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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 NASHUA  
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 Nashua Corporation (“Nashua”) (each a “Party”  
4     and together the “Parties”). The Parties enter into this Consent Judgment to settle certain claims  
5     asserted by CEH against Nashua as set forth in the operative complaint (“Complaint”) in the  
6     above-captioned matter. This Consent Judgment covers certain thermal paper sold by Nashua  
7     (“Thermal Paper”). Thermal Paper is used in thermal printers to create transactional documents  
8     such as cash register and ATM receipts. Thermal Paper sold by Nashua has in the past been  
9     coated with bisphenol A, a chemical known to the State of California to cause birth defects or  
10    other reproductive harm (“BPA”).

11          1.2     On June 16, 2017, CEH provided a 60-day Notice of Violation under Proposition  
12    65 to Nashua, the California Attorney General, the District Attorneys of every county in  
13    California and the City Attorneys of every California city with a population greater than 750,000,  
14    alleging that Nashua violated California Health & Safety Code Section 25249.5 *et seq.*  
15    (“Proposition 65”) by exposing persons to BPA from Thermal Paper without first providing a  
16    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. On  
19    August 29, 2017, CEH amended the operative Complaint in the above-captioned matter to name  
20    Nashua as a defendant.

21          1.4     Nashua is a corporation or other business entity that allegedly sold Thermal Paper  
22    containing BPA to customers that then provided such Thermal Paper to California consumers.

23          1.5     For purposes of this Consent Judgment only, the Parties stipulate that this Court  
24    has jurisdiction over the allegations of violations contained in the Complaint and personal  
25    jurisdiction over Nashua as to the acts alleged in the Complaint, that venue is proper in the  
26    County of Alameda, and that this Court has jurisdiction to enter and enforce this Consent  
27    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 containing BPA sold  
2 by Nashua.

3 1.6 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 Definitions.**

13 2.1.1 The “Effective Date” is the date of entry of this Consent Judgment.

14 2.1.2 “California Thermal Paper” is Thermal Paper that will be used in  
15 California or otherwise provided to employees working in California or consumers located in  
16 California by Nashua or any direct or indirect downstream entity.

17 **2.2 Specification Compliance Date.** To the extent it has not already done so, no  
18 more than thirty (30) days after the Effective Date, Nashua shall instruct each supplier of  
19 California Thermal Paper that the California Thermal Paper supplied to Nashua must be BPA  
20 free. If in the future Nashua purchases California Thermal Paper from a supplier that it has not  
21 previously provided with instructions to provide BPA free Thermal Paper, Nashua shall provide  
22 such instructions to said supplier prior to placing an initial order for California Thermal Paper.  
23 On each of the first two (2) anniversaries of the Effective Date, Nashua shall serve CEH with a  
24 written certification of compliance with its obligations under this Section 2.2 that will include  
25 records of communications sent to and received from suppliers of California Thermal Paper that  
26 are related to the requirements of this Section 2.2.

1           2.3     **Reformulation of Thermal Paper.** After the Effective Date, Nashua shall not  
2 purchase, ship, sell or offer for sale any California Thermal Paper that contains BPA that was  
3 intentionally added to the Thermal Paper in the manufacturing process. Thermal Paper that  
4 contains fewer than twenty (20) parts per million BPA by weight (the “Reformulation Level”) is  
5 deemed to contain no intentionally added BPA, such concentration to be determined by use of a  
6 test performed by an accredited laboratory using inductively coupled plasma mass spectrometry  
7 (ICP-MS) equipment following solvent extraction and analysis with high performance liquid  
8 chromatography.

9           2.4     **Additional Efforts to Reduce Use of Phenols In Thermal Paper.** CEH believes  
10 that one or more of the possible alternatives to BPA used in Thermal Paper are other chemicals  
11 that also have potentially adverse health effects. Accordingly, Nashua agrees to research its  
12 continued and expanded use of safer non-phenol based Thermal Paper. Nashua shall prepare a  
13 written report detailing the efforts made and results from this work on the use of safer non-phenol  
14 based Thermal Paper that shall be submitted to CEH within thirty (30) days of the day that is one  
15 (1) year after the Effective Date.

