



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

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Case Number: CGC-18-565217

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TEXT JUDGMENT

AMY CHAMBERLIN VS. BIOLITE INC. A DELAWARE CORPORATION ET AL

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MAR 01 2019

CLERK OF THE COURT

BY: [Signature]
Deputy Clerk

1 Melvin B. Pearlston (SBN 54291)
2 Robert B. Hancock (SBN 179439)
3 Elizabeth D. Sonnichsen (SBN 321131)
4 PACIFIC JUSTICE CENTER
5 50 California Street, Suite 1500
6 San Francisco, California 94111
7 Telephone: (415) 310-1940
8 Email: robh@rbhancocklaw.com

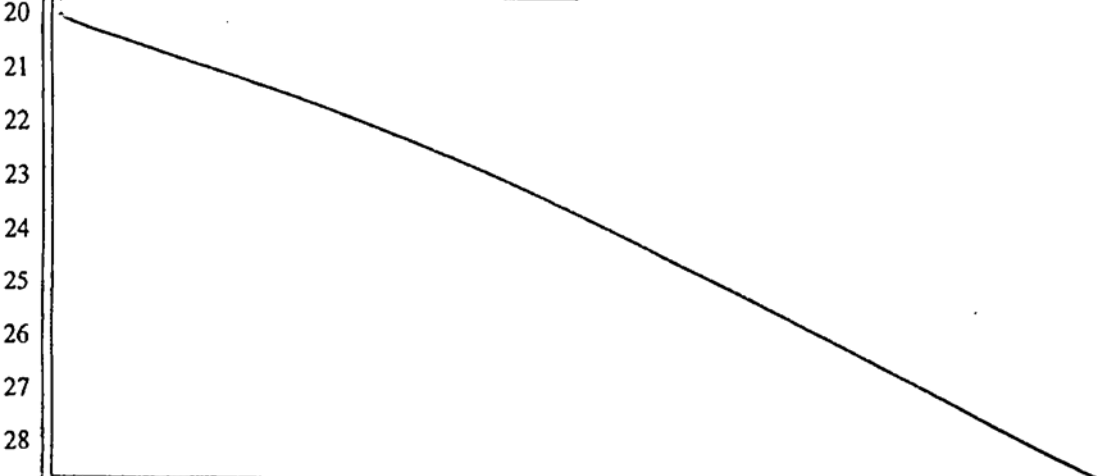
9 Attorneys for Plaintiff
10 **AMY CHAMBERLIN**

11 **SUPERIOR COURT of CALIFORNIA**
12 **COUNTY OF SAN FRANCISCO**

13 AMY CHAMBERLIN, in the public interest,
14 Plaintiff,
15 v.
16 BIOLITE, INC., a Delaware corporation; and
17 DOES 1 through 400 inclusive,
18 Defendants.

CIVIL ACTION NO. CGC-18-565217
**[PROPOSED] STIPULATED CONSENT
JUDGMENT**
[Cal. Health and Safety Code
Sec. 25249.6, *et seq.*]

19
20 [Signature]



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 referred to as "Proposition 65") regarding Defendant BioLite, Inc.'s "BioLite
5 Biofuel Pellets" (hereinafter the "Covered Product"). Plaintiff alleges that the Covered Product
6 exposes consumers in California to Wood Dust. Wood Dust is hereinafter referred to as the "Listed
7 Chemical."

8 **1.2** Plaintiff AMY CHAMBERLIN ("CHAMBERLIN") is a California resident acting
9 as private enforcer of Proposition 65. CHAMBERLIN alleges that she brings this Action in the
10 public interest pursuant to California Health and Safety Code section 25249.5, *et seq.*, asserts that
11 she is dedicated to, among other causes, helping safeguard the public from health hazards by
12 reducing the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for
13 consumers and employees, and encouraging corporate responsibility.

14 **1.3** Defendant BioLite, Inc. is a Delaware corporation ("BIOLITE" or "Defendant").

15 **1.4** CHAMBERLIN and BIOLITE are referred to individually as a "Party" or
16 collectively as the "Parties."

17 **1.5** BIOLITE manufactures, acquires, distributes and/or sells the Covered Product.

18 **1.6** On or about October 3, 2017 and December 1, 2017, pursuant to California Health
19 and Safety Code section 25249.7(d)(1), CHAMBERLIN served 60-Day Notices of Violation of
20 Proposition 65 on the California Attorney General, other public enforcers and BIOLITE alleging
21 that BIOLITE violated Proposition 65 by exposing persons in California to Wood Dust in
22 connection with their use of the Covered Product without first providing a Proposition 65 warning
23 (the "Notice of Violation").

