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11 **AMY CHAMBERLIN**

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF ALAMEDA**

14 AMY CHAMBERLIN, in the public interest,
15 Plaintiff,
16 v.
17 CHURCH & DWIGHT CO., INC.,
18 Defendant.

Case No. RG18918240

**[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 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 Defendant’s FelinePine
5 100% Natural Pine Original Non-Clumping Litter and FelinePine 100% Natural Pine Clumping
6 Litter products (the “Covered Products”).

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

13 **1.3.** Defendant Church & Dwight Co., Inc. is a Delaware corporation, hereinafter referred
14 to as “Defendant” or “Church & Dwight.”

15 **1.4.** Chamberlin and Church & Dwight are hereinafter sometimes referred to individually
16 as a “Party” or collectively as the “Parties.”

17 **1.5.** Church & Dwight manufactures, distributes, and/or sells the Covered Products.

18 **1.6.** Pursuant to California Health and Safety Code Section 25249.7(d)(1), Chamberlin
19 served on the California Attorney General, other designated public enforcers, and Church & Dwight
20 two 60-Day Notices of Violation of Proposition 65 related to the Covered Products, the first on or
21 about December 5, 2017 regarding FelinePine 100% Natural Pine Original Non-Clumping Litter (the
22 “First Notice of Violation”) and the second on or about August 24, 2018 regarding FelinePine 100%
23 Natural Pine Clumping Litter (the “Second Notice of Violation”) (collectively, the “Notices of
24 Violation”).

25 **1.7.** More than sixty (60) days have passed since service of the First Notice of Violation,
26 and no public enforcer designated under Proposition 65 has filed a complaint against Church &
27 Dwight with regard to the Covered Products or alleged violations set out in the First Notice of
28 Violation.

1 1.8. Upon the Parties' execution of this Proposed Stipulated Consent Judgment,
2 Chamberlin will file a complaint against Church & Dwight for injunctive relief and civil penalties,
3 based on the allegations in the First Notice of Violation (the "Complaint").

4 1.9. The Parties stipulate that, upon the expiration of the 60-day notice period for the
5 Second Notice of Violation with no objection or intervention by any public enforcer designated
6 under Proposition 65, the Complaint may be deemed amended to include the allegations in the
7 Second Notice of Violation.

8 1.10. The Complaint will allege that Church & Dwight manufactured, distributed, and/or
9 sold in California the Covered Products, which Chamberlin alleges contain wood dust, a substance
10 listed under Proposition 65 as being known by the State of California to cause cancer and,
11 Chamberlin alleges, requiring a Proposition 65 warning. Further, the Complaint will allege that the
12 use of the Covered Products exposes persons in California to wood dust without first providing clear
13 and reasonable warnings in violation of California Health and Safety Code Section 25249.6. Church
14 & Dwight denies any wrongdoing, any liability and all material and factual allegations of the Notices
15 of Violation and the Complaint, and specifically denies that Chamberlin or California consumers
16 have been harmed or damaged by the Covered Products. Church & Dwight and Chamberlin each
17 reserve all rights to allege additional facts, claims, and affirmative defenses if the Court does not
18 approve this Consent Judgment.

19 1.11. The Parties enter into this Consent Judgment in order to settle, compromise, and
20 resolve disputed claims and avoid prolonged and costly litigation. Nothing in this Consent
21 Judgment, nor compliance with its terms, shall constitute or be construed as an admission by any of
22 the Parties, or by any of their respective officers, directors, shareholders, employees, agents, parent
23 companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, distributors,
24 wholesalers, or retailers, of any fact, conclusion of law, issue of law, violation of law, fault,
25 wrongdoing, or liability, including without limitation, any admission concerning any alleged
26 violation of Proposition 65. Except as expressly set forth herein, nothing in this Consent Judgment
27 shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
28

1 other or future legal proceeding. Provided, however, nothing in this Section shall affect the
2 enforceability of this Consent Judgment.

