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10 **SUPERIOR COURT OF CALIFORNIA**

11 **COUNTY OF SAN FRANCISCO**

12 ERIKA MCCARTNEY, in the public interest,

13 Plaintiff,

14 v.

15 LIGNETICS OF VIRGINIA, INC.;
LIGNETICS OF WEST VIRGINIA, INC.;
16 LIGNETICS OF IDAHO, INC.; a Washington
limited liability company, and DOES 1 through
17 500, inclusive,

18 Defendants.
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CIVIL ACTION NO: CGC-15-544874

**[PROPOSED] STIPULATED CONSENT
JUDGMENT; [PROPOSED] ORDER**

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

1 **1. INTRODUCTION**

2 **1.1** This Action arises out of alleged violations of California’s Safe Drinking Water and
3 Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5 *et seq.*, (also
4 known as and hereinafter referred to as “Proposition 65”) regarding the following products: Lignetics
5 Premium Quality Wood Pellet Fuel; Lignetics Pres-to Logs Wood Fuel Pellets (all shapes and types);
6 Lignetics Pres-to Logs Wood Fire Starters (all types); Lignetics Pres-to Logs Wood BBQ Pellets (all
7 types), EZ Equine Animal bedding pellets and shavings (all types) (hereinafter, collectively the
8 “Covered Products.”)

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

15 **1.3** Defendants Lignetics, Inc.; Lignetics of Virginia, Inc., Lignetics of West Virginia, Inc.
16 and Lignetics of Idaho, Inc., are related entities. Defendants herein after referred to as “Defendants”
17 or “Lignetics.”

18 **1.4** McCartney and Lignetics are hereinafter sometimes referred to individually as a
19 “Party” or collectively as the “Parties.”

20 **1.5** Lignetics manufactures, distributes and sells the Covered Products.

21 **1.6** On or about October 1, 2014, June 2, 2015 and December 6, 2016, pursuant to
22 California Health and Safety Code Section 25249.7(d)(1), McCartney served 60-Day Notices of
23 Violations of Proposition 65 (“Notices of Violations”) on the California Attorney General, other
24 public enforcers, and Lignetics.

25 **1.7** After more than sixty (60) days passed since service of the Notices of Violations, and
26 no designated governmental agency having filed a complaint against Lignetics with regard to the
Covered Products or the alleged violations, McCartney filed a complaint (the “Complaint”) for

1 injunctive relief and civil penalties. The Complaint is based on the allegations in the Notice of
2 Violations.

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

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

24 **1.10** The “Effective Date” of this Consent Judgment shall be the date this Consent
25 Judgment is entered as a Judgment.
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1 **2. JURISDICTION AND VENUE**

2 The Parties stipulate that this Court has jurisdiction over the subject matter of this Action and
3 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, Lignetics 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 Lignetics knows or has reason to know will sell the Covered
12 Products in California. Provided, however, that Lignetics may manufacture or package and sell
13 Covered Products without providing a Proposition 65 compliant warning so long as such products are
14 only for sale to consumers located outside of California and Lignetics does not distribute them into
15 California.

16 **3.2** All Covered Products that have been or will have been produced, distributed, shipped,
17 or sold, or otherwise placed in the stream of commerce through and including the Effective Date of
18 this Consent Judgment are exempt from the provisions of Section 3.1 and 3.3 and are included within
19 the release in Sections 8.1 through 8.4.

20 **3.3 Clear and Reasonable Warnings**

21 For the Covered Products that are subject to the warning requirements of Section 3.1,
22 Lignetics shall provide the following warning (“Warning”):

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

26 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

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

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

14 **4. SETTLEMENT PAYMENT**

15 **4.1** Lignetics shall make a total payment of \$61,000 within ten business days of the
16 Effective Date, which shall be in full and final satisfaction of any and all civil penalties, payment in
17 lieu of civil penalties, and attorneys’ fees and costs.

18 **4.2** The payment will be in the form of four separate checks sent to counsel for Plaintiff,
19 Robert B. Hancock, Pacific Justice Center, 50 California Street, San Francisco, California 94111.
20 The Checks shall be payable to the following parties and the payment shall be apportioned as follows:

21 **4.3** \$18,500 as civil penalties pursuant to California Health and Safety Code Section
22 25249.7(b)(1). Of this amount, \$13,875 shall be payable to the Office of Environmental Health
23 Hazard Assessment (“OEHHA”), \$3,000 shall be payable to McCartney, and \$1,625 shall be payable
24 to CancerCare, a qualified 501(c)(3) charitable organization. (Cal. Health & Safety Code
25 25249.12(c)(1) & (d)). McCartney’s counsel will forward all remittances. McCartney hereby waives
26 any entitlement to civil penalties in excess of \$3,000.

