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9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 AMY CHAMBERLIN, in the public interest,)
12 Plaintiff,)
13 v.)
14 ALFA-PET, INC., a Delaware corporation; and)
15 DOES 1 through 500, inclusive,)
16 Defendants.)
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CIVIL ACTION NO. RG16824916

**[PROPOSED] STIPULATED CONSENT
JUDGMENT**

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

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 hereinafter referred to as “Proposition 65”) regarding the Defendant’s “Alfa-
5 Pet Aspen Animal Bedding” and “Alfa-Pet Cedar Animal Bedding” (the “Covered Products.”)

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

12 **1.3** Alfa-Pet, Inc., is a Delaware corporation, hereinafter referred to as “Defendant” or
13 “Alfa-Pet.”

14 **1.4** Chamberlin and Alfa-Pet are hereinafter sometimes referred to individually as a
15 “Party” or collectively as the “Parties.”

16 **1.5** Alfa-Pet acquires, distributes and/or sells the Covered Products.

17 **1.6** On or about June 24, 2016, pursuant to California Health and Safety Code section
18 25249.7(d)(1), Chamberlin served a 60-Day Notice of Violation of Proposition 65 on the
19 California Attorney General, other public enforcers and Alfa-Pet alleging that Alfa-Pet violated
20 Proposition 65 by exposing persons in California to wood dust in connection with the use of the
21 Covered Products without first providing a Proposition 65 warning.

22 **1.7** After more than sixty (60) days passed since service of the Notices of Violation,
23 and no designated governmental agency having filed a complaint against Alfa-Pet with regard to
24 the Covered Products or the alleged violations, Chamberlin filed a complaint (the “Complaint”)
25 for injunctive relief and civil penalties. The Complaint, dated August 31, 2016, is based on the
26 allegations in the Notice of Violation.

27 **1.8** The Complaint alleges that Alfa-Pet manufactured, distributed, and/or sold in
28 California the Covered Products, which allegedly contain wood dust, a substance listed under

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

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

20 **1.10** The “Effective Date” of this Consent Judgment shall be the date this Consent
21 Judgment is entered as a Judgment.

22 **2. JURISDICTION AND VENUE**

23 **2.1** The Parties stipulate that this Court has jurisdiction over the subject matter of this
24 Action and personal jurisdiction over the Parties, that venue is proper in this Court, and that this
25 Court has jurisdiction to enter this Consent Judgment pursuant to the terms set forth herein.

26 **3. INJUNCTIVE RELIEF AND WARNINGS**

27 **3.1** Beginning on the Effective Date, and except as provided in Section 3.2 below,
28 Alfa-Pet shall be permanently enjoined from offering for sale to a consumer in California, directly

1 selling to a consumer in California, or “Distributing into California” any of the Covered Products,
2 unless the label of the Covered Products contains a Proposition 65 compliant warning, consistent
3 with Section 3.3, below. “Distribution into California” means to ship any of the Covered Products
4 to California for sale by others. Provided, however, that Alfa-Pet may manufacture or package
5 and sell Covered Products without providing a Proposition 65 compliant warning so long as such
6 products are only for sale to distributors located outside of California or Alfa-Pet does not
7 Distribute them into California.

8 **3.2** All Covered Products that have been or will have been produced, distributed,
9 shipped, or sold, or otherwise placed in the stream of commerce through and including 60 days
10 after the Effective Date of this Consent Judgment are exempt from the provisions of Sections 3.1
11 and 3.3 and are included within the release in Sections 8.1 through 8.4.

12 **3.3 Clear and Reasonable Warnings**

13 (A) For the Covered Products that are subject to the warning requirement of Section
14 3.1, Alfa-Pet shall provide a Compliant Warning. The Parties agree the following constitutes a
15 clear and reasonable warning:

16 **WARNING:**
17 This product contains wood dust,
18 a substance known to the State of California
19 to cause cancer.

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

1 Parties acknowledge that Alfa-Pet is currently utilizing a warning in connection with the Covered
2 Products. That warning is attached hereto as Exhibit A and is agreed to satisfy the warning
3 obligation.

4 (C) Notwithstanding paragraphs (A) and (B) above, if modifications or amendments to
5 Proposition 65 or its regulations adopted after the Effective Date are inconsistent with, or provide
6 warnings specifications or options different from, the specifications in this Agreement, Alfa-Pet
7 may modify the content and delivery methods of its warnings to conform to the clear and
8 reasonable warning provisions of Proposition 65 or its regulations as modified or amended, and
9 such warnings shall constitute Compliant Warnings under this Agreement.

10 **4. SETTLEMENT PAYMENT**

11 **4.1** Alfa-Pet shall make total payments of \$57,500.00. The payments shall be within
12 ten days of the Effective Date. The payments shall be in full and final satisfaction of any and all
13 civil penalties, payment in lieu of civil penalties, and attorneys' fees and costs.

