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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,) Case No. RG-16-834949
)
Plaintiff,) **[PROPOSED] CONSENT**
) **JUDGMENT AS TO TUFCO**
v.) **DIVISION LIMITED**
) **PARTNERSHIP AND HAMCO**
DEL TACO RESTAURANTS, INC., et al.,) **MANUFACTURING &**
) **DISTRIBUTING, LLC**
Defendants.)
)
)
_____)

1 jurisdiction over Settling Defendants as to the acts alleged in the Complaint, that venue is proper
2 in the County of Alameda, and that this Court has jurisdiction to enter and enforce this Consent
3 Judgment as a full and final resolution of all claims which were or could have been raised in the
4 Complaint based on the facts alleged therein with respect to exposures to BPA from Thermal
5 Paper sold, or provided to consumers, by Settling Defendants.

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

14 1.7. The date CEH serves notice on Settling Defendants of entry of this Consent
15 Judgment is the “Effective Date”.

16 **2. INJUNCTIVE RELIEF**

17 2.1. **Specification Compliance Date.** To the extent it has not already done so, before
18 a Settling Defendant finalizes any contract after the Effective Date for the purchase of Thermal
19 Paper that may be eventually used in California by a Settling Defendant or any entity that is
20 downstream from a Settling Defendant, it shall instruct in writing each such supplier of Thermal
21 Paper (i.e., the contracting party from whom the Settling Defendant purchases the Thermal Paper)
22 (a “Thermal Paper Supplier”) that the Thermal Paper supplied to that Settling Defendant must
23 meet the BPA Reformulation Level (defined below). Each Settling Defendant shall retain for a
24 period of three (3) years and make available to CEH upon reasonable written request
25 documentation demonstrating compliance with this Section 2. By way of example, such
26 documentation may include the written request that the Thermal Paper purchased from the
27 Thermal Paper Supplier meet the Reformulation Level and specification or technical data sheets

1 from the Thermal Paper Supplier showing that the Thermal Paper purchased meets this
2 requirement. Any confidential information provided to CEH by a Settling Defendant under this
3 Section 2.1 may be provided subject to the Protective Order entered by the Court in this matter on
4 June 6, 2017 (the “Del Taco Protective Order”), regardless of whether the Del Taco Protective
5 Order is determined to pertain to this Consent Judgment and related settlement correspondence
6 stemming from this Consent Judgment.

7 **2.2. Reformulation of Thermal Paper.** After the Effective Date, no Settling
8 Defendant shall purchase, distribute, sell or provide to any person any Thermal Paper that will be
9 used in California by the Settling Defendant or any entity in the downstream chain of commerce
10 from such Settling Defendant that does not meet the Reformulation Level. Thermal Paper is
11 deemed to meet the Reformulation Level if it contains no BPA that was intentionally added to the
12 Thermal Paper in the manufacturing process and it contains less than twenty (20) parts per million
13 BPA by weight, such concentration to be determined by use of a test performed by an accredited
14 laboratory using inductively coupled plasma mass spectrometry (ICP-MS) equipment. So long as
15 a Settling Defendant is in compliance with the requirements of this Section, there is no
16 independent obligation on a Settling Defendant to test Thermal Paper for BPA under this Consent
17 Judgment.

18 **2.3. Additional Efforts to Reduce Use of Phenol Containing Thermal Paper.** CEH
19 contends that certain alternatives to BPA used in Thermal Paper are other bisphenols that have
20 potentially adverse health effects, although they are not subject to Proposition 65. Accordingly,
21 Settling Defendants agree to use commercially reasonable efforts to research alternatives to
22 phenol based Thermal Paper. Settling Defendants shall prepare a joint written report describing
23 results from this work that shall be submitted to CEH within the thirty (30) day period following
24 the one year anniversary of the Effective Date. Any confidential information provided to CEH by
25 a Settling Defendant under this Section 2.3 may be provided subject to the Del Taco Protective
26 Order, regardless of whether the Del Taco Protective Order is determined to pertain to this
27 Consent Judgment and related settlement correspondence stemming from this Consent Judgment.

