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ENDORSED  
FILED  
San Francisco County Superior Court

DEC 05 2016  
CLERK OF THE COURT  
BY: \_\_\_\_\_  
Deputy Clerk

DE LA VEGA-NAVARRO, Rossaly

9  
10 SUPERIOR COURT OF CALIFORNIA  
11 COUNTY OF SAN FRANCISCO

BY FAX  
CGC 16-555800

12 AMY CHAMBERLIN, in the public interest,  
13 Plaintiff,  
14 v.  
15 PACIFIC COAST FIBER FUELS, LLC, a  
16 Washington limited liability company, and DOES  
17 1 through 500, inclusive,  
18 Defendants.

CIVIL ACTION NO:  
**COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES**  
[Cal. Health and Safety Code  
Sec. 25249.5 *et seq.*]

19 Plaintiff Amy Chamberlin, in the public interest, based on information and belief and  
20 investigation of counsel, except for information based on knowledge, hereby makes the following  
21 allegations.

22  
23 **INTRODUCTION**

24 1. This Complaint seeks to remedy Defendant's failure to warn individuals in  
25 California that they are being exposed to wood dust (hereinafter "Wood Dust"), a substance  
26 known to the State of California to cause cancer. Such exposures have occurred, and continue to

1 occur through the manufacture, distribution, sale and use of Defendant's "Sierra Supreme Wood  
2 Pellets," "Olympus Wood Pellets," and "Cascade Wood Pellets" (the "Products").

3           2. Under California's Proposition 65, Health & Safety Code § 25249.5, *et seq.*, it is  
4 unlawful for businesses to knowingly and intentionally expose individuals in California to  
5 substances known to the State to cause cancer, birth defects or other reproductive harm without  
6 providing clear and reasonable warnings to individuals prior to exposure. Defendant introduces  
7 products contaminated with Wood Dust into the California marketplace, exposing consumers to  
8 Wood Dust.  
9

10           3. Despite the fact that Defendant exposes consumers to Wood Dust, Defendant has,  
11 during the operative period, provided no warnings about the carcinogenic hazards associated with  
12 Wood Dust exposure. Defendant's conduct thus violates the warning provision of Proposition 65,  
13 Health & Safety Code § 25249.6.  
14

### 15 PARTIES

16           4. Plaintiff brings this enforcement action in the public interest pursuant to Health &  
17 Safety Code § 25249.7(d).  
18

19           5. Defendant PACIFIC COAST FIBER FUELS, LLC is a person in the course of  
20 doing business within the meaning of Health & Safety Code § 25249.11. Defendant  
21 manufactures, distributes and/or sells the Products for sale and use in California.  
22

23           6. The true names of DOES 1 through 500 are unknown to Plaintiff at this time.  
24 When their identities are ascertained, the Complaint shall be amended to reflect their true names.  
25

### 26 JURISDICTION AND VENUE

          7. The Court has jurisdiction over this action pursuant to Health & Safety Code §  
25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant to

1 California Constitution Article VI, Section 10, because this case is a cause not given by statute to  
2 other trial courts.

3 8. This Court has jurisdiction over Defendant because it is a business entity that does  
4 sufficient business, has sufficient minimum contacts in California or otherwise intentionally  
5 avails itself of the California market through the sale, marketing or use of the Products in  
6 California and/or by having such other contacts with California so as to render the exercise of  
7 jurisdiction over it by the California courts consistent with traditional notions of fair play and  
8 substantial justice.  
9

10 9. Venue is proper in San Francisco County Superior Court because one or more of  
11 the violations arise in San Francisco County, and because Defendant has designated no principal  
12 place of business within the State of California.  
13

#### 14 **BACKGROUND FACTS**

15 10. The People of the State of California have declared by initiative under Proposition  
16 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or  
17 other reproductive harm.” Proposition 65 § 1(b).  
18

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

24 No person in the course of doing business shall knowingly and intentionally expose any  
25 individual to a chemical known to the state to cause cancer or reproductive toxicity  
26 without first giving clear and reasonable warning to such individual....

12. On December 18, 2009, the State of California officially listed Wood Dust as a  
substance known to cause cancer, based upon classifications by the International Agency for

1 Research on Cancer (“IARC”) and National Toxicology Program (“NTP”) – both “authoritative  
2 bodies” under Proposition 65 -- that the substance was a “known human carcinogen.” On  
3 December 18, 2010, one year after it was listed as a substance known to cause cancer, Wood Dust  
4 became subject to the clear and reasonable warning requirement regarding carcinogens under  
5 Proposition 65. 27 C.C.R. 27001(c); Health and Safety Code § 25249.10(b).

6  
7 13. Defendant’s Products contain sufficient quantities of Wood Dust such that  
8 consumers using the Products are exposed to Wood Dust. The primary route of exposure for the  
9 violations is through inhalation. These exposures occur everywhere throughout California where  
10 the Products are used.

