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4 Attorneys for Plaintiff
5 Kim Embry

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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **IN AND FOR THE COUNTY OF ALAMEDA**

9 KIM EMBRY, an individual

10 Plaintiff,

11 v.

12 A. LOACKER USA, INC., a Delaware
corporation, and DOES 1 through 100,
13 inclusive

14 Defendants.

Case No. RG19001295

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Kim Embry (“Embry”) and A. Locker
4 USA, Inc. (“Locker”) (collectively the “Parties”).

5 **1.2 Plaintiff**

6 Embry is an individual residing in California and acting in the interest of the general public.
7 She seeks to promote awareness of exposures to toxic chemicals and to improve human health by
8 reducing or eliminating hazardous substances in consumer products.

9 **1.3 Defendant**

10 Locker employs ten or more individuals and is a “person in the course of doing business” for
11 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
12 section 25249.6 *et seq.* (“Proposition 65”).

13 **1.4 General Allegations**

14 Embry alleges that Locker manufactures, imports, sells, and distributes for sale wafer products
15 that contain acrylamide. Embry further alleges that Locker does so without providing a sufficient
16 health hazard warning as required by Proposition 65 and related Regulations. Pursuant to Proposition
17 65, acrylamide is listed as a chemical known to cause cancer and reproductive harm.

18 **1.5 Covered Products**

19 For purposes of this Consent Judgment “Covered Products” means all products containing
20 wafer(s) that are manufactured, imported, sold, or distributed by Defendant Releasees, defined below,
21 for sale in California.

22 **1.6 Releasees**

23 “Releasees” means and includes: A. Locker USA, Inc., its parents, subsidiaries, affiliated
24 entities, directors, officers, employees, agents, shareholders, successors, assigns, insurers, and
25 attorneys (the “Defendant Releasees”) and all entities to which Defendant Releasees directly or
26 indirectly distribute or sell Covered Products, including but not limited to distributors, wholesalers,
27 customers, retailers, franchisees, licensors, and licensees, including but not limited to Tawa
28

1 Supermarket, Inc. – dba 99 Ranch Market (the “Downstream Defendant Releasees”).

2 **1.7 Notices of Violation**

3 On July 10, 2017, Embry served Loacker, Tawa Supermarket, Inc. dba 99 Ranch Market, the
4 California Attorney General, and all other required public enforcement agencies with a 60-Day Notice
5 of Violation of California Health and Safety Code section 25249.6 *et seq.* (“Notice”). The Notice
6 alleged that Loacker violated Proposition 65 by failing to sufficiently warn consumers in California of
7 the health hazards associated with exposures to acrylamide contained in “Quadratini Almonds bite size
8 Wafer cookies.”

9 No public enforcer has commenced or is otherwise prosecuting an action to enforce the
10 violations alleged in the Notice.

11 **1.8 Complaint**

12 On January 4, 2019, Embry filed a Complaint against Loacker alleging the violations of Health
13 and Safety Code section 25249.6 that are the subject of the Notice (“Complaint”).

14 **1.9 No Admission**

15 Loacker denies the material factual and legal allegations of the Notice and Complaint, and
16 maintains that all of the products it has manufactured, imported, sold, and/or distributed for sale in
17 California, including Covered Products, have been, and are, in compliance with all laws. Nothing in
18 this Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue
19 of law, or violation of law, nor shall compliance with this Consent Judgment be construed as an
20 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall
21 not, however, diminish or otherwise affect Loacker’s obligations, responsibilities, and duties under this
22 Consent Judgment.

23 **1.10 Jurisdiction**

24 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this
25 Court has jurisdiction over Loacker as to the allegations in the Complaint, that venue is proper in the
26 County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this
27 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.
28

1 **1.11 Effective Date**

2 For purposes of this Consent Judgment, the term “Effective Date” means that date certain
3 falling six calendar months after the date on which the Court grants the motion for approval and entry
4 of this Consent Judgment, as discussed in Section 5.

5 **2. INJUNCTIVE RELIEF**

6 **2.1 Reformulation of the Covered Products**

7 Commencing on the Effective Date, and continuing thereafter, Defendant Releasees shall only
8 manufacture, ship, sell, or offer for sale Covered Products that: (a) contain an average acrylamide
9 concentration by weight (the “Average Level”) of 115 parts per billion or less; or (b) are labeled with
10 a clear and reasonable warning pursuant to Section 2.2. The Average Level shall be determined: (a) by
11 randomly selecting and testing at least one sample each from five different lots of the product (or the
12 maximum number of lots available for testing if less than five) that were produced on dates spread out
13 roughly evenly over a period of at least 60 days; and (b) using tests performed by a laboratory
14 accredited by the State of California, a federal agency, or a nationally recognized accrediting
15 organization, using LC-MS/MS (Liquid Chromatograph-Mass Spectrometry).

16 **2.2 Clear and Reasonable Warnings**

17 Commencing on the Effective Date and continuing thereafter, Defendant Releasees shall, for
18 all Covered Products that do not contain an Average Level of 115 parts per billion or less, provide clear
19 and reasonable warnings as set forth in Proposition 65 and related Regulations.

