

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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 MITSUBISHI  
INTERNATIONAL CORPORATION**

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 Mitsubishi International Corporation, a New  
4     York Corporation (referred to as “Settling Defendant”). The Parties enter into this Consent  
5     Judgment to settle certain claims asserted by CEH against Settling Defendant as set forth in the  
6     operative complaint (“Complaint”) in the above-captioned matter. This Consent Judgment covers  
7     thermal paper that is sold, offered for sale or distributed by Settling Defendant (“Thermal  
8     Paper”). Thermal Paper is used in thermal printers to create transactional documents such as cash  
9     register and ATM receipts. Thermal Paper sold by Settling Defendant to its customers is or has  
10    been coated with bisphenol A (“BPA”), a chemical known to the State of California to cause birth  
11    defects or other reproductive harm.

12          1.2.     On April 24, 2018, CEH provided a 60-day Notice of Violation under Proposition  
13    65 to Settling Defendant, 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, alleging that Settling Defendant violated Proposition 65 by exposing persons to BPA  
16    from Thermal Paper without first providing a clear and reasonable Proposition 65 warning.

17          1.3.     On October 13, 2016, CEH filed the Complaint in the above-captioned matter. On  
18    November 2, 2016, CEH filed the First Amended Complaint in the above-captioned matter. The  
19    First Amended Complaint has since been amended to add additional defendants, including  
20    Settling Defendant on February 11, 2019.

21          1.4.     For purposes of this Consent Judgment only, the Parties stipulate that this Court  
22    has jurisdiction over the allegations of violations contained in the Complaint and personal  
23    jurisdiction over Settling Defendant as to the acts alleged in the Complaint, that venue is proper in  
24    the County of Alameda and that this Court has jurisdiction to enter and enforce this Consent  
25    Judgment as a full and final resolution of all claims which were or could have been raised in the  
26    Complaint based on the facts alleged therein with respect to Thermal Paper containing BPA sold  
27    by Settling Defendant.

1           1.5. Nothing in this Consent Judgment is or shall be construed as an admission by the  
2 Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with  
3 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,  
4 conclusion of law, issue of law or violation of law. Nothing in this Consent Judgment shall  
5 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any  
6 other pending or future legal proceedings. This Consent Judgment is the product of negotiation  
7 and compromise and is accepted by the Parties solely for purposes of settling, compromising and  
8 resolving issues disputed in this Action.

9           **2. INJUNCTIVE RELIEF**

10           2.1. **Reformulation of Thermal Paper.** After the date of entry of this Consent  
11 Judgment (the “Effective Date”), Settling Defendant shall not purchase, sell, offer for sale, ship or  
12 distribute any Thermal Paper that contains BPA that was intentionally added to the Thermal  
13 Paper in the manufacturing process. Thermal Paper that contains less than 20 parts per million  
14 (“ppm”) BPA by weight (the “Reformulation Level”) is deemed to contain no intentionally added  
15 BPA, such concentration to be determined by use of a test performed by an accredited laboratory  
16 using inductively coupled plasma mass spectrometry (ICP-MS) equipment.

17           2.2. **Additional Efforts to Reduce Use of Phenol Based Thermal Paper.** CEH  
18 believes that some of the possible alternatives to BPA used in Thermal Paper including  
19 bisphenol-S have potentially adverse health effects. Accordingly, Settling Defendant agrees to  
20 use commercially reasonable efforts to expand the use of phenol-free thermal paper by its  
21 customers. Settling Defendant shall prepare a written report detailing the efforts made and results  
22 from this work on the promotion of safer non-phenol based Thermal Paper that shall be submitted  
23 to CEH within thirty (30) days of the day that is one (1) year after the Effective Date.

24           **3. ENFORCEMENT**

25           3.1. **Enforcement Procedures.** This Court shall have exclusive jurisdiction over all  
26 matters regarding enforcement of the Consent Judgment. Prior to bringing any motion or order to  
27 show cause to enforce the terms of this Consent Judgment, a Party seeking to enforce shall  
28

1 provide the violating party forty-five (45) days advanced written notice of the alleged violation.  
2 The Parties shall meet and confer during such forty-five (45) day period in an effort to try to  
3 reach agreement on an appropriate cure for the alleged violation. After such forty-five (45) day  
4 period, the Party seeking to enforce may, by new action, motion or order to show cause before the  
5 Superior Court of Alameda, seek to enforce Proposition 65 and the terms and conditions  
6 contained in this Consent Judgment.