11 14. No clear and reasonable warning is provided with the Products regarding the  
12 carcinogenic hazards of Wood Dust.

13 15. Any person acting in the public interest has standing to enforce violations of  
14 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid  
15 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action  
16 within such time. Health and Safety Code § 25249.7(d).

17 16. More than sixty days prior to naming the Defendant herein, Plaintiff provided 60-  
18 Day “Notices of Violation of Proposition 65” to the California Attorney General, the District  
19 Attorneys of every county in California, the City Attorneys of every California city with a  
20 population greater than 750,000 and to each of the named Defendants. In compliance with Health  
21 & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the following  
22 information: (1) the name and address of each violator; (2) the statute violated; (3) the time  
23 period during which violations occurred; (4) specific descriptions of the violations, including (a)  
24 the routes of exposure to Wood Dust from the Products, and (b) the specific type of Products sold  
25  
26

1 and used in violation of Proposition 65; and (5) the name of the specific Proposition 65-listed  
2 substance that is the subject of the violations described in each Notice.

3 17. Plaintiff also sent a Certificate of Merit for each Notice to the California Attorney  
4 General, the District Attorneys of every county in California, the City Attorneys of every  
5 California city with a population greater than 750,000 and to each named Defendant. In  
6 compliance with Health and Safety Code § 25249.(d) and 11 C.C.R. § 3101, each Certificate  
7 certified that Plaintiff's counsel: (1) has consulted with one or more persons with relevant and  
8 appropriate experience or expertise who reviewed facts, studies or other data regarding the  
9 exposures to Wood Dust alleged in each Notice; and (2) based on the information obtained  
10 through such consultations, believes that there is a reasonable and meritorious case for a citizen  
11 enforcement action based on the facts alleged in each Notice. In compliance with Health &  
12 Safety Code § 25249.7(d) and 11 C.C.R. § 3102, each Certificate served on the Attorney General  
13 included factual information – provided on a confidential basis – sufficient to establish the basis  
14 for the Certificate, including the identity of the person(s) consulted by the Plaintiff's counsel and  
15 the facts, studies or other data reviewed by such persons.  
16  
17

18 18. None of the public prosecutors with the authority to prosecute violations of  
19 Proposition 65 has commenced and/or is diligently prosecuting a cause of action against  
20 Defendant under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in each of  
21 Plaintiff's Notices.  
22

23 19. Defendant both knows and intends that individuals in California will use the  
24 Products, thus exposing them to Wood Dust.

25 20. Under Proposition 65, an exposure is "knowing" where the party responsible for  
26 such exposure has:

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

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

6 22. Defendant further has, throughout the operative period, had knowledge its  
7 Products contain Wood Dust.

8 23. As entities that manufacture, import, distribute and/or sell the Products for use in  
9 the California marketplace, Defendant knew or should know that the Products contain Wood Dust  
10 and that individuals who use the Products will be exposed to Wood Dust. The exposures to  
11 consumers who use the Products are a natural and foreseeable consequence of Defendant's  
12 actions of placing the Products into the stream of commerce.

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

15 25. Any person "violating or threatening to violate" Proposition 65 may be enjoined in  
16 any court of competent jurisdiction. Health & Safety Code § 25249.7. "Threaten to violate" is  
17 defined to mean "to create a condition in which there is a substantial probability that a violation  
18 will occur." Health & Safety Code § 25249.11(e). Proposition 65 provides for civil penalties not  
19 to exceed \$2,500 per day for each violation of Proposition 65.  
20

21 **FIRST CAUSE OF ACTION**

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

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

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

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

5 29. Defendant knows that use of the Products will expose users of the Product to Wood  
6 Dust. Defendant intends that the Products be used in a manner that results in exposures to Wood  
7 Dust from the Products.  
8

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

11 31. By committing the acts alleged above, Defendant has at all times relevant to this  
12 Complaint violated Proposition 65 by knowingly and intentionally exposing individuals to Wood  
13 Dust without first giving clear and reasonable warnings to such individuals regarding the  
14 carcinogenic effects of Wood Dust.  
15

16 **PRAYER FOR RELIEF**

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

18 1. That the Court, pursuant to Health & Safety Code § 25249.7(b), assess civil  
19 penalties against each of the Defendants in an amount up to \$2,500 per day for each violation of  
20 Proposition 65;  
21

22 2. That the Court, pursuant to Health & Safety Code § 25249.7(a), preliminarily and  
23 permanently enjoin Defendant from offering the Product for sale in California without either  
24 reformulating the Products such that no Proposition 65 warning is required or providing prior  
25 clear and reasonable warnings, as Plaintiff shall specify in further application to the Court;  
26


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

4           4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other  
5 applicable statute, theory, rule or doctrine, grant Plaintiff reasonable attorneys' fees and costs of  
6 suit; and  
7

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

9 Dated: December 9, 2016.

10  
11                                   PACIFIC JUSTICE CENTER

12  
13           By:   
14                                   Robert B. Hancock  
15                                   Attorneys for Plaintiff