1 **3. ENFORCEMENT**

2 3.1. **Enforcement Procedures.** Prior to bringing any motion or order to show cause to
3 enforce the terms of this Consent Judgment, a Party seeking to enforce shall provide the violating
4 party thirty (30) days advanced written notice of the alleged violation. The involved Parties shall
5 meet and confer during such thirty (30) day period in an effort to try to reach agreement on an
6 appropriate cure for the alleged violation. The Parties may extend the thirty (30) day meet and
7 confer period upon mutual consent. After such meet and confer period, the Party seeking to
8 enforce may, by new action, motion, or order to show cause before the Superior Court of
9 Alameda, seek to enforce Proposition 65 and the terms and conditions contained in this Consent
10 Judgment.

11 **4. PAYMENTS**

12 4.1. **Payments by Settling Defendants.** On or before seven (7) days after the
13 Effective Date of this Consent Judgment, Tufco shall pay the total sum of \$150,000 as a
14 settlement payment as further set forth in this Section.

15 4.2. **Allocation of Payments.** The total settlement amount shall be paid in five (5)
16 separate checks in the amounts specified below and delivered as set forth below. Any failure by
17 Tufco to comply with the payment terms herein shall be subject to a stipulated late fee to be paid
18 by Tufco in the amount of \$100.00 for each day the full payment is not received after the
19 applicable payment due date set forth in Section 4.1. The late fees required under this Section
20 shall be recoverable, together with reasonable attorneys’ fees, in an enforcement proceeding
21 brought pursuant to Section 3 of this Consent Judgment. The funds paid by Tufco shall be
22 allocated as set forth below between the following categories and made payable as follows:

23 4.2.1. Tufco shall pay \$20,160 as a civil penalty pursuant to Health & Safety
24 Code §25249.7(b). The civil penalty payment shall be apportioned in accordance with Health &
25 Safety Code §25249.12 (25% to CEH and 75% to the State of California's Office of
26 Environmental Health Hazard Assessment (“OEHHA”). Accordingly, Tufco shall pay the
27 OEHHA portion of the civil penalty payment for \$15,120 by check made payable to OEHHA and

1 associated with taxpayer identification number 68-0284486. This payment shall be delivered as
2 follows:

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

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

15 Tufco shall pay the CEH portion of the civil penalty payment for \$5,040 by check made payable to
16 the Center for Environmental Health and associated with taxpayer identification number 94-
17 3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San
18 Francisco, CA 94117.

19 4.2.2. Tufco shall pay \$15,120 as an Additional Settlement Payment (“ASP”) to
20 CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title
21 11, § 3204. CEH intends to place these funds in CEH’s Toxics in Food Fund and use them to
22 support CEH programs and activities that seek to educate the public about BPA and other toxic
23 chemicals in food, to work with the food industry and agriculture interests to reduce exposure to
24 BPA and other toxic chemicals in food, and to thereby reduce the public health impacts and risks
25 of exposure to BPA and other toxic chemicals in food sold in California. CEH shall obtain and
26 maintain adequate records to document that ASPs are spent on these activities and CEH agrees to
27 provide such documentation to the Attorney General within thirty days of any request from the
28 Attorney General. The payments pursuant to this Section shall be made payable to the Center for
Environmental Health and associated with taxpayer identification number 94-3251981. These
payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
94117.

1 4.2.3. Tufco shall pay \$114,720 as a reimbursement of a portion of CEH's
 2 reasonable attorneys' fees and costs. The attorneys' fees and cost reimbursement shall be made
 3 in two separate checks as follows: (a) \$97,080 payable to the Lexington Law Group and
 4 associated with taxpayer identification number 94-3317175; and (b) \$17,640 payable to the
 5 Center For Environmental Health and associated with taxpayer identification number 94-
 6 3251981. Both of these payments shall be delivered to Lexington Law Group, 503 Divisadero
 7 Street, San Francisco, CA 94117.

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

11 Payee	Type	Amount	Deliver To
12 OEHHA	Penalty	\$15,120	OEHHA per Section 4.2.1
13 Center For Environmental Health	Penalty	\$ 5,040	LLG
14 Center For Environmental Health	ASP	\$15,120	LLG
15 Lexington Law Group	Fee & Cost	\$97,080	LLG
16 Center For Environmental Health	Fee & Cost	\$17,640	LLG

