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ALAMEDA COUNTY

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SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,
Plaintiff,
v.
DEL TACO RESTAURANTS, INC., et al.,
Defendants.

Case No. RG-16-834949

**[PROPOSED] CONSENT
JUDGMENT AS TO AMERICAN
MULTI-CINEMA, INC., TAYLOR
COMMUNICATIONS, INC. AND
TELEMARK CORPORATION**

1 **1. INTRODUCTION**

2 1.1 The Parties to this Consent Judgment are plaintiff the Center for Environmental
3 Health, a California non-profit corporation (“CEH”), and defendants American Multi-Cinema,
4 Inc. (“AMC”), Taylor Communications, Inc. (“Taylor”) and Telemark Corporation (“Telemark”)
5 (referred to collectively as, “Settling Defendants”). The Parties enter into this Consent Judgment
6 to settle certain claims asserted by CEH against Settling Defendants as set forth in the operative
7 complaint (“Complaint”) in the above-captioned matter. This Consent Judgment covers thermal
8 paper sold by Taylor and Telemark and thermal paper purchased by AMC for use in California
9 as transactional documentation such as movie tickets and receipts. Some of the thermal paper
10 provided by Settling Defendants to their customers was coated with bisphenol A, a chemical
11 known to the State of California to cause birth defects or other reproductive harm (“BPA”).

12 1.2 On February 9, 2017, CEH provided a 60-day Notice of Violation under
13 Proposition 65 to AMC, the California Attorney General, the District Attorneys of every county
14 in California and the City Attorneys of every California city with a population greater than
15 750,000 (the “Public Enforcers”), alleging that AMC violated Proposition 65 by exposing
16 persons to BPA from thermal paper without first providing a clear and reasonable Proposition
17 65 warning.

18 1.3 On October 16, 2017, CEH provided a 60-day Notice of Violation under
19 Proposition 65 to Taylor, Telemark and the Public Enforcers alleging that Taylor and Telemark
20 violated Proposition 65 by exposing persons to BPA from thermal paper without first providing
21 a clear and reasonable Proposition 65 warning.

22 1.4 On October 13, 2016, CEH filed the initial complaint in the above-captioned
23 matter. On November 2, 2016, CEH filed the First Amended Complaint in the above-captioned
24 matter. The First Amended Complaint has since been amended to add additional defendants,
25 including AMC on May 5, 2017 and Taylor and Telemark on January 10, 2018.

26 1.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court
27 has jurisdiction over the allegations of violations contained in the Complaint and personal
28 jurisdiction over Settling Defendants as to the acts alleged in the Complaint, that venue is proper

1 in the County of Alameda and that this Court has jurisdiction to enter and enforce this Consent
2 Judgment as a full and final resolution of all claims which were or could have been raised in the
3 Complaint based on the facts alleged therein with respect to thermal paper sold or provided to
4 consumers by Settling Defendants.

5 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by the
6 Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with
7 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
8 conclusion of law, issue of law or violation of law. Nothing in this Consent Judgment shall
9 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any
10 other pending or future legal proceedings. This Consent Judgment is the product of negotiation
11 and compromise and is accepted by the Parties solely for purposes of settling, compromising and
12 resolving issues disputed in this Action.

13 2. INJUNCTIVE RELIEF

14 2.1 Definitions

15 2.1.1 The “Effective Date” is the date of entry of this Consent Judgment.

16 2.1.2 “California Thermal Paper” is thermal paper that has or will be used in
17 California or otherwise provided to employees working in California or consumers located in
18 California by a Settling Defendant or any direct or indirect downstream entity.

19 **2.2 Specification Compliance Date.** To the extent it has not already done so, no more
20 than thirty (30) days after the Effective Date, before a Settling Defendant purchases any
21 California Thermal Paper, it shall instruct in writing each of its suppliers of California Thermal
22 Paper (a “Thermal Paper Supplier”) that the California Thermal Paper supplied to that Settling
23 Defendant must be BPA-free, as defined in Section 2.3 below. If in the future a Settling
24 Defendant purchases California Thermal Paper from a Thermal Paper Supplier that it has not
25 previously provided with instructions to provide BPA-free thermal paper, the Settling Defendant
26 shall provide written instructions to such Thermal Paper Supplier prior to placing an initial order
27 for California Thermal Paper that instructs the Thermal Paper Supplier to provide it with
28 California Thermal Paper that is BPA-free. Each Settling Defendant shall retain and make

1 available to CEH upon reasonable written request records of communications sent to and received
2 from Thermal Paper Suppliers that are related to the requirement of this Section 2.1 for a period
3 of three (3) years from the Effective Date.

