

1 **GLICK LAW GROUP, PC**  
Noam Glick (SBN 251582)  
2 225 Broadway, Suite 2100  
San Diego, California 92101  
3 Tel: (619) 382-3400  
Fax: (619) 393-0154

4 **NICHOLAS & TOMASEVIC, LLP**  
5 Craig M. Nicholas (SBN 178444)  
Jake Schulte (SBN 293777)  
6 225 Broadway, Suite 1900  
San Diego, California 92101  
7 Tel: (619) 325-0492  
Fax: (619) 325-0496

8 Attorneys for Plaintiff  
9 Kim Embry

10  
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **IN AND FOR THE COUNTY OF ALAMEDA**

13 KIM EMBRY, an individual,

14 Plaintiff,

15 v.

16 WONDERFUL PISTACHIOS & ALMONDS  
LLC., a Delaware corporation, JET.COM, INC.,  
17 a Delaware corporation, TRADER JOE'S  
18 COMPANY, a California corporation, and  
DOES 1 through 100, inclusive,

19 Defendants.  
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Case No.: RG19012133

**[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 Wonderful  
4 Pistachios & Almonds LLC (“WP&A”) with Embry and WP&A each individually referred to as a  
5 “Party” and collectively referred to as the “Parties.”

6             **1.2     Plaintiff**

7             Embry is a citizen in the State of California, 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  
9 reducing or eliminating hazardous substances contained in consumer products.

10            **1.3     Defendant**

11            WP&A 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            Embry alleges that WP&A manufactures, imports, sells, and distributes for sale roasted  
16 almonds that contain acrylamide. Embry further alleges that WP&A 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 by the State of California to cause cancer  
19 and reproductive harm.

20            **1.5     Notice of Violation**

21            On April 5, 2018, Embry served WP&A, Jet.com, Inc., the California Attorney General, and  
22 all other required public enforcement agencies with a 60-Day Notice of Violation of California  
23 Health and Safety Code section 25249.6 et seq. (“WP&A Notice”). The Notice alleges that WP&A  
24 and Jet.com violated Proposition 65 by failing to sufficiently warn consumers in California of the  
25 health hazards associated with exposure to acrylamide contained in its “Wonderful Roasted & Salted  
26 Almonds.”

27            On May 3, 2018, Embry served Trader Joe’s Company (“Trader Joe’s”), the California  
28 Attorney General, and all other required public enforcement agencies with a 60-Day Notice of

1 Violation of California Health and Safety Code section 25249.6 et seq. (“Trader Joe’s Notice”). The  
2 Notice alleges that Trader Joe’s violated Proposition 65 by failing to sufficiently warn consumers in  
3 California of the health hazards associated with exposure to acrylamide contained in its “Trader Joe’s  
4 Dry Roasted & Salted Almonds.”

5 On December 5, 2019, Embry amended the Trader Joe’s Notice to identify the manufacturer  
6 as WP&A.

7 On May 12, 2020, Embry amended the WP&A Notice to include all roasted almond products  
8 manufactured or processed by WP&A.

9 No public enforcer has filed a lawsuit to enforce the violations alleged in the WP&A Notice  
10 or Trader Joe’s Notice.

### 11 **1.6 Product Description**

12 The products covered by this Consent Judgment are all roasted almonds manufactured or  
13 processed by WP&A and that allegedly contain acrylamide and are imported, sold, shipped, delivered  
14 or distributed for sale to consumers in California by Releasees (as defined in section 4.1) (the  
15 “Products”), whether sold under the Wonderful Brand, any other brand, or some other private label,  
16 at all grocery, retail, and other locations and sales channels, including on the Internet. The Consent  
17 Judgment covers the Products to the extent that they are incorporated as an ingredient in any food  
18 product made or sold by others.

### 19 **1.7 Complaint**

20 On May 1, 2019, Embry filed a Complaint against WP&A for the alleged violations of Health  
21 and Safety Code section 25249.6 that are the subject of the WP&A Notice (“Complaint”). Plaintiff  
22 amended the Complaint to add Jet.com and Trader Joe’s Company as defendants on January 29,  
23 2020.

