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FILED
ALAMEDA COUNTY

DEC 28 2018

CLERK OF THE SUPERIOR COURT

By *[Signature]* Deputy

SUPERIOR COURT FOR THE STATE 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 CINEMARK
HOLDINGS, INC., CINEMARK USA,
INC. AND CENTURY THEATRES,
INC.**

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1 **1. INTRODUCTION**

2 1.1. The Parties to this Consent Judgment are the Center for Environmental Health, a
3 California non-profit corporation (“CEH”), and Cinemark Holdings, Inc., a Delaware corporation,
4 and its wholly owned subsidiaries Cinemark USA, Inc., a Texas Corporation and Century
5 Theatres, Inc., a California corporation (collectively, “Settling Defendants”). The Parties enter
6 into this Consent Judgment to settle certain claims asserted by CEH against Settling Defendants
7 as set forth in the operative complaint (“Complaint”) in the above-captioned matter. This
8 Consent Judgment covers thermal paper that is provided by Settling Defendants to their
9 customers in California as transactional documentation such as receipts and tickets (“Thermal
10 Paper”). CEH alleges that the Thermal Paper provided by Settling Defendants to their customers
11 in the past was coated with bisphenol A, a chemical known to the State of California to cause
12 birth defects or other reproductive harm (“BPA”).

13 1.2. On February 9, 2017, CEH provided a 60-day Notice of Violation under
14 Proposition 65 to Cinemark Holdings, Inc., Cinemark USA, Inc., the California Attorney General,
15 the District Attorneys of every county in California and the City Attorneys of every California
16 city with a population greater than 750,000, alleging that Cinemark Holdings, Inc. and Cinemark
17 USA, Inc. violated Proposition 65 by exposing persons to BPA from Thermal Paper without first
18 providing a clear and reasonable Proposition 65 warning.

19 1.3. On May 11, 2018, CEH provided a 60-day Notice of Violation under Proposition
20 65 to Century Theatres, Inc., the California Attorney General, the District Attorneys of every
21 county in California and the City Attorneys of every California city with a population greater than
22 750,000, alleging that Century Theatres, Inc. violated Proposition 65 by exposing persons to BPA
23 from Thermal Paper without first providing a clear and reasonable Proposition 65 warning.

24 1.4. On October 13, 2016, CEH filed the Complaint in the above-captioned matter. On
25 November 2, 2016, CEH filed the First Amended Complaint in the above-captioned matter. The
26 First Amended Complaint has since been amended to add additional defendants, including
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1 Cinemark Holdings, Inc. and Cinemark USA, Inc. on May 5, 2017 and to add Century Theatres,
2 Inc. on or about July 25, 2018.

3 1.5. For purposes of this Consent Judgment only, the Parties stipulate that this Court
4 has jurisdiction over the allegations of violations contained in the Complaint and personal
5 jurisdiction over Settling Defendants as to the acts alleged in the Complaint, that venue is proper
6 in the County of Alameda, and that this Court has jurisdiction to enter and enforce this Consent
7 Judgment as a full and final resolution of all claims which were or could have been raised in the
8 Complaint based on the facts alleged therein with respect to Thermal Paper provided to
9 consumers by Settling Defendants.

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

18 1.7. The date of entry of this Consent Judgment is the “Effective Date.”

19 **2. INJUNCTIVE RELIEF**

20 2.1. **Specification Compliance Date.** To the extent it has not already done so, no
21 more than thirty (30) days after the date of entry of this Consent Judgment, before a Settling
22 Defendant purchases any Thermal Paper for use in its California locations, it shall instruct each of
23 its suppliers of Thermal Paper (*i.e.*, the contracting party from whom the Settling Defendant
24 purchases Thermal Paper) (a “Thermal Paper Supplier”) that the Thermal Paper to be used in its
25 California locations must meet the BPA Reformulation Level (defined below). If in the future a
26 Settling Defendant purchases Thermal Paper from a Thermal Paper Supplier that it has not
27 previously provided with instructions to provide Thermal Paper for use in its California locations

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1 that meets the BPA Reformation Level, the Settling Defendant shall provide instructions to such
2 Thermal Paper Supplier prior to placing an initial order for Thermal Paper that directs the
3 Thermal Paper Supplier to provide it with Thermal Paper for use in its California locations that
4 meets the BPA Reformation Level. Each Settling Defendant shall retain and make available to
5 CEH upon reasonable written request records of communications sent to and received from
6 Thermal Paper Suppliers that are related to the requirement of this Section 2.1 for a period of one
7 (1) year from the Effective Date. Any confidential information provided to CEH by a Settling
8 Defendant pursuant to this Consent Judgment may be provided subject to the Protective Order
9 entered by the Court in this matter on June 6, 2017 (the “Del Taco Protective Order”), regardless
10 of whether the Del Taco Protective Order is determined to pertain to this Consent Judgment and
11 related settlement correspondence stemming from this Consent Judgment.

