

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 NATIONAL
TICKET COMPANY**

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 National Ticket Company, a Pennsylvania
4 Corporation (referred to as, “Settling Defendant”). The Parties enter into this Consent Judgment
5 to settle certain claims asserted by CEH against Settling Defendant as set forth in the operative
6 complaint (“Complaint”) in the above-captioned matter. This Consent Judgment covers thermal
7 paper that is provided by Settling Defendant to its customers for use as transactional
8 documentation such as tickets and wristbands (“Thermal Paper”). Thermal Paper provided by
9 Settling Defendant to its customers is or has been coated with bisphenol A, a chemical known to
10 the State of California to cause birth defects or other reproductive harm (“BPA”).

11 1.2 On October 16, 2017, CEH provided a 60-day Notice of Violation under
12 Proposition 65 to Settling Defendant, the California Attorney General, the District Attorneys of
13 every county in California and the City Attorneys of every California city with a population
14 greater than 750,000, alleging that Settling Defendant violated Proposition 65 by exposing
15 persons to BPA from Thermal Paper without first providing a clear and reasonable Proposition 65
16 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 January 10, 2018.

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 provided to customers
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 **Specification Compliance Date.** To the extent it has not already done so, no
11 more than thirty (30) days after the date of entry of this Consent Judgment (the “Effective Date”),
12 before Settling Defendant purchases any Thermal Paper, it shall instruct in writing each of its
13 suppliers of Thermal Paper (a “Thermal Paper Supplier”) that the Thermal Paper supplied to
14 Settling Defendant must be BPA free or comply with the reformulation requirements of Section
15 2.2. If in the future Settling Defendant purchases Thermal Paper from a Thermal Paper Supplier
16 that it has not previously provided with instructions to provide BPA free Thermal Paper, Settling
17 Defendant shall provide written instructions to such Thermal Paper Supplier prior to placing an
18 initial order for Thermal Paper that instruct the Thermal Paper Supplier to provide it with
19 Thermal Paper that is BPA free. Settling Defendant shall retain and make available to CEH upon
20 reasonable written request records of communications sent to and received from Thermal Paper
21 Suppliers that are related to the requirement of this Section 2.1 for a period of two (2) years from
22 the Effective Date.

23 2.2 **Reformulation of Thermal Paper.** After the Effective Date, Settling Defendant
24 shall not purchase, sell, offer for sale, ship or distribute any Thermal Paper that contains BPA that
25 was intentionally added to the Thermal Paper in the manufacturing process. Thermal Paper that
26 contains less than 20 parts per million (“ppm”) BPA by weight is deemed to contain no
27 intentionally added BPA, such concentration to be determined by use of a test performed by an
28

1 accredited laboratory using inductively coupled plasma mass spectrometry (ICP-MS) equipment.
2 So long as Settling Defendant is in compliance with the requirements of this Section, Settling
3 Defendant has no independent obligation to test Thermal Paper for BPA.

4 **2.3 Additional Efforts to Reduce Use of Thermal Paper. CEH contends that**
5 **many** of the alternatives to BPA used in Thermal Paper are other phenols that also have
6 potentially adverse health effects, such as bisphenol-S (“BPS”). Accordingly, Settling Defendant
7 agrees to continue to use commercially reasonable efforts to reduce the use of all phenol based
8 Thermal Paper. These efforts shall include but not be limited to efforts to market and sell
9 Thermal Paper that is phenol free. Settling Defendant shall prepare a written report detailing the
10 efforts made and results from this work on the reduction in use of Thermal Paper containing
11 phenols that shall be submitted to CEH one year after the Effective date.

12 **3. ENFORCEMENT**

13 **3.1 Enforcement Procedures.** Prior to bringing any motion or order to show cause to
14 enforce the terms of this Consent Judgment, a Party seeking to enforce shall provide the violating
15 party thirty (30) days advanced written notice of the alleged violation. The Parties shall meet and
16 confer during such thirty (30) day period in an effort to try to reach agreement on an appropriate
17 cure for the alleged violation. After such thirty (30) day period, the Party seeking to enforce may,
18 by new action, motion or order to show cause before the Superior Court of Alameda, seek to
19 enforce Proposition 65 and the terms and conditions contained in this Consent Judgment.

20 **4. PAYMENTS**

21 **4.1 Payments by Settling Defendant.** On or before five (5) days after the entry of
22 this Consent Judgment, Settling Defendant shall be liable for payment of the total sum of
23 \$160,000 as a settlement payment as further set forth in this Section.

24 **4.2 Allocation of Payments.** The total settlement amount shall be paid in four (4)
25 separate checks in the amounts specified below and delivered as set forth below. Any failure by
26 Settling Defendant to comply with the payment terms herein shall be subject to a stipulated late
27 fee to be paid by Settling Defendant in the amount of \$100 for each day the full payment is not
28

1 received after the applicable payment due date set forth in Section 4.1. The late fees required
2 under this Section shall be recoverable, together with reasonable attorneys' fees, in an
3 enforcement proceeding brought pursuant to Section 3 of this Consent Judgment. The funds paid
4 by Settling Defendant shall be allocated as set forth below between the following categories and
5 made payable as follows:

6 4.2.1 Settling Defendant shall pay \$28,000 as a civil penalty pursuant to Health
7 & Safety Code §25249.7(b). The civil penalty payment shall be apportioned in accordance with
8 Health & Safety Code §25249.12 (25% to CEH and 75% to the State of California's Office of
9 Environmental Health Hazard Assessment ("OEHHA")). Accordingly, Settling Defendant shall
10 pay the OEHHA portion of the civil penalty payment for \$21,000 by check made payable to
11 OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be
12 delivered as follows:

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

19 For Non-United States Postal Service Delivery:
20 Attn: Mike Gyurics
21 Fiscal Operations Branch Chief
22 Office of Environmental Health Hazard Assessment
23 1001 I Street, MS #19B
24 Sacramento, CA 95814

25 Settling Defendant shall pay the CEH portion of the civil penalty payment for \$7,000 by check
26 made payable to the Center for Environmental Health and associated with taxpayer identification
27 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero
28 Street, San Francisco, CA 94117.

