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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 GALLERIA
MARKET, LP AND GALLERIA
MARKET/NORTHRIDGE, LP**

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 California entities Galleria Market, LP and
4 Galleria Market/Northridge, LP (collectively, “Settling Defendants”). The Parties enter into this
5 Consent Judgment to settle certain claims asserted by CEH against Settling Defendants as set
6 forth in the operative complaint (“Complaint”) in the above-captioned matter. This Consent
7 Judgment covers thermal paper that is provided by Settling Defendants to their customers in
8 California as transactional documentation such as receipts (“Thermal Paper”). Thermal Paper
9 provided by Settling Defendants to their customers is or has been coated with bisphenol A, a
10 chemical known to the State of California to cause birth defects or other reproductive harm
11 (“BPA”).

12 1.2. On February 9, 2017, CEH provided a 60-day Notice of Violation under
13 Proposition 65 to each Settling Defendant, the California Attorney General, the District Attorneys
14 of every county in California and the City Attorneys of every California city with a population
15 greater than 750,000, alleging that Settling Defendants violated Proposition 65 by exposing
16 persons to BPA from Thermal Paper without first providing a clear and reasonable Proposition 65
17 warning.

18 1.3. On October 13, 2016, CEH filed the Complaint in the above-captioned matter. On
19 November 2, 2016, CEH filed the First Amended Complaint in the above-captioned matter. The
20 First Amended Complaint has since been amended to add additional defendants, including both
21 Settling Defendants on May 5, 2017.

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

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

11 **2. INJUNCTIVE RELIEF**

12 2.1. **Specification Compliance Date.** To the extent it has not already done so, no
13 more than thirty (30) days after the date of entry of this Consent Judgment, before a Settling
14 Defendant purchases any Thermal Paper, it shall instruct each of its suppliers of Thermal Paper (a
15 “Thermal Paper Supplier”) that the Thermal Paper supplied to such Settling Defendant must be
16 phenol free. If in the future a Settling Defendant purchases Thermal Paper from a Thermal Paper
17 Supplier that it has not previously provided with instructions to provide phenol free Thermal
18 Paper, the Settling Defendant shall provide instructions to such Thermal Paper Supplier prior to
19 placing an initial order for Thermal Paper that direct the Thermal Paper Supplier to provide it
20 with Thermal Paper that is phenol free. Each Settling Defendant shall retain and make available
21 to CEH upon reasonable written request records of communications sent to and received from
22 Thermal Paper Suppliers that are related to the requirement of this Section 2.1 for a period of five
23 (5) years from the date of entry of this Consent Judgment (the “Effective Date”).

24 2.2. **Reformulation of Thermal Paper.** After the Effective Date, no Settling
25 Defendant shall purchase, sell, offer for sale, ship, distribute, use or provide to any employee or
26 customer any Thermal Paper that contains BPA or any other phenol that was intentionally added
27 to the Thermal Paper in the manufacturing process. Thermal Paper that contains less than 20
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1 parts per million BPA or other phenol by weight is deemed to contain no intentionally added BPA
2 or other phenol, such concentration to be determined by use of a test performed by an accredited
3 laboratory using inductively coupled plasma mass spectrometry (ICP-MS) equipment.

4 **3. ENFORCEMENT**

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

14 **4. PAYMENTS**

15 4.1. **Payments by Settling Defendants.** On or before five (5) days after the entry of
16 this Consent Judgment but no earlier than January 15, 2019, the Settling Defendants shall jointly
17 and severally be liable for payment of the total sum of \$39,000 as a settlement payment as further
18 set forth in this Section.

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

1 4.2.1. Settling Defendants shall pay \$6,516 as a civil penalty pursuant to Health
2 & Safety Code §25249.7(b). The civil penalty payment shall be apportioned in accordance with
3 Health & Safety Code §25249.12 (25% to CEH and 75% to the State of California's Office of
4 Environmental Health Hazard Assessment (“OEHHA”). Accordingly, Settling Defendants shall
5 pay the OEHHA portion of the civil penalty payment for \$4,887 by check made payable to
6 OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be
7 delivered as follows:

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

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

20 Settling Defendants shall pay the CEH portion of the civil penalty payment for \$1,629 by check
21 made payable to the Center for Environmental Health and associated with taxpayer identification
22 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero
23 Street, San Francisco, CA 94117.

24 4.2.2. Settling Defendants shall pay \$4,884 as an Additional Settlement Payment
25 (“ASP”) to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of
26 Regulations, Title 11, § 3204. CEH intends to place these funds in CEH’s Toxics in Food Fund
27 and use them to support CEH programs and activities that seek to educate the public about BPA
28 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 sold in California.
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

1 days of any request from the Attorney General. The payments pursuant to this Section shall be
2 made payable to the Center for Environmental Health and associated with taxpayer identification
3 number 94-3251981. These payments shall be delivered to Lexington Law Group, 503
4 Divisadero Street, San Francisco, CA 94117.

5 4.2.3. Payment Defendants shall pay \$27,600 as a reimbursement of a portion of
6 CEH's reasonable attorneys' fees and costs. The attorneys' fees and cost reimbursement shall be
7 made payable to the Lexington Law Group and associated with taxpayer identification number 94-
8 3317175. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San
9 Francisco, CA 94117.

