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FILED
ALAMEDA COUNTY
OCT 02 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 MAX
INTERNATIONAL CONVERTERS,
INC. AND TAYLOR
COMMUNICATIONS, INC., FKA
STANDARD REGISTER, INC.**

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 MAX International
4 Converters, Inc. (“MAX”) and Taylor Communications, Inc., formerly known as Standard
5 Register, Inc. (“Taylor”). CEH, Taylor and MAX are referred to as the Parties and Taylor and
6 MAX are referred to as Settling Defendants. The Parties enter into this Consent Judgment to
7 settle certain claims asserted by CEH against Settling Defendants as set forth in the operative
8 complaint (“Complaint”) in the above-captioned matter. This Consent Judgment covers thermal
9 paper sold by Taylor and MAX for ultimate sale or use in California. Thermal paper is used in
10 thermal printers to create transactional documents such as point of sale receipts. Some of the
11 thermal paper provided by Settling Defendants to their customers in California was coated with
12 bisphenol A, a chemical known to the State of California to cause birth defects or other
13 reproductive harm (“BPA”).

14 1.2 On March 20, 2017, CEH provided a 60-day Notice of Violation under Proposition
15 65 to Taylor and MAX as well as the California Attorney General, the District Attorneys of every
16 county in California and the City Attorneys of every California city with a population greater than
17 750,000, alleging that Taylor and MAX violated Proposition 65 by exposing persons to BPA
18 from thermal paper without first providing a clear and reasonable Proposition 65 warning.

19 1.3 Taylor and MAX are corporations or other entities that sold Thermal Paper
20 containing BPA that was provided to California consumers.

21 1.4 On October 13, 2106, CEH filed the Complaint in the above-captioned matter. On
22 June 26, 2017 CEH amended the operative Complaint to name Taylor and MAX as defendants in
23 this action.

24 1.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court
25 has jurisdiction over the allegations of violations contained in the Complaint and personal
26 jurisdiction over Settling Defendants as to the acts alleged in the Complaint, that venue is proper
27 in the County of Alameda, and that this Court has jurisdiction to enter and enforce this Consent
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1 Judgment as a full and final resolution of all claims which were or could have been raised in the
2 Complaint based on the facts alleged therein with respect to exposures to BPA from California
3 Thermal Paper (as defined in Section 2.1.2 below) sold, or provided to consumers, by Settling
4 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 will be used in California
17 or otherwise provided to employees working in California or consumers located in California by a
18 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
20 more than thirty (30) days after the date of entry of this Consent Judgment, before a Settling
21 Defendant purchases any California Thermal Paper, it shall instruct in writing each supplier of
22 California Thermal Paper that the California Thermal Paper supplied to that Settling Defendant
23 must be BPA-free, as defined in Section 2.3 below. If in the future a Settling Defendant
24 purchases California Thermal Paper from a supplier that it has not previously provided with
25 instructions to provide BPA-free thermal paper, the Settling Defendant shall provide written
26 instructions to such supplier prior to placing an initial order for California Thermal Paper that
27 instruct the supplier to provide it with California Thermal Paper that is BPA-free. Each Settling
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1 Defendant shall retain and make available to CEH upon reasonable written request records of
2 communications sent to and received from suppliers of California Thermal Paper that are related
3 to the requirement of this Section 2.1 for a period 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, distribute, sell or provide to any employee or any customer any
6 California Thermal Paper that contains BPA that was intentionally added to the Thermal Paper in
7 the manufacturing process. Thermal paper that contains less than 20 parts per million BPA by
8 weight is deemed to contain no intentionally added BPA, such concentration to be determined by
9 use of a test performed by an accredited laboratory using inductively coupled plasma mass
10 spectrometry (ICP-MS) equipment.

11 **3. ENFORCEMENT**

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

19 **4. PAYMENTS**

20 **4.1 Payments by Settling Defendants.** On or before five (5) days after the entry of
21 this Consent Judgment, MAX shall pay the total sum of \$107,500 as a settlement payment as
22 further set forth in this Section.

