

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

MAR 9 2018

CLERK OF THE COURT

BY: [Signature] Deputy Clerk

10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO

12 AMY CHAMBERLIN, in the public interest,

13 Plaintiff,

14 v.

15 PESTELL GROUP; PESTELL PET
16 PRODUCTS LTD.; PESTELL PET
17 PRODUCTS, INC.; and DOES 1 through 500,
18 inclusive,

19 Defendants.

CIVIL ACTION NO: CGC-17-557319

~~PROPOSED~~ STIPULATED CONSENT
JUDGMENT; ~~PROPOSED~~ ORDER

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

~~PROPOSED~~ STIPULATED CONSENT JUDGMENT; ~~PROPOSED~~ ORDER
Chamberlin v. Pestell Group, et al., Civil Action No. CGC-17-557319

1 **1. INTRODUCTION**

2 **1.1** On February 28, 2017, Plaintiff AMY CHAMBERLIN ("Chamberlin") acting on
3 behalf of herself and the general public, filed a Complaint for civil penalties and injunctive relief
4 ("Complaint") in the San Francisco Superior Court, Case No. CGC-17-557319, against defendant
5 PESTELL PET PRODUCTS, INC. ("Defendant" or "Pestell"). 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: EasyClean Pine Animal Bedding and EasyClean Cedar Animal
9 Bedding (hereinafter the "Covered Products.")

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

16 **1.3** Pestell is a corporation employing more than ten persons.

17 **1.4** Chamberlin and Pestell are hereinafter sometimes referred to individually as a "Party"
18 or collectively as the "Parties."

19 **1.5** Pestell manufactures, distributes, and/or sells the Covered Products.

20 **1.6** On or about July 1, 2016, pursuant to California Health and Safety Code Section
21 25249.7(d)(1), Chamberlin served 60-Day Notices of Violations of Proposition 65 ("Notices of
22 Violations") on the California Attorney General, all District Attorneys, and all City Attorneys with
23 populations exceeding 750,000, and Pestell.

24 **1.7** After more than sixty (60) days passed since service of the Notices of Violations, and
25 no designated governmental agency having filed a complaint against Pestell with regard to the
26 Covered Products or the alleged violations, Chamberlin filed the Complaint for injunctive relief and
 civil penalties. The Complaint is based on the allegations in the Notice of Violations.

1 **1.8** The Complaint and the Notices of Violations each allege that Pestell manufactured,
2 distributed, and/or sold in California the Covered Products, which allegedly contains wood dust, a
3 substance listed under Proposition 65 as being known by the State of California to cause cancer,
4 requiring a Proposition 65 warning. Further, the Complaint and Notices of Violations allege that use
5 of the Covered Products expose persons in California to wood dust without first providing clear and
6 reasonable warnings, in violation of California Health and Safety Code Section 25249.6. Pestell
7 generally denies all material and factual allegations of the Notices of Violations and the Complaint,
8 and specifically denies that the Plaintiff or California consumers have been harmed or damaged by its
9 conduct. Pestell and Chamberlin each reserve all rights to allege additional facts, claims, and
10 affirmative defenses if the Court does not approve this Consent Judgment.

11 **1.9** The Parties enter into this Consent Judgment in order to settle, compromise and
12 resolve denied and disputed claims and avoid prolonged and costly litigation. The parties enter into
13 this Consent Judgment pursuant to a full and final settlement of any and all claims between the
14 parties. Nothing in this Consent Judgment, nor compliance with its terms, shall constitute or be
15 construed as an admission by any of the Parties, or by any of their respective officers, directors,
16 shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, suppliers,
17 franchisees, licensees, distributors, wholesalers, or retailers, of any fact, conclusion of law, issue of
18 law, violation of law, fault, wrongdoing, or liability, including without limitation, any admission
19 concerning any alleged violation of Proposition 65. Except as expressly set forth herein, nothing in
20 this Consent Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense the
21 Parties may have in any other or future legal proceeding. Provided, however, nothing in this Section
22 shall affect the enforceability of this Consent Judgment.

23 **1.9** The "Effective Date" of this Consent Judgment shall be the date this Consent
24 Judgment is entered as a Judgment by the Court.
25
26

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

17 **3.2** All Covered Products that have been or will have been produced, distributed, shipped,
18 or sold, or otherwise placed in the stream of commerce through and including the Effective Date of
19 this Consent Judgment are exempt from the provisions of Section 3.1 and 3.3 and are included within
20 the release in Sections 8.1 through 8.4.

21 **3.3 Clear and Reasonable Warnings**

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

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

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 Pestell shall make a total payment of \$51,750, 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 \$12,000 as civil penalties pursuant to California Health and Safety Code Section
24 25249.7(b)(2). Of this amount, \$9,000 shall be payable to the Office of Environmental Health
25 Hazard Assessment ("OEHHA"), and \$3,000 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** \$39,750 payable to Robert B. Hancock as reimbursement of Chamberlin's attorneys'
2 fees, costs, investigation, and litigation expenses ("Attorney's Fees and Costs").

3 **4.5** The foregoing payments shall be made within ten days' entry of this Consent
4 Judgment.

5 **4.6** Any failure by Pestell to remit payment on or before its due date shall be deemed a
6 material breach of the Agreement, entitling Plaintiff to rescind. In such event, the Parties agree to
7 cooperate in taking any and all steps necessary to vacate and/or set aside any Judgment or dismissal
8 entered.

9 **5. MODIFICATION OF CONSENT JUDGMENT**

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

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

2 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate this
3 Consent Judgment.

