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Attorneys for Defendant Weyerhaeuser Company

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

**WESTWOOD LUMBER COMPANY,
INC., CASCADE HARDWOODS, INC.,
MORTON ALDER MILL, and
ALEXANDER LUMBER MILL INC.,**

Plaintiffs,

v.

WEYERHAEUSER COMPANY,

Defendant.

No. CV03-0551-PA

**ANSWER TO FOURTH AMENDED
COMPLAINT**

(Demand for Jury Trial)

Defendant Weyerhaeuser Company (“Weyerhaeuser”) answers Plaintiffs’ Fourth Amended Complaint (“Complaint”) as follows:

1. Weyerhaeuser states that the allegations contained in paragraph 1 purport to characterize this action and do not require a response. To the extent that any response is required, however, Weyerhaeuser denies the allegations contained in paragraph 1 except admits that Plaintiffs purport to bring this action under Section 2 of the Sherman Act.

2. Weyerhaeuser states that the first sentence and first clause of the second sentence of paragraph 2 state legal conclusions and do not require a response. To the extent that any response is required, however, Weyerhaeuser denies those allegations. Weyerhaeuser denies the remaining allegations in paragraph 2, except admits that it transacts business and maintains offices in this district.

3. Weyerhaeuser lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3, and on that basis denies those allegations.

4. Weyerhaeuser lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4, and on that basis denies those allegations.

5. Weyerhaeuser lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5, and on that basis denies those allegations.

6. Weyerhaeuser lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6, and on that basis denies those allegations.

7. Weyerhaeuser lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7, and on that basis denies those allegations.

8. Weyerhaeuser admits that it is a corporation organized pursuant to the laws of the State of Washington, that it conducts business both domestically and internationally, that it operates six hardwood lumber manufacturing facilities located in Oregon and Washington

through its business known as Northwest Hardwoods, and that its Canadian subsidiary operates a seventh manufacturing facility in British Columbia, Canada. Except as so expressly admitted, Weyerhaeuser denies the allegations contained in paragraph 8.

9. For its answer to paragraph 9, Weyerhaeuser incorporates its answers to paragraphs 1 through 8 as if fully set forth herein.

10. Weyerhaeuser denies the allegations contained in paragraph 10.

11. Weyerhaeuser denies the allegations contained in paragraph 11.

12. Weyerhaeuser admits that in some seasons, alder sawlogs are susceptible to stain or discoloration. Except as so expressly admitted, Weyerhaeuser denies the allegations contained in paragraph 12.

13. Weyerhaeuser states that it is without information sufficient to form a belief as to what percentage of British Columbia's "alder sawlog resource" is currently located on "Crown lands owned by the provincial government of British Columbia". Weyerhaeuser further states that there has existed in British Columbia a regulatory procedure by which the export of logs from certain lands is subject to the right of local sawmills to buy those logs. During the 1990s and into 2000, hardwood lumber producers could effectively block the export of hardwood logs into the United States by submitting a bid to the Timber Advisory Council in British Columbia. Coast Mountain Hardwoods used this regulatory procedure to, at the very least, significantly limit the export of logs to the United States during the 1990s and into 2000. Except as so expressly admitted, Weyerhaeuser denies the allegations contained in paragraph 13.

14. Weyerhaeuser states that alder is frequently a component of the conifer harvest as a "come along" species. Except as so expressly admitted, Weyerhaeuser denies the allegations contained in paragraph 14.

15. Weyerhaeuser denies the allegations contained in paragraph 15.

16. Weyerhaeuser denies the allegations contained in paragraph 16.

17. Weyerhaeuser denies the allegations contained in paragraph 17.

18. Weyerhaeuser admits the allegations contained in paragraph 18.

19. Weyerhaeuser admits the allegations contained in paragraph 19.

20. Weyerhaeuser admits the allegations contained in paragraph 20.

21. Weyerhaeuser admits that it promoted a grading system for finished alder lumber, greatly expanding the number of alder lumber products in comparison to the historic grading system. Except as so expressly admitted, Weyerhaeuser denies the allegations contained in paragraph 21.

22. Weyerhaeuser admits that the number of alder sawmills decreased between 1980 and 1990. Except as so expressly admitted, Weyerhaeuser denies the allegations contained in paragraph 22.

23. Weyerhaeuser admits that its competitors developed grading systems, some of which were similar to Weyerhaeuser's. Except as so expressly admitted, Weyerhaeuser denies the allegations contained in paragraph 23.

24. Weyerhaeuser denies the allegations contained in paragraph 24.

25. Weyerhaeuser denies the allegations contained in paragraph 25.

26. Weyerhaeuser denies the allegations contained in paragraph 26.

27. Weyerhaeuser denies the allegations contained in paragraph 27.

28. Weyerhaeuser denies the allegations contained in paragraph 28.

29. Weyerhaeuser denies the allegations contained in paragraph 29.

30. Weyerhaeuser denies the allegations contained in paragraph 30, except admits that during the 1990's Coast Mountain Hardwoods provided Weyerhaeuser with access to some of its books and records.

31. Weyerhaeuser denies the allegations contained in paragraph 31, including the allegations in each of the subparts thereof.

32. Weyerhaeuser denies the allegations contained in paragraph 32, including the allegations in each of the subparts thereof.

33. Weyerhaeuser denies the allegations contained in paragraph 33.

34. Weyerhaeuser denies the allegations contained in paragraph 34.

35. Weyerhaeuser denies the allegations contained in paragraph 35.

36. Weyerhaeuser denies the allegations contained in paragraph 36.

37. Weyerhaeuser denies the allegations contained in paragraph 37.

38. Weyerhaeuser admits that the number of alder sawmills in Oregon and Washington decreased between 1980 and 2001, and that the number of Weyerhaeuser sawmills went from zero to six. Except as so expressly admitted, Weyerhaeuser denies the allegations contained in paragraph 38.

39. Weyerhaeuser denies the allegations contained in paragraph 39.

40. Weyerhaeuser denies the allegations contained in paragraph 40.

41. Weyerhaeuser admits that Ross-Simmons Hardwood Lumber Co. and Pacific Hardwoods closed their operations in Longview and South Bend, respectively, in 2001. Except as so expressly admitted, Weyerhaeuser denies the allegations contained in paragraph 41.

42. Weyerhaeuser denies the allegations contained in paragraph 42.

43. Weyerhaeuser denies the allegations contained in paragraph 43.

44. Weyerhaeuser denies the allegations contained in paragraph 44.

45. Weyerhaeuser denies the allegations contained in paragraph 45.

46. Weyerhaeuser denies the allegations contained in paragraph 46.

47. Weyerhaeuser denies the allegations contained in paragraph 47.

48. Weyerhaeuser lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 48, and on that basis denies those allegations.

49. Weyerhaeuser denies the allegations contained in paragraph 49.

50. Weyerhaeuser denies the allegations contained in paragraph 50.

51. Weyerhaeuser denies the allegations contained in paragraph 51.

52. Weyerhaeuser denies the allegations contained in paragraph 52.

53. Weyerhaeuser denies the allegations contained in paragraph 53.

54. Weyerhaeuser states that the second and third sentences of paragraph 54 purport to ask the Court for relief and do not require a response. To the extent that any response is required, however, Weyerhaeuser denies those allegations. Weyerhaeuser denies the remaining allegations in paragraph 54.

55. Weyerhaeuser denies the allegations contained in paragraph 55.

56. Weyerhaeuser states that the allegations of paragraph 56 purport to ask the Court for relief and do not require a response. To the extent that any response is required, however, Weyerhaeuser denies those allegations.

57. Weyerhaeuser states that the allegations of paragraph 57 state a legal conclusion and do not require a response. To the extent that any response is required, however, Weyerhaeuser denies those allegations.

58. For its answer to paragraph 58, Weyerhaeuser incorporates its answers to paragraphs 1 through 8 as if fully set forth herein.

59. Weyerhaeuser denies the allegations contained in paragraph 59.

60. Weyerhaeuser denies the allegations contained in paragraph 60.

61. Weyerhaeuser denies the allegations contained in paragraph 61.

62. Weyerhaeuser denies the allegations contained in paragraph 62.

63. Weyerhaeuser denies the allegations contained in paragraph 63.

64. For its answer to paragraph 64, Weyerhaeuser incorporates its answers to paragraphs 18 through 31 as if fully set forth herein

65. Weyerhaeuser denies the allegations contained in paragraph 65, including the allegations in each of the subparts thereof.