24 **1.7** After more than sixty (60) days passed since service of the Notice of Violation, and
25 no designated governmental agency having filed a complaint against BIOLITE with regard to the
26 Covered Product or the alleged violations, CHAMBERLIN filed a complaint (the "Complaint") for
27 injunctive relief and civil penalties. The Complaint, dated March 23, 2018, is based on the
28 allegations in the Notices of Violation in connection with the Covered Product.

1 **1.8** BIOLITE generally denies all material and factual allegations of the Notice of
2 Violation and the Complaint, and specifically denies that any Proposition 65 Notice is required on
3 the Covered Product beyond the Proposition 65 Notice that has already been provided by BIOLITE,
4 and that Plaintiff or any California consumer have been harmed or damaged by its conduct.
5 BIOLITE and CHAMBERLIN each reserve all rights to allege additional facts, claims, and
6 affirmative defenses if the Court does not approve this Consent Judgment.

7 **1.9** The Parties enter into this Consent Judgment in order to settle, compromise and
8 resolve disputed claims and avoid prolonged and costly litigation. For purposes of the approval of
9 entry of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over the
10 subject matter of this Action and personal jurisdiction over the Parties, that venue is proper in this
11 Court, and that this Court has jurisdiction to enter this Consent Judgment pursuant to the terms set
12 forth herein.

13 **1.10** Nothing in this Consent Judgment, nor compliance with its terms, shall constitute or
14 be construed as an admission by any of the Parties, or by any of their respective officers, directors,
15 shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, suppliers,
16 franchisees, licensees, distributors, wholesalers, or retailers, of any fact, conclusion of law, issue of
17 law, violation of law, fault, wrongdoing, or liability, including without limitation, any admission
18 concerning any alleged violation of Proposition 65. Except as expressly set forth herein, nothing in
19 this Consent Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense the
20 Parties may have in any other or future legal proceeding.

21 **1.11** The "Effective Date" of this Consent Judgment shall be the date this Consent
22 Judgment is entered as a Judgment.

23 **2. JURISDICTION AND VENUE**

24 **2.1** As of the Compliance date (defined below) and except as otherwise provided herein,
25 BIOLITE shall be permanently enjoined from Distributing into California any Covered Products
26 without a warning as set forth in this section. "Distributing into California" or "Distribute into
27 California" means to ship the Covered Product to California for sale or to sell the Covered Product
28 to a distributor that BIOLITE knows will redistribute the Covered Product in or into California.

1 The Parties agree that should OEHHA warning regulations change, BIOLITE may either
2 conform with the OEHHA regulations or conform with the terms provided in this Consent Judgment,
3 and in so doing, will be in compliance with this Consent Judgment.

4 **3. INJUNCTIVE RELIEF AND WARNINGS**

5 **3.1** Beginning on the Effective Date, and except as provided in Section 3.2 below,
6 BIOLITE shall be permanently enjoined from offering for sale to a consumer in California, directly
7 selling to a consumer in California, or Distributing into California the Covered Product, unless the
8 label of the Covered Product contains a Proposition 65 compliant warning, consistent with Section
9 3.2, below.

10 **3.2 Clear and Reasonable Warnings**

11 (A) For the Covered Product that is subject to the warning requirement of Section 3.1,
12 BIOLITE shall provide a Compliant Warning. The Parties agree the following constitutes a
13 clear and reasonable warning:



15 **WARNING:** This product can expose you to chemicals including wood dust, which
16 is known to the State of California to cause cancer. For more information go to
www.P65Warnings.ca.gov/wood.

17 (B) The Warning shall be permanently affixed to or printed on (at the point of
18 manufacture, or distribution, but prior to shipment into California, or prior to distribution within
19 California) the outside packaging or container of each bag of the Covered Product. The Warning
20 shall be displayed with such conspicuousness, as compared with other words, statements, designs
21 or devices on the outside packaging or labeling, as to render it likely be to read and understood by
22 an ordinary individual prior to use. If the Warning is displayed on the product packaging or labeling,
23 the Warning shall be at least the same size as the largest of any other health or safety warnings on
24 the product packaging or labeling, and the word "WARNING" shall be in all capital letters. If printed
25 on the label itself, the Warning shall be contained in the same section of the labeling that states other
26 safety warnings concerning the use of Covered Product, if any.

27 (C) In the event that BIOLITE sells Covered Product via the internet directly to
28 consumers located in California after the Effective Date, BIOLITE shall provide a warning for such

1 Covered Products sold via the internet to such California residents prior to completion of the
2 purchase. A warning that is given on the internet shall be in the same type size or larger than the
3 Covered Product description text and shall appear either: (a) on the same web page on which the
4 Covered Product is displayed; (b) on the same web page as the order form for the Covered Product;
5 (c) on the same page as the price for the Covered Product; or (d) on one or more web pages displayed
6 to a purchaser during the checkout process. The following warning shall be provided:



7 **WARNING:** This product can expose you to chemicals including wood dust, which
8 is known to the State of California to cause cancer. For more information go to
9 www.P65Warnings.ca.gov/wood.

