

SETTLEMENT AGREEMENT

BETWEEN ERIKA MCCARTNEY AND A&J MANUFACTURING, LLC

1. RECITALS

1.1 The Parties

This Settlement Agreement (“Settlement”) is entered into by and between Erika McCartney (“Ms. McCartney”) and A&J Manufacturing, LLC (“A&J Manufacturing”). Ms. McCartney and A&J Manufacturing shall hereinafter collectively be referred to as the “Parties.”

Ms. McCartney is a citizen of the State of California with an interest in improving human health and the health of ecosystems, and supporting environmentally sound practices, which includes promoting awareness of exposure to toxic chemicals and substances and reducing exposure to hazardous substances found in consumer products. A&J Manufacturing is a person in the course of doing business as the term is defined in California *Health & Safety Code* section 25249.6 et seq. (“Proposition 65”).

1.2 Allegations

Ms. McCartney alleges A&J Manufacturing manufactured, distributed, supplied, and/or sold certain wood products, specifically barbecue wood pellets for use by consumers during barbecuing, causing users in California to be exposed to wood dust without providing “clear and reasonable warnings,” in violation of Proposition 65. Wood dust (the “Listed Substance”) is subject to Proposition 65 warning requirements because it is listed as known to the State of California to cause cancer.

On November 14, 2014, a sixty-day notice of violation, along with a Certificate of Merit, was mailed by Ms. McCartney to A&J Manufacturing and various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to A&J Manufacturing’s “Char-

Griller Gourmet BBQ Wood Pellets.” (“60-Day Notice.”) The product referenced in the 60-Day Notice notices is hereinafter referred to as the “Covered Product.”

1.3 No Admissions

A&J Manufacturing denies all allegations in Ms. McCartney’s 60-Day Notice and maintains that the Covered Product has been, and is, in compliance with all laws, and that A&J Manufacturing has not violated Proposition 65. This Settlement shall not be construed as an admission of liability by A&J Manufacturing but as a compromise of claims that are expressly contested and denied. However, nothing in this section shall affect the Parties’ obligations, duties, and responsibilities under this Settlement.

1.4 Compromise

The Parties enter into this Settlement in order to resolve the controversy described above and avoid prolonged and costly litigation between them.

1.5 Effective Date

The “Effective Date” shall be the date ten days from which this Settlement is signed by both Parties and delivered to each Party.

2. INJUNCTIVE BELIEF

2.1 Warning Obligations for Covered Product

After the Effective Date, A&J Manufacturing shall not manufacture, decorate, import, distribute or offer for use or sale any Covered Product containing the Listed Substance for distribution, sale or use in California, unless a clear and reasonable warning is given in a manner consistent with the method and language set forth in Section 2.2.

2.2 Manner of Providing Warning

For the Covered Product, A&J Manufacturing shall provide the following warning

("Warning") as specified below:

"[California Proposition 65] WARNING: This product contains wood dust and other substances known to the State of California to cause cancer. Avoid inhaling dust generated from wood products or use a dust mask or other safeguards to avoid inhaling dust generated from wood. When combusted, wood products emit chemicals known to the State of California to cause cancer, birth defects or other reproductive harm. California Health and Safety Code Section 25249.6"

The text above appearing in brackets shall be optional. The Warning shall be permanently affixed to or printed on (at the point of manufacture, prior to shipment to California, or prior to distribution within California) the outside packaging or container of each unit of the Covered Product. The Warning shall be displayed with such conspicuousness, as compared with other words, statements designs or devices on the outside packaging or labeling, as to render it likely to be read and understood by an ordinary individual prior to use. If the Warning is displayed on the product container or labeling, the Warning shall be at least the same size as the largest of any other health or safety warnings on the product container or labeling, and the word "WARNING" shall be in all capital letters. Placing the Warning language specified above on the product packaging in the same location and type size as the existing Proposition 65 warning shall constitute compliance with this requirement of this Agreement.

The Parties acknowledge that A&J Manufacturing currently utilizes a wood-dust specific California Proposition 65 warning in connection with the Covered Product which differs slightly from the warning required by this Settlement. The Parties agree that A&J Manufacturing may exhaust its currently supply of the Covered Product containing this language, but shall utilize the new warning above at its earliest opportunity.

