmium and cadmium compounds; carbazole; chromium (hexavalent compounds); chrysene; dibenz[a,j]acridine; dibenz[a,h]anthracene; dibenzo[a,e]pyrene; dibenzo[a,h]pyrene; dibenzo[a,i]pyrene; dibenzo[a,l]pyrene; dichloromethane (methylene chloride); formaldehyde (gas); indeno[1,2,3-cd]-pyrene; lead and lead compounds; 5-methylchrysene; nickel and nickel compounds; silica, crystalline; tetrachloroethylene (perchloroethylene); toluene diisocyanate; trichloroethylene; carbon disulfide; mercury and mercury compounds; and toluene (collectively, "Covered Chemicals"). Four Seasons Roofing, Inc. disputes this.

1.4 CAG alleges that the Covered Chemicals are substances listed in the regulations promulgated under the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code sections 25249.5 et seq. ("Proposition

65") as chemicals known to the State of California to cause cancer and/or reproductive harm. Four Seasons Roofing, Inc. disputes this.

1.5 CAG alleges that on June 27, 2006, it served public enforcement agencies and Four Seasons Roofing, Inc. with a document entitled "60-Day Notice of Violation" ("Notice"). The Notice alleged that Four Seasons Roofing, Inc. had violated Proposition 65 by failing to warn its employees and other persons in California that some of the roofing materials used by Four Seasons Roofing, Inc. expose those persons to Covered Chemicals. Four Seasons Roofing, Inc. disputes this.

1.6 On December 26, 2006, CAG filed the Lawsuit alleging Four Seasons Roofing, Inc. violated Proposition 65 by exposing employees and other persons to Covered Chemicals contained in certain roofing products without providing "clear and reasonable" warnings. Such alleged exposures constitute "consumer product," "occupational" and "environmental" exposures within the meaning of the Proposition 65 implementing regulations set forth at California Code of Regulations, title 22, section 12601, subdivisions (b), (c) and (d), respectively. Four Seasons Roofing, Inc. denies the material allegations of the Lawsuit, and denies liability for the cause of action alleged in the complaint.

1.7 For purposes of this Settlement Agreement only, the Parties stipulate that this Court has jurisdiction: (i) over the allegations of violations contained in the CAG Complaint and Notice, (ii) over Four Seasons Roofing, Inc. as to the acts alleged, and (iii) to enter an order approving this Settlement Agreement.

1.8 The Parties enter into this Settlement Agreement pursuant to a settlement of certain disputed claims between the Parties as alleged in the CAG Complaint and Notice for the purpose of avoiding prolonged and costly litigation between the Parties hereto and as a full and final settlement of all disputed claims in the Lawsuit and between the Parties.

1.9 By execution of this Settlement Agreement, the Parties do not admit any facts or conclusions of law, including, but not limited to, facts or conclusions of law regarding any violation of Proposition 65, or any other statutory, regulatory, common law, or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, including, but not limited to, any admission concerning the meaning of the terms "knowingly and intentionally expose" or "clear and reasonable warning" as used in Health and Safety Code section 25249.6. Nothing in this Settlement Agreement, nor compliance with the terms of this Settlement Agreement, shall constitute or be construed as evidence of an admission or evidence of fault, wrongdoing, or liability by Four Seasons Roofing, Inc., its officers, directors, employees, or parent, subsidiary or affiliated

corporations, in any administrative or judicial proceeding or litigation in any forum.

2.0 Release

2.1 Upon judicial approval of the settlement between the Parties and the expiration of time in which to appeal the same, CAG, for itself and its affiliates, subsidiary and parent corporations, and/or their affiliated companies, and each of their officers, directors, agents, servants, partners, stockholders, attorneys, employees, representatives, and each of their respective successors and assigns, releases and discharges Four Seasons Roofing, Inc., its affiliates, subsidiary and parent corporations, and/or their affiliated companies, and each of their officers, directors, agents, servants, partners, stockholders, attorneys, employees, representatives, and each of their respective successors and assigns (collectively, the "Released Parties") from all known and unknown rights, claims, causes of action, damages, suits, penalties, liabilities, injunctive relief, declaratory relief, and attorneys' fees, costs and expenses related to or arising out of the facts and claims alleged in the Lawsuit. Without limiting the foregoing, the Parties intend the scope of this release to cover all Claims Covered (as defined in Section 3.1 below) as to the Released Parties put in controversy by the Lawsuit.

2.2 CAG is aware of the contents of Section 1542 of the Civil Code of California. CAG acknowledges that the claims released in section 2.1 above may include unknown claims and waives Section 1542 as to any such unknown claims. Section 1542 reads as follows:

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

CAG acknowledges and understands the significance and consequences of this specific waiver of Civil Code Section 1542.