17
 18 **5. MODIFICATION OF CONSENT JUDGMENT**

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

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

1 **6. CLAIMS COVERED AND RELEASE**

2 6.1. Provided that Settling Defendants comply in full with all of their obligations under
3 Section 4 hereof, this Consent Judgment is a full, final and binding resolution between CEH on
4 behalf of itself and the public interest and Settling Defendants and their parents, subsidiaries,
5 affiliated entities that are under common ownership, directors, officers, employees, agents,
6 shareholders, predecessors, successors, assigns, and attorneys (“Defendant Releasees”), and all
7 entities to which Settling Defendants directly or indirectly distribute or sell Thermal Paper,
8 including but not limited to distributors, wholesalers, customers, retailers (including but not
9 limited to The Neiman Marcus Group LLC), franchisees, licensors and licensees, lessees,
10 concessionaires (“Downstream Defendant Releasees”), of any violation of Proposition 65 based
11 on failure to warn about alleged exposure to BPA contained in Thermal Paper that was purchased,
12 sold, distributed, used, handled or otherwise provided to employees, customers or any other
13 person by a Settling Defendant prior to the Effective Date.

14 6.2. Provided that Settling Defendants comply in full with all of their obligations under
15 Section 4 hereof, CEH, for itself, its agents, successors and assigns, releases, waives, and forever
16 discharges any and all claims against Settling Defendants, Defendant Releasees, and Downstream
17 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
18 common law claims that have been or could have been asserted by CEH individually or in the
19 public interest regarding the failure to warn about exposure to BPA arising in connection with
20 Thermal Paper that was purchased, sold, distributed, used, handled or otherwise provided to
21 employees, customers or any other person by a Settling Defendant prior to the Effective Date.

22 6.3. Provided that Settling Defendants comply in full with all of their obligations under
23 Section 4 hereof, compliance with the terms of this Consent Judgment by a Settling Defendant
24 shall constitute compliance with Proposition 65 by that Settling Defendant, its Defendant
25 Releasees and its Downstream Defendant Releasees with respect to any alleged failure to warn
26 about BPA in Thermal Paper that was purchased, sold, distributed, used, handled or otherwise
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1 provided to employees, customers or any other person by a Settling Defendant on and after the
2 Effective Date.

3 **7. PROVISION OF NOTICE**

4 7.1. When CEH is entitled to receive any notice under this Consent Judgment, the
5 notice shall be sent by first class and electronic mail to:

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

11 7.2. When Tufco is entitled to receive any notice under this Consent Judgment, the
12 notice shall be sent by first class and electronic mail to:

13 Kristin Larson
14 Stradling Yocca Carlson & Rauth, P.C.
15 800 Anacapa Street, Suite A
16 Santa Barbara, CA 93101
17 klarson@sycr.com

18 7.3. Any Party may modify the person and address to whom the notice is to be sent by
19 sending the other Party notice by first class and electronic mail.

20 **8. COURT APPROVAL**

21 8.1. CEH shall prepare and file a Motion for Approval of this Consent
22 Judgment. Each Settling Defendant agrees not to oppose approval of such Motion and this
23 covenant shall become effective and enforceable upon execution of this Consent Judgment by all
24 Parties.

25 8.2. If this Consent Judgment is not entered by the Court, it shall be of no force
26 or effect and shall not be introduced into evidence or otherwise used in any proceeding for any
27 purpose.

28 **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 Consent
3 Judgment shall be required to pay the prevailing Party’s reasonable attorneys’ fees and costs
4 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 in
27 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent

1 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
2 whether or not similar, nor shall such waiver constitute a continuing waiver.

3 **12. RETENTION OF JURISDICTION**

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

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

7 13.1. Each signatory to this Consent Judgment certifies that he or she is fully authorized
8 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
9 execute the Consent Judgment on behalf of the Party represented and to legally bind 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 by
16 means of facsimile or portable document format (pdf), which taken together shall be deemed to
17 constitute one document.

18 **IT IS SO STIPULATED:**

19 **CENTER FOR ENVIRONMENTAL HEALTH**

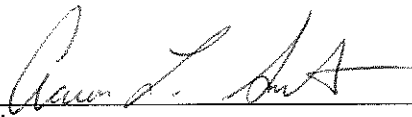
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22 Charlie Pizarro
23 Associate Director

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TUFCO DIVISION LIMITED PARTNERSHIP, dba TUFCO L.P.



Signature

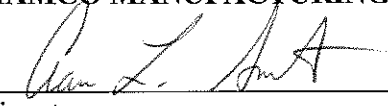
AARON L Smits

Printed Name

CFO

Title

HAMCO MANUFACTURING & DISTRIBUTING, LLC



Signature

AARON L Smits

Printed Name

CFO

Title

IT IS SO ORDERED:

Dated: _____, 2018

Judge of the Superior Court of California