14 **4.2** The payment shall be in the form of three separate checks sent to counsel for
15 Plaintiff, Robert B. Hancock, Pacific Justice Center, 50 California Street, San Francisco,
16 California 94111. The checks shall be payable to the following parties and the payment shall be
17 apportioned as follows:

18 **4.3** An aggregate of \$17,500.00 as civil penalties pursuant to California Health and
19 Safety Code section 25249.7(b)(1). Of this amount, one check shall be payable to the Office of
20 Environmental Health Hazard Assessment ("OEHHA"), in the sum of \$13,125.00 and a second
21 check shall be payable to Chamberlin in the sum of \$4,375.00. (Cal. Health & Safety Code
22 section 25249.12(c)(1) and (d)). Chamberlin's counsel will forward the civil penalty to OEHHA.

23 **4.4** The third check shall be for \$40,000.00 payable to Robert B. Hancock as
24 reimbursement of Chamberlin's attorneys' fees, costs, investigation and litigation expenses
25 ("Attorneys' Fees and Costs").

26 **4.5** Any failure by Alfa-Pet to remit payments on or before its due date shall be deemed
27 a material breach of this Agreement, entitling Plaintiff to rescind. In such event, the Parties agree
28

1 to cooperate in taking any and all steps necessary to vacate and/or set aside any Judgment or
2 dismissal entered, and this Agreement and the Consent Judgment shall be deemed null, void and
3 not admissible at trial in this proceeding.

4 **5. MODIFICATION OF CONSENT JUDGMENT**

5 **5.1** This Consent Judgment may be modified only by: (i) Written agreement and
6 stipulation of the Parties and upon having such stipulation entered as a modified Consent
7 Judgment by the Court; or (ii) upon entry of a modified Judgment by the Court pursuant to a
8 motion by one of the Parties after exhausting the meet and confer process set forth as follows. If
9 either Party requests or initiates a modification, then it shall meet and confer with the other Party
10 in good faith before filing a motion with the Court seeking to modify it. Chamberlin is entitled to
11 reimbursement of all reasonable attorneys' fees and costs regarding the Parties' meet and confer
12 efforts for any modification requested or initiated by Alfa-Pet. Similarly, Alfa-Pet is entitled to
13 reimbursement of all reasonable attorneys' fees and costs regarding the Parties' meet and confer
14 efforts for any modification requested or initiated by Chamberlin. If, despite their meet and confer
15 efforts, the Parties are unable to reach agreement on any proposed modification the party seeking
16 the modification may file the appropriate motion and the prevailing party on such motion shall be
17 entitled to recover its reasonable fees and costs associated with such motion. One basis, but not
18 the exclusive basis, for Alfa-Pet to seek a modification of this Consent Judgment is if Proposition
19 65 is changed, narrowed, limited, or otherwise rendered inapplicable in whole or in part to the
20 Covered Products or wood dust due to legislative change, a change in the implementing
21 regulations, court decisions or other legal basis.

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

23 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate
24 this Consent Judgment, if the Agreement is not rescinded.

25 **6.2** Subject to Section 6.3, any Party may, by motion or application for an order to
26 show cause filed with this Court, enforce the terms and conditions contained in this Consent
27 Judgment. The prevailing party in any such motion or application may request that the Court
28 award its reasonable attorneys' fees and costs associated with such motion or application.

1 **6.3** Before filing a motion or application for an order to show cause, Chamberlin shall
2 provide Alfa-Pet with 30 (thirty) days' written notice of any alleged violations of the terms and
3 conditions contained in this Consent Judgment. As long as Alfa-Pet cures any such alleged
4 violations within the 30-day period (or if any such violation cannot practicably be cured within 30
5 days, it expeditiously initiates a cure within 30 days and completes it as soon as practicable) and
6 Alfa-Pet provides proof to Chamberlin that the alleged violation(s) were the result of good faith
7 mistake or accident, then Alfa-Pet shall not be in violation of the Consent Judgment. Alfa-Pet
8 shall have the ability to avail itself of the benefits of this Section two (2) times following the
9 Effective Date.

10 **7. APPLICATION OF CONSENT JUDGMENT**

11 **7.1** This Consent Judgment shall apply to and be binding upon and benefit the Parties
12 and their respective officers, directors, successors, and assigns, and it shall benefit the Parties and
13 their respective officers, directors, shareholders, employees, agents, parent companies,
14 subsidiaries, divisions, affiliates, suppliers, franchisees, licenses, customers, distributors,
15 wholesalers, retailers, predecessors, successors, and assigns.

