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10 **SUPERIOR COURT OF CALIFORNIA**
11 **COUNTY OF SAN FRANCISCO**

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

CIVIL ACTION NO.
**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 1. This Complaint seeks to remedy Defendant's failure 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 Defendant's "Biolite Biofuel Pellets" (the
9 "Product").
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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. Defendant introduces the
15 Product contaminated with Wood Dust into the California marketplace, exposing consumers to
16 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).
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
9 individual

10 12. On December 18, 2009, the State of California officially listed Wood Dust as a
11 substance known to cause cancer. On December 18, 2010, one year after it was listed as a
12 substance known to cause cancer, Wood Dust became subject to the clear and reasonable warning
13 requirement regarding carcinogens under Proposition 65. 27 C.C.R. 27001(c); Health & Safety
14 Code § 25249.10(b).

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. During the relevant period, no clear and reasonable warning was provided with the
19 Product regarding the carcinogenic hazards of Wood Dust.

20 15. Any person acting in the public interest has standing to enforce violations of
21 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid
22 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
23 within such time. Health & Safety Code § 25249.7(d).
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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 Defendant. In compliance with Health & Safety Code §
5 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the following information: (1) the
6 name and address of the violator; (2) the statute violated; (3) the time period during which
7 violations occurred; (4) specific descriptions of the violations, including (a) the route of exposure to
8 Wood Dust from the Product, and (b) the specific Product sold and used in violation of Proposition
9 65; and (5) the name of the specific Proposition 65-listed contaminant that is the subject of the
10 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 Defendant. In compliance with Health & Safety
15 Code § 25249.7(d) and 11 C.C.R. § 3101, each Certificate certified that Plaintiff's counsel: (1) has
16 consulted with one or more persons with relevant and appropriate experience or expertise who
17 reviewed facts, studies or other data regarding the exposures to Wood Dust alleged in each Notice;
18 and (2) based on the information obtained through such consultations, believes that there is a
19 reasonable and meritorious case for a citizen enforcement action based on the facts alleged in each
20 Notice. In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3102, each
21 Certificate served on the Attorney General included factual information - provided on a confidential
22 basis – sufficient to establish the basis for the Certificate, including the identity of the person(s)
23 consulted by the Plaintiff's counsel and the facts, studies or other data reviewed by such 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. Defendant knows and intends that individuals in California will use the Product,
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:

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

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

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

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

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

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

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

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 Products.
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32. By committing the acts alleged above, Defendant has 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 Defendant as follows:

- 1. That the Court, pursuant to Health & Safety Code § 25249.7(b), assess civil penalties against Defendant 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 Defendant from offering the Product for sale in California without either reformulating the Product 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 Defendant to take action to stop ongoing unwarranted exposures to Wood Dust resulting from use of the Product sold by Defendant, 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: March 23, 2018.

PACIFIC JUSTICE CENTER

By: 
Robert B. Hancock
Attorneys for Plaintiff