23 **4.2 Allocation of Payments.** The total settlement amount shall be paid in five (5)
24 separate checks in the amounts specified below and delivered as set forth below. Any failure by
25 Settling Defendants to comply with the payment terms herein shall be subject to a stipulated late
26 fee to be paid by Settling Defendants in the amount of \$100 for each day the full payment is not
27 received after the applicable payment due date set forth in Section 4.1. The late fees required

1 under this Section shall be recoverable, together with reasonable attorneys' fees, in an
2 enforcement proceeding brought pursuant to Section 3 of this Consent Judgment. The funds paid
3 by Settling Defendants shall be allocated as set forth below between the following categories and
4 made payable as follows:

5 4.2.1 Settling Defendants shall pay \$14,252 as a civil penalty pursuant to Health
6 & Safety Code §25249.7(b). The civil penalty payment shall be apportioned in accordance with
7 Health & Safety Code §25249.12 (25% to CEH and 75% to the State of California's Office of
8 Environmental Health Hazard Assessment ("OEHHA")). Accordingly, Settling Defendants shall
9 pay the OEHHA portion of the civil penalty payment for \$10,689 by check made payable to
10 OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be
11 delivered as follows:

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

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

24 Settling Defendants shall pay the CEH portion of the civil penalty payment for \$3,563 by check
25 made payable to the Center for Environmental Health and associated with taxpayer identification
26 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero
27 Street, San Francisco, CA 94117.

28 4.2.2 Settling Defendants shall pay \$10,688 as an Additional Settlement
Payment ("ASP") to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code
of Regulations, Title 11, § 3204. CEH intends to place these funds in CEH's Toxics in Food
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 to
 2 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 California.
 4 CEH shall obtain and maintain adequate records to document that ASPs are spent on these
 5 activities and CEH agrees to provide such documentation to the Attorney General within thirty
 6 days of any request from the Attorney General. The payments pursuant to this Section shall be
 7 made payable to the Center for Environmental Health and associated with taxpayer identification
 8 number 94-3251981. These payments shall be delivered to Lexington Law Group, 503
 9 Divisadero Street, San Francisco, CA 94117.

10 4.2.3 Settling Defendants shall pay \$82,560 as a reimbursement of a portion of
 11 CEH’s reasonable attorneys’ fees and costs. The attorneys’ fees and cost reimbursement shall be
 12 made in two separate checks as follows: (a) \$70,000 payable to the Lexington Law Group and
 13 associated with taxpayer identification number 94-3317175; and (b) \$12,560 payable to the
 14 Center For Environmental Health and associated with taxpayer identification number 94-
 15 3251981. Both of these payments shall be delivered to Lexington Law Group, 503 Divisadero
 16 Street, San Francisco, CA 94117.

17 4.2.4 To summarize, Settling Defendant shall deliver checks made out to the
 18 payees and in the amounts set forth below:

20 Payee	Type	Amount	Deliver To
21 OEHHA	Penalty	\$10,689	OEHHA per Section 4.2.1
22 Center For Environmental Health	Penalty	\$3,563	LLG
23 Center For Environmental Health	ASP	\$10,688	LLG
24 Lexington Law Group	Fee	\$70,000	LLG
25 Center For Environmental Health	Fee	\$12,560	LLG

1 **5. MODIFICATION OF CONSENT JUDGMENT**

2 5.1 **Modification.** This Consent Judgment may be modified from time to time by
3 express written agreement of the Parties, with the approval of the Court, or by an order of this
4 Court upon motion and in accordance with law.

5 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
6 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
7 modify the Consent Judgment.

8 **6. CLAIMS COVERED AND RELEASE**

9 6.1 Provided each Settling Defendant complies in full with all of its obligations under
10 Section 4 hereof, this Consent Judgment is a full, final and binding resolution between CEH on
11 behalf of itself and the public interest and each Settling Defendant and its parents, subsidiaries,
12 affiliated entities that are under common ownership, directors, officers, employees, agents,
13 shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and all entities to which
14 a Settling Defendant directly or indirectly distributes or sells California Thermal Paper, including
15 but not limited to distributors, wholesalers, customers, retailers, franchisees, licensors and
16 licensees (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on
17 failure to warn about alleged exposure to BPA contained in California Thermal Paper that was
18 manufactured, distributed, or sold by MAX prior to the Effective Date.

19 6.2 Provided that each Settling Defendant complies in full with all of its obligations
20 under Section 4 hereof , CEH, for itself, its agents, successors and assigns, releases, waives, and
21 forever discharges any and all claims against each Settling Defendant, Defendant Releasees, and
22 Downstream Defendant Releasees arising from any violation of Proposition 65 or any other
23 statutory or common law claims that have been or could have been asserted by CEH individually
24 or in the public interest regarding the failure to warn about exposure to BPA arising in connection
25 with California Thermal Paper that was manufactured, distributed, or sold by MAX prior to the
26 Effective Date.

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1 6.3 Provided that each Settling Defendant complies in full with all of its obligations
2 under Section 4 hereof, compliance with the terms of this Consent Judgment by a Settling
3 Defendant shall constitute compliance with Proposition 65 by that Settling Defendant, its
4 Defendant Releasees and its Downstream Defendant Releasees with respect to the failure to warn
5 about exposures to BPA in California Thermal Paper manufactured, distributed, or sold by
6 Settling Defendants.

7 **7. PROVISION OF NOTICE**

8 7.1 When CEH is entitled to receive any notice under this Consent Judgment, the
9 notice shall be sent by first class and electronic mail to:

10 Eric S. Somers
11 Lexington Law Group
12 503 Divisadero Street
13 San Francisco, CA 94117
14 esomers@lexlawgroup.com

15 7.2 When a Settling Defendant is entitled to receive any notice under this Consent
16 Judgment, the notice shall be sent by first class and electronic mail to:

17 For MAX:

18 Mike Vigunas, President
19 MAX International Converters, Inc.
20 2360 Dairy Road
21 Lancaster, PA 17601
22 mav@maxintl.com

23 For Taylor:

24 Brian A. Mayer
25 Assistant General Counsel
26 Taylor Corporation
27 1725 Roe Crest Drive
28 North Mankato, MN 56003
 507-625-2828

 For both MAX and Taylor:

 Jeffrey Margulies
 Norton Rose Fulbright US LLP
 555 South Flower Street, 41st Floor
 Los Angeles, CA 90071
 jeff.margulies@nortonrosefulbright.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 and
5 Settling Defendants shall support approval of such Motion.

6 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
7 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
8 purpose, except that this Section 8.2 shall not preclude a Party from enforcing the obligations of
9 another Party under Section 8.1.

10 **9. GOVERNING LAW AND CONSTRUCTION**

11 9.1 The terms of this Consent Judgment shall be governed by the laws of the State of
12 California.

13 **10. ATTORNEY'S FEES**

14 10.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
15 Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs
16 unless the unsuccessful Party has acted with substantial justification. For purposes of this
17 Consent Judgment, the term substantial justification shall carry the same meaning as used in the
18 Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016.010, *et seq.*

19 10.2 Notwithstanding Section 10.1, a Party who prevails in a contested enforcement
20 action brought pursuant to Section 3 may seek an award of attorneys' fees pursuant to Code of
21 Civil Procedure § 1021.5 against a Party that acted with substantial justification. The Party
22 seeking such an award shall bear the burden of meeting all of the elements of § 1021.5, and this
23 provision shall not be construed as altering any procedural or substantive requirements for
24 obtaining such an award.

25 10.3 Nothing in this Section 10 shall preclude a party from seeking an award of
26 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 a Settling Defendant on terms that are different than those contained
26 in 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 **MAX INTERNATIONAL CONVERTERS, INC.**

13
14
15 _____
16 Signature

17 _____
18 Printed Name

19
20 _____
21 Title

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23
24 **TAYLOR COMMUNICATIONS, INC.**

25
26 _____
27 Signature

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7 **CENTER FOR ENVIRONMENTAL HEALTH**

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9 _____
10 Charlie Pizarro
11 Associate Director

12 **MAX INTERNATIONAL CONVERTERS, INC.**

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15 _____
16 Signature

17 MICHAEL A. VIGUNAS
18 Printed Name

19 PRESIDENT
20 Title

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24 **TAYLOR COMMUNICATIONS, INC.**

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26 _____
27 Signature

1 **15. EXECUTION IN COUNTERPARTS**

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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**

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9 _____
10 Charlie Pizarro
11 Associate Director

12 **MAX INTERNATIONAL CONVERTERS, INC.**

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18 Printed Name

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24 **TAYLOR COMMUNICATIONS, INC.**

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JEFF CRUMP

Printed Name

C.O.O.

Title

IT IS SO ORDERED:

Dated: 10/2, 2018



Judge of the Superior Court of California