



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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TEXT JUDGMENT

AMY CHAMBERLAIN VS. PACIFIC COAST FIBER FUELS LLC

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F I L E D

Superior Court of California
County of San Francisco

JAN 26 2018

CLERK OF THE COURT

BY: *Reguelina Alameda*
Deputy Clerk

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*

8
9
10 **SUPERIOR COURT OF CALIFORNIA**

11 **COUNTY OF SAN FRANCISCO**

12 AMY CHAMBERLIN, in the public interest,

13 Plaintiff,

14 v.

15 PACIFIC COAST FIBER FUELS, LLC, a
16 Washington limited liability company, and DOES
17 1 through 500, inclusive,

18 Defendants.

CIVIL ACTION NO:CGC-16-555800

~~[PROPOSED]~~ STIPULATED
19 CONSENT JUDGMENT; ~~[PROPOSED]~~
20 ORDER

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

22 **1. INTRODUCTION**

23 1.1 This Action arises out of alleged violations of California's Safe Drinking Water and
24 Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5 *et seq.*, (also
25 known as and hereinafter referred to as "Proposition 65") regarding the following products: "Sierra
26 Supreme Wood Pellets," "Olympus Wood Pellets," and "Cascade Wood Pellets" (the "Products").
(hereinafter, collectively the "Covered Products").

1 **1.2** Plaintiff AMY CHAMBERLIN (“Chamberlin”) is a California resident acting as a
2 private enforcer of Proposition 65. Chamberlin alleges that she brings this Action in the public
3 interest pursuant to California Health and Safety Code Section 25249.5, *et seq.*, asserts that she is
4 dedicated to, among other causes, helping safeguard the public from health hazards by reducing the
5 use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and
6 employees, and encouraging corporate responsibility.
7

8 **1.3** Defendant Pacific Coast Fiber Fuels, LLC, is a Washington limited liability company,
9 herein after referred to as “Defendant” or “Pacific Coast.”

10 **1.4** Chamberlin and Pacific Coast are hereinafter sometimes referred to individually as a
11 “Party” or collectively as the “Parties.”

12 **1.5** Pacific Coast distributes and sells the Covered Products.

13 **1.6** On or about August 17, 2016, and not later than August 29, 2016, pursuant to
14 California Health and Safety Code Section 25249.7(d)(1), Chamberlin served 60-Day Notices of
15 Violations of Proposition 65 (“Notices of Violations”) on the California Attorney General, other
16 public enforcers, and Pacific Coast.
17

18 **1.7** After more than sixty (60) days passed since service of the Notices of Violations, and
19 no designated governmental agency having filed a complaint against Pacific Coast with regard to the
20 Covered Products or the alleged violations, Chamberlin filed a complaint (the “Complaint”) for
21 injunctive relief and civil penalties. The Complaint is based on the allegations in the Notice of
22 Violations.
23

24 **1.8** The Complaint and the Notices of Violations each allege that Pacific Coast
25 manufactured, distributed, and/or sold in California the Covered Products, which allegedly contain
26 wood dust, a substance listed under Proposition 65 as being known by the State of California to cause

1 cancer, requiring a Proposition 65 warning. Further, the Complaint and Notices of Violations allege
2 that use of the Covered Products exposes persons in California to wood dust without first providing
3 clear and reasonable warnings, in violation of California Health and Safety Code Section 25249.6.
4 Pacific Coast generally denies all material and factual allegations of the Notices of Violations and the
5 Complaint, and specifically denies that the Plaintiff or California consumers have been harmed or
6 damaged by its conduct. Pacific Coast and Chamberlin each reserve all rights to allege additional
7 facts, claims, and affirmative defenses if the Court does not approve this Consent Judgment.
8