4 **2.3 Reformulation of Thermal Paper.** After the Effective Date, no Settling
5 Defendant shall purchase, sell, offer for sale, ship, distribute, use or provide to any employee or
6 customer any California Thermal Paper that contains BPA that was intentionally added to the
7 thermal paper in the manufacturing process. Thermal paper that contains less than 20 parts per
8 million (“ppm”) BPA by weight is deemed to contain no intentionally added BPA, such
9 concentration to be determined by use of a test performed by an accredited laboratory using
10 inductively coupled plasma mass spectrometry (ICP-MS) equipment.

11 **3. ENFORCEMENT**

12 **3.1 Enforcement Procedures.** Prior to bringing any motion or order to show cause
13 to enforce the terms of this Consent Judgment, a Party seeking to enforce shall provide the
14 violating party thirty (30) days advanced written notice of the alleged violation. The Parties shall
15 meet and confer during such thirty (30) day period in an effort to try to reach agreement on an
16 appropriate cure for the alleged violation. After such thirty (30) day period, the Party seeking to
17 enforce may, by new action, motion or order to show cause before the Superior Court of
18 Alameda, seek to enforce Proposition 65 and the terms and conditions contained in this Consent
19 Judgment.

20 **4. PAYMENTS**

21 **4.1 Payments by Settling Defendants.** On or before five (5) days after the entry of
22 this Consent Judgment, Taylor and Telemark (“Payment Defendants”) shall be jointly and
23 severally liable for payment of the total sum of \$180,000 as a settlement payment as further set
24 forth in this Section.

25 **4.2 Allocation of Payments.** The total settlement amount shall be paid in four
26 separate checks in the amounts specified below and delivered as set forth below. Any failure by
27 Payment Defendants to comply with the payment terms herein shall be subject to a stipulated
28 late fee to be paid jointly by Payment Defendants in the amount of \$100 for each day the full

1 payment is not received after the applicable payment due date set forth in Section 4.1. The late
2 fees required under this Section shall be recoverable, together with reasonable attorneys' fees, in
3 an enforcement proceeding brought pursuant to Section 3 of this Consent Judgment. The funds
4 paid by Payment Defendants shall be allocated as set forth below between the following
5 categories and made payable as follows:

6 4.2.1 Payment Defendants shall pay \$31,440 as a civil penalty pursuant to Health
7 & Safety Code §25249.7(b). The civil penalty payment shall be apportioned in accordance with
8 Health & Safety Code §25249.12 (25% to CEH and 75% to the State of California's Office of
9 Environmental Health Hazard Assessment ("OEHHA")). Accordingly, Payment Defendants shall
10 pay the OEHHA portion of the civil penalty payment for \$23,580 by check made payable to
11 OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be
12 delivered as follows:

13 For United States Postal Service Delivery:
14 Attn: Mike Gyurics
15 Fiscal Operations Branch Chief
16 Office of Environmental Health Hazard Assessment
17 P.O. Box 4010, MS #19B
18 Sacramento, CA 95812-4010

17 For Non-United States Postal Service Delivery:
18 Attn: Mike Gyurics
19 Fiscal Operations Branch Chief
20 Office of Environmental Health Hazard Assessment
21 1001 I Street, MS #19B
22 Sacramento, CA 95814

21 Payment Defendants shall pay the CEH portion of the civil penalty payment for \$7,860 by check
22 made payable to the Center for Environmental Health and associated with taxpayer identification
23 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero
24 Street, San Francisco, CA 94117.

25 4.2.2 Payment Defendants shall pay \$23,580 as an Additional Settlement
26 Payment ("ASP") to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code
27 of Regulations, Title 11, § 3204. CEH intends to place these funds in CEH's Toxics in Food
28 Fund and use them to support CEH programs and activities that seek to educate the public about

1 BPA and other toxic chemicals in food, to work with the food industry and agriculture interests
2 to reduce exposure to BPA and other toxic chemicals in food, and to thereby reduce the public
3 health impacts and risks of exposure to BPA and other toxic chemicals in food sold in
4 California. CEH shall obtain and maintain adequate records to document that ASPs are spent on
5 these activities and CEH agrees to provide such documentation to the Attorney General within
6 thirty days of any request from the Attorney General. The payment pursuant to this Section shall
7 be made payable to the Center for Environmental Health and associated with taxpayer
8 identification number 94-3251981. This payment shall be delivered to Lexington Law Group,
9 503 Divisadero Street, San Francisco, CA 94117.