20 In the event that the Office of Environmental Health Hazard Assessment promulgates one or
21 more regulations requiring or permitting warning text, permitting the absence of warning text, and/or
22 permitting methods of transmission different than those set forth above, Defendant Releasees shall be
23 entitled to use, at their discretion, such other warning text and/or method of transmission without being
24 deemed in breach of this Consent Judgment.

25 **2.3 Sell-Through Period**

26 Notwithstanding anything else in this Settlement Agreement, Covered Products that were
27 manufactured before the Effective Date shall be subject to a full release of all liability pursuant to this
28 Consent Judgment, without regard to when such Covered Products were, or are in the future, distributed

1 or sold to customers. The obligations of Defendant Releasees, do not apply to Covered Products
2 manufactured before the Effective Date. Claims concerning those earlier manufactured products are
3 released nonetheless.

4 **2.4 Court Approval of Less Onerous Compliance Measures**

5 If a California court approves a Proposition 65 consent judgment concerning acrylamide for
6 one or more competitors of any Defendant Releasee that provides for materially less onerous
7 compliance measures, the Court, upon application by Locker, shall modify this Consent Judgment to
8 replace the more onerous compliance measures set forth herein with those less onerous compliance
9 measures.

10 **3. MONETARY SETTLEMENT TERMS**

11 **3.1 Settlement Amount**

12 Locker shall pay sixty thousand dollars (\$60,000) in settlement and total satisfaction of all the
13 claims referred to in the Notice, the Complaint, and this Consent Judgment. This includes civil penalties
14 in the amount of six thousand dollars (\$6,000) pursuant to Health and Safety Code section 25249.7(b)
15 and attorney's fees and costs in the amount of fifty-four thousand dollars (\$54,000) pursuant to Code
16 of Civil Procedure section 1021.5.

17 **3.2 Civil Penalty**

18 The portion of the settlement attributable to civil penalties shall be allocated according to Health
19 and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid
20 to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining
21 twenty-five percent (25%) of the penalty paid to Embry individually.

22 The portion of the penalty owed to Embry (totaling \$1,500) shall be paid by one check payable
23 to the Glick Law Group Client Trust Account and delivered to the following payment address:

24 Noam Glick
25 Glick Law Group
26 225 Broadway, Suite 2100
27 San Diego, CA 92101

28 The portion of the penalty owed to OEHHA (EIN: 68-0284486) (totaling \$4,500) shall be
delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at the following addresses:

1 For United States Postal Service Delivery:

2 Mike Gyurics
3 Fiscal Operations Branch Chief
4 Office of Environmental Health Hazard Assessment
5 P.O. Box 4010
6 Sacramento, CA 95812-4010

7 For Non-United States Postal Service Delivery:

8 Mike Gyurics
9 Fiscal Operations Branch Chief
10 Office of Environmental Health Hazard Assessment
11 1001 I Street
12 Sacramento, CA 95814

13 Loacker agrees to provide Embry's counsel with a copy of the check payable to OEHHA,
14 simultaneous with its penalty payments to Embry.

15 Plaintiff and her counsel will provide completed IRS 1099, W-9, or other tax forms as required.

16 Relevant information is set out below:

- 17 • "Glick Law Group" (EIN: 47-1838518) at the address provided in Section 3.2(a)(i);
- 18 • "Nicholas & Tomasevic" (EIN: 46-3474065) at the address provided in Section 3.2(a)(i);
- 19 and
- 20 • "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA
21 95814.

22 **3.3 Attorney's Fees and Costs**

23 The portion of the settlement attributable to attorney's fees and costs (\$54,000) shall be paid to
24 Embry's counsel, who are entitled to attorney's fees and costs incurred by her in this action, including
25 but not limited to investigating potential violations, bringing this matter to Loacker's attention, as well
26 as litigating and negotiating a settlement in the public interest.

27 Loacker shall provide its payment to Embry's counsel in two checks, divided equally, payable
28 to Glick Law Group, PC (\$27,000) and Nicholas & Tomasevic, LLP (\$27,000) respectively. The
addresses for these two entities are:

Noam Glick
Glick Law Group
225 Broadway, Suite 2100
San Diego, CA 92101

Craig Nicholas
Nicholas & Tomasevic, LLP
225 Broadway, 19th Floor
San Diego, CA 92101

3.4 Timing

The above-mentioned checks will be issued within fourteen (14) days of the Effective Date.

4. CLAIMS COVERED AND RELEASED

4.1 Embry's Public Release of Proposition 65 Claims

Embry, acting for the general public, releases each and all Releasees from all claims arising under Proposition 65, based on exposure to and/or failure to warn about exposure to, acrylamide from Covered Products manufactured, imported, sold, or distributed before the Effective Date.

Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to all alleged or actual failure(s) to warn about exposures to acrylamide from Covered Products that are manufactured, imported, sold, or distributed after the Effective Date. This Consent Judgment is a full, final and binding resolution of all claims that were or could have been asserted against Releasees for exposure to acrylamide from Covered Products and/or failure to warn about exposure to acrylamide from Covered Products.

4.2 Embry's Individual Release of Claims

Embry, in her individual capacity, hereby releases each and all Releasees, which shall be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action, obligations, costs, expenses, attorney's fees, damages, losses, claims, liabilities, and demands of every nature, character, and kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to acrylamide in Covered Products manufactured, imported, sold, or distributed by Releasees before the Effective Date, and/or that were or could have been alleged or asserted in the Complaint.

4.3 Locker's Release of Embry

Locker, for itself and the Defendant Releasees, hereby waives any and all claims against Embry and her attorneys and other representatives, for any and all actions taken or statements made by Embry and her attorneys and other representatives, whether in the course of investigating claims or otherwise, committed or omitted in the process of seeking to enforce Proposition 65 against it with

1 respect to Covered Products through the date of Loacker's execution of this Stipulation.

2 **5. COURT APPROVAL**

3 This Consent Judgment is not effective until it is approved and entered by the Court and shall
4 be null and void if it is not approved and entered by the Court within one year after it has been fully
5 executed by the Parties, or by such additional time as the Parties may agree to in writing.

6 **6. SEVERABILITY**

7 Subsequent to the Court's approval and entry of this Consent Judgment, if any provision is held
8 by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

9 **7. GOVERNING LAW**

10 The terms of this Consent Judgment shall be governed by the laws of the state of California as
11 applied within the state. If Proposition 65 is repealed, or is otherwise rendered inapplicable for any
12 reason, including but not limited to changes in the law, then Loacker shall have no further obligations
13 pursuant to this Consent Judgment with respect to, and to the extent that, the Covered Products are so
14 affected.

15 **8. NOTICE**

16 Unless otherwise specified herein, all correspondence and notice required or permitted by this
17 Consent Judgment shall be in writing and sent: (1) by personal delivery or by US Mail (first-class,
18 registered, or certified mail, return receipt requested), or by a recognized overnight courier, to the
19 physical address provided below, (2) with copies, not themselves constituting notice, emailed to each
20 email address provided below:

21 If to Loacker:

22 Ray E. Gallo
23 Gallo LLP
24 1604 Solano Ave., Suite B
25 Berkeley, CA 94707
rgallo@gallo.law
dvalerian@gallo.law
lcharisius@loacker.com

If to Embry:

Noam Glick
Glick Law Group, PC
225 Broadway, 21st Floor
San Diego, CA 92101

26 Any Party may, from time to time, specify in writing to the other, a change of mailing or email
27 addresses to which notices and other communications shall be sent. Any and all Notices shall be
28 effective only if sent in compliance with this section, and after the emailed copies have been sent

1 without reported error.

2 **9. COUNTERPARTS; DIGITAL SIGNATURES**

3 This Consent Judgment may be executed in counterparts and executed by digital, faxed, or
4 otherwise reproduced signature. Each counterpart shall be deemed an original, and all counterparts
5 taken together shall constitute one and the same document.

6 **10. POST EXECUTION ACTIVITIES**

7 Embry agrees to comply with the reporting form requirements referenced in Health and Safety
8 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
9 section 25249.7(f), a noticed motion is required to obtain judicial approval of this proposed settlement,
10 which motion Embry shall draft and file. In furtherance of obtaining such approval, the Parties agree
11 to mutually employ commercially reasonable efforts, including those of their counsel, to support the
12 entry of this agreement as judgment, and to obtain judicial approval of their settlement in a timely
13 manner. For purposes of this Section, “commercially reasonable efforts” shall include, at a minimum,
14 supporting the motion for approval, responding to any objection that any third-party may make, and
15 appearing at the hearing before the Court if so requested.

16 **11. MODIFICATION**

17 This Consent Judgment may be modified by: (i) a written agreement of the Parties and entry of
18 a modified consent judgment thereon by the Court; or (ii) a successful motion or application of any
19 Party, and the entry of a modified consent judgment thereon by the Court.


20 **12. AUTHORIZATION**

21 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
22 have read, understand, and agree to all of the terms and conditions contained herein.
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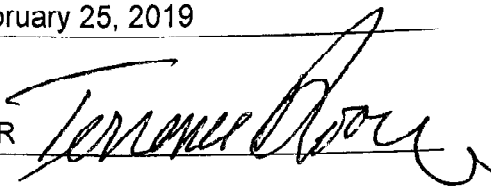
AGREED TO:

Date: March 4, 2019

By: 
KIM EMBRY


AGREED TO:

Date: February 25, 2019

By: TJR 
Terrence J Rooney [print name]
A. Locker USA, Inc.


APPROVED AS TO FORM:

Date: March 4, 2019

By: 
Noam Glick
Counsel for Kim Embry

APPROVED AS TO FORM:

Date: March 4, 2019

By: 
Ray E. Gallo
Counsel for A. Locker USA, Inc.