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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

CENTER FOR ENVIRONMENTAL HEALTH,
Plaintiff,
v.
S.P. RICHARDS CO., et al.,
Defendants.

Case No. CGC-20-586195
**[PROPOSED] CONSENT
JUDGMENT AS TO S.P. RICHARDS
CO.**

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 S.P. Richards Co., a Georgia Corporation
4 (referred to as, “Settling Defendant”). The Parties enter into this Consent Judgment to settle
5 certain claims asserted by CEH against Settling Defendant as set forth in the operative complaint
6 (“Complaint”) in the above-captioned matter. This Consent Judgment covers thermal paper that
7 is sold, offered for sale or distributed by Settling Defendant (“Thermal Paper”). Thermal Paper is
8 used in thermal printers to create transactional documents such as cash register and ATM receipts.
9 Plaintiff alleges that Thermal Paper sold by Settling Defendant to its customers is or has been
10 coated with bisphenol A (“BPA”), a chemical known to the State of California to cause birth
11 defects or other reproductive harm.

12 1.1 On April 17, 2020, 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 1.2 On August 18, 2020, CEH filed the Complaint in the above-captioned matter,
18 which names Settling Defendant.

19 1.3 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 San Francisco 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 provided to customers
25 by Settling Defendant.

26 1.4 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
28

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 including matters related to the Cross Complaint filed
5 in this proceeding by Settling Defendant. This Consent Judgment is the product of negotiation
6 and compromise and is accepted by the Parties solely for purposes of settling, compromising and
7 resolving issues disputed in the Complaint.

8 **2. INJUNCTIVE RELIEF**

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

16 **3. ENFORCEMENT**

17 3.1 **Enforcement Procedures.** This Court shall have exclusive jurisdiction over all
18 matters regarding enforcement of the Consent Judgment. Prior to bringing any motion or order to
19 show cause to enforce the terms of this Consent Judgment, a Party seeking to enforce shall
20 provide the violating party thirty (30) days advanced written notice of the alleged violation. The
21 Parties shall meet and confer during such thirty (30) day period in an effort to try to reach
22 agreement on an appropriate cure for the alleged violation. After such thirty (30) day period, the
23 Party seeking to enforce may, by new action, motion or order to show cause before the Superior
24 Court of San Francisco, seek to enforce Proposition 65 and the terms and conditions contained in
25 this Consent Judgment.

1 **4. PAYMENTS**

2 **4.1 Payments by Settling Defendant.** On or before five (5) days after the entry of
3 this Consent Judgment, Settling Defendant shall be liable for payment of the total sum of \$38,000
4 as a settlement payment as further set forth in this Section.

5 **4.2 Allocation of Payments.** The total settlement amount shall be paid in four (4)
6 separate checks in the amounts specified below and delivered as set forth below. Any failure by
7 Settling Defendant to comply with the payment terms herein shall be subject to a stipulated late
8 fee to be paid by Settling Defendant in the amount of \$100 for each day the full payment is not
9 received after the applicable payment due date set forth in Section 4.1. The late fees required
10 under this Section shall be recoverable, together with reasonable attorneys’ fees, in an
11 enforcement proceeding brought pursuant to Section 3 of this Consent Judgment. CEH shall
12 provide W-9s for each check recipient as a condition prior to payment. The funds paid by
13 Settling Defendant shall be allocated as set forth below between the following categories and
14 made payable as follows:

15 **4.2.1** Settling Defendant shall pay \$6,300 as a civil penalty pursuant to Health &
16 Safety Code §25249.7(b). The civil penalty payment shall be apportioned in accordance with
17 Health & Safety Code §25249.12 (25% to CEH and 75% to the State of California's Office of
18 Environmental Health Hazard Assessment (“OEHHA”). Accordingly, Settling Defendant shall
19 pay the OEHHA portion of the civil penalty payment for \$4,725 by check made payable to
20 OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be
21 delivered as follows:

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

28 For Non-United States Postal Service Delivery:
 Attn: Mike Gyurics
 Fiscal Operations Branch Chief
 Office of Environmental Health Hazard Assessment

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1001 I Street, MS #19B
Sacramento, CA 95814

Settling Defendant shall pay the CEH portion of the civil penalty payment for \$1,575 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 \$4,700 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 days of any request from the Attorney General. The payments pursuant to this Section shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. These payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

4.2.3 Settling Defendant shall pay \$27,000 as a reimbursement of a portion of CEH’s reasonable attorneys’ fees and costs. The attorneys’ fees and cost reimbursement shall be made by check payable to the Lexington Law Group and associated with taxpayer identification number 94-3317175. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

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

| Payee | Type | Amount | Deliver To |
|---------------------------------|----------------|----------|-------------------------|
| OEHHA | Penalty | \$4,725 | OEHHA per Section 4.2.1 |
| Center For Environmental Health | Penalty | \$1,575 | LLG |
| Center For Environmental Health | ASP | \$4,700 | LLG |
| Lexington Law Group | Fees and Costs | \$27,000 | LLG |

4.3 **Failure to Comply With Payment Obligations.** Notwithstanding the provisions of the Enforcement of Judgments Law and California Code of Civil Procedure § 708.160, in the event that Settling Defendant does not comply fully with its payment obligations under Section 4, in addition to any other enforcement mechanism available to CEH, CEH may obtain an order requiring Settling Defendant to submit to a debtor exam. In the event that Settling Defendant fails to submit to any such debtor exam ordered by the Court, CEH may seek an order holding Settling Defendant in contempt of Court.

