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FILED
ALAMEDA COUNTY

OCT 12 2018

CLERK OF THE SUPERIOR COURT

By

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SUPERIOR COURT OF CALIFORNIA**COUNTY OF ALAMEDA**

AMY CHAMBERLIN, in the public interest,

Plaintiff,

v.

DEJNO'S, INC., a Wisconsin corporation;
AMAZON.COM, INC.; and DOES 1 through
500, inclusive,

Defendants.

Case No. *Rg18924400***COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**[Cal. Health and Safety Code Sec.
25249.6, *et seq.*]

1 Amy Chamberlin, in the public interest, based on information and belief and investigation
2 of counsel, except for information based on knowledge, hereby makes the following allegations.

3 INTRODUCTION

4 1. This Complaint seeks to remedy Defendants' continuing failure to adequately warn
5 individuals in California that they are being exposed to Wood Dust, a chemical known to the State
6 of California to cause cancer. Such exposures have occurred, and continue to occur, through the
7 distribution, sale, and consumption of "Dejno's Inc. Premium Pine Kiln Dried Animal Bedding"
8 (the "Product"). On information and belief, the Product is available to consumers in California
9 through a multitude of retail channels, including, without limitation: (a) via the internet through
10 the primary distributor's website; and (b) via the internet through third-party retail websites.
11 Consumers are exposed to Wood Dust when they consume the product.

12 2. Under California's Proposition 65, Health & Safety Code § 25249.6, *et seq.*, it is
13 unlawful for businesses to knowingly and intentionally expose individuals in California to
14 chemicals known to the State to cause cancer without providing clear and reasonable warnings to
15 individuals prior to their exposure. Defendants sell and distribute a product contaminated with
16 significant quantities of Wood Dust into the California marketplace, exposing consumers of the
17 Product to Wood Dust.

18 3. Despite the fact that Defendants expose consumers to Wood Dust, during the
19 relevant period, Defendants provided no warning about the carcinogenetic hazards associated with
20 Wood Dust exposure. Defendants' conduct thus violates the warning provision of Proposition 65,
21 Health & Safety Code § 25249.5.

22 PARTIES

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

25 5. Defendants DEJNO'S, INC. and AMAZON.COM, INC. ("Defendants") are
26 persons in the course of doing business within the meaning of Health & Safety Code § 25249.11.
27 Defendants distribute and/or sell the Product for sale and use in California.
28

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

3 **JURISDICTION AND VENUE**

4 7. The Court has jurisdiction pursuant to Health & Safety Code § 25249.7, which
5 allows enforcement in any court of competent jurisdiction, and pursuant to California Constitution
6 Article VI, Section 10, because this case is a cause not given by statute to other trial courts.

7 8. This Court has jurisdiction over Defendants as business entities that do sufficient
8 business, have sufficient minimum contacts in California, or otherwise intentionally avail
9 themselves of the California marketplace through the sale, marketing or use of the Product in
10 California and/or by having such other contacts with California so as to render the exercise of
11 jurisdiction over it by the California courts consistent with traditional notions of fair play and
12 substantial justice.

13 9. Venue is proper in Alameda County Superior Court because one or more of the
14 violations arise in the County of Alameda, and Defendants have designated no principal office
15 within the State of California.

16 **BACKGROUND**

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

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

25 No person in the course of doing business shall knowingly and intentionally expose any
26 individual to a chemical known in the state to cause cancer or reproductive toxicity without
27 first giving clear and reasonable warning to such individual...
28

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

6 13. Defendants' Product contains Wood Dust such that consumers using the Product
7 are exposed to Wood Dust. The primary route of exposure for the violations is through inhalation.
8 These exposures occur everywhere throughout California where the Products are used.

9 14. No clear and reasonable warning is provided with the Product regarding the
10 carcinogenic hazards of Wood Dust.

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

15 16. More than sixty days prior to naming each Defendants in this lawsuit, Plaintiff
16 provided a 60-Day "Notice of Violation of Proposition 65" to the California Attorney General, the
17 District Attorneys of every county in California, the City Attorneys of every California city with
18 a population greater than 750,000 and to the named Defendants. In compliance with Health &
19 Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), the Notice included the following
20 information: (1) the name and address of each violator; (2) the statute violated; (3) the time period
21 during which the violations occurred; (4) the specific descriptions of the violations, including (a)
22 the routes of exposure to Wood Dust from the product and (b) the specific type of Product sold
23 and used in violation of Proposition 65; and (5) the name of the specific Proposition 65-listed
24 chemical that is the subject of the violation described in the Notice.

