

1 Melvin B. Pearlston (SBN 54291)
2 Robert B. Hancock (SBN 179438)
3 PACIFIC JUSTICE CENTER
4 50 California Street, Suite 1500
5 San Francisco, California 94111
6 Tel: (415) 310-1940/Fax: (415) 354-3508

7 Attorneys for Plaintiff

ENDORSED
FILED
ALAMEDA COUNTY

JUL 27 2016

CLERK OF THE SUPERIOR COURT
By Sue Yesko Deputy

8
9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF ALAMEDA

11 AMY CHAMBERLIN, in the public interest,)

12 Plaintiff,)

13 v.)

14 ALFA-PET, INC., a Delaware corporation; and)
15 DOES 1 through 500, inclusive,)

16 Defendants.)
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CIVIL ACTION NO. 16824916

COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES

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

BY FAX

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 Alfa-Pet brand
9 "Alfa Pet Aspen Animal Bedding" and "Alfa Pet Cedar Animal Bedding" (the "Products").
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. Defendant introduces
15 products contaminated with significant quantities of Wood Dust into the California marketplace,
16 exposing consumers to Wood Dust
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18 3. Despite the fact that Defendant exposes consumers to Wood Dust, Defendant has,
19 during the operative period, provided no warnings about the carcinogenic hazards associated with
20 Wood Dust exposure. Defendant's conduct thus violates the warning provision of Proposition 65,
21 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).
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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 Wood Dust such that consumers using the Products
21 are exposed to Wood Dust. The primary route of exposure for the violations is through inhalation.
22 These exposures occur everywhere throughout California where the Products are used.

23 14. No clear and reasonable warning is provided with the Products regarding the
24 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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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
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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.
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25 23. As an entity that manufactures, distributes and/or sells the Products for use in the
26 California marketplace, Defendant knew or should know that the Products contain Wood Dust and

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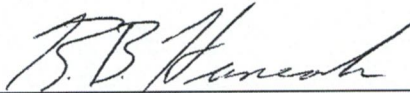
22 29. Wood Dust is a substance listed by the State of California as known to cause cancer.

23 30. Defendant knows that use of the Products will expose users of the Product to Wood
24 Dust. Defendant intends that the Products be used in a manner that results in exposures to Wood
25 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: July 26, 2016.

PACIFIC JUSTICE CENTER

By: 
Robert B. Hancock
Attorneys for Plaintiff

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