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7 COMPANY, INC.

8 SUPERIOR COURT OF THE STATE CALIFORNIA
9 FOR THE COUNTY OF SAN FRANCISCO

11 ERIKA MCCARTNEY, in the public
12 interest

13 Plaintiff,

14 vs.

15 MANKE LUMBER COMPANY, INC., a
16 Washington corporation; and DOES 1 – 500,
17 inclusive,

18 Defendants.

CASE NO: CGC-14-543442

**[Proposed] STIPULATED CONSENT
JUDGMENT**

[Cal. Health & Saf. Code § 25249.6, *et
seq.*]

19 **I. INTRODUCTION**

20 a. This action arose out of allegations by Plaintiff ERIKA MCCARTNEY
21 (hereinafter referred to as “PLAINTIFF”) against Defendant MANKE LUMBER COMPANY,
22 INC. (hereinafter referred to as “DEFENDANT”) alleging that DEFENDANT is liable for
23 violation of California’s Safe Drinking Water and Toxic Enforcement Act of 1986, California
24 Health and Safety Code section 25249.5 *et seq.* (also known as and hereinafter referred to as
25 “Proposition 65”) regarding DEFENDANT’s product, CleanBurn Wood Pellet Fuel.
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[Proposed] STIPULATED CONSENT JUDGMENT

1 **b.** **PLAINTIFF** is a California resident and claims to be acting as a private enforcer
2 of Proposition 65. **PLAINTIFF** claims to bring this action in the public interest pursuant to
3 California Health and Safety Code section 25249.

4 **c.** **DEFENDANT** is a Washington based corporation.

5 **d.** **PLAINTIFF** and **DEFENDANT** are collectively referred to herein as “the
6 Parties.”
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8 **e.** **DEFENDANT** manufactures and sells CleanBurn Wood Pellet Fuel.

9 **f.** On or about October 15, 2014, pursuant to California Health and Safety Code
10 section 25249.7(d)(1), **PLAINTIFF** served a 60-Day Notice of Violation of Proposition 65
11 (“Notice of Violations”) on the California Attorney General, other public enforcers, and
12 **DEFENDANT**.
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14 **g.** After more than sixty (60) days passed since service of the Notice of Violations,
15 and no designated governmental agency filed a complaint against **DEFENDANT** with regard to
16 the CleanBurn Wood Pellet Fuel or the alleged violations, **PLAINTIFF** filed a complaint for
17 injunctive relief and civil penalties.
18

19 **h.** The complaint and Notice of Violations each allege that **DEFENDANT**
20 manufactured, distributed, and/or sold in California the CleanBurn Wood Pellet Fuel. The
21 complaint and Notice of Violations each allege that the CleanBurn Wood Pellet Fuel contains
22 wood dust, a substance listed under Proposition 65 as a carcinogen. The complaint and Notice of
23 Violations each allege that CleanBurn Wood Pellet Fuel exposed consumers to wood dust. The
24 complaint and Notice of Violations each allege that the use of CleanBurn Wood Pellet Fuel
25 exposes persons in California to wood dust without first providing a clear and reasonable
26 warning, in violation of California Health and Safety Code section 25249.6.
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1 i. DEFENDANT generally denies the allegations in the PLAINTIFF's complaint
2 and Notice of Violations, and specifically denies that CleanBurn Wood Pellet Fuel contains
3 wood dust, and otherwise exposes persons in California to wood dust, and denies Plaintiff's
4 claim in its entirety.

5 j. The Parties desire to enter into this Consent Judgment in order to settle,
6 compromise and resolve disputed claims and avoid prolonged and costly litigation. Nothing in
7 this Consent Judgment, nor compliance with its terms, shall constitute or be construed as an
8 admission by any of the Parties, or by any of their respective officers, directors, shareholders,
9 employees, agents, parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees,
10 licensees, distributors, wholesalers or retailers, of any fact, conclusion of law, issue of law,
11 violation of law, fault, wrongdoing or liability, including without limitation, any admission
12 concerning any alleged violation of Proposition 65. Except as expressly set forth herein, nothing
13 in this Consent Judgment, shall prejudice, waive or impair any right, remedy, argument or
14 defense the Parties may have in any other or future legal proceeding. Nothing in this section
15 shall affect the enforceability of this Consent Judgment.

