

SETTLEMENT AGREEMENT

BETWEEN AMY CHAMBERLIN AND MALLARD CREEK, INC.

1. RECITALS

1.1 The Parties

This Settlement Agreement (“Settlement”) is entered into by and between Amy Chamberlin (“Ms. Chamberlin”) and Mallard Creek, Inc. (“Mallard Creek”). Ms. Chamberlin and Mallard Creek shall hereinafter collectively be referred to as the “Parties.”

Ms. Chamberlin is a citizen of the State of California with an interest in improving human health and the health of ecosystems, and supporting environmentally sound practices, which includes promoting awareness of exposure to toxic chemicals and substances and reducing exposure to hazardous substances found in consumer products. Mallard Cree is a person in the course of doing business as the term is defined in California Health & Safety Code Section 25249.6 *et seq.* (“Proposition 65”).

1.2 Allegations

Ms. Chamberlin alleges Mallard Creek manufactured, distributed, supplied, and/or sold a certain wood-based product, specifically “Mallard Creek Classic Mix” (“the Covered Product”) for use by individuals, causing users in California to be exposed to wood dust without providing “clear and reasonable warnings,” in violation of Proposition 65. Wood dust (the “Listed Substance”) is subject to Proposition 65 warning requirements because it is listed as known to the State of California to cause cancer.

On April 23, 2015, a sixty-day notice of violation, along with a Certificate of Merit, was provided by Ms. Chamberlin to Mallard Creek and various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Covered Product.

1.3 No Admissions

Mallard Creek denies all allegations in Ms. Chamberlin's 60-Day Notice and maintains that the Covered Product has been, and is, in compliance with all laws, and that Mallard Creek has not violated Proposition 65, and maintains that at all times material has conducted and maintained an appropriate warning program in connection with the Covered Product. This Settlement shall not be construed as an admission of liability by Mallard Creek but as a compromise of claims that are expressly contested and denied. However, nothing in this section shall affect the Parties' obligations, duties, and responsibilities under this Settlement.

1.4 Compromise

The Parties enter into this Settlement in order to resolve the controversy described above and avoid prolonged and costly litigation between them.

1.5 Effective Date

The "Effective Date" shall be the date ten days from which this Settlement is signed by both Parties and delivered to each Party.

2. INJUNCTIVE BELIEF

2.1 Warning Obligations for Covered Product

After the Effective Date, Mallard Creek shall not manufacture, decorate, import, distribute or offer for use or sale any Covered Product containing the Listed Substance for distribution, sale or use in California, unless a clear and reasonable warning is given in a manner consistent with the method and language set forth in Section 2.2.

2.2 Manner of Providing Warning

For the Covered Product, Mallard Creek shall provide the warning language depicted in

the attachment hereto as Exhibit A. The Warning shall be permanently affixed to or printed on (at the point of manufacture, prior to shipment to California, or prior to distribution within California) the outside packaging or container of each unit of the Covered Products. The Warning shall be displayed with such conspicuousness, as compared with other words, statements designs or devices on the outside packaging or labeling, as to render it likely to be read and understood by an ordinary individual prior to use. If the Warning is displayed on the product container or labeling, the Warning shall be at least the same size as the largest of any other health or safety warnings on the product container or labeling, and the word "WARNING" shall be in all capital letters. The Parties agree, and in particular, Plaintiff agrees and acknowledges, that the depiction attached as Exhibit A conforms to the requirements of this paragraph and satisfies the requirements of Proposition 65 with respect to the Covered Product.

3. PAYMENTS

3.1 Civil Penalty Pursuant To Proposition 65

In settlement of all claims referred to in this Settlement, Mallard Creek shall pay a total civil penalty of \$5,000 to be apportioned in accordance with Health and Safety Code section 25249.12(c)(1) and (d), with 75% paid to State of California Office of Environmental Health Hazard Assessment, and the remaining 25% paid to Ms. Chamberlin.

Mallard Creek shall issue two (2) checks for the civil penalty: (1) a check or money order made payable to "Office of Environmental Health Hazard Assessment" in the amount of \$3,750.00 and (2) a check or money order made payable to "Erika Chamberlin" in the amount of \$1,250.00. Mallard Creek shall remit the two foregoing payments within five (5) business days of the signing of this Agreement, to:

Pacific Justice Center
ATTN: Robert B. Hancock, Esq.

