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ENDORSED  
FILED  
Superior Court of California  
County of San Francisco  
DEC 31 2014  
CLERK OF THE COURT  
BY: MEREDITH GRIER  
Deputy Clerk

9 SUPERIOR COURT OF CALIFORNIA  
10 COUNTY OF SAN FRANCISCO

11 ERIKA MCCARTNEY, in the public interest, )

12 Plaintiff, )

13 v. )

14 WEBER-STEPHEN PRODUCTS LLC, a )  
15 Delaware limited liability company; WSP )  
16 HOLDINGS CO., an Illinois corporation; and )  
DOES 1 through 500, inclusive, )

17 Defendants. )

11 CCC-14-543457  
12 CIVIL ACTION NO.

13 COMPLAINT FOR INJUNCTIVE  
14 RELIEF AND CIVIL PENALTIES

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

17 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' 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 Defendants' "Weber  
9 Firespeice Mesquite Wood Chips" (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 Defendant exposes 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 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  
individual ....

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

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

19 14. No clear and reasonable warning is provided with the Product regarding the  
20 carcinogenic hazards of Wood Dust.  
21

22 15. Any person acting in the public interest has standing to enforce violations of  
23 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid  
24 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action  
25 within such time. Health & Safety Code § 25249.7(d).  
26

1           16.     More than sixty days prior to naming the Defendant 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.  
11

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.  
25  
26

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 know and intend that individuals in California will use the Product,  
6 thus 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 their 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

20 23. As entities that manufacture, import, distribute and/or sell the Products for use in the  
21 California marketplace, Defendants know or should know that the Product contains Wood Dust and  
22 that individuals who uses the Product will be exposed to Wood Dust. The exposures to consumers  
23 who use the Products are a natural and foreseeable consequence of Defendants' actions of placing  
24 the Products into the stream of commerce.  
25  
26

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

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

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

11 **FIRST CAUSE OF ACTION**

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

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

15 28. By placing the Product into the stream of commerce, each Defendant is a person in  
16 the course of doing business within the meaning of Health & Safety Code § 25249.11.  
17

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

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

22 31. Defendants have failed, and continue to fail, to provide clear and reasonable  
23 warnings regarding the carcinogenic hazards of Wood Dust to users of the Product.  
24

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

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

3 **PRAYER FOR RELIEF**

4 Wherefore, Plaintiff prays for judgment against Defendants as follows:

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

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

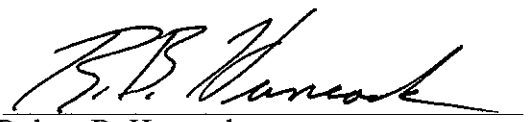
12 3. That the Court, pursuant to Health & Safety Code § 25249.7(a), order Defendants to  
13 take action to stop ongoing unwarranted exposures to Wood Dust resulting from use of the Product  
14 sold by Defendant, as Plaintiff shall specify in further application to the Court;

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

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

18 Dated: December 26, 2014

PACIFIC JUSTICE CENTER

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22  
23 By:   
24 Robert B. Hancock  
25 Attorneys for Plaintiff  
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