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Attorneys for Plaintiff

**FILED BY FAX**

ALAMEDA COUNTY

August 15, 2016

CLERK OF  
THE SUPERIOR COURT  
By Alicia Espinoza, Deputy

CASE NUMBER:

**RG16826473**

**SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF ALAMEDA**

AMY CHAMBERLIN, in the public interest,

Plaintiff,

v.

AMERICAN WOOD FIBERS, INC., a  
Wisconsin corporation; and DOES 1 through  
500, inclusive,

Defendants.

CIVIL ACTION NO. RG16826473

**FIRST AMENDED COMPLAINT FOR  
INJUNCTIVE RELIEF AND CIVIL  
PENALTIES**

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

1 Plaintiff Amy Chamberlin, 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 Defendant's continuing failure to warn individuals  
6 in California that they are being exposed to wood dust (hereinafter "Wood Dust"), a substance  
7 known to the State of California to cause cancer through. Such exposures have occurred, and  
8 continue to occur through the manufacture, distribution, sale and use of Defendant's "Premier Pet  
9 Kennel Care Red Cedar Bedding," "Premier Pet Pine Softwood Bedding," "Pet's Pick Kennel Care  
10 Eastern Red Cedar Bedding," "America's Choice Premium Mini Flake Animal Bedding" and  
11 "Tractor Supply Co. Premium Pine Shavings, Fine" (the "Products.")

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

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

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**PARTIES**

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

5. Defendant AMERICAN WOOD FIBERS, INC. (“Defendant”) is a person in the course of doing business within the meaning of Health & Safety Code § 25249.11. Defendant manufactures, distributes and/or sells the Products for sale and use in California.

6. The true names of DOES 1 through 500 are unknown to Plaintiff at this time. When their identities are ascertained, the Complaint shall be amended to reflect their true names.

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**JURISDICTION AND VENUE**

7. The Court has jurisdiction over this action pursuant to Health & Safety Code § 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant to California Constitution Article VI, Section 10, because this case is a cause not given by statute to other trial courts.

8. This Court has jurisdiction over Defendant because each it is a business entity that does sufficient business, has sufficient minimum contacts in California or otherwise intentionally avails itself of the California market through the sale, marketing or use of the Products in California and/or by having such other contacts with California so as to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

9. Venue is proper in Alameda County Superior Court because one or more of the violations arise in Alameda County.

**BACKGROUND**

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2           10.    The People of the State of California have declared by initiative under Proposition  
3 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or  
4 other reproductive harm.” Proposition 65 § 1(b).

5           11.    To effectuate this goal, Proposition 65 prohibits exposing people to substances listed  
6 by the State of California as known to cause cancer, birth defects or other reproductive harm  
7 without a “clear and reasonable warning” unless the business responsible for the exposure can  
8 prove that it fits within a statutory exemption. Health & Safety Code § 25249.6 states, in pertinent  
9 part:  
10

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

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

20           13.    Defendant’s Products contain sufficient quantities of Wood Dust such that  
21 consumers using the Products are exposed to Wood Dust. The primary route of exposure for the  
22 violations is through inhalation. These exposures occur everywhere throughout California where  
23 the Products are used.

24           14.    No clear and reasonable warning is provided with the Products regarding the  
25 carcinogenic hazards of Wood Dust.  
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1 15. Any person acting in the public interest has standing to enforce violations of  
2 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid  
3 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action  
4 within such time. Health & Safety Code § 25249.7(d).

5 16. More than sixty days prior to naming the Defendant herein, Plaintiff provided a 60-  
6 Day "Notice of Violation of Proposition 65" to the California Attorney General, the District  
7 Attorneys of every county in California, the City Attorneys of every California city with a  
8 population greater than 750,000 and to each named Defendant. In compliance with Health &  
9 Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the following  
10 information: (1) the name and address of each violator; (2) the statute violated; (3) the time period  
11 during which violations occurred; (4) specific descriptions of the violations, including (a) the routes  
12 of exposure to Wood Dust from the Products, and (b) the specific type of Products sold and used in  
13 violation of Proposition 65; and (5) the name of the specific Proposition 65-listed substance that is  
14 the subject of the violations described in each Notice.  
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17 17. Plaintiff also sent a Certificate of Merit for each Notice to the California Attorney  
18 General, the District Attorneys of every county in California, the City Attorneys of every California  
19 city with a population greater than 750,000 and to each named Defendant. In compliance with  
20 Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3101, each Certificate certified that Plaintiff's  
21 counsel: (1) has consulted with one or more persons with relevant and appropriate experience or  
22 expertise who reviewed facts, studies or other data regarding the exposures to Wood Dust alleged  
23 in each Notice; and (2) based on the information obtained through such consultations, believes that  
24 there is a reasonable and meritorious case for a citizen enforcement action based on the facts  
25 alleged in each Notice. In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. §  
26

1 3102, each Certificate served on the Attorney General included factual information - provided on a  
2 confidential basis – sufficient to establish the basis for the Certificate, including the identity of the  
3 person(s) consulted by the Plaintiff’s counsel and the facts, studies or other data reviewed by such  
4 persons.