16     **3.     ENFORCEMENT**

17           3.1     **Enforcement Procedures.** Prior to bringing any motion or order to show cause to  
18 enforce the terms of this Consent Judgment, a Party seeking to enforce this Consent Judgment  
19 shall provide the other Party forty-five (45) days advanced written notice specifying reasonable  
20 details of the alleged violation. The Parties shall meet and confer in good faith during the forty-  
21 five (45) day period in an effort to try to reach agreement on an appropriate cure for the alleged  
22 violation, and if deemed appropriate by the Parties, for testing pursuant to the methods described  
23 in Section 2.3 herein. After such forty-five (45) day period, the Party seeking to enforce may, by  
24 new action, motion, or order to show cause before the Superior Court of Alameda, seek to enforce  
25 Proposition 65 and the terms and conditions contained in this Consent Judgment.

1     **4.     PAYMENTS**

2             **4.1     Payments by Nashua.** On or before December 13, 2017, Nashua shall pay the  
3 total sum of \$120,000 as a settlement payment (“Settlement Payment”) as further set forth in this  
4 Section. All funds paid under this Section shall be held in trust pending approval of this Consent  
5 Judgment by the Court.

6             **4.2     Allocation of Payments.** The total Settlement Payment shall be paid in four (4)  
7 separate checks in the amounts specified below and delivered as set forth below. Any failure by  
8 Nashua to comply with the payment terms herein shall be subject to a stipulated late fee to be  
9 paid by Nashua in the amount of \$100.00 for each day the full payment is not received after the  
10 applicable payment due date set forth in Section 4.1. The late fees required under this Section  
11 shall be recoverable, together with reasonable attorneys’ fees, in an enforcement proceeding  
12 brought pursuant to Section 3 of this Consent Judgment. The Settlement Payment paid by  
13 Nashua shall be allocated as set forth below between the following categories and made payable  
14 as follows:

15                     **4.2.1** Nashua shall pay \$16,040 as a civil penalty (“Civil Penalty”) pursuant to  
16 Health & Safety Code §25249.7(b), such money to be apportioned by CEH in accordance with  
17 California Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California’s  
18 Office of Environmental Health Hazard Assessment). This payment shall be delivered to  
19 Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

20                     **4.2.2** Nashua shall pay \$12,030 as an Additional Settlement Payment (“ASP”) to  
21 CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title  
22 11, § 3204. CEH intends to place these funds in CEH’s Toxics in Food Fund and use them to  
23 support CEH programs and activities that seek to educate the public about BPA and other toxic  
24 chemicals in food, to work with the food industry and agriculture interests to reduce exposure to  
25 BPA and other toxic chemicals in food, and to thereby reduce the public health impacts and risks  
26 of exposure to BPA and other toxic chemicals in food sold in California. CEH shall obtain and  
27 maintain adequate records to document that ASPs are spent on these activities and CEH agrees to  
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1 provide such documentation to the Attorney General within thirty (30) days of any request from  
2 the Attorney General. The payments pursuant to this Section shall be made payable to the Center  
3 for Environmental Health and associated with taxpayer identification number 94-3251981. These  
4 payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA  
5 94117.

6 4.2.3 Nashua shall pay \$91,930 as a reimbursement of a portion of CEH's  
7 reasonable attorneys' fees and costs. The attorneys' fees and cost reimbursement shall be made  
8 in two separate checks as follows: (a) \$77,880 payable to the Lexington Law Group and  
9 associated with taxpayer identification number 94-3317175; and (b) \$14,050 payable to the  
10 Center For Environmental Health and associated with taxpayer identification number 94-  
11 3251981. Both of these payments shall be delivered to Lexington Law Group, 503 Divisadero  
12 Street, San Francisco, CA 94117.

13 4.2.4 To summarize, Nashua shall deliver checks made out to the payees and in  
14 the amounts set forth below:

| 15 <b>Payee</b>                    | 16 <b>Type</b> | 17 <b>Amount</b> | 18 <b>Deliver To</b> |
|------------------------------------|----------------|------------------|----------------------|
| 19 Center For Environmental Health | 20 Penalty     | \$16,040         | LLG                  |
| Center For Environmental Health    | ASP            | \$12,030         | LLG                  |
| Lexington Law Group                | Fees and Costs | \$77,880         | LLG                  |
| Center For Environmental Health    | Fees and Costs | \$14,050         | LLG                  |

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

22 5.1 **Modification.** This Consent Judgment may be modified from time to time by  
23 express written agreement of the Parties, with the approval of the Court, or by an order of this  
24 Court upon motion and in accordance with law.

25 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment  
26 shall attempt in good faith to meet and confer with all affected Parties not less than thirty (30)  
27 days prior to filing a motion to modify the Consent Judgment.