3 1.12. The "Effective Date" of this Consent Judgment shall be the date this Consent
4 Judgment is entered by the Court as a Judgment.

5 **2. JURISDICTION AND VENUE**

6 For the purposes of seeking entry of the Consent Judgment only, the Parties stipulate that this
7 Court has jurisdiction over the subject matter of this Action and personal jurisdiction over the
8 Parties, that venue is proper in this Court, and that this Court has jurisdiction to enter this Consent
9 Judgment pursuant to the terms set forth herein.

10 **3. INJUNCTIVE RELIEF AND WARNINGS**

11 3.1. Beginning on the Effective Date, and subject to Section 3.2 below, Church & Dwight
12 shall be permanently enjoined from offering for sale to a consumer in California, directly selling to a
13 consumer in California, or "Distributing into California" any of the Covered Products unless the
14 packaging or container of the Covered Products contains a Proposition 65 compliant warning,
15 consistent with Section 3.3 below. "Distributing into California" means to ship any of the Covered
16 Products to California for sale or to sell any of the Covered Products in California. Provided,
17 however, that Church & Dwight may manufacture or package and sell Covered Products without
18 providing a Proposition 65 compliant warning so long as such products are only for sale to
19 consumers located outside of California and Church & Dwight does not distribute them into
20 California.

21 3.2. All Covered Products that have been or will have been produced, distributed, shipped,
22 sold, or placed in the stream of commerce through and including 60 days after the Effective Date of
23 this Consent Judgment are exempt from the provisions of Sections 3.1 and 3.3 and are included
24 within the releases in Section 8. For the avoidance of doubt, Church & Dwight may sell off, without
25 date restriction, Covered Products using labels/packaging without the warning of Section 3.3.1 that
26 were printed or ordered to be printed through and including 60 days after the Effective Date of this
27 Consent Judgment, and such Covered Products are exempt from the provisions of Sections 3.1 and
28 3.3 and are included within the releases in Section 8; all labels/packaging for the Covered Products

1 printed or ordered to be printed after 60 days of the Effective Date shall contain the warning of
2 Section 3.3.1.

3 **3.3. Clear and Reasonable Warnings**

4 **3.3.1.** For the Covered Products that are subject to the warning requirements of
5 Section 3.1, Church & Dwight shall provide the following warning (the "Warning"):

6 **WARNING:** This product contains wood dust, which is known by the
7 State of California to cause cancer.

8
9 **3.3.2.** The Warning shall be permanently affixed to or printed on (at the point of
10 manufacture, prior to shipment to California, or prior to distribution within California) the outside
11 packaging or container of each unit of the Covered Products. The Warning shall be displayed with
12 such conspicuousness on the outside packaging or labeling, as to render it likely to be read and
13 understood by an ordinary individual prior to use.

14 **3.3.3.** If the Warning is printed directly onto the labeling of a Covered Product, the
15 Warning shall be at least the same size as the largest of any other health or safety warnings on the
16 product packaging or labeling, and the word "WARNING" shall be in all capital letters. If printed
17 on the labeling itself, the Warning shall be contained in the same section of the labeling that states
18 other safety warnings concerning the use of the Covered Products. At its option, Church & Dwight
19 may comply with this Section 3.3.3. by including the Warning in the same paragraph as other safety
20 warnings, as demonstrated in the following label excerpt, provided by way of example only and not
21 as the exclusive manner of complying with Section 3.3:

22 Please wash hands thoroughly after handling used cat litter. We want to remind
23 pregnant women and those with suppressed immune systems, that a parasite
24 sometimes found in cat feces can cause toxoplasmosis. **WARNING:** This product
contains wood dust, which is known by the State of California to cause cancer.

25 **3.4.** Any label of a Covered Product including the Warning described in Section 3.3 shall
26 be deemed to give "clear and reasonable warning," as such term is used in California Health and
27 Safety Code Section 25249.6, and shall be deemed to be a Proposition 65 compliant warning.

