



FILED
ALAMEDA COUNTY

MAR 15 2017

CLERK OF THE SUPERIOR COURT

By Nancy A. Rose
NANCY ROSE, Deputy

1 Melvin B. Pearlston (SBN 54291)
2 Robert B. Hancock (SBN 179438)
3 PACIFIC JUSTICE CENTER
4 50 California Street, Suite 1500
5 San Francisco, California 94111
6 Tel: (415) 310-1940/Fax: (415) 354-3508

7 Attorneys for Plaintiff

10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF ALAMEDA

12 AMY CHAMBERLIN, in the public interest,
13 Plaintiff,

14 v.

15 AMERICAN WOOD FIBERS, INC., a
16 Wisconsin corporation; and DOES 1 through
17 500, inclusive,
18 Defendants.

CIVIL ACTION NO. RG16826473

~~PROPOSED~~ STIPULATED CONSENT
JUDGMENT

[Cal. Health and Safety Code
Sec. 25249.6, *et seq.*]

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[PROPOSED] STIPULATED CONSENT JUDGMENT
Chamberlin v. American Wood Fibers, Inc.

1 **1. INTRODUCTION**

2 1.1 This Action arises out of the alleged violations of California's Safe Drinking Water
3 and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5 *et seq.*
4 (also known as and hereinafter referred to as "Proposition 65") regarding the following products:
5 Defendant's "Premier Pet Kennel Care Red Cedar Bedding," "Premier Pet Pine Softwood
6 Bedding," "Pet's Pick Kennel Care Eastern Red Cedar Bedding," "America's Choice Premium
7 Mini Flake Animal Bedding," and "Tractor Supply Co. Premium Pine Shavings, Fine" (the
8 "Products"). (hereinafter, collectively the "Covered Products").
9

10 1.2 Plaintiff AMY CHAMBERLIN ("Chamberlin") is a California resident acting as a
11 private enforcer of Proposition 65. Chamberlin alleges that she brings this Action in the public
12 interest pursuant to California Health and Safety Code Section 25249.5, *et seq.* asserts that she is
13 dedicated to, among other causes, helping safeguard the public from health hazards by reducing the
14 use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and
15 employees, and encouraging corporate responsibility.
16

17 1.3 Defendant American Wood Fibers, Inc., is a Wisconsin corporation, hereinafter
18 referred to as "Defendant" or "AWF."
19

20 1.4 Chamberlin and AWF are hereinafter sometimes referred to individually as a
21 "Party" or collectively as the "Parties."
22

23 1.5 AWF manufactures, distributes and/or sells the Covered Products.

24 1.6 On or about April 21, 2015, pursuant to California Health and Safety Code Section
25 25249.7(d)(1), Chamberlin served a 60-Day Notice of Violation of Proposition 65 on the California
26 Attorney General, other public enforcers and AWF. On or about April 23, 2015, pursuant to

1 California Health and Safety Code Section 25249.7(d)(1), Chamberlin served a 60-Day Notice of
2 Violation of Proposition 65 on the California Attorney General, other public enforcers and Tractor
3 Supply Company. Collectively, the two notices are referred to herein as "Notices of Violation."

4
5 1.7 After more than sixty (60) days passed since service of the Notices of Violation, and
6 no designated governmental agency having filed a complaint against AWF or Tractor Supply
7 Company with regard to the Covered Products or the alleged violations, Chamberlin filed a
8 complaint (the "Complaint") for injunctive relief and civil penalties. The Complaint is based on
9 the allegations in the Notices of Violation.

