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ENDORSED
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ALAMEDA COUNTY
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CLERK OF THE SUPERIOR COURT
By: ERICA BAKER, Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

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.)
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Case No. RG 16-834949
**FIRST AMENDED COMPLAINT FOR
INJUNCTIVE RELIEF AND CIVIL
PENALTIES**
Health & Safety Code §25249.6, *et seq.*
(Other)

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 paper coated with BPA
9 ("Thermal Paper") that is manufactured, distributed, sold or otherwise provided to consumers by
10 Defendants. Consumers, including pregnant women, are exposed to BPA when they touch or
11 handle the Thermal Paper.

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 birth defects or other reproductive harm without first
15 providing clear and reasonable warnings to exposed individuals. Defendants introduce Thermal
16 Paper containing significant quantities of BPA into the California marketplace, either directly by
17 selling the Thermal Paper or by distributing Thermal Paper as transactional documents, such as
18 receipts from cash registers and airline boarding passes, to California consumers.

19 3. Thermal Paper is treated with a surface coating of BPA. When Thermal
20 Paper is exposed to heat from a thermal printer, the BPA reacts with other chemicals on the
21 surface of the Thermal Paper by changing color to appear like ink on the paper. California
22 consumers, many of whom are pregnant women, are thus exposed to BPA when they touch or
23 otherwise handle the Thermal Paper.

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

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1 **PARTIES**

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

13 6. Defendant DEL TACO RESTAURANTS, INC. is a person in the course
14 of doing business within the meaning of Health & Safety Code §25249.11. DEL TACO
15 RESTAURANTS, INC. sells or otherwise makes available Thermal Paper that is provided to
16 California consumers as receipts for the purchase of other goods or services.

17 7. Defendant DEL TACO LLC is a person in the course of doing business
18 within the meaning of Health & Safety Code §25249.11. DEL TACO LLC sells or otherwise
19 makes available Thermal Paper that is provided to California consumers as receipts for the
20 purchase of other goods or services.

21 8. Defendant GREWAL SUPERFOODS INC. is a person in the course of
22 doing business within the meaning of Health & Safety Code §25249.11. GREWAL
23 SUPERFOODS INC. sells or otherwise makes available Thermal Paper that is provided to
24 California consumers as receipts for the purchase of other goods or services.

25 9. DOES 1 through 200 are each a person in the course of doing business
26 within the meaning of Health & Safety Code §25249.11. DOES 1 through 200 manufacture,
27 distribute, sell or otherwise make available Thermal Paper that is offered for sale in California or
28 provided as receipts or other transactional documentation to California consumers.

1 10. The defendants identified in Paragraphs 6 through 8 and DOES 1 through
2 200 are collectively referred to herein as “Defendants.”

3 11. The true names of DOES 1 through 200 are either unknown to CEH at this
4 time or the applicable time period before which CEH may file a Proposition 65 action has not
5 run. When their identities are ascertained or the applicable time period before which CEH may
6 file a Proposition 65 action has run, the Complaint shall be amended to reflect their true names.

7 **JURISDICTION AND VENUE**

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

12 13. This Court has jurisdiction over Defendants because each is a business
13 entity that does sufficient business, has sufficient minimum contacts in California or otherwise
14 intentionally avails itself of the California market through the sale, marketing or provision of
15 Thermal Paper in California or by having such other contacts with California so as to render the
16 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair
17 play and substantial justice.

18 14. Venue is proper in Alameda County Superior Court because one or more of
19 the violations arise in the County of Alameda.

20 **BACKGROUND FACTS**

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

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

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

4 17. On May 11, 2015, the State of California officially listed BPA as a
5 chemical known to cause reproductive toxicity. BPA is specifically identified as a reproductive
6 toxicant under the subcategory “female reproductive toxicity,” which means harm to the female
7 reproductive system. 27 California Code of Regulations (“C.C.R.”) §27001(c). On May 11,
8 2016, one year after it was listed as a chemical known to cause reproductive toxicity, BPA
9 became subject to the clear and reasonable warning requirement regarding reproductive toxicants
10 under Proposition 65. *Ibid.*; Health & Safety Code §25249.10(b).