28 **4. SETTLEMENT PAYMENT**

1 4.1. Church & Dwight shall make a total payment of \$65,000 (the "Settlement Amount")
2 within 20 (twenty) business days of the Effective Date. Payment of the Settlement Amount shall be
3 in full and final satisfaction of any and all civil penalties, payment in lieu of civil penalties, and
4 attorneys' fees.

5 4.2. The payment will be in the form of four separate checks sent to counsel for Plaintiff,
6 Robert B. Hancock, Pacific Justice Center, 50 California Street, Suite 1500, San Francisco,
7 California, 94111. The checks shall be payable to the following parties and the payment shall be
8 apportioned as follows:

9 4.2.1. \$17,500 as civil penalties pursuant to California Health and Safety Code
10 Section 25249.7(b)(2). Of this amount, \$13,125 shall be payable to the Office of Environmental
11 Health Hazard Assessment ("OEHHA"), \$3,281 shall be payable to CHAMBERLIN, and \$1,094
12 shall be payable to *CancerCare*, a qualified 501(c)(3) charitable organization, dedicated to providing
13 financial aid to cancer patients for treatment costs. CHAMBERLIN hereby waives any statutory
14 entitlement to penalties in excess of \$3,281.

15 4.2.2. \$47,500 payable to Robert B. Hancock ("Hancock") as reimbursement of
16 CHAMBERLIN's attorneys' fees, costs, and investigation and litigation expenses ("Attorney's Fees
17 and Costs").

18 4.3. Chamberlin shall provide to counsel for Church & Dwight a completed Internal
19 Revenue Service Form W-9 for each of OEHHA, Chamberlin, *CancerCare*, and Hancock. In the
20 event Chamberlin does not provide the Forms W-9 described in this Section 4.3 before the Effective
21 Date, Church & Dwight's payment of the Settlement Amount shall not be due until 10 (ten) business
22 days after its counsel's receipt of those Forms W-9.

23 4.4. Any failure by Church & Dwight to remit payment of the foregoing payments on or
24 before its due date shall be deemed a material breach of this Agreement, entitling Chamberlin to
25 rescind. In such event, the Parties agree to cooperate in taking any and all steps necessary to vacate
26 and set aside any Judgment or dismissal entered.

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1 **5. MODIFICATION OF CONSENT JUDGMENT**

2 5.1. This Consent Judgment may be modified only by: (i) Written agreement and
3 stipulation of the Parties and upon having such stipulation entered as a modified Consent Judgment
4 by the Court; or (ii) Upon entry of a modified Judgment by the Court pursuant to a motion by one of
5 the Parties after exhausting the meet and confer process set forth in Section 5.2.

6 5.2. If either Party requests or initiates a modification of the Consent Order, then it shall
7 meet and confer with the other Party in good faith before filing a motion with the Court seeking to
8 modify it. If, despite their meet and confer efforts, the Parties are unable to reach agreement on any
9 proposed modification, the party seeking the modification may file the appropriate motion and the
10 prevailing party on such motion shall be entitled recover its reasonable fees and costs associated
11 with such motion.

12 5.3. Potential bases for Church & Dwight's seeking modification of the Consent
13 Judgment, but not the exclusive bases, would be if Proposition 65 is narrowed, limited, or otherwise
14 rendered inapplicable in whole or in part to the Covered Products or to wood dust, due to legislative
15 change, a change in the implementing regulations, court decision, or other legal basis or if it
16 becomes necessary under Proposition 65 to include warnings for other chemicals and/or to warn of
17 potential reproductive harm.

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

19 6.1. This Court shall retain jurisdiction of this matter to enforce, modify, or terminate this
20 Consent Judgment.