4 **6.2** Subject to Section 6.3, any Party may, by motion or application for an order to show
5 cause filed with this Court, enforce the terms and conditions contained in this Consent Judgment.
6 The prevailing party in any such motion or application may request that the Court award its
7 reasonable attorneys' fees and costs associated with such motion and application.

8 **6.3** Before Filing a motion or application for an order to show cause, Chamberlin shall
9 provide Pestell with 30 (thirty) days written notice of any alleged violations of the terms and
10 conditions contained in this Consent Judgment. As long as Pestell cures any such alleged violations
11 within the 30-day period (or if any such violation cannot practicably be cured within 30 days, it
12 expeditiously initiates a cure within 30 days and completes it as soon as practicable) and Pestell
13 provides proof to Chamberlin that the alleged violation(s) was the result of good faith mistake or
14 accident, then Pestell shall not be in violation of the Consent Judgment. Pestell shall have the ability
15 to avail itself of the benefits of this Section two (2) times following the Effective Date.

16 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

23 **8.1** This Consent Judgment is a full, final, and binding resolution between Chamberlin, on
24 behalf of herself and in the public interest, and Pestell, of any and all direct or derivative violations
25 (or claimed violations) of Proposition 65 or its implementing regulations for failure to provide
26 Proposition 65 warnings of exposure to wood dust from the handling, use, or consumption of the
 Covered Products and fully resolves all claims that have been or could have been asserted in this

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

13 8.2 Compliance with the terms of this Consent Judgment shall be deemed to constitute
14 compliance by any Released Party with Proposition 65 regarding alleged exposures to wood dust
15 from the Covered Products as set forth in the Notice of Violations and the Complaint.

16 8.3 It is possible that other Claims not known to Chamberlin arising out of the facts
17 alleged in the Notice of Violations or the Complaint and related to wood dust in the Covered Products
18 that were manufactured, sold or Distributed into California before the Effective Date will develop or
19 be discovered. Chamberlin, on behalf of herself only, acknowledges that the Claims released herein
20 include all known and unknown Claims and waives California Civil Code Section 1542 as to any
21 such unknown Claims. California Civil Code Section 1542 reads as follows:

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

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

1 8.4 Chamberlin, on one hand, and Pestell, on the other hand, each release and waive all
2 Claims they may have against each other for any statements or actions made or undertaken by them in
3 connection with the Notice of Violations and the Complaint. However, this shall not affect or limit
4 any Party's right to seek to enforce the terms of this Consent Judgment.

5 **9. CONSTRUCTION AND SEVERABILITY**

6 9.1 The terms and conditions of the Consent Judgment have been reviewed by the
7 respective counsel for the Parties prior to its signing, and each Party has had an opportunity to fully
8 discuss the terms and conditions with its counsel. In any subsequent interpretation or construction of
9 this Consent Judgment, the terms and conditions shall not be construed against any Party.

10 9.2 The provisions of this Consent Judgment shall be governed by and construed in
11 accordance with the laws of the State of California.

12 **10. PROVISION OF NOTICE**

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

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

20 **For Pestell:**
21 Melissa A. Jones
22 STOEL RIVES LLP
23 500 Capitol Mall, Ste. 1600
 Sacramento, CA 95814

24 **11. COURT APPROVAL**

25 11.1 Upon execution of this Consent Judgment by the Parties, Chamberlin shall notice a
26 Motion for Court Approval. The Parties shall use their best efforts to support entry of this Consent
Judgment.

1 **11.2** If the California Attorney General objects to any term in this Consent Judgment, the
2 Parties shall use their best efforts to resolve the concern in a timely manner, and if possible prior to
3 the hearing on the motion.

4 **11.3** If, despite the Parties' best efforts, the Court does not approve this Stipulated Consent
5 Judgment, it shall be null and void and have no force or effect, and cannot be used in any proceeding
6 for any purpose.

7 **12. EXECUTION AND COUNTERPARTS**

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

11 **13. ENTIRE AGREEMENT, AUTHORIZATION**

12 **13.1** This Consent Judgment contains sole and entire agreement and understanding of the
13 Parties with respect to the entire subject matter herein, and any and all prior discussions, negotiations,
14 commitments, and understandings related hereto. No representations, oral or otherwise, express or
15 implied, other than those contained herein have been made by any Party. No other agreements, oral
16 or otherwise, unless specifically referred to herein, shall be deemed to exist or to bind any Party.

17 **13.2** Each signatory to this Consent Judgment certifies that he or she is fully authorized by
18 the Party he or she represents to stipulate to this Consent Judgment. Except as explicitly provided
19 herein, each Party shall bear its own fees and costs.

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

21 **14.1** This Consent Judgment has come before the Court upon request of the Parties. The
22 Parties request the Court to fully review this Consent Judgment and, being fully informed regarding
23 the matters, which are the subject of this action, to:

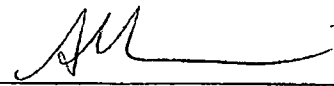
24 (a) Find that the terms and provisions of this Consent Judgment represent a good
25 faith settlement of all matters raised by the allegations of the Complaint, that the matter has been
26 diligently prosecuted, and that the public interest is served by such settlement; and

(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 Pestell waive their respective rights to a hearing or trial on the allegations of the Complaint.

IT IS SO STIPULATED.

Dated: 11/13/2017


Amy Chamberlin

Dated: 1/3/2018

PESTELL PET PRODUCTS, INC.

By: 

Its: PRESIDENT
BOB HEMINGWAY

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: 3/9, 201⁸.

Richard B. Ulmer
Judge of the Superior Court

RICHARD B. ULMER