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ALAMEDA COUNTY

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CENTER FOR ENVIRONMENTAL HEALTH
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA
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12 CENTER FOR ENVIRONMENTAL HEALTH,)
13 a non-profit corporation,)
14 Plaintiff,)
15 v.)
16 DEL TACO RESTAURANTS, INC.; DEL)
17 TACO LLC; GREWAL SUPERFOODS INC.;)
18 and DOES 1 through 200, inclusive,)
19 Defendants.)

Case No. **RG 1683 4949**

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

Health & Safety Code §25249.6, *et seq.*
(Other)

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1 Plaintiff Center for Environmental Health, in the public interest, based on
2 information and belief and investigation of counsel, except for information based on knowledge,
3 hereby makes the following allegations:

4 **INTRODUCTION**

5 1. This Complaint seeks to remedy Defendants' continuing failure to warn
6 individuals in California that they are being exposed to bisphenol A ("BPA"), a chemical known
7 to the State of California to cause birth defects and other reproductive harm. Such exposures
8 have occurred, and continue to occur, when people handle thermal receipt paper (the "Products")
9 that is manufactured, distributed, sold, or otherwise provided to consumers by Defendants.
10 Consumers, including pregnant women, are exposed to BPA when they touch or handle the
11 Products.

12 2. Under California's Proposition 65, Health & Safety Code §25249.5, *et*
13 *seq.*, it is unlawful for businesses to knowingly and intentionally expose individuals in California
14 to chemicals known to the State to cause cancer, birth defects or other reproductive harm without
15 first providing clear and reasonable warnings to exposed individuals. Defendants introduce
16 Products containing significant quantities of BPA into the California marketplace, and/or
17 dispense such Products to California consumers as transactional receipts, thereby exposing
18 persons who touch or handle their Products, many of whom are pregnant women, to BPA.

19 3. Despite the fact that Defendants expose pregnant women and other
20 individuals to BPA, Defendants provide no warnings whatsoever about the reproductive hazards
21 associated with BPA exposure. Defendants' conduct thus violates the warning provision of
22 Proposition 65. Health & Safety Code §25249.6.

23 **PARTIES**

24 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a
25 non-profit corporation dedicated to protecting the public from environmental health hazards and
26 toxic exposures. CEH is based in Oakland, California and incorporated under the laws of the
27 State of California. CEH is a "person" within the meaning of Health & Safety Code
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1 §25249.11(a) and brings this enforcement action in the public interest pursuant to Health &
2 Safety Code §25249.7(d). CEH is a nationally recognized non-profit environmental advocacy
3 group that has prosecuted a large number of Proposition 65 cases in the public interest. These
4 cases have resulted in significant public benefit, including the reformulation of thousands of
5 products to remove toxic chemicals and to make them safer. CEH also provides information to
6 Californians about the health risks associated with exposure to hazardous substances, where
7 manufacturers and other responsible parties fail to do so.

8 5. Defendant DEL TACO RESTAURANTS, INC. is a person in the course
9 of doing business within the meaning of Health & Safety Code §25249.11. DEL TACO
10 RESTAURANTS, INC. manufactures, distributes and/or sells the Products for sale and use in
11 California, or otherwise provides the Products to California consumers.

12 6. Defendant DEL TACO LLC is a person in the course of doing business
13 within the meaning of Health & Safety Code §25249.11. DEL TACO LLC manufactures,
14 distributes and/or sells the Products for sale and use in California, or otherwise provides the
15 Products to California consumers.

16 7. Defendant GREWAL SUPERFOODS INC. is a person in the course of
17 doing business within the meaning of Health & Safety Code §25249.11. GREWAL
18 SUPERFOODS INC. manufactures, distributes and/or sells the Products for sale and use in
19 California, or otherwise provides the Products to California consumers.

20 8. DOES 1 through 200 are each a person in the course of doing business
21 within the meaning of Health & Safety Code §25249.11. DOES 1 through 200 manufacture,
22 distribute and/or sell the Products for sale or use in California, or otherwise provides the
23 Products to California consumers.

24 9. The defendants identified in Paragraphs 5 through 7 and DOES 1 through
25 200 are collectively referred to herein as “Defendants.”

26 10. The true names of DOES 1 through 200 are unknown to CEH at this time.
27 When their identities are ascertained or the applicable time period before which CEH may file a
28 Proposition 65 action has run, the Complaint shall be amended to reflect their true names.

1 **JURISDICTION AND VENUE**

2 11. The Court has jurisdiction over this action pursuant to Health & Safety
3 Code §25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant
4 to California Constitution Article VI, Section 10, because this case is a cause not given by statute
5 to other trial courts.