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

22 19. Thermal Paper is a specialty paper designed for use in thermal printers.
23 Thermal Paper has a layer of a reactant acid combined with a dye on the surface of the Thermal
24 Paper. When heated in a thermal printer, the molecules in the dye bond with molecules in the
25 reactant acid (often called the developer) on the surface of the Thermal Paper to produce text,
26 numbers or images. This resulting darkening of the Thermal Paper appears like ink on the paper
27 surface. The reactant acid in the Thermal Paper at issue here is BPA. Thus, BPA is intentionally
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1 added to the surface of the Thermal Paper as a functional component of the paper. Without the
2 precise amount of BPA, the Thermal Paper will not produce images and text accurately.

3 20. Thermal Paper is used for a diverse array of purposes. Thermal Paper is
4 often used in generating receipts from cash registers, credit card terminals and similar devices.
5 Thermal Paper is also used in generating other transactional documents, such as service and
6 repair estimates, invoices and order forms, delivery notices, and transportation documentation.
7 Thermal Paper is also used in label makers and fax machines.

8 21. BPA is transferred from the surface of the Thermal Paper to the hands
9 when the Thermal Paper is touched or handled. Absorption of BPA increases when hands are
10 damp or oily, such as a person who has recently wiped their forehead or handled greasy food, or
11 when the handler has used personal care products on their skin, such as hand sanitizer, soap or
12 lotion. *See, e.g.,* Hormann, A., *et al.*, “Holding Thermal Receipt Paper and Eating Food after
13 Using Hand Sanitizer Results in High Serum Bioactive and Urine Total Levels of Bisphenol A
14 (BPA),” *PLOS ONE*, Vol. 9:10, October 2014; Biedermann, S., *et al.*, “Transfer of Bisphenol A
15 from Thermal Printer Paper to the Skin,” *Analytical & Bioanalytical Chemistry*, Vol. 398:1,
16 September 2010.

17 22. Defendants’ Thermal Paper contains sufficient quantities of BPA such that
18 consumers, including pregnant women, who touch or handle the Thermal Paper are exposed to
19 significant amounts of BPA. The primary routes of exposure for the violations are dermal
20 absorption directly through the skin when consumers touch or handle Thermal Paper, and
21 ingestion via hand-to-mouth contact after consumers touch or handle Thermal Paper. These
22 exposures occur in homes, restaurants, workplaces, airline, train and bus terminals and
23 everywhere else throughout California where the Thermal Paper is touched or handled.

24 23. No clear and reasonable warning is provided with Defendants’ Thermal
25 Paper regarding the reproductive hazards of BPA.

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

3 25. More than sixty days prior to naming each Defendant in this lawsuit, CEH
4 provided a 60-Day “Notice of Violation” of Proposition 65 to the California Attorney General, to
5 the District Attorneys of every county in California, to the City Attorneys of every California city
6 with a population greater than 750,000 and to each of the named Defendants. In compliance with
7 Health & Safety Code §25249.7(d) and 27 C.C.R. §25903(b), each Notice included the following
8 information: (1) the name and address of each violator; (2) the statute violated; (3) the time
9 period during which violations occurred; (4) specific descriptions of the violations, including (a)
10 the routes of exposure to BPA from Thermal Paper, and (b) the specific type of product violating
11 Proposition 65; and (5) the name of the specific Proposition 65-listed chemical (BPA) that is the
12 subject of the violations described in each Notice.