10 1.8 The Complaint alleges that AWF manufactured, distributed, and/or sold in
11 California the Covered Products, which allegedly contain wood dust, a substance listed under
12 Proposition 65 as being known by the State of California to cause cancer, requiring a Proposition
13 65 warning. Further, the Complaint alleges that use of the Covered Products exposes persons in
14 California to wood dust without first providing clear and reasonable warnings, in violation of
15 California Health and Safety Code Section 25249.6. AWF generally denies all material and factual
16 allegations of the Notices of Violations and the Complaint, and specifically denies that the Plaintiff
17 or California consumers have been harmed or damaged by its conduct. AWF and Chamberlin each
18 reserve all rights to allege additional facts, claims, and affirmative defenses if the Court does not
19 approve this Consent Judgment.
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21
22 1.9 The Parties enter into this Consent Judgment in order to settle, compromise and
23 resolve disputed claims and avoid prolonged and costly litigation. Nothing in this Consent
24 Judgment, nor compliance with its terms, shall constitute or be construed as an admission by any of
25 the Parties, or by any of their respective officers, directors, shareholders, employees, agents, parent
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1 companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, distributors,
2 wholesalers, or retailers, of any fact, conclusion of law, issue of law, violation of law, fault,
3 wrongdoing, or liability, including without limitation, any admission concerning any alleged
4 violation of Proposition 65. Except as expressly set forth herein, nothing in this Consent Judgment
5 shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
6 any other or future legal proceeding. Provided, however, nothing in this Section shall affect the
7 enforceability of this Consent Judgment.
8

9 1.10 The "Effective Date" of this Consent Judgment shall be the date this Consent
10 Judgment is entered as a Judgment.

11 2. JURISDICTION AND VENUE

12 The Parties stipulate that this Court has jurisdiction over the subject matter of this Action
13 and personal jurisdiction over the Parties, that venue is proper in this Court, and that this Court has
14 jurisdiction to enter this Consent Judgment pursuant to the terms set forth herein.
15

16 3. INJUNCTIVE RELIEF AND WARNINGS

17 3.1 Beginning on the Effective Date, AWF shall be permanently enjoined from offering
18 for sale to a consumer in California, directly selling to a consumer in California, or "Distributing
19 into California" any of the Covered Products unless the label of the Covered Products contains a
20 Proposition 65 compliant warning, consistent with Section 3.4, below. "Distributing into
21 California" means to ship any of the Covered Products to California for sale. Provided, however,
22 that AWF may manufacture or package and sell Covered Products without providing a Proposition
23 65 compliant warning so long as such products are only for sale to consumers located outside of
24 California and AWF does not distribute them into California.
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1 3.2 All Covered Products that have been or will have been produced, distributed,
2 shipped, or sold, or otherwise placed in the stream of commerce through and including 60-days
3 after the Effective Date of this Consent Judgment are exempt from the provisions of Sections 3.1
4 and 3.3 and are included within the release in Sections 8.1 through 8.4.
5

6 **3.3 Clear and Reasonable Warnings**

7 For the Covered Products that are subject to the warning requirement of Section 3.1, AWF
8 shall provide the following warning ("Warning"):

9 **WARNING:** This product contains a chemical known to the State of California to cause
10 cancer.

11 At its option, AWF may also state, in proximity to the above safe harbor warning language,
12 that "The chemical at issue is wood dust," or some variant of that phrase, such that consumers
13 understand that there are no actual chemical additives to the products.

14 The Warning shall be permanently affixed to or printed on (at the point of manufacture,
15 prior to shipment to California, or prior to distribution within California) the outside packaging or
16 container of each unit of the Covered Products. The Warning shall be displayed with such
17 conspicuousness, as compared with other words, statements designs or devices on the outside
18 packaging or labeling, as to render it likely to be read and understood by an ordinary individual
19 prior to use. If the Warning is displayed on the product packaging or labeling, the Warning shall be
20 at least the same size as the largest of any other health or safety warnings on the product packaging
21 or labeling, and the word "WARNING" shall be in all capital letters. If printed on the labeling
22 itself, the Warning shall be contained in the same section of the labeling that states other safety
23 warnings concerning the use of the Covered Products, if any. The Parties acknowledge that AWF
24 is currently utilizing a safe harbor warning as specified in Cal. Code Reg. Sec. 25603.2 in
25 connection with the Covered Products. AWF may exhaust any current inventory of said Covered
26 Products, and shall begin utilizing the foregoing warning in lieu of the current warning at its
earliest opportunity.