9 **1.9** The Parties enter into this Consent Judgment in order to settle, compromise and
10 resolve disputed claims and avoid prolonged and costly litigation. Nothing in this Consent Judgment,
11 nor compliance with its terms, shall constitute or be construed as an admission by any of the Parties,
12 or by any of their respective officers, directors, shareholders, employees, agents, parent companies,
13 subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, distributors, wholesalers, or
14 retailers, of any fact, conclusion of law, issue of law, violation of law, fault, wrongdoing, or liability,
15 including without limitation, any admission concerning any alleged violation of Proposition 65.
16 Except as expressly set forth herein, nothing in this Consent Judgment shall prejudice, waive, or
17 impair any right, remedy, argument, or defense the Parties may have in any other or future legal
18 proceeding. Provided, however, nothing in this Section shall affect the enforceability of this Consent
19 Judgment.
20

21 **1.10** The "Effective Date" of this Consent Judgment shall be the date this Consent
22 Judgment is entered as a Judgment.
23
24
25
26

1 **2. JURISDICTION AND VENUE**

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

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

6 **3.1** Beginning on the Effective Date, Pacific Coast shall be permanently enjoined from
7 offering for sale to a consumer in California, directly selling to a consumer in California, or
8 “Distributing into California” any of the Covered Products unless the label of the Covered Products
9 contains a proposition 65 compliant warning, consistent with Section 3.4, below. “Distributing into
10 California” means to ship any of the Covered Products to California for sale or to sell any of the
11 Covered Products to a distributor that Pacific Coast knows or has reason to know will sell the
12 Covered Products in California. Provided, however, that Pacific Coast may manufacture or package
13 and sell Covered Products without providing a Proposition 65 compliant warning so long as such
14 products are only for sale to consumers located outside of California and Pacific Coast does not
15 distribute them into California.
16
17

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

23 **3.3 Clear and Reasonable Warnings**

24 For the Covered Products that are subject to the warning requirements of Section 3.1, Pacific
25 Coast shall provide the following warning (“Warning”):
26

1 CALIFORNIA PROPOSITION 65 WARNING: Inhalation of wood dust is known by the
2 State of California to cause cancer. Carbon monoxide, which is a by-product of combustion of this
3 product, is known to the State of California to cause birth defects or other reproductive harm.

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

14 Without limitation as to other forms of warnings, displaying the Warnings that are in Exhibit
15 A hereto, on the outside packaging or container of each unit of the Covered Products is deemed to be
16 a clear and reasonable warning under, and to fully comply with, Health & Safety Section 25249.6 and
17 the implementing regulations at Title 27 California Code of Regulations Section 25601 through
18 25605.2

21 4. SETTLEMENT PAYMENT

22 4.1 Pacific Coast shall make a total payment of \$50,000 within ten business days of the
23 Effective Date, which shall be in full and final satisfaction of any and all civil penalties, payment in
24 lieu of civil penalties, and attorneys' fees and costs.
25
26

1 4.2 The payment will be in the form of four separate checks sent to counsel for Plaintiff,
2 Robert B. Hancock, Pacific Justice Center, 50 California Street, San Francisco, California 94111. The
3 Checks shall be payable to the following parties and the payment shall be apportioned as follows:

4 4.3 \$15,000 as civil penalties pursuant to California Health and Safety Code Section
5 25249.7(b)(1). Of this amount, \$11,250 shall be payable to the Office of Environmental Health
6 Hazard Assessment ("OEHHA"), \$2,500 shall be payable to Chamberlin, and \$1,250 shall be payable
7 to CancerCare, a qualified 501(c)(3) organization dedicated to providing financial aid to cancer
8 patients otherwise unable to afford treatment. (Cal. Health & Safety Code 25249.12(c)(1) & (d)).