1 **4.4** \$42,500 payable to Pacific Justice Center as reimbursement of McCartney’s
2 Attorneys’ fees, costs, investigation, and litigation expenses (“Attorney’s Fees and Costs”).

3 **4.5** Any failure by Lignetics to remit payment on or before its due date shall be deemed a
4 material breach of the Agreement, entitling Plaintiff to rescind. In such event, the Parties agree to
5 cooperate in taking any and all steps necessary to vacate and/or set aside any Judgment or dismissal
6 entered.

7 **5. MODIFICATION OF CONSENT JUDGMENT**

8 **5.1** This Consent Judgment may be modified only by: (i) Written agreement and
9 stipulation of the Parties and upon having such stipulation entered as a modified Consent Judgment
10 by the Court; or (ii) Upon entry of a modified Judgment by the Court pursuant to a motion by one of
11 the Parties after exhausting the meet and confer process set forth as follows. If either Party requests or
12 initiates a modification, then it shall meet and confer with the other Party in good faith before filing a
13 motion with the Court seeking to modify it. McCartney is entitled to reimbursement of all reasonable
14 attorneys’ fees and costs regarding the Parties’ meet and confer efforts for any modification requested
15 or initiated by Lignetics. Similarly, Lignetics is entitled to reimbursement of all reasonable attorneys’
16 fees and costs regarding the Parties’ meet and confer efforts for any modification requested or
17 initiated by McCartney. If, despite their meet and confer efforts, the Parties are unable to reach
18 agreement on any proposed modification the party seeking the modification may file the appropriate
19 motion and the prevailing party on such motion shall be entitled recover its reasonable fees and cost
20 associated with such motion. One basis, but not the exclusive basis, for Lignetics to seek a
21 modification of the Consent Judgment is if Proposition 65 is changed, narrowed, limited, or otherwise
22 rendered inapplicable in whole or in part to the Covered Products or wood dust due to legislative
23 change, a change in the implementing regulations, court decisions, or other legal basis.

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

25 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate this
26 Consent Judgment.

1 **6.2** Subject to Section 6.3, any Party may, by motion or application for an order to show
2 cause filed with this Court, enforce the terms and conditions contained in this Consent Judgment.
3 The prevailing party in any such motion or application may request that the Court award its
4 reasonable attorneys’ fees and costs associated with such motion and application.

5 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

12 **8.1** This Consent Judgment is a full, final, and binding resolution between McCartney, on
13 behalf of herself and in the public interest, and Lignetics, of any and all direct or derivative violations
14 (or claimed violations) of Proposition 65 or its implementing regulations for failure to provide
15 Proposition 65 warnings of exposure to wood dust from the handling, use, or consumption of the
16 Covered Products and fully resolves all claims that have been or could have been asserted in this
17 Action up to and including the Effective Date for failure to provide Proposition 65 warnings for the
18 Covered Products regarding wood dust. McCartney, on behalf of herself and in the public interest,
19 hereby forever releases and discharges, Lignetics and its past and present officers, directors, owners,
20 shareholders, employees, agents, attorneys, parent companies, subsidiaries, divisions, affiliates,
21 suppliers, franchisees, licensees, customers, distributors, wholesalers, retailers, and all other upstream
22 and downstream entities and persons in the distribution chain of any Covered Product, and the
23 predecessors, successors, and assigns of any of them (collectively, “Released Parties”), from any and
24 all claims and causes of action and obligations to pay damages, restitution, fines, civil penalties,
25 payment in lieu of civil penalties and expenses (including but not limited to expert analysis fees,
26 expert fees, attorney’s fees and costs) (collectively, “Claims”) arising under, based on, or derivative
of Proposition 65 or its implementing regulations up through the Effective Date relating to actual or

1 potential exposure to wood dust from the Covered Products and/or failure to warn about wood dust,
2 as set forth in the Notice of Violations and the Complaint.

