

GLICK LAW GROUP, PC

Noam Glick (SBN 251582)
225 Broadway, Suite 2100
San Diego, California 92101
Tel: (619) 382-3400
Fax: (619) 393-0154
Email: noam@glicklawgroup.com

NICHOLAS & TOMASEVIC, LLP

Craig M. Nicholas (SBN 178444)
Ethan T. Litney (SBN 295603)
225 Broadway, Suite 1900
San Diego, California 92101
Tel: (619) 325-0492
Email: cnicholas@nicholaslaw.org
Email: elitney@nicholaslaw.org

Attorneys for Plaintiff
Kim Embry

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES- GLENDALE COURTHOUSE

KIM EMBRY, an individual,

Plaintiff,

v.

GLENDALE HOOKAH LOUNGE, a
California corporation, and DOES 1 through
100, inclusive,

Defendants.

Case No.: 19GDCV01385

**[PROPOSED] CONSENT JUDGMENT AS
TO GLENDALE HOOKAH LOUNGE**

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

1. INTRODUCTION

1.1 Parties

This Consent Judgment is entered into by and between Kim Embry (“Embry”) on one hand, and The H&H Lounge, Inc., (erroneously sued as its d/b/a, Glendale Hookah Lounge) (“Defendant” or “H&H”) on the other hand, with Embry and H&H individually referred to as a “Party” and collectively as the “Parties.”

1.2 Plaintiff

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

1.3 Defendant

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

1.4 General Allegations

Embry alleges that H&H failed to inform the People of exposures to carcinogens and/or reproductive toxicants listed on the Proposition 65 list. The toxicants that customers are exposed to in Defendant’s place of business may include but are not limited to: tobacco smoke, carbon monoxide (CO), acrylamide, arsenic, 1,3-butadiene, hexavalent chromium, formaldehyde, cadmium, lead, mercury, nickel, nicotine, benzene, quinoline, benzofuran, ethylbenzene, and/or styrene. (“Toxicants”). Embry further alleges that H&H allows customers to be exposed to these Toxicants by willingly providing materials used for hookah smoking, including charcoals which harbor carcinogens and reproductive toxins without providing a sufficient health hazard warning as required by Proposition 65 and related regulations (“Product(s)”). Pursuant to Proposition 65, carbon monoxide is listed as a chemical known to cause developmental/reproductive harm. H&H denies that warnings are required under Proposition 65 for any exposures to carbon monoxide or other Toxicants in the Product, and H&H maintains that it has complied with all applicable federal and state laws, including but not limited to Proposition 65.

1 **1.5 Product Description**

2 For purposes of this Consent Judgment “Product” or “Products” are defined as hookahs, and any
3 other single- or multi-stemmed instrument for vaporizing or smoking tobacco, tobacco, charcoal, fuel,
4 coils, stems, hoses, bowls, valves, trays, filters, adapters, shisha, alfahker, al fakher, or mu’assel
5 imported, sold, or distributed for sale in California by H&H and Releasees, defined infra.

6 **1.6 Notice of Violation**

7 On October 5, 2018 Embry served H&H, the California Attorney General, and all other
8 required public enforcement agencies with a 60-Day Notice of Violation of California Health and
9 Safety Code section 25249.6 *et seq.* (“Notice”). The Notice alleged that H&H violated Proposition 65
10 by failing to sufficiently warn consumers in California of the health hazards associated with exposures
11 to Toxicants customers are exposed to in Defendant’s place of business or by use of its Products.

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

14 **1.7 Complaint**

15 On March 8, 2019, Embry filed a Complaint against Defendant for the alleged violations of
16 Health and Safety Code section 25249.6 that are the subject of the Notice (“Complaint”).

17 **1.8 No Admission**

18 By stipulating to the entry of this Consent Judgment and agreeing to provide the relief and
19 remedies specified herein, H&H does not admit that is has violated, or threatened to violate,
20 Proposition 65 or any other law or legal duty.