10 4.2.3 Payment Defendants shall pay \$124,980 as a reimbursement of a portion
11 of CEH's reasonable attorneys' fees and costs. The attorneys' fees and cost reimbursement shall
12 be made payable to the Lexington Law Group and associated with taxpayer identification number
13 94-3317175. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street,
14 San Francisco, CA 94117.

15 4.2.4 To summarize, Payment Defendants shall deliver checks made out to the
16 payees and in the amounts set forth below:

17

18 Payee	Type	Amount	Deliver To
19 OEHHA	Penalty	\$23,580	OEHHA per Section 4.2.1
20 Center For Environmental Health	Penalty	\$7,860	LLG
21 Center For Environmental Health	ASP	\$23,580	LLG
22 Lexington Law Group	Fees and Costs	\$124,980	LLG

23

24 5. MODIFICATION OF CONSENT JUDGMENT

25 5.1 **Modification.** This Consent Judgment may be modified from time to time by
26 express written agreement of the Parties, with the approval of the Court or by an order of this
27 Court upon motion and in accordance with law.

28 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment

1 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
2 modify the Consent Judgment.

3 **6. CLAIMS COVERED AND RELEASE**

4 6.1 This Consent Judgment is a full, final and binding resolution between CEH on
5 behalf of itself and the public interest and each Settling Defendant and its parents, subsidiaries,
6 affiliated entities that are under common ownership, directors, officers, employees, agents,
7 shareholders, successors, assigns and attorneys (“Defendant Releasees”), and all entities to
8 which a Settling Defendant directly or indirectly distributes or sells California Thermal Paper,
9 including but not limited to Vistar Transportation, LLC and distributors, wholesalers, customers,
10 retailers, franchisees, licensors and licensees (“Downstream Defendant Releasees”), of any
11 violation of Proposition 65 based on failure to warn about alleged exposure to BPA contained in
12 California Thermal Paper that was sold, offered for sale, shipped, distributed, used or otherwise
13 provided to employees or customers by a Settling Defendant prior to the Effective Date,
14 provided however, that nothing in this Section 6.1 release shall apply to thermal paper sold by
15 Taylor for eventual use by Nordstrom, Inc.¹

16 6.2 CEH, for itself, its agents, successors and assigns, releases, waives and forever
17 discharges any and all claims against each Settling Defendant, Defendant Releasees and
18 Downstream Defendant Releasees arising from any violation of Proposition 65 or any other
19 statutory or common law claims that have been or could have been asserted by CEH individually
20 or in the public interest regarding the failure to warn about exposure to BPA in connection with
21 California Thermal Paper that was sold, offered for sale, shipped, distributed, used or otherwise
22 provided to employees or customers by a Settling Defendant prior to the Effective Date,
23 provided however, that nothing in this Section 6.2 release shall apply to thermal paper sold by
24 Taylor for eventual use by Nordstrom, Inc.

25 6.3 Compliance with the terms of this Consent Judgment by a Settling Defendant
26 shall constitute compliance with Proposition 65 by that Settling Defendant, its Defendant
27

28 ¹ Sales of thermal paper by Taylor for eventual use by Nordstrom, Inc. are covered in a
separate Consent Judgment.

1 Releasees and its Downstream Defendant Releasees with respect to any alleged failure to warn
2 about BPA contained in California Thermal Paper sold, offered for sale, shipped, distributed,
3 used or otherwise provided to employees or customers by a Settling Defendant.

4 **7. PROVISION OF NOTICE**

5 7.1 When CEH is entitled to receive any notice under this Consent Judgment,
6 the notice shall be sent by first class and electronic mail to:

7 Eric S. Somers
8 Lexington Law Group
9 503 Divisadero Street
10 San Francisco, CA 94117
11 esomers@lexlawgroup.com

12 7.2 When a Settling Defendant is entitled to receive any notice under this
13 Consent Judgment, the notice shall be sent by first class and electronic mail to:

14 Rohit Sabnis
15 Burnham Brown
16 A Professional Law Corporation
17 1901 Harrison Street, 14th Floor
18 Oakland, CA 94612
19 rsabnis@burnhambrown.com

20 7.3 Any Party may modify the person and address to whom the notice is to be
21 sent by sending the other Party notice by first class and electronic mail.

