



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

Karen Ross, Secretary

August 29, 2017

DMS NOTICE
QC - 17 - 03
DISCARD: RETAIN

TO: WEIGHTS AND MEASURES OFFICIALS

SUBJECT: Settlement – Basalite Building Products, LLC

Enclosed is a copy of the Final Judgment and Permanent Injunction issued against Basalite Building Products, LLC. The case was filed on August 14, 2017, by the Marin County District Attorney in conjunction with the Stanislaus County District Attorney for selling product that was less quantity than represented and improperly labeled, violations of California Business and Professions Code §§ 12024, 12602, 12603, and 12611.

The California Department of Food and Agriculture (Department), Division of Measurement Standards (DMS), worked with weights and measures investigators from Stanislaus County on this case. The total settlement was for \$175,000. Civil penalties amounted to \$150,000, agency costs were \$5,000, and cy pres restitution of \$20,000 was designated to Habitat for Humanity Greater San Francisco and Habitat for Humanity Stanislaus County.

Stanislaus County needs to report these penalties on the County Monthly Report along with their individual investigative cost reimbursements in the appropriate columns.

The Department sincerely appreciates the work performed by the District Attorneys' offices along with the state and county investigators that documented and caused to be prosecuted these violations. If you have any questions, please contact Katherine de Contreras, Supervising Special Investigator, DMS Enforcement Branch at (916) 229-3047, or katherine.decontreras@cdfa.ca.gov.

Sincerely,

Kristin Macey
Director

Enclosure

cc: Gary Leslie, County/State Liaison, CDFA



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County of Marin
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FILED

AUG 14 2017

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: E. Chais, Deputy

7 BIRGIT FLADAGER, District Attorney
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12 Attorneys for Plaintiff

13 SUPERIOR COURT OF CALIFORNIA

14 COUNTY OF MARIN

15 PEOPLE OF THE STATE OF CALIFORNIA,) CASE NO. CIV 1702881
16 Plaintiff,)
17 v.) ~~[PROPOSED]~~ FINAL JUDGMENT
18 BASALITE BUILDING PRODUCTS, LLC,) AND PERMANENT INJUNCTION
19 Defendant.)
20

21
22 Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA, through its attorneys,
23 EDWARD S. BERBERIAN, the District Attorney for the County of Marin, by Deputy District
24 Attorneys Andres H. Perez and Jeremy M. Fonseca; BIRGIT FLADAGER, the District Attorney
25 for the County of Stanislaus, by Deputy District Attorney Richard B. Mury, III; and Defendant,
26 BASALITE BUILDING PRODUCTS, LLC, a Nevada Limited Liability Company (formerly
27 known as Basalite Concrete Products, LLC), appearing through its attorneys, Locke Lord LLP,
28

COPY

1 by Jason Mueller, Esq. and Kelly S. Biggins, Esq., have stipulated to the entry of this [Proposed]
2 Final Judgment and Permanent Injunction ("Final Judgment") without the Court taking evidence,
3 without the Defendant admitting or denying any wrongdoing, without the parties' stipulation or
4 anything herein constituting an admission or finding of any liability or wrongdoing or admission
5 or denial by any party regarding any issue of fact or law, and good cause appearing:

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

7 JURISDICTION

8 1. This action is brought under California law and this Court has jurisdiction of the
9 subject matter and the parties.

10 APPLICABILITY

11 2. The provisions of this Final Judgment are applicable to Basalite Building
12 Products, LLC, its "Epic Plastics" division, and all employees, individual agents, and successors
13 acting under, by, through, on behalf of, or in concert with Basalite with actual or constructive
14 knowledge of this Judgment (henceforth, individually and collectively "Basalite" or
15 "Defendant").

16 DEFINITIONS

17 3. For the purposes of this Final Judgment, the following definitions shall apply:

18 A. "ACTUAL DIMENSION(S)" means the true and accurate linear
19 dimensions, including without limitation height, width (thickness), and length, of a commodity.

20 B. "DEPARTMENT" means the California Department of Food and
21 Agriculture, Division of Measurement Standards.

22 C. "EPIC" means Basalite Building Products, LLC, its "Epic Plastics"
23 division.

24 D. "LABEL" means the label that EPIC shall use in connection with future
25 sales of PRODUCT.
26

1 E. "PRODUCT" shall mean any composite landscape edging or shaping
2 products manufactured by Defendant including, but not limited to, "Benda
3 Board[®]" branded products.

4 F. "WEIGHTS AND MEASURES OFFICIAL" means any representative of
5 the DEPARTMENT, or any representative of a County Sealer or Director of a
6 County Department of Agriculture, the Attorney General, a district attorney, a city
7 attorney, or any of their agents.