12 **2.2. Reformulation of Thermal Paper.** After the Effective Date, no Settling
13 Defendant shall purchase, sell, offer for sale, ship, distribute, use or provide to any employee or
14 customer any Thermal Paper to be used in California that contains BPA that does not meet the
15 Reformulation Level. Thermal Paper is deemed to meet the Reformulation Level if it contains no
16 BPA that was intentionally added to the Thermal Paper in the manufacturing process and it
17 contains less than 20 parts per million (“ppm”) BPA by weight, such concentration to be
18 determined by use of a test performed by an accredited laboratory using inductively coupled
19 plasma mass spectrometry (ICP-MS) equipment. So long as a Settling Defendant is in
20 compliance with the requirements of this Section, a Settling Defendant has no independent
21 obligation under this Consent Judgment to test Thermal Paper for BPA.

22 **2.3. Additional Research Efforts on Thermal Paper.** CEH contends that certain
23 alternatives to BPA used in Thermal Paper are other phenols (*e.g.*, bisphenol S (“BPS”)) that
24 allegedly have adverse health effects, although they are not subject to Proposition 65. Settling
25 Defendants agree to use commercially reasonable efforts to research alternatives to phenol-based
26 Thermal Paper and strategies to reduce the use of thermal paper in their California
27 locations. Settling Defendants shall prepare a joint written report describing the results from this

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1 work, including the feasibility of switching to phenol-free Thermal Paper, that shall be submitted
2 to CEH within thirty (30) days of the one-year anniversary of the Effective Date.

3 **3. ENFORCEMENT**

4 3.1. **Enforcement Procedures.** Prior to bringing any motion or order to show cause to
5 enforce the terms of this Consent Judgment, a Party seeking to enforce shall provide the violating
6 party thirty (30) days advanced written notice of the alleged violation. The Parties shall meet and
7 confer during such thirty (30) day period in an effort to try to reach agreement on an appropriate
8 cure for the alleged violation. After such thirty (30) day period, the Party seeking to enforce may,
9 by new action, motion or order to show cause before the Superior Court of Alameda, seek to
10 enforce Proposition 65 and the terms and conditions contained in this Consent Judgment.

11 **4. PAYMENTS**

12 4.1. **Payments by Settling Defendants.** CEH agrees to provide a separate W-9 form
13 for each legal entity that will receive a check pursuant to this Agreement. The Settling
14 Defendants shall be jointly and severally liable for a total payment of \$195,000 dollars (\$) within
15 ten (10) calendar days of entry of this Consent Judgment.

16 4.2. **Allocation of Payments.** The total settlement amount shall be paid in four (4)
17 separate checks in the amounts specified below and delivered as set forth below. Any failure by
18 Settling Defendants to comply with the payment terms herein shall be subject to a stipulated late
19 fee to be paid by Settling Defendants in the amount of \$100 for each day the full payment is not
20 received after the applicable payment due date set forth in Section 4.1. The late fees required
21 under this Section shall be recoverable, together with reasonable attorneys' fees, in an
22 enforcement proceeding brought pursuant to Section 3 of this Consent Judgment. The funds paid
23 by Settling Defendants shall be allocated as set forth below between the following categories and
24 made payable as follows:

25 4.2.1. Settling Defendants shall pay \$34,028 as a civil penalty pursuant to Health
26 & Safety Code §25249.7(b). The civil penalty payment shall be apportioned in accordance with
27 Health & Safety Code §25249.12 (25% to CEH and 75% to the State of California's Office of

1 Environmental Health Hazard Assessment (“OEHHA”). Accordingly, Settling Defendants shall
2 pay the OEHHA portion of the civil penalty payment for \$25,521 by check made payable to
3 OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be
4 delivered as follows:

5 For United States Postal Service Delivery:
6 Attn: Mike Gyurics
7 Fiscal Operations Branch Chief
8 Office of Environmental Health Hazard Assessment
9 P.O. Box 4010, MS #19B
10 Sacramento, CA 95812-4010

11 For Non-United States Postal Service Delivery:
12 Attn: Mike Gyurics
13 Fiscal Operations Branch Chief
14 Office of Environmental Health Hazard Assessment
15 1001 I Street, MS #19B
16 Sacramento, CA 95814

17 Settling Defendants shall pay the CEH portion of the civil penalty payment for \$8,507 by check
18 made payable to the Center for Environmental Health and associated with taxpayer identification
19 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero
20 Street, San Francisco, CA 94117.

