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11 CONSUMER ADVOCACY GROUP, INC.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF LOS ANGELES

14 CONSUMER ADVOCACY GROUP, INC.
15 and BEN SASSOON
16 Plaintiffs,
17 v.
18 ROOFCORP OF CA, INC.; et al.,
19 Defendants.

Case No. BC 364149

**[PROPOSED] CONSENT JUDGMENT AS
TO PLAINTIFFS CONSUMER
ADVOCACY GROUP, INC. AND BEN
SASSOON AND DEFENDANT
ROOFCORP OF CA, INC.**

Date action filed: December 29, 2006
Trial date: Not set

20 Plaintiffs, CONSUMER ADVOCACY GROUP, INC. and BEN SASSOON
21 (collectively referred to herein as "Plaintiffs"), and defendant, ROOFCORP OF CA, INC.
22 (referred to herein as "Settling Defendant"), enter into this Consent Judgment as follows:

23 1. **Introduction.**

24 1.1 Consumer Advocacy Group ("CAG") is an entity based in Los Angeles,
25 California that seek to promote awareness of exposures to toxic chemicals and improve human
26 health by reducing or eliminating hazardous substances contained in consumer and industrial
27 products. Plaintiff Ben Sassoon is an individual who resides in Encino, California.
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1 1.2 Settling Defendant is a California corporation that employs ten or more persons
2 and acts primarily as a roofing contractor.

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

14 1.4 The Covered Chemicals are identified as substances listed in the regulations
15 promulgated under the California Safe Drinking Water and Toxic Enforcement Act, California
16 Health & Safety Code sections 25249.5 *et seq.* ("Proposition 65") as chemicals known to the
17 State of California to cause cancer and/or reproductive harm. A list of the roofing products that
18 consist of, contain or result in exposure to either asphalt or coal tar and are covered by this
19 Consent Judgment (the "Materials") is provided in Exhibit A. Some of the Materials are heated
20 and/or delivered to the place of application using a kettle, tank truck or other equipment. Tank
21 trucks and kettles are collectively referred to herein as "Heating and Delivery Equipment."

22 1.5 In October 2004, Plaintiff Sassoon contracted with Settling Defendant for the
23 purpose of repairing and/or replacing the roof on his residence, located at 17149 Nance Street,
24 Encino, California 91316 (the "Roofing Operations"). The Roofing Operations were completed
25 in February 2005.

26 1.6 In May 2005, Plaintiffs served public enforcement agencies and Settling
27 Defendant with a document entitled "60-Day Notice of Violation" (the "Notice"), which

1 provided public enforcers and the Settling Defendant with notice that Settling Defendant was
2 alleged to have violated Proposition 65 by failing to warn its employees and other persons in
3 California that the Materials used by Settling Defendant expose those persons to the Covered
4 Chemicals.

5 1.7 On December 29, 2006, Plaintiffs brought an action in the public interest
6 captioned as *Consumer Advocacy Group, et al. v. Roofcorp. of CA, Inc., et al.*, in the Los
7 Angeles County Superior Court, Case No. BC 364149 (hereinafter the "Action") naming
8 ROOFCORP OF CA, INC., et al., as defendants, and alleging that Settling Defendant and other
9 defendants violated Health & Safety Code section 25249.6 and Business & Professions Code
10 sections 17200, *et seq.*, by exposing employees and other persons to chemicals listed pursuant to
11 Proposition 65 contained in the Materials without providing "clear and reasonable" warnings.
12 Such alleged exposures constitute "consumer product," "occupational" and "environmental"
13 exposures within the meaning of the Proposition 65 implementing regulations set forth at
14 California Code of Regulations, title 22, section 12601, subdivisions (b), (c) and (d),
15 respectively.

16 1.8 For purposes of this Consent Judgment only, the parties stipulate that this Court
17 has jurisdiction over the allegations of violations contained in the Plaintiffs' Complaint and
18 Notice, that the Court has personal jurisdiction over Settling Defendant as to the acts alleged in
19 the Plaintiffs' Complaint and Notice, that venue is proper in the County of Los Angeles and that
20 this Court has jurisdiction to enter this Consent Judgment as a full settlement and resolution of
21 the allegations contained in the Plaintiffs' Complaint and Notice, and of all claims which were
22 or could have been raised by any person or entity based on whole or in part, directly or
23 indirectly, on the facts alleged in the Notice, in the Plaintiffs' Complaint, or arising therefrom or
24 related thereto.

