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ENDORSED
FILED
Superior Court of California
County of San Francisco

DEC 21 2015

CLERK OF THE COURT
BY: ARLENE RAMOS
Deputy Clerk

8
9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

CGC-15-549538

11 ERIKA MCCARTNEY, in the public interest,)

12 Plaintiff,)

13 v.)

14 TRAEGER PELLET GRILLS, LLC, a Delaware)
15 limited liability company; 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.*]

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 Defendant's 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. Such exposures have occurred, and continue to occur
8 through the manufacture, distribution, sale and use of Defendant's Traeger brand "All Natural
9 Hardwood Wood Pellets -- Oak," "Hickory BBQ Pellets," "Mesquite BBQ Pellets," "Alder BBQ
10 Pellets," "Maple BBQ Pellets," "Cherry BBQ Pellets," "Apple BBQ Pellets," "Pecan BBQ
11 Pellets," and "Gourmet Blend BBQ Pellets" (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 Wood Dust into the California marketplace, exposing consumers to
18 Wood Dust.

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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

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

4 5. Defendant TRAEGER PELLET GRILLS, LLC is a person in the course of doing
5 business within the meaning of Health & Safety Code § 25249.11. Defendant manufactures,
6 distributes and/or sells the Products for sale and use in California.

7
8 6. The true names of DOES 1 through 500 are unknown to Plaintiff at this time. When
9 their identities are ascertained, the Complaint shall be amended to reflect their true names.

JURISDICTION AND VENUE

10
11 7. The Court has jurisdiction over this action pursuant to Health & Safety Code §
12 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant to
13 California Constitution Article VI, Section 10, because this case is a cause not given by statute to
14 other trial courts.

15
16 8. This Court has jurisdiction over Defendant because as a business entity that does
17 sufficient business, has sufficient minimum contacts in California or otherwise intentionally avails
18 itself of the California market through the sale, marketing or use of the Products in California
19 and/or by having such other contacts with California so as to render the exercise of jurisdiction over
20 it by the California courts consistent with traditional notions of fair play and substantial justice.

21 9. Venue is proper in San Francisco County Superior Court because one or more of the
22 violations arise in San Francisco County, and because Defendant has designated no principal place
23 of business within the State of California.
24

BACKGROUND FACTS

1
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
individual

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

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

23
24 14. No clear and reasonable warning is provided with the Products regarding the
25 carcinogenic hazards of Wood Dust.
26

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 60-
6 Day "Notices 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 of the named Defendants. 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.
15

16 17. Plaintiff also sent a Certificate of Merit for each Notice to the California Attorney
17 General, the District Attorneys of every county in California, the City Attorneys of every California
18 city with a population greater than 750,000 and to each named Defendant. In compliance with
19 Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3101, each Certificate certified that Plaintiff's
20 counsel: (1) has consulted with one or more persons with relevant and appropriate experience or
21 expertise who reviewed facts, studies or other data regarding the exposures to Wood Dust alleged
22 in each Notice; and (2) based on the information obtained through such consultations, believes that
23 there is a reasonable and meritorious case for a citizen enforcement action based on the facts
24 alleged in each Notice. In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. §
25
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 entities that manufacture, import, distribute and/or sell the Products for use in the
25 California marketplace, Defendant knew or should know that the Products contain Wood Dust and
26

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

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

12 **FIRST CAUSE OF ACTION**

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

14 26. Plaintiff realleges and incorporates by reference as if specifically set forth herein
15 Paragraphs 1 through 25, inclusive.
16

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

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

20 29. Defendant knows that use of the Products will expose users of the Product to Wood
21 Dust. Defendant intends that the Products be used in a manner that results in exposures to Wood
22 Dust from the Products.
23

24 30. Defendant has failed during the operative period to provide clear and reasonable
25 warnings regarding the carcinogenic hazards of Wood Dust to users of the Products.
26

1 31. By committing the acts alleged above, Defendant has at all times relevant to this
 2 Complaint violated Proposition 65 by knowingly and intentionally exposing individuals to Wood
 3 Dust without first giving clear and reasonable warnings to such individuals regarding the
 4 carcinogenic effects of Wood Dust.

PRAYER FOR RELIEF

6 Wherefore, Plaintiff prays for judgment against Defendant as follows:

7 1. That the Court, pursuant to Health & Safety Code § 25249.7(b), assess civil
 8 penalties against each of the Defendant in an amount up to \$2,500 per day for each violation of
 9 Proposition 65;
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11 2. That the Court, pursuant to Health & Safety Code § 25249.7(a), preliminarily and
 12 permanently enjoin Defendant from offering the Product for sale in California without either
 13 reformulating the Products such that no Proposition 65 warnings is required or providing prior clear
 14 and reasonable warnings, as Plaintiff shall specify in further application to the Court;
 15

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

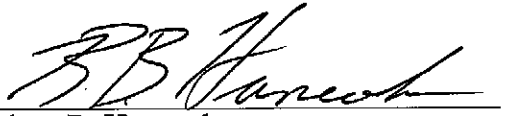
19 4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other applicable
 20 statute, theory, rule or doctrine, grant Plaintiff reasonable attorneys' fees and costs of suit; and

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

Dated: December 21, 2015.

PACIFIC JUSTICE CENTER

By: 
Robert B. Hancock
Attorneys for Plaintiff

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