### 24 **1.8 No Admission**

25 WP&A denies the material, factual, and legal allegations in the WP&A Notice and  
26 Complaint, and maintains that the Products it has manufactured or processed for sale, shipment,  
27 delivery or distribution for sale in California have been and are in compliance with all laws. WP&A  
28 further denies that the Products are harmful in any way to consumers and maintains that the Products

1 are healthy, safe, nutritious, and provide health benefits. Nothing in this Consent Judgment shall be  
2 construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law,  
3 nor shall compliance with this Consent Judgment be construed as an admission of any fact, finding,  
4 conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish or  
5 otherwise affect WP&A's obligations, responsibilities, and duties under this Consent Judgment.

### 6 **1.9 Jurisdiction**

7 The Parties stipulate that this Court has jurisdiction over WP&A as to the allegations in the  
8 Complaint, that venue is proper in the County of Alameda, and that the Court has jurisdiction to enter  
9 and enforce the provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil  
10 Procedure section 664.6.

### 11 **1.10 Effective Date & Compliance Date**

12 For purposes of this Consent Judgment, the term "Effective Date" means the date the Court  
13 grants the motion for approval of this Consent Judgment, as discussed in Section 5. Due to the fact  
14 that the Products are subject to other food safety regulatory requirements, and any reformulation must  
15 ensure compliance with these other applicable regulatory requirements, the Compliance Date is six  
16 (6) months after the Effective Date.

## 17 **2. INJUNCTIVE RELIEF**

### 18 **2.1 Reformulation of the Product**

19 For any Products that are manufactured or processed by WP&A on or after the Compliance  
20 Date that are sold or offered for sale in California the average acrylamide concentration (the  
21 "Average Level") shall not exceed 225 ppb by weight.

### 22 **2.2 Testing**

23 (a) Calculation of the Average Level shall be determined using LC-MS/MS (Liquid  
24 Chromatograph-Mass Spectrometry), GC/MS (Gas Chromatography/Mass Spectrometry), or any  
25 other testing method agreed upon by the Parties. On the Compliance Date, and continuing thereafter,  
26 WP&A shall not manufacture or process any Product that will be sold or offered for sale in  
27 California that exceeds 225 ppb, such concentration to be determined by use of a test performed by a  
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1 laboratory accredited by the State of California, a federal agency, or a nationally recognized  
2 organization or a laboratory associated with a university that is so accredited.

3 (b) The Average Level is determined by random selection and testing, over no less than a  
4 ten-day period, one sample from at least five batches (or from as many batches as are available, if  
5 fewer than five) and a maximum of ten batches of Products produced at locations that supply such  
6 Products in California (“Sampling Data”). The mean and standard deviation shall be calculated using  
7 the Sampling Data.

8 (c) For three consecutive years after the Compliance Date, WP&A shall arrange for  
9 testing under Section 2.2. The testing shall be at least once per year.

10 (d) All test results of acrylamide concentrations shall remain confidential unless required  
11 to be produced to the Attorney General or the Court.

12 **2.3 Sell-Through Period**

13 Notwithstanding anything else in this Consent Judgment, the Products that are manufactured or  
14 processed prior to the Compliance Date shall be subject to release of liability pursuant to this  
15 Consent Judgement, without regard to when such products were, or are in the future, shipped,  
16 delivered, distributed or sold to customers. As a result, the obligation of Releasees do not apply to the  
17 Products manufactured or processed prior to the Compliance Date.

18 **3. MONETARY SETTLEMENT TERMS**

19 **3.1 Settlement Amount**

20 WP&A shall pay one hundred thousand dollars (\$100,000.00) in settlement and total  
21 satisfaction of all the claims referred to in the WP&A Notice, the Complaint, and this Consent  
22 Judgment. This includes civil penalties in the amount of ten thousand dollars (\$10,000.00) pursuant  
23 to Health and Safety Code section 25249.7(b) and attorney’s fees and costs in the amount of ninety  
24 thousand dollars (\$90,000.00) pursuant to Code of Civil Procedure section 1021.5.

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- 1 • “Nicholas & Tomasevic” (EIN: 46-3474065) at the address provided in Section 3.2(a)(i);
- 2 and
- 3 • “Office of Environmental Health Hazard Assessment” at 1001 I Street, Sacramento, CA
- 4 95814.

### 5 **3.3 Attorney’s Fees and Costs**

6 The portion of the settlement attributable to attorney’s fees and costs shall be paid to Embry’s  
7 counsel, who are entitled to attorney’s fees and costs incurred by them in this action, including but  
8 not limited to investigating potential violations, bringing this matter to WP&A’s attention, as well as  
9 litigating and negotiating a settlement in the public interest.

10 WP&A shall provide its payment to Embry’s counsel in two checks, divided equally, payable  
11 to Glick Law Group, PC (\$45,000.00) and Nicholas & Tomasevic, LLP (\$45,000.00) respectively.

12 The addresses for these two entities are:

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

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

### 18 **3.4 Timing**

19 The above-mentioned checks will be issued within twenty-one (21) days of the Effective  
20 Date.

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

### 22 **4.1 Embry’s Public Release of Proposition 65 Claims**

23 Embry, acting on her own behalf and in the public interest, hereby releases and forever  
24 discharges WP&A and each of its respective past, present and future owners, parents, subsidiaries,  
25 affiliates, partners, managers, members, representatives, directors, officers, shareholders, agents,  
26 employees, attorneys, insurers, trustees, administrators, executors, predecessors in interest,  
27 successors in interest, heirs and assigns, and all other persons, firms or corporations with whom any  
28 of the former have been, are now, or may hereafter be affiliated or related (which shall expressly

1 include, among all other applicable entities, Wonderful Almond Cooperative and Cal Pure Produce  
2 Inc.) (collectively, “WP&A Releasees”) as well as each entity to whom WP&A directly or  
3 indirectly ship, deliver, distribute or sell the Products, including, but not limited to, downstream  
4 distributors (which shall expressly include, among all other downstream distributors, Jet.com and  
5 Trader Joe’s Company), wholesalers, customers, individuals, retailers, franchisees and licensees  
6 (collectively with WP&A Releasees, the “Releasees”), from any and all claims, charges, demands,  
7 obligations, losses, damages, and liabilities of any nature whatsoever, including, but not limited to,  
8 any claim or violation arising under Proposition 65 alleging a failure to warn about exposures to  
9 acrylamide from Products or related products manufactured, processed, imported, sold, shipped,  
10 delivered or distributed by Releasees prior to the Effective Date, and all costs, expenses and  
11 attorney’s fees related thereto, whether based on tort, contract, statute, ordinance or regulation, or  
12 any other theory of recovery in law or equity, whether for compensatory, punitive or civil damages,  
13 equitable relief of otherwise, whether or not relating to or otherwise arising out of this dispute, from  
14 the beginning of time through the Effective Date. Compliance with the terms of this Consent  
15 Judgment constitutes compliance with Proposition 65 with respect to the alleged or actual failure to  
16 warn about exposures to acrylamide from Products manufactured, processed, imported, sold,  
17 shipped, delivered or distributed by Releasees on and after the Effective Date. This Consent  
18 Judgment is a full, final and binding resolution of all claims that were or could have been asserted  
19 against Releasees for failure to provide warnings for alleged exposures to acrylamide contained in  
20 Products.

#### 21 **4.2 Embry’s Individual Release of Claims**

22 Embry, in her individual capacity, also provides a release to Releasees, which shall be a full  
23 and final accord and satisfaction of as well as a bar to all claims, charges, actions, causes of action,  
24 obligations, costs, expenses, attorney’s fees, damages, losses, liabilities, and demands by Embry of  
25 any nature, character, or kind, whether known or unknown, suspected or unsuspected, arising out of  
26 alleged or actual exposures to acrylamide in Products manufactured, processed, imported, sold, or  
27 distributed by Releasees before the Effective Date.  
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1           **4.3     WPA’s Release of Embry**

2           WP&A, on its own behalf, and on behalf of Releasees as well as its past and current agents,  
3 representatives, attorneys, successors, and assignees, hereby waives any and all claims against Embry  
4 and her attorneys and other representatives, for any and all actions taken or statements made by  
5 Embry and her attorneys and other representatives, whether in the course of investigating claims,  
6 otherwise seeking to enforce Proposition 65 against it, in this matter or with respect to the Products.