3 **8.2** Compliance with the terms of this Consent Judgment shall be deemed to constitute
4 compliance by any Released Party with Proposition 65 regarding alleged exposures to wood dust
5 from the Covered Products as set forth in the Notice of Violations and the Complaint.

6 **8.3** It is possible that other Claims not known to McCartney arising out of the facts alleged
7 in the Notice of Violations or the Complaint and related to wood dust in the Covered Products that
8 were manufactured, sold or Distributed into California before the Effective Date will develop or be
9 discovered. McCartney, on behalf of herself only, acknowledges that the Claims released herein
10 include all known and unknown Claims and waives California Civil Code Section 1542 as to any
11 such unknown Claims. California Civil Code Section 1542 reads as follows:

12 **“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
13 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
14 **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN**
15 **BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER**
16 **SETTLEMENT WITH THE DEBTOR.”**

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

19 **8.4** McCartney, on one hand, and Lignetics, on the other hand, each release and waive all
20 Claims they may have against each other for any statements or actions made or undertaken by them in
21 connection with the Notice of Violations and the Complaint. However, this shall not affect or limit
22 any Party’s right to seek to enforce the terms of this Consent Judgment.

23 **9. CONSTRUCTION AND SEVERABILITY**

24 **9.1** The terms and conditions of the Consent Judgment have been reviewed by the
25 respective counsel for the Parties prior to its signing, and each Party has had an opportunity to fully
26 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.

1 **9.2** The provisions of this Consent Judgment shall be governed by and construed in
2 accordance with the laws of the State of California.

3 **10. PROVISION OF NOTICE**

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

7 **For McCartney:**

8 Melvin B. Pearlston
9 Robert B. Hancock
10 PACIFIC JUSTICE CENTER
11 50 California Street, Suite 1500
12 San Francisco, California 94111

13 **For Lignetics:**

14 Caroline Asimakopoulos
15 Chief Financial Officer, Lignetics
16 1075 E South Boulder Rd Ste 210
17 Louisville, CO 800027

18 William F. Tarantino
19 Morrison & Forster LLP
20 425 Market Street
21 San Francisco, California 94105-2482

22 **11. COURT APPROVAL**

23 **11.1** Upon execution of this Consent Judgment by the Parties, McCartney shall notice a
24 Motion for Court Approval. The Parties shall use their best efforts to support entry of this Consent
25 Judgment.

26 **11.2** If the California Attorney General objects to any term in this Consent Judgment, the
Parties shall use their best efforts to resolve the concern in a timely manner, and if possible prior to
the hearing on the motion.

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

1 **12. EXECUTION AND COUNTERPARTS**

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

5 **13. ENTIRE AGREEMENT, AUTHORIZATION**

6 **13.1** This Consent Judgment contains sole and entire agreement and understanding of the
7 Parties with respect to the entire subject matter herein, and any and all prior discussions, negotiations,
8 commitments and understandings related hereto. No representations, oral or otherwise, express or
9 implied, other than those contained herein have been made by any Party. No other agreements, oral or
10 otherwise, unless specifically referred to herein, shall be deemed to exist or to bind any Party.

11 **13.2** Each signatory to this Consent Judgment certifies that he or she is fully authorized by
12 the Party he or she represents to stipulate to this Consent Judgment. Except as explicitly provided
13 herein, each Party shall bear its own fees and costs.

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

15 **14.1** This Consent Judgment has come before the Court upon request of the Parties. The
16 Parties request the Court to fully review this Consent Judgment and, being fully informed regarding
17 the matters which are the subject of this action, to:

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

21 (b) Make the findings pursuant to California Health and Safety Code Section
22 25249.7(f)(4), and approve the Settlement, and this Consent Judgment.

23 **IT IS SO STIPULATED.**

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26 Dated: _____ 11/04/2017 _____



Erika McCartney

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Dated: 11/6/17

Lignetics, Inc.

By: Carolina Osimokoya

Its: CFO

Dated: 11/6/17

Lignetics of Virginia, Inc.

By: Carolina Osimokoya

Its: CFO

Dated: 11/6/17

Lignetics of West Virginia, Inc.

By: Carolina Osimokoya

Its: CFO

Dated: 11/6/17

Lignetics of Idaho, Inc.

By: Carolina Osimokoya

Its: CFO

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: _____, 2017.

Judge of the Superior Court