7 **4. PAYMENTS**

8 4.1. **Payments by Settling Defendant.** On or before ten (10) days after the entry of  
9 this Consent Judgment, Settling Defendant shall be liable for payment of the total sum of  
10 \$140,000 as a settlement payment as further set forth in this Section.

11 4.2. **Allocation of Payments.** The total settlement amount shall be paid in four (4)  
12 separate checks in the amounts specified below and delivered as set forth below. Any failure by  
13 Settling Defendant to comply with the payment terms herein shall be subject to a stipulated late  
14 fee to be paid by Settling Defendant in the amount of \$100 for each day the full payment is not  
15 received after the applicable payment due date set forth in Section 4.1. The late fees required  
16 under this Section shall be recoverable, together with reasonable attorneys' fees, in an  
17 enforcement proceeding brought pursuant to Section 3 of this Consent Judgment. The funds paid  
18 by Settling Defendant shall be allocated as set forth below between the following categories and  
19 made payable as follows:

20 4.2.1. Settling Defendant shall pay \$24,000 as a civil penalty pursuant to Health  
21 & Safety Code §25249.7(b). The civil penalty payment shall be apportioned in accordance with  
22 Health & Safety Code §25249.12 (25% to CEH and 75% to the State of California's Office of  
23 Environmental Health Hazard Assessment ("OEHHA")). Accordingly, Settling Defendant shall  
24 pay the OEHHA portion of the civil penalty payment for \$18,000 by check made payable to  
25 OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be  
26 delivered as follows:

27 For United States Postal Service Delivery:  
28 Attn: Mike Gyurics

1 Fiscal Operations Branch Chief  
2 Office of Environmental Health Hazard Assessment  
3 P.O. Box 4010, MS #19B  
4 Sacramento, CA 95812-4010

5 For Non-United States Postal Service Delivery:  
6 Attn: Mike Gyurics  
7 Fiscal Operations Branch Chief  
8 Office of Environmental Health Hazard Assessment  
9 1001 I Street, MS #19B  
10 Sacramento, CA 95814

11 Settling Defendant shall pay the CEH portion of the civil penalty payment for \$6,000 by check  
12 made payable to the Center for Environmental Health and associated with taxpayer identification  
13 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero  
14 Street, San Francisco, CA 94117.

15 4.2.2. Settling Defendant shall pay \$18,000 as an Additional Settlement Payment  
16 (“ASP”) to CEH pursuant to Health & Safety Code §25249.7(b), and California Code of  
17 Regulations, Title 11, §3204. CEH intends to place these funds in CEH’s Toxics in Food Fund  
18 and use them to support CEH programs and activities that seek to educate the public about BPA  
19 and other toxic chemicals in food, to work with the food industry and agriculture interests to  
20 reduce exposure to BPA and other toxic chemicals in food, and to thereby reduce the public  
21 health impacts and risks of exposure to BPA and other toxic chemicals in food sold in California.  
22 CEH shall obtain and maintain adequate records to document that ASPs are spent on these  
23 activities and CEH agrees to provide such documentation to the Attorney General within thirty  
24 (30) days of any request from the Attorney General. The payment pursuant to this Section shall  
25 be made payable to the Center for Environmental Health and associated with taxpayer  
26 identification number 94-3251981. This payment shall be delivered to Lexington Law Group,  
27 503 Divisadero Street, San Francisco, CA 94117.

28 4.2.3. Settling Defendant shall pay \$98,000 as a reimbursement of a portion of  
CEH’s reasonable attorneys’ fees and costs. The attorneys’ fees and cost reimbursement shall be  
made by check payable to the Lexington Law Group and associated with taxpayer identification

1 number 94-3317175. This payment shall be delivered to Lexington Law Group, 503 Divisadero  
2 Street, San Francisco, CA 94117.

3 4.2.4. To summarize, Settling Defendant shall deliver checks made out to the  
4 payees and in the amounts set forth below:

5 <b>Payee</b>	<b>Type</b>	<b>Amount</b>	<b>Deliver To</b>
6 OEHHA	Penalty	\$18,000	OEHHA per Section 7 4.2.1
8 Center for Environmental Health	Penalty	\$6,000	LLG
9 Center for Environmental Health	ASP	\$18,000	LLG
10 Lexington Law Group	Fees and Costs	\$98,000	LLG

## 11 **5. MODIFICATION OF CONSENT JUDGMENT**

12 5.1. **Modification.** This Consent Judgment may be modified from time to time by  
13 express written agreement of the Parties, with the approval of the Court, or by an order of this  
14 Court upon motion and in accordance with law.

15 5.2. **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment  
16 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
17 modify the Consent Judgment.

