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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  
7 e-mail: rbh@lawyer.com

8 Attorneys for Plaintiff

**FILED**  
San Francisco County Superior Court

AUG 02 2018

CLERK OF THE COURT  
By: [Signature] Deputy Clerk

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9  
10 SUPERIOR COURT OF CALIFORNIA  
11 COUNTY OF SAN FRANCISCO

12 AMY CHAMBERLIN, in the public interest,

13 Plaintiff,

14 v.

15 GEM SHAVINGS, LLC, a Washington limited  
16 liability company, and DOES 1 through 500,  
17 inclusive,

18 Defendants.

CIVIL ACTION NO: CGC-17-557357

19  
20 <sup>W</sup>  
21 ~~PROPOSED~~ STIPULATED CONSENT  
22 JUDGMENT; ~~PROPOSED~~ ORDER

23  
24 [Cal. Health and Safety Code  
25 Sec. 25249.6 *et seq.*]  
26

1       **1.     INTRODUCTION**

2           **1.1**     On April 13, 2018, Plaintiff AMY CHAMBERLIN ("Chamberlin") acting on behalf of  
3 herself and the general public, filed an amended Complaint for civil penalties and injunctive relief  
4 ("Complaint") in the San Francisco Superior Court, Case No. CGC-17-557357, against defendant  
5 GEM Shavings, LLC ("Defendant" or "GEM Shavings"). The Complaint alleges violations of  
6 California's Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety  
7 Code Section 25249.5 *et seq.*, (also known as and hereinafter referred to as "Proposition 65")  
8 regarding the following products: (a) GEM Premier White Shavings; (b) GEM Premier Pine  
9 Shavings; (c) GEM Premier White Shavings Small Flake; (d) GEM Premier Fines; (e) GEM Premier  
10 Douglas Fir; and (f) GEM Premier Cedar Shavings. (hereinafter the "Covered Products.")

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

17           **1.3**     GEM Shavings is a Washington limited liability company that employs more than ten  
18 persons.

19           **1.4**     Chamberlin and GEM Shavings are hereinafter sometimes referred to individually as a  
20 "Party" or collectively as the "Parties."

21           **1.5**     GEM Shavings manufactures, distributes, and/or sells the Covered Products.

22           **1.6**     On or about June 17, 2016 and January 11, 2018, pursuant to California Health and  
23 Safety Code Section 25249.7(d)(1), Chamberlin served 60-Day Notices of Violations of Proposition  
24 65 ("Notices of Violations") on the California Attorney General, all District Attorneys, and all City  
25 Attorneys with populations exceeding 750,000, and GEM Shavings.

26           **1.7**     After more than sixty (60) days passed since service of the Notices of Violations, and  
no designated governmental agency having filed a complaint against GEM Shavings with regard to

1 the Covered Products or the alleged violations, Chamberlin filed the amended Complaint  
2 ("Complaint") for injunctive relief and civil penalties. The Complaint is based on the allegations in  
3 the Notice of Violations.

4 1.8 The Complaint and the Notices of Violations each allege that GEM Shavings  
5 manufactured, distributed, and/or sold in California the Covered Products, which allegedly contains  
6 wood dust, a substance listed under Proposition 65 as being known by the State of California to cause  
7 cancer, requiring a Proposition 65 warning. Further, the Complaint and Notices of Violations allege  
8 that use of the Covered Products expose persons in California to wood dust without first providing  
9 clear and reasonable warnings, in violation of California Health and Safety Code Section 25249.6.  
10 GEM Shavings generally denies all material and factual allegations of the Notices of Violations and  
11 the Complaint, and specifically denies that the Plaintiff or California consumers have been harmed or  
12 damaged by its conduct. GEM Shavings and Chamberlin each reserve all rights to allege additional  
13 facts, claims, and affirmative defenses if the Court does not approve this Consent Judgment.

14 1.9 The Parties enter into this Consent Judgment in order to settle, compromise and  
15 resolve denied and disputed claims and avoid prolonged and costly litigation. The parties enter into  
16 this Consent Judgment pursuant to a full and final settlement of any and all claims between the  
17 parties. Nothing in this Consent Judgment, nor compliance with its terms, shall constitute or be  
18 construed as an admission by any of the Parties, or by any of their respective officers, directors,  
19 shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, suppliers,  
20 franchisees, licensees, distributors, wholesalers, or retailers, of any fact, conclusion of law, issue of  
21 law, violation of law, fault, wrongdoing, or liability, including without limitation, any admission  
22 concerning any alleged violation of Proposition 65. Except as expressly set forth herein, nothing in  
23 this Consent Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense the  
24 Parties may have in any other or future legal proceeding. Provided, however, nothing in this Section  
25 shall affect the enforceability of this Consent Judgment.