6 12. This Court has jurisdiction over Defendants because each is a business
7 entity that does sufficient business, has sufficient minimum contacts in California or otherwise
8 intentionally avails itself of the California market through the sale, marketing or use of the
9 Products in California and/or by having such other contacts with California so as to render the
10 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair
11 play and substantial justice.

12 13. Venue is proper in Alameda County Superior Court because one or more of
13 the violations arise in the County of Alameda.

14 **BACKGROUND FACTS**

15 14. The People of the State of California have declared by initiative under
16 Proposition 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth
17 defects, or other reproductive harm.” Proposition 65, §1(b).

18 15. To effectuate this goal, Proposition 65 prohibits exposing people to
19 chemicals listed by the State of California as known to cause cancer, birth defects or other
20 reproductive harm above certain levels without a “clear and reasonable warning” unless the
21 business responsible for the exposure can prove that it fits within a statutory exemption. Health
22 & Safety Code §25249.6 states, in pertinent part:

23 No person in the course of doing business shall knowingly and
24 intentionally expose any individual to a chemical known to the
25 state to cause cancer or reproductive toxicity without first giving
clear and reasonable warning to such individual

26 16. On May 11, 2015, the State of California officially listed BPA as a
27 chemical known to cause reproductive toxicity. BPA is specifically identified as a reproductive
28 toxicant under the subcategory “female reproductive toxicity,” which means harm to the female

1 reproductive system. 27 California Code of Regulations (“C.C.R.”) §27001(c). On May 11,
2 2016, one year after it was listed as a chemical known to cause reproductive toxicity, BPA
3 became subject to the clear and reasonable warning requirement regarding reproductive toxicants
4 under Proposition 65. *Ibid.*; Health & Safety Code §25249.10(b).

5 17. Exposure to BPA, a known endocrine disruptor, has been associated with
6 numerous adverse reproductive impacts. One study summarizing recent scientific research
7 concluded that BPA acts as both an ovarian toxicant (*e.g.*, by altering levels of sex hormones and
8 reducing egg quality) and as a uterine toxicant (*e.g.*, by impairing the ability of the embryo to
9 implant in the uterus). Peretz, J., *et al.*, “Bisphenol A and Reproductive Health: Update of
10 Experimental and Human Evidence, 2007–2013,” *Environmental Health Perspectives*, Vol.
11 122:8, August 2014. Another recent study focusing on human epidemiological studies
12 confirmed these impacts, and further found BPA exposure to be linked to a host of
13 developmental harms, including disrupted neurological development and increased asthma
14 prevalence in children. Rochester, J., “Bisphenol A and Human Health: A Review of the
15 Literature,” *Reproductive Toxicology*, Vol. 42, December 2013.

16 18. Thermal paper is often used in generating receipts from cash registers,
17 credit card terminals, and similar devices, and BPA is often used as a reactant acid on the surface
18 of such paper. BPA is transferred from the surface of the Products to the hands when the
19 Products are touched or handled. Absorption of BPA increases when hands are damp or oily,
20 such as a person who has recently wiped their forehead or handled greasy food, or when the
21 handler has used personal care products on their skin, such as hand sanitizer, soap, or lotion.
22 *See, e.g.*, Hormann, A., *et al.*, “Holding Thermal Receipt Paper and Eating Food after Using
23 Hand Sanitizer Results in High Serum Bioactive and Urine Total Levels of Bisphenol A (BPA),”
24 *PLOS ONE*, Vol. 9:10, October 2014; Biedermann, S., *et al.*, “Transfer of Bisphenol A from
25 Thermal Printer Paper to the Skin,” *Analytical & Bioanalytical Chemistry*, Vol. 398:1,
26 September 2010.

27 19. Defendants’ Products contain sufficient quantities of BPA such that
28 consumers, including pregnant women, who touch or handle Products are exposed to a

1 significant amount of BPA. The primary routes of exposure for the violations are dermal
2 absorption directly through the skin when consumers touch or handle the Products, and ingestion
3 via hand-to-mouth contact after consumers touch or handle the Products. These exposures occur
4 in homes, restaurants, workplaces and everywhere else throughout California where the products
5 are touched or handled.

6 20. No clear and reasonable warning is provided with Defendants' Products
7 regarding the reproductive hazards of BPA.

8 21. Any person acting in the public interest has standing to enforce violations
9 of Proposition 65 provided that such person has supplied the requisite public enforcers with a
10 valid 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the
11 action within such time. Health & Safety Code §25249.7(d).

