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FILED
CLERK OF THE COURT
MAY 20 2015
BY: ROSSALY DE LA VEGA
Deputy Clerk

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 066-15-545931

12 ERIKA MCCARTNEY, in the public interest,)
13 Plaintiff,)
14 v.)
15 SBC FIREMASTER LTD.; and DOES 1 through)
16 500, inclusive,)
17 Defendants.)

CIVIL ACTION NO.
COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES
[Cal. Health and Safety Code
Sec. 25249.6, et seq.]

18 BY FAX

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 "Firemaster Premium
9 Wood Pellets" (the "Product").
10

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

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

23 PARTIES

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

1 without a "clear and reasonable warning" unless the business responsible for the exposure can
2 prove that it fits within a statutory exemption. Health & Safety Code § 25249.6 states, in pertinent
3 part:

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

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

12 13. Defendant's Product contains sufficient quantities of Wood Dust such that
13 consumers using the Product are exposed to Wood Dust. The primary route of exposure for the
14 violations is through inhalation. These exposures occur everywhere throughout California where
15 the Product is used.

16 14. No clear and reasonable warning is provided with the Product regarding the
17 carcinogenic hazards of Wood Dust.

18 15. Any person acting in the public interest has standing to enforce violations of
19 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid
20 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
21 within such time. Health & Safety Code § 25249.7(d).

22 16. More than sixty days prior to naming the Defendant herein, Plaintiff provided a 60-
23 Day "Notice of Violation of Proposition 65" to the California Attorney General, the District
24
25
26

1 Attorneys of every county in California, the City Attorneys of every California city with a
2 population greater than 750,000 and to each of the named Defendants. In compliance with Health
3 & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the following
4 information: (1) the name and address of each violator; (2) the statute violated; (3) the time period
5 during which violations occurred; (4) specific descriptions of the violations, including (a) the routes
6 of exposure to Wood Dust from the Products, and (b) the specific type of Products sold and used in
7 violation of Proposition 65; and (5) the name of the specific Proposition 65-listed substance that is
8 the subject of the violations described in each Notice.
9

10 17. Plaintiff also sent a Certificate of Merit for each Notice to the California Attorney
11 General, the District Attorneys of every county in California, the City Attorneys of every California
12 city with a population greater than 750,000 and to each of the named Defendants. In compliance
13 with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3101, each Certificate certified that
14 Plaintiff's counsel: (1) has consulted with one or more persons with relevant and appropriate
15 experience or expertise who reviewed facts, studies or other data regarding the exposures to Wood
16 Dust alleged in each Notice; and (2) based on the information obtained through such consultations,
17 believes that there is a reasonable and meritorious case for a citizen enforcement action based on
18 the facts alleged in each Notice. In compliance with Health & Safety Code § 25249.7(d) and 11
19 C.C.R. § 3102, each Certificate served on the Attorney General included factual information -
20 provided on a confidential basis – sufficient to establish the basis for the Certificate, including the
21 identity of the person(s) consulted by the Plaintiff's counsel and the facts, studies or other data
22 reviewed by such persons.
23
24

25 18. None of the public prosecutors with the authority to prosecute violations of
26 Proposition 65 has commenced and/or is diligently prosecuting a cause of action against

1 Defendants under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in each of
2 Plaintiff's Notices.

3 19. Defendant both knows and intends that individuals will use the Product, thus
4 exposing them to Wood Dust.

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

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

10 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
11 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2, §
12 12201).

13 21. Defendant has been informed of the Wood Dust in its Products by the 60-Day
14 Notice of Violation and accompanying Certificate of Merit served on it.

15 22. Defendant further has, throughout the operative period, had knowledge its Product
16 contains Wood Dust.

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

22 24. Nevertheless, on information and belief, Defendant continues to expose consumers
23 to Wood Dust without prior clear and reasonable warnings regarding the carcinogenic hazards of
24 Wood Dust.
25
26

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

SBC FIREMASTER LTD.; and DOES 1 through 500, inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

ERIKA MCCARTNEY, in the public interest.

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

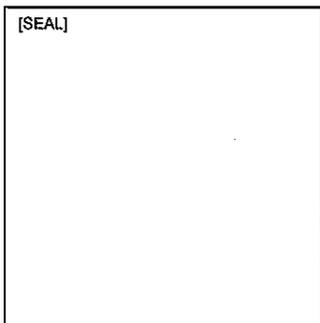
The name and address of the court is:
(El nombre y dirección de la corte es): **San Francisco Superior Court**
400 McAllister Street, San Francisco, California 94102-4514

CASE NUMBER:
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Robert B. Hancock, 50 California Street, Suite 1500, San Francisco, California 94111 415.310.1940

DATE: _____ Clerk, by _____, Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):

under: <input checked="" type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Robert B. Hancock (SBN 179438) 50 California Street, Suite 1500 San Francisco, California 94111 TELEPHONE NO.: 415.310.1940 FAX NO.: Plaintiff Erika McCartney ATTORNEY FOR (Name):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: 400 McAllister Street CITY AND ZIP CODE: San Francisco, California 94102-4514 BRANCH NAME: Main	
CASE NAME: McCartney v. SBC Firemaster LTD.	
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
	CASE NUMBER: JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input checked="" type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): **One**
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: May 21, 2015
 Robert B. Hancock


 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

(TYPE OR PRINT NAME)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

PRAAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment against Defendants as follows:

1. That the Court, pursuant to Health & Safety Code § 25249.7(b), assess civil penalties against each of the Defendant in an amount up to \$2,500 per day for each violation of Proposition 65;

2. That the Court, pursuant to Health & Safety Code § 25249.7(a), preliminarily and permanently enjoin Defendant from offering the Product for sale in California without either reformulating the Product such that no Proposition 65 warnings is required or providing prior clear and reasonable warnings, as Plaintiff shall specify in further application to the Court;

3. That the Court, pursuant to Health & Safety Code § 25249.7(a), order Defendant to take action to stop ongoing unwarranted exposures to Wood Dust resulting from use of the Product sold by Defendant, as Plaintiff shall specify in further application to the Court;

4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other applicable statute, theory, rule or doctrine, grant Plaintiff its reasonable attorneys' fees and costs of suit; and

5. That the Court grant such other and further relief as may be just and proper.

Dated: May 21, 2015

PACIFIC JUSTICE CENTER

By: 
Robert B. Hancock
Attorneys for Plaintiff