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

17 **8.1** This Consent Judgment is a full, final, and binding resolution between Chamberlin,
18 on behalf of herself and in the public interest, and Alfa-Pet, of any and all direct or derivative
19 violations (or claimed violations) of Proposition 65 or its implementing regulations for failure to
20 provide Proposition 65 warnings of exposure from the handling, use, or consumption of the
21 Covered Products and fully resolves all claims that have been or could have been asserted in this
22 Action by any person up to and including the Effective Date for failure to provide Proposition 65
23 warnings for the Covered Products. Chamberlin, on behalf of herself and in the public interest,
24 hereby forever releases and discharges Alfa-Pet and its past and present officers, directors, owners,
25 shareholders, employees, agents, attorneys, parent companies, subsidiaries, divisions, affiliates,
26 suppliers, franchisees, licensees, customers, distributions, wholesalers, retailers, and all other
27 upstream and downstream entities and persons in the distribution chain of any Covered Products,
28 including but not limited to Walmart, Inc., and Blue Mountain Lumber, and the predecessors,

1 successors and assigns of any of them (collectively, "Released Parties"), from any and all claims
2 and causes of action and obligations to pay damages, restitution, fines, civil penalties, payment in
3 lieu of civil penalties and expenses (including but not limited to expert analysis fees, expert fees,
4 attorneys' fees and costs) (collectively, "Claims") arising under, based on, or derivative of
5 Proposition 65 or its implementing regulations up through the Effective Date relating to actual or
6 potential exposure to chemicals known by the State of California to cause cancer, birth defects or
7 other reproductive harm, from the Covered Products and/or failure to warn about wood dust, as set
8 forth in the Notices of Violation and the Complaint.

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

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

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

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

24 **8.4** Chamberlin, on one hand, and Alfa-Pet, on the other hand, each release and waive
25 all Claims they may have against each other for any statements or actions made or undertaken by
26 them in connection with the Notice of Violations or the Complaint. However, this shall not affect
27 or limit any Party's right to seek to enforce the terms of this Consent Judgment.

1 **9. CONSTRUCTION AND SEVERABILITY**

2 **9.1** The terms and conditions of this Consent Judgment have been reviewed by the
3 respective counsel for the Parties prior to its signing, and each Party has had an opportunity to
4 fully discuss the terms and conditions with its counsel. In any subsequent interpretation or
5 construction of this Consent Judgment, the terms and conditions shall not be construed against any
6 Party.

7 **9.2** In the event that any of the provisions of this Consent Judgment are held by a court
8 to be unenforceable, the validity of the remaining enforceable provisions shall not be adversely
9 affected.

10 **9.3** The terms and conditions of this Consent Judgment shall be governed by and
11 construed in 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
14 be in writing and sent to the following agents listed below by: (a) first-class, registered, (b)
15 certified mail, (c) overnight courier, or (d) personal delivery to the following:

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 ALFA-PET:**

21 Christopher W. James
22 VINSON & ELKINS LLP
555 Mission Street, Suite 2000
23 San Francisco, California 94105

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
27 Consent Judgment.

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

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

6 **12. EXECUTION AND COUNTERPARTS**

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

10 **13. ENTIRE AGREEMENT, AUTHORIZATION**

11 **13.1** This Consent Judgment contains the sole and entire agreement and understanding
12 of the Parties with respect to the entire subject matter herein, and any and all prior discussions,
13 negotiations, commitments and understandings related hereto. No representations, oral or
14 otherwise, express or implied, other than those contained herein have been made by any Party. No
15 other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to exist
16 or to bind any Party.

17 **13.2** Each signatory to this Consent Judgment certifies that he or she is fully authorized
18 by the Party he or she represents to stipulate to this Consent Judgment. Except as explicitly
19 provided 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 the request of the Parties.
22 The Parties request the Court to fully review this Consent Judgment and, being fully informed
23 regarding 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 faith
25 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

27 (b) Make the findings pursuant to California Health and Safety Code section
28 25249.7(f)(4), and approve the Settlement, and this Consent Judgment.

1 IT IS SO STIPULATED.

2 Dated: 10/9/2017



Amy Chamberlin

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4 Dated: _____

ALFA-PET, INC.

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By: _____

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Its: _____

9 APPROVED AS TO FORM:

10 Dated: 10/9/17

PACIFIC JUSTICE CENTER

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By: 

13

Robert B. Hancock
Attorneys for Plaintiff
AMY CHAMBERLIN

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15 Dated: _____

VINSON & ELKINS LLP

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By: _____

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Christopher W. James
Attorneys for Defendant
Alfa-Pet, Inc.

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1 IT IS SO STIPULATED.

2 Dated: _____

Amy Chamberlin

4 Dated: 10/11/17

ALFA-PEL, INC.

6 By: Mary A. Johnson
7 Mary A. Johnson

8 Its: President

9 APPROVED AS TO FORM:

10 Dated: _____

PACIFIC JUSTICE CENTER

12 By: _____
13 Robert B. Hancock
14 Attorneys for Plaintiff
AMY CHAMBERLIN

15 Dated: 10/11/17

VINSON & ELKINS LLP

17 By: Christopher W. James
18 Christopher W. James
19 Attorneys for Defendant
20 Alfa-Pel, 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: _____, 2017

Judge of the Superior Court

WARNING:
This product contains wood dust,
a substance known to the
State of California to cause cancer.

EXHIBIT A