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Attorney for Plaintiff
Center for Environmental Health

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL WEST DISTRICT

CENTER FOR ENVIRONMENTAL HEALTH,
a California non-profit corporation

CASE NO. BC392691

Plaintiff

CONSENT JUDGMENT

vs.

Judge Ann Jones
Dept.: 308

GS ROOFING PRODUCTS, COMPANY
and DOES I-X,

Defendants.

_____ /

I. INTRODUCTION

1.1 On June 12, 2008, Plaintiff Center for Environmental Health (“CEH”) acting as a private attorney general, filed a Complaint for Injunctive and Declaratory Relief, and Civil Penalties in the Los Angeles County Superior Court against Defendant GS Roofing Products, Company (“GS Roofing Products”). CEH and GS Roofing Products shall be referred to collectively as the “Parties.” CEH’s legal action alleges that GS Roofing Products violated

provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code sections 25249.5 et seq. (“Proposition 65”).

1.2 CEH’s Complaint is based on allegations contained in its January 8, 2008 Notice of Violation relating to GS Roofing Products’ Wilmington, California facility which provided GS Roofing Products, the California Attorney General, the Los Angeles County District Attorney and the Los Angeles City Attorney with notice that the facility was allegedly in violation of Health and Safety Code section 25249.6 by knowingly and intentionally exposing persons to chemicals known to the State of California to cause cancer and reproductive toxicity and cancer, without first providing a clear and reasonable warning to such individuals. A true and correct copy of this Notice is attached hereto as Exhibit A.

1.3 CEH is a non-profit California corporation whose primary mission is to prevent and reduce toxic hazards to human health and the environment. Through CEH’s activities, numerous carcinogenic chemicals and reproductive toxicants listed pursuant to Proposition 65 contained in consumer products and emitted into the air from industries have been eliminated. CEH is, and at all times set forth herein has been, acting in the public interest under provisions of Proposition 65, as fully set forth at Health and Safety Code section 25249.7 (d).

1.4 GS Roofing Products is a corporation licensed to do business in the State of California. GS Roofing Products owns and operates an asphalt roofing products plant at 1431 West E Street, Wilmington, California 90744.

1.5 In the complaint, CEH alleges that the operations at GS Roofing Products caused emissions of 1,3 butadiene, benzene and formaldehyde into the air and exposed numerous persons in the surrounding area in violation of Proposition 65. The Complaint was based on emission reports provided by GS Roofing Products to the South Coast Air Quality Management

District disclosing sufficiently high annual emissions of these toxic chemicals and signed under penalty of perjury. CEH relied on the accuracy of these emission reports and consequently hired a consultant to conduct a Proposition 65 cancer risk assessment which demonstrated off-site exposures that warranted GS Roofing Products provide a warning to the surrounding community. CEH then filed this legal action. In reliance of GS Roofing Products emission reports, CEH incurred various expenses such as a consultant report, filing fees and general litigation expenses; and CEH's counsel has worked more than 87 hours on the case.

1.6 In response, GS Roofing Products denied all allegations in CEH's complaint. GS Roofing Products claimed that the emission reports were erroneous and that CEH should not rely on the emissions reported. Based on this claim, CEH requested that the South Coast Air Quality Management District conduct testing of the raw materials and other monitoring at the GS Roofing Products facility. This study was completed toward the end of 2009. While the study took many months to complete, the result of the study confirmed that the emissions from GS Roofing Products were negligible. Therefore, GS Roofing Products had no duty to warn persons in the surrounding community pursuant to Proposition 65 and was not in violation of the statute.

1.7 The Parties enter into this Consent Judgment pursuant to a full settlement of disputed claims between the Parties as alleged in the Complaint for the purpose of avoiding prolonged litigation and to insure that the objectives of Proposition 65 are satisfied. The Parties seek to protect the public health by reducing the public's exposure to toxic chemicals. CEH has diligently prosecuted this matter and is settling this case in the public interest. CEH and GS Roofing Products also intend for this Consent Judgment to provide, to the maximum extent permitted by law, res judicata protection for GS Roofing Products against all other claims based

on the same or similar allegations contained in CEH's Notice of Violation and CEH's Complaint.