## 18 **6. CLAIMS COVERED AND RELEASE**

19 6.1. Provided that Settling Defendant complies with its obligations under Section 4  
20 hereof, this Consent Judgment is a full, final and binding resolution between CEH on behalf of  
21 itself and the public interest and Settling Defendant and its parents, subsidiaries, affiliated entities  
22 that are under common ownership, directors, officers, employees, agents, shareholders,  
23 successors, assigns and attorneys (“Defendant Releasees”), and all entities to which a Settling  
24 Defendant directly or indirectly distributes or sells California Thermal Paper other than National  
25 Ticket Company and Telemark Corporation, including but not limited to distributors, wholesalers,  
26 customers, retailers, franchisees, licensors and licensees (“Downstream Defendant Releasees”), of  
27

1 any violation of Proposition 65 based on failure to warn about exposure to BPA contained in  
2 Thermal Paper that was sold by Settling Defendant prior to the Effective Date.

3 6.2. Provided that Settling Defendant complies with its obligations under Section 4  
4 hereof, CEH, for itself, its successors and assigns, releases, waives and forever discharges any  
5 and all claims against Settling Defendant, Defendant Releasees, and Downstream Defendant  
6 Releasees arising from any violation of Proposition 65 or any other statutory or common law  
7 claims that have been or could have been asserted by CEH individually or in the public interest  
8 regarding the failure to warn about exposure to BPA contained in Thermal Paper that was sold by  
9 Settling Defendant prior to the Effective Date.

10 6.3. Provided that Settling Defendant complies with its obligations under Section 4  
11 hereof, compliance with the terms of this Consent Judgment by Settling Defendant shall  
12 constitute compliance with Proposition 65 by Settling Defendant, its Defendant Releasees and its  
13 Downstream Defendant Releasees with respect to any alleged failure to warn about BPA  
14 contained in Thermal Paper sold by Settling Defendant after the Effective Date.

15 **7. PROVISION OF NOTICE**

16 7.1. When CEH is entitled to receive any notice under this Consent Judgment, the  
17 notice shall be sent by first class and electronic mail to:

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

23 7.2. When Settling Defendant is entitled to receive any notice under this Consent  
24 Judgment, the notice shall be sent by first class and electronic mail to:

25 Anna Fero  
26 Paul Hastings, LLP  
27 101 California Street, Forty-Eighth Floor  
28 San Francisco, CA 94111  
annafero@paulhastings.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. This Consent Judgment shall become effective as a contract upon the date signed  
5 by CEH and Settling Defendant, whichever is later, provided however, that CEH shall also  
6 prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant shall  
7 support approval of 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. 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.

28



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. Other agreements that are not specifically contained or referenced herein, oral or  
9 otherwise, shall be deemed neither to exist nor to bind any of the Parties hereto. Any agreements  
10 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind  
11 any of the Parties hereto only to the extent that they are expressly incorporated herein. No  
12 supplementation, modification, waiver or termination of this Consent Judgment shall be binding  
13 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions  
14 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other  
15 provisions hereof 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 Defendant on terms that are different from those contained in  
26 this Consent Judgment.

27  
28

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 Michael Green  
11 Chief Executive Officer

12 **MITSUBISHI INTERNATIONAL CORPORATION**

13  
14 \_\_\_\_\_  
15 Signature

16  
17 \_\_\_\_\_  
18 Printed Name

19 \_\_\_\_\_  
20 Title

21  
22 **IT IS SO ORDERED:**

23  
24  
25 Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
Judge of the Superior Court of California

1 **15. EXECUTION IN COUNTERPARTS**

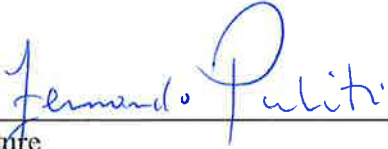
2 15.1. The stipulations to this Consent Judgment may be executed in counterparts and by  
3 means of facsimile or portable document format (pdf), which taken together shall be deemed to  
4 constitute one document.

5  
6 **IT IS SO STIPULATED:**

7 **CENTER FOR ENVIRONMENTAL HEALTH**

8  
9 \_\_\_\_\_  
10 Michael Green  
11 Chief Executive Officer

12 **MITSUBISHI INTERNATIONAL CORPORATION**

13  
14   
15 \_\_\_\_\_  
16 Signature

17 FERNANDO PULITI  
18 \_\_\_\_\_  
19 Printed Name

20 Senior Vice-President  
21 \_\_\_\_\_  
22 Title

23 **IT IS SO ORDERED:**

24  
25 Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
Judge of the Superior Court of California