3.0 Claims Covered

3.1 This Settlement Agreement is a final and binding resolution between the CAG and the Released Parties of the following claims and causes of action:

All claims, known or unknown, that were or could have been asserted in the Lawsuit arising out of allegations that the Released Parties violated Proposition 65 or any other statutory or common law because of Released Parties' operations.

4.0 Defendant's Duties

4.1 Four Seasons Roofing, Inc. agrees to provide Proposition 65 warnings and to take actions intended to prevent, reduce, or mitigate exposure to the Covered Chemicals arising from using roofing products, in the manner prescribed below. However, nothing in this Settlement Agreement shall impose requirements or duties exceeding the statutory duties required by Proposition 65 or any other duties imposed by law. Within ninety days after entering into this Settlement Agreement, Four Seasons Roofing, Inc. shall provide Proposition 65 warnings to its California employees who use roofing products containing Covered Chemicals by incorporating such warnings into the chemical hazard warnings and training provided in its hazard communication training plans, as part of compliance with the California Hazard Communication Standard under California Code of Regulations, title 8, section 5194.

4.2 Within ninety days after entering into this Settlement Agreement, Four Seasons Roofing, Inc. shall post a Proposition 65 warning sign conspicuously at each of its places of business where employees who handle roofing products containing Covered Chemicals are likely to see and read the warning sign, such as a locker room where employees store their gear or near a time clock that employees use regularly. For the purposes of this Settlement Agreement, such places of business shall not include job sites at which Four Seasons Roofing, Inc. performs services, but which are not owned and operated by Four Seasons Roofing, Inc. The Proposition 65 warning sign shall set forth the following warning statement:

WARNING: This area contains 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 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.

The Parties agree that this warning shall be deemed "clear and reasonable" for purposes of Proposition 65 for any chemical contained in roofing products or to which exposure occurs from use of roofing products.

4.3 CAG maintains that environmental and consumer product exposures occur because of the presence of Covered Chemicals in certain roofing products, and that warnings for such exposures are required. Four Seasons Roofing, Inc. disputes this. In recognition of the measures adopted below and the effect those measures will have, the Parties agree that warnings for consumer product exposures and environmental exposures are not required.

4.4 The Parties agree that Four Seasons Roofing, Inc. shall institute certain measures to reduce or mitigate occupational, environmental, or consumer exposures to the Covered Chemicals arising from the use of certain roofing products. The Parties agree to these measures with the mutual understanding and expectation that such measures will reduce and mitigate exposure to the Covered Chemicals arising from the use of certain roofing products to or within the levels such that warnings for "consumer product" or "environmental" exposures would not be required. Beginning within ninety days after entering into this Settlement Agreement, Four Seasons Roofing, Inc. shall do the following:

4.4.1 Ensure that tank trucks and kettles with a capacity greater than 200 gallons will have operational thermostatic heating controls.

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

4.4.2.1 Employees shall restrict access to tank trucks and kettles in which roofing products are heated for application to those employees whose job responsibilities require them to be present.

4.4.2.2 Employees shall not heat any roofing product to a temperature that is higher than the manufacturer's specifications for that material.

4.4.2.3 Employees shall verify the temperature of heated roofing products with a thermometer on a regular basis, to ensure that roofing products are not heated higher than the applicable manufacturer's specifications.

4.4.2.4 Employees will work upwind from tank trucks and kettles whenever it is practical to do so.

4.4.2.5 Employees will keep kettle lids closed except when necessary to: (i) add or remove roofing product from

the kettles, (ii) check the temperature of the roofing product in the kettles; (iii) the check the volume or quality of the roofing product in the kettles; or (iv) perform similar activities.

4.4.2.6 Employees shall position tank trucks and kettles as close to the point of application as practical in order to minimize heat loss.

Four Seasons Roofing, Inc. shall train its employees in the health hazards of roofing products in their work area(s), and the measures that they can take to protect themselves from these hazards, including specific procedures that the employer has implemented to protect employees from exposure to hazardous substances, such as appropriate work practices, emergency procedures, and use of personal protective equipment. Four Seasons Roofing, Inc. shall periodically monitor its employees' conduct to promote full compliance with all the requirements of this paragraph.

5.0 Payments

5.1 Defendants' Payment in Lieu of Civil Penalties. Following court approval of the Settlement Agreement, Four Seasons Roofing, Inc. shall pay to CAG, a corporation commenced for the purpose of furthering environmental causes, the sum of \$500.00. Payment shall be made to "Consumer Advocacy Group, Inc." CAG will use the payment for such projects and purposes related to environmental protection, worker health and safety, or reduction of human exposure to hazardous substances (including administrative and litigation costs arising from such projects), as CAG may choose. CAG agrees to provide its address and federal tax identification number to Four Seasons Roofing, Inc. prior to such payment.