8 **INJUNCTION**

9 4. Pursuant to Business and Professions Code §§17203 and 17535, Defendant is
10 hereby enjoined and restrained from engaging, directly or indirectly, in any of the following acts
11 or practices in or from California for the five (5) years following the entry of this Judgment:

12 A. Selling any PRODUCT in less quantity than represented in violation of
13 Business and Professions Code §12024. PRODUCTS with ACTUAL DIMENSIONS greater than
14 that stated shall not constitute a violation of this section.

15 B. Packaging or affixing a label to any PRODUCT that does not conform to
16 the California Fair Packaging and Labeling Act (California Business and Professions Code,
17 Division 5, Chapter 6) ("FPLA") or the regulations adopted under its authority in violation of
18 Business and Professions Code §12602.

19 C. Distributing any packaged PRODUCT that is not in conformity with the
20 Declaration of Identity and Declaration of Responsibility requirements of the Uniform Packaging
21 and Labeling Regulation set forth in the latest edition of National Institute of Standards and
22 Technology Handbook 130 in violation of Business and Professions Code §12603(a).

23 D. Distributing any packaged PRODUCT that is not in conformity with the
24 Declaration of Quantity requirements of the Uniform Packaging and Labeling Regulation set forth
25 in Section 2.10 of the latest edition of National Institute of Standards and Technology Handbook
26 130 in violation of Business and Professions Code §12603(b).

1 E. Selling or offering for sale any PRODUCT which is not conspicuously
2 marked, branded, or otherwise labeled as required by the FPLA or on which any word, statement,
3 or other information required by the FPLA is not prominently placed in conformity with the
4 Prominence and Placement requirements of the Uniform Packaging and Labeling Regulation set
5 forth in the latest edition of National Institute of Standards and Technology Handbook 130 in
6 violation of Business and Professions Code §12611. Should a LABEL adequately affixed to a
7 PRODUCT'S principal display panel become obliterated during transport it shall not constitute a
8 violation of this Final Judgment, unless this is occurring to a majority of PRODUCT; then, the
9 parties shall meet and confer first to attempt to resolve the issue.

11 F. Making or causing to be made any statement which is known or by the
12 exercise of reasonable care should be known to be untrue or having the tendency or capacity to
13 mislead in violation of Business and Professions Code §17500.

14 G. Consistent with California Business and Professions Code §12602(b),
15 paragraphs A, B, C, D, and E above shall not create any obligation or liability on Defendant with
16 respect to any PRODUCTS that Defendant did not package itself or contract to be packaged by
17 Defendant, but is rather acting solely as a third-party distributor, and nothing herein shall impose
18 any such obligation or liability.

19 H. With respect to each of the foregoing, isolated or unforeseen incidents that
20 occur despite Defendant having taken reasonable protective measures and that are promptly
21 remedied do not constitute a violation of this section.

22 5. Defendant may, but is not required to, submit proposed PRODUCT LABELS to
23 the DEPARTMENT for review of a LABEL'S compliance with the FPLA. The DEPARTMENT
24 may agree at its discretion to review PRODUCT LABELS and if they so agree may bill
25 Defendant at the DEPARTMENT'S normal hourly billing rate and Defendant shall pay
26 DEPARTMENT for any PRODUCT LABEL reviews requested. Any PRODUCT LABEL
27

1 deemed to be in compliance with the FLPA by the DEPARTMENT shall not be in violation of
2 this Final Judgment. Defendant submitted a proposed label to the DEPARTMENT, which the
3 DEPARTMENT deemed compliant on July 28, 2017. A copy of said label is attached hereto as
4 Exhibit A.

5
6 6. To permit Defendant an opportunity to produce conforming labeling and
7 packaging, to label new inventory and to take reasonable efforts to update the labeling on
8 existing inventory, the injunctive provisions of this Final Judgment shall not apply to any
9 PRODUCT labeled and packaged before the entry of this Final Judgment, and for up to 12
10 months after the entry of this Final Judgment ("sell through period").

11 A. Defendant shall provide written notice of the ACTUAL DIMENSIONS of
12 the PRODUCT to any retailers or consumers who receive the PRODUCT directly from Defendant
13 during the sell through period.

14 B. During the sell through period, Defendant shall provide written notice of
15 the ACTUAL DIMENSIONS of the PRODUCT to any and all retailers who Defendant knows or,
16 after a reasonable inquiry, Defendant believes still have Defendant's PRODUCT for sale that was
17 labeled and packaged prior to or within the sell through period.

18 C. Defendant shall retain for three (3) years copies of all notices required by
19 this section, including the recipient's name, and shall make these records available within twenty
20 (20) days to any WEIGHTS AND MEASURES OFFICIAL upon request.