12 22. More than sixty days prior to naming each Defendant in this lawsuit, CEH
13 provided a 60-Day "Notice of Violation" of Proposition 65 to the California Attorney General, to
14 the District Attorneys of every county in California, to the City Attorneys of every California
15 city with a population greater than 750,000 and to each of the named Defendants. In compliance
16 with Health & Safety Code §25249.7(d) and 27 C.C.R. §25903(b), each Notice included the
17 following information: (1) the name and address of each violator; (2) the statute violated; (3) the
18 time period during which violations occurred; (4) specific descriptions of the violations,
19 including (a) the routes of exposure to BPA from the Products, and (b) the specific type of
20 Products sold and used in violation of Proposition 65; and (5) the name of the specific
21 Proposition 65-listed chemical that is the subject of the violations described in each Notice.

22 23. CEH also sent a Certificate of Merit for each Notice to the California
23 Attorney General, to the District Attorneys of every county in California, to the City Attorneys
24 of every California city with a population greater than 750,000 and to each of the named
25 Defendants. In compliance with Health & Safety Code §25249.7(d) and 11 C.C.R. §3101, each
26 Certificate certified that CEH's counsel: (1) has consulted with one or more persons with
27 relevant and appropriate experience or expertise who reviewed facts, studies or other data
28 regarding the exposures to BPA alleged in each Notice; and (2) based on the information

1 obtained through such consultations, believes that there is a reasonable and meritorious case for
2 a citizen enforcement action based on the facts alleged in each Notice. In compliance with
3 Health & Safety Code §25249.7(d) and 11 C.C.R. §3102, each Certificate served on the Attorney
4 General included factual information – provided on a confidential basis – sufficient to establish
5 the basis for the Certificate, including the identity of the person(s) consulted by CEH’s counsel
6 and the facts, studies or other data reviewed by such persons.

7 24. None of the public prosecutors with the authority to prosecute violations
8 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against
9 Defendants under Health & Safety Code §25249.5, *et seq.*, based on the claims asserted in each
10 of CEH’s Notices.

11 25. Defendants both know and intend that individuals, including pregnant
12 women, will touch or handle the Products, thus exposing them to BPA.

13 26. Under Proposition 65, an exposure is “knowing” where the party
14 responsible for such exposure has:

15 knowledge of the fact that a[n] . . . exposure to a chemical listed
16 pursuant to [Health & Safety Code §25249.8(a)] is occurring. No
17 knowledge that the . . . exposure is unlawful is required.

18 27 C.C.R. §25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
19 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
20 §12601).

21 27. Defendants have been informed of the BPA in their Products by the 60-
22 Day Notice of Violation and accompanying Certificate of Merit served on them by CEH.

23 28. Defendants also have constructive knowledge that their Products contain
24 BPA due to the widespread media coverage concerning the problem of BPA in consumer
25 products in general, and in receipts using thermal paper in particular. The problem of BPA in
26 Products has been the subject of articles in national newspapers, industry trade papers, and
27 scholarly journals, as well as numerous Internet postings.
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1 37. Defendants have failed, and continue to fail, to provide clear and
2 reasonable warnings regarding the reproductive toxicity of BPA to users of their Products.

3 38. By committing the acts alleged above, Defendants have at all times
4 relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing
5 individuals to BPA without first giving clear and reasonable warnings to such individuals
6 regarding the reproductive toxicity of BPA.

7 **PRAYER FOR RELIEF**

8 CEH prays for judgment against Defendants as follows:

9 1. That the Court, pursuant to Health & Safety Code §25249.7(b), assess
10 civil penalties against each of the Defendants in the amount of \$2,500 per day for each violation
11 of Proposition 65 according to proof;

12 2. That the Court, pursuant to Health & Safety Code §25249.7(a),
13 preliminarily and permanently enjoin Defendants from offering the Products for sale in
14 California without either reformulating the Products such that no Proposition 65 warnings are
15 required or providing prior clear and reasonable warnings, as CEH shall specify in further
16 application to the Court;

17 3. That the Court, pursuant to Health & Safety Code §25249.7(a), order
18 Defendants to take action to stop ongoing unwarned exposures to BPA resulting from use of
19 Products sold by Defendants, as CEH shall specify in further application to the Court;

20 4. That the Court, pursuant to Code of Civil Procedure §1021.5 or any other
21 applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and

22 5. That the Court grant such other and further relief as may be just and
23 proper.
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25 Dated: September 8, 2016

Respectfully submitted,

LEXINGTON LAW GROUP

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CENTER FOR ENVIRONMENTAL HEALTH