26 1.9 The "Effective Date" of this Consent Judgment shall be the date this Consent  
Judgment is entered as a Judgment by the Court.

1     **2.     JURISDICTION AND VENUE**

2             The Parties stipulate, for the purposes of this Consent Judgment only, that this Court has  
3 jurisdiction over the subject matter of this Action and personal jurisdiction over the Parties, that  
4 venue is proper in this Court, and that this Court has jurisdiction to enter this Consent Judgment  
5 pursuant to the terms set forth herein as a full settlement and resolution of the allegations contained in  
6 the Complaint.

7     **3.     INJUNCTIVE RELIEF, REFORMULATION, TESTING, AND WARNINGS**

8             **3.1**     Beginning on the Effective Date, GEM Shavings shall be permanently enjoined from  
9 offering for sale to a consumer in California, directly selling to a consumer in California, or  
10 "Distributing into California" any of the Covered Products unless the packaging or container of the  
11 Covered Products contains a proposition 65 compliant warning, consistent with Section 3.4, below.  
12 "Distributing into California," means to ship any of the Covered Products to California for sale or to  
13 sell any of the Covered Products to a distributor that GEM Shavings knows or has reason to know  
14 will sell the Covered Products in California. Provided, however, that GEM Shavings may  
15 manufacture or package and sell Covered Products without providing a Proposition 65 compliant  
16 warning so long as such products are only for sale to consumers located outside of California and  
17 GEM Shavings does not distribute them into California.

18             **3.2**     All Covered Products that have been or will have been produced, distributed, shipped,  
19 or sold, or otherwise placed in the stream of commerce through and including the Effective Date of  
20 this Consent Judgment are exempt from the provisions of Section 3.1 and 3.3 and are included within  
21 the release in Sections 8.1 through 8.4.

22             **3.3     Clear and Reasonable Warnings**

23             For the Covered Products subject to the warning requirements of Section 3.1, GEM Shavings  
24 shall provide the following warning ("Warning"):

25             **CALIFORNIA PROPOSITION 65 WARNING:** This product may expose you to wood dust,  
26 which is known by the State of California to cause cancer.

1           The Warning shall be permanently affixed to or printed on (at the point of manufacture, prior  
2 to shipment to California, or prior to distribution within California) the outside packaging or  
3 container of each unit of the Covered Products. The Warning shall be displayed with such  
4 conspicuousness, as compared with other words, statements designs or devices on the outside  
5 packaging or labeling, as to render it likely to be read and understood by an ordinary individual prior  
6 to use. If the Warning is displayed on the product packaging or labeling, the Warning shall be at least  
7 the same size as the largest of any other health or safety warnings on the product packaging or  
8 labeling, and the word "WARNING" shall be in all capital letters. If printed on the labeling itself, the  
9 Warning shall be contained in the same section of the labeling that states other safety warnings  
10 concerning the use of the Covered Products, if any.

11           Without limitation as to other forms of warnings, displaying the Warnings that are in Exhibit  
12 A hereto, on the outside packaging or container of each unit of the Covered Products is deemed to be  
13 a clear and reasonable warning under, and to fully comply with, Health & Safety Section 25249.6 and  
14 the implementing regulations at Title 27 California Code of Regulations Section 25601 through  
15 25605.2

#### 16           4. SETTLEMENT PAYMENT

17           4.1 GEM Shavings shall make a total payment of \$52,000 which shall be in full and final  
18 satisfaction of any and all civil penalties, payment in lieu of civil penalties, and attorneys' fees and  
19 costs.

20           4.2 The payment will be in the form of three separate checks sent to counsel for Plaintiff,  
21 Robert B. Hancock, Pacific Justice Center, 50 California Street, San Francisco, California 94111.  
22 The Checks shall be payable to the following parties and the payment shall be apportioned as follows:

23           4.3 \$12,500 as civil penalties pursuant to California Health and Safety Code Section  
24 25249.7(b)(2). Of this amount, \$9,375 shall be payable to the Office of Environmental Health  
25 Hazard Assessment ("OEHHA"), and \$3,125 shall be payable to Chamberlin. (Cal. Health & Safety  
26 Code 25249.12(c)(1) & (d)). Chamberlin's counsel will forward the civil penalty to OEHHA.

