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ENDORSED
FILED
ALAMEDA COUNTY

AUG 31 2016

CLERK OF THE SUPERIOR COURT
By SUE PESKO

9
10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF ALAMEDA

12 AMY CHAMBERLIN, in the public interest,)
13 Plaintiff,)
14 v.)
15 PENNINGTON SEED, INC., a Delaware)
16 corporation; and DOES 1 through 500, inclusive,)
17 Defendants.)

CIVIL ACTION NO. **8616829495**

COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES

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

18 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. Such exposures have occurred, and continue to
8 occur through the manufacture, distribution, sale and use of Defendant's "Nature's Heat Wood
9 Pellets" (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. Defendant introduces the
15 product contaminated with significant quantities of Wood Dust into the California marketplace,
16 exposing consumers to Wood Dust
17

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).
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

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

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

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).
25
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 named Defendant. 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 Product, and (b) the specific type of Product 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 Defendant
3 under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in each of Plaintiff's
4 Notices.

5 19. Defendant both knows and intends that individuals in California will use the
6 Product, 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
16 21. Defendant has been informed of the Wood Dust in its Product by the 60-Day Notice
17 of Violation and accompanying Certificate of Merit served on it.

18 22. Defendant further has, throughout the operative period, had knowledge its Product
19 contains Wood Dust.

20 23. As an entity that manufactures, distributes and/or sells the Product for use in the
21 California marketplace, Defendant knew or should know that the Product contains Wood Dust and
22 that individuals who use the Product will be exposed to Wood Dust. The exposures to consumers
23 who use the Product are a natural and foreseeable consequence of Defendant's actions of placing
24 the Product into the stream of commerce.
25
26

1 24. Nevertheless, on information and belief, Defendant continues to expose consumers
2 to Wood Dust without prior clear and reasonable warnings regarding the carcinogenic hazards of
3 Wood Dust.

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

6 26. 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 CAUSE OF ACTION

13 (Violations of the Health & Safety Code 25249.6)

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

17 28. By placing the Product 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 29. Wood Dust is a substance listed by the State of California as known to cause cancer.

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

24 31. 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 Product.
26

1 32. 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.

5
6 **PRAYER FOR RELIEF**

7
8 Wherefore, Plaintiff prays for judgment against Defendant as follows:

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

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

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

20 4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other applicable
21 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: August 30, 2016.

PACIFIC JUSTICE CENTER

By: 
Robert B. Hancock
Attorneys for Plaintiff