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

25 6.3. Before filing a motion or application for an order to show cause, Chamberlin shall
26 provide Church & Dwight with 30 (thirty) days' written notice of any alleged violations of the terms
27 and conditions contained in this Consent Judgment. As long Church & Dwight cures any such
28 alleged violations within the 30-day period (or if any such violation cannot practicably be cured

1 within 30 days, it expeditiously initiates a cure within 30 days and completes it as soon as
2 practicable) and Church & Dwight provides proof to Chamberlin that the alleged violation(s) was the
3 result of good faith mistake or accident, then Church & Dwight shall not be in violation of the
4 Consent Judgment. Church & Dwight shall have the ability to avail itself of the benefits of this
5 Section 6.3 two (2) times, following the Effective Date.

6 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

13 **8.1.** This Consent Judgment is a full, final, and binding resolution between Chamberlin,
14 on behalf of herself and in the public interest, and Church & Dwight, of any and all direct or
15 derivative violations (or claimed violations) of Proposition 65 or its implementing regulations for
16 failure to provide Proposition 65 warnings of exposure to wood dust from the handling, use, or
17 consumption of the Covered Products and fully resolves all claims that have been or could have been
18 asserted in this Action up to and including the Effective Date for failure to provide Proposition 65
19 warnings for the Covered Products regarding wood dust.

20 **8.2.** Chamberlin, on behalf of herself and in the public interest, hereby forever releases
21 and discharges, Church & Dwight and its past and present officers, affiliates, directors, owners,
22 shareholders, employees, agents, attorneys, suppliers, franchisees, licensees, customers, distributors,
23 wholesalers, retailers, and all other upstream and downstream entities and persons in the distribution
24 chain of any Covered Products, and the predecessors, successors, and assigns of any of them
25 (collectively, the "Released Parties") from any and all claims and causes of action and obligations to
26 pay damages, restitution, fines, civil penalties, payment in lieu of civil penalties and expenses
27 (including but not limited to expert analysis fees, expert fees, attorney's fees and costs) (collectively,
28 "Claims") arising under, based on, or derivative of Proposition 65 or its implementing regulations up

1 through the Effective Date relating to actual or potential exposure to wood dust from the Covered
2 Products and/or failure to warn about wood dust, as set forth in the Notices of Violation and the
3 Complaint.

4 8.3. Compliance with the terms of this Consent Judgment shall be deemed to constitute
5 compliance by any Released Party with Proposition 65 regarding alleged exposures to wood dust
6 from the Covered Products as set forth in the Notices of Violations and the Complaint.

7 8.4. It is possible that other Claims against the Released Parties arising out of events or
8 conduct occurring before the Effective Date not presently known to Chamberlin will develop or be
9 discovered. Chamberlin, on behalf of herself only, acknowledges that the Claims released herein by
10 her included all known and unknown Claims and waives California Civil Code Section 1542 as to
11 any 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 FAVOR**
14 **AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR**
15 **HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT**
16 **WITH THE DEBTOR.”**

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

19 8.5. Chamberlin, on the one hand, and Church & Dwight, on the other hand, each release
20 and waive all Claims they may have against each other as of the Effective Date. However, this shall
21 not affect 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 of
26 this Consent Judgment, the terms and conditions shall not be construed against any Party.

27 9.2. In the event that the Complaint cannot be deemed to be amended pursuant to Section
28 1.9 either because a public enforcer designated under Proposition 65 objects or intervenes or because

1 the Court rejects such amendment for any other reason, this Consent Judgment shall remain in effect
2 as to the allegations in the First Notice of Violation regarding FelinePine 100% Natural Pine
3 Clumping Litter, without adjustment to the monetary or injunctive relief provisions contained in
4 Sections 3 and 4. In such event, references herein to the "Covered Products" shall mean only
5 FelinePine 100% Natural Pine Clumping Litter and references herein to "Notices of Violation" shall
6 mean only the First Notice of Violation.

7 9.3. In the event that, after entry of the Consent Judgment, any of the provisions of this
8 Consent Judgment is held by a court to be unenforceable, the validity of the remaining enforceable
9 provisions shall not be adversely affected.

