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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

AMY CHAMBERLIN, in the public interest,

Plaintiff,

vs.

FOREST ENERGY CORPORATION, an
Arizona corporation; and DOES 1 through
500, inclusive,

Defendant.

Case No. RG16828097
**[PROPOSED] STIPULATED CONSENT
JUDGMENT**

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

Action Filed: August 19, 2016

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 the following wood fuel pellets
5 manufactured and/or sold by Defendant Forest Energy, as packaged by Forest Energy, in bags or
6 containers intended to be sold to end users: Heat’rs Wood Pellet Fuel, Green Tree Wood Pellet Fuel,
7 TerrAmigo Wood Pellet Fuel, Blazer Wood Pellet Fuel, Hot Shots Wood Pellet Fuel (collectively
8 the “Covered Products”). “Covered Products” do not include wood fuel pellets distributed to any
9 person or entity who rebrands any Covered Product, or utilizes any packaging different from that
10 utilized or supplied by Forest Energy.

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

17 **1.3** Defendant Forest Energy Corporation is an Arizona corporation (“Forest Energy” or
18 “Defendant”).

19 **1.4** Chamberlin and Forest Energy are referred to individually as a “Party” or collectively
20 as the “Parties.”

21 **1.5** Forest Energy manufactures, acquires, distributes and/or sells the Covered Products.

22 **1.6** On or about June 10, 2016, pursuant to California Health and Safety Code section
23 25249.7(d)(1), Chamberlin served a 60-Day Notice of Violation of Proposition 65 on the California
24 Attorney General, other public enforcers and Forest Energy alleging that Forest Energy violated
25 Proposition 65 by exposing persons in California to wood dust in connection with their use of the
26 Covered Products without first providing a Proposition 65 warning (the “Notice of Violation”).

27 **1.7** After more than sixty (60) days passed since service of the Notice of Violation, and
28 no designated governmental agency having filed a complaint against Forest Energy with regard to

1 the Covered Products or the alleged violations, Chamberlin filed a complaint (the "Complaint") for
2 injunctive relief and civil penalties. The Complaint, dated August 19, 2016, is based on the
3 allegations in the Notice of Violation.

4 **1.8** The Complaint alleges that Forest Energy manufactured, distributed, and/or sold in
5 California the Covered Products, which contain or the use of which creates wood dust, a substance
6 listed under Proposition 65, and the exposure to which is known by the State of California to cause
7 cancer, and requiring a Proposition 65 warning. The Complaint also alleges that use of the Covered
8 Products exposes persons in California to wood dust without first providing clear and reasonable
9 warnings, in violation of California Health and Safety Code section 25249.6. Forest Energy
10 generally denies all material and factual allegations of the Notice of Violation and the Complaint,
11 and specifically denies that any Proposition 65 Notice is required on the Covered Products, that any
12 reasonable user of the Covered Products would be exposed to chemicals in amounts or
13 concentrations that would require a warning, and that Plaintiff or any California consumer have been
14 harmed or damaged by its conduct. Forest Energy and Chamberlin each reserve all rights to allege
15 additional facts, claims, and affirmative defenses if the Court does not approve this Consent
16 Judgment.

17 **1.9** Chamberlin represents and warrants that as of the date of her execution of this
18 Consent Judgment, other than the violations alleged in the Notice of Violation as to the Covered
19 Products or the subject of the settlement of the San Francisco Action, or the subject of any other
20 60-day notice or action currently pending, neither she nor any of her agents: (a) has any current
21 knowledge or information based upon any investigation or otherwise that Forest Energy is
22 currently manufacturing, distributing, shipping, selling or offering for sale in California any
23 product(s) that Chamberlin believes is causing a violation of Proposition 65; and (b) that she has
24 no present intention of filing suit against Forest Energy or providing a 60-Day Notice to Forest
25 Energy with respect to any exposure to any listed chemical under Proposition 65 with respect to
26 any products manufactured or sold by Forest Energy, including but not limited to the Covered
27 Products.
28

1 **1.10** The Parties enter into this Consent Judgment in order to settle, compromise and
2 resolve disputed claims and avoid prolonged and costly litigation. Nothing in this Consent
3 Judgment, nor compliance with its terms, shall constitute or be construed as an admission by any of
4 the Parties, or by any of their respective officers, directors, shareholders, employees, agents, parent
5 companies, subsidiaries, divisions, affiliates (collectively “Party Affiliates”), or by any of their
6 suppliers, franchisees, licensees, distributors, wholesalers, transporters, customers, or retailers
7 (collectively the “Downstream Parties”), of any fact, conclusion of law, issue of law, violation of
8 law, fault, wrongdoing, or liability, including without limitation, any admission concerning any
9 alleged violation of Proposition 65. Except as expressly set forth in this Consent Judgment, nothing
10 in this Consent Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense
11 the Parties or Party Affiliates may have in any other or future legal proceeding. Provided, however,
12 nothing in this Section shall affect the enforceability of this Consent Judgment.

