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Attorneys for Defendant Weyerhaeuser Company

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

**SMITH STREET MILL, INC., H.R.
JONES VENEER, INC., VALLEY
WOOD PRODUCTS CO., PACIFIC
HARDWOODS-SOUTH BEND CO.,
HARDWOOD COMPONENTS, INC., and
MAPLE VALLEY TONE WOODS, INC.,**

Plaintiffs,

No. CV04-1049-PA

**ANSWER TO SECOND AMENDED
COMPLAINT**

(Demand for Jury Trial)

v.

WEYERHAEUSER COMPANY,

Defendant.

Defendant Weyerhaeuser Company ("Weyerhaeuser") answers Plaintiffs' Second Amended Complaint ("Complaint")¹ 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 admits the allegations contained in paragraph 3.

4. Weyerhaeuser admits the allegations contained in paragraph 4, except Weyerhaeuser lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 that the plant has closed permanently, and on that basis denies that allegation.

5. Weyerhaeuser admits the allegations contained in paragraph 5, except Weyerhaeuser lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 that the plant has closed permanently, and on that basis denies that allegation.

¹ Plaintiffs have not revised the Second Amended Complaint in accordance with this Court's denial of leave to amend to include claims for damages for 1997. Record of Pretrial Conference and Order (May 2, 2005). Weyerhaeuser's answer does not constitute a waiver of its objection to the inclusion of those claims in this action.

6. Weyerhaeuser admits the allegations contained in paragraph 6.

7. Weyerhaeuser admits the allegations contained in paragraph 7.

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 hardwood lumber manufacturing facilities located in Oregon and Washington through its business known as Northwest Hardwoods, and that its Canadian subsidiary operates a 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. Weyerhaeuser admits that between 1993 and September 2000, Coast Mountain owned and operated the Delta alder sawmill and blocked alder log exports from British Columbia. Weyerhaeuser further admits that after the acquisition of Coast Mountain's assets, its Canadian subsidiary continued to

bid on surplus logs from British Columbia's Crown lands. 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 denies that there is a relevant market for alder sawlogs or lumber; otherwise, 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, 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, except admits that, during the 1990s, Weyerhaeuser provided Coast Mountain Hardwoods with assistance at least in the form of personnel and training.

30. Weyerhaeuser admits that in the course of due diligence in connection with the sale of its assets in 2000, Coast Mountain Hardwoods provided Weyerhaeuser with access to some of its books and records. Weyerhaeuser further admits that it acquired Coast Mountain's five forest licenses in British Columbia when it acquired the assets of Coast Mountain in September 2000. Except as so expressly admitted, Weyerhaeuser denies the allegations contained in paragraph 30.

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 denies the allegations contained in paragraph 38.

39. Weyerhaeuser admits that the number of alder sawmills in Oregon and Washington decreased between 1980 and 2001. Except as so expressly admitted, Weyerhaeuser denies the allegations contained in paragraph 39.

40. Weyerhaeuser denies the allegations contained in paragraph 40.

41. 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 denies the allegations contained in paragraph 48, including the allegations in each of the subparts thereof.

49. Weyerhaeuser denies the allegations contained in paragraph 49.

50. Weyerhaeuser denies the allegations contained in paragraph 50, including the allegations in each of the subparts thereof.

51. For its answer to paragraph 51, Weyerhaeuser incorporates its answers to paragraphs 1 through 50 as if fully set forth herein.

52. Weyerhaeuser denies the allegations contained in paragraph 52.

53. Weyerhaeuser denies the allegations contained in paragraph 53.

54. For its answer to paragraph 54, Weyerhaeuser incorporates its answers to paragraphs 1 through 8 as if fully set forth herein.

55-84. The allegations contained in paragraphs 55 through 84 have been dismissed by this Court and, therefore, it is improper for plaintiffs to reallege these claims. In any event, except as expressly admitted in Weyerhaeuser's Answer to First Amended Complaint, Weyerhaeuser denies these allegations.

85. For its answer to paragraph 85, Weyerhaeuser incorporates its answers to paragraphs 1 through 84 as if fully set forth herein.

86. The allegations contained in paragraphs 86 through 87 have been dismissed by this Court and, therefore, it is improper for plaintiffs to reallege these claims. In any event, Weyerhaeuser denies these allegations.

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 plaintiff lack injury, antitrust injury and standing.

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

Plaintiff has not set out its claims with sufficient particularity to permit Weyerhaeuser to raise all appropriate defenses, and accordingly, Weyerhaeuser reserves the right 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 takes 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 10th day of May, 2005.

DUNN CARNEY ALLEN HIGGINS & TONGUE LLP



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Attorneys for Defendant Weyerhaeuser Company

CERTIFICATE OF SERVICE

I hereby certify that a true copy of **ANSWER TO SECOND AMENDED COMPLAINT** was served on:

Michael E. Haglund
Michael K. Kelley
Haglund Kelley Horngren Jones LLP
101 S.W. Main Street, Suite 1800
Portland, OR 97204

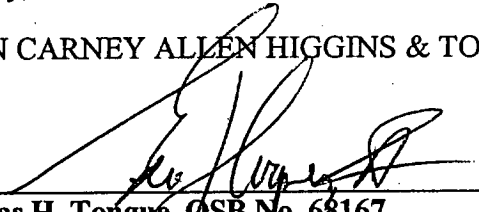
Attorneys for Plaintiff

By hand delivery
 By first-class mail
 By certified mail
 By overnight mail
 By facsimile transmission
Fax #: 503-225-1257

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

DATED this 10th day of May, 2005.

DUNN CARNEY ALLEN HIGGINS & TONGUE LLP



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