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ENDORSED  
FILED  
Superior Court of California  
County of San Francisco

SEP 22 2015

CLERK OF THE COURT  
BY: ARLENE RAMOS  
Deputy Clerk

9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

CGC-15-548091

11 ERIKA MCCARTNEY, in the public interest, )

12 Plaintiff, )

13 v. )

14 SMOKEHOUSE PRODUCTS, LLC, an Oregon )  
15 limited liability company; SMOKEHOUSE )  
16 PRODUCTS, LLC, a corporation; and DOES 1 )  
17 through 500, inclusive, )

18 Defendants. )

CIVIL ACTION NO.

COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES

[Cal. Health and Safety Code  
Sec. 25249.6, *et seq.*]

1 Plaintiff Erika McCartney, in the public interest, based on information and belief and  
2 investigation of counsel, except for information based on knowledge, hereby makes the following  
3 allegations.

#### 4 INTRODUCTION

5 1. This Complaint seeks to remedy Defendants' failure to warn individuals in  
6 California that they are being exposed to wood dust (hereinafter "Wood Dust"), a substance known  
7 to the State of California to cause cancer through. Such exposures have occurred, and continue to  
8 occur through the manufacture, distribution, sale and use of Defendant's "Smokehouse All Natural"  
9 wood chip products, including, without limitation, "Smokehouse All Natural Wood Cherry Chips,"  
10 and "Smokehouse All Natural Wood Hickory Chips" (the "Products.")

11  
12 2. Under California's Proposition 65, Health & Safety Code § 25249.5, *et seq.*, it is  
13 unlawful for businesses to knowingly and intentionally expose individuals in California to  
14 substances known to the State to cause cancer, birth defects or other reproductive harm without  
15 providing clear and reasonable warnings to individuals prior to exposure. Defendants introduce  
16 products contaminated with significant quantities of Wood Dust into the California marketplace,  
17 exposing consumers to Wood Dust.

18  
19 3. Despite the fact that the Defendants expose consumers to Wood Dust, Defendants  
20 have, during the operative period, provided no warnings about the carcinogenic hazards associated  
21 with Wood Dust exposure. Defendants' conduct thus violates the warning provision of Proposition  
22 65, Health & Safety Code § 25249.6.

#### 23 PARTIES

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25 4. Plaintiff brings this enforcement action in the public interest pursuant to Health &  
26 Safety Code § 25249.7(d).



1 11. To effectuate this goal, Proposition 65 prohibits exposing people to substances listed  
2 by the State of California as known to cause cancer, birth defects or other reproductive harm  
3 without a "clear and reasonable warning" unless the business responsible for the exposure can  
4 prove that it fits within a statutory exemption. Health & Safety Code § 25249.6 states, in pertinent  
5 part:

6 No person in the course of doing business shall knowingly and intentionally  
7 expose any individual to a chemical known to the state to cause cancer or  
8 reproductive toxicity without first giving clear and reasonable warning to such  
9 individual ....

10 12. On December 18, 2009, the State of California officially listed Wood Dust as a  
11 substance known to cause cancer. On December 18, 2010, one year after it was listed as a  
12 substance known to cause cancer, Wood Dust became subject to the clear and reasonable warning  
13 requirement regarding carcinogens under Proposition 65. 27 C.C.R. 27001(c); Health & Safety  
14 Code § 25249.10(b).

15 13. Defendants' Products contain sufficient quantities of Wood Dust such that  
16 consumers using the Product are exposed to Wood Dust. The primary route of exposure for the  
17 violations is through inhalation. These exposures occur everywhere throughout California where  
18 the Products are used.

19 14. No clear and reasonable warning is provided with the Products regarding the  
20 carcinogenic hazards of Wood Dust.

21 15. Any person acting in the public interest has standing to enforce violations of  
22 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid  
23 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action  
24 within such time. Health & Safety Code § 25249.7(d).  
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1           16.     More than sixty days prior to naming the Defendants herein, Plaintiff provided a 60-  
2 Day "Notice of Violation of Proposition 65" to the California Attorney General, the District  
3 Attorneys of every county in California, the City Attorneys of every California city with a  
4 population greater than 750,000 and to each of the named Defendants. In compliance with Health  
5 & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the following  
6 information: (1) the name and address of each violator; (2) the statute violated; (3) the time period  
7 during which violations occurred; (4) specific descriptions of the violations, including (a) the routes  
8 of exposure to Wood Dust from the Products, and (b) the specific type of Products sold and used in  
9 violation of Proposition 65; and (5) the name of the specific Proposition 65-listed substance that is  
10 the subject of the violations described in each Notice.

12           17.     Plaintiff also sent a Certificate of Merit for each Notice to the California Attorney  
13 General, the District Attorneys of every county in California, the City Attorneys of every California  
14 city with a population greater than 750,000 and to each of the named Defendants. In compliance  
15 with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3101, each Certificate certified that  
16 Plaintiff's counsel: (1) has consulted with one or more persons with relevant and appropriate  
17 experience or expertise who reviewed facts, studies or other data regarding the exposures to Wood  
18 Dust alleged in each Notice; and (2) based on the information obtained through such consultations,  
19 believes that there is a reasonable and meritorious case for a citizen enforcement action based on  
20 the facts alleged in each Notice. In compliance with Health & Safety Code § 25249.7(d) and 11  
21 C.C.R. § 3102, each Certificate served on the Attorney General included factual information -  
22 provided on a confidential basis – sufficient to establish the basis for the Certificate, including the  
23 identity of the person(s) consulted by the Plaintiff's counsel and the facts, studies or other data  
24 reviewed by such persons.  
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1 18. None of the public prosecutors with the authority to prosecute violations of  
2 Proposition 65 has commenced and/or is diligently prosecuting a cause of action against  
3 Defendants under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in each of  
4 Plaintiff's Notices.

5 19. Defendants both knows and intends that individuals will use the Product, thus  
6 exposing them to Wood Dust.

7 20. Under Proposition 65, an exposure is "knowing" where the party responsible for  
8 such exposure has:

9  
10 knowledge of the fact that a[n] ... exposure to a chemical listed pursuant  
11 to [Health & Safety Code § 25249.8(a)] is occurring. No knowledge that  
the ... exposure is unlawful is required.

12 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final  
13 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2, §  
14 12201).

15 21. Defendants have been informed of the Wood Dust in its Products by the 60-Day  
16 Notice of Violation and accompanying Certificate of Merit served on it.

17 22. Defendants further have, throughout the operative period, had knowledge their  
18 Products contains Wood Dust.

19 23. As a company that manufactures, imports, distributes and/or sell the Products for use  
20 in the California marketplace, Defendants know or should know that the Products contain Wood  
21 Dust and that individuals who uses the Products will be exposed to Wood Dust. The exposures to  
22 consumers who use the Products are a natural and foreseeable consequence of Defendants' placing  
23 the Products into the stream of commerce.  
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