13 **1.11** The “Effective Date” of this Consent Judgment shall be the date this Consent
14 Judgment is entered as a Judgment.

15 **2. JURISDICTION AND VENUE**

16 **2.1** The Parties stipulate that this Court has jurisdiction over the subject matter of this
17 Action and personal jurisdiction over the Parties, that venue is proper in this Court, and that this
18 Court has jurisdiction to enter this Consent Judgment pursuant to the terms set forth herein.

19 **3. INJUNCTIVE RELIEF AND WARNINGS**

20 **3.1** Beginning on the Effective Date, and except as provided in Section 3.2 below, Forest
21 Energy shall be permanently enjoined from offering for sale to a consumer in California, directly
22 selling to a consumer in California, or “Distributing into California” any of the Covered Products,
23 unless the label of the Covered Product contains a Proposition 65 compliant warning, consistent
24 with Section 3.4, below. “Distribution into California” or “Distributing into California” means
25 to ship any of the Covered Products to California for sale by others in California.

26 **3.2 Clear and Reasonable Warnings**

27 (A) For the Covered Product that is subject to the warning requirement of Section 3.1,
28

1 Forest Energy shall provide a Compliant Warning. The Parties agree the following
2 constitutes a clear and reasonable warning:



3 **WARNING:** This product can expose you to chemicals including wood dust,
4 which is known to the State of California to cause cancer. Combustion of this
5 product can expose you to chemicals including carbon monoxide, which is known to the
6 State of California to cause birth defects or other reproductive harm. For more information
7 go to www.P65Warnings.ca.gov

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

18 (C) Notwithstanding paragraphs (A) and (B) above, if modifications or amendments to
19 Proposition 65 or its regulations adopted after the Effective Date are inconsistent with, or provide
20 warnings specifications or options different from, the specifications in this Agreement, Forest
21 Energy may modify the content and delivery methods of its warnings to conform to the clear and
22 reasonable warning provisions of Proposition 65 or its regulations as modified or amended, and such
23 warnings shall constitute Compliant Warnings under this Agreement.

24 **4. REQUIRED MONETARY PAYMENTS .**

25 4.1 Defendant shall pay \$25,000 within ten (10) days of the Effective Date, which shall
26 be a full and final satisfaction of all civil penalties pursuant to California Health and Safety Code
27 section 25249.7(b)(1). Of this amount, one check shall be payable to the Office of Environmental
28 Health Hazard Assessment ("OEHHA"), in the sum of \$18,750.00, a second check shall be payable

1 to Chamberlin in the sum of \$4,000.00, and a third check for \$2,250.00 shall be payable to
2 *CancerCare*, a qualified charitable organization. (Cal. Health & Safety Code section 25249.12(c)(1)
3 and (d)). Chamberlin waives any statutory right to share in the penalties awarded to any further
4 extent. The payment will be in the form of three separate checks sent to counsel for Chamberlin,
5 Robert B. Hancock, Pacific Justice Center, 50 California St., Suite 1500, San Francisco, CA 94111.

6 **4.2** Defendant shall pay \$55,000.00 as reimbursement of Chamberlin's attorneys' fees,
7 costs, investigation and litigation expenses ("Attorneys' Fees and Costs.") All payments shall be
8 remitted with Robert B. Hancock as payee, and shall be paid in accordance with the following
9 schedule: \$25,000 within ten (10) days of the Effective Date; \$15,000 payable on or before forty-
10 five (45) days after the Effective Date; and \$15,000 payable on or before seventy-five (75) days
11 after the Effective Date.

