

Mar 17 10 08:27P K & M Asphalt
JESSE JACK LAW OFFICE

408-225-8822

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SETTLEMENT AGREEMENT BETWEEN CONSUMER ADVOCACY GROUP, INC.
AND K & M ASPHALT, 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 K & M Asphalt, Inc. ("K & M Asphalt"), (CAG and K & M Asphalt, collectively, "Parties") hereby enter into this opt-in agreement in which K & M Asphalt agrees to opt-in to the consent judgment resolving the claims of *Consumer Advocacy Group, Inc. and Environmental World Watch v. All American Asphalt, et al.* (Case No. RG03-097307), and entered in *People ex rel. Lockyer v. Blue's Roofing Company, Inc.* (Case No. RG05-082954) (hereinafter "AAA Consent Judgment") and complied with all requirements for doing so, as between the Parties, as follows:

1.0 Introduction

1.1 CAG 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 contained in consumer and industrial products.

1.2 CAG alleges that K & M Asphalt is a company that employs ten or more persons and acts primarily as a paving contractor.

1.3 CAG alleges that K & M Asphalt uses paving 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]fluoranthene; benzo[k]fluoranthene; 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").

1.4 The Covered Chemicals are substances listed in the regulations promulgated under the California Safe Drinking Water and Toxic Enforcement Act (Health & Saf. Code, §§ 25249.5, et seq.) ("Proposition 65") as chemicals known to the State of California to cause cancer or reproductive harm.

1.5 On August 29, 2006, CAG served public enforcement agencies and K&M Asphalt with a document entitled "60-Day Notice of Intent to Sue Under

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Health & Safety Code Section 25249.6" ("Notice") The Notice alleged that K&M Asphalt violated Proposition 65 by failing to warn its employees and other persons in California that some of the paving materials used by K & M Asphalt expose those persons to Covered Chemicals

1.6 On March 24, 2008, CAG filed the Lawsuit alleging K & M Asphalt, among other entities, violated Proposition 65 by exposing employees and others to Covered Chemicals contained in asphalt paving products without providing "clear and reasonable" warnings. The alleged exposures constitute "occupational" and "environmental" exposures pursuant to California Code of Regulations, title 22, section 12601.

1.7 The Parties enter into this Settlement Agreement for settlement of certain disputed claims between the Parties as alleged in the CAG Complaint and Notice in order to avoid prolonged and costly litigation between the Parties.

1.8 By execution of this Settlement Agreement, the Parties admit no facts or conclusions of law, including those 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. Nothing in this Settlement Agreement, nor compliance with its terms, shall constitute or be construed as evidence of an admission or evidence of fault, wrongdoing, or liability by K & M Asphalt, its officers, directors, employees, or parent, subsidiary or affiliated corporations, in any administrative or judicial proceeding or litigation. Except for the cause of action and allegations settled and compromised, nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense that CAG or K & M Asphalt may have against one another in any other pending legal proceeding involving allegations unrelated to those alleged in the Lawsuit

2.0 Release

2.1 Upon the execution of the settlement between the Parties and once K & M Asphalt takes all the steps necessary to opt into the Consent Judgment, reached in the action of *Consumer Advocacy Group, Inc. v All American Asphalt, Astro Paving and Does 1-1,000*, CAG releases and forever discharges K & M Asphalt and its affiliates, subsidiary and parent corporations, 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 rights, claims, causes of action, damages, suits, penalties, liabilities, injunctive relief, declaratory relief, and attorney 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

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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. CAG acknowledges that the claims released in this Lawsuit include known and unknown claims and hereby waives any protections provided for by Section 1542 of the Civil Code. Section 1542 of the Civil Code provides 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 expressly waives all rights and benefits conferred upon it by 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, which were or could have been asserted in the Lawsuit arising out of allegations that the Released Parties violated Proposition 65 or any other law because of Released Parties' operations.

4.0 Defendant's Duties

K & M Asphalt shall opt-in and will comply with all the requirements set forth in the Consent Judgment which was reached in the action of *Consumer Advocacy Group, Inc., and Environmental World Watch, Inc., in the interest of, and on Behalf of the Public v. All American Asphalt, Astro Paving and Does 1-1,000*, (hereinafter referred to as "Consent Judgment") filed in the Superior Court of the State of California for the County of Alameda under Case No. RG 03097307. Even though at the time of the execution of this agreement 40 days shall have passed since K & M Asphalt's acceptance of service of CAG's Complaint, for and in consideration of the terms herein, CAG expressly agrees to allow K & M Asphalt to opt in to the Consent Judgment. Accordingly, K & M Asphalt shall take all necessary steps to opt-in and be in compliance with all the terms and requirements of the Consent Judgment

K & M Asphalt shall prepare and post Prop 65 Warning Signs by the time the "Opt-In" Notice is submitted. K & M Asphalt shall develop and implement a Hazard Communication program ("HCP") to educate their employees about the dangers of asphalt fumes by the time the "Opt-In" Notice is submitted

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5.0 Payments

5.1 Payment to Yeroushalmi & Associates. K & M Asphalt shall pay eighteen thousand dollars (\$18,000.00) to CAG for its attorney fees and costs. Payment shall be made to "Yeroushalmi & Associates."

6.0 Authority to Enter Into Settlement Agreement

CAG represents that the signatory to this Settlement Agreement has the authority to enter into this Settlement Agreement on behalf of CAG and to bind legally CAG. K & M Asphalt represents that the signatories to this Settlement Agreement have the authority to enter into this Settlement Agreement on behalf of K & M Asphalt and to bind legally K & M Asphalt.

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 or pdf signature shall be as valid as the original.

9.0 Entry of Judgment Pursuant to 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 ultimately 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

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all related prior discussions, negotiations, commitments, and understandings. No other agreements, oral or otherwise, exist to bind any of the Parties.

11.0 Modification of Settlement Agreement

11.1 Any modification to this Settlement Agreement shall be in writing by the Parties.

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 Attorney Fees

15.1 In the event that CAG incurs fees because of delinquency or non-compliance by K&M Asphalt with the payment, CAG shall be entitled to recover those costs and reasonable attorney fees incurred in collection process thereof.

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:

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For CAG:

Reuben Yeroushalmi
Yeroushalmi & Associates
3700 Wilshire Blvd., Suite 480
Los Angeles, CA 90010
Facsimile: (213) 382-3430

For K & M Asphalt:

Jesse W. Jack, Esq.
Law Offices of Jesse W. Jack
1550 The Alameda Suite 300
San Jose, CA 95126
Facsimile: (408) 279-5044

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

Dated: _____

By: [Signature]
CONSUMER ADVOCACY GROUP, INC

Dated: 3-17-10

By: [Signature]
K & M ASPHALT ASPHALT, INC

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As to form only:

YERUSHALMI & ASSOCIATES

Dated: _____

By:



Reuben Yerushalmi
Attorneys for Consumer Advocacy Group,
Inc.

Dated: _____

By:

Jesse W. Jack, Esq.
Attorneys for K & M Asphalt Asphalt, Inc.

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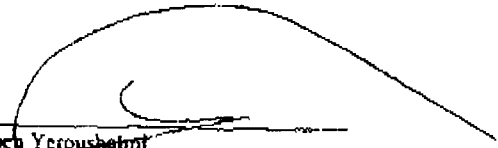
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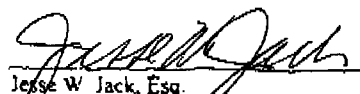
As to form only:

YERUSHALMI & ASSOCIATES

Dated: _____

By 
Reuben Yerushalmi
Attorneys for Consumer Advocacy Group,
Inc

Dated: 3/18/2010

By 
Jesse W. Jack, Esq.
Attorneys for K & M Asphalt Asphalt, Inc