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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
IN AND FOR THE COUNTY OF MULTNOMAH

CAMILLE ESTES, individually and on behalf of all  
others similarly situated,  
  
Plaintiff,  
  
vs.  
  
DEAN INNOVATIONS, INC., an Oregon domestic  
business corporation,  
  
Defendant.

Case No.

**COMPLAINT AND DEMAND FOR  
JURY TRIAL**

CLASS ACTION; UNLAWFUL  
TRADE PRACTICES ACT; PRODUCT  
LIABILITY LAW

**Not subject to mandatory arbitration**

**JURY TRIAL DEMANDED**

Filing fee \$594.00 pursuant to  
ORS 21.160(1)(c)

Plaintiff Camille Estes alleges as follows:

**NATURE OF THE CASE**

1.

This is a proposed class action on behalf of individuals who purchased contaminated  
planting mixes and composts from Defendant Deans Innovations, Inc. (“Deans” or “Defendant”).  
Plaintiff and members of the proposed class purchased Defendant’s planting mixes and composts  
with the understanding that the products were beneficial and of a quality that may be used in

1 landscaping and gardening. With that understanding of the products' quality and benefits,  
2 Plaintiff and members of the proposed class used the products when they planted their flowers,  
3 vegetables, and other plants in their yards, gardens, and other landscaped areas they own.

4 2.

5 Shortly after those flowers, vegetables, and other plants began to grow, however, they  
6 began to show signs of herbicide contamination. Plaintiff and members of the proposed class  
7 later learned, and Defendant and the Oregon Department of Agriculture later announced, that  
8 Defendant's products were contaminated with Clopyralid, an herbicide that is harmful to plants  
9 and causes plant deformities.

10 3.

11 Plaintiff brings this lawsuit, individually and on behalf of other similarly situated  
12 individuals who have purchased and used Defendant's contaminated planting mixes or composts,  
13 to seek refunds and relief necessary to clean up and remediate Plaintiff's and proposed class  
14 members' yards, gardens, and other landscaped areas that, as a result of Defendant's products,  
15 are now contaminated with Clopyralid.

16 **JURISDICTION AND VENUE**

17 4.

18 Jurisdiction and venue are proper in Multnomah County, Oregon, because Plaintiff's  
19 purchases were made, and causes of action arose, in Multnomah County, Oregon, and because  
20 Defendant resides in Multnomah County, Oregon.

21 **THE PARTIES**

22 5.

23 Plaintiff Camille Estes is a resident of Multnomah County, Oregon. Plaintiff purchased  
24 Defendant's planting mix on two occasions; the first on March 24, 2020, and the second on April  
25 1, 2020. Between March 28, 2020, and May 10, 2020, Plaintiff used Defendant's planting mix to  
26

1 plant fruits and vegetables in both indoor and outdoor locations. On or around June 8, 2020,  
2 Plaintiff learned, through testing conducted by the Oregon Department of Agriculture, that the  
3 planting mix that she had purchased from Defendant was contaminated with Clopyralid, a toxic  
4 and persistent herbicide.

5 6.

6 Defendant Deans Innovations, Inc. is an Oregon domestic business corporation that  
7 operates a landscaping supply business in Portland, Multnomah County, Oregon. Defendant's  
8 principal place of business is in Portland, Multnomah County, Oregon.

9 **GENERAL ALLEGATIONS**

10 7.

11 Defendant is a landscaping supply business in Portland, Oregon, that offers for sale  
12 planting mixes, composts, soils, and other materials for use in residential and commercial  
13 landscaping. Defendant offers its products for sale at its store, and also accepts orders for  
14 delivery of its products on the phone. Defendant is engaged in the business of selling the  
15 planting mixes and composts that Plaintiff and members of the proposed class purchased for use  
16 in the manner in which Plaintiff and proposed class members engaged.

17 8.