25 1.9 The parties enter into this Consent Judgment pursuant to a settlement of certain
26 disputed claims between the parties as alleged in the Plaintiffs' Complaint and Notice for the
27 purpose of avoiding prolonged and costly litigation between the parties hereto. By execution of

1 this Consent Judgment, the parties do not admit any fact, conclusion of law, issue of law or
2 violation of law, including, but not limited to, any fact, conclusion of law, issue of law, or
3 violation of law suggesting or demonstrating any violations of Proposition 65, the Unfair
4 Competition Law, or any other statutory, common law or equitable requirements relating to the
5 Materials. Nothing in this Consent Judgment shall be construed as an admission by the parties
6 of any fact, conclusion of law, issue of law or violation of law. Nor shall compliance with the
7 Consent Judgment constitute or be construed as an admission by the parties of any fact,
8 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
9 prejudice, waive or impair any right, remedy, argument or defense the parties may have in this
10 or any other or future legal proceedings. Nothing in this Consent Judgment shall preclude
11 Plaintiffs from opposing any argument. Nevertheless, Settling Defendant's obligations,
12 responsibilities and duties shall remain as set forth in this Consent Judgment unless a
13 modification has been entered by a court of law as set forth in Paragraph 12, below.

14 **2. Injunctive Relief.**

15 2.1 Settling Defendant agrees to provide Proposition 65 warnings and to take actions
16 intended to prevent, reduce and mitigate exposure to the Covered Chemicals arising from using
17 the Materials, in the manner prescribed below.

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

24 2.3 Within ninety (90) days after entry of this Consent Judgment, Settling Defendant
25 shall post a Proposition 65 warning sign conspicuously at each of its California places of
26 business where employees who are likely to handle, use, or store the Materials or prepare the
27 Materials for application, are likely to see and read the warning sign, such as a locker room

1 where such employees store their gear or in the proximity of a time clock where such employees
2 check in and out on a regular basis. For the purposes of this Consent Judgment, such places of
3 business shall not include job sites at which services may be performed, but which are not
4 owned and operated by Settling Defendant. The Proposition 65 warning sign shall set forth the
5 following warning statement:

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

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

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

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

1 2.5 The parties agree that Settling Defendant shall institute certain measures in order
2 to reduce or mitigate alleged occupational, environmental or consumer exposure to the Covered
3 Chemicals arising from the use of the Materials. The parties agree to these measures with the
4 mutual understanding and expectation that such measures will be effective to reduce and
5 mitigate exposure to the Covered Chemicals arising from the use of the Materials to or within
6 the levels such that warnings for “consumer product/service” or “environmental” exposures,
7 within the meaning of the Proposition 65 implementing regulations set forth at California Code
8 of Regulations, title 22, section 12601, subdivisions (b) and (d), respectively, would not be
9 required. Within ninety (90) days after entry of this Consent Judgment, Settling Defendant shall
10 do the following:

11 2.5.1 Settling Defendant shall ensure that Heating and Delivery Equipment
12 with a capacity greater than 200 gallons will have operational
13 thermostatic heating controls.

14 2.5.2 Settling Defendant shall incorporate the following instructions in its
15 chemical hazard training plan for employees, as part of its compliance
16 with the California Hazard Communication Standard, set forth at
17 California Code of Regulations, title 8, section 5194.

18 2.5.2.1 Employees shall restrict access to Heating and Delivery
19 Equipment in which Materials are being heated for application
20 to those employees whose job responsibilities require them to
21 be present.

22 2.5.2.2 Employees shall not heat any Material to a temperature that is
23 higher than the manufacturer’s specifications for that material.

24 2.5.2.3 Employees shall verify the temperature of heated Materials
25 with a thermometer on a regular basis, to ensure that the
26 Materials are not being heated higher than the applicable
27 manufacturer’s specifications.

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

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

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

Settling Defendant shall train its employees in the physical and health hazards of the Materials and other substances 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 personal protective equipment to be used. Settling Defendant shall periodically monitor its employees' conduct to promote full compliance with all the requirements of this Subparagraph 2.5.