10 4.2.4. To summarize, Settling Defendants shall deliver checks made out to the
11 payees and in the amounts set forth below:

12	Payee	Type	Amount	Deliver To
13	OEHHA	Penalty	\$4,887	OEHHA per Section 4.2.1
14	Center For Environmental Health	Penalty	\$1,629	LLG
15	Center For Environmental Health	ASP	\$4,884	LLG
16	Lexington Law Group	Fees and Costs	\$27,600	LLG

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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.

25 **6. CLAIMS COVERED AND RELEASE**

26 6.1. This Consent Judgment is a full, final and binding resolution between CEH on
27 behalf of itself and the public interest and each Settling Defendant and its parents, subsidiaries,
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1 affiliated entities that are under common ownership, directors, officers, employees, shareholders,
2 successors, assigns and attorneys (“Defendant Releasees”), and all entities to which a Settling
3 Defendant directly or indirectly distributes or sells Thermal Paper, including but not limited to
4 distributors, wholesalers, customers, retailers, franchisees, licensors and licensees (“Downstream
5 Defendant Releasees”), of any violation of Proposition 65 based on failure to warn about
6 exposure to BPA contained in Thermal Paper that was sold, offered for sale, shipped, distributed,
7 used or otherwise provided to employees or customers by a Settling Defendant prior to the
8 Effective Date.

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

16 6.3. Compliance with the terms of this Consent Judgment by a Settling Defendant shall
17 constitute compliance with Proposition 65 by such Settling Defendant, its Defendant Releasees
18 and its Downstream Defendant Releasees with respect to any alleged failure to warn about BPA
19 contained in Thermal Paper sold, offered for sale, shipped, distributed, used or otherwise
20 provided to employees or customers by such Settling Defendant after the Effective Date.

21 **7. PROVISION OF NOTICE**

22 7.1. When CEH is entitled to receive any notice under this Consent Judgment, the
23 notice shall be sent by first class and electronic mail to:

24 Eric S. Somers
25 Lexington Law Group
26 503 Divisadero Street
27 San Francisco, CA 94117
28 esomers@lexlawgroup.com

1 7.2. When Settling Defendants are entitled to receive any notice under this Consent
2 Judgment, the notice shall be sent by first class and electronic mail to:

3 Steven Y. Han
4 The Han Law Group
5 A Professional Law Corporation
6 515 S. Flower Street, 36th Floor
7 Los Angeles, CA 90071
8 shan@hanlawgroup.com

9 7.3. Any Party may modify the person and address to whom the notice is to be sent by
10 sending the other Party notice by first class and electronic mail.

11 **8. COURT APPROVAL**

12 8.1. This Consent Judgment shall become effective as a contract upon the date signed
13 by CEH and Settling Defendants, whichever is later, provided however, that CEH shall also
14 prepare and file a Motion for Approval of this Consent Judgment and Settling Defendants shall
15 support approval of such Motion.

16 8.2. If this Consent Judgment is not entered by the Court, it shall be of no force or
17 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
18 purpose.

19 **9. GOVERNING LAW AND CONSTRUCTION**

20 9.1. The terms of this Consent Judgment shall be governed by the laws of the State of
21 California.

22 **10. ATTORNEY'S FEES**

23 10.1. A Party who unsuccessfully brings or contests an action arising out of this Consent
24 Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs
25 unless the unsuccessful Party has acted with substantial justification. For purposes of this
26 Consent Judgment, the term substantial justification shall carry the same meaning as used in the
27 Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016.010, *et seq.*

28 10.2. Notwithstanding Section 10.1, a Party who prevails in a contested enforcement
action brought pursuant to Section 3 may seek an award of attorneys' fees pursuant to Code of
Civil Procedure § 1021.5 against a Party that acted with substantial justification. The Party

1 seeking such an award shall bear the burden of meeting all of the elements of § 1021.5, and this
2 provision shall not be construed as altering any procedural or substantive requirements for
3 obtaining such an award.

4 10.3. Nothing in this Section 10 shall preclude a party from seeking an award of
5 sanctions pursuant to law.

6 **11. ENTIRE AGREEMENT**

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

21 **12. RETENTION OF JURISDICTION**

22 12.1. This Court shall retain jurisdiction of this matter to implement or modify the
23 Consent Judgment.

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

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

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 Settling Defendants on terms that are different than those contained in
4 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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IT IS SO STIPULATED:
CENTER FOR ENVIRONMENTAL HEALTH



Charlie Pizarro
Associate Director

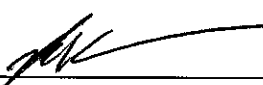
1 **GALLERIA MARKET, LP**

2
3 
Signature _____

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5 Young J. Kim
Printed Name _____

6
7 Partner
Title _____

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9 **GALLERIA MARKET/NORTHRIDGE, LP**

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11 
Signature _____

12
13 Young J. Kim
Printed Name _____

14
15 Partner
Title _____

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19 **IT IS SO ORDERED:**

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22 Dated: _____

Judge of the Superior Court of California