1       **6. CLAIMS COVERED AND RELEASED**

2           6.1       Provided that Nashua complies in all material respects with its 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 Nashua and its parents (including the holding company  
5 of its direct parent), subsidiaries, affiliated entities that are under common ownership, and each of  
6 their directors, officers, employees, agents, independent contractors, consultants, members,  
7 shareholders, successors, predecessors, assigns, and attorneys (“Defendant Releasees”), and all  
8 persons or entities to which Nashua directly or indirectly distributed, shipped, offered for sale or  
9 sold Thermal Paper, including but not limited to distributors, wholesalers, customers, retailers,  
10 franchisees, licensors and licensees (“Downstream Defendant Releasees”), of any violation of  
11 Proposition 65 based on failure to warn about alleged exposure to BPA contained in Thermal  
12 Paper sold, directly or indirectly distributed, shipped or offered for sale by Nashua prior to the  
13 Effective Date.

14           6.2       Provided that Nashua complies in all material respects with its obligations under  
15 Section 4 hereof, CEH, for itself and its successors, assigns and predecessors, releases, waives,  
16 and forever discharges any and all costs, damages, actions, proceedings, demands and/or claims  
17 against Nashua, Defendant Releasees, and Downstream Defendant Releasees arising from any  
18 violation of Proposition 65 or any other statutory or common law claims that have been or could  
19 have been asserted by CEH individually or in the public interest regarding the failure to warn  
20 about exposure to BPA arising in connection with Thermal Paper shipped, sold, directly or  
21 indirectly distributed, or offered for sale by Nashua prior to the Effective Date.

22           6.3       Provided that Nashua complies in all material respects with its obligations under  
23 Section 4 hereof, compliance with the terms of this Consent Judgment by Nashua shall constitute  
24 compliance with Proposition 65 by Nashua, its Defendant Releasees and its Downstream  
25 Defendant Releasees with respect to any failure to warn about alleged exposure to BPA contained  
26 in Thermal Paper sold, directly or indirectly distributed, shipped or offered for sale by Nashua  
27 after the Effective Date.

1       **7.     PROVISION OF NOTICE**

2           7.1     When CEH is entitled to receive any notice under this Consent Judgment, the  
3 notice shall be sent by first class and electronic mail to:

4                   Eric S. Somers  
5                   Lexington Law Group  
6                   503 Divisadero Street  
7                   San Francisco, CA 94117  
8                   [esomers@lexlawgroup.com](mailto:esomers@lexlawgroup.com)

9           7.2     When Nashua is entitled to receive any notice under this Consent Judgment, the  
10 notice shall be sent by first class and electronic mail to:

11                   Steve N. Siegel  
12                   Dinsmore & Shohl LLP  
13                   255 East Fifth Street  
14                   Suite 1900  
15                   Cincinnati, OH 45202  
16                   [Steve.siegel@dinsmore.com](mailto:Steve.siegel@dinsmore.com)

17           7.3     Any Party may modify the person and address to whom the notice is to be sent by  
18 sending the other Party written notice by first class and electronic mail.

19       **8.     COURT APPROVAL**

20           8.1     This Consent Judgment shall become binding as a contract upon the date signed by  
21 CEH and Nashua, whichever is later, provided however, that CEH shall also prepare and file a  
22 Motion for Approval of this Consent Judgment and Nashua shall support approval of such  
23 Motion.

24           8.2     If this Consent Judgment is not entered by the Court within six months of the date  
25 executed by Nashua, it shall be of no force or effect, shall not be introduced into evidence or  
26 otherwise used in any proceeding for any purpose, and CEH and the Lexington Law Group will  
27 refund any payments made under Section 4 of this Consent Judgment.

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. ATTORNEYS' FEES**

2 10.1 A Party who unsuccessfully brings or contests an action, motion, or application  
3 arising out of this Consent Judgment shall be required to pay the prevailing Party's reasonable  
4 attorneys' fees and costs.

5 10.2 Nothing in this Section 10 shall preclude a Party from seeking an award of  
6 sanctions pursuant to law or an award of attorneys' fee under Cal. Code of Civil Procedure  
7 §1021.5.

8 **11. ENTIRE AGREEMENT**

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

23 **12. RETENTION OF JURISDICTION**

24 12.1 This Court shall retain jurisdiction of this matter to implement or modify the  
25 Consent Judgment.

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

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

**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 Nashua 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

*7 December 2017*

\_\_\_\_\_  
Date

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**NASHUA CORPORATION**

*[Handwritten Signature]*

Signature

*Jan R. Scheinmann*

Printed Name

*General Counsel & Company Secretary*

Title

*12/7/17*

Date

**IT IS SO ORDERED:**

Dated: \_\_\_\_\_, 2018

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