

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
7 e-mail: rbh@lawyer.com

8 Attorneys for Plaintiff

ENDORSED
FILED
Superior Court of California
County of San Francisco

MAR 02 2017

CLERK OF THE COURT

BY: ARLENE RAMOS
Deputy Clerk

9
10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO

CGC-17-557357

12 AMY CHAMBERLIN, in the public interest,)
13 Plaintiff,)
14 v.)
15 GEM SHAVINGS, LLC, a Washington limited)
16 liability company; and DOES 1 through 500,)
17 inclusive,)
18 Defendants.)

CIVIL ACTION NO.
**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**
[Cal. Health and Safety Code
Sec. 25249.6, *et seq.*]

BY FAX
ONE LEGAL LLC

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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 Defendants' failures 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 Defendants' "EasyClean Pine Animal
9 Bedding" and "EasyClean Cedar Animal Bedding" (the "Products").
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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 the
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 Defendants 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).
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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

15 13. Defendants’ Products contains Wood Dust such that consumers using the Products
16 are exposed to Wood Dust. The primary route of exposure for the violations is through inhalation.
17 These exposures occur everywhere throughout California where the Products are used.

18 14. No clear and reasonable warning is provided with the Products regarding the
19 carcinogenic hazards of Wood Dust.
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21 15. Any person acting in the public interest has standing to enforce violations of
22 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid
23 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
24 within such time. Health & Safety Code § 25249.7(d).
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1 16. More than sixty days prior to naming the Defendants 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 Pestell Group and Pestell Pet Products. In compliance with
5 Health & 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 Product, 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 named Defendant. In compliance with
15 Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3101, each Certificate certified that Plaintiff's
16 counsel: (1) has consulted with one or more persons with relevant and appropriate experience or
17 expertise who reviewed facts, studies or other data regarding the exposures to Wood Dust alleged
18 in each Notice; and (2) based on the information obtained through such consultations, believes that
19 there is a reasonable and meritorious case for a citizen enforcement action based on the facts
20 alleged in each Notice. In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. §
21 3102, each Certificate served on the Attorney General included factual information - provided on a
22 confidential basis – sufficient to establish the basis for the Certificate, including the identity of the
23 person(s) consulted by the Plaintiff's counsel and the facts, studies or other data reviewed by such
24 persons.
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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 of
4 Plaintiff's Notice.

5 19. Defendants know and intend that individuals in California will use the Products,
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 its Product by the 60-Day
16 Notice of Violation and accompanying Certificate of Merit served on them.

17 22. Defendants further have, throughout the operative period, had knowledge their
18 Products contain Wood Dust.

19 23. As an entity that manufactures, distributes and/or sells the Products for use in the
20 California marketplace, each Defendant knew or should know that the Products contain Wood Dust
21 and that individuals who use the Products will be exposed to Wood Dust. The exposures to
22 consumers who use the Products are a natural and foreseeable consequence of Defendants' actions
23 of placing the Products into the stream of commerce.
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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), permanently enjoin Defendants from offering the Product for sale in California without either reformulating the Products 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 Products sold by Defendants, 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 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: February 27, 2017.

PACIFIC JUSTICE CENTER

By: 
Robert B. Hancock
Attorneys for Plaintiff

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