1 **4. SETTLEMENT PAYMENT**

2 4.1 AWF shall make a total payment of \$97,500 in three equal installments. The first
3 installment shall be within ten days of the Effective Date, and each of the two subsequent payment
4 shall be quarterly (i.e., the second payment three months after the first payment and the third
5 payment three months after the second payment). Upon the final payment, such payments, in total,
6 shall be in full and final satisfaction of any and all civil penalties, payment in lieu of civil penalties,
7 and attorneys' fees and costs.

9 4.2 The first payment will be in the form of separate checks sent to counsel for Plaintiff,
10 Robert B. Hancock, Pacific Justice Center, 50 California Street, San Francisco, California 94111.
11 The checks shall be payable to the following parties and the payment shall be apportioned as
12 follows:

13 4.3 \$32,500 (thirty-two thousand five hundred dollars) as civil penalties pursuant to
14 California Health and Safety Code Section 25249.7(b)(1). Of this amount, one check shall be for
15 \$27,500 (twenty-seven thousand five hundred dollars) shall be payable to the Office of
16 Environmental Health Hazard Assessment ("OEHHA"), and a second check shall be for \$5,000
17 (five thousand dollars) shall be payable to Chamberlin. (Cal. Health & Safety Code §
18 25249.12(c)(1) & (d)). Chamberlin waives any statutory right to share in the penalties awarded to
19 any further extent. Chamberlin's counsel will forward the civil penalty to OEHHA.
20

21 4.4 The second and third payments shall each be for \$32,500 (thirty-two thousand five
22 hundred dollars) payable to Robert B. Hancock as reimbursement of Chamberlin's attorneys' fees,
23 costs, investigation and litigation expenses ("Attorney's Fees and Costs").
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1 4.5 Any failure by AWF to remit payment on or before its due date shall be deemed a
2 material breach of this Agreement, entitling Plaintiff to rescind. In such event, the Parties agree to
3 cooperate in taking any and all steps necessary to vacate and/or set aside any Judgment or dismissal
4 entered.

5
6 **5. MODIFICATION OF CONSENT JUDGMENT**

7 5.1 This Consent Judgment may be modified only by: (i) Written agreement and
8 stipulation of the Parties and upon having such stipulation entered as a modified Consent Judgment
9 by the Court; or (ii) Upon entry of a modified Judgment by the Court pursuant to a motion by one
10 of the Parties after exhausting the meet and confer process set forth as follows. If either Party
11 requests or initiates a modification, then it shall meet and confer with the other Party in good faith
12 before filing a motion with the Court seeking to modify it. Chamberlin is entitled to reimbursement
13 of all reasonable attorneys' fees and costs regarding the Parties' meet and confer efforts for any
14 modification requested or initiated by AWF. Similarly, AWF is entitled to reimbursement of all
15 reasonable attorney's fees and costs regarding the Parties' meet and confer efforts for any
16 modification requested or initiated by Chamberlin. If, despite their meet and confer efforts, the
17 Parties are unable to reach agreement on any proposed modification the party seeking the
18 modification may file the appropriate motion and the prevailing party on such motion shall be
19 entitled recover its reasonable fees and costs associated with such motion. One basis, but not the
20 exclusive basis, for AWF to seek a modification of this Consent Judgment is if Proposition 65 is
21 changed, narrowed, limited, or otherwise rendered inapplicable in whole or in part to the Covered
22 Products or wood dust due to legislative change, a change in the implementing regulations, court
23 decisions, or other legal basis.
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6. RETENTION OF JURISDICTION; ENFORCEMENT OF CONSENT JUDGMENT

6.1 This Court shall retain jurisdiction of this matter to enforce, modify or terminate this Consent Judgment.

6.2 Subject to Section 6.3, any Party may, by motion or application for an order to show cause filed with this Court, enforce the terms and conditions contained in this Consent Judgment. The prevailing party in any such motion or application may request that the Court award its reasonable attorneys' fees and costs associated with such motion or application.

