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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 DEL TACO
RESTAURANTS, INC., DEL TACO
LLC, AMERCAREROYAL, LLC,
MCLANE COMPANY, INC., AND
MCLANE FOODSERVICE, INC.**

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 Del Taco Restaurants, Inc. and Del Taco, LLC
4 (collectively, “Del Taco”), AmerCareRoyal, LLC, formerly known as JRMI, Ltd. (“ACR”),
5 McLane Company, Inc. and McLane Foodservice, Inc. (collectively “McLane”). Del Taco, ACR
6 and McLane are collectively referred to herein as the “Settling Defendants.” The Settling
7 Defendants and CEH are collectively referred to herein as the “Parties.” The Parties enter into
8 this Consent Judgment to settle and resolve all claims asserted by CEH against the Settling
9 Defendants, both individually and collectively, as set forth in the operative Complaint (the
10 “Complaint”) in the above-captioned matter. This Consent Judgment pertains to thermal paper
11 sold by ACR and McLane as well as thermal paper purchased by Del Taco for use in California
12 as transactional documentation (“Thermal Paper”). CEH contends that the Thermal Paper was
13 coated with bisphenol A (“BPA”). BPA is a chemical known to the State of California to cause
14 birth defects or other reproductive harm (“BPA”).

15 1.2. On June 14, 2016, CEH provided a 60-day Notice of Violation under Proposition
16 65 to Del Taco, the California Attorney General, the District Attorneys of every county in
17 California and the City Attorneys of every California city with a population greater than 750,000,
18 alleging that Del Taco violated Proposition 65 by exposing persons to BPA from Thermal Paper
19 without first providing a clear and reasonable Proposition 65 warning.

20 1.3. On June 2, 2017, CEH provided a 60-day Notice of Violation under Proposition 65
21 to ACR and McLane, the California Attorney General, the District Attorneys of every county in
22 California and the City Attorneys of every California city with a population greater than 750,000,
23 alleging that ACR and McLane violated Proposition 65 by exposing persons to BPA from
24 Thermal Paper without first providing a clear and reasonable Proposition 65 warning.

25 1.4. Settling Defendants are each corporations or other business entities. CEH
26 contends that Settling Defendants have sold or otherwise provided Thermal Paper containing
27 BPA used to document point of sale transactions to California consumers.

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1 1.5. On October 13, 2016, CEH filed the Complaint in the above-captioned matter,
2 which names Del Taco as defendants. On August 29, 2017, CEH amended the Complaint in the
3 above-captioned matter to name ACR and McLane as defendants.

4 1.6. For purposes of this Consent Judgment only, the Parties stipulate that this Court
5 has jurisdiction over the allegations of violations contained in the Complaint and personal
6 jurisdiction over Settling Defendants as to the acts alleged in the Complaint, that venue is proper
7 in the County of Alameda, and that this Court has jurisdiction to enter and enforce this Consent
8 Judgment as a full and final resolution of all claims which were or could have been raised in the
9 Complaint based on the facts alleged therein with respect to Thermal Paper sold or otherwise
10 provided to consumers by Settling Defendants.

11 1.7. Nothing in this Consent Judgment is or shall be construed as an admission by the
12 Parties, either individually or collectively, of any fact, claim, allegation, conclusion of law, issue
13 of law or violation of law, nor shall compliance with the Consent Judgment constitute or be
14 construed as an admission by the Parties, either individually or collectively, of any fact, claim,
15 allegation, conclusion of law, issue of law or violation of law. Nothing in this Consent Judgment
16 shall prejudice, waive or impair any right, remedy, argument or defense the Parties may have in
17 any other pending or future legal proceedings. This Consent Judgment is the product of
18 negotiation and compromise and is accepted by the Parties solely for purposes of settling,
19 compromising and resolving issues referenced and disputed in the Complaint and this litigation.