3. PAYMENTS

3.1 Civil Penalty Pursuant To Proposition 65

In settlement of all claims referred to in this Settlement, A&J Manufacturing shall pay a total civil penalty of \$9,000 to be apportioned in accordance with Health and Safety Code section 25249.12(c)(l) and (d), with 75% paid to State of California Office of Environmental Health Hazard Assessment, and the remaining 25% paid to Ms. McCartney.

A&J Manufacturing shall issue two (2) checks for the civil penalty: (1) a check or money order made payable to "Office of Environmental Health Hazard Assessment" in the amount of \$6,750.00 and (2) a check or money order made payable to "Erika McCartney" in the amount of \$2,250.00. Provided that Ms. McCartney has supplied A&J Manufacturing with W-9 forms for Ms. McCartney, Robert B. Hancock, and OEHHA, A&J Manufacturing shall remit the payments within five (5) business days of the Effective Date of this Agreement, to:

Pacific Justice Center
ATTN: Robert B. Hancock, Esq.
50 California Street, Suite 1500
San Francisco, CA 94111

3.2 Payment of Attorneys' Fees And Expenses

A&J Manufacturing shall pay Ms. McCartney's attorney's fees and expenses incurred in prosecuting the instant action, in the amount of \$38,500. Accordingly, A&J Manufacturing shall issue a check or money order made payable to "Robert B. Hancock" in the amount of \$38,500. A&J Manufacturing shall remit the payment within five (5) business days of the Effective Date of this Agreement to:

Pacific Justice Center
ATTN: Robert B. Hancock, Esq.
50 California Street, Suite 1500
San Francisco, CA 94111

4. RELEASES

4.1 Ms. McCartney's Release Of A&J Manufacturing

Ms. McCartney, acting in her individual capacity, her past and current agents, representatives, attorneys, successors, and/or assignees, in consideration of the promises and monetary payments contained herein, hereby releases A&J Manufacturing, its parents, subsidiaries, shareholders, directors, members, officers, employees, downstream distributors and retailers, agents and attorneys, including Lowe's Companies, Inc, its subsidiaries and affiliates, from the claims asserted in Ms. McCartney's 60-Day Notice dated November 14, 2014 regarding violation of Proposition 65 with respect to the Covered Product.

4.2 A&J Manufacturing's Release Of Ms. McCartney

A&J Manufacturing, by this Settlement, waives all rights to institute any form of legal action against Ms. McCartney, her past and current agents, representatives, attorneys, experts, successors, and/or assignees, for actions or statements made or undertaken, whether in the course of investigating claims or seeking enforcement of Proposition 65 against A&J Manufacturing in this matter.

4.3 Waiver Of Unknown Claims

Each of the Parties acknowledges that they are familiar with Section 1542 of 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 right or benefit it has or may have under Section 1542 of *California Civil Code* or any similar provision under the statutory or non

statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights and benefits pertaining to the claims in this Settlement. 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 claims released herein. The Parties agree that this Settlement and the releases contained herein shall be and remain effective in all respects notwithstanding the discovery of such additional or different facts.

5. SEVERABILITY

Should any non-material part or provision of this Settlement for any reason be declared by a Court to be invalid, void, unenforceable, or against law or public policy, the remaining portions and provisions shall continue in full force and effect.

6. GOVERNING LAW

The terms of this Settlement shall be governed by the laws of the State of California.

7. INTEGRATION

This Settlement constitutes the entire agreement between the parties with respect to the subject matter hereof and may not be amended or modified except in writing executed by both Parties.

8. COUNTERPARTS

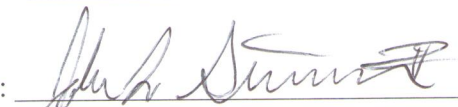
This Settlement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute the same document. Execution and delivery of this Settlement by e-mail, facsimile, or other electronic means shall constitute legal and binding execution and delivery. Any photocopy of the executed Settlement shall have the same force and effect as the originals.

9. AUTHORIZATION

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

AGREED: A&J Manufacturing, LLC


Date: 5/16/16

By: 

Its: President

AGREED:

Date: 5/3/16


Erika McCartney