25 17. Plaintiff also sent a Certificate of Merit for the Notice to the California Attorney
26 General, the District Attorneys of every county in California, the City Attorneys of every
27 California city with a population greater than 750,000 and to the named Defendants. In
28 compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R § 3101, the Certificate certified

1 that Plaintiff's counsel: (1) consulted with one or more persons with relevant and appropriate
2 experience or expertise who reviewed fact, studies or other data regarding the exposures to Wood
3 Dust alleged in the Notice; and (2) based on the information through such consultations, believes
4 that there is a reasonable and meritorious case for a citizen enforcement action based on the facts
5 alleged in the Notice. In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. §
6 3102, the Certificate served on the Attorney General included factual information—provided on a
7 confidential basis—sufficient to establish the basis for the Certificate, including the identity of the
8 person(s) consulted by Plaintiff's counsel and the facts, studies or other data reviewed by such
9 persons.

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

14 19. Defendants both know and intend that individuals in California will use the
15 Products, thus exposing them to Wood Dust.

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

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

21 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.* Final
22 Statement of Reasons Revised (November 4, 1998) (pursuant to former 22 C.C.R. Division 2, §
23 12201).

24 21. Defendants have further been informed of the Wood Dust in the Product by the 60-
25 Day Notice of Violation and accompanying Certificate of Merit served on them.

26 22. Defendants further have, throughout the operative period, had knowledge their
27 Product contains Wood Dust.
28

23. As an entity that distributes and/or sells the Product for use in the California marketplace, Defendants know or should know that the Product contains Wood Dust and that individuals who use the Product will be exposed to Wood Dust. The Wood Dust exposures to consumers who consume the Product are a natural and foreseeable consequence of Defendants' placing the Product into the stream of commerce.

24. Nevertheless, Defendants continue to expose consumers to Wood Dust without prior clear and reasonable warnings regarding the carcinogenetic hazards of Wood Dust.

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

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

CAUSE OF ACTION

(Violations of the Health & Safety Code § 25249.6)

27. Plaintiff restates and realleges paragraphs 1-26 as though fully set forth herein.

28. By placing the Product into the stream of commerce, Defendants are persons in the course of doing business within the meaning of Health & Safety Code § 25249.11.

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

30. Defendants know that average user of the Product will expose users to the Product to Wood Dust. Defendants know ~~the~~ that the average use of the Product will expose users of the Product to Wood Dust. Defendants intend that the Product be used in a manner that results in exposures to Wood Dust from the Product.

31. Defendants have failed to provide clear and reasonable warnings regarding the carcinogenic hazards of Wood Dust to users of the Product.

32. By committing the acts alleged above, Defendants have at times relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing individuals to Wood

1 Dust without first giving clear and reasonable warnings to such individuals regarding the
2 carcinogenetic hazards of Wood Dust.

3 **PRAYER FOR RELIEF**

4 Wherefore, Plaintiff prays for judgment against Defendants as follows:

5 1. That the Court, pursuant to Health & Safety Code § 25249.7(b), assess civil
6 penalties against Defendants of up to \$2,500 per day for each violation of Proposition 65 occurring
7 during or after the statutory period;

8 2. That the Court, pursuant to Health & Safety Code § 25249.7(a), preliminarily and
9 permanently enjoin Defendants from offering the Product for sale in California without either
10 reformulating the Product such that no Proposition 65 warnings are required or providing clear
11 and reasonable warnings, as Plaintiff shall specify in further application to the Court;

12 3. That the Court, pursuant to Health & Safety Code § 25249.7(a), order Defendants
13 to take action to stop ongoing unwarranted exposures to Wood Dust resulting from use of the
14 Product, as Plaintiff shall specify in further application to the Court;

15 4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other
16 applicable theory or doctrine, grant Plaintiff her reasonable attorneys' fees and costs of suit; and

17 5. That the Court grant such other and further relief as may be just and proper.
18

19 Dated: October 12, 2018.

PACIFIC JUSTICE CENTER

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21 By: 

22 Robert B. Hancock
23 Attorneys for Plaintiff
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