21 7. The injunctive provisions of this Final Judgment are in addition to all other
22 obligations and duties imposed by law. Nothing in this injunction shall be deemed to permit or
23 authorize any violation of local, state or federal law, rule or regulation or otherwise be construed
24 to relieve Defendant of any duty to comply with the applicable laws, rules and regulations; nor
25 shall anything herein be deemed to constitute permission to engage in any acts or practices
26 prohibited by such laws, rules or regulations; nor shall this injunction be deemed to be more
27 restrictive than, supersede or replace any local, state or federal law, rule or regulation. Nothing in
28

1 this Final Judgment shall prevent WEIGHTS AND MEASURES OFFICIALS from enforcing
2 their statutory duties.

3 **MONETARY RELIEF**

4 8. Defendant shall pay the aggregate sum of ONE HUNDRED SEVENTY FIVE
5 THOUSAND DOLLARS (\$175,000.00), to be applied to civil penalties, costs and *cy pres*
6 restitution as detailed as follows:

7 A. Pursuant to Business and Professions Code §§ 17206 and 17536,
8 Defendant shall, within ten (10) days of the date of the filing of this Final Judgment, pay to
9 Plaintiff the sum of ONE HUNDRED FIFTY THOUSAND DOLLARS (\$ 150,000.00) as civil
10 penalties. Pursuant to Government Code §26506, these civil penalties shall be divided equally and
11 paid to the county of each of the prosecuting agencies bringing this action. Said payment shall be
12 made in the form of a check payable to: Marin County District Attorney's Office.
13

14 B. Pursuant to Business and Professions Code §§ 17203 and 17535
15 Defendant shall, within ten (10) days of the date of the filing of this Final Judgment, pay to
16 Plaintiff the sum of FIVE THOUSAND DOLLARS (\$5,000.00) for costs. Said payments shall be
17 made in the form of checks payable to the following agencies:

18	Agency	Amount
19		
20	1) Stanislaus County Dept. of Weights and Measures	\$1,540.00
21	2) California Department of Food and Agriculture, Division of Measurement Standards	\$3,460.00

22 C. Pursuant to Business and Professions Code §§ 17203 and 17535
23 Defendant shall pay, restitution in the form of *cy pres* in the sum of TWENTY THOUSAND
24 DOLLARS (\$20,000.00). Said *cy pres* restitution shall be paid within ten (10) days of the date of
25 the filing of this Final Judgment and divided equally between: 1) Habitat for Humanity Greater
26

1 San Francisco, to be used to support housing in Marin County, CA; and 2) Habitat for Humanity
2 Stanislaus County, to be used to support housing in Stanislaus County.

3 9. All payments ordered pursuant to this Final Judgment shall be delivered to the
4 attention of: Andres H. Perez, Deputy District Attorney, Marin County District Attorney's
5 Office, 3501 Civic Center Dr., Room 130, San Rafael, CA 94903, Telephone (415) 473-6450.

6 10. This Final Judgment represents the complete and final settlement of all claims that
7 have been or could have been brought by the District Attorneys who are parties to this action
8 against Defendant arising from or relating to the subject matter of the Complaint herein which
9 acts occurred as of the date this Final Judgment was lodged with the Court and occurred in the
10 jurisdictions of the respective District Attorneys' offices.

11 11. The court having reviewed the Complaint and this Final Judgment finds that this
12 Final Judgment is a just, reasonable, and equitable resolution, entered in good faith, and is
13 adequate to protect the public from the occurrence in the future of the conduct alleged in the
14 Complaint and to provide complete satisfaction of the public interest in the conduct that is the
15 subject of this Final Judgment including full and adequate restitution to the public of any
16 allegedly unjust gains that may have been obtained from such conduct.

17 **NO ADMISSION OF LIABILITY**

18 12. This Final Judgment is not to be construed as an admission of liability by any
19 party, or a finding of liability against any party. This Final Judgment was entered into as a result
20 of a stipulation of the parties, without admissions or findings of fact or law, and without any
21 admission by Defendant or by any party of liability, wrongdoing, illegality, or of any fact alleged
22 against any party. To the extent permitted by law, all information and communications relating to
23 the negotiation of the settlement reflected in this Final Judgment shall remain confidential.

24 **RETENTION OF JURISDICTION**

25
26 13. Jurisdiction is retained by the Court for the purpose of enabling any party to this
27
28

EXHIBIT A

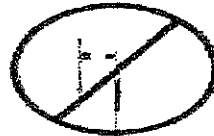
Epic Plastics

Lodi CA 95240

Landscape Edging



DO NOT SCREW
BOARDS TOGETHER



Benda Board

Redwood



“WARNING: Cancer and Reproductive Harm –
www.P65Warnings.ca.gov.”

.72 in x 3.35 in x 19 ft 10 in
1.82 cm x 8.5 cm x 6.04 m