

SETTLEMENT AGREEMENT

This Settlement Agreement (“the Agreement”) is by and between Smokehouse Products, LLC, Smokehouse Products, Inc. (collectively, “Smokehouse”) and Bear Mountain Forest Products, Inc. (“Bear Mountain”), and each of their respective past, present and future officers, directors, employees, agents, customers, distributors, successors, assigns, affiliates, subsidiaries, parents, related entities and insurers (collectively, “Defendants”), on the one hand, and Erika McCartney, both individually and in the public interest, and any and all of her heirs, successors and assigns (collectively, “Plaintiff” or “Ms. McCartney”), on the other hand. Plaintiff, Defendants, Smokehouse and/or Bear Mountain are sometimes referred to herein collectively as the Parties and individually as a Party.

RECITALS

WHEREAS, on or about October 1, 2014, Plaintiff sent to Smokehouse, 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 California Health and Safety Code section 25249.5 et seq. (also known as Proposition 65) relating to allegedly actionable levels of wood dust in products known as Smokehouse All Natural Wood Cherry Chips and Smokehouse All Natural Wood Hickory Chips, which were manufactured, delivered, sold and/or handled by Smokehouse. Pursuant to this same Notice, Plaintiff also continued to investigate other products manufactured, delivered, sold and/or handled by Smokehouse;

WHEREAS, on or about October 9, 2014, Plaintiff sent to Bear Mountain, 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 California Health and Safety Code section 25249.5 et seq. (also known as Proposition 65) relating to allegedly actionable levels of wood dust in a product known as Bear Mountain Premium Wood Pellets, which was manufactured, delivered, sold and/or handled by Bear Mountain. Pursuant to this same Notice, Plaintiff also continued to investigate other products manufactured, delivered, sold and/or handled by Bear Mountain;

WHEREAS, Plaintiff and Defendants subsequently entered into tolling agreements for the above alleged violations of Proposition 65, and engaged in discussions relating to the resolution of these alleged violations, which discussions initially proved unsuccessful;

WHEREAS, on or about September 22, 2015, Plaintiff (individually and on behalf of the general public and in the public interest) filed suit against Smokehouse and others for alleged violations of Proposition 65 relating to certain wood-based products manufactured, delivered, sold and/or handled by Smokehouse, including without limitation Smokehouse All Natural Wood Cherry Chips and Smokehouse All Natural Wood Hickory Chips, in the Superior Court of California, County of San Francisco, Civil Action No. CGC-15-548091 (“the Suit”);

WHEREAS, the Parties now enter into this Agreement for the purpose of fully and finally resolving any and all claims and disputes relating to any alleged violations of Proposition 65 for products manufactured, delivered, sold and/or handled by Defendants, as set forth below.

AGREEMENT

In consideration of the promises and undertakings set forth below, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, do hereby agree as follows:

1. Notices of Violations. Plaintiff shall submit in a manner compliant with any laws statutes and/or regulations, 60-Day Notices of Violations of California Health and Safety Code section 25249.5 et seq. (also known as Proposition 65), as well as any necessary Certificates of Merit and other information or material, to Smokehouse, Bear Mountain, 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, for the following products:

- (a) Smokehouse Wood Smoking Chips (all types and flavors, including without limitation Apple, Alder, Cherry, Hickory and Mesquite);
- (b) Smokehouse Wood Smoking Chunks (all types and flavors, including without limitation Apple, Alder, Cherry, Hickory and Mesquite);
- (c) Smokehouse Wood Smoking Pellets (all types and flavors, including without limitation Apple, Alder, Cherry, Hickory and Mesquite);
- (d) Smokehouse Wood Grilling Planks (all types and flavors, including without limitation Cedar and Alder);
- (e) Bear Mountain Wood Fuel Pellets (all types, including without limitation Golden Fire Wood Fuel Pellets, Bear Mountain Premium Wood Fuel Pellets, America's Best Wood Fuel Pellets, and Forest Fuel Wood Pellets);
- (f) Bear Mountain Wood Fire Bricks/Logs;
- (g) Bear Mountain Wood Fire Starters (all types, including without limitation Golden Fire Starter Shavings);
- (h) Bear Mountain Wood BBQ Pellets (all types and flavors, including without limitation American Hickory, Texas Mesquite, Cascade Alder, Washington Apple, Hood River Cherry, Smokehouse Maple, Southern Pecan, and Classic Oak); and
- (i) Bear Mountain Animal Bedding (all types, including without limitation Cozy Den Animal Bedding Premium Cedar Shavings, Cozy Den Animal Bedding Pine Shavings, and Dry Den Animal Bedding).

