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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 MITSUBISHI
HITEC PAPER EUROPE GMBH**

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 Mitsubishi HiTec Paper Europe GmbH, a German
4 corporation (referred to as “Settling Defendant”). The Parties enter into this Consent Judgment to
5 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 manufactured and sold by Settling Defendant (“Thermal Paper”). Thermal Paper
8 manufactured and sold by Settling Defendant has been coated with bisphenol A (“BPA”), a
9 chemical known to the State of California to cause birth defects or other reproductive harm.

10 1.2 On April 24, 2018, CEH provided a 60-day Notice of Violation under Proposition
11 65 to Settling Defendant, the California Attorney General, the District Attorneys of every county
12 in California and the City Attorneys of every California city with a population greater than
13 750,000, alleging that Settling Defendant violated Proposition 65 by exposing persons to BPA
14 from Thermal Paper without first providing a clear and reasonable Proposition 65 warning.

15 1.3 On October 13, 2016, CEH filed the Complaint in the above-captioned matter. On
16 November 2, 2016, CEH filed the First Amended Complaint in the above-captioned matter. The
17 First Amended Complaint has since been amended to add additional defendants, including
18 Settling Defendant on April 24, 2018.

19 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court
20 has jurisdiction over the allegations of violations contained in the Complaint and personal
21 jurisdiction over Settling Defendant as to the acts alleged in the Complaint, that venue is proper in
22 the County of Alameda and that this Court has jurisdiction to enter and enforce this Consent
23 Judgment as a full and final resolution of all claims which were or could have been raised in the
24 Complaint based on the facts alleged therein with respect to Thermal Paper sold by Settling
25 Defendant.

26 1.5 Nothing in this Consent Judgment is or shall be construed as an admission by the
27 Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with

1 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
2 conclusion of law, issue of law or violation of law. Nothing in this Consent Judgment shall
3 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any
4 other pending or future legal proceedings. This Consent Judgment is the product of negotiation
5 and compromise and is accepted by the Parties solely for purposes of settling, compromising and
6 resolving issues disputed in this action.

7 **2. INJUNCTIVE RELIEF**

8 2.1 **Reformulation of Thermal Paper.** After the date of entry of this Consent
9 Judgment (the “Effective Date”), Settling Defendant shall not manufacture, sell, offer for sale,
10 ship or distribute in the United States any Thermal Paper that contains BPA that was intentionally
11 added to the Thermal Paper in the manufacturing process. Thermal Paper that contains less than
12 20 parts per million (“ppm”) BPA by weight is deemed to contain no intentionally added BPA,
13 such concentration to be determined by use of a test performed by an accredited laboratory using
14 inductively coupled plasma mass spectrometry (ICP-MS) equipment.

15 2.2 **Phase Out of Bisphenol S in Thermal Paper.** Certain alternatives to BPA used
16 in Thermal Paper are other phenols that also have potentially adverse health effects, such as
17 bisphenol S (“BPS”). The European Chemicals Agency (“ECHA”) is presently considering
18 whether to ban the use of BPS as a developer in Thermal Paper sold within the European Union.
19 Settling Defendant presently uses BPS as a substitute for BPA in certain of its Thermal Paper. In
20 the event that ECHA issues a final decision or rule that BPS may not be used in Thermal Paper in
21 the European Union, Settling Defendant agrees to discontinue the use of BPS in the Thermal
22 Paper it sells, offers for sale, ships or distributes anywhere in the United States by the date on
23 which ECHA’s restriction becomes effective.

24 2.3 If and when Settling Defendant learns of the ECHA’s final regulatory decision or
25 rule banning the use of BPS in Thermal Paper in the European Union, Settling Defendant shall
26 provide CEH with a copy of such final decision or rule establishing the date on which ECHA’s
27 regulatory action regarding BPS becomes final and the date on which ECHA’s BPS restriction
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1 becomes effective. Such notice shall be subject to the requirements of Paragraph 7. Subject to
2 the foregoing, any failure to comply with this Paragraph 2.3 by Settling Defendant shall not be
3 subject to monetary sanctions (including attorneys' fees or costs).

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 Defendant.** On or before five (5) business days after the
16 entry of this Consent Judgment, Settling Defendant shall be liable for payment of the total sum of
17 \$202,500 as a settlement payment as further set forth in this Section.