16 k. The "Effective Date" of this Consent Judgment shall be the date this Consent
17 Judgment is entered as a Judgment.

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21 **II. JURISDICTION AND VENUE**

22 The Parties stipulate that this Court has jurisdiction over the subject matter of this Action
23 and personal jurisdiction over the Parties, that venue is proper in this Court, and that this Court
24 has jurisdiction to enter this Consent Judgment pursuant to the terms set forth herein.
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1 **III. CLEAR AND REASONABLE WARNING LABEL CHANGE**

2 The Parties agree that the Label Change to the Warning will begin to take effect the week
3 beginning sixty (60) days of the complete execution of this Settlement Agreement, and further
4 agree that such a time is a reasonable time to effectuate the Label Change given the products
5 currently in production and in distribution. The Label Change shall be effective only for units of
6 CleanBurn Wood Pellet Fuel (“the Product”) sold in or distributed into California. The Label
7 Change shall be as follows: DEFENDANT shall include to the current label:
8

9 **“WARNING:** Combustion of this product results in emissions of Carbon
10 Monoxide, soot and other combustion byproducts which are known by the State
11 of California to cause cancer, birth defects or reproductive harm. This product can
12 expose you to chemicals including wood dust, which is known to the State of
13 California to cause cancer. For more information, go to
14 www.P65Warnings.ca.gov.”
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17 **IV. SETTLEMENT PAYMENT**

18 **a.** As a final settlement and compromise of any and all claims and causes of actions
19 against DEFENDANT by PLAINTIFF, including the claims and causes of actions in this action
20 and any other matter, and in release and discharge of any and all claims and causes of action
21 against DEFENDANT arising out of the representation whether referred to in the action or not,
22 PLAINTIFF agrees to dismiss any and all civil actions against DEFENDANT with prejudice and
23 further agrees not to file any other actions, in exchange for and in consideration of (1) a Label
24 Change of the Product as described above in section III; and (2) for a total sum of Thirty-
25 Thousand Dollars and No/Cents (\$30,000.00) (hereinafter referred to as “Settlement Payment”).
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1 Said sum of will be paid as follows: \$7,500.00 for penalties and \$22,500 for fees and costs, with
2 a total sum of \$30,000 paid by check made payable to PLAINTIFF, ERIKA MCCARTNEY and
3 her attorneys, Pacific Justice Center, by DEFENDANT, MANKE LUMBER COMPANY, INC.

4 The Settlement Payment shall be delivered to Pacific Justice Center, 50 California Street, San
5 Francisco California 94111 within ten (10) days of the complete execution of this Settlement
6 Agreement.
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8 **b.** For and in consideration of the Label Change and Settlement Payment, the value
9 of which is hereby acknowledged, PLAINTIFF on behalf of herself, and her respective heirs,
10 executors, predecessors, successors, administrators and assigns, does hereby agree to release,
11 acquit and forever discharge DEFENDANT and her attorneys, agents, employees,
12 representatives, insurance companies, predecessors and successors, and all other persons, firms
13 and corporations acting on his behalf, from any Civil Action, causes of action, claims, liens,
14 demands, damages, losses, expenses or costs, in any way related to any known or unknown
15 injuries or damages as are claimed by PLAINTIFF, or could be claimed by PLAINTIFF, whether
16 alleged or not, in the Civil Action, or alleged (or able to be alleged) in any other action by
17 PLAINTIFF against DEFENDANT, including any past or potential actions filed in any State,
18 including the State of California and any United States Federal Jurisdiction. PLAINTIFF further
19 agrees not to bring, continue, or maintain any legal proceedings of any nature whatsoever against
20 DEFENDANT and any of DEFENDANT's related persons, assigns, agents, representatives,
21 attorneys, insurers and employees before any court, state/federal commission, arbitrator, or any
22 other tribunal or legal/administrative forum by reason of or related to the facts or issues alleged
23 in, involved in, pertaining to, and/or arising out of the Representation. DEFENDANT likewise
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[Proposed] STIPULATED CONSENT JUDGMENT

1 agrees to release and waive any and all claims she has or may have against PLAINTIFF,
2 including breach of contract, attorney fees, interest, and costs.