13 26. CEH also sent a Certificate of Merit for each Notice to the California
14 Attorney General, to the District Attorneys of every county in California, to the City Attorneys of
15 every California city with a population greater than 750,000 and to each of the named
16 Defendants. In compliance with Health & Safety Code §25249.7(d) and 11 C.C.R. §3101, each
17 Certificate certified that CEH’s counsel: (1) has consulted with one or more persons with
18 relevant and appropriate experience or expertise who reviewed facts, studies or other data
19 regarding the exposures to BPA alleged in each Notice; and (2) based on the information
20 obtained through such consultations, believes that there is a reasonable and meritorious case for a
21 citizen enforcement action based on the facts alleged in each Notice. In compliance with Health
22 & Safety Code §25249.7(d) and 11 C.C.R. §3102, each Certificate served on the Attorney
23 General included factual information – provided on a confidential basis – sufficient to establish
24 the basis for the Certificate, including the identity of the person(s) consulted by CEH’s counsel
25 and the facts, studies or other data reviewed by such persons.

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

3 28. Defendants both know and intend that individuals, including pregnant
4 women, will touch or handle Thermal Paper, thus exposing them to BPA.

5 29. Under Proposition 65, an exposure is "knowing" where the party
6 responsible for such exposure has:

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

10 27 C.C.R. §25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
11 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
12 §12601).

13 30. Defendants have been informed of the BPA in their Thermal Paper by the
14 60-Day Notice of Violation and accompanying Certificate of Merit served on them by CEH.

15 31. Because Thermal Paper requires a phenol-based reactant such as BPA in
16 order to produce text or images, Defendants should have known that their Thermal Paper could
17 contain BPA. Further, Defendants also have constructive knowledge that their Thermal Paper
18 contains BPA due to the widespread media coverage concerning the problem of BPA in
19 consumer products in general, and on documents printed on Thermal Paper in particular. The
20 problem of BPA exposures from thermal paper has been the subject of articles in national
21 newspapers, industry trade papers and scholarly journals, as well as numerous Internet postings.

22 32. As companies that manufacture, import, distribute, sell or otherwise
23 provide Thermal Paper to consumers, Defendants know or should know that Thermal Paper
24 contains BPA and that individuals who touch or handle Thermal Paper will be exposed to BPA.
25 The BPA exposures to consumers who touch or handle Thermal Paper are a natural and
26 foreseeable consequence of Defendants' placing Thermal Paper into the stream of commerce
27 and/or dispensing Thermal Paper to California consumers.
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33. Nevertheless, Defendants continue to expose consumers, including pregnant women, to BPA without prior clear and reasonable warnings regarding the reproductive hazards of BPA.

34. CEH has engaged in good faith efforts to resolve the claims alleged herein prior to filing this Complaint.

35. Any person “violating or threatening to violate” Proposition 65 may be enjoined in any court of competent jurisdiction. Health & Safety Code §25249.7. “Threaten to violate” is defined to mean “to create a condition in which there is a substantial probability that a violation will occur.” Health & Safety Code §25249.11(e). Proposition 65 provides for civil penalties not to exceed \$2,500 per day for each violation of Proposition 65.

FIRST CAUSE OF ACTION

(Violations of Health & Safety Code §25249.6)

36. CEH realleges and incorporates by reference as if specifically set forth herein Paragraphs 1 through 35, inclusive.

37. By placing Thermal Paper into the stream of commerce or dispensing Thermal Paper to California consumers as receipts or other transactional documentation, each Defendant is a person in the course of doing business within the meaning of Health & Safety Code §25249.11.

38. BPA is a chemical listed by the State of California as known to cause birth defects and other reproductive harm.

39. Defendants know that average use of their Thermal Paper will expose people who touch or handle the Thermal Paper to BPA. Defendants intend that the Thermal Paper be used in a manner that results in Thermal Paper’s being touched or handled, which results in exposures to BPA from the Thermal Paper.

40. Defendants have failed, and continue to fail, to provide clear and reasonable warnings regarding the reproductive toxicity of BPA to consumers who touch or handle their Thermal Paper.

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5. That the Court grant such other and further relief as may be just and proper.

Dated: November 2, 2016

Respectfully submitted,
LEXINGTON LAW GROUP



Eric S. Somers
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH