

SETTLEMENT AGREEMENT BETWEEN CONSUMER ADVOCACY GROUP, INC.  
AND FAGUNDES & SON, 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 Fagundes & Son, Inc. (“Fagundes & Son”), (CAG and Fagundes & Son, collectively, “Parties”) enter into this agreement (“Settlement Agreement”) to settle only CAG’s claims for costs and fees incurred in commencing suit against Fagundes & Son as permitted under Section 5.7 of the April 27, 2005 Corrected Consent Judgment (“Consent Judgment”) entered in the lawsuit styled *Consumer Advocacy Group and Environmental World Watch v. All American Asphalt, Astro Paving and Does 1-1000* (“Lawsuit”) 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. Fagundes & Son disputes this.

1.2 CAG alleges that Fagundes & Son uses paving materials, some of which are listed as Covered Chemicals 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. Fagundes & Son disputes exposing persons to any Covered Chemicals.

1.3 CAG alleges that, on August 29, 2006, CAG served public enforcement agencies and Fagundes & Son with a document entitled “60-Day Notice of Intent to Sue Under Health & Safety Code Section 25249.6” (“Notice”). The Notice alleged that Fagundes & Son violated Proposition 65 by failing to warn its employees and other persons in California that some of the paving materials used by it exposes persons to Covered Chemicals.

1.4 On December 27, 2007, CAG filed its action against Fagundes & Son, subsequently consolidated into the Lawsuit, alleging, among other entities, that Fagundes & Son violated Proposition 65 by exposing employees and others to Covered Chemicals contained in asphalt paving products without providing “clear and reasonable” warnings. Fagundes & Son denied the material allegations of the Lawsuit and all liability for the cause of action alleged in the complaint.

1.5 On or about July 14, 2009, Fagundes & Son exercised its right to opt-in to the Consent Judgment.

1.6 The Parties enter into this Settlement Agreement for settlement of disputed claims between the Parties over CAG's claims under Section 5.7 of the Consent Judgment for costs and fees incurred in commencing suit against Fagundes & Son.

1.7 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, including 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 its terms, shall constitute or be construed as evidence of an admission or evidence of fault, wrongdoing, or liability by Fagundes & Son, its officers, directors, employees, or parent, subsidiary or affiliated corporations, in any administrative or judicial proceeding or litigation.

## **2.0 Release**

2.1 Upon full satisfaction of Fagundes & Son's payment obligations set forth below, CAG releases and forever discharges Fagundes & Son 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 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 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.

To confer upon Fagundes & Son a broad release of claims, CAG expressly waives all rights and benefits conferred upon it by Civil Code Section 1542, as

well as any other similar state or federal statute or common law principle, to the fullest extent it may lawfully waive such right or benefits pertaining to the claims released above.

### **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, for costs and fees incurred in CAG commencing suit against Fagundes & Son as permitted under Section 5.7 of the Consent Judgment 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 Payments**

4.1 In consideration for the release and waiver in Sections 2 and 3, above, Fagundes & Son agrees to pay "Yeroushalmi & Associates" the sum of Twenty Thousand Dollars and Zero Cents (\$20,000.00) by September 1, 2009 or the date that the Attorney General chooses not to oppose the settlement, whichever is later in time. Yeroushalmi & Associates will provide its federal tax identification number to counsel for Fagundes & Son by August 15, 2009.

### **5.0 Authority to Enter Into Settlement Agreement**

5.1 CAG warrants and represents that the signatory to this Settlement Agreement has the authority to enter into this Settlement Agreement on its behalf and to legally bind CAG, that CAG has incurred fees and costs to commence suit against Fagundes & Son in the Lawsuit, and that CAG has authority to release its claims for costs and fees under Section 5.7 of the Consent Judgment.

5.2 Fagundes & Son warrants and represents that the signatories to this Settlement Agreement have the authority to enter into this Settlement Agreement on its behalf and to legally bind Fagundes & Son .

### **6.0 Attorney General Review**

6.1 Consistent with section 3003, subdivision (a) of Title 11 of the California Code of Regulations, CAG shall submit this Settlement Agreement to the Attorney General's Office for review and approval after execution. To the extent that either the Attorney General or the Court disapproves and/or rejects this Settlement Agreement and/or the relief intended to be afforded to Released Parties under it, CAG and Yeroushalmi & Associates agree to return all sums paid by Fagundes & Son under Section 4.0, above, with 15 days of a written

demand made by Fagundes & Son or its representatives for a return of those sums.

**7.0 Execution in Counterparts and Facsimile**

7.1 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.

**8.0 Entire Agreement**

8.1 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.

**9.0 Modification of Settlement Agreement**

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

**10.0 Application of Settlement Agreement**

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

**11.0 Severability**

11.1 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.

**12.0 Governing Law**

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

**13.0 Notification Requirements**

13.1 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 Fagundes & Son:

Dean C. Burnick, Esq.  
Greenan Peffer Sallander & Lally LLP  
6111 Bollinger Canyon Rd #500  
San Ramon, CA 94583  
Fax: 925.830.8787

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

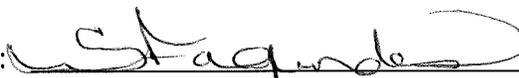
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
CONSUMER ADVOCACY GROUP, INC.

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: 8/31/09

By:   
Sherri Fagundes, President  
FAGUNDES & SON, INC.

As to form only:

YEROUSHALMI & ASSOCIATES

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Reuben Yeroushalmi  
Attorneys for Consumer Advocacy Group,  
Inc.

GREENAN PEFFER SALLANDER & LALLY  
LLP

Dated: 9/2/09

By: Dean C B  
Dean C. Burnick  
Attorneys for Fagundes & Son , Inc.

**13.0 Notification Requirements**

13.1 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 Fagundes & Son:

Dean C. Burnick, Esq.  
Greenan Peffer Sallander & Lally LLP  
6111 Bollinger Canyon Rd #500  
San Ramon, CA 94583  
Fax: 925.830.8787

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

Dated: 8/14/09

By:   
CONSUMER ADVOCACY GROUP, INC.

Print Name: LYN MARCUS

Title: President

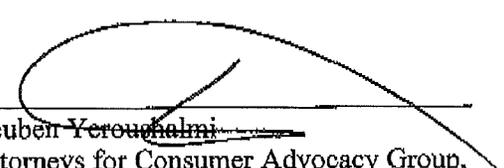
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Sherri Fagundes, President  
FAGUNDES & SON, INC.

As to form only:

YEROUSHALMI & ASSOCIATES 9-4

Dated: August 19, 09

By:   
~~Reuben Yeroushalmi~~  
Attorneys for Consumer Advocacy Group,  
Inc.

GREENAN PEPPER SALLANDER & LALLY  
LLP

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Dean C. Burnick  
Attorneys for Fagundes & Son , Inc.