22 **8. COURT APPROVAL**

23 8.1 This Consent Judgment shall become effective as a contract upon the date signed
24 by CEH and all Settling Defendants, whichever is later, provided however, that CEH shall also
25 prepare and file a Motion for Approval of this Consent Judgment and Settling Defendants shall
26 support approval of such Motion.

27 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
28 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
purpose.

9. GOVERNING LAW AND CONSTRUCTION

9.1 The terms of this Consent Judgment shall be governed by the laws of the
State of California.

1 **10. ATTORNEY’S FEES**

2 10.1 A Party who unsuccessfully brings or contests an action arising out of this
3 Consent Judgment shall be required to pay the prevailing Party’s reasonable attorneys’ fees and
4 costs unless the unsuccessful Party has acted with substantial justification. For purposes of this
5 Consent Judgment, the term substantial justification shall carry the same meaning as used in the
6 Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016.010, *et seq.*

7 10.2 Notwithstanding Section 10.1, a Party who prevails in a contested enforcement
8 action brought pursuant to Section 3 may seek an award of attorneys’ fees pursuant to Code of
9 Civil Procedure § 1021.5 against a Party that acted with substantial justification. The Party
10 seeking such an award shall bear the burden of meeting all of the elements of § 1021.5, and this
11 provision shall not be construed as altering any procedural or substantive requirements for
12 obtaining such an award.

13 10.3 Nothing in this Section 10 shall preclude a party from seeking an award of
14 sanctions pursuant to law.

15 **11. ENTIRE AGREEMENT**

16 11.1 This Consent Judgment contains the sole and entire agreement and understanding
17 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
18 negotiations, commitments or understandings related thereto, if any, are hereby merged herein
19 and therein. There are no warranties, representations or other agreements between the Parties
20 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
21 other than those specifically referred to in this Consent Judgment have been made by any Party
22 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
23 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
24 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
25 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
26 modification, waiver or termination of this Consent Judgment shall be binding unless executed
27 in writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
28 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof

1 whether or not similar, nor shall such waiver constitute a continuing waiver.

2 **12. RETENTION OF JURISDICTION**

3 12.1 This Court shall retain jurisdiction of this matter to implement or modify the
4 Consent Judgment.

5 **13. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

6 13.1 Each signatory to this Consent Judgment certifies that he or she is fully
7 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter
8 into and execute the Consent Judgment on behalf of the Party represented and to legally bind
9 that Party.

10 **14. NO EFFECT ON OTHER SETTLEMENTS**

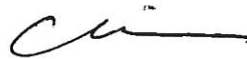
11 14.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
12 against an entity that is not a Settling Defendant on terms that are different than those contained
13 in this Consent Judgment.

14 **15. EXECUTION IN COUNTERPARTS**

15 15.1 The stipulations to this Consent Judgment may be executed in counterparts and
16 by means of facsimile or portable document format (pdf), which taken together shall be deemed
17 to constitute one document.

18
19 **IT IS SO STIPULATED.**

20 **CENTER FOR ENVIRONMENTAL HEALTH**

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22 _____
23 Charlie Pizarro
24 Associate Director

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AMERICAN MULTI-CINEMA, INC.



Signature

Kevin M Connor

Printed Name

SVP, General Counsel, Secretary

Title

TAYLOR COMMUNICATIONS, INC.

Signature

Printed Name

Title

TELEMARK CORPORATION

Signature

Printed Name

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AMERICAN MULTI-CINEMA, INC.

Signature

Printed Name

Title

TAYLOR COMMUNICATIONS, INC.

Signature

JEFF CRUMP

Printed Name

C.O.O

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TELEMARK CORPORATION

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AMERICAN MULTI-CINEMA, INC.

Signature

Printed Name

Title

TAYLOR COMMUNICATIONS, INC.

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TELEMARK CORPORATION

Thomas J Thomasma

Signature

Thomas J Thomasma

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CEO

Title

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**IT IS SO ORDERED, ADJUDGED,
AND DECREED:**

Dated: 12/28/16



Judge of the Superior Court of California

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

Case Number: RG16834949

Case name: Center for Environmental Health v. Del Taco Restaurants, Inc. et al.

CLERK'S CERTIFICATE OF SERVICE

I certify that I am not a party to this cause and that a true and correct copy of this Order was emailed to the addresses shown on at the bottom of this document.

Dated: December 31, 2018

Jhalisa A. Castaneda

Courtroom Clerk, Dept. 23

Lexington Law Group
Eric Somers
Joseph Mann
Ryan Berghoff
503 Divisadero Street
San Francisco, CA 94117

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