18 4.2 **Allocation of Payments.** The total settlement amount shall be paid in four (4)
19 separate checks in the amounts specified below and delivered as set forth below. Any failure by
20 Settling Defendant to comply with the payment terms herein shall be subject to a stipulated late
21 fee to be paid by Settling Defendant in the amount of \$100 for each day the full payment is not
22 received after the applicable payment due date set forth in Section 4.1. The late fees required
23 under this Section shall be recoverable, together with reasonable attorneys' fees, in an
24 enforcement proceeding brought pursuant to Section 3 of this Consent Judgment. The funds paid
25 by Settling Defendant shall be allocated as set forth below between the following categories and
26 made payable as follows:

1 4.2.1 Settling Defendant shall pay \$35,600 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 Defendant shall
5 pay the OEHHA portion of the civil penalty payment for \$26,700 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 Defendant shall pay the CEH portion of the civil penalty payment for \$8,900 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 Defendant shall pay \$26,700 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. This payment shall be delivered to Lexington Law Group, 503 Divisadero
4 Street, San Francisco, CA 94117.

5 4.2.3 Settling Defendant shall pay \$140,200 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
8 94-3317175. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street,
9 San Francisco, CA 94117.

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

12 Payee	13 Type	14 Amount	15 Deliver To
16 OEHHA	17 Penalty	\$26,700	OEHHA per Section 4.2.1
Center for Environmental Health	Penalty	\$8,900_	LLG
Center for Environmental Health	ASP	\$26,700	LLG
Lexington Law Group	Fees and Costs	\$140,200	LLG

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

9 6.2 Provided that Settling Defendant complies with its obligations under Section 4
10 hereof, CEH, for itself, its agents, successors and assigns, releases, waives and forever discharges
11 any and all claims against Settling Defendant, Defendant Releasees and Downstream Defendant
12 Releasees arising from any violation of Proposition 65 or any other statutory or common law
13 claims that have been or could have been asserted by CEH individually or in the public interest
14 regarding the failure to warn about exposure to BPA contained in Thermal Paper that was sold by
15 Settling Defendant prior to the Effective Date.

16 6.3 Provided that Settling Defendant complies in full with all of its obligations under
17 Section 4 hereof, Compliance with the terms of this Consent Judgment by Settling Defendant
18 shall constitute compliance with Proposition 65 by Settling Defendant, its Defendant Releasees
19 and its Downstream Defendant Releasees with respect to any alleged failure to warn about
20 exposure to BPA contained in Thermal Paper sold by 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 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 Mark E. Elliott
4 Pillsbury Winthrop Shaw Pittman LLP
5 725 South Figueroa Street, Suite 2800
6 Los Angeles, CA 90017-5406
7 mark.elliott@pillsburylaw.com

8 7.3 Any Party may modify the person and address to whom the notice is to be sent by
9 sending the other Party notice by first class and electronic mail.

10 **8. COURT APPROVAL**

11 8.1 This Consent Judgment shall become effective as a contract upon the date signed
12 by CEH and Settling Defendant, whichever is later, provided however, that CEH shall also
13 prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant shall
14 support approval of such Motion.

15 8.2 If this Consent Judgment is not entered by the Court, it shall be of no further force
16 or effect and shall not be introduced into evidence or otherwise used in any proceeding for any
17 purpose.

18 **9. GOVERNING LAW AND CONSTRUCTION**

19 9.1 The terms of this Consent Judgment shall be governed by the laws of the State of
20 California.

21 **10. ATTORNEY'S FEES**

22 10.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
23 Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs
24 unless the unsuccessful Party has acted with substantial justification. For purposes of this
25 Consent Judgment, the term substantial justification shall carry the same meaning as used in the
26 Civil Discovery Act of 1986, Code of Civil Procedure §§2016.010, *et seq.*

27 10.2 Notwithstanding Section 10.1, a Party who prevails in a contested enforcement
28 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 Defendant on terms that are different from those contained in
4 this Consent Judgment.

5 **15. SUCCESSORS AND ASSIGNS**

6 15.1 This Consent Judgment shall apply to and be binding upon CEH and Settling
7 Defendant, and their respective divisions, subdivisions, and subsidiaries, and the successors or
8 assigns of any of them.

9 **16. EXECUTION IN COUNTERPARTS**

10 16.1 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.

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IT IS SO STIPULATED:

CENTER FOR ENVIRONMENTAL HEALTH



Michael Green
Chief Executive Officer

**MITSUBISHI HITEC PAPER EUROPE
GMBH**

Signature

Printed Name

Title

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

Dated: _____

Judge of the Superior Court of California

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IT IS SO STIPULATED:

CENTER FOR ENVIRONMENTAL HEALTH

Michael Green
Chief Executive Officer

**MITSUBISHI HITEC PAPER EUROPE
GMBH**

27.05.19



Signature

Dr. Martin Schreier *Andreas Jastrzebmowski*

Printed Name

Managing Director *Managing Director*

Title

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

Dated: _____
Judge of the Superior Court of California