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16 Attorneys for Plaintiff
17 Environmental Health Advocates, Inc.

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

20 ENVIRONMENTAL HEALTH
21 ADVOCATES, INC., a California organization,

22 Plaintiff,

23 v.

24 EZAKI GLICO USA CORPORATION, a
25 California Corporation, and DOES 1 through
26 100, inclusive,

27 Defendants.
28

Case No. HG20079175

[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 Environmental Health Advocates, Inc.,
4 (“EHA”) and Ezaki Glico USA Corporation (“Glico”), with EHA and Glico each individually referred
5 to as a “Party” and collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

7 EHA is a corporation organized in the state of California, acting in the interest of the general
8 public. It seeks to promote awareness of exposures to toxic chemicals and to improve human health by
9 reducing or eliminating hazardous substances contained in consumer products.

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 EHA alleges that Glico manufactures, imports, sells, and/or distributes for sale chocolate
16 covered almonds that contain acrylamide. EHA further alleges that Glico does so without providing a
17 sufficient health hazard warning as required by Proposition 65 and related Regulations. Pursuant to
18 Proposition 65, acrylamide is listed as a chemical known to cause cancer, birth defects and other
19 reproductive harm.

20 **1.5 Notices of Violation**

21 On April 3, 2020, EHA served Glico, Daiso California LLC (“Daiso”), the California Attorney
22 General, and all other required public enforcement agencies with a 60-Day Notice of Violation of
23 California Health and Safety Code section 25249.6 *et seq.* (“Notice”). The Notice alleged that Glico
24 and Daiso violated Proposition 65 by failing to sufficiently warn consumers in California of the health
25 hazards associated with exposures to acrylamide contained in its Almond Peak products.

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

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1 **1.6 Product Description**

2 The products covered by this Consent Judgment are the chocolate covered almond products,
3 including “Almond Peak,” manufactured or processed for Glico that allegedly contain acrylamide and
4 are imported, sold, shipped, delivered or distributed for sale to consumers in California by Releasees
5 (as defined in section 4.1) (“Products”).

6 **1.7 Complaint**

7 On November 5, 2020, EHA filed a Complaint against Glico for the alleged violations of
8 Health and Safety Code section 25249.6 that are the subject of the Notice (“Complaint”).

9 **1.8 No Admission**

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

18 **1.9 Jurisdiction**

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

23 **1.10 Effective Date and Compliance Date**

24 For purposes of this Consent Judgment, the term “Effective Date” means the date on which the
25 Court grants the motion for approval of this Consent Judgment, as discussed in Section 5. The
26 “Compliance Date” is the date that is 90 days after the Effective Date.

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1 **2. INJUNCTIVE RELIEF**

2 **2.1 Reformulation of the Products**

3 Commencing on the Compliance Date, and continuing thereafter, Glico agrees to only
4 manufacture for sale, purchase for sale, import for sale, or distribute for sale in or into California,
5 Products containing acrylamide concentrations of 225 part per billion (“ppb”) or less. As used in this
6 section 2.1, “distributed for sale in California” means to directly ship Products into California or to sell
7 Products to a distributor Glico knows will sell Products in California.

8 **2.2 Clear and Reasonable Warnings**

9 As an alternative to reformulation under Section 2.1, Glico, commencing on the Compliance
10 Date, shall not distribute for sale in California any Products unless the label, as defined by Cal. Code
11 Regs. tit. 27, § 25600.1, contains a clear and reasonable warning that complies with Proposition 65’s
12 warning regulations, including Cal. Code Regs. tit. 27, § 25600 *et. seq.*

13 **2.3 Grace Period for Existing Inventory of Products**

14 The requirements of this Consent Judgment shall not apply to Products manufactured as of the
15 Compliance Date, which Products are expressly subject to the releases provided in Section 4.

16 **3. MONETARY SETTLEMENT TERMS**

17 **3.1 Settlement Amount**

18 Glico shall pay fifty thousand dollars (\$50,000.00) in settlement and total satisfaction of all the
19 claims referred to in the Notice, the Complaint, and this Consent Judgment. This includes civil penalties
20 in the amount of five thousand dollars (\$5,000.00) pursuant to Health and Safety Code section
21 25249.7(b) and attorney’s fees and costs in the amount of forty-five thousand dollars (\$45,000.00)
22 pursuant to Code of Civil Procedure section 1021.5.

23 **3.2 Civil Penalty**

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

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1 All payments owed to EHA shall be delivered to the following address:
2 Environmental Health Advocates
3 225 Broadway, Suite 1900
4 San Diego, CA 92101

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

7 For United States Postal Service Delivery:

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

13 For Non-United States Postal Service Delivery:

14 Mike Gyurics
15 Fiscal Operations Branch Chief
16 Office of Environmental Health Hazard Assessment
17 1001 I Street
18 Sacramento, CA 95814

19 Glico agrees to provide EHA's counsel with a copy of the check payable to OEHHA,
20 simultaneous with its penalty payments to EHA.

21 Plaintiff and its counsel will provide completed IRS 1099, W-9, or other tax forms as required.
22 Relevant information is set out below:

- 23 • "Glick Law Group" (EIN: 47-1838518) at the address provided in Section 3.3;
- 24 • "BNY Mellon" (TIN: 250659306) at the address provided in Section 3.3.

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

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

Each firm may, at counsel's option, elect to have all or part of the Court-approved attorney's
fees allocated to a structured settlement permitting payment of such fees to be made in a series of
periodic payments. If a firm elects to have its award of all or a portion of the Court-approved attorney's

1 fees in a structured settlement, their interest in such funds will be assigned to an independent third party
2 to make payment of attorney's fees to counsel.

3 Glico shall provide its payment to EHA's counsel in two checks, divided equally, payable to
4 Glick Law Group, PC (\$22,500) and to BNY MELLON FBO JURISPRUDENT DEFERRAL
5 SOLUTIONS, LLC (\$22,500) per Deferred Payment Agreement entered into by and between Nicholas
6 & Tomasevic, LLP and JurisPrudent Deferral Solutions, LLC.

7 The addresses for these two entities are:

8 Noam Glick
9 Glick Law Group
10 225 Broadway, Suite 1900
11 San Diego, CA 92101

12 BNY Mellon
13 Attn. Margot Donohue
14 1250 H St. NW, Suite 1100
15 Washington, DC, 20005

16 **3.4 Timing**

17 The above-mentioned checks shall be issued within 14 days of the Effective Date.

18 **4. CLAIMS COVERED AND RELEASED**

19 **4.1 EHA's Public Release of Proposition 65 Claims**

20 For any claim or violation arising under Proposition 65 alleging a failure to warn about
21 exposures to acrylamide from Products or related products manufactured, imported, sold, or distributed
22 by Glico prior to the Compliance Date, EHA, acting for the general public, releases Glico of any and
23 all liability. This includes Glico's owners, parents, subsidiaries, affiliated entities under common
24 ownerships, its directors, officers, agents, employees, attorneys, and each entity to whom Glico directly
25 or indirectly distributes or sells Products, including but not limited to downstream distributors,
26 wholesales, customers, retailers, franchisees, cooperative members and licensees, (collectively, the
27 "Releasees"). Releasees include Daiso Industries Co. Ltd., Daiso California LLC, Daiso Holdings USA
28 Inc., their parents, and all subsidiaries and affiliates thereof and their respective employees, agents, and
assigns that sell Glico's Products. Compliance with the terms of this Consent Judgment constitutes

1 compliances with Proposition 65 with respect to the alleged or actual failure to warn about exposures
2 to acrylamide from Products manufactured, imported, sold, or distributed by Glico after the
3 Compliance Date. This Consent Judgment is a full, final and binding resolution of all claims that were
4 or could have been asserted against Glico and/or Releasees for failure to provide warnings for alleged
5 exposure to acrylamide contained in Products.

6 **4.2 EHA's Individual Release of Claims**

7 EHA, in its individual capacity, also provides a release to Glico and/or Releasees, which shall
8 be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action, obligations,
9 costs, expenses, attorney's fees, damages, losses, claims, liabilities, and demands of every nature,
10 character, and kind, whether known or unknown, suspected or unsuspected, arising out of alleged or
11 actual exposures to acrylamide in Products manufactured, imported, sold, or distributed by Glico before
12 the Compliance Date. With respect to the foregoing waivers and releases in this paragraph, EHA hereby
13 specifically waives any and all rights and benefits which it now has, or in the future may have, conferred
14 by virtue of the provisions of Section 1542 of the California Civil Code, which provides as follows:
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16
17 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR
18 DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
19 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE
20 MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

21 **4.3 Glico's Release of EHA**

22 Glico on its own behalf, as well as its past and current agents, representatives, attorneys,
23 successors, and assignees, hereby waives any and all claims against EHA and its attorneys and other
24 representatives, for any and all actions taken or statements made by EHA and its attorneys and other
25 representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition
26 65 against them, in this matter or with respect to the Products.

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1 **5. COURT APPROVAL**

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

5 **6. SEVERABILITY**

6 Subsequent to the Court’s approval and entry of this Consent Judgment, if any provision is held
7 by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.
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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 of California. In the event that Proposition 65 is repealed, or is otherwise
12 rendered inapplicable for reasons, including but not limited to changes in the law, then Glico may
13 provide written notice to EHA of any asserted change, and shall have no further injunctive obligations
14 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected.

15 **8. NOTICE**

16 Unless otherwise specified herein, all correspondence and notice required by this Consent
17 Judgment shall be in writing and sent by email to the appropriate email addresses listed below, as well
18 as one of the following methods: (i) personal delivery; (ii) first-class, registered, or certified mail, return
19 receipt requested; or (iii) a recognized overnight courier to the following addresses:

20 If to Glico:

21 Julie Schwartz
22 Perkins Coie LLP
23 3150 Porter Drive
24 Palo Alto, CA 94304
25 JSchwartz@perkinscoie.com

20 If to EHA:

21 Jake Schulte
22 Nicholas & Tomasevic LLP
23 225 Broadway Suite 1900
24 San Diego, CA 92101
25 JSchulte@nicholaslaw.org

26 Any Party may, from time to time, specify in writing to the other, a change of address to which
27 notices and other communications shall be sent.
28

1 **9. COUNTERPARTS; DIGITAL SIGNATURES**

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

5 **10. POST EXECUTION ACTIVITIES**

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

15 **11. MODIFICATION**

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

19 **12. AUTHORIZATION**

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

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

23 If a dispute arises with respect to either Party’s compliance with the terms of this Consent
24 Judgment entered by the Court, the Parties shall meet and confer in person, or by telephone, and/or in
25 writing and endeavor to resolve the dispute in an amicable manner. Glico shall be given a reasonable
26 opportunity to cure any purported violation. No action or motion may be filed in the absence of such a
27 good faith attempt to resolve the dispute beforehand and an opportunity to cure the purported violation.

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1 **15. ENTIRE AGREEMENT**


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

7 **AGREED TO:**

AGREED TO:

8
9 Date: January 29, 2021.

Date: January 28, 2021

10
11 By: 

By: Kuninori Ueno

12 ENVIRONMENTAL HEALTH
13 ADVOCATES, INC.

EZAKI GLICO USA CORPORATION

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17 **IT IS SO ORDERED.**

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19 Date: _____

20 JUDGE OF THE SUPERIOR COURT
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