10 (D) Notwithstanding paragraphs (A), (B), and (C) above, if modifications or amendments
11 to Proposition 65 or its regulations adopted after the Effective Date are inconsistent with, or provide
12 warnings specifications or options different from, the specifications in this Agreement, BIOLITE
13 may modify the content and delivery methods of its warnings to conform to the clear and reasonable
14 warning provisions of Proposition 65 or its regulations as modified or amended, and such warnings
15 shall constitute Compliant Warnings under this Agreement.

16 3.3 Sell-Through Period

17 Notwithstanding anything else in this Consent Judgment, the Covered Products that were
18 manufactured prior to sixty (60) days after the Effective Date shall be subject to the release of
19 liability pursuant to Section 8 of this Consent Judgment, without regard to when such Covered
20 Products were, or are in the future, distributed or sold to customers. As a result, the obligation of
21 BIOLITE, or any of its parents, subsidiaries, affiliates, or downstream retailers set forth in this
22 Consent Judgment, including but not limited to Section 3, do not apply to these products
23 manufactured prior to sixty (60) days after the Effective Date.

24 4. REQUIRED MONETARY PAYMENTS

25 4.1 Defendant shall pay \$12,500.00 within ten (10) business days of the Effective Date,
26 which shall be a full and final satisfaction of all civil penalties pursuant to California Health and
27 Safety Code section 25249.7(b)(1). Of this amount, one check shall be payable to the Office of
28 Environmental Health Hazard Assessment ("OEHHHA"), in the sum of \$9,375.00, a second check

1 shall be payable to CHAMBERLIN in the sum of \$2,343.00, and a third check shall be payable to
2 *CancerCare*, a qualified charitable organization in the sum of \$782.00. (Cal. Health & Safety Code
3 section 25249.12(c)(1) and (d)). CHAMBERLIN waives any statutory right to share in the penalties
4 awarded to any further extent. The payment will be in the form of three separate checks sent to
5 counsel for CHAMBERLIN, Robert B. Hancock, Pacific Justice Center, 50 California Street, San
6 Francisco, California 94111.

7 **4.2** Defendant shall pay \$45,000.00 as reimbursement of CHAMBERLIN's attorneys'
8 fees, costs, investigation and litigation expenses ("Attorneys' Fees and Costs") to be paid within ten
9 (10) business days of the Effective Date.

10 **4.3** Any failure by BIOLITE to remit any of the foregoing payments results in a mutual
11 recession of the agreement, as though no resolution had been had. In that event, the parties stipulate
12 to vacating the Consent Judgment, and will cooperate in securing an order for the same.

13 **5. MODIFICATION OF CONSENT JUDGMENT**

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

1 Product or Wood Dust due to legislative change, a change in the implementing regulations, court
2 decisions or other legal 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 or application.

10 **6.3** Before filing a motion or application for an order to show cause, CHAMBERLIN
11 shall provide BIOLITE with thirty (30) days' written notice of any alleged violations of the terms
12 and conditions contained in this Consent Judgment. As long as BIOLITE 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 BIOLITE provides proof to CHAMBERLIN that the alleged violation(s) were the result of good
16 faith mistake or accident, then BIOLITE shall not be in violation of the Consent Judgment. BIOLITE
17 shall have the ability to avail itself of the benefits of this Section two (2) times following the
18 Effective Date.

19 **7. APPLICATION OF CONSENT JUDGMENT**

20 **7.1** This Consent Judgment shall apply to and be binding upon and benefit the Parties
21 and their respective officers, directors, successors, and assigns, including but not limited to their
22 Party Affiliates, and it shall benefit the Parties and their respective officers, directors, shareholders,
23 employees, agents, parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees,
24 licenses, customers, distributors, wholesalers, retailers, predecessors, successors, and assigns,
25 including but not limited to the Downstream Releasees.