18 Defendant offers for sale various types of planting mixes and composts, including its  
19 "White Lightning" planting mix, its "Fun Guy" compost, and its "Stinky Bull" compost.  
20 Defendant describes the "White Lightning" planting mix as a nutrient-rich material that is  
21 beneficial for organic gardening. Likewise, its "Fun Guy" and "Stinky Bull" composts contain  
22 organic matter touted for leading to, among other things, strong and energetic plant growth.  
23 Defendant represented that all of the products have a quality and benefits suitable for use in  
24 landscaping and organic gardening on both residential and commercial properties.

1 9.

2 Between March and June 2020, Plaintiff and members of the proposed class purchased directly  
3 from Defendant its “White Lightning” planting mix, its “Fun Guy” compost, or its “Stinky Bull”  
4 compost. Between March and June 2020, Plaintiff and members of the proposed class used  
5 Defendant’s products in yards, gardens, and other landscaped areas they own to plant flowers,  
6 vegetables, and other plants.

7 10.

8 Shortly after using Defendant’s products, Plaintiff and members of the proposed class  
9 began to see distorted new growth on plants that came into contact with Defendant’s products.  
10 The distorted new growths that Plaintiff’s plants showed are typical of, and an indicator for,  
11 herbicide contamination.

12 11.

13 Plaintiff, for instance, used Defendant’s “White Lighting” planting mix to plant various  
14 fruits and vegetables in both indoor and outdoor locations. As soon as her plants began to grow,  
15 they showed areas of distorted or deformed growth typical of herbicide contamination. Plaintiff  
16 contacted Defendant and requested assistance with removing the contaminated soil from her  
17 property, but Defendant declined her request. A few days later, an investigator from the Oregon  
18 Department of Agriculture took samples of Defendant’s product from Plaintiff’s yard, which  
19 tested positive for Clopyralid, an herbicide.

20 12.

21 The Oregon Department of Agriculture also tested samples of Defendant’s products,  
22 including its “White Lightning,” “Fun Guy,” and “Stinky Bull” products directly from its store,  
23 some samples of which also tested positive for Clopyralid.

24 //

25 //

1 13.

2 As a result of the Clopyralid contamination caused by Defendant's product, Plaintiff and  
3 members of the proposed class must clean up and remediate the contaminated portions of their  
4 yards, gardens, and other landscaped areas, to prevent the further spread of the herbicide and  
5 additional harmful impacts to their plants.

6 **CLASS ACTION ALLEGATIONS**

7 14.

8 Plaintiff brings this action as a class action pursuant to ORCP 32 for the time period  
9 beginning two years from before the date of filing of this action to the date on which a class is  
10 certified ("Class Period").

11 15.

12 Plaintiff seeks to represent a class consisting of all persons who purchased Clopyralid-  
13 contaminated products from Defendant during the Class Period and who suffered a loss,  
14 including the purchase price of the products and losses associated with the need to clean up and  
15 remediate the portions of their yards, gardens, and other landscaped areas that are contaminated  
16 with Clopyralid from Defendant's products. Excluded from the proposed class are Defendant's  
17 officers and directors and the immediate families of Defendant's officers and directors. Also  
18 excluded from the proposed class is Defendant and its subsidiaries, parents, affiliates, joint  
19 venturers, any entity in which Defendant has or has had a controlling interest, any judge who  
20 rules on any matter connected to this case, and any juror who sits on this case at trial.

21 16.

22 The class is so numerous that joinder is impracticable. ORCP 32A(1). On Plaintiff's  
23 information and belief, the proposed class consists of at least 100 people.

24 //

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26

17.

This action involves common questions of law and fact because each class member's claim derives from the sale of the same contaminated products. ORCP 32A(2). The common questions of law and fact involved predominate over questions that affect only Plaintiff or individual class members. ORCP 32B(3). Common questions of law or fact include:

- Whether Defendant, in selling its products, represented that its products were of a particular quality or benefit;
- Whether the products that Defendant sold were of another quality—*i.e.*, whether those products were contaminated with Clopyralid and unable to serve the purposes for which they were intended;
- Whether Defendants were aware of a material defect or material nonconformity in its products—*i.e.*, that its planting mixes and composts were contaminated with Clopyralid—at or before the time of tender or delivery of those products to its customers.
- Whether the products that Defendant sold were unreasonably dangerous to Plaintiff and members of the class because they were contaminated with Clopyralid at the time of sale;
- Whether Plaintiff and members of the proposed class used Defendant's product in a reasonably foreseeable manner and in a condition substantially unchanged from the condition at the point of sale;
- Whether Defendant's sale of its Clopyralid-contaminated products violates the Unlawful Trade Practices Act, ORS 646.608(1) in one or more of the ways alleged;
- Whether one or more of Defendant's violations caused ascertainable loss to Plaintiff and the class;
- Whether, and to what extent, injunctive relief should be imposed on Defendant to compensate Plaintiff and members of the class for the ascertainable losses they suffered.

18.

Plaintiff's claims are typical of the class. ORCP 32A(3). All class members purchased from Defendant products that Defendant represented to be of a particular quality and to serve a particular purpose. All of the products that class members purchased were of a different

1 quality—*i.e.*, where contaminated with the herbicide, Clopyralid—and unable to serve the  
2 purposes for which they were purchased and sold. Each class member’s loss was caused directly  
3 by the product they purchased from Defendant, and thus directly by the unlawful conduct in  
4 which Defendant engaged.

5 19.

6 Plaintiff will fairly and adequately protect the interests of all class members. ORCP  
7 32A(4). The class members share a common interest in being compensated for the losses they  
8 suffered as a result of Defendant’s violations. Plaintiff also has no interests that conflict with or  
9 are antagonistic to the interests of other class members. Plaintiff has retained competent and  
10 experienced class action attorneys to represent their interests and that of the class.

11 20.

12 Plaintiff commenced this action seeking only injunctive relief in the form of cleanup and  
13 remediation of the Clopyralid-contaminated areas of Plaintiff’s property. Plaintiff also gave  
14 notice to Defendant, pursuant to ORCP 32H, of their intent to seek damages. Plaintiff will  
15 amend to allege claims for damages.

16 21.

17 A class action is superior. ORCP 32B. There is no plain, speedy, or adequate remedy  
18 other than by maintenance of this class action. The prosecution of individual claims by members  
19 of the proposed class will risk creating inconsistent standards of conduct for Defendant and  
20 potential impair class members’ rights and interests through actions to which they were not  
21 parties. Class action treatment will permit a large number of similarly situated persons to  
22 prosecute their common claims in a single forum simultaneously, efficiently, and without the  
23 unnecessary duplication of effort and expense that numerous individual actions would engender.  
24 Furthermore, as the injury suffered by each individual member of the class may be relatively  
25 small, the expenses and the burden of individual litigation would make it difficult or impossible  
26

1 for individual members of the class to redress the wrongs done to them, while an important  
2 public interest will be served by addressing the matter as a class action.

3 22.

4 The prerequisites to maintaining a class action for injunctive relief pursuant to ORCP 32  
5 are also met. Defendant has acted or refused to act on grounds generally applicable to the class,  
6 thereby making appropriate final injunctive relief with respect to the class as a whole.

7 **FIRST CLAIM FOR RELIEF**

8 **VIOLATION OF UNLAWFUL TRADE PRACTICES ACT – ORS 646.608**

9 23.

10 Plaintiff incorporates and realleges the allegations set forth above as if fully restated  
11 herein.

12 24.

13 Defendant violated ORS 646.608(1) in one or more of the following ways, and, as set  
14 forth in more detail, Plaintiff and members of the class suffered ascertainable losses, in that they  
15 purchased Defendant’s products, used the products in the manner for which the products’ use  
16 was intended, and suffered harm in the form of contaminated yards, gardens, and plants as a  
17 result of the fact that Defendant’s product was contaminated with the herbicide Clopyralid:

18 A. Defendant violated ORS 646.608(1)(e) by representing that its products had  
19 characteristics, ingredients, uses, benefits, or qualities that the product did not have.  
20 Specifically, Defendant represented that its planting mix was of a quality that may be  
21 used for, and would be beneficial for, organic gardening and landscaping, but the  
22 Defendant’s product instead was contaminated with Clopyralid, an herbicide, which is  
23 harmful to plants.

