Randall D. Haimovici (SBN: 213635) Katherine A. Wolf (SBN: 267763) 1 SHOOK, HARDY & BACON L.L.P. One Montgomery, Suite 2700 2 San Francisco, California 94104-4505 3 415.544.1900 Telephone: 415.391.0281 Facsimile: 4 Attorneys for Defendants SMOKEHOUSE PRODUCTS, LLC, 5 SMOKEHOUSE PRODUCTS, INC. and Deputy Clerk BEAR MOUNTAIN FOREST PRODUCTS, INC. 6 7 8 SUPERIOR COURT OF CALIFORNIA 9 **COUNTY OF SAN FRANCISCO** 10 CIVIL ACTION NO. CGC-15-548091 ERIKA MCCARTNEY, in the public interest, 11 12 Plaintiff, 13 v. STIPULATED CONSENT JUDGMENT SMOKEHOUSE PRODUCTS, LLC, an Oregon 14 limited liability company; SMOKEHOUSE PRODUCTS, INC., a corporation; BEAR 15 MOUNTAIN FOREST PRODUCTS, INC., a corporation; and DOES 1 through 500, inclusive, 16 Defendants. 17 18 19 INTRODUCTION 20 Plaintiff Erika McCartney ("Plaintiff"), individually, in the public interest and on behalf of 21 the public pursuant to, among other things, California Health & Safety Code § 25249.5 et seq. 22 ("Proposition 65"), and Defendants Smokehouse Products, LLC, Smokehouse Products, Inc. and 23 Bear Mountain Forest Products, Inc. (collectively "Defendants"), enter into this Stipulated Consent 24 Judgment to resolve all of the allegations and claims set forth in the First Amended Complaint filed 25 by Plaintiff in the above-captioned case. Plaintiff and Defendants are sometimes referred to herein 26 collectively as the Parties, and individually as a Party. 27 28 STIPULATED CONSENT JUDGMENT

## SETTLEMENT OF PRODUCTS 1 The Parties enter into this Consent Judgment without a trial. 1. 2 For purposes of this Consent Judgment, "the Products" shall mean the following, as 2. 3 well as all Products referenced in Plaintiff's Amended Complaint: 4 Smokehouse Wood Smoking Chips (all types and flavors, including without (a) 5 limitation Apple, Alder, Cherry, Hickory and Mesquite); 6 Smokehouse Wood Smoking Chunks (all types and flavors, including without (b) 7 limitation Apple, Alder, Cherry, Hickory and Mesquite); 8 Smokehouse Wood Smoking Pellets (all types and flavors, including without (c) 9 limitation Apple, Alder, Cherry, Hickory and Mesquite); 10 Smokehouse Wood Grilling Planks (all types and flavors, including without (d) 11 limitation Cedar and Alder); 12 Bear Mountain Wood Fuel Pellets (all types, including without limitation (e) 13 Golden Fire Wood Fuel Pellets, Bear Mountain Premium Wood Fuel Pellets, 14 America's Best Wood Fuel Pellets, and Forest Fuel Wood Pellets); 15 Bear Mountain Wood Fire Bricks/Logs (all types, including without limitation (f) 16 Bear Mountain Bear Bricks); 17 Bear Mountain Wood Fire Starters (all types, including without limitation (g) 18 Golden Fire Starter Shavings); 19 Bear Mountain Wood BBQ Pellets (all types and flavors, including without (h) 20 limitation American Hickory, Texas Mesquite, Cascade Alder, Washington 21 Apple, Hood River Cherry, Smokehouse Maple, Southern Pecan, and Classic 22 Oak); 23 Bear Mountain Animal Bedding (all types, including without limitation Cozy (i) 24 Den Animal Bedding Premium Cedar Shavings, Cozy Den Animal Bedding 25 Pine Shavings, and Dry Den Animal Bedding); and 26 any and all other wood-based products manufactured, sold, distributed, (i) 27 labeled, transported and/or handled by Defendants. 28