10 9.4. 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 be
14 in writing and sent to the following agents listed below by: (a) first-class, registered, certified mail,
15 (b) overnight courier, or (c) personal delivery:

16 **For Chamberlin:**

17 Melvin B. Pearlston
18 Robert B. Hancock
19 PACIFIC JUSTICE CENTER
20 50 California Street, Suite 1500
San Francisco, CA 94111

21 **For Church & Dwight:**

22 Baldassare Vinti
23 PROSKAUER ROSE LLP
Eleven Times Square
New York, NY 10036

24 and

25 Church & Dwight Co, Inc.
26 Princeton South Corporate Park
500 Charles Ewing Boulevard
27 Ewing, NJ 08628
Attn: General Counsel

1 **11. COURT APPROVAL**

2 **11.1.** Upon execution of this Consent Judgment by the Parties, Chamberlin shall file the
3 Complaint and shall notice a Motion for Court Approval of this Consent Judgment. The Parties shall
4 use their best efforts to support entry of this Consent Judgment

5 **11.2.** If the California Attorney General objects to any term in this Consent Judgment, the
6 Parties shall use their best efforts to resolve the concern in a timely manner, and if possible prior to
7 the hearing on the Motion for Court Approval.

8 **11.3.** Pending the Court's determination of the Motion for Court Approval, the Parties
9 agree not to prosecute this Action, except to file the Complaint and an Answer. Specifically, the
10 Parties agree not to engage in any discovery or motion practice, other than as necessary to support
11 entry of this Consent Judgment, until such time as the Court either enters the Consent Judgment or
12 denies the Motion for Court Approval.

13 **11.4.** If, despite the Parties' best efforts, the Court does not approve this Stipulated Consent
14 Judgment, the parties shall have the option of (a) proceeding to try and resolve the matter amicably,
15 or (b) determining that the Settlement is null and void and of no force or effect, in which event, all
16 payment-related obligations set forth in Section 3 above shall be deemed never to have existed and
17 the parties thereafter may proceed on their own accord.

18 **12. EXECUTION AND COUNTERPARTS**

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

22 **13. ENTIRE AGREEMENT, AUTHORIZATION**

23 **13.1.** This Consent Judgment contains the sole and entire agreement and understanding of
24 the Parties with respect to the entire subject matter herein, and any and all prior discussions,
25 negotiations, commitments, and understandings related hereto. No representations, oral or
26 otherwise, express or implied, other than those contained herein have been made by any Party. No
27 other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to exist or
28 to bind any Party.

1 13.2. Each signatory to this Consent Judgment certifies that he or she is fully authorized by
2 the Party he or she represents to stipulate to this Consent Judgment. Except as explicitly provided
3 herein, each Party shall bear its own fees and costs.

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

5 14.1. This Consent Judgment has come before the Court upon request of the Parties. The
6 Parties request the Court to fully review this Consent Judgment and, being fully informed regarding
7 the matters which are the subject of this action, to:


8 (a) Order that the Complaint be deemed amended to include the allegations in the
9 Second Notice of Violation;

10 (b) Find that the terms and provisions of this Consent Judgment represent a good
11 faith settlement of all matters raised by the allegations of the Complaint as amended, that the matter
12 has been diligently prosecuted, and that the public interest is served by such settlement; and

13 (c) Make the findings pursuant to California Health and Safety Code Section
14 25249.7(f)(4) and approve the Settlement and this Consent Judgment.

15
16 **IT IS SO STIPUATED.**

17
18 Dated: 8/29/2018

19 
20 _____
Amy Chamberlin

21
22 Dated: 8/29/2018

Church & Dwight Co., Inc.

23 By: Maria Parphy
24 _____

25 Its: Associate General Counsel & Asst. Secretary
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JUDGMENT

Based up on 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: _____, 2018 _____

Judge of the Superior Court