21 Nothing in this Consent Judgment shall be construed as an admission of any fact, finding,
22 conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment
23 be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law.
24 This Section shall not, however, diminish or otherwise affect H&H’s obligations, responsibilities, and
25 duties under this Consent Judgment, subject to subsequent modifications thereof or Court orders
26 regarding any such obligation, responsibility, and/or duty.
27
28

1 **1.9 Jurisdiction**

2 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this
3 Court has jurisdiction over H&H as to the allegations in the Complaint, that venue is proper in the
4 County of Los Angeles, and that the Court has jurisdiction to enter and enforce the provisions of this
5 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

6 **1.10 Effective Date and Compliance Date**

7 For purposes of this Consent Judgment, the term “Effective Date” means the date on which the
8 Court grants the motion for approval of this Consent Judgment, as discussed in Section 5.

9 **2. INJUNCTIVE RELIEF**

10 H&H shall prominently place signage in its location meeting all the requirements of California
11 Health and Safety Code section 25249.6, and Title 27 of the California Code of Regulations, section
12 25600 et seq.

13 **3. MONETARY SETTLEMENT TERMS**

14 **3.1 Settlement Amount**

15 Defendant shall pay fifty thousand dollars (\$50,000) in settlement and total satisfaction of all
16 the claims referred to in the Notices, the Complaint, and this Consent Judgment. This includes civil
17 penalties in the amount of five thousand dollars (\$5,000) pursuant to Health and Safety Code section
18 25249.7(b) and attorney’s fees and costs in the amount of forty-five thousand dollars (\$45,000)
19 pursuant to Code of Civil Procedure section 1021.5 and Health and Safety Code section 25249 et seq.

20 **3.2 Civil Penalty**

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

25 All payments owed to Embry, shall be delivered to the following payment address:

26 Noam Glick
27 Glick Law Group
28 225 Broadway, Suite 2100
 San Diego, CA 92101

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

3 For United States Postal Delivery:

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

9
10 For Non-United States Postal Service Delivery:

11 Mike Gyuries
12 Fiscal Operations Branch Chief
13 Office of Environmental Health Hazard Assessment
14 1001 I Street
15 Sacramento, CA 95814

16 H&H agrees to provide Embry's counsel with a copy of the check payable to OEHHA
17 simultaneous with its penalty payment to Embry.

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

- 20
- 21 • "Glick Law Group" (EIN: 47-1838518) at address provided in Section 3.2;
 - 22 • "Nicholas & Tomasevic" (EIN: 46-3474065) at address provided in Section 3.3; and
 - 23 • "Office of Environmental Health Hazard Assessment at 1001 I Street, Sacramento, CA
24 95814.

25 **3.3 Attorney's Fees and Costs**

26 The portion of the settlement attributable to attorneys' fees and costs shall be paid to Embry's
27 counsel, who are entitled to attorney's fees and costs incurred by her in this action, including but not
28

1 limited to investigating potential violations, bringing this matter to Defendant's attention, as well as
2 litigating and negotiating a settlement in the public interest.

3 Defendant shall provide its payment to Embry's counsel in two checks, divided equally,
4 payable to Glick Law Group, PC \$22,500 and Nicholas & Tomasevic, LLP \$22,500 respectively. The
5 addresses for these two entities are:

6 Noam Glick
7 Glick Law Group
8 225 Broadway, Suite 2100
9 San Diego, CA 92101

10 Craig Nicholas
11 Nicholas & Tomasevic, LLP
12 225 Broadway, Suite 2100
13 San Diego, CA 92101

14 **3.4 Timing**

15 The above-mentioned checks will be issued 21 days after the motion to approve the consent
16 judgment is granted..

17 **4. CLAIMS COVERED AND RELEASED**

18 **4.1 Embry's Public Release of Proposition 65 Claims**

19 For any claim or violation arising under Proposition 65 alleging a failure to warn about
20 exposures Toxicants from Products or related products manufactured, imported, sold, or distributed
21 by H&H or used on H&H's premises prior to the Effective Date, Embry, acting on her own behalf and
22 in the public interest, releases H&H of any and all liability. This includes H&H's owners, parents,
23 subsidiaries, affiliated entities under common ownership, its directors, officers, agents, employees,
24 attorneys, and each entity to whom H&H directly or indirectly distributes or sells the Products,
25 including but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees,
26 cooperative members and licensees, (collectively, the "Releasees"). Releasees include defendant, its
27 parent, and all subsidiaries and affiliates thereof and their respective employees, agents, and assigns
28 that sell H&H's Products. Compliance with the terms of this Consent Judgment constitutes
compliance with Proposition 65 with respect to the alleged or actual failure to warn about exposures
to Toxicants from Products manufactured, imported, sold, or distributed by H&H or used on H&H's

premises 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 H&H and/or Releasees for failure to provide warnings for alleged exposures to Toxicants contained in Products.

4.2 Embry's Individual Release of Claims

Embry, in her individual capacity, also provides a release to H&H and/or 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 by Embry of any nature, character, or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to Toxicants in Products manufactured, imported, sold, or distributed by H&H before the Effective Date.

4.3 Defendant's Release of Embry

H&H, on its own behalf, and on behalf of Releasees as well as its past and current agents, representatives, attorneys, successors, and assignees, 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, otherwise seeking to enforce Proposition 65 against it, in this matter or with respect to the Products.

5. COURT APPROVAL

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

6. SEVERABILITY

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

7. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the state of California and apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise rendered inapplicable for reasons, including but not limited to changes in the law, then Defendant may

1 provide written notice to Embry of any asserted change, and shall have no further injunctive
2 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
3 so affected.

4 **8. NOTICE**

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

8 For H&H:

9 Edgar Martirosyan, Esq.
10 Martirosyan PC
11 601 S. Glenoaks Blvd., Suite 201
Burbank, CA 91502-1425

For Embry:

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

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

14 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

15 This Consent Judgment may be executed in counterparts and by facsimile signature, each of
16 which shall be deemed an original, and all of which, when taken together, shall constitute one and the
17 same document.

18 **10. POST EXECUTION ACTIVITIES**

19 Embry agrees to comply with the reporting form requirements referenced in Health and Safety
20 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
21 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which
22 motion Embry shall draft and file. In furtherance of obtaining such approval, the Parties agree to
23 mutually employ their best efforts, including those of their counsel, to support the entry of this
24 agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For
25 purposes of this Section, “best efforts” shall include, at a minimum, supporting the motion for
26 approval, responding to any objection that any third-party may make, and appearing at the hearing
27 before the Court if so requested.
28

1 **11. MODIFICATION**

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

5 **12. AUTHORIZATION**

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

8 **13. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

9 If a dispute arises with respect to either Party's compliance with the terms of this Consent
10 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or in
11 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed
12 in the absence of such a good faith attempt to resolve the dispute beforehand.

13 **14. ENTIRE AGREEMENT**

14 This Consent Judgment contains the sole and entire agreement and understanding of the Parties
15 with respect to the entire subject matter herein, and any and all prior discussions, negotiations,
16 commitments, and understandings related hereto. No representations, oral or otherwise, express or
17 implied, other than those contained herein have been made by any Party. No other agreements, oral
18 or otherwise, unless specifically referred to herein, shall be deemed to exist or to bind any Party.


19
20
21 **AGREED TO BY PLAINTIFF**
22 **KIM EMBRY:**

23 Date: 2/21/20

24 By: 
25 Kim Embry

26 **AGREED TO BY DEFENDANT**
27 **THE H&H LOUNGE, INC.:**

28 Date: 2/21/20

By: 
Varand Hayrapian
For The H&H Lounge, Inc.
(Sued as Glendale Hookah Lounge)