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ENDORSED
FILED
ALAMEDA COUNTY

AUG 19 2016

CLERK OF THE SUPERIOR COURT
By Maria Carrera
MARIA CARRERA, Deputy

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10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF ALAMEDA

12 AMY CHAMBERLIN, in the public interest,)

13 Plaintiff,)

14 v.)

15 FOREST ENERGY CORPORATION, an)
16 Arizona corporation; and DOES 1 through 500,)
inclusive,)

17 Defendants.)
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CIVIL ACTION NO. RG 16 828 097

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
6 1. This Complaint seeks to remedy Defendant's continuing failure to warn individuals
7 in California that they are being exposed to wood dust (hereinafter "Wood Dust"), a substance
8 known to the State of California to cause cancer. Such exposures have occurred, and continue to
9 occur through the manufacture, distribution, sale and use of Defendant's "Heat's Wood Pellets"
10 (the "Product").

11
12 2. Under California's Proposition 65, Health & Safety Code § 25249.5, *et seq.*, it is
13 unlawful for businesses to knowingly and intentionally expose individuals in California to
14 substances known to the State to cause cancer, birth defects or other reproductive harm without
15 providing clear and reasonable warnings to individuals prior to exposure. Defendant introduces the
16 product contaminated with significant quantities of Wood Dust into the California marketplace,
17 exposing consumers to Wood Dust

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

23 PARTIES

24
25 4. Plaintiff brings this enforcement action in the public interest pursuant to Health &
26 Safety Code § 25249.7(d).

1 **BACKGROUND**

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

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

23 14. No clear and reasonable warning is provided with the Product 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
6 16. More than sixty days prior to naming the Defendant herein, Plaintiff provided a 60-
7 Day “Notice of Violation of Proposition 65” to the California Attorney General, the District
8 Attorneys of every county in California, the City Attorneys of every California city with a
9 population greater than 750,000 and to each named Defendant. In compliance with Health &
10 Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the following
11 information: (1) the name and address of each violator; (2) the statute violated; (3) the time period
12 during which violations occurred; (4) specific descriptions of the violations, including (a) the routes
13 of exposure to Wood Dust from the Product, and (b) the specific type of Product sold and used in
14 violation of Proposition 65; and (5) the name of the specific Proposition 65-listed substance that is
15 the subject of the violations described in each Notice.
16

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
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1 alleged in each Notice. In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. §
2 3102, each Certificate served on the Attorney General included factual information - provided on a
3 confidential basis – sufficient to establish the basis for the Certificate, including the identity of the
4 person(s) consulted by the Plaintiff's counsel and the facts, studies or other data reviewed by such
5 persons.
6

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

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

13 20. Under Proposition 65, an exposure is “knowing” where the party responsible for
14 such exposure has:
15

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

19 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
20 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2, §
21 12201).

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

24 22. Defendant further has, throughout the operative period, had knowledge its Product
25 contains Wood Dust.
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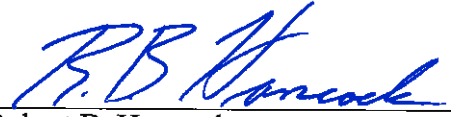
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4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other applicable statute, theory, rule or doctrine, grant Plaintiff reasonable attorneys' fees and costs of suit; and

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

Dated: August 19, 2016.

PACIFIC JUSTICE CENTER

By: 
Robert B. Hancock
Attorneys for Plaintiff