5.2 Payment to Yeroushalmi & Associates. Following court approval of the Settlement Agreement, Four Seasons Roofing, Inc. will pay \$9,500.00 to CAG's attorneys, for CAG's attorney fees and costs. The check shall be made payable to "Yeroushalmi & Associates." CAG represents and warrants that CAG has authorized the payment of attorney fees and costs, and that the payment and any application and/or distribution of such payment will not violate any agreement between CAG and its attorneys or with any other person or entity. CAG releases and agrees to hold harmless the Released Parties with regard to any issue concerning the allocation and/or distribution of the amount paid under this section. Yeroushalmi & Associates agrees to provide its address and federal tax identification number to Four Seasons Roofing, Inc. prior to such payment.

5.3 Dismissal. Prior to the first payment reflected in sections 5.1 and 5.2, CAG's counsel shall provide to Four Seasons Roofing, Inc.'s counsel a fully

executed dismissal with prejudice of the Lawsuit, to be held in trust with no action thereon until the payments in sections 5.1 and 5.2 are received by CAG's counsel, in good and sufficient funds.

6.0 Authority To Enter Into Settlement Agreement

6.1 CAG represents that its signatory to this Settlement Agreement has the authority to enter into this Settlement Agreement on behalf of CAG and to bind legally CAG. Four Seasons Roofing, Inc. represents that its signatory to this Settlement Agreement has the authority to enter into this Settlement Agreement on behalf of Four Seasons Roofing, Inc. and to bind legally Four Seasons Roofing, Inc.

7.0 Attorney General Review

7.1 Consistent with section 3003(a) of Title 11 of the California Code of Regulations, CAG shall submit this Settlement Agreement to the Attorney General's Office for review within five days of the Parties' execution of this Settlement Agreement.

8.0 Execution in Counterparts and Facsimile

8.1 This Settlement Agreement may be executed in counterparts, which taken together shall be deemed to constitute the same document. A facsimile signature shall be as valid as the original.

9.0 Judicial Approval of Settlement Agreement Required

9.1 CAG shall submit this Settlement Agreement to the Court for consideration as required by Health and Safety Code section 25249.7, subdivision (f)(4). CAG will provide the Court with the necessary information to allow the Court to make the findings required by Health and Safety Code section 25249.7, subdivision (f)(4)(A)-(C).

9.2 This Settlement Agreement shall be void in the event the Court does not approve this settlement as required by Health and Safety Code section 25249.7, subdivision (f)(4)(A)-(C).

10.0 Entire Agreement

10.1 This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof; and all related prior discussions, negotiations, commitments, and understandings. No other agreements, oral or otherwise, exist to bind any of the Parties, subject to the specifics of the terms described herein.

11.0 Modification of Settlement Agreement

11.1 Any modification to this Settlement Agreement shall be in writing by all Parties hereto. "Writing" shall include electronic correspondence exchanged between and among the Parties' counsel.

12.0 Application of Settlement Agreement

12.1 This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of, the CAG and the Released Parties identified above.

13.0 Severability

13.1 In the event that a court of competent jurisdiction finds unenforceable any of the provision of this Settlement, such finding shall not affect adversely the validity of the enforceable provisions.

14.0 Governing Law

14.1 The laws of the State of California shall govern the terms of this Settlement Agreement.

15.0 Attorneys' Fees

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

16.0 Notification Requirements

16.1 Any notice required or permitted hereunder shall be effective only if in writing and delivered in person or sent by telecopy, certified or registered mail return receipt requested, or traceable overnight delivery service, to the following designees:

For CAG:

Reuben Yeroushalmi
Yeroushalmi & Associates
3700 Wilshire Blvd., Suite 480
Los Angeles, CA 90010
Fax: 213.382.3430

For Four Seasons Roofing, Inc.:

C. Andrew Gibson, Esq.
Leonidou & Rosin, PC.
5 Thomas Mellon Cir #205
San Francisco, CA 94134
Fax: 415.715.2870

Any Party may change its designee(s) for purposes of notification by providing notice of such change pursuant to this section.

17.0 Product of Negotiation

The Parties agree that this Settlement Agreement is a product of negotiation and preparation by and between the Parties and their respective attorneys. Therefore, the Parties acknowledge and agree that this Settlement Agreement shall not be deemed prepared or drafted by one Party or the other and should be construed accordingly.

Dated: 7/17/07

By: *Jim H. Marcus* Pres.
CONSUMER ADVOCACY GROUP, INC.

Dated: 6/26/07

By: *[Signature]*
FOUR SEASONS ROOFING, INC.

As to form only:

YERUSHALMI & ASSOCIATES

Dated: 7/17/07

By: *[Signature]*
Reuben Yeroushalmi

LEONIDOU & ROSIN, PC.

Dated: 6/26/07

By: *[Signature]*
Leonidou & Rosin, PC.