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14 Attorneys for Plaintiff  
15 Kim Embry

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **IN AND FOR THE COUNTY OF ALAMEDA**

18 KIM EMBRY., an individual,

19 Plaintiff,

20 v.

21 JET.COM INC., a Delaware corporation,  
22 YUMTEE NATURALS, LTD., a New York  
23 corporation d/b/a FARM FRESH NUTS; and  
24 DOES 1 through 100, inclusive,

25 Defendants.  
26  
27  
28

Case No. HG19028982

**[PROPOSED] CONSENT JUDGMENT  
AS TO YUMTEE NATURALS, LTD.**

(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 YumTee  
4     Naturals, LTD d/b/a Farm Fresh Nuts (“YumTee”) with Embry and YumTee each individually referred  
5     to as a “Party” and collectively referred to as the “Parties.”

6             **1.2 Plaintiff**

7             Embry is a citizen of the State of California and acting in the interest of the general public. She  
8     seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing  
9     or eliminating hazardous substances contained in consumer products.

10            **1.3 Defendant**

11           Embry alleges YumTee employs ten or more individuals and is a “person in the course of doing  
12   business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and  
13   Safety Code section 25249.6 *et seq.* (“Proposition 65”). YumTee has fewer than ten employees, and  
14   disputes this averment.

15            **1.4 General Allegations**

16           Embry alleges that YumTee manufactures, imports, sells, and distributes for sale roasted nuts  
17   including but not limited to Farm Fresh Nuts Dry Roasted Salted Almonds that contain acrylamide.  
18   Embry further alleges that YumTee does so without providing a sufficient health hazard warning as  
19   required by Proposition 65 and related Regulations. Pursuant to Proposition 65, acrylamide is listed as  
20   a chemical known to cause cancer and reproductive harm.

21            **1.5 Notice of Violation**

22           On May 17, 2018, Embry served YumTee, Farm Fresh Nuts, the California Attorney General,  
23   and all other required public enforcement agencies with a 60-Day Notice of Violation of California  
24   Health and Safety Code section 25249.6 *et seq.* (“Notice”). On May 3, 2019, Embry served YumTee,  
25   Jet.com, Inc., Farm Fresh Nuts, the California Attorney General, and all other required public  
26   enforcement agencies with a 60-Day Notice of Violation of California Health and Safety Code section  
27   25249.6 *et seq.* (“Notice”). This Notice superseded the original notice dated May 17, 2018. The Notice  
28   alleges that YumTee violated Proposition 65 by failing to sufficiently warn consumers in California of

1 the health hazards associated with exposures to acrylamide contained in its "Farm Fresh Nuts Dry  
2 Roasted Salted Almonds."

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

#### 5 **1.6 Product Description**

6 For purposes of this Consent Judgment "Product" or "Products" are defined as Farm Fresh Nuts  
7 Dry Roasted Salted Almonds that contain acrylamide and are manufactured, imported, sold, or  
8 distributed for sale in California by YumTee and Releasees, defined *infra*.

#### 9 **1.7 Complaint**

10 On July 29, 2019 Embry filed a Complaint against YumTee for the alleged violations of Health  
11 and Safety Code section 25249.6 that are the subject of the Notice ("Complaint").

#### 12 **1.8 No Admission**

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

#### 21 **1.9 Jurisdiction**

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

#### 26 **1.10 Effective Date**

27 For purposes of this Consent Judgment, the term "Effective Date" means the date on which the  
28 Court grants the motion for approval of this Consent Judgment, as discussed in Section 5.



1     **2.     INJUNCTIVE RELIEF**

2             **2.1     Clear and Reasonable Warnings**

3             Commencing on the Effective Date, and continuing thereafter, YumTee shall provide clear and  
4     reasonable warnings to products shipped into California as set forth in Proposition 65 and related  
5     Regulations. The warning shall be prominently placed with such conspicuousness as compared with  
6     other words, statements, designs, or devices as to render it likely to be read and understood by any  
7     ordinary individual under customary conditions before purchase or use.