7           **4.4     Release of Known or Unknown Claims**

8           For the purpose of implementing a full and complete release, Embry, on behalf of herself and  
9 her agents, attorneys, representatives, successors, and assigns, expressly acknowledges that the  
10 release, which shall be effective as a full and final accord and satisfaction, as a bar to all claims of  
11 any nature, character or kind, known or unknown, suspected or unsuspected, arising out of alleged  
12 violations, she gives in this Consent Judgment is intended to include in its effect, without limitation,  
13 the release of all claims against the other party of any nature whatsoever relating to alleged violations  
14 of Proposition 65 with respect to the Products, and Embry’s alleged or actual exposure to acrylamide  
15 in the Products. Embry acknowledges that she is familiar with California Civil Code section 1542,  
16 which provides:

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

20           **4.5     Dismissal of the Complaint**

21           Jet.com was the retailer of the Wonderful Brand roasted and salted almonds described in the  
22 WP&A Notice. WP&A manufactured the dry roasted and salted almonds described in the Trader  
23 Joe’s Notice. Wonderful Brand roasted and salted almonds and Trader Joe’s dry roasted and salted  
24 almonds are included within the definition of Products in Section 1.6. Accordingly, within three (3)  
25 court days after Effective Date of this Consent Judgment, Embry shall dismiss the Complaint with  
26 prejudice and waive all attorneys’ fees and costs as to Jet.com and Trader Joe’s Company.  
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1 **5. COURT APPROVAL**

2 This Consent Judgment is not effective until it is approved by the Court. The Consent  
3 Judgment shall be null and void if it is not approved by the Court within one year after it has been  
4 fully executed by the Parties, or by such additional time as the Parties may agree to in writing. This  
5 Consent Judgment shall also be null and void if Embry withdraws the notice issued on May \_\_\_\_,  
6 2020 or the Court rules that the notice or this Consent Judgment does not include all WP&A’s  
7 Products (as defined herein) that are manufactured, processed, imported, sold, shipped, delivered, or  
8 distributed by Releasees.

9 **6. SEVERABILITY**

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

13 **7. GOVERNING LAW**

14 The terms of this Consent Judgment shall be governed by the laws of the State of California  
15 and apply within the State of California. In the event that Proposition 65 is repealed, or is otherwise  
16 rendered inapplicable for reasons, including but not limited to changes in the law or court rulings,  
17 then WP&A may provide written notice to Embry of any asserted change, and shall have no further  
18 injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the  
19 Products are so affected.

20 **8. NOTICE**

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

24 For WP&A:

25 Kristina Diaz, Esq.  
26 Courtney Vaudreuil, Esq.  
27 Roll Law Group, P.C.  
11444 W Olympic Blvd  
Los Angeles, CA 90064-1557

For Embry:

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

28 Any Party may, from time to time, specify in writing to the other, a change of address to

1 which all notices and other communications shall be sent.

2 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

3 This Consent Judgment may be executed in counterparts and by electronic means, including,  
4 but not limited to, DocuSign or facsimile signature, each of which shall be deemed an original, and  
5 all of which, when 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 the settlement, which  
10 motion Embry shall draft and file. In furtherance of obtaining such approval, the Parties agree to  
11 mutually employ their best efforts, including those of their counsel, to support the entry of this  
12 agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For  
13 purposes of this Section, “best efforts” shall include, at a minimum, supporting the motion for  
14 approval, responding to any objection that any third-party may make, and appearing at the hearing  
15 before the Court if so requested.

16 **11. MODIFICATION**

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

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

24 If a dispute arises with respect to either Party’s compliance with the terms of this Consent  
25 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, or in  
26 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed  
27 in the absence of such a good faith attempt to resolve the dispute beforehand.  
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1 **14. ENTIRE AGREEMENT**


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


8 **AGREED TO:**

**AGREED TO BY WONDERFUL  
PISTACHIOS & ALMONDS LLC**

9  
10 Date: May 7, 2020

Date: May 7, 2020

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13   
14 By: \_\_\_\_\_  
15 **KIM EMBRY**

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19 **DocuSigned by:**  
  
20 By: \_\_\_\_\_  
21 **CRAIG B. COOPER**  
22 **Senior Vice President**

23 **IT IS SO ORDERED.**

24  
25  
26  
27  
28 Date: \_\_\_\_\_

\_\_\_\_\_  
**JUDGE OF THE SUPERIOR COURT**