1           4.4   \$39,500 payable to Pacific Justice Center as reimbursement of Chamberlin's  
2 attorneys' fees, costs, investigation, and litigation expenses ("Attorney's Fees and Costs").

3           4.5   The foregoing payments shall each be made in two equal installments. The payments  
4 pursuant to section 4.3 in the total amount of \$12,500 shall be sent within ten days' entry of this  
5 Consent Judgment. The payments pursuant to section 4.4 in the total amount of \$39,500 shall be sent  
6 thirty days thereafter.

7           4.6   Any failure by GEM Shavings to remit payment on or before its due date shall be  
8 deemed a material breach of the Agreement, entitling Plaintiff to rescind. In such event, the Parties  
9 agree to cooperate in taking any and all steps necessary to vacate and/or set aside any Judgment or  
10 dismissal entered.

#### 11       **5.   MODIFICATION OF CONSENT JUDGMENT**

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

1 due to legislative change, a change in the implementing regulations, court decisions, or other legal  
2 basis.

3 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT JUDGMENT**

4 6.1 This Court shall retain jurisdiction of this matter to enforce, modify or terminate this  
5 Consent Judgment.

6 6.2 Subject to Section 6.3, any Party may, by motion or application for an order to show  
7 cause filed with this Court, enforce the terms and conditions contained in this Consent Judgment.  
8 The prevailing party in any such motion or application may request that the Court award its  
9 reasonable attorneys' fees and costs associated with such motion and application.

10 6.3 Before Filing a motion or application for an order to show cause, Chamberlin shall  
11 provide GEM Shavings with 30 (thirty) days written notice of any alleged violations of the terms and  
12 conditions contained in this Consent Judgment. As long as GEM Shavings cures any such alleged  
13 violations within the 30-day period (or if any such violation cannot practicably be cured within 30  
14 days, it expeditiously initiates a cure within 30 days and completes it as soon as practicable) and  
15 GEM Shavings provides proof to Chamberlin that the alleged violation(s) was the result of good faith  
16 mistake or accident, then GEM Shavings shall not be in violation of the Consent Judgment. GEM  
17 Shavings shall have the ability to avail itself of the benefits of this Section two (2) times following  
18 the Effective Date.

19 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

26 8.1 This Consent Judgment is a full, final, and binding resolution between Chamberlin, on  
behalf of herself and in the public interest, and GEM Shavings, of any and all direct or derivative

1 violations (or claimed violations) of Proposition 65 or its implementing regulations for failure to  
2 provide Proposition 65 warnings of exposure to wood dust from the handling, use, or consumption of  
3 the Covered Products and fully resolves all claims that have been or could have been asserted in this  
4 Action for failure to provide Proposition 65 warnings for the Covered Products regarding wood dust.  
5 Chamberlin, on behalf of herself and in the public interest, hereby forever releases and discharges,  
6 GEM Shavings and its past and present officers, directors, owners, shareholders, employees, agents,  
7 attorneys, parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees,  
8 customers, distributors, wholesalers, retailers, and all other upstream and downstream entities and  
9 persons in the distribution chain of any Covered Products, and the predecessors, successors, and  
10 assigns of any of them (collectively, "Released Parties"), from any and all claims and causes of action  
11 and obligations to pay damages, restitution, fines, civil penalties, payment in lieu of civil penalties  
12 and expenses (including but not limited to expert analysis fees, expert fees, attorney's fees and costs)  
13 (collectively, "Claims") arising under, based on, or derivative of Proposition 65 or its implementing  
14 regulations relating to actual or potential exposure to wood dust from the Covered Products and/or  
15 failure to warn about wood dust, as set forth in the Notice of Violations and the Complaint.

16       8.2 Compliance with the terms of this Consent Judgment shall be deemed to constitute  
17 compliance by any Released Party with Proposition 65 regarding alleged exposures to wood dust  
18 from the Covered Products as set forth in the Notice of Violations and the Complaint.

19       8.3 It is possible that other Claims not known to Chamberlin arising out of the facts  
20 alleged in the Notice of Violations or the Complaint and related to wood dust in the Covered Products  
21 that were manufactured, sold or Distributed into California before the Effective Date will develop or  
22 be discovered. Chamberlin, on behalf of herself only, acknowledges that the Claims released herein  
23 include all known and unknown Claims and waives California Civil Code Section 1542 as to any  
24 such unknown Claims. California Civil Code Section 1542 reads as follows:

25       **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**  
26       **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**  
      **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN**  
      **BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER**  
      **SETTLEMENT WITH THE DEBTOR."**



1 Chamberlin, on behalf of herself only, acknowledges and understands the significance and  
2 consequences of this specific waiver of California Civil Code Section 1542.