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

3. Monetary Relief.

3.1 **Payment Pursuant to Health & Safety Code Section 25249.7(b).** Within thirty (30) days after entry of this Consent Judgment, Settling Defendant shall pay CAG \$1,000.00 as civil penalties.

1 3.2 **Other Payments.** The parties recognize and agree that monetary relief other
2 than payments under Health and Safety Code section 25249.7(b), or in addition to such
3 payments, might be imposed or required if the Settling Defendant was found liable in this
4 matter. Such monetary relief might include payments denominated as restitution, disgorgement
5 of profits, attorneys' fees and costs, investigative costs, or other payments, as such payments
6 might be imposed under Business & Professions Code sections 17200, *et seq.* ("Unfair
7 Competition Law"), Business & Professions Code § 17500, the Civil Procedure Code, or any
8 other law. Nevertheless, as consideration for Settling Defendant's agreement to adopt the
9 measures set forth in Paragraph 2 above, Plaintiffs agree to accept a single payment from
10 Settling Defendant in the amount set forth in Paragraph 3.1, above, in complete satisfaction of
11 any claim for such monetary relief, and Settling Defendant agrees to pay this amount.

12 3.3 **Manner of Payment.** The above-required civil penalty payment shall be made
13 payable to Yeroushalmi & Associates, 3700 Wilshire Boulevard, Suite 480, Los Angeles,
14 California, 90010 (Attn: Reuben Yeroushalmi, Esq.). Penalty monies shall be apportioned by
15 Yeroushalmi & Associates in accordance with Health & Safety Code section 25249.12, with
16 75% of these funds remitted to the Safe Drinking Water and Toxic Enforcement Fund, and the
17 remaining 25% apportioned to CAG pursuant to Section 25249.12(d).

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

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1 **4. Payment of Plaintiffs' Attorneys' Fees and Costs.**

2 4.1 **Attorneys' Fees Payment.** Within thirty (30) days after entry of this Consent
3 Judgment, Settling Defendant shall pay Plaintiffs \$6,800.00 as attorneys' fees and costs.

4 4.2 **Manner of Payment.** The above-required attorneys' fees and costs payment
5 shall be made payable to Yerousalmi & Associates, 3700 Wilshire Boulevard, Suite 480, Los
6 Angeles, California, 90010 (Attn: Reuben Yerousalmi, Esq.).

7 4.3 **Satisfaction of Claims/No Admissions.** The payment that Settling Defendant
8 makes pursuant to this Paragraph 4 shall be in consideration for the full, final and complete
9 satisfaction of all claims for attorneys' fees or costs related to the alleged violations regarding
10 the Materials. Making these payments shall not be construed as an admission by Settling
11 Defendant of any fact, conclusion of law, issue of law, or violation of law. Nor shall
12 compliance with the Consent Judgment constitute or be construed as an admission by Settling
13 Defendant of any fact, conclusion of law, issue of fact, law or violation of law.

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

15 By entering into this Consent Judgment, Plaintiffs do not waive any right to take further
16 enforcement actions regarding any violations not covered by the Action or this Consent
17 Judgment. Nothing in this Consent Judgment shall be construed as diminishing Settling
18 Defendant's continuing obligation to comply with Proposition 65 and the Unfair Competition
19 Law, Business & Professions Code sections 17200, *et seq.* in its future activities.

20 **6. Enforcement of Consent Judgment.**

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

10 **7. Application of Consent Judgment.**

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

14 **8. Claims Covered.**

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

19 Proposition 65,

20 the Unfair Competition Law (Business and Professions Code
21 sections 17200 *et seq.*),

22 Business and Professions Code sections 17500 *et seq.*, or

23 any other statutory or common law,

24 that arise from Settling Defendant's failure to provide clear and reasonable warnings, pursuant
25 to Proposition 65, that roofing operations cause exposure to the following:

26 the Materials,

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

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

11 **9. Mutual Releases of Claims.**

12 **9.1 Plaintiffs' Release of Settling Defendant.** This Consent Judgment shall
13 constitute a release from Plaintiffs on behalf of themselves, their agents, representatives,
14 attorneys and assigns, by which they waive all rights to institute or participate in, directly or
15 indirectly, any form of legal action, and releases all claims, liabilities, obligations, losses, costs,
16 expenses, penalties, fines and damages, against Settling Defendant, and its directors, officers,
17 employees, parent companies, sister companies, subsidiaries, or any other affiliated person who
18 may use, maintain or sell the Materials, and the successors and assigns of any of them, whether
19 under Proposition 65 or Business & Profession Code sections 17200, *et seq.*, or 17500 *et seq.*,
20 based upon Settling Defendant's failure to warn about exposure to chemicals listed under
21 Proposition 65, before and after the entry of this Consent Judgment, resulting from the sale,
22 distribution, marketing or use of any of the Materials

