

1 **GLICK LAW GROUP, P.C.**

2 Noam Glick (SBN 251582)  
3 225 Broadway, Suite 1900  
4 San Diego, California 92101  
5 Tel: (619) 382-3400  
6 Fax: (619) 393-0154  
7 Email: noam@glicklawgroup.com

8 **NICHOLAS & TOMASEVIC, LLP.**

9 Craig M. Nicholas (SBN 178444)  
10 Jake Schulte (SBN 293777)  
11 225 Broadway, Suite 1900  
12 San Diego, California 92101  
13 Tel: (619) 325-0492  
14 Fax: (619) 325-0496  
15 Email: cnicholas@nicholaslaw.org  
16 Email: jschulte@nicholaslaw.org

17 Attorneys for Plaintiff  
18 Kim Embry

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

21 KIM EMBRY, an individual,

22 Plaintiff,

23 v.

24 PITA PIT BAKERY, INC., a California  
25 corporation, SURGE GLOBAL BAKERIES  
26 HOLDINGS LLC., a Delaware corporation,  
27 ATLAS MARKET, a California corporation,  
28 BREADMASTERS ARA-Z, INC., a California  
corporation, and DOES 2 through 100,  
inclusive,

Defendants.

Case No. RG19030015

**[PROPOSED] CONSENT JUDGMENT  
AS TO DEFENDANT SURGE GLOBAL  
BAKERIES HOLDINGS LLC**

(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, (“Plaintiff” or “Embry”),  
4 on the one hand, and Surge Global Bakeries Holdings LLC (“Defendant” or “Surge”), on the other  
5 hand, with Embry and Surge each individually referred to as a “Party” and collectively referred to as  
6 the “Parties.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

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

15 **1.4 General Allegations**

16 Embry alleges that Surge manufactures, imports, sells, and distributes for sale pita bread that  
17 contains acrylamide when toasted or grilled to a golden brown. Embry further alleges Surge instructs  
18 customers to, and reasonably anticipates that customers will, toast or grill its pita bread prior to  
19 consumption. Despite knowledge of same, Embry alleges that Surge manufactures, imports, sells,  
20 and distributes for sale its pita bread without providing a sufficient health hazard warning as required  
21 by Proposition 65 and related Regulations.

22 **1.5 Notices of Violation**

23 On various dates, including but not limited to January 11, 2019, December 4, 2020, and  
24 December 11, 2020, Embry served Surge, Atlas World Fresh Market, and/or TA Distributors, as well  
25 as the California Attorney General, and all other required public enforcement agencies, with 60-Day  
26 Notices of Violation of Proposition 65. (“Notices”) The Notices alleged that one or more Defendants  
27 violated Proposition 65 by failing to sufficiently warn consumers in California of exposures to  
28 acrylamide contained in the Covered Products.

1 On January 11, 2019, Embry issued her original 60-Day Notice of Violation of Proposition 65  
2 (“Notice”) to Surge and Atlas World Fresh Market. On December 4, 2020, Embry issued an  
3 Amended 60-Day Notice of Violation of Proposition 65 (“Amended Notice”) adding TA Distributors.  
4 On December 11, 2020, Embry issued a Second Amended 60-Day Notice of Violation of Proposition  
5 65 (“Second Amended Notice”) to correct the manufacturer to Surge.

6 No public enforcer has commenced or is otherwise prosecuting an action to enforce the  
7 violations alleged in the Notice, Amended Notice, or Second Amended Notice (hereinafter, the  
8 “Notices”).

### 9 **1.5 “Covered Products” Description**

10 “Covered Products” as used in this Consent Judgment is defined as, and expressly limited to,  
11 Plain Brick Oven Pita Bread that contains acrylamide, when toasted or grilled to a golden brown, and  
12 that is manufactured, sold, imported, or distributed for sale in California by Surge.

### 13 **1.6 Complaint**

14 On August 1, 2019, Embry filed a Complaint against Surge, and other Defendants, for the  
15 alleged violations of Proposition 65 that are the subject of the Notices (“Complaint”).