21 4.2.2. Settling Defendants shall pay \$25,521 as an Additional Settlement
22 Payment (“ASP”) to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code
23 of Regulations, Title 11, § 3204. CEH intends to place these funds in CEH’s Toxics in Food
24 Fund and use them to support CEH programs and activities that seek to educate the public about
25 BPA and other toxic chemicals in food, to work with the food industry and agriculture interests to
26 reduce exposure to BPA and other toxic chemicals in food, and to thereby reduce the public
27 health impacts and risks of exposure to BPA and other toxic chemicals in food sold in California.
28 CEH shall obtain and maintain adequate records to document that ASPs are spent on these
activities and CEH agrees to provide such documentation to the Attorney General within thirty
days of any request from the Attorney General. The payments pursuant to this Section shall be
made payable to the Center for Environmental Health and associated with taxpayer identification

1 number 94-3251981. These payments shall be delivered to Lexington Law Group, 503
2 Divisadero Street, San Francisco, CA 94117.

3 4.2.3. Settling Defendants shall pay \$135,451 as a reimbursement of a portion of
4 CEH's reasonable attorneys' fees and costs. The attorneys' fees and cost reimbursement shall be
5 made payable to the Lexington Law Group and associated with taxpayer identification number
6 94-3317175. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street,
7 San Francisco, CA 94117.

8 4.2.4. To summarize, Settling Defendants shall deliver checks made out to the
9 payees and in the amounts set forth below:

10 Payee	11 Type	12 Amount	13 Deliver To
14 OEHHA	Penalty	\$25,521	OEHHA per Section
15 Center For Environmental Health	Penalty	\$8,507	LLG
Center For Environmental Health	ASP	\$25,521	LLG
Lexington Law Group	Fees and Costs	\$135,451	LLG

16 **5. MODIFICATION OF CONSENT JUDGMENT**

17 5.1. **Modification.** This Consent Judgment may be modified from time to time by
18 express written agreement of the Parties, with the approval of the Court, or by an order of this
19 Court upon motion and in accordance with law.

20 5.2. **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
21 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
22 modify the Consent Judgment.

23 **6. CLAIMS COVERED AND RELEASE**

24 6.1. This Consent Judgment is a full, final and binding resolution between CEH on
25 behalf of itself and the public interest and each Settling Defendant and its parents, subsidiaries,
26 affiliated entities that are under common ownership, directors, officers, employees, agents,
27 shareholders, successors, assigns and attorneys ("Defendant Releasees") of any violation of

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1 Proposition 65 based on failure to warn about exposure to BPA contained in Thermal Paper that
2 was purchased, sold, offered for sale, shipped, distributed, used or otherwise provided to
3 employees or customers by a Settling Defendant prior to the Effective Date.

4 6.2. CEH, for itself, its agents, successors and assigns, releases, waives and forever
5 discharges any and all claims against each Settling Defendant, Defendant Releasees arising from
6 any violation of Proposition 65 or any other statutory or common law claims that have been or
7 could have been asserted by CEH individually or in the public interest regarding the failure to
8 warn about exposure to BPA contained in Thermal Paper that was purchased, sold, offered for
9 sale, shipped, distributed, used or otherwise provided to employees or customers by a Settling
10 Defendant prior to the Effective Date.

11 6.3. Compliance with the terms of this Consent Judgment by a Settling Defendant shall
12 constitute compliance with Proposition 65 by such Settling Defendant, its Defendant Releasees
13 with respect to any alleged failure to warn about BPA contained in Thermal Paper purchased,
14 sold, offered for sale, shipped, distributed, used or otherwise provided to employees or customers
15 by such Settling Defendant after the Effective Date.

16 **7. PROVISION OF NOTICE**

17 7.1. When CEH is entitled to receive any notice under this Consent Judgment, the
18 notice shall be sent by first class and electronic mail to:

19 Eric S. Somers
20 Lexington Law Group
21 503 Divisadero Street
22 San Francisco, CA 94117
23 esomers@lexlawgroup.com

24 7.2. When Settling Defendants are entitled to receive any notice under this Consent
25 Judgment, the notice shall be sent by first class and electronic mail to:

26 Ashley Crawford
27 Akin Gump Strauss Hauer & Feld LLP
28 580 California Street, Suite 1500
San Francisco, CA 94104
avcrawford@akingump.com

1 7.3. Any Party may modify the person and address to whom the notice is to be sent by
2 sending the other Party notice by first class and electronic mail.