6.3 Before filing a motion or application for an order to show cause, Chamberlin shall provide AWF with 30 (thirty) days written notice of any alleged violations of the terms and conditions contained in this Consent Judgment. As long as AWF cures any such alleged violations within the 30-day period (or if any such violation cannot practicably be cured within 30 days, it expeditiously initiates a cure within 30 days and completes it as soon as practicable) and AWF provides proof to Chamberlin that the alleged violation(s) was the result of good faith mistake or accident, then AWF shall not be in violation of the Consent Judgment. AWF shall have the ability to avail itself of the benefits of this Section two (2) times following the Effective Date.

7. APPLICATION OF CONSENT JUDGMENT

This Consent Judgment shall apply to and be binding upon the Parties and their respective officers, directors, successors and assigns, and it shall benefit the Parties and their respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, distributors, wholesalers, retailers, predecessors, successors, and assigns.

1 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

2 **8.1** This Consent Judgment is a full, final, and binding resolution between Chamberlin,
3 on behalf of herself and in the public interest, and AWF, of any and all direct or derivative
4 violations (or claimed violations) of Proposition 65 or its implementing regulations for failure to
5 provide Proposition 65 warnings of exposure to wood dust from the handling, use, or consumption
6 of the Covered Products and fully resolves all claims that have been or could have been asserted in
7 this Action up to and including the Effective Date for failure to provide Proposition 65 warnings
8 for the Covered Products regarding wood dust. Chamberlin, on behalf of herself and in the public
9 interest, hereby forever releases and discharges, AWF and its past and present officers, directors,
10 owners, shareholders, employees, agents, attorneys, parent companies, subsidiaries, divisions,
11 affiliates, suppliers, franchisees, licensees, customers, distributors, wholesalers, retailers, and all
12 other upstream and downstream entities and persons in the distribution chain of any Covered
13 Product, including but not limited to Tractor Supply Co., and the predecessors, successors and
14 assigns of any of them (collectively, "Released Parties"), from any and all claims and causes of
15 action and obligations to pay damages, restitution, fines, civil penalties, payment in lieu of civil
16 penalties and expenses (including but not limited to expert analysis fees, expert fees, attorney's fees
17 and costs) (collectively, "Claims") arising under, based on, or derivative of Proposition 65 or its
18 implementing regulations up through the Effective Date relating to actual or potential exposure to
19 wood dust from the Covered Products and/or failure to warn about wood dust, as set forth in the
20 Notices of Violation and the Complaint.
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1 8.2 Compliance with the terms of this Consent Judgment shall be deemed to constitute
2 compliance by any Released Party with Proposition 65 regarding alleged exposures to wood dust
3 from the Covered Products as set forth in the Notice of Violations and the Complaint.

4 8.3 It is possible that other Claims not known to Chamberlin arising out of the facts
5 alleged in the Notice of Violations or the Complaint and relating to wood dust in the Covered
6 Products that were manufactured, sold or Distributed into California before the Effective Date will
7 develop or be discovered. Chamberlin, on behalf of herself only, acknowledges that the Claims
8 released herein include all known and unknown Claims and waives California Civil Code Section
9 1542 as to any such unknown Claims. California Civil Code Section 1542 reads as follows:
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11 **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
12 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
13 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
14 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
OR HER SETTLEMENT WITH THE DEBTOR."**

15 Chamberlin, on behalf of herself only, acknowledges and understands the significance and
16 consequences of this specific waiver of California Civil Code section 1542.

17 8.4 Chamberlin, on one hand, and AWF, on the other hand, each release and waive all
18 Claims they may have against each other for any statements or actions made or undertaken by them
19 in connection with the Notice of Violations or the Complaint. However, this shall not affect or
20 limit any Party's right to seek to enforce the terms of this Consent Judgment.

21 9. CONSTRUCTION AND SEVERABILITY

22 9.1 The terms and conditions of this Consent Judgment have been reviewed by the
23 respective counsel for the Parties prior to its signing, and each Party has had an opportunity to fully
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1 discuss the terms and conditions with its counsel. In any subsequent interpretation or construction
2 of this Consent Judgment, the terms and conditions shall not be construed against any Party.