3 c. PLAINTIFF agrees to deliver to DEFENDANT's counsel a signed and executed
4 Settlement Agreement, a completed and executed W-9, and PLAINTIFF acknowledges that the
5 Settlement Payment cannot be processed until such settlement documents have been delivered to
6 counsel for DEFENDANT. The PLAINTIFF and DEFENDANT further agree to bear their own
7 costs and attorney fees expended during the course of the Civil Action.
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9 d. Each party agrees to bear his or her own attorneys' fees and costs incurred in
10 connection with the Civil Action, except as otherwise provided in this Settlement Agreement.
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12 **V. MODIFICATION OF CONSENT JUDGMENT**

13 This Consent Judgment may be modified only by written agreement and stipulation of the
14 Parties and upon having such stipulation entered as a modified Consent Judgment by the Court.

15 **VI. RETENTION OF JURISDICTION AND ENFORCEMENT OF CONSENT
16 JUDGMENT**

17 a. This Court shall retain jurisdiction of this matter to enforce, modify or terminate
18 this Consent Judgment.

19 b. Subject to Section 6.3, any Party may, by motion or application for an order to
20 show cause filed with this Court, enforce the terms and conditions contained in this Consent
21 Judgment. The prevailing party in any such motion or application may request that the Court
22 award its reasonable attorney's fees and costs associated with such motion or application.
23

24 **VII. APPLICATION OF CONSENT JUDGMENT**

25 This Consent Judgment shall apply to and be binding upon the Parties and their
26 respective officers, directors, successors and assigns, and it shall benefit the Parties and their
27 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
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1 divisions, affiliates, franchisees, licensees, customers, distributors, wholesalers, retailers,
2 predecessors, successors and assigns.

3 **VIII. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

4 a. This Consent Judgment is a full, final and binding resolution between
5 PLAINTIFF on behalf of herself, and DEFENDANT, of any and all direct or indirect or
6 derivative violations, or claimed violations, of Proposition 65 or its implementing regulations for
7 failure to provide Proposition 65 warnings of exposure to wood dust from handling, use or
8 consumption of the Product and fully resolves all claims that have been or could have been
9 asserted in this Action up to and including the Effective Date for failure to provide Proposition
10 65 warnings for the Product regarding wood dust. PLAINTIFF, on behalf of herself, hereby
11 forever releases and discharges DEFENDANT and its past and present officers, directors,
12 owners, shareholders, employees, agents, attorneys, parent companies, subsidiaries, divisions,
13 affiliates, suppliers, franchisees, licensees, customers, distributors, wholesalers, retailers and all
14 other upstream and downstream entities and persons in the distribution chain of the Product, and
15 the predecessors, successors and assigns of any of them (collectively "Released Parties") from
16 any and all claims and causes of action and obligations to pay damages, restitution, fines, civil
17 penalties, payment in lieu of civil penalties and expenses, including but not limited to expert
18 analysis fees, expert fees, attorney's fees and costs (collectively "Claims") arising under, based
19 on, or derivative of Proposition 65 or its implementing regulations up through the Effective Date
20 relating to actual or potential exposure to wood dust from the Product and/or failure to warn
21 about wood dust, as set forth in the Notices of Violation and the Complaint.
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1 **IX. CONSTRUCTION AND SEVERABILITY**

2 a. The terms and conditions of this Consent Judgment have been reviewed by the
3 respective counsel for the Parties prior to its signing, and each Party has had an opportunity to
4 fully discuss the terms and conditions with its counsel. In any subsequent interpretation or
5 construction of this Consent Judgment, the terms and conditions shall not be construed against
6 any Party.

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8 b. If any provision, paragraph, clause or sentence in this Consent Judgment is
9 declared to be illegal, void or invalid, or unenforceable by a court or other authority with
10 jurisdiction thereof, the remaining provisions, paragraphs, clauses and sentences shall be
11 severable and shall remain in full force and effect. The parties to this Consent Judgment agree
12 that a void or invalid paragraph, clause or provision shall not affect the validity or enforceability
13 of the remaining provisions of this Settlement Agreement.