3 **8. COURT APPROVAL**

4 8.1. CEH shall prepare and file a Motion for Approval of this Consent Judgment. Each
5 Settling Defendant shall support entry of the Consent Judgment and notwithstanding Section 8.2
6 this covenant shall become effective and enforceable upon execution of this Consent Judgment by
7 all Parties.

8 8.2. If this Consent Judgment is not entered by the Court, it shall be of no force or
9 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
10 purpose.

11 **9. GOVERNING LAW AND CONSTRUCTION**

12 9.1. The terms of this Consent Judgment shall be governed by the laws of the State of
13 California.

14 **10. ATTORNEY'S FEES**

15 10.1. A Party who unsuccessfully brings or contests an action arising out of this Consent
16 Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs
17 unless the unsuccessful Party has acted with substantial justification. For purposes of this
18 Consent Judgment, the term substantial justification shall carry the same meaning as used in the
19 Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016.010, *et seq.*

20 10.2. Notwithstanding Section 10.1, a Party who prevails in a contested enforcement
21 action brought pursuant to Section 3 may seek an award of attorneys' fees pursuant to Code of
22 Civil Procedure § 1021.5 against a Party that acted with substantial justification. The Party
23 seeking such an award shall bear the burden of meeting all of the elements of § 1021.5, and this
24 provision shall not be construed as altering any procedural or substantive requirements for
25 obtaining such an award.

26 10.3. Nothing in this Section 10 shall preclude a party from seeking an award of
27 sanctions pursuant to law.

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1 **11. ENTIRE AGREEMENT**

2 11.1. This Consent Judgment contains the sole and entire agreement and understanding
3 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
4 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
5 and therein. There are no warranties, representations, or other agreements between the Parties
6 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
7 other than those specifically referred to in this Consent Judgment have been made by any Party
8 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
9 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
10 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
11 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
12 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
13 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
14 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
15 whether or not similar, nor shall such waiver constitute a continuing waiver.

16 **12. RETENTION OF JURISDICTION**

17 12.1. This Court shall retain jurisdiction of this matter to implement or modify the
18 Consent Judgment.

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

20 13.1. Each signatory to this Consent Judgment certifies that he or she is fully authorized
21 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
22 execute the Consent Judgment on behalf of the Party represented and to legally bind that Party.

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


24 14.1. Nothing in this Consent Judgment shall preclude CEH from resolving any claim
25 against an entity that is not Settling Defendants on terms that are different than those contained in
26 this Consent Judgment.

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1 **15. EXECUTION IN COUNTERPARTS**

2 15.1. The stipulations to this Consent Judgment may be executed in counterparts and by
3 means of facsimile or portable document format (pdf), which taken together shall be deemed to
4 constitute one document.

5
6 **IT IS SO STIPULATED:**
7 **CENTER FOR ENVIRONMENTAL HEALTH**

8 
9 _____
10 Charlie Pizarro
11 Associate Director

12 **CINEMARK HOLDINGS, INC.**
13 _____
14 Signature
15 _____
16 Printed Name
17 _____
18 Title

19
20 **CINEMARK USA, INC.**
21 _____
22 Signature
23 _____
24 Printed Name
25 _____
26 Title

1 **15. EXECUTION IN COUNTERPARTS**

2 15.1. The stipulations to this Consent Judgment may be executed in counterparts and by
3 means of facsimile or portable document format (pdf), which taken together shall be deemed to
4 constitute one document.

5
6 **IT IS SO STIPULATED:**

7 **CENTER FOR ENVIRONMENTAL HEALTH**

8
9 _____
10 Charlie Pizarro
11 Associate Director

12 **CINEMARK HOLDINGS, INC.**

13 Walter Hebert
14 Signature

15 WALTER HEBERT
16 Printed Name

17 EVP
18 Title

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20 **CINEMARK USA, INC.**

21 Walter Hebert
22 Signature

23
24 WALTER HEBERT
25 Printed Name

26 EVP
27 Title

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CENTURY THEATRES, INC.

Walter Herbert
Signature

WALTER HERBERT
Printed Name

EVP
Title

IT IS SO ORDERED:

Dated: 12/25, 2018


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

Eric Somers
esomers@lexlawgroup.com
Joseph Mann
jmann@lexlawgroup.com
Ryan Berghoff
rberghoff@lexlawgroup.com