The products listed above in this Paragraph 1, and any and all other wood-based products manufactured by either Smokehouse or Bear Mountain, are hereinafter collectively referred to as "the Products"). Plaintiff shall also ensure that the Notices of Violations required by this Paragraph 1 are in full compliance with all applicable laws, statutes and/or regulations.

2. Amendment of Pleadings. Upon expiration of the 60 days required for the Notices of Violations called for in Paragraph 1 above, Plaintiff shall file an amended Complaint in the Suit extending her existing claims to include both Bear Mountain and Smokehouse, and to further include all of the Products identified in Paragraph 1 above. Plaintiff shall also take any and all other steps that may be necessary to the full and final resolution of the claims set forth in her amended Complaint in the Suit and/or specified in this

Agreement, including without limitation providing notice of her amended Complaint to all persons or entities, and in the method and manner, as may be required by any applicable laws, statutes and/or regulations.

3. Consent Judgment & Settlement Amount. Upon entry by the Court of the amended Complaint in the Suit as called for in Paragraph 2 above, the Parties shall move for the entry of a Consent Judgment, in a form acceptable to Defendants, fully and finally resolving any and all claims, whether known or unknown, relating in any way to the Products manufactured, distributed and/or sold by Smokehouse and/or Bear Mountain from the beginning of time through the expiration of 30 days after entry by the Court in the Suit of the Consent Decree called for in this Paragraph 3.

a. The Consent Judgment called for in this Paragraph 3 shall be in the amount of **\$120,000.00 (ONE HUNDRED TWENTY THOUSAND DOLLARS)**, inclusive of all damages, penalties, fines, expenses, costs and fees, including attorney fees (“the Settlement Amount”). The Settlement Amount shall be allocated as amounts paid by Smokehouse and Bear Mountain, and shall be allocated between damages, penalties, fines, expenses, costs and fees, including attorney fees, as follows: \$42,500 in satisfaction of all claims for fines/penalties, and \$77,500 in satisfaction of Plaintiff’s claims for attorneys’ fees, costs and expenses.

b. The Settlement Amount shall be payable within 30 days after the entry by the Court of a final judgment in the Suit.

c. Within 5 days of payment of the Settlement Amount, Plaintiff shall file a Satisfaction of Judgment in the Suit in a form acceptable to Defendants.

d. The Consent Judgment shall also (i) recite that within 30 days of entry by the Court of the final judgment in the Suit, Defendants shall voluntarily include a warning label on all of the Products, (ii) recite the specific language of the warning label to be used on the Products by Defendants, and (iii) obtain the Court’s approval of the specific language of the warning label as compliant with Proposition 65.

e. In the event Defendants fail to pay the Settlement Amount within the time specified by this Agreement, then to the full extent permitted by law the consent judgment and this Agreement shall be null and void, and the Parties shall be deemed and shall be restored in all aspects to their respective positions as they existed on January 22, 2016, and the Parties shall further take all steps necessary to vacate and set aside the judgment and effect such restoration.

f. In the event the Court refuses to enter a Consent Judgment on the terms or in the form submitted to it by the Parties, and/or in the event that any public prosecutor takes formal action within the 60-day notice period for the Notices of Violation referenced herein, then the Parties will either (i) reach a mutual agreement on new terms to submit to the Court for entry as a Consent Judgment and as otherwise required by this Agreement, or (ii) if no such mutual agreement is reached, then this Agreement and all other agreements between the Parties shall be null and void, and the

Parties shall be deemed and shall be restored in all aspects to their respective positions as they existed on January 22, 2016, and the Parties shall further take all steps necessary to effect such restoration. The forgoing is an express condition of the entirety of this Agreement.

g. Plaintiff shall also take any and all other steps that may be necessary to the full and final resolution of the claims set forth in her amended Complaint in the Suit and/or specified in this Agreement, including without limitation providing notice of the proposed Consent Judgment to all persons or entities, and in the method and manner, as may be required by any applicable laws, statutes and/or regulations.