9 Chamberlin hereby waives any further statutory entitlement to share in any portion of the civil
10 penalty paid. Chamberlin's counsel will forward the portion of the civil penalty awardable to
11 OEHHA to the agency.
12

13 4.4 \$35,000 payable to Robert B. Hancock as reimbursement of Chamberlin's Attorneys'
14 fees, costs, investigation, and litigation expenses ("Attorney's Fees and Costs").
15

16 4.5 Any failure by Pacific Coast to remit payment on or before its due date shall be
17 deemed a material breach of the Agreement, entitling Plaintiff to rescind. In such event, the Parties
18 agree to cooperate in taking any and all steps necessary to vacate and/or set aside any Judgment or
19 dismissal entered.
20

21 **5. MODIFICATION OF CONSENT JUDGMENT**

22 5.1 This Consent Judgment may be modified only by: (i) Written agreement and
23 stipulation of the Parties and upon having such stipulation entered as a modified Consent Judgment
24 by the Court; or (ii) Upon entry of a modified Judgment by the Court pursuant to a motion by one of
25 the Parties after exhausting the meet and confer process set forth as follows. If either Party requests or
26 initiates a modification, then it shall meet and confer with the other Party in good faith before filing a

1 motion with the Court seeking to modify it. Chamberlin is entitled to reimbursement of all reasonable
2 attorneys' fees and costs regarding the Parties' meet and confer efforts for any modification requested
3 or initiated by Pacific Coast. Similarly, Pacific Coast is entitled to reimbursement of all reasonable
4 attorneys' fees and costs regarding the Parties' meet and confer efforts for any modification requested
5 or initiated by Chamberlin. If, despite their meet and confer efforts, the Parties are unable to reach
6 agreement on any proposed modification the party seeking the modification may file the appropriate
7 motion and the prevailing party on such motion shall be entitled recover its reasonable fees and cost
8 associated with such motion. One basis, but not the exclusive basis, for Pacific Coast to seek a
9 modification of the Consent Judgment is if Proposition 65 is changed, narrowed, limited, or otherwise
10 rendered inapplicable in whole or in part to the Covered Products or wood dust due to legislative
11 change, a change in the implementing regulations, court decisions, or other legal basis.

12
13 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT JUDGMENT**

14 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate this
15 Consent Judgment.

16 **6.2** Subject to Section 6.3, any Party may, by motion or application for an order to show
17 cause filed with this Court, enforce the terms and conditions contained in this Consent Judgment.

18 The prevailing party in any such motion or application may request that the Court award its
19 reasonable attorneys' fees and costs associated with such motion and application.

20 **6.3** Before Filing a motion or application for an order to show cause, Chamberlin shall
21 provide Pacific Coast with 30 (thirty) days written notice of any alleged violations of the terms and
22 conditions contained in this Consent Judgment. As long as Pacific Coast cures any such alleged
23 violations within the 30-day period (or if any such violation cannot practicably be cured within 30
24 days, it expeditiously initiates a cure within 30 days and completes it as soon as practicable) and
25
26

1 Pacific Coast provides proof to Chamberlin that the alleged violation(s) was the result of good faith
2 mistake or accident, then Pacific Coast shall not be in violation of the Consent Judgment. Pacific
3 Coast shall have the ability to avail itself of the benefits of this Section two (2) times following the
4 Effective Date.

5
6 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

13
14 **8.1** This Consent Judgment is a full, final, and binding resolution between Chamberlin, on
15 behalf of herself and in the public interest, and Pacific Coast, of any and all direct or derivative
16 violations (or claimed violations) of Proposition 65 or its implementing regulations for failure to
17 provide Proposition 65 warnings of exposure to wood dust from the handling, use, or consumption of
18 the Covered Products and fully resolves all claims that have been or could have been asserted in this
19 Action up to and including the Effective Date for failure to provide Proposition 65 warnings for the
20 Covered Products regarding wood dust. Chamberlin, on behalf of herself and in the public interest,
21 hereby forever releases and discharges, Pacific Coast and its past and present officers, directors,
22 owners, shareholders, employees, agents, attorneys, parent companies, subsidiaries, divisions,
23 affiliates, suppliers, franchisees, licensees, customers, distributors, wholesalers, retailers, and all other
24 upstream and downstream entities and persons in the distribution chain of any Covered Product, and
25 the predecessors, successors, and assigns of any of them (collectively, "Released Parties"), from any
26

