

## SETTLEMENT AGREEMENT

### BETWEEN AMY CHAMBERLIN AND VITAKRAFT SUNSEED, INC.

#### 1. RECITALS

##### 1.1 The Parties

This Settlement Agreement (“Settlement”) is entered into by and between Amy Chamberlin (“Ms. Chamberlin”) and Vitakraft Sunseed, Inc. (“Vitakraft.”) Ms. Chamberlin and Vitakraft 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. Vitakraft 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 Vitakraft manufactured, distributed, supplied, and/or sold a certain wood-based product, including the following:

- Sunthing Special Northern White Pine Bedding (SKU 18010, 18005, 18022, 18015)
- Sunthing Special Cedar Bedding (SKU 18020, 18100, 18500, 18150)
- Sunthing Special Aspen Bedding (SKU 18072, 18071, 18073, 18075)

Collectively, the above Products shall be referred to as the "Covered Product.s" The covered Products are alleged to have caused users in California to be exposed to wood dust without providing a “clear and reasonable warning,” 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 July 8, 2016, a sixty-day notice of violation, along with a Certificate of Merit, was provided by Ms. Chamberlin to Vitakraft and various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to Sunthing Special Northern White Pine Bedding. (“60-Day Notice.”) On December 12, 2017, a second sixty-day notice of violation, along with a Certificate of Merit, was provided by Ms. Chamberlin to Vitakraft and various public enforcement authorities regarding the alleged violation of Proposition 65 with respect to Sunthing Special Cedar Bedding, and Sunthing Special Aspen Bedding. No public prosecutor intervened in connection with either notice.

### **1.3 No Admissions**

Vitakraft denies all allegations in Ms. Chamberlin’s 60-Day Notice and maintains that the Covered Products have been, and are, in compliance with all laws, and that Vitakraft has not violated Proposition 65. This Settlement shall not be construed as an admission of liability by Vitakraft 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 the Settlement is signed by both Parties.

**2. INJUNCTIVE RELIEF**

**2.1 Warning Obligations for Covered Products**

After the Effective Date, Vitakraft shall not manufacture, 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, Vitakraft shall provide the following warning ("Warning") as specified below<sup>1</sup>:



**WARNING:**

This product can expose you to chemicals including wood dust, which is known to the State of California to cause cancer. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)



**WARNING:**

Combustion (burning) of this product can expose you to carbon monoxide and other substances which are known by the State of California to cause cancer, birth defects or reproductive harm. For more information, go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

Older units of the Covered Products may have the following Warning:

**[WARNING:**

This product contains a chemical known to the State of California to cause cancer. The listed chemical is wood dust; we do not add any chemicals to our natural wood products. ]

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

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<sup>1</sup> Portions in brackets are optional.

or container of each unit of the Covered Product. 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 that the warnings depicted above constitute "clear and reasonable warning" in all respects. Nothing herein shall preclude Vitakraft from providing any alternative warning to comply with any change in law or regulation.

### **3. PAYMENTS**

#### **3.1 Payment of Civil Penalty Pursuant To Proposition 65**

In settlement of all claims referred to in this Settlement, Vitakraft shall pay a total civil penalty of \$17,500 in three quarterly installments 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. As set forth below, Ms. Chamberlin agrees to donate a portion of the penalty payable to her to CancerCare, a charitable organization providing financial assistance to individuals receiving cancer treatments. Ms. Chamberlin hereby waives her statutory rights to share in the subject civil penalty to any greater extent.

Vitakraft shall issue checks for the civil penalty in each of the three following quarters, as follows: (1) three checks or money orders made payable to "Office of Environmental Health Hazard Assessment" each in the amount of \$4,375 for a total of \$13,125; (2) three checks or money orders made payable to "Amy Chamberlin" each in the amount of \$791.66 for a total of

\$2,375.00; (3) three checks or money orders made payable to "CancerCare" each in the amount of \$666,67 for a total of \$2,000. Vitakraft shall remit the first of the above-listed payments within five days of the complete execution of this Agreement provided that Vitakraft receive appropriate and necessary information from each of the recipients to allow for proper documentation relating to tax reporting. Vitakraft shall submit the subsequent payment within 90-days of the complete execution of this Agreement and the final payment, within 180-days of the complete execution of this Agreement.

### **3.2 Payment of Chamberlin's Attorneys' Fees And Expenses**

Vitakraft shall pay Ms. Chamberlin's attorney's fees and expenses incurred in prosecuting the instant action, in the amount of \$37,500. Payment shall be made in three quarterly installments. Accordingly, Vitakraft shall issue a total of three checks or money orders made payable to "Robert B. Hancock" in the amount of \$12,500 each. The first installment shall be payable five days after the complete execution of this Agreement and after receiving the appropriate and necessary information to allow for proper documentation relating to tax reporting. Vitakraft shall submit the subsequent payment within 90-days of the complete execution of this Agreement and the final payment, within 180-days of the complete execution of this Agreement. Plaintiff's counsel agrees to donate the sum of \$3,000 of its own fees/costs to CancerCare upon receipt of the first installment. Plaintiff's counsel will provide proof of remittance to counsel for Vitakraft.

All payments under this Agreement shall be mailed or overnighted to the following address:

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 Vitakraft

Ms. Chamberlin, acting in her individual capacity, and on behalf of her past and current agents, representatives, attorneys, experts, successors, and/or assignees, in consideration of the promises and monetary payments contained herein, hereby releases Vitakraft, its parents, subsidiaries, shareholders, directors, members, officers, employees, downstream distributors and retailers, agents and attorneys, from any claims that were or could have been asserted in Ms. Chamberlin's 60-Day Notices.

##### 4.2 Vitakraft's Release Of Ms. Chamberlin

Vitakraft, 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 Vitakraft 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 Section 1542 of *California Civil Code* 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.

**AGREED:** Vitakraft Sunseed, Inc.


Date: 3-3-18

By: 

Its: Pres/CEO

**AGREED:**

Date: 3/6/2018

  
Amy Chamberlin