1.7 Nothing in this Consent Judgment shall be construed as an admission by GS Roofing Products of any fact, issue of law or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by GS Roofing Products of any fact, issue of law or violation of law, at any time, for any purpose. Nothing in this Consent Judgment entered by the Court shall prejudice, waive or impair any right, remedy or defense that GS Roofing Products may have in any other or further legal proceedings. Nothing in this Consent Judgment entered by the Court, or any document referred to herein, nor any action taken to carry out the Consent Judgment entered by the Court, shall be construed as giving rise to any presumption or inference of admission or concession by GS Roofing Products as to any fault, wrongdoing or liability whatsoever. Nothing in this Consent Judgment entered by the Court, or any of its terms or provisions, nor any of the negotiations or other proceedings connected with it, nor any other action taken to carry out this Consent Judgment entered by the Court, by any of the Parties hereto, shall be referred to, offered as evidence, or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to enforce this Consent Judgment entered by the Court, to defend against the assertion of the released claims or as otherwise required by law. However, this paragraph shall not diminish or otherwise affect the obligations, responsibilities and duties of GS Roofing Products under the Consent Judgment entered by the Court.

II. JURISDICTION AND VENUE

For purposes of this Consent Judgment, the Parties stipulate that this Court has jurisdiction over the subject matter of this action and personal jurisdiction over the Parties, that venue is

proper in the Superior Court of the State of California for the County of Los Angeles, and that this Court has jurisdiction to enter a Judgment pursuant to the terms of this Consent Judgment as a resolution of this action.

III. PAYMENT

In full and final satisfaction of CEH's costs of litigation, attorney's fees and all other expenses, GS Roofing Products shall make a total payment to the Center for Environmental Health of \$3,050.00 payable within ten (10) business days of receiving Court approval of this Consent Judgment. Said payments shall be reimbursement of CEH's out of pocket expenses. CEH's Tax Identification No. is 94-3169008.

GS Roofing Products' payments shall be mailed to the Law Office of Michael Freund.

V. RELEASE AND CLAIMS COVERED

This Consent Judgment entered by the Court is a final and binding resolution between and among, CEH, its officers, directors, agents, employees, attorneys, successors and assigns, acting on behalf of the general public, and GS Roofing Products, its parents, subsidiaries, affiliates, divisions, subdivisions, officers, directors, shareholders, employees, agents, attorneys, successors and assigns, of any and all claims, known or unknown, that have been or could have been asserted by CEH against GS Roofing Products in the Complaint in regard to any violation of Proposition 65, up to and including the date of entry of Judgment arising from the emissions of lead, including, but not limited to, claims arising from environmental and occupational exposures to lead, wherever occurring and to whomever occurring, through and including the date upon which the Judgment becomes final. Except for such rights and obligations as have been created under this Consent Judgment entered by the Court, CEH, on its own behalf and bringing

an action “in the public interest” pursuant to California Health and Safety Code Section 25249.7 (d) with respect to the matters alleged in this lawsuit, does hereby fully, completely, finally and forever release, relinquish and discharge GS Roofing Products and its respective parents, subsidiaries, affiliates, division, subdivisions, officers, directors, shareholders, employees, agents, attorneys, successors and assigns (“released parties”) of and from any and all claims, actions, causes of action, demands, rights, debts, agreements, promises, liabilities, damages, accountings, costs and expenses, whether known or unknown, suspected or unsuspected, of every nature whatsoever which CEH has or may have against the said released parties, arising directly or indirectly out of any fact or circumstance occurring prior to the date upon which the Consent Judgment becomes final, relating to alleged violations of Proposition 65 by GS Roofing Products.

It is the intention of the Parties to this release that, upon entry of judgment and conclusion of any litigation relating to (i) this Consent Judgment entered by the Court and (ii) the CEH lawsuit itself, that this Consent Judgment entered by the Court shall be effective as a full and final accord and satisfaction and release of each and every released claim. In furtherance of this intention, CEH acknowledges that it is familiar with California Civil Code section 1542, which provides as follows:

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

CEH hereby waives and relinquishes all of the rights and benefits that CEH has, or may have, under California Civil Code section 1542. CEH hereby acknowledges that it may hereafter

discover facts in addition to, or different from, those which it now knows or believes to be true with respect to the subject matter of this Consent Judgment entered by the Court and the released claims, but that notwithstanding the foregoing, it is CEH's intention hereby to fully, finally, completely and forever settle and release each, every and all released claims, and that in furtherance of such intention, the release herein given shall be and remain in effect as a full and complete general release, notwithstanding the discovery or existence of any such additional or different facts. CEH hereby warrants and represents to GS Roofing Products that (a) CEH has not previously assigned any released claim, and (b) CEH has the right, ability and power to release each released claim.

VI. CONTINUING OBLIGATIONS

Nothing herein shall be construed as diminishing GS Roofing Products' continuing obligations to comply with Proposition 65.

VII. SEVERABILITY OF UNENFORCED PROVISIONS

In the event that any of the provisions hereof are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

VIII. ENFORCEMENT OF JUDGMENT

CEH may, by motion or order to show cause before the Superior Court of Los Angeles County, enforce the terms and conditions contained in the this Consent Judgment entered by the Court.

