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ENDORSED
FILED
Superior Court of California
County of San Francisco

MAR 23 2015

CLERK OF THE COURT
BY: VICTORIA GONZALEZ
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

CGC-15-544874

ERIKA MCCARTNEY, in the public interest, Plaintiff, v. LIGNETICS OF VIRGINIA, INC.; LIGNETICS OF WEST VIRGINIA, INC.; LIGNETICS OF IDAHO, INC.; and DOES 1 through 500, inclusive, Defendants.	CIVIL ACTION NO. **COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES** [Cal. Health and Safety Code Sec. 25249.6, *et seq.*]

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

INTRODUCTION

1. This Complaint seeks to remedy Defendants' failure to warn individuals in California that they are being exposed to wood dust (hereinafter "Wood Dust"), a substance known to the State of California to cause cancer through. Such exposures have occurred, and continue to occur through the manufacture, distribution, sale and use of Defendants' "Lignetics Premium Quality Wood Pellet Fuel" (the "Product").

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

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

PARTIES

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

5. Defendants LIGNETICS OF VIRGINA, INC.; LIGNETICS OF WEST VIRGINIA, INC., and LIGNETICS OF IDAHO, INC. ("LIGNETICS") are persons in the course of doing business within the meaning of Health & Safety Code § 25249.11, and are related persons. LIGNETICS manufactures, distributes and/or sells the Product 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.

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 Defendants because each 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 Product 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 San Francisco County Superior Court because one or more of the violations giving rise to civil penalties arise in San Francisco County.

BACKGROUND FACTS

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

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

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

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

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

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

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

16. More than sixty days prior to naming the Defendant herein, Plaintiff provided a 60-Day "Notice of Violation of Proposition 65" to the California Attorney General, the District Attorneys of every county in California, the City Attorneys of every California city with a population greater than 750,000 and to each of the named Defendants. In compliance with Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the following information: (1) the name and address of each violator; (2) the statute violated; (3) the time period during which violations occurred; (4) specific descriptions of the violations, including (a) the routes of exposure to Wood Dust from the Product, and (b) the specific type of Product sold and used in violation of Proposition 65; and (5) the name of the specific Proposition 65-listed substance that is the subject of the violations described in each Notice.

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

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

19. Defendants both know and intend that individuals will use the Product, thus exposing them to Wood Dust.

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

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

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

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

22. Defendants further have, throughout the operative period, had knowledge its Product contains Wood Dust.

23. As persons that manufacture, import, distribute and/or sell the Product for use in the California marketplace, Defendants know or should know that the Product contains Wood Dust and that individuals who uses the Product will be exposed to Wood Dust. The exposures to consumers who use the Product are a natural and foreseeable consequence of Defendants' placing the Product into the stream of commerce.

24. Nevertheless, Defendants continues to expose consumers to Wood Dust without prior clear and reasonable warnings regarding the carcinogenic hazards of Wood Dust.

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

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

FIRST CAUSE OF ACTION

(Violations of the Health & Safety Code 25249.6)

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

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

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

30. Defendants know that use of the Product will expose users of the Product to Wood Dust. Defendants intend that the Product be used in a manner that results in exposures to Wood Dust from the Product.

31. Defendants have failed, and continues to fail, to provide clear and reasonable warnings regarding the carcinogenic hazards of Wood Dust to users of the Product.

32. By committing the acts alleged above, Defendants have at all times relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing individuals to Wood

Dust without first giving clear and reasonable warnings to such individuals regarding the carcinogenic effects of Wood Dust.

PRAYER 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 Defendants 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 Defendants 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;

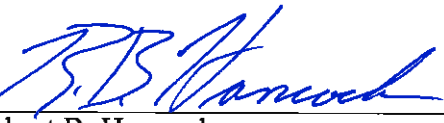
3. That the Court, pursuant to Health & Safety Code § 25249.7(a), order Defendants to take action to stop ongoing unwarranted exposures to Wood Dust resulting from use of the Product sold by any Defendant, as Plaintiff shall specify in further application to the Court;

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: March 23, 2015.

PACIFIC JUSTICE CENTER

By: 

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