

## SETTLEMENT AGREEMENT

### **1. INTRODUCTION**

#### **1.1 Parties**

This Settlement Agreement is entered into by and between Kim Embry (“Embry”), on the one hand, and Domino’s Pizza LLC (“Domino’s”), on the other hand, with Embry and Domino’s each individually referred to as a “Party” and collectively as the “Parties.” Embry is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. Domino’s Pizza Franchising LLC, a subsidiary of Domino’s, licenses the right to operate individual pizza restaurants under the brand name “Domino’s” to independent business owners (“Franchisees”) who employ ten or more individuals in the operation of their individual store locations and are people in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code § 25249.6 *et seq.* (“Proposition 65”).

#### **1.2 General Allegations**

Embry alleges that Domino’s manufactures, sells, and/or distributes for sale in California products that contain Acrylamide and that it does so without first providing the health hazard warning required by Proposition 65. Acrylamide is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

#### **1.3 Product Description**

The products covered by this Settlement Agreement are defined as, and expressly limited to, Domino's Chocolate Lava Crunch Cake (“Products”), that are alleged to contain Acrylamide and that are manufactured, sold and/or distributed for sale in California by Domino’s.

#### **1.4 Notice of Violation**

On July 29, 2019, Embry served Domino’s, the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Domino’s and its Franchisees violated Proposition 65 when they failed to warn their customers and consumers in California of the health risks associated with exposures to Acrylamide from the Products. To the

best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

### **1.5 No Admission**

Domino's denies the material, factual, and legal allegations in the Notice and maintains that all the products it and its Franchisees sold and/or distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Domino's or its Franchisees of any fact, finding, conclusion, issue of law or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Domino's or its Franchisees of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Domino's and its Franchisees. This Section shall not, however, diminish or otherwise affect Domino's and its Franchisees obligations, responsibilities and duties under this Settlement Agreement.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean one hundred eighty (180) days following the execution of this Settlement Agreement by the Parties.

## **2. INJUNCTIVE RELIEF**

### **2.1 Clear and Reasonable Warnings**

Commencing on the Effective Date, and continuing thereafter, Domino's agrees to only manufacture for sale, purchase for sale, import for sale, or distribute for sale in or into California Products that are sold with a health hazard warning as provided for in Section 2.2.

### **2.2 General Warning Requirements**

Domino's and its Franchisees agree to provide warnings for the Products consistent with the provisions of 27 CCR 25600 et seq.

### **2.3 Grace Period for Existing Inventory of Products**

The injunctive requirements of Section 2 shall not apply to Products that were manufactured, distributed and/or sold as of the Effective Date, which Products are expressly subject to the releases provided in Section 4.1.

**3. MONETARY SETTLEMENT TERMS**

**3.1 Civil Penalty Payment**

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Domino's agrees to pay three thousand dollars (\$3,000.00) in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code §§ 25249.12(c)(1) & (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty amount retained by Embry. Within ten (10) days of the date this Settlement Agreement is executed by the Parties, Domino's shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of two thousand two hundred and fifty dollars (\$2,250.00) and (b) Kim Embry, payable to the Glick Law Group Client Trust Account, in the amount of seven hundred and fifty dollars (\$750.00).

All payments owed to OEHHA (EIN: 68-0284486), pursuant to this Section 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

All penalty payments owed to Embry shall be sent to:

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

### **3.2 Attorneys Fees and Costs**

The Parties reached an accord on the compensation due to Embry and her counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, within ten (10) days of the date this Settlement Agreement is executed by the Parties, Domino's agrees to pay twenty seven thousand dollars (\$27,000.00) to Embry and her counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Domino's, and negotiating a settlement. Domino's payment shall be delivered in the form of two checks: (1) one check for thirteen thousand and five hundred dollars (\$13,500.00) payable to "Glick Law Group"; and (2) one check for thirteen thousand and five hundred dollars (\$13,500.00) payable to "Nicholas & Tomasevic LLP."

### **3.3 Attorneys Fees and Costs Payment Address**

All payments required under Section 3.2 shall be delivered to:

For the payment under Section 3.2(1):

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

For the payment under Section 3.2(2):

Craig Nicholas  
Nicholas & Tomasevic, LLP  
225 Broadway, Suite 1900  
San Diego, CA 92101

### **3.4 Tax Documentation**

Domino's agrees to provide a completed IRS 1099 for its payments to, and Embry agrees to provide IRS W-9 forms for, each of the payees under this Settlement Agreement. The Parties acknowledge that Domino's cannot issue any settlement payments pursuant to Section 3.1 and 3.2 above until after Domino's receives the requisite W-9 forms from Embry's counsel.

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

### **4.1 Embry's Release of Domino's**

This Settlement Agreement is a full, final, and binding resolution between Embry, on her own behalf and not on behalf of the public, and Domino's of any violation of Proposition 65 that was or could have been asserted by Embry, on her own behalf, on behalf of her past and current agents, representatives, attorneys, successors and/or assignees, against Domino's and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, each upstream entity from whom the Products were purchased by Domino's, and each entity to whom Domino's directly or indirectly distributes or sells Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees ("Releasees"), based on the failure to warn about exposures to Acrylamide in Products manufactured, sold or distributed for sale in California by Domino's before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, Embry on her own behalf and not on behalf of the public, on behalf of her past, current and future agents, representatives, attorneys, successors and/or assignees hereby waives any and all rights she may have to institute or participate in, directly or indirectly, any form of legal action and releases all claims against Domino's and Releasees including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses including, but not exclusively, investigation fees, expert fees and attorney fees arising under Proposition 65 with respect to the alleged or actual failure to warn about exposures to Acrylamide in Products manufactured, distributed, sold and/or offered for sale by Domino's, before the Effective Date.

#### **4.2 Domino's Release of Embry**

Domino's, on its own behalf and on behalf of its past, current and future 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 Products.

#### **4.3 Mutual Release of Known and Unknown Claims**

Embry, on behalf of herself and her agents, attorneys, representatives, successors, and assigns, in her respective individual capacity only and not in her representative capacity, and Domino's, each provide a general release of the other including the Releasees herein which shall be effective as a full and final accord and satisfaction, as a bar to all claims of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of alleged violations of Proposition 65. Embry and Domino's each acknowledge that they are each familiar with Section 1542 of the California Civil Code, which provides as follows:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her must have materially affected his or her settlement with the debtor or released party.**

#### **5. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

#### **6. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California.

#### **7. NOTICE**

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For Domino's Pizza LLC:

Sarah A. Slack  
Foley & Lardner LLP  
555 South Flower Street, Suite 3300  
Los Angeles, CA 90071

For Embry:

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

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

**8. COUNTERPARTS; FACSIMILE SIGNATURES**

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

**9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

Embry and her attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

**10. NON-DISPARAGEMENT**

\_\_\_\_\_The Parties agree not to publicly make comments that are disparaging of the other Party. A disparaging statement is any communication, oral or written, which would cause or tend to cause the recipient of the communication to question the business condition, integrity, competence, fairness, or good character of the person or entity to whom the communication relates.

**11. MODIFICATION**

This Settlement Agreement may be modified only by written agreement of the Parties.

**12. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: 1/3/20

Date: 1/7/20

By:   
KIM EMBRY

By:   
DOMINO'S PIZZA LLC