23 In addition, this Consent Judgment shall constitute a release from Plaintiffs on behalf of
24 themselves, their agents, representatives, attorneys and assigns, by which they waive all rights to
25 institute or participate in, directly or indirectly, any form of legal action, and releases all claims,
26 liabilities, obligations, losses, costs, expenses, penalties, fines and damages, against Settling
27 Defendant, and its directors, officers, employees, parent companies, sister companies,

1 subsidiaries, or any other affiliated person, and the successors and assigns of any of them,
2 before and after the entry of this Consent Judgment, based upon the Roofing Operations.

3 Plaintiffs acknowledge that they have read and waive the provisions of California Civil
4 Code § 1542:

5 **“A GENERAL RELEASE DOES NOT EXTEND TO**
6 **CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR**
7 **SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE**
8 **TIME OF EXECUTING THE RELEASE, WHICH IF**
9 **KNOWN BY HIM OR HER MUST HAVE MATERIALLY**
10 **AFFECTED HIS OR HER SETTLEMENT WITH THE**
11 **DEBTOR.”**

12 Plaintiffs understand and acknowledge the significance of this waiver of Section 1542 of
13 the Civil Code is that even if they discover additional claims or causes of action, Plaintiffs will
14 not be able to enforce or prosecute those claims or causes of action. Furthermore, Plaintiffs
15 acknowledge that they intend these consequences even as to claims or causes of action that may
16 exist as of the date of this release but which Plaintiffs do not know exist, and which, if known,
17 would materially affect Plaintiffs’ decision to execute this release, regardless of whether
18 Plaintiffs’ lack of knowledge is a result of ignorance, oversight, error, negligence, or any other
19 cause.

20 **9.2 Settling Defendant’s Release of Plaintiffs.** Settling Defendant by this Consent
21 Judgment, releases and waives all rights to institute any form of legal action against Plaintiffs
22 and their attorneys or representatives, for all actions or statements made by Plaintiffs, and their
23 attorneys or representatives, in the course of seeking enforcement of Proposition 65 or the
24 Business & Profession Code through Plaintiffs’ Complaint against Settling Defendant as to the
25 Materials that are the subject of the Notice and the Plaintiffs’ Complaint.

1 In addition, Settling Defendant by this Consent Judgment, releases and waives all rights
2 to institute any form of legal action against Plaintiffs and their attorneys or representatives,
3 based upon the Roofing Operations.

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

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

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

21 **10. Entire Agreement.**

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

1 **11. Authorization.**

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

5 **12. Modification.**

6 12.1 This Consent Judgment may be modified from time to time by express written
7 agreement of the parties, with the approval of the Court, or by an order of this Court in
8 accordance with law.

9 12.2 If (1) the Attorney General, CAG or Plaintiffs subsequently agree in a settlement
10 or judicially entered injunction or consent judgment (i) that certain Materials do not require a
11 warning under Proposition 65, or (ii) that a modified warning for the Materials is appropriate, or
12 (iii) to injunctive relief concerning the use, manufacture and/or sale of the Materials that differs
13 from that imposed in this Consent Judgment, or (2) a court of competent jurisdiction renders a
14 final judgment in a case brought by the Attorney General, CAG or Plaintiffs (i) that eliminates
15 such a warning requirement for Materials, or (ii) that modifies such a warning requirement for
16 the Materials, or (iii) that imposes injunctive relief concerning the use, manufacture and/or sale
17 of the Materials that differs from that imposed in this Consent Judgment, then Settling
18 Defendant shall be entitled to submit evidence to Plaintiffs demonstrating that the Materials
19 come within the scope of the agreement or ruling and (i) do not require a warning under
20 Proposition 65, or (ii) require a modified warning under Proposition 65, or (iii) require different
21 injunctive relief under Proposition 65.