8             **2.2     Sell-Through Period**

9             Notwithstanding anything else in this Settlement Agreement, the Products that were  
10     manufactured prior to the Effective Date shall be subject to the release of liability pursuant to this  
11     Consent Judgment, without regard to when such Products were, or are in the future, distributed or sold  
12     to customers. As a result, the obligations of YumTee, or any Releases, do not apply to these Products  
13     manufactured prior to the Effective Date.

14     **3.     MONETARY SETTLEMENT TERMS**

15             **3.1     Settlement Amount**

16             YumTee shall pay thirty-seven thousand five hundred dollars (\$37,500) in settlement and total  
17     satisfaction of all the claims referred to in the Notice, the Complaint, and this Consent Judgment. This  
18     includes civil penalties in the amount of four thousand dollars (\$4,000) pursuant to Health and Safety  
19     Code section 25249.7(b) and attorney's fees and costs in the amount of thirty-three thousand five  
20     hundred dollars (\$33,500) pursuant to Code of Civil Procedure section 1021.5.

21             **3.2     Civil Penalty**

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

26             All payments owed to Embry shall be made payable to the Glick Law Group Client Trust  
27     Account, and shall be delivered to the following address:  
28

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

All payments owed to OEHHA (EIN: 68-0284486) shall be delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at the following addresses:

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95814

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

The Parties will exchange completed IRS 1099, W-9, or other forms as required. Relevant information for Glick Law Group and N&T are set out below:

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

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

The portion of the settlement attributable to attorney's fees and costs shall be paid to Embry's counsel, who are entitled to attorney's fees and costs incurred by it in this action, including but not limited to investigating potential violations, bringing this matter to YumTee's attention, as well as litigating and negotiating a settlement in the public interest.

1 YumTee shall provide its payment to Embry's counsel in four checks, divided equally, payable  
2 to Glick Law Group, PC sixteen thousand seven hundred and fifty dollars (\$16,750) and Nicholas &  
3 Tomasevic, LLP sixteen thousand seven hundred and fifty dollars (\$16,750) respectively. The  
4 addresses for these two entities are:

5  
6 Noam Glick  
Glick Law Group  
225 Broadway, Suite 2100  
7 San Diego, CA 92101

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

### 11 **3.4 Timing**

12 The above-mentioned checks will be issued in four equal monthly installments of \$8,375.00  
13 (\$4,187.50 to Glick Law Group and \$4,187.50 to Nicholas & Tomasevic, LLP). The first installment  
14 shall be due within fourteen (14) days of the Effective Date, and each subsequent installment shall be  
15 due 30 days, 60 days, and 90 days, respectively, from the 14th day after the Effective Date.

## 16 **4. CLAIMS COVERED AND RELEASED**

### 17 **4.1 Embry's Public Release of Proposition 65 Claims**

18 For any claim or violation arising under Proposition 65 alleging a failure to warn about  
19 exposures to acrylamide from Products manufactured, imported, sold, or distributed by YumTee prior  
20 to the Effective Date, Embry, acting on its own behalf and in the public interest, releases YumTee of  
21 any and all liability. This includes YumTee's online distributors, including but not limited to Jet.com,  
22 Inc., and their parents, subsidiaries, affiliated entities under common ownership, its directors, officers,  
23 principals, agents, employees, attorneys, insurers, accountants, predecessors, successors, and assigns,  
24 and each entity to whom YumTee directly or indirectly distributes, ships, or sells the Products,  
25 including but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees,  
26 cooperative members, and licensees, and their owners, directors, officers, agents, principals,  
27 employees, attorneys, insurers, accountants, representatives, predecessors, successors, and assigns  
28 (collectively, the "Releasees"). Releasees include Farm Fresh Nuts, YumTee's parent, Jet.com, Inc.,