24 B. Defendant violated ORS 646.608(1)(g) by representing that its product was of a  
25 particular standard, quality, or grade—*i.e.*, beneficial for use in organic gardening and  
26



1 landscaping—when the product was of actually contaminated with Clopyralid, an  
2 herbicide, which is harmful to plants.

3 C. Defendant violated ORS 646.608(1)(t) by failing to disclose a known material defect  
4 or material nonconformity in its product—i.e., that it was contaminated with  
5 Clopyralid—at the time the product was tendered or delivered to Plaintiff and members  
6 of the class.

7 25.

8 Plaintiff and the class suffered ascertainable losses as a result of those violations in the  
9 following way:

10 Plaintiff and members of the class purchased products from Defendants that were  
11 contaminated with Clopyralid, an herbicide, such that when Plaintiff and class members  
12 used Defendant’s product it caused contamination throughout their yards, gardens, and  
13 other landscaped areas, and caused harm to their yards, gardens, and landscaped areas as  
14 a result of the contamination. To remove areas of contamination created by Defendant’s  
15 product, and to prevent further contamination, areas that are currently contaminated must  
16 be cleaned up and remediated.

17 26.

18 Plaintiff and the class seek equitable relief, an injunction, and attorneys’ fees. ORS  
19 656.638; ORS 646.636.

20 **SECOND CLAIM FOR RELIEF**

21 **STRICT PRODUCTS LIABILITY – ORS 30.920**

22 27.

23 Plaintiff incorporates and realleges the allegations set forth above as if fully restated  
24 herein.

1 28.

2 At the that Defendant sold and delivered its planting mix and composting products to  
3 Plaintiff and members of the proposed class, including its “White Lightning” planting mix, “Fun  
4 Guy” compost, and “Stinky Bull” compost, the products were in a condition not contemplated by  
5 Plaintiff or members of the proposed class and, because they were contaminated with Clopyralid,  
6 an herbicide, were unreasonably dangerous for use by Plaintiff and the proposed class members  
7 on their properties.

8 29.

9 Plaintiff and members of the proposed class used Defendant’s product in a reasonably  
10 foreseeable manner and without substantial change in its condition from the time that it was sold  
11 and delivered.

12 30.

13 The unreasonably dangerous condition of Defendant’s product—i.e., its contamination  
14 with Clopyralid, an herbicide—caused harm to Plaintiff’s and proposed class members’ yards,  
15 gardens, and landscape areas and, as a result, those yards, gardens, and landscape areas must be  
16 cleaned up and remediated.

17 **PRAYER FOR RELIEF**

18 Plaintiff and the class are entitled to damages, equitable relief, an injunction, and  
19 attorneys’ fees. ORS 646.638; ORS 646.636; ORS 30.920.

20 WHEREFORE, Plaintiff asks the Court to enter the following judgment:

- 21 1. Certifying of the class, appointing Plaintiff as representative of the class, and  
22 appointing her counsel as counsel for the class;
- 23 2. Declaring that Defendant has committed the violations alleged;
- 24 3. On Plaintiff’s first claim, granting injunctive relief to Plaintiff and members of the  
25 proposed class for the cleanup and remediation of Plaintiff’s and class members’ properties, and  
26

1 damages as alleged;

- 2 6. On Plaintiff's second claim, granting damages in an amount to be proven at trial;  
3 7. Awarding attorneys' fees and costs; and  
4 8. Granting further relief as this Court may deem proper.

5  
6 DATED this 29<sup>th</sup> day of June, 2020.

7 Respectfully submitted,  
8 SUGERMAN LAW OFFICE

9  
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23 PLAINTIFF DEMANDS A JURY TRIAL as to each issue on which she is entitled.

24 DATED this 29<sup>th</sup> day of June, 2020.

25 SUGERMAN LAW OFFICE

26 By /s/ David F. Sugerman  
David F. Sugerman, OSB No. 86298  
AttorneyS for Plaintiff and Trial Attorney