STIPULATED CONSENT JUDGMENT

- 3. On May 24, 2016, Plaintiff sent to Defendants, the California Attorney General, the District Attorneys of every County in California and the City Attorneys of every California city with a population of 750,000 people or greater, a 60-Day Notice of Violations of Proposition 65 relating to allegedly actionable levels of wood dust in the Products ("the Notice").
- 4. Neither the California Attorney General, nor any of the District Attorneys or City Attorneys of any County in California or any City in California with a population of 750,000 people or greater objected or otherwise responded to the Notice, nor did they seek to intervene in this lawsuit.
- 5. This Consent Judgment is thus permissible, and is a full, final, and binding resolution between Plaintiff and Defendants of the allegations and claims that were asserted or that could have been asserted by Plaintiff against Defendants or any other party relating in any way to any and/or all of the Products that were manufactured, sold, distributed, labeled, transported and/or handled at any time prior to 30 days after the entry by the Court of this Consent Judgment.
- 6. This Consent Judgment does not constitute evidence of an admission by the Defendants regarding any issue of law or fact alleged in the First Amended Complaint. By entering into this Consent Judgment the Defendants do not admit to any violation of law.

## **FUTURE LABELING**

7. Within 30 days after the entry by the Court of this Consent Judgment, Defendants shall voluntarily include a warning label on all of the Products manufactured by them thereafter that states as follows:

California Proposition 65 Warning: This product contains substance known to the State of California to cause cancer, combustion of wood chips (or pellets), like all wood products, results in the emission of carbon monoxide, soot and other combustion by-products which are known by the State of California to cause cancer, birth defects or other reproductive harm. Use safeguards to avoid inhaling wood combustion by-products.

8. Entry of this Consent Judgment by the Court shall constitute approval by the Court of the warning language identified in paragraph 7 as compliant with Proposition 65.

## SETTLEMENT PAYMENT

1 Within 30 days of the later to occur of (a) entry by the Court of this Consent 9. 2 Judgment, or (b) receipt by Defendants of Plaintiff's W-9 and payment instructions, Defendants 3 shall pay to Plaintiff a combined total of \$120,000.00 (ONE HUNDRED TWENTY THOUSAND 4 DOLLARS) ("Settlement Amount"), inclusive of all damages, penalties, fines, expenses, costs and 5 fees, including attorney fees. The Settlement Amount shall be allocated as amounts paid by 6 Defendants, and shall be allocated between damages, penalties, fines, expenses, costs and fees, 7 including attorney fees, as follows: 8 \$42,500 in satisfaction of all claims for fines, penalties or other amounts pursuant to (a) 9 Health and Safety Code section 25249.7; and 10 \$77,500 in satisfaction of Plaintiff's claims for attorneys' fees, costs and expenses. **(b)** 11 Within 5 days of payment of the Settlement Amount, Plaintiff shall file a Satisfaction 10. 12 of Judgment in the above-captioned action in a form acceptable to Defendants. 13 OTHER PROVISIONS 14 This Consent Judgment may be executed in counterparts, which taken together shall 11. 15 be deemed to constitute one and the same document. 16 IT IS SO STIPULATED. 17 18 19 PACIFIC JUSTICE CENTER Dated: October 5, 2016 20 21 22 23 Attorneys for Plaintiff ERIKA MCCARTNEY, individually and 24 in the public interest 25 26

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| 1        | Dated: October 6, 2016 SHOOK, HARDY & BACON L.L.P.   |
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| 3        | By: Mall   |
| 5        | RANDALL D. HAIMUVICI   |
| 6        | Attorneys for Defendants SMOKEHOUSE PRODUCTS, LLC,   |
| 7        | Attorneys for Defendants SMOKEHOUSE PRODUCTS, LLC, SMOKEHOUSE PRODUCTS, INC. and BEAR MOUNTAIN FOREST PRODUCTS, INC. |
| 8        | PRODUCTS, INC.   |
| 9        |  |
| 10       | IT IS SO ORDERED.  |
| 11       | 1,9/17   |
| 12       | Dated:   |
| 13       | HAROLD KAHN  |
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