1 and all subsidiaries and affiliates thereof and their respective employees, agents, and assigns that sell  
2 YumTee's Products. Compliance with the terms of this Consent Judgment constitutes compliance  
3 with Proposition 65 with respect to the alleged or actual failure to warn about exposures to acrylamide  
4 from Products manufactured, imported, sold, or distributed by YumTee after the Effective Date. This  
5 Consent Judgment is a full, final and binding resolution of all claims that were or could have been  
6 asserted against YumTee and/or Releasees for failure to provide warnings for alleged exposures to  
7 acrylamide contained in Products.

#### 8 **4.2 Embry's Individual Release of Claims**

9 Embry, in her individual capacity, also provides a release to YumTee and/or Releasees, which  
10 shall be a full and final accord and satisfaction of as well as a bar to all actions, causes of action,  
11 obligations, costs, expenses, attorney's fees, damages, losses, claims, liabilities, and demands by  
12 Embry of any nature, character, or kind, whether known or unknown, suspected or unsuspected, arising  
13 out of alleged or actual exposures to acrylamide in Products manufactured, imported, sold, or  
14 distributed by YumTee before the Effective Date.

#### 15 **4.3 YumTee's Release of Embry**

16 YumTee, on its own behalf, and on behalf of Releasees as well as its past and current agents,  
17 representatives, attorneys, successors, and assignees, hereby waives any and all claims against Embry  
18 and its attorneys and other representatives, for any and all actions taken or statements made by Embry  
19 and its attorneys and other representatives, whether in the course of investigating claims, otherwise  
20 seeking to enforce Proposition 65 against it, in this matter or with respect to the Products.

### 21 **5. COURT APPROVAL**

22 This Consent Judgment is not effective until it is approved and entered by the Court.

### 23 **6. SEVERABILITY**

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

### 26 **7. GOVERNING LAW**

27 The terms of this Consent Judgment shall be governed by the laws of the state of California and  
28 apply within the state of California.

1     **8. NOTICE**

2           Unless specified herein, all correspondence and notice required by this Consent Judgment shall  
3     be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail, return receipt  
4     requested; or (iii) a recognized overnight courier to the following addresses:

5     For YumTee:

6     William Stern  
7     Covington & Burling LLP  
8     Salesforce Tower  
9     415 Mission Street, Suite 5400  
10    San Francisco, CA 94105-2533

5     For Embry:

6     Noam Glick  
7     Glick Law Group, PC  
8     225 Broadway, 21st Floor  
9     San Diego, CA 92101

9           Any Party may, from time to time, specify in writing to the other, a change of address to which  
10    all notices and other communications shall be sent.

11    **9. COUNTERPARTS; FACSIMILE SIGNATURES**

12           This Consent Judgment may be executed in counterparts and by signature through facsimile or  
13    portable document format (PDF), each of which shall be deemed an original, and all of which, when  
14    taken together, shall constitute one and the same document.

15    **10. POST EXECUTION ACTIVITIES**

16           Embry agrees to comply with the reporting form requirements referenced in Health and Safety  
17    Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code  
18    section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which  
19    motion Embry shall draft and file. In furtherance of obtaining such approval, the Parties agree to  
20    mutually employ their best efforts, including those of their counsel, to support the entry of this  
21    agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For  
22    purposes of this Section, "best efforts" shall include, at a minimum, supporting the motion for approval,  
23    responding to any objection that any third-party may make, and appearing at the hearing before the  
24    Court if so requested.

25    **11. MODIFICATION**

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

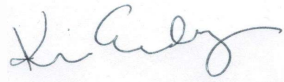


12. AUTHORIZATION

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


AGREED TO:

Date: 12/16/2019

By:   
\_\_\_\_\_  
Kim Embry [print name]

AGREED TO:

Date: 12-16-19

By:   
\_\_\_\_\_  
YumTee Naturals, LTD [print name]