20 **2. INJUNCTIVE RELIEF**

21 2.1. **Specification Compliance Date.** The date of entry of this Consent Judgment
22 shall be herein referred to as the “Effective Date.” To the extent it has not already done so, no
23 more than thirty (30) days after the Effective Date, before a Settling Defendant purchases any
24 Thermal Paper from any entity that is not another Settling Defendant, it shall instruct in writing
25 each supplier of Thermal Paper (a “Thermal Paper Supplier”) that the Thermal Paper supplied to
26 that Settling Defendant must be BPA-free. If in the future a Settling Defendant purchases
27 Thermal Paper that will be sold or used in the United States from a Thermal Paper Supplier that it

1 has not previously provided with instructions to provide BPA-free Thermal Paper, that Settling
2 Defendant shall provide written instructions to such Thermal Paper Supplier prior to placing an
3 initial order for Thermal Paper that will be sold or used in the United States that instruct the
4 Thermal Paper Supplier to provide it with Thermal Paper that is BPA-free. Each Settling
5 Defendant shall retain and make available to CEH upon reasonable written request records of
6 communications sent to and received from Thermal Paper Suppliers that are related to the
7 requirement of this Section 2.1 for a period of five (5) years from the Effective Date.

8 **2.2. Reformulation of Thermal Paper.** After the Effective Date, neither ACR nor
9 McLane shall distribute, sell or offer for sale in the United States any Thermal Paper that contains
10 BPA that was intentionally added to the Thermal Paper in the manufacturing process. After the
11 Effective Date, Del Taco shall not purchase or provide to any employee or customer in the United
12 States any Thermal Paper that contains BPA that was intentionally added to the Thermal Paper in
13 the manufacturing process. Thermal Paper that contains less than 10 parts per million (“ppm”)
14 BPA by weight (the “Reformulation Level”) is deemed to contain no intentionally added BPA,
15 such concentration to be determined by use of a test performed by an accredited laboratory using
16 inductively coupled plasma mass spectrometry (ICP-MS) equipment.

17 **2.3. Additional Efforts to Reduce Use of Thermal Paper.** CEH alleges that many of the
18 alternatives to BPA used in Thermal Paper, such as bisphenol-S (“BPS”), are other phenols that
19 also have potentially adverse health effects. Accordingly, Del Taco agrees to use commercially
20 reasonable efforts to reduce the use of Thermal Paper. CEH and Del Taco have discussed, and
21 Del Taco agrees to explore in good faith, potential options to reduce the use of Thermal Paper
22 such as: (i) the expansion of the use of smartphone-based ordering applications that do not
23 involve the use of Thermal Paper such as Del Taco iOS and Android applications (and potentially
24 including expanding markets where the applications work); (ii) implementation of reusable
25 numbers to be handed to customers and returned when the customer picks up the food; and (iii)
26 working with register software to create the option to print receipts only when requested by the
27 customer. Del Taco shall prepare a written report detailing the efforts made regarding the
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1 reduction in use of Thermal Paper which shall be presented to CEH within thirty days of the one-
2 year anniversary of the Effective Date. Upon request by CEH, Del Taco shall meet and confer
3 with CEH once CEH has reviewed the report to discuss possible additional efforts to reduce the
4 use of Thermal Paper in Del Taco's California restaurants. ACR and McLane agree to use
5 commercially reasonable efforts to research using BPS-free non-phenol based thermal
6 paper. ACR and McLane shall each prepare a written report detailing the efforts made and
7 results from this work that shall be submitted to CEH within thirty days of the one year
8 anniversary of the Effective Date.

9 **3. ENFORCEMENT**

10 3.1. **Enforcement Procedures.** Prior to bringing any action, motion, or order to show
11 cause to enforce the terms of this Consent Judgment, a Party seeking to enforce the terms of this
12 Consent Judgment shall provide the allegedly violating party thirty (30) days advance written
13 notice of the alleged violation. The relevant Parties shall meet and confer during such thirty (30)
14 day period in an effort to try to reach agreement on an appropriate cure of or resolution relating to
15 the alleged violation. After such thirty (30) day period, the Party seeking to enforce the term(s) of
16 this Consent Judgment may, by new action, motion, or order to show cause before the Superior
17 Court of Alameda, seek to enforce the terms and conditions contained in this Consent Judgment.