5. MODIFICATION OF CONSENT JUDGMENT

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

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

6. CLAIMS COVERED AND RELEASE

6.1 Provided that Settling Defendant complies in full with its obligations under Section 4, this Consent Judgment is a full, final and binding resolution between CEH on behalf of itself and the public interest and Settling Defendant and its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, agents, shareholders, successors, assigns and attorneys, as well as Iconex, LLC and NCR Coproation (together “Defendant Releasees”), and all entities to which Settling Defendant directly or indirectly distributes or sells Thermal Paper, including but not limited to distributors, wholesalers,

1 customers, retailers, franchisees, licensors and licensees (“Downstream Defendant Releasees”), of
2 any violation of Proposition 65 based on failure to warn about exposure to BPA contained in
3 Thermal Paper that was sold, offered for sale, shipped, or distributed by Settling Defendant prior
4 to the Effective Date. By entering into this Consent Judgment, Settling Defendant does not intend
5 to and does not release, dismiss nor discharge Iconex, LLC nor NCR Corporation from any of
6 Settling Defendant’s claims alleged in its Cross Complaint against said parties to the litigation, nor
7 for any of its claims for express indemnity or any cause of action alleged in the Cross Complaint
8 filed by Settling Defendant.

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

17 6.3 Provided that Settling Defendant complies in full with its obligations under
18 Section 4, compliance with the terms of this Consent Judgment by Settling Defendant shall
19 constitute compliance with Proposition 65 by Settling Defendant, its Defendant Releasees and its
20 Downstream Defendant Releasees with respect to any alleged failure to warn about BPA
21 contained in Thermal Paper sold, offered for sale, shipped, distributed, used or otherwise
22 provided to employees or customers by Settling Defendant after the Effective Date.

23 **7. PROVISION OF NOTICE**

24 7.1 When CEH is entitled to receive any notice under this Consent Judgment, the
25 notice shall be sent by first class and electronic mail to:
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1 Eric S. Somers
2 Lexington Law Group
3 503 Divisadero Street
4 San Francisco, CA 94117
5 esomers@lexlawgroup.com

6 7.2 When Settling Defendant is entitled to receive any notice under this Consent
7 Judgment, the notice shall be sent by first class and electronic mail to:

8 Tina Mangarpan
9 Ford, Walker, Haggerty & Behar LLP
10 One World Trade Center, 27th Floor
11 Long Beach, CA 90831
12 tmangarpan@fwhb.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 further force
21 or 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 Should CEH prevail on any motion, application for an order to show cause, or
28 other proceeding to enforce a violation of this Consent Judgment, CEH shall be entitled to its
reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
Settling Defendants prevail on any motion application for an order to show cause, or other
proceeding, Settling Defendants may be awarded their reasonable attorneys' fees and costs as a

1 result of such motion or application upon a finding by the Court that CEH's prosecution of the
2 motion or application lacked substantial justification. For purposes of this Consent Judgment, the
3 term substantial justification shall carry the same meaning as used in the Civil Discovery Act of
4 1986, Code of Civil Procedure §§ 2016, *et seq.*

5 10.2 Nothing in this Section 10 shall preclude a party from seeking an award of
6 sanctions pursuant to law.

7 **11. ENTIRE AGREEMENT**

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

22 **12. SUCCESSORS AND ASSIGNS**

23 12.1 This Consent Judgment shall apply to and be binding upon CEH and Settling
24 Defendant, and their respective divisions, subdivisions and subsidiaries, and the successors or
25 assigns of any of them.

1 **13. RETENTION OF JURISDICTION**

2 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
3 Consent Judgment.

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

5 14.1 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 **15. NO EFFECT ON OTHER SETTLEMENTS**

9 15.1 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 **16. EXECUTION IN COUNTERPARTS**

13 16.1 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.

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IT IS SO STIPULATED:

Dated: June 4, 2021

**CENTER FOR ENVIRONMENTAL
HEALTH**



Signature

Michael Green

Printed Name

CEO

Title

Dated: MAY 27, 2021

S.P. RICHARDS CO.



Signature

Jack R Roberts

Printed Name

Executive V.P.

Title

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

Dated: _____

Judge of the Superior Court of California