 4.2.2 Settling Defendant shall pay \$21,000 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

1 and other toxic chemicals in food, to work with the food industry and agriculture interests to
2 reduce exposure to BPA and other toxic chemicals in food, and to thereby reduce the public
3 health impacts and risks of exposure to BPA and other toxic chemicals in food sold in California.
4 CEH shall obtain and maintain adequate records to document that ASPs are spent on these
5 activities and CEH agrees to provide such documentation to the Attorney General within thirty
6 days of any request from the Attorney General. The payments pursuant to this Section shall be
7 made payable to the Center for Environmental Health and associated with taxpayer identification
8 number 94-3251981. These payments shall be delivered to Lexington Law Group, 503
9 Divisadero Street, San Francisco, CA 94117.

10 4.2.3 Settling Defendant shall pay \$111,000 as a reimbursement of a portion of
11 CEH's reasonable attorneys' fees and costs. The attorneys' fees and cost reimbursement shall be
12 made payable to the Lexington Law Group, associated with taxpayer identification number 94-
13 3317175 and shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco,
14 CA 94117.

15 4.2.4 To summarize, Settling Defendant shall deliver checks made out to the
16 payees and in the amounts set forth below:

18 Payee	Type	Amount	Deliver To
19 OEHHA	Penalty	\$21,000	OEHHA per Section 4.2.1
20 Center For Environmental Health	Penalty	\$7,000	LLG
21 Center For Environmental Health	ASP	\$21,000	LLG
22 Lexington Law Group	Fees and Costs	\$111,000	LLG

23 **5. MODIFICATION OF CONSENT JUDGMENT**

24 5.1 **Modification.** This Consent Judgment may be modified from time to time by
25 express written agreement of the Parties, with the approval of the Court or by an order of this
26 Court upon motion and in accordance with law.
27

1 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
2 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
3 modify the Consent Judgment.

4 **6. CLAIMS COVERED AND RELEASE**

5 6.1 Provided that Settling Defendant complies in full with all of its obligations under
6 Section 4 hereof, this Consent Judgment is a full, final and binding resolution between CEH on
7 behalf of itself and the public interest and Settling Defendant and its parents, subsidiaries,
8 affiliated entities that are under common ownership, directors, officers, employees, shareholders,
9 successors, assigns and attorneys (“Defendant Releasees”), and all entities to which Settling
10 Defendant directly or indirectly distributes or sells Thermal Paper, including but not limited to
11 distributors, wholesalers, customers, retailers, franchisees, licensors and licensees (“Downstream
12 Defendant Releasees”), of any violation of Proposition 65 based on failure to warn about
13 exposure to BPA contained in Thermal Paper that was sold by Settling Defendant prior to the
14 Effective Date.

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

22 6.3 Provided that each Settling Defendant complies in full with all of its obligations
23 under Section 4 hereof, compliance with the terms of this Consent Judgment by Settling
24 Defendant shall constitute compliance with Proposition 65 by Settling Defendant, its Defendant
25 Releasees and its Downstream Defendant Releasees with respect to any alleged failure to warn
26 about exposure to BPA contained in Thermal Paper sold by Settling Defendant after the Effective
27 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

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

11 Jessica Kim
12 Walsworth WFBM, LLP
13 One City Boulevard, Fifth Floor
14 Orange, CA 92868
15 jkim@wfbm.com

16 7.3 Any Party may modify the person and address to whom the notice is to be sent by
17 sending the other Party notice by first class and electronic mail.

18 **8. COURT APPROVAL**

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

23 8.2 If this Consent Judgment is not entered by the Court, it shall be of no further force
24 or effect and shall not be introduced into evidence or otherwise used in any proceeding for any
25 purpose other than a proceeding related to enforcement of Section 8.1.

26 **9. GOVERNING LAW AND CONSTRUCTION**

27 9.1 The terms of this Consent Judgment shall be governed by the laws of the State of
28 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

1 unless the unsuccessful Party has acted with substantial justification. For purposes of this
2 Consent Judgment, the term substantial justification shall carry the same meaning as used in the
3 Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016.010, *et seq.*

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

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

12 **11. ENTIRE AGREEMENT**

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

1 **12. RETENTION OF JURISDICTION**

2 12.1 This Court shall retain jurisdiction of this matter to implement or modify the
3 Consent Judgment.

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

5 13.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
6 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
7 execute the Consent Judgment on behalf of the Party represented and to legally bind that Party.

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

9 14.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
10 against an entity that is not Settling Defendant on terms that are different than those contained in
11 this Consent Judgment.

12 **15. EXECUTION IN COUNTERPARTS**

13 15.1 The stipulations to this Consent Judgment may be executed in counterparts and by
14 means of facsimile or portable document format (pdf), which taken together shall be deemed to
15 constitute one document.

16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO STIPULATED:

CENTER FOR ENVIRONMENTAL HEALTH



Michael Green
Chief Executive Officer

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

NATIONAL TICKET COMPANY

Ed. A. Ludes

Signature

Edward A. Ludes

Printed Name

PRESIDENT

Title

**IT IS SO ORDERED, ADJUDGED,
AND DECREED:**

Dated: _____

Judge of the Superior Court of California