12 **4.3** Any failure by Forest Energy to remit a payment by its due date shall be deemed a
13 material default under this Agreement, after which Chamberlin shall give written notice to Forest
14 Energy of such default. Forest Energy shall have ten (10) business days after such written notice to
15 cure the default, after which Forest Energy shall be in material breach, entitling Chamberlin to either
16 (a) enforce this Consent Judgment, or (b) give notice of rescission of this Consent Judgment. In such
17 event, the Parties agree to cooperate in taking any and all steps necessary to vacate and/or set aside
18 any Judgment or dismissal entered, including Chamberlin's return of any consideration received
19 under this Consent Judgment, and after the Court's approval of the rescission, this Consent
20 Judgment shall be deemed null, void, and not admissible at trial in this proceeding.

21 **4.4** The parties confirm that upon entry of this Consent Judgment, they have reached a
22 separate written settlement of Case Number CGC-15-544278 pending in San Francisco Superior
23 Court. Plaintiff's counsel shall take all steps necessary to secure a dismissal with prejudice of Case
24 number CGC-15-542278 within twenty (20) days of the last payment by Forest Energy under this
25 Consent Judgment.

26 **5. MODIFICATION OF CONSENT JUDGMENT**

27 **5.1** This Consent Judgment may be modified only by: (i) Written agreement and
28 stipulation of the Parties and upon having such stipulation entered as a modified Consent Judgment

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

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

17 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate this
18 Consent Judgment.

19 **6.2** Subject to Section 6.3, any Party may, by motion or application for an order to show
20 cause filed with this Court, enforce the terms and conditions contained in this Consent Judgment.
21 The prevailing party in any such motion or application may request that the Court award its
22 reasonable attorneys' fees and costs associated with such motion or application.

23 **6.3** Before filing a motion or application for an order to show cause, Chamberlin shall
24 provide Forest Energy with thirty (30) days' written notice of any alleged violations of the terms
25 and conditions contained in this Consent Judgment. As long as Forest Energy cures any such alleged
26 violations within the 30-day period (or if any such violation cannot practicably be cured within 30
27 days, it expeditiously initiates a cure within 30 days and completes it as soon as practicable) and
28 Forest Energy provides proof to Chamberlin that the alleged violation(s) were the result of good

1 faith mistake or accident, then Forest Energy shall not be in violation of the Consent Judgment.
2 Forest Energy shall have the ability to avail itself of the benefits of this Section two (2) times
3 following the Effective Date.

4 **7. APPLICATION OF CONSENT JUDGMENT**

5 **7.1** This Consent Judgment shall apply to and be binding upon and benefit the Parties
6 and their respective officers, directors, successors, and assigns, including but not limited to their
7 Party Affiliates, and it shall benefit the Parties and their respective officers, directors, shareholders,
8 employees, agents, parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees,
9 licenses, customers, distributors, wholesalers, retailers, predecessors, successors, and assigns,
10 including but not limited to the Downstream Releasees.

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

12 **8.1** This Consent Judgment is a full, final, and binding resolution between Chamberlin,
13 on behalf of herself and in the public interest, and Forest Energy, of any and all direct or derivative
14 violations (or claimed violations) of Proposition 65 or its implementing regulations for failure to
15 provide Proposition 65 warnings of exposure from the handling or use of the Covered Products and
16 fully resolves all claims that have been or could have been asserted in this Action by any person up
17 to and including the Effective Date for failure to provide Proposition 65 warnings for the Covered
18 Products. Chamberlin, on behalf of herself and in the public interest, hereby forever releases and
19 discharges Forest Energy and its past and present officers, directors, owners, shareholders,
20 employees, agents, attorneys, parent companies, subsidiaries, divisions, affiliates, suppliers,
21 franchisees, licensees, customers, distributors, wholesalers, retailers, and all other upstream and
22 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, attorneys' fees and costs) (collectively, "Claims") arising under, based on, or derivative
27 of Proposition 65 or its implementing regulations up through the Effective Date relating to actual or
28 potential exposure to chemicals known by the State of California to cause cancer, birth defects or

1 other reproductive harm, from the Covered Products and/or failure to warn about wood dust, as set
2 forth in the Notices of Violation 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 from the
5 Covered Products as described above or set forth in the Notice of Violations and the Complaint.

6 **8.3** It is possible that other Claims not known to Chamberlin arising out of the facts
7 alleged in the Notice of Violations or the Complaint and relating to the Covered Products that were
8 manufactured, sold or distributed into California before the Effective Date will develop or be
9 discovered. Chamberlin, 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**
13 **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT**
14 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF**
15 **EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM**
OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
HER SETTLEMENT WITH THE DEBTOR.