18 **4. PAYMENTS**

19 4.1. **Payments by Payment Defendants.** ACR and McLane are referred to herein as
20 the "Payment Defendants". The Payment Defendants shall be jointly and severally liable for
21 payment of the total sum of \$230,000 as a settlement payment as further set forth in this Section
22 according to the following schedule: (a) \$115,000 on or before April 10, 2018; and (b) \$115,000
23 on or before five days after the Effective Date. Each of the settlement payments shall be made
24 payable to the Lexington Law Group and shall be delivered to Lexington Law Group, 503
25 Divisadero Street, San Francisco, CA 94117. Any failure by Payment Defendants to comply with
26 the payment terms herein shall be subject to a stipulated late fee to be paid by Payment
27 Defendants in the amount of \$100 for each day the full payment is not received after the
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1 applicable payment due date set forth in Section 4.1. The late fees required under this Section
2 shall be recoverable, together with reasonable attorneys' fees, in an enforcement proceeding
3 brought against Payment Defendants pursuant to Section 3 of this Consent Judgment. CEH
4 agrees to hold any payments received prior to the Effective Date in trust, such funds to be
5 released and allocated after the Effective Date as set forth below.

6 **4.2. Allocation of Payments.** The funds paid by Payment Defendants shall be
7 allocated by CEH as set forth below between the following categories and paid as follows:

8 4.2.1. A civil penalty of \$30,180 pursuant to Health & Safety Code §25249.7(b).
9 The civil penalty payment shall be apportioned in accordance with Health & Safety Code
10 §25249.12 (25% or \$7,545 to CEH and 75% or \$22,635 to the State of California's Office of
11 Environmental Health Hazard Assessment ("OEHHA")). The OEHHA payment shall be
12 delivered by CEH 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

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

25 4.2.2. An Additional Settlement Payment ("ASP") in the amount of \$22,620 shall
26 be paid by Payment Defendants to CEH pursuant to Health & Safety Code § 25249.7(b), and
27 California Code of Regulations, Title 11, § 3204. CEH intends to place these funds in CEH's
28 Toxics in Food Fund and use them to support CEH programs and activities that seek to educate
the public about BPA and other toxic chemicals in food, to work with the food industry and
agriculture interests to reduce exposure to BPA and other toxic chemicals in food, and to thereby
reduce the public health impacts and risks of exposure to BPA and other toxic chemicals in food

1 sold in California. CEH shall obtain and maintain adequate records to document that ASPs are
 2 spent on these activities and CEH agrees to provide such documentation to the Attorney General
 3 within thirty days of any request from the Attorney General.

4 4.2.3. A reimbursement of a portion of CEH’s reasonable attorneys’ fees and
 5 costs shall be paid by Payment Defendants in the total amount of \$177,200, to be allocated
 6 \$26,400 to CEH to reimburse CEH for investigation costs associated with the litigation and
 7 \$150,800 to LLG to reimburse LLG for attorneys’ fees and costs associated with the litigation.

8 4.2.4. To summarize, CEH shall allocate the payments made by Payment
 9 Defendants to the payees and in the amounts and on the dates set forth below:

First Set of Payments Due April 10, 2018			
Payee	Type	Amount	Deliver To
OEHHA	Penalty	\$11,317.50	OEHHA per Section 4.2.1
Center For Environmental Health	Penalty	\$3,772.50	CEH
Center For Environmental Health	ASP	\$11,310.00	CEH
Lexington Law Group	Fee	\$75,400.00	LLG
Center For Environmental Health	Fee	\$13,200.00	CEH
Second Set of Payments Due 5 Days After Entry of Consent Judgment			
Payee	Type	Amount	Deliver To
OEHHA	Penalty	\$11,317.50	OEHHA per Section 4.2.1
Center For Environmental Health	Penalty	\$3,772.50	CEH
Center For Environmental Health	ASP	\$11,310.00	CEH
Lexington Law Group	Fee	\$75,400.00	LLG
Center For Environmental Health	Fee	\$13,200.00	CEH

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 Parties prior to filing a motion to modify
7 the Consent Judgment.