14
15 c. The terms and conditions of this Consent Judgment shall be governed by and
16 construed in accordance with the laws of the State of California.

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18 **X. PROVISION OF NOTICE**

19 All notices required to be given to either Party to this Consent Judgment by the other
20 shall be in writing and sent to the following agents listed below by: (a) first-class, registered; (b)
21 certified mail; (c) overnight courier; or (d) personal delivery to the following:

22 For PLAINTIFF:

23
24 Melvin B. Pearlston
25 Robert B. Hancock
26 PACIFIC JUSTICE CENTER
27 50 California Street, Suite 1500
28 San Francisco, California 94111

1 For DEFENDANT:

2 Fred J. Knez
3 Matthew J. Knez
4 KNEZ LAW GROUP, LLP
5 6780 Indiana Ave., Suite 150
6 Riverside California 92506

7 **XI. COURT APPROVAL**

8 a. Upon execution of this Consent Judgment by the Parties, PLAINTIFF shall notice
9 a Motion for Court Approval. The Parties shall use their best efforts to support entry of this
10 Consent Judgment.

11 b. If the California Attorney General objects to any term in this Consent Judgment,
12 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
13 prior to the hearing on the motion.

14 c. If, despite the Parties' best efforts, the Court does not approve this Consent
15 Judgment, it shall be null and void and have no force or effect, subject to IX Construction and
16 Severability.

17 **XII. EXECUTION AND COUNTERPARTS**

18 This Consent Judgment may be executed in counterparts, which taken together shall be
19 deemed one document. A facsimile or electronic signature shall be construed as valid and as the
20 original signature.

21 **XIII. ENTIRE AGREEMENT AND AUTHORIZATION**

22 a. This Consent Judgment contains the entire agreement and understanding between
23 the Parties, and supersedes and replaces all negotiations or proposed agreements, whether written
24 or oral. Each of the Parties acknowledges that no single party, agent or attorney for any other
25 party has made a promise, representation or warranty whatsoever, whether express or implied,
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1 not contained within this Consent Judgment, to induce entry into this Consent Judgment. Each
2 of the Parties acknowledge the cooperation and participation of all parties in the drafting and
3 preparation of this Consent Judgment and, therefore, this Consent Judgment should not be
4 construed against any party hereto.

5 b. Each signatory to this Consent Judgment certifies that he or she is fully authorized
6 by the party he or she represents to stipulate to this Consent Judgment. Except as explicitly
7 provided herein, each of the Parties shall bear its own fees and costs.
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10 **XIV. REQUEST FOR FINDINGS AND FOR APPROVAL**

11 a. This Consent Judgment has come before the Court upon the request of the Parties.
12 The Parties request the Court to fully review this Consent Judgment and, being fully informed
13 regarding the matters which are the subject of this action, to:
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15 i. Find that the terms and provisions of this Consent Judgment represent a good
16 faith settlement of all matters raised by the allegations of the Notice of Violations and the
17 Complaint, that the matter has been diligently prosecuted, and that the public interest is served
18 by such settlement and compromise; and
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20 ii. Make the findings pursuant to California Health and Safety Code section
21 25249.7(f)(4) and approve the settlement and this Consent Judgment.
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IT IS SO STIPULATED

DATED: 1/3/19


ERIKA MCCARTNEY
Plaintiff

APPROVED AS TO FORM:

~~October~~, 2018 DATED: January 3, 2019


By: 
~~ROBERT B. HANCOCK~~ Elizabeth D. Sonnichsen
Attorney for Plaintiff
ERIKA MCCARTNEY

DATED: 12/31/2018


MANKE LUMBER COMPANY, INC.
Defendant

APPROVED AS TO FORM:

~~October~~, 2018 

1/2/19
By: 
MATTHEW J. KNEZ
Attorney for Defendant
MANKE LUMBER COMPANY, INC.

[Proposed] STIPULATED CONSENT JUDGMENT

JUDGMENT

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Based upon the Parties' Stipulation, and good cause appearing therefor, this Consent Judgment is approved and judgment is hereby entered according to its terms.

IT IS SO ORDERED, ADJUDGED AND DECREED

DATED: _____

Judge of the Superior Court