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

27 **8.1** This Consent Judgment is a full, final, and binding resolution between
28 CHAMBERLIN, on behalf of herself and in the public interest, and BIOLITE, of any and all direct

1 or derivative violations (or claimed violations) of Proposition 65 or its implementing regulations for
2 failure to provide Proposition 65 warnings of exposure from the handling or use of the Covered
3 Product and fully resolves all claims that have been or could have been asserted in this Action by
4 any person up to and including the Effective Date for failure to provide Proposition 65 warnings for
5 the Covered Product. CHAMBERLIN, on behalf of herself and in the public interest, hereby forever
6 releases and discharges BIOLITE and its past and present officers, directors, owners, shareholders,
7 employees, agents, attorneys, parent companies, subsidiaries, divisions, affiliates, suppliers,
8 franchisees, licensees, customers, distributors, wholesalers, retailers, and all other upstream and
9 downstream entities and persons in the distribution chain of any Covered Product, and the
10 predecessors, successors and assigns of any of them (collectively, "Released Parties"), from any and
11 all claims and causes of action and obligations to pay damages, restitution, fines, civil penalties,
12 payment in lieu of civil penalties and expenses (including but not limited to expert analysis fees,
13 expert fees, attorneys' fees and costs) (collectively, "Claims") arising under, based on, or derivative
14 of Proposition 65 or its implementing regulations up through the Effective Date relating to actual or
15 potential exposure to chemicals known by the State of California to cause cancer, birth defects or
16 other reproductive harm, from the Covered Product and/or failure to warn about Wood Dust, as set
17 forth in the Notices of Violation and the Complaint.

18 **8.2** Compliance with the terms of this Consent Judgment shall be deemed to constitute
19 compliance by any Released Party with Proposition 65 regarding alleged exposures from the
20 Covered Product as described above or set forth in the Notice of Violations and the Complaint.

21 **8.3** It is possible that other Claims not known to CHAMBERLIN arising out of the facts
22 alleged in the Notice of Violations or the Complaint and relating to the Covered Product that were
23 manufactured, sold or distributed into California before the Effective Date will develop or be
24 discovered. CHAMBERLIN, on behalf of herself only, acknowledges that the Claims released
25 herein include all known and unknown Claims and waives California Civil Code section 1542 as to
26 any such unknown Claims. California Civil Code section 1542 reads as follows:

27 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
28 **WHICH THE 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

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**OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
HER 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.

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

9. CONSTRUCTION AND SEVERABILITY

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

9.2 In the event that any of the provisions of this Consent Judgment are held by a court to be unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

9.3 The terms and conditions of this Consent Judgment shall be governed by and construed in accordance with the laws of the State of California.

10. PROVISION OF NOTICE

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

For Amy Chamberlin:

Melvin B. Pearlston
Robert B. Hancock
PACIFIC JUSTICE CENTER
50 California Street, Suite 1500
San Francisco, California 94111

1 **For BioLite, Inc.:**

2 Nelson Lam
3 George Gigounas
4 DLA PIPER LLP
5 555 Mission Street, Suite 2400
6 San Francisco, California 94105

6 **11. COURT APPROVAL**

7 **11.1** Upon execution of this Consent Judgment by the Parties, CHAMBERLIN shall
8 notice a Motion for Court Approval. The Parties shall use their best efforts to support entry of this
9 Consent Judgment.

10 **11.2** If the California Attorney General objects to any term in this Consent Judgment, the
11 Parties shall use their best efforts to resolve the concern in a timely manner, and if possible prior to
12 the hearing on the motion.

13 **11.3** If, despite the Parties' best efforts, the Court does not approve this Stipulated Consent
14 Judgment, it shall be null and void and have no force or effect.

15 **12. EXECUTION AND COUNTERPARTS**

16 **12.1** This Stipulated Consent Judgment may be executed in counterparts, which taken
17 together shall be deemed one document. A facsimile or electronic signature shall be construed as
18 valid as the original signature.

19 **13. ENTIRE AGREEMENT, AUTHORIZATION**

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

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

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

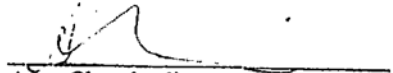
2 **14.1** This Consent Judgment has come before the Court upon the request of the Parties.
3 The Parties request the Court to fully review this Consent Judgment and, being fully informed
4 regarding the matters which are the subject of this action, to:

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
7 diligently 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
11 **IT IS SO STIPULATED.**

12
13 Dated: 12/12/2018


14 Amy Chamberlin

15
16 Dated: Nov 29, 2018

BIOLITE INCORPORATED

17
18 By: Tarathon Cole

19 Its: CEO

20
21
22 APPROVED AS TO FORM:

23
24 Dated: 12/14/18

PACIFIC JUSTICE CENTER


25
26 By: R.B. Hancock

27 Robert B. Hancock
28 Attorneys for Plaintiff
Amy CHAMBERLIN

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Dated: Nov 29, 2018

DLA PIPER LLP

By: 
Nelson P. Lam
Attorneys for Defendant
BioLite, 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: 5/1/19, 2019

Richard Bluf
Judge of the Superior Court

RICHARD ULMER