8 **6. CLAIMS COVERED AND RELEASE**

9 6.1. Provided that the Payment Defendants comply in all material respects with all of
10 their obligations under Section 4 hereof, this Consent Judgment is a full, final and binding
11 resolution between CEH on behalf of itself and the public interest and each Settling Defendant
12 and their respective parents, subsidiaries, affiliated entities that are (or were at any relevant times)
13 under common ownership, directors, officers, employees, agents, shareholders, successors,
14 assigns, and attorneys (“Defendant Releasees”), and all individuals and entities to which any
15 Settling Defendant distributed or sold Thermal Paper, including but not limited to distributors,
16 wholesalers, customers, retailers, franchisees, licensors and licensees, including but not limited to
17 Grewal Superfoods, Inc. (“Downstream Defendant Releasees”), of any violations of Proposition
18 65 based on failure to warn about exposure to BPA contained in Thermal Paper that was sold,
19 distributed, or otherwise provided to employees or customers by ACR, McLane, or Del Taco
20 prior to the Effective Date. Nothing in this Consent Judgment covers or releases any claim
21 regarding Thermal Paper sold by any entity other than a Settling Defendant or a Defendant
22 Releasee that is upstream of a Settling Defendant, including but not limited to Papeles y
23 Conversiones de Mexico, S.A. de C.V. (“PCM”) or any entity affiliated with PCM. The Thermal
24 Paper released in this Section 6.1 is referred to as the “Released Thermal Paper.”

25 6.2. Provided that the Payment Defendants comply in all material respects with all of
26 their obligations under Section 4 hereof, CEH, for itself, its agents, successors and assigns,
27 releases, waives, and forever discharges any and all claims against each Settling Defendant, each
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1 of the Defendant Releasees, and each of the Downstream Defendant Releasees arising from any
2 violation of Proposition 65 and any other statutory or common law claims that have been or could
3 have been asserted by CEH either individually or in the public interest regarding the failure to
4 warn about exposure to BPA contained in Released Thermal Paper.

5 6.3. Provided that the Payment Defendants comply in all material respects with all of
6 their obligations under Section 4 hereof, Compliance with the terms of this Consent Judgment by
7 a Settling Defendant shall constitute compliance with Proposition 65 by such Settling Defendant,
8 its Defendant Releasees and its Downstream Defendant Releasees with respect to any actual or
9 alleged failure to warn about BPA in Released Thermal Paper.

10 **7. PROVISION OF NOTICE**

11 7.1. When CEH is entitled to receive any notice under this Consent Judgment, the
12 notice shall be sent by first class and electronic mail to:

13 Eric S. Somers
14 Lexington Law Group
15 503 Divisadero Street
16 San Francisco, CA 94117
17 esomers@lexlawgroup.com

18 7.2. When ACR or McLane are entitled to receive any notice under this Consent
19 Judgment, the notice shall be sent by first class and electronic mail to:

20 Anthony Cortez
21 Greenberg Traurig LLP
22 1201 K Street, Suite 1100
23 Sacramento, CA 95814
24 acortez@gtlaw.com

25 7.3. When Del Taco is entitled to receive any notice under this Consent Judgment, the
26 notice shall be sent by first class and electronic mail to:

27 Ryan M. McNamara
28 Matthew R. Orr
Call & Jensen
610 Newport Center Drive, Suite 700
Newport Beach, CA 92660
rmcnamara@calljensen.com
morr@calljensen.com

1 7.4. Any Party may modify the person and address to whom the notice is to be sent by
2 sending the other Parties notice by first class and electronic mail.