66. Weyerhaeuser denies the allegations contained in paragraph 66.

67. Weyerhaeuser denies the allegations contained in paragraph 67.

68. Weyerhaeuser denies the allegations contained in paragraph 68.

69. For its answer to paragraph 69, Weyerhaeuser incorporates its answers to paragraphs 38 through 46 as if fully set forth herein

70. Weyerhaeuser denies the allegations contained in paragraph 70.

71. Weyerhaeuser denies the allegations contained in paragraph 71.

72. Weyerhaeuser denies the allegations contained in paragraph 72.

73. Weyerhaeuser denies the allegations contained in paragraph 73.

74. Weyerhaeuser denies the allegations contained in paragraph 74.

75. For its answer to paragraph 75, Weyerhaeuser incorporates its answers to paragraphs 1 through 57 as if fully set forth herein.

76. Weyerhaeuser denies the allegations contained in paragraph 76.

77. Weyerhaeuser denies the allegations contained in paragraph 77.

78. For its answer to paragraph 78, Weyerhaeuser incorporates its answers to paragraphs 1 through 8 and paragraphs 59 through 74 as if fully set forth herein.

79. Weyerhaeuser denies the allegations contained in paragraph 79.

80. Weyerhaeuser denies the allegations contained in paragraph 80.

AFFIRMATIVE DEFENSES TO ALL CLAIMS

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' Complaint, and each and every purported cause of action and/or legal theory alleged therein, fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the applicable statutes of limitations.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs are barred from recovery because they have failed to mitigate their damages, if any.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrines of laches, estoppel, and/or unclean hands.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' injuries, if any, were caused in whole or in part by persons other than Weyerhaeuser.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by Weyerhaeuser's legitimate business reasons for its conduct.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred because Plaintiffs lack standing.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred and/or precluded by the *Noerr-Pennington* doctrine.

NINTH AFFIRMATIVE DEFENSE

The claims of plaintiffs Cascade Hardwoods, Inc. and Alexander Lumber Mill, Inc. are barred due to improper venue.

TENTH AFFIRMATIVE DEFENSE

The claims of plaintiff Westwood Lumber Company, Inc. are barred as they are not being prosecuted by the real party in interest.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs have not set out their claims with sufficient particularity to permit Weyerhaeuser to raise all appropriate defenses, and accordingly, Weyerhaeuser reserves the right, upon completion of its investigation of the facts contained in the Complaint and discovery, to assert such additional defenses as may be appropriate when the precise final nature of each claim becomes known.

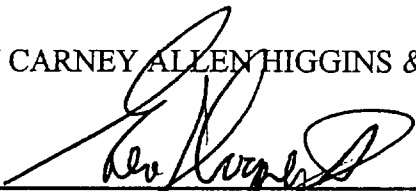
RELIEF REQUESTED

WHEREFORE, Weyerhaeuser respectfully requests as follows:

1. That Plaintiffs take nothing by means of the Complaint;
2. That judgment be entered in favor of Weyerhaeuser;
3. That Weyerhaeuser be awarded costs of suit, including reasonable attorneys' fees incurred herein; and
4. That the Court grant such other and further relief as may be proper.

DATED THIS 5th day of March, 2004.

DUNN CARNEY ALLEN HIGGINS & TONGUE LLP

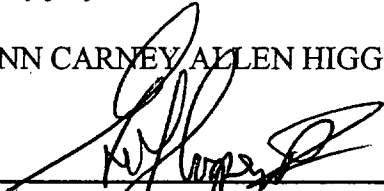


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DEMAND FOR JURY TRIAL

Defendant demands a trial by jury in this action.

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CERTIFICATE OF SERVICE

I hereby certify **ANSWER TO FOURTH AMENDED COMPLAINT** was served on:

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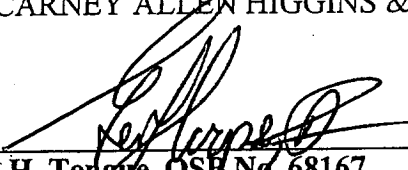
By hand delivery
 By first-class mail
 By certified mail
 By overnight mail
 By facsimile transmission
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Attorneys for Plaintiff

With first-class postage prepaid and deposited in Portland, OR.

DATED this 5th day of March, 2004.

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