3 9.2 In the event that any of the provisions of this Consent Judgment is held by a court to
4 be unenforceable, the validity of the remaining enforceable provisions shall not be adversely
5 affected.
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7 9.3 The terms and conditions of this Consent Judgment shall be governed by and
8 construed in accordance with the laws of the State of California.
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10 **10. PROVISION OF NOTICE**

11 All notices required to be given to either Party to this Consent Judgment by the other shall
12 be in writing and sent to the following agents listed below by: (a) first-class, registered, (b) certified
13 mail, (b) overnight courier, or (c) personal delivery to the following:
14

15 **For Chamberlin:**
16 Melvin B. Pearlston
17 Robert B. Hancock
18 PACIFIC JUSTICE CENTER
19 50 California Street, Suite 1500
20 San Francisco, California 94111

21 **For AWF:**
22 David F. Gabor
23 WEINTRAUB TOBIN
24 10250 Constellation Boulevard, Suite 2900
25 Los Angeles, California 90067

26 **11. COURT APPROVAL**

1 11.1 Upon execution of this Consent Judgment by the Parties, Chamberlin shall notice a
2 Motion for Court Approval. The Parties shall use their best efforts to support entry of this Consent
3 Judgment.

4 11.2 If the California Attorney General objects to any term in this Consent Judgment, the
5 Parties shall use their best efforts to resolve the concern in a timely manner, and if possible prior to
6 the hearing on the motion.

7 11.3 If, despite the Parties' best efforts, the Court does not approve this Stipulated
8 Consent Judgment, it shall be null and void and have no force or effect.
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12 **12. EXECUTION AND COUNTERPARTS**

13 This Stipulated Consent Judgment may be executed in counterparts, which taken together
14 shall be deemed one document. A facsimile or .pdf signature shall be construed as valid and as the
15 original signature.
16

17 **13. ENTIRE AGREEMENT, AUTHORIZATION**

18 13.1 This Consent Judgment contains the sole and entire agreement and understanding of
19 the Parties with respect to the entire subject matter herein, and any and all prior discussions,
20 negotiations, commitments and understandings related hereto. No representations, oral or
21 otherwise, express or implied, other than those contained herein have been made by any Party. No
22 other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to exist
23 or to bind any Party.
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Date: 5/27/16

PACIFIC JUSTICE CENTER

Robert B. Hancock

Robert B. Hancock
Attorney for Plaintiff
JOEY CHAMBERLIN

Date: 5-31-16

WEINTRAUB LOBIN

Dana K. Gier

Dana K. Gier
Attorney for Defendant
AMERICAN WOOD PAPER, INC.

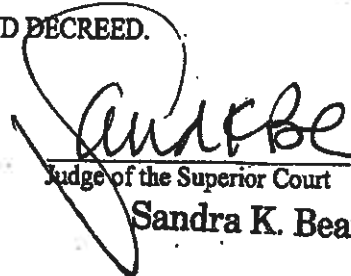
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JUDGMENT

Based upon the Parties' Stipulation, and good cause appearing therefor, this Consent Judgment is approved and judgment is hereby entered according to its terms.

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: March 15, 2016.



Judge of the Superior Court
Sandra K. Bean

CLERK'S CERTIFICATE OF MAILING

Action No. RG16 826473

Case Name: Chamberlin Vs. American Wood Fibers, Inc.

I certify that the following is true and correct: I am the clerk of the above-named Court and not a party to this cause. I served Stipulated Consent Judgment by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices to the addresses listed below to both parties addressed below.

Dated: March 15, 2017

CHAD FINKE

Executive Officer/Clerk of the Superior Court

By *Nancy A. Rose*

**Melvin B. Pearlston, Esq.
Pacific Justice Center
50 California St., Ste. 1500
San Francisco, CA. 94111**

**David R. Gabor, Esq.
Weintraub Tobin Law Corporation
10250 Constellation Blvd., Ste. 2900
Los Angeles, CA. 90067**