3 **8. COURT APPROVAL**

4 8.1. This Consent Judgment shall become effective as a contract upon the date signed
5 by CEH and all Settling Defendants, provided however, that CEH shall also prepare and file a
6 Motion for Approval of this Consent Judgment and Settling Defendants shall support approval of
7 such Motion.

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. ATTORNEYS' 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.

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 of CEH’s claims both individually and in
4 the public interest against or relating in any way to Settling Defendants (both individually and
5 collectively), and any and all prior discussions, negotiations, commitments, or understandings
6 related thereto, if any, are hereby merged herein and therein. There are no warranties,
7 representations, or other agreements relating to the Complaint, this dispute, or the resolution of
8 this dispute by and between the Parties except as expressly set forth herein. No representations,
9 oral or otherwise, express or implied, other than those specifically referred to in this Consent
10 Judgment have been made by any Party hereto with respect to the Complaint, this dispute, or the
11 resolution of this dispute by and between the Parties. No other oral or written agreements which
12 are not specifically contained or referenced herein shall be deemed to exist or to bind any of the
13 Parties hereto. Any agreements specifically contained or referenced herein, whether oral or
14 written, shall be deemed to exist or to bind any of the Parties hereto only to the extent that they
15 are expressly incorporated herein. No supplementation, modification, waiver, or termination of
16 this Consent Judgment shall be binding unless executed in writing by the Parties. No waiver of
17 any of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of
18 any of the other provisions hereof whether or not similar, nor shall such waiver constitute a
19 continuing waiver.

20 **12. RETENTION OF JURISDICTION**

21 12.1. This Court shall retain jurisdiction of this matter to implement, enforce, and
22 modify the Consent Judgment.

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

24 13.1. Each signatory to this Consent Judgment certifies that he or she is fully authorized
25 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
26 execute the Consent Judgment on behalf of the Party represented and to legally bind that Party.

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14. NO EFFECT ON OTHER SETTLEMENTS

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

15. EXECUTION IN COUNTERPARTS

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

IT IS SO STIPULATED:

CENTER FOR ENVIRONMENTAL HEALTH

Charlie Pizarro
Associate Director

DEL TACO RESTAURANTS, INC.

Signature

Printed Name

Title

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

2 14.1. Nothing in this Consent Judgment shall preclude CEH from resolving any claim
3 against an entity that is not a Settling Defendant on terms that are different than those contained
4 in this Consent Judgment.

5 **15. EXECUTION IN COUNTERPARTS**

6 15.1. The stipulations to this Consent Judgment may be executed in counterparts and by
7 means of facsimile or portable document format (pdf), which taken together shall be deemed to
8 constitute one document.

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10 **IT IS SO STIPULATED:**

11 **CENTER FOR ENVIRONMENTAL HEALTH**

12

13 _____
14 Charlie Pizarro
Associate Director

15 **DEL TACO RESTAURANTS, INC.**

16
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18 _____
Signature 

19
20 _____
Printed Name *Jack Tang*

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22 _____
Title *General Counsel*

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DEL TACO, LLC

Signature



Printed Name

Jack Tang

Title

General Counsel

AMERCAREROYAL, LLC

Signature

Printed Name

Title

MCLANE COMPANY, INC.

Signature

Printed Name

Title

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DEL TACO, LLC

Signature

Printed Name

Title

AMERCAREROYAL, LLC

Signature *J. Early*

Printed Name *Jay Early*

Title *President*

MCLANE COMPANY, INC.

Signature

Printed Name

Title

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DEL TACO, LLC

Signature

Printed Name

Title

AMERCAREROYAL, LLC

Signature

Printed Name

Title

MCLANE COMPANY, INC.



Signature

Bart McKay
Printed Name

Division General Counsel
Title

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MCLANE FOODSERVICE, INC.


Signature

Bart McKay
Printed Name

Division General Counsel
Title

IT IS SO ORDERED:

Dated: _____, 2018

Judge of the Superior Court of California