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

18 **8.4** Chamberlin, on one hand, and Forest Energy, on the other hand, each release and
19 waive all Claims they may have against each other for any statements or actions made or undertaken
20 by them in connection with the Notice of Violations or the Complaint. However, this shall not affect
21 or limit any Party's right to seek to enforce the terms of this Consent Judgment.

22 **9. CONSTRUCTION AND SEVERABILITY**

23 **9.1** The terms and conditions of this Consent Judgment have been reviewed by the
24 respective counsel for the Parties prior to its signing, and each Party has had an opportunity to fully
25 discuss the terms and conditions with its counsel. In any subsequent interpretation or construction
26 of this Consent Judgment, the terms and conditions shall not be construed against any Party.

27 **9.2** In the event that any of the provisions of this Consent Judgment are held by a court
28 to be unenforceable, the validity of the remaining enforceable provisions shall not be adversely

1 affected, unless such unenforceability materially destroys the essential bargain reached between
2 the Parties.

3 **9.3** The terms and conditions of this Consent Judgment shall be governed by and
4 construed in accordance with the laws of the State of California.

5 **10. PROVISION OF NOTICE**

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

9 **For Chamberlin:**

10 Melvin B. Pearlston
11 Robert B. Hancock
12 PACIFIC JUSTICE CENTER
13 50 California Street, Suite 1500
San Francisco, California 94111

14 **For Forest Energy:**

15 Thomas N. FitzGibbon
16 APEX LAW, APC
17 199 W. Hillcrest Drive, Suite 115
18 Thousand Oaks, CA 91360

19 **11. COURT APPROVAL**

20 **11.1** Upon execution of this Consent Judgment by the Parties, Chamberlin shall notice a
21 Motion for Court Approval. The Parties shall use their best efforts to support entry of this Consent
22 Judgment.

23 **11.2** If the California Attorney General objects to any term in this Consent Judgment, the
24 Parties shall use their best efforts to resolve the concern in a timely manner, and if possible prior to
25 the hearing on the motion.

26 **11.3** If, despite the Parties' best efforts, the Court does not approve this Stipulated Consent
27 Judgment, it shall be null and void and have no force or effect.
28

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 electronic signature shall be construed as valid as the
4 original signature.

5 **13. ENTIRE AGREEMENT, AUTHORIZATION**

6 **13.1** This Consent Judgment contains the sole and entire agreement and understanding of
7 the Parties with respect to its entire subject matter, and any and all prior discussions, negotiations,
8 commitments and related understandings, except that the Parties agree Forest Energy is separately
9 entering into a Settlement Agreement of the San Francisco Action that is dependent upon the
10 approval of this Consent Judgment. No representations, oral or otherwise, express or implied, other
11 than those contained in this Consent Judgment have been made by any Party. No other agreements,
12 oral or otherwise, unless specifically referred to in this Consent Judgment, shall be deemed to exist
13 or to bind any Party.

14 **13.2** Each signatory to this Consent Judgment certifies that he or she is fully authorized
15 by the Party he or she represents to stipulate to this Consent Judgment. Except as explicitly provided
16 in this Consent Judgment, each Party shall bear its own fees and costs.

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

18 **14.1** This Consent Judgment has come before the Court upon the request of the Parties.
19 The Parties request the Court to fully review this Consent Judgment and, being fully informed
20 regarding the matters which are the subject of this action, to:

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

24 (b) Make the findings pursuant to California Health and Safety Code section
25 25249.7(f)(4), and approve the Settlement, and this Consent Judgment.

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IT IS SO STIPULATED.

Dated: 9/25/2018



Amy Chamberlin

Dated: _____


FOREST ENERGY CORPORATION

By: _____
Rob Davis
Its: President

APPROVED AS TO FORM:

Dated: 9/28/18

PACIFIC JUSTICE CENTER

By: 

Robert B. Hancock
Attorneys for Plaintiff
Amy Chamberlin

Dated: _____

APEX LAW, APC

By: _____
Thomas N. FitzGibbon
Attorneys for Defendant
Forest Energy Corporation

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IT IS SO STIPULATED.

Dated: _____

Amy Chamberlin

Dated: Sept 25, 2018

FOREST ENERGY CORPORATION

By: 
Rob Davis
Its: President

APPROVED AS TO FORM:


Dated: _____

PACIFIC JUSTICE CENTER

By: _____
Robert B. Hancock
Attorneys for Plaintiff
Amy Chamberlin

Dated: September 27, 2018

APEX LAW, APC

By: 
Thomas N. FitzGibbon
Attorneys for Defendant
Forest Energy Corporation