4. Release. Upon entry of the Consent Judgment, Plaintiff, being of lawful age and represented by independent counsel of her own choosing, **RELEASES, ACQUITS AND FOREVER DISCHARGES** Defendants from any and all past, present and future claims, suits, demands, obligations, actions, causes of action, rights, damages, costs, penalties, fines, costs, expenses, losses, services, compensation and punitive or exemplary damages, of any nature whatsoever, whether known or unknown, whether accrued now or hereafter or are otherwise in the future acquired, and whether based on statute, regulation, tort, contract or otherwise, that were brought or that could have been brought in the Suit, and/or that relate in any way to the Products that were manufactured, distributed, handled and/or sold by Smokehouse and/or Bear Mountain from the beginning of time through the expiration of 30 days after entry by the Court in the Suit of the Consent Decree called for in Paragraph 3 above (“the Released Claims”).

5. Waiver of Unknown Claims. Each of the Parties acknowledges that they are familiar with Section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Each of the Parties waives and relinquishes any rights or benefits that they have or may have under section 1542 of the California Civil Code or any similar provisions, rights or benefits under the statutory or non-statutory law of any other jurisdiction to the full extent that it may lawfully waive such rights or benefits relating to the Released Claims in this Agreement. The Parties acknowledge that each may subsequently discover facts in addition to, or different from, those that it believes to be true with respect to the Released Claims in this Agreement. The Parties agree that this Agreement and the Releases contained herein shall be and remain effective in all respects notwithstanding the discovery of such additional or different facts.

6. Indemnity, Defense & Hold Harmless. Plaintiff agrees that she will forever and fully hold Defendants harmless (including without limitation paying indemnity for any amounts incurred by Defendants, and paying any defense costs, expenses, fees and attorney fees incurred by Defendants) against any of the Released Claims that she may bring or assert against any person or entity.

7. Attorney Fees, Costs & Expenses. Except as otherwise set forth in this Agreement, the Parties agree that each of them shall bear their own attorneys' fees, expenses and costs arising from or relating in any way to the Suit and/or this Agreement.

8. Entire Agreement and Successors in Interest. This Agreement contains the entire agreement between the Parties with regard to the matters set forth herein and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each Party. This Agreement shall not be added to, changed or modified in any way except by a writing signed by the Parties.

9. Representation of Comprehension of Document. In entering into this Agreement, the Parties represent that they have relied upon the legal advice of their respective attorneys, and that the terms of this Agreement have been completely read and explained to each Party by that Party's attorney, and that those terms are fully understood and voluntarily accepted by each Party. Plaintiff specifically acknowledges that she has not relied on any legal advice from the Defendants or from the Defendants' attorneys in entering into this Agreement.

10. Additional Documents/Actions. Except as otherwise set forth herein, the Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions, which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.


11. Non-Waiver. No breach of any provision of this Agreement can be waived unless such waiver is stated expressly in writing signed by the waiving Party or Parties. Waiver of any one breach of this Agreement shall not be deemed to be a waiver of any other breach of this Agreement.

12. Counterparts/Copies. This Agreement may be executed in multiple counterparts and will become effective and binding upon the Parties when all of the signatories hereto have signed a counterpart hereof. All counterparts so executed shall constitute one Agreement binding upon all Parties. Any photocopy of the executed Agreement or any of its counterparts shall have the same force and effect as the originals. Execution and delivery of this Agreement or any of its counterparts by e-mail, facsimile, or by other electronic means shall constitute legal and binding execution and delivery.

13. Authority. The undersigned are authorized to execute this Agreement on behalf of their respective Party or Parties. Each Party has read, understood, and agrees to all of the terms and conditions of this Agreement. Each Party warrants to the other that it is free to enter into this Agreement and is not subject to any conflicting obligation which will or might prevent or interfere with the execution or performance of this Agreement by said Party.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement deemed effective on February 9, 2016.

For Smokehouse:

By: 

Title: Manager

Date: May 9th, 2016

For Bear Mountain:

By: 

Title: President/CEO

Date: May 6th, 2016

For Ms. McCartney:

By: _____

Title: _____

Date: _____

For Smokehouse:

By: _____

Title: _____

Date: _____

For Bear Mountain:

By: _____

Title: _____

Date: _____

For Ms. McCartney:

By: *EMC*

Title: Plaintiff

Date: 5/2/16