IX. APPLICATION OF JUDGMENT

This Consent Judgment entered by the Court shall apply to, be binding upon and inure to the benefit of GS Roofing Products, its parents, subsidiaries, affiliates, divisions, subdivisions, officers, directors, shareholders, employees, agents, attorneys, successors and assigns, and upon

CEH on its own behalf and on behalf of the general public, and each and every one of its members, and its directors, officers, employees, agents, successors, attorneys and assigns.

X. MODIFICATION OF JUDGMENT

This Consent Judgment entered by the Court may be modified only upon written agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon a regularly-noticed motion of any Party to this Consent Judgment as provided by law and upon entry of a modified Judgment by the Court.

XI. RETENTION OF JURISDICTION

This Court shall retain jurisdiction of this matter to enforce, modify or terminate this Consent Judgment.

XII. AUTHORITY TO STIPULATE TO THIS JUDGMENT

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

XIII. NON-CONFIDENTIALITY

The terms and conditions of this Consent Judgment entered by the Court shall not be confidential.

XIV. COURT APPROVAL

This Consent Judgment shall be effective only after it has been executed by the Court. Otherwise, it shall be of no force or effect and cannot be used in any proceeding for any purpose.

XV. EXECUTION IN COUNTERPARTS

This Consent Judgment may be executed in counterparts and/or by facsimile, which taken together shall be deemed to constitute one document.

XVI. NOTICES

All notices required to be given to either Party to this Consent Judgment by the other shall be sent to the following agents:

FOR CENTER FOR ENVIRONMENTAL HEALTH:

Michael Green, Executive Director
Center for Environmental Health
2201 Broadway
Oakland, CA 94612-3023

Michael Bruce Freund, Esq.
Law Offices of Michael Freund
1915 Addison Street
Berkeley, CA 94704
Telephone: (510) 540-1992
Facsimile: (510) 540-5543

FOR GS ROOFING PRODUCTS CORPORATION, INC.:

Laurin Alternman
Assistant General Counsel
Saint-Gobain Corporation
750 E. Swedesford Road
Valley Forge, PA 19482

Joanne K. Leighton, Esq.
Artiano & Associates, APC
3828 Carson Street, Suite 102
Torrance, CA 90503-6706
Telephone: (310) 543-1240
Facsimile: (410) 543-9850

XVII. GOVERNING LAW

The validity, construction and performance of this Consent Judgment shall be governed by the laws of the State of California.

XVIII. DRAFTING

The terms of this Consent Judgment have been reviewed by the respective counsel for the Parties to this settlement prior to its signing, and each Party has had an opportunity to fully discuss the terms with counsel. The Parties agree that, in any subsequent interpretation and construction of this Consent Judgment entered thereon, the terms and provisions shall not be construed against either Party.

XIX. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES

In the event a dispute arises with respect to either party's compliance with the terms of this Consent Judgment entered by the Court, the Parties shall meet either in person or by telephone and endeavor to resolve the dispute in an amicable manner. No action may be filed in the absence of such a good faith attempt to resolve the dispute beforehand. In the event an action is filed, however, the prevailing party may seek to recover costs and reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party" means a party who is successful in obtaining relief more favorable to it than the relief that the other party was amenable to providing during the parties' good faith attempt to resolve the dispute that is the subject of such enforcement action.

XX. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF JUDGMENT

This settlement has come before the Court upon the request of the Parties. The Parties request the Court to fully review this settlement and, being fully informed regarding the matters which are the subject of this action, to:

(1) Find that the terms and provisions of this Consent Judgment represent a fair and equitable settlement of all matters raised by the allegations of CEH's Complaint, that the matter has been diligently prosecuted, and that the public interest is served by such settlement; and

(2) Make the findings pursuant to Health & Safety Code § 25249.7 (f) (4), approve the Consent Judgment.

IT IS SO STIPULATED:

DATED: _____, 2010

GS ROOFING PRODUCTS COMPANY, INC.

By: _____
Laurin Alterman, Vice President, Health,
Safety and Environment
GS Roofing Products Corporation, Inc.

DATED: _____, 2010

CENTER FOR ENVIRONMENTAL HEALTH

By: _____
Michael Green, Executive Director
Center for Environmental Health

APPROVED AS TO FORM:

DATED: _____, 2010

ARTIANO & ASSOCIATES, APC

By: _____
Joanne K. Leghton
Attorney for GS Roofing Products Corporation, Inc.

DATED: _____, 2010

LAW OFFICES OF MICHAEL FREUND

By: _____

Michael Freund

Attorney for Center for Environmental Health

IT IS SO ORDERED:

Judge Ann Jones