22 12.3 Plaintiffs and Settling Defendant shall have ninety (90) days from the date on
23 which Settling Defendant submits such evidence to Plaintiffs in which to confer and decide
24 concerning whether (1) to eliminate the warning requirement set forth in Paragraph 2 above or
25 (2) otherwise to eliminate or modify the injunctive relief provisions of this Consent Judgment.
26 If the parties agree that the Materials used by Settling Defendant come within the scope of the
27 agreement or ruling, then they shall jointly move the Court for such modification.

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

11 12.5 This Paragraph 12 shall not apply to the monetary relief provisions of this
12 Consent Judgment.

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

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

19 **14. Retention of Jurisdiction.**

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

21 **15. Severability.**

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

25 **16. Attorneys' Fees.**

26 In the event that a dispute arises with respect to any provision(s) of the Consent
27 Judgment, and such disputes are resolved by the Court or through mediation, arbitration or other

1 alternative dispute resolution proceeding, the prevailing party in such action or proceeding shall
2 be entitled to recover costs and reasonable attorneys' fees.

3 **17. Governing Law.**

4 The terms of this Consent Judgment shall be governed by the laws of the State of
5 California.

6 **18. Notices.**

7 **18.1 All correspondence to Plaintiffs shall be mailed to:**

8 Reuben Yeroushalmi
9 Yeroushalmi & Associates
10 3700 Wilshire Blvd., Suite 480
11 Los Angeles, CA 90010

12 **18.2 All correspondence to Settling Defendant shall be mailed to:**

13 Settling Defendant's registered agent
14 with copy to

15 Stanley W. Landfair
16 McKenna Long & Aldridge LLP
17 101 California Street
18 41st Floor
19 San Francisco, CA 94111
20 Tel.: 415-267-4000
21 Fax: 415-267-4198

22 **19. Counterparts and Facsimile.**

23 This Consent Judgment may be executed in counterparts and facsimile, each of which
24 shall be deemed an original, and all of which, when taken together, shall constitute one and the
25 same document.
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1 **AGREED TO:**

AGREED TO:

2 DATE: 2/7/07

DATE: 1/24/07

3
4 *Lyn Marcus*
5 Lyn Marcus

Jorge C. Joya
Jorge C. Joya

6 President
CONSUMER ADVOCACY GROUP, INC.

ROOFCORP OF CA, INC.
Defendant

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8
9 **AGREED TO:**

10 DATE: 2/12/07

11
12 *Ben Sassoon*
13 Ben Sassoon

14 Plaintiff

15 **AGREED AS TO FORM:**

AGREED AS TO FORM:

16 YEROUSHALMI & ASSOCIATES

MCKENNA LONG & ALDRIDGE LLP

17
18
19 *Reuben Yeroushalmi*
20 Reuben Yeroushalmi

Ann D. Dinnick for
Stanley W. Landfair

21 Attorneys for Plaintiffs
CONSUMER ADVOCACY GROUP, INC.
22 and BEN SASSOON

Attorneys for Defendant
ROOFCORP OF CA, INC.

23
24 DATE: 2/12/07

DATE: 1/29/07

1 **EXHIBIT A**

2 The Materials, as defined at Paragraph 1.4, include all roofing products that consist of,
3 contain or result in exposure to asphalt or coal tar, and any equipment used in the storage,
4 installation, repair, removal, and transportation of such products whose use may cause persons
5 to be exposed to asphalt or coal tar, including specifically, but not exclusively, the products and
6 equipment listed below:

- | | |
|------------------------|--|
| 7 Binders | Insulation materials |
| 8 Felts | Substrates |
| 9 Base sheets | Roofing kettles |
| 10 Cap sheets | Tank trucks |
| 11 Surfacing materials | Vehicles used to tow roofing
kettles to, from, and within job sites |
| 12 Membrane systems | Torches |
| 13 Shingles | Hot-air welders |
| 14 Roll roofing | Other heating equipment |
| 15 Felt underlayments | Spreaders |
| 16 Flashings | Felt-laying machines |
| 17 Coatings | Roof removal equipment, including
but not limited to roof cutters |
| 18 Mastics | Hand tools |
| 19 Cements | |
| 20 Adhesives | |
| 21 Caulking compounds | |

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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.

Dated: _____

Employee Signature

Employee Name (printed)