

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 HANSOL
AMERICA, 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 Hansol America, Inc., a California Corporation
4 headquartered in New Jersey (referred to as, “Settling Defendant”). The Parties enter into this
5 Consent Judgment to settle certain claims asserted by CEH against Settling Defendant as set forth
6 in the operative complaint (“Complaint”) in the above-captioned matter. This Consent Judgment
7 covers 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 March 20, 2017, 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 June 26, 2017.

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 Effective Date, Settling Defendant
11 shall not purchase, sell, offer for sale, ship or distribute any Thermal Paper that contains BPA that
12 was intentionally added to the Thermal Paper in the manufacturing process. Thermal Paper that
13 contains less than 20 parts per million (“ppm”) BPA by weight (the “Reformulation Level”) is
14 deemed to contain no intentionally added BPA, such concentration to be determined by use of a
15 test performed by an accredited laboratory using inductively coupled plasma mass spectrometry
16 (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, in
20 coordination with its parent company Hansol Paper Co., Ltd., to use commercially reasonable
21 efforts to research alternatives to phenol based thermal paper. Settling Defendant shall prepare a
22 written report detailing the efforts made and results from this work on the use of safer non-phenol
23 based Thermal Paper that shall be submitted to CEH within thirty (30) days of the day that is one
24 (1) year after the Effective Date.

25 **3. ENFORCEMENT**

26 3.1. **Enforcement Procedures.** This Court shall have exclusive jurisdiction over all
27 matters regarding enforcement of the Consent Judgment. Prior to bringing any motion or order to
28

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

8 **4. PAYMENTS**

9 4.1. **Payments by Settling Defendant.** On or before five (5) days after the entry of
10 this Consent Judgment, Settling Defendant shall be liable for payment of the total sum of
11 \$205,000 as a settlement payment as further set forth in this Section.

12 4.2. **Allocation of Payments.** The total settlement amount shall be paid in five (5)
13 separate checks in the amounts specified below and delivered as set forth below. Any failure by
14 Settling Defendant to comply with the payment terms herein shall be subject to a stipulated late
15 fee to be paid by Settling Defendant in the amount of \$100 for each day the full payment is not
16 received after the applicable payment due date set forth in Section 4.1. The late fees required
17 under this Section shall be recoverable, together with reasonable attorneys' fees, in an
18 enforcement proceeding brought pursuant to Section 3 of this Consent Judgment. The funds paid
19 by Settling Defendant shall be allocated as set forth below between the following categories and
20 made payable as follows:

21 4.2.1. Settling Defendant shall pay \$27,248 as a civil penalty pursuant to Health
22 & Safety Code §25249.7(b). The civil penalty payment shall be apportioned in accordance with
23 Health & Safety Code §25249.12 (25% to CEH and 75% to the State of California's Office of
24 Environmental Health Hazard Assessment ("OEHHA")). Accordingly, Settling Defendant shall
25 pay the OEHHA portion of the civil penalty payment for \$20,571 by check made payable to
26 OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be
27 delivered as follows:

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

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

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

Settling Defendant shall pay the CEH portion of the civil penalty payment for \$6,857 by check made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

4.2.2. Settling Defendant shall pay \$20,572 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 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 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 (30) days of any request from the Attorney General. The payment pursuant to this Section shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

4.2.3. Settling Defendant shall pay \$157,000 as a reimbursement of a portion of CEH’s reasonable attorneys’ fees and costs. The attorneys’ fees and cost reimbursement shall be

1 made in two separate checks as follows: (a) \$133,000 payable to the Lexington Law Group and
2 associated with taxpayer identification number 94-3317175; and (b) \$24,000 payable to the
3 Center for Environmental Health and associated with taxpayer identification number 94-3251981.
4 Both of these payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San
5 Francisco, CA 94117.

6 4.2.4. To summarize, Settling Defendant shall deliver checks made out to the
7 payees and in the amounts set forth below:

8 Payee	9 Type	10 Amount	11 Deliver To
12 OEHHA	13 Penalty	\$20,571	OEHHA per Section 4.2.1
14 Center For Environmental Health	Penalty	\$6,857	LLG
Center For Environmental Health	ASP	\$20,571	LLG
Lexington Law Group	Fees and Costs	\$133,000	LLG
Center For Environmental Health	Fees and Costs	\$24,000	LLG

15 **5. MODIFICATION OF CONSENT JUDGMENT**

16 5.1. **Modification.** This Consent Judgment may be modified from time to time by
17 express written agreement of the Parties, with the approval of the Court, or by an order of this
18 Court upon motion and in accordance with law.

19 5.2. **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
20 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
21 modify the Consent Judgment.

22 **6. CLAIMS COVERED AND RELEASE**

23 6.1. This Consent Judgment is a full, final and binding resolution between CEH on
24 behalf of itself and the public interest and Settling Defendant and its parents, subsidiaries,
25 affiliated entities that are under common ownership, directors, officers, employees, agents,
26 shareholders, successors, assigns and attorneys (“Defendant Releasees”) of any violation of
27 Proposition 65 based on failure to warn about exposure to BPA contained in Thermal Paper that

1 was sold, offered for sale, shipped, distributed, used or otherwise provided by Settling Defendant
2 prior to the Effective Date.

3 6.2. CEH, for itself, its agents, successors and assigns, releases, waives and forever
4 discharges any and all claims against Settling Defendant and Defendant Releasees arising from
5 any violation of Proposition 65 or any other statutory or common law claims that have been or
6 could have been asserted by CEH individually or in the public interest regarding the failure to
7 warn about exposure to BPA contained in Thermal Paper that was sold, offered for sale, shipped,
8 distributed, used or otherwise provided to employees or customers by Settling Defendant prior to
9 the Effective Date.