3  
4 8.4 Chamberlin, on one hand, and GEM Shavings, on the other hand, each release and  
5 waive all Claims they may have against each other for any statements or actions made or undertaken  
6 by them in connection with the Notice of Violations and the Complaint. However, this shall not affect  
7 or limit any Party's right to seek to enforce the terms of this Consent Judgment.

8 **9. CONSTRUCTION AND SEVERABILITY**

9 9.1 The terms and conditions of the Consent Judgment have been reviewed by the  
10 respective counsel for the Parties prior to its signing, and each Party has had an opportunity to fully  
11 discuss the terms and conditions with its counsel. In any subsequent interpretation or construction of  
12 this Consent Judgment, the terms and conditions shall not be construed against any Party.

13 9.2 The provisions of this Consent Judgment shall be governed by and construed in  
14 accordance with the laws of the State of California.

15 **10. PROVISION OF NOTICE**

16 All notices required to be given to either Party to this Consent Judgment by the other shall be  
17 in writing and sent to the following agents listed below by one or more of the following means: (a)  
18 first-class, registered mail, (b) certified mail, (c) overnight courier, or (d) personal delivery:

19 **For Chamberlin:**

20 Melvin B. Pearlston  
21 Robert B. Hancock  
22 PACIFIC JUSTICE CENTER  
23 50 California Street, Suite 1500  
24 San Francisco, California 94111

25 **For GEM Shavings:**

26 Melissa Jones, Esq.  
Stoel Rives LLP  
500 Capitol Mall, Suite 1600  
Sacramento, California 95814

1     **11. COURT APPROVAL**

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

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

8           11.3 If, despite the Parties' best efforts, the Court does not approve this Stipulated Consent  
9 Judgment, it shall be null and void and have no force or effect, and cannot be used in any proceeding  
10 for any purpose.

11     **12. EXECUTION AND COUNTERPARTS**

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

15     **13. ENTIRE AGREEMENT, AUTHORIZATION**

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

21           13.2 Each signatory to this Consent Judgment certifies that he or she is fully authorized by  
22 the Party he or she represents to stipulate to this Consent Judgment. Except as explicitly provided  
23 herein, each Party shall bear its own fees and costs.

24     **14. REQUEST FOR FINDINGS AND FOR APPROVAL**

25           14.1 This Consent Judgment has come before the Court upon request of the Parties. The  
26 Parties request the Court to fully review this Consent Judgment and, being fully informed regarding  
the matters which are the subject of this action, to:

1 (a) Find that the terms and provisions of this Consent Judgment represent a good  
2 faith settlement of all matters raised by the allegations of the Complaint, that the matter has been  
3 diligently prosecuted, and that the public interest is served by such settlement; and

4 (b) Make the findings pursuant to California Health and Safety Code Section  
5 25249.7(f)(4), and approve the Settlement, and this Consent Judgment.

6 14.2 Upon entry of the Consent Judgment, Chamberlin and GEM Shavings waive their  
7 respective rights to a hearing or trial on the allegations of the Complaint.

8  
9  
10 **IT IS SO STIPULATED.**

11  
12 Dated: \_\_\_\_\_

\_\_\_\_\_  
Amy Chamberlin

13  
14 Dated: 5/15/18

\_\_\_\_\_  
GEM Shavings, LLC

15  
16 Name: James M. Murray

17 Its: Managing Member  
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(a) Find that the terms and provisions of this Consent Judgment represent a good faith settlement of all matters raised by the allegations of the Complaint, that the matter has been diligently prosecuted, and that the public interest is served by such settlement; and

(b) Make the findings pursuant to California Health and Safety Code Section 25249.7(f)(4), and approve the Settlement, and this Consent Judgment.

14.2 Upon entry of the Consent Judgment, Chamberlin and GEM Shavings waive their respective rights to a hearing or trial on the allegations of the Complaint.

**IT IS SO STIPULATED.**

Dated: 3/26/2018

  
\_\_\_\_\_  
Arty Chamberlin

Dated: \_\_\_\_\_

GEM Shavings, LLC

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**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:           e12          , 2018.

  
\_\_\_\_\_  
Judge of the Superior Court

HAROLD KAHN

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