1 and all claims and causes of action and obligations to pay damages, restitution, fines, civil penalties,
2 payment in lieu of civil penalties and expenses (including but not limited to expert analysis fees,
3 expert fees, attorney's fees and costs) (collectively, "Claims") arising under, based on, or derivative
4 of Proposition 65 or its implementing regulations up through the Effective Date relating to actual or
5 potential exposure to wood dust from the Covered Products and/or failure to warn about wood dust,
6 as set forth in the Notice of Violations and the Complaint.
7

8 **8.2** Compliance with the terms of this Consent Judgment shall be deemed to constitute
9 compliance by any Released Party with Proposition 65 regarding alleged exposures to wood dust
10 from the Covered Products as set forth in the Notice of Violations and the Complaint.

11 **8.3** It is possible that other Claims not known to Chamberlin arising out of the facts
12 alleged in the Notice of Violations or the Complaint and related to wood dust in the Covered Products
13 that were manufactured, sold or Distributed into California before the Effective Date will develop or
14 be discovered. Chamberlin, on behalf of herself only, acknowledges that the Claims released herein
15 include all known and unknown Claims and waives California Civil Code Section 1542 as to any
16 such unknown Claims. California Civil Code Section 1542 reads as follows:
17

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

24 Chamberlin, on behalf of herself only, acknowledges and understands the significance and
25 consequences of this specific waiver of California Civil Code Section 1542.
26

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

5
6 **9. CONSTRUCTION AND SEVERABILITY**

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

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

13
14 **10. PROVISION OF NOTICE**

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

18 **For Chamberlin:**
19
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 Pacific Coast:**
26 John Ray Nelson
27 Foster Pepper PLLC
28 618 W. Riverside Ave., Suite 618
29 Spokane, Washington 99201

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

9 11.3 If, despite the Parties' best efforts, the Court does not approve this Stipulated Consent
10 Judgment, it shall be null and void and have no force or effect.

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

16 **13. ENTIRE AGREEMENT, AUTHORIZATION**

17 13.1 This Consent Judgment contains sole and entire agreement and understanding of the
18 Parties with respect to the entire subject matter herein, and any and all prior discussions, negotiations,
19 commitments and understandings related hereto. No representations, oral or otherwise, express or
20 implied, other than those contained herein have been made by any Party. No other agreements, oral or
21 otherwise, unless specifically referred to herein, shall be deemed to exist or to bind any Party.
22

23 13.2 Each signatory to this Consent Judgment certifies that he or she is fully authorized by
24 the Party he or she represents to stipulate to this Consent Judgment. Except as explicitly provided
25 herein, each Party shall bear its own fees and costs.
26

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


2 14.1 This Consent Judgment has come before the Court upon request of the Parties. The
3 Parties request the Court to fully review this Consent Judgment and, being fully informed regarding
4 the matters which are the subject of this action, to:

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



8 (b) Make the findings pursuant to California Health and Safety Code Section
9 25249.7(f)(4), and approve the Settlement, and this Consent Judgment.

10 **IT IS SO STIPULATED.**

11 Dated: 11/28/2017



Amy Chamberlin

12 Dated: 11-28-2017



Pacific Coast Fiber Fuels, LLC
Name: 
Title: 

13 **APPROVED AS TO FORM**

14 Dated: 11/29/17

PACIFIC JUSTICE CENTER
By: 
Robert B. Hancock
Attorneys for Plaintiff
AMY CHAMBERLIN

15 Dated: 11-28-2017

Pacific Coast Fiber Fuels, LLC
Name: 
Title: 

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: Jan. 26, 2016.

Richard B. Ulmer (Ulmer)
Judge of the Superior Court

RICHARD B. ULMER

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