5 18. None of the public prosecutors with the authority to prosecute violations of  
6 Proposition 65 has commenced and/or is diligently prosecuting a cause of action against Defendant  
7 under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in each of Plaintiff’s  
8 Notices.  
9

10 19. Defendant both knows and intends that individuals in California will use the  
11 Products, thus exposing them to Wood Dust.

12 20. Under Proposition 65, an exposure is “knowing” where the party responsible for  
13 such exposure has:

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

17 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final  
18 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2, §  
19 12201).

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

22 22. Defendant further has, throughout the operative period, had knowledge its Products  
23 contain Wood Dust.

24 23. As an entity that manufactures, distributes and/or sells the Products for use in the  
25 California marketplace, Defendant knew or should know that the Products contain Wood Dust and  
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1 that individuals who use the Products will be exposed to Wood Dust. The exposures to consumers  
2 who use the Products are a natural and foreseeable consequence of Defendant's actions of placing  
3 the Products into the stream of commerce.

4 24. Nevertheless, on information and belief, Defendant continues to expose consumers  
5 to Wood Dust without prior clear and reasonable warnings regarding the carcinogenic hazards of  
6 Wood Dust.

7 25. Plaintiff has engaged in good-faith efforts to resolve the claims alleged herein prior  
8 to filing this Complaint.

9 26. Any person "violating or threatening to violate" Proposition 65 may be enjoined in  
10 any court of competent jurisdiction. Health & Safety Code § 25249.7. "Threaten to violate" is  
11 defined to mean "to create a condition in which there is a substantial probability that a violation  
12 will occur." Health & Safety Code § 25249.11(e). Proposition 65 provides for civil penalties not  
13 to exceed \$2,500 per day for each violation of Proposition 65.  
14

15 **CAUSE OF ACTION**

16 **(Violations of the Health & Safety Code 25249.6)**

17 27. Plaintiff realleges and incorporates by reference as if specifically set forth herein  
18 Paragraphs 1 through 26, inclusive.

19 28. By placing the Products into the stream of commerce, Defendant is a person in the  
20 course of doing business within the meaning of Health & Safety Code § 25249.11.

21 29. Wood Dust is a substance listed by the State of California as known to cause cancer.

22 30. Defendant knows that use of the Products will expose users of the Product to Wood  
23 Dust. Defendant intends that the Products be used in a manner that results in exposures to Wood  
24 Dust from the Products.  
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5. That the Court grant such other and further relief as may be just and proper.

Dated: August 15, 2016.

PACIFIC JUSTICE CENTER

By:   
Robert B. Hancock  
Attorneys for Plaintiff

## PROOF OF SERVICE

I, the undersigned, declare that I am over the age of 18 and am not a party to this action. I am employed in the City of San Francisco, California; my business address is Pacific Justice Center, 50 California Street, Suite 1500, San Francisco, California 94111.

On the date below I served a copy, with all exhibits, of the following document(s):

### **FIRST AMENDED COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES**

on all interested parties in said case addressed as follows:

David Gabor  
WEINTRAUB TOBIN  
9665 Willshire Blvd. Ste. 900  
Beverly Hills, CA 90212  
310.860.3340 Phone  
310.550.7191 Fax  
dgabor@weintraub.com

- (BY MAIL)** By placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with the firm's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in sealed envelopes with postage fully prepaid.
- (BY HAND)** By placing the documents in an envelope or package addressed to the persons listed above and providing them to a professional messenger service for delivery.
- (BY FEDERAL EXPRESS)** By depositing copies of the above documents in a box or other facility regularly maintained by Federal Express with delivery fees paid or provided for.
- (BY EXPRESS MAIL)** By placing the above documents in the United States mail for Express Mail delivery in a sealed envelope addressed as above, with Express Mail postage thereon fully prepaid.
- (BY FAX)** By use of facsimile machine telephone number (415) 354-3508, I faxed a true copy to the addressee(s) listed at the facsimile number(s) indicated after the party's address. The transmission was reported as complete without error. The attached transmission report, which sets for the date and time for the transmission, was properly issued by the transmitting facsimile machine.
- (BY ELECTRONIC TRANSMISSION)** By sending a file of the above document(s) via electronic transmission (e-mail) using e-mail address at the e-mail address designated for each party identified above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration is executed on August 15, 2016.

  
\_\_\_\_\_  
Robert B. Hancock