50 California Street, Suite 1500
San Francisco, CA 94111

3.2 Payment of Attorneys' Fees And Expenses

Mallard Creek shall pay Chamberlin's attorney's fees and expenses incurred in prosecuting the instant action, in the total amount of \$35,000. Accordingly, Mallard Creek shall issue a check or money order made payable to "Robert B. Hancock" in the amount of \$15,000, and a second check payable to "Robert B. Hancock" in the amount of \$20,000. Mallard Creek shall remit the foregoing two payments within five (5) and sixty-five (65) days, respectively, of the signing of this Agreement to:

Pacific Justice Center
ATTN: Robert B. Hancock, Esq.
50 California Street, Suite 1500
San Francisco, CA 94111

4. RELEASES

4.1 Ms. Chamberlin's Release Of Mallard Creek

Ms. Chamberlin, acting in her individual capacity, her past and current agents, representatives, attorneys, successors, and/or assignees, in consideration of the promises and monetary payments contained herein, hereby releases Mallard Creek, its parents, subsidiaries, shareholders, directors, members, officers, employees, downstream distributors, retailers, agents, attorneys, affiliates, managers, wholesalers, customers, franchisees and licensees from the claims asserted in Ms. Chamberlin's 60-Day Notice dated April 23, 2015 regarding violation of Proposition 65 with respect to the Covered Product.

4.2 Mallard Creek's Release Of Ms. Chamberlin

Mallard Creek, by this Settlement, waives all rights to institute any form of legal action against Ms. Chamberlin, her past and current agents, representatives, attorneys, experts,

successors, and/or assignees, for actions or statements made or undertaken, whether in the course of investigating claims or seeking enforcement of Proposition 65 against Mallard Creek in this matter.

4.3 Waiver Of Unknown Claims

Each of the Parties acknowledges that they are familiar with Section 1542 of California Civil Code which provides as follows:

A general release does not extend to claims 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 or her must have materially affected his or her settlement with the debtor.

Each of the parties waives and relinquishes any right or benefit it has or may have under California Civil Code Section 1542 of or any similar provision under the statutory or non statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights and benefits pertaining to the claims in this Settlement. The Parties acknowledge that each may subsequently discover facts in addition to, or different from, those that it believes to be true with respect to the claims released herein. The Parties agree that this Settlement and the releases contained herein shall be and remain effective in all respects notwithstanding the discovery of such additional or different facts.

5. SEVERABILITY

Should any non-material part or provision of this Settlement for any reason be declared by a Court to be invalid, void, unenforceable, or against law or public policy, the remaining portions and provisions shall continue in full force and effect.

6. GOVERNING LAW

The terms of this Settlement shall be governed by the laws of the State of California.

7. INTEGRATION

This Settlement constitutes the entire agreement between the parties with respect to the subject matter hereof and may not be amended or modified except in writing executed by both Parties.

8. COUNTERPARTS

This Settlement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute the same document. Execution and delivery of this Settlement by e-mail, facsimile, or other electronic means shall constitute legal and binding execution and delivery. Any photocopy of the executed Settlement shall have the same force and effect as the originals.

9. AUTHORIZATION

The undersigned are authorized to execute this Settlement on behalf of their respective Party. Each Party has read, understood, and agrees to all of the terms and conditions of this Settlement. Each Party warrants to the other that it is free to enter into this Settlement and not subject to any conflicting obligation which will or might prevent or interfere with the execution or performance of this Settlement by said Party.

10. NOTICE TO ATTORNEY GENERAL

Plaintiff agrees to comply with all obligations to notify public enforcement authorities of this Settlement, including, without limitation, all obligations to notify the California Attorney General pursuant to California Health and Safety Code section 25249.7(f).

11. ENFORCEMENT


In the event of any litigation arising out of any dispute related to the enforcement or interpretation of this Settlement, the prevailing party thereon shall be entitled to an award of

reasonable attorneys' fees and costs.

AGREED: Mallard Creek, Inc.


Date: 3-24-17

By: Scott Lonnelly

Its: 

AGREED:

Date: 3/15/2017


Amy Chamberlin