10 6.3. Compliance with the terms of this Consent Judgment by Settling Defendant shall
11 constitute compliance with Proposition 65 by Settling Defendant and its Defendant Releasees
12 with respect to any alleged failure to warn about BPA contained in Thermal Paper sold, offered
13 for sale, shipped, distributed, used or otherwise provided by Settling Defendant after the Effective
14 Date.

15 6.4. Nothing in this Consent Judgment covers or releases any claim arising from any
16 violation of Proposition 65 or any other statutory or common law claims that have been or could
17 have been asserted by CEH individually or in the public interest including but not limited to those
18 claims regarding the failure to warn about exposure to BPA contained in Thermal Paper by any
19 entity other than Settling Defendant and Defendant Releasees including but not limited to all
20 downstream entities to which Settling Defendant directly or indirectly distributed or sold Thermal
21 Paper such as distributors, wholesalers, customers, retailers, franchisees, licensors and licensees.

22 **7. PROVISION OF NOTICE**

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

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

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

3 Christopher Tayback
4 Quinn Emanuel Urquhart & Sullivan, LLP
5 865 South Figueroa Street, 10th Floor
6 Los Angeles, CA 90017

7 and

8 Enoch H. Liang
9 LTL Attorneys LLP
10 601 Gateway Blvd., Suite 1010
11 South San Francisco, CA 94080
12 enoch.liang@ltmlattorneys.com

13 7.3. Any Party may modify the person and address to whom the notice is to be sent by
14 sending the other Party notice by first class and electronic mail.

15 **8. COURT APPROVAL**

16 8.1. This Consent Judgment shall become effective as a contract upon the date signed
17 by CEH and Settling Defendant, whichever is later, provided however, that CEH shall also
18 prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant shall
19 support approval of such Motion.

20 8.2. If this Consent Judgment is not entered by the Court, it shall be of no force or
21 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
22 purpose.

23 **9. GOVERNING LAW AND CONSTRUCTION**

24 9.1. The terms of this Consent Judgment shall be governed by the laws of the State of
25 California.

26 **10. ATTORNEY'S FEES**

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

1 10.2. Notwithstanding Section 10.1, a Party who prevails in a contested enforcement
2 action brought pursuant to Section 3 may seek an award of attorneys' fees pursuant to Code of
3 Civil Procedure § 1021.5 against a Party that acted with substantial justification. The Party
4 seeking such an award shall bear the burden of meeting all of the elements of § 1021.5, and this
5 provision shall not be construed as altering any procedural or substantive requirements for
6 obtaining such an award.

7 10.3. Nothing in this Section 10 shall preclude a party from seeking an award of
8 sanctions pursuant to law.

9 **11. ENTIRE AGREEMENT**

10 11.1. This Consent Judgment contains the sole and entire agreement and understanding
11 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
12 negotiations, commitments or understandings related thereto, if any, are hereby merged herein
13 and therein. There are no warranties, representations or other agreements between the Parties
14 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
15 other than those specifically referred to in this Consent Judgment have been made by any Party
16 hereto. Other agreements that are not specifically contained or referenced herein, oral or
17 otherwise, shall be deemed neither to exist nor to bind any of the Parties hereto. Any agreements
18 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
19 any of the Parties hereto only to the extent that they are expressly incorporated herein. No
20 supplementation, modification, waiver or termination of this Consent Judgment shall be binding
21 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
22 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
23 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

24 **12. RETENTION OF JURISDICTION**

25 12.1. This Court shall retain jurisdiction of this matter to implement or modify the
26 Consent Judgment.

27
28

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

2 13.1. Each signatory to this Consent Judgment certifies that he or she is fully authorized
3 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
4 execute the Consent Judgment on behalf of the Party represented and to legally bind that Party.

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


6 14.1. Nothing in this Consent Judgment shall preclude CEH from resolving any claim
7 against an entity that is not Settling Defendant on terms that are different than those contained in
8 this Consent Judgment.

9 **15. EXECUTION IN COUNTERPARTS**

10 15.1. The stipulations to this Consent Judgment may be executed in counterparts and by
11 means of facsimile or portable document format (pdf), which taken together shall be deemed to
12 constitute one document.

13
14 **IT IS SO STIPULATED:**

15 **CENTER FOR ENVIRONMENTAL HEALTH**

16
17 
18 _____
19 Charlie Pizarro
20 Associate Director

21 **HANSOL AMERICA, INC.**

22 _____
23 Signature

24 _____
25 Printed Name

26 _____
27 Title

28

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

2 13.1. Each signatory to this Consent Judgment certifies that he or she is fully authorized
3 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
4 execute the Consent Judgment on behalf of the Party represented and to legally bind that Party.

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

6 14.1. Nothing in this Consent Judgment shall preclude CEH from resolving any claim
7 against an entity that is not Settling Defendant on terms that are different than those contained in
8 this Consent Judgment.

9 **15. EXECUTION IN COUNTERPARTS**

10 15.1. The stipulations to this Consent Judgment may be executed in counterparts and by
11 means of facsimile or portable document format (pdf), which taken together shall be deemed to
12 constitute one document.

13
14 **IT IS SO STIPULATED:**

15 **CENTER FOR ENVIRONMENTAL HEALTH**

16
17 _____
18 Charlie Pizarro
19 Associate Director

20 **HANSOL AMERICA, INC.**

21 
22 _____
23 Signature

24 Steve Han
25 _____
26 Printed Name

27 President
28 _____
Title

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

IT IS SO ORDERED:

Dated: _____, 2018

Judge of the Superior Court of California