### 16 **1.7 No Admission**

17 Surge denies the material factual and legal allegations of the Notices and Complaint and  
18 maintains that all of the products it has manufactured, imported, sold, and/or distributed for sale in  
19 California, including the Covered Products, have been, and are, in compliance with all laws. Surge  
20 maintains that it has had sufficient Proposition 65 warnings for the Covered Products since in or  
21 around January 1, 2019. Surge states that it is entering into this settlement / Consent Judgment  
22 primarily because of the situation prior to that date. Nothing in this Consent Judgment shall be  
23 construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law,  
24 nor shall compliance with this Consent Judgment be construed as an admission of any fact, finding,  
25 conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish or  
26 otherwise affect Surge’s obligations, responsibilities, and duties under this Consent Judgment.  
27  
28

1           **1.8     Jurisdiction**

2           For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this  
3 Court has jurisdiction over Surge as to the allegations in the Complaint, that venue is proper in the  
4 County of Alameda, 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. In the  
6 event a Party brings a motion to enforce the terms of this Consent Judgment, the prevailing Party  
7 (i.e., the Party that successfully brings or defends against said motion) is entitled to recover its  
8 reasonable attorneys’ fees and costs.

9           **1.9     Effective Date**

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

12 **2.     INJUNCTIVE RELIEF: WARNINGS**

13           **2.1     Clear and Reasonable Warnings**

14          Commencing on the Effective Date, and continuing thereafter, Surge agrees to only  
15 manufacture for sale, purchase for sale, import for sale, or distribute for sale into California Covered  
16 Products that are sold with a warning as provided for in Section 2.2.

17           **2.2     General Warning Requirements**

18          For Covered Products which are manufactured and packaged for distribution for authorized  
19 sale or use in California on or after the Effective Date, Surge shall provide one of the following  
20 Proposition 65 warnings:

21           **Option 1:**

22                           **WARNING:** This product can expose you to chemicals  
23 including Acrylamide, which is known to the State of  
24 California to cause cancer, birth defects or other  
reproductive harm. For more information go to  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

25           **Option 2:**

26                           **WARNING:** Cancer and Reproductive Harm –  
[www.P65Warnings.cs.gov](http://www.P65Warnings.cs.gov)

27          The word “**WARNING**” shall be displayed in all capital letters and bold print. This warning  
28 statement shall be prominently displayed on the packaging of the Covered Products, or on a placard,

1 shelf tag, or sign provided that the statement is displayed with such conspicuousness, as compared  
2 with other words, statements, or designs as to render it likely to be read and understood by an  
3 ordinary individual prior to sale. If the warning statement is displayed on the Covered Products'  
4 label, it must be set off from other surrounding information. The same warning shall be posted on  
5 any websites, under the exclusive control of Surge, where Covered Products are sold into California

### 6 **2.3 Sell-Through Period**

7 Notwithstanding anything else in this Consent Judgment, Covered Products that are  
8 manufactured on or prior to the Effective Date shall be subject to release of liability pursuant to this  
9 Consent Judgment, without regard to when such Covered Products were, or are in the future,  
10 distributed or sold to customers. As a result, the obligation of Surge, or any Releasees (if applicable),  
11 do not apply to Covered Products manufactured on or prior to the Effective Date.

## 12 **3. MONETARY SETTLEMENT TERMS**

### 13 **3.1 Settlement Amount**

14 Surge shall pay fifty thousand dollars (\$50,000.00) in settlement and total satisfaction of all  
15 the claims referred to in the Notices, the Complaint, and this Consent Judgment. This includes civil  
16 penalties in the amount of five thousand dollars (\$5,000.00) pursuant to Health and Safety Code  
17 section 25249.7(b) and attorneys' fees and costs in the amount of forty-five thousand dollars  
18 (\$45,000.00) pursuant to Code of Civil Procedure section 1021.5.

### 19 **3.2 Civil Penalty**

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

24 All payments owed to Embry shall be delivered to the following address:

25 Noam Glick  
26 Glick Law Group, PC  
27 225 Broadway, Suite 1900  
28 San Diego, CA 92101

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

3 For United States Postal Service Delivery:

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

9 For Non-United States Postal Service Delivery:

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

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

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

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

### 24 **3.3 Attorneys' Fees and Costs**

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

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Noam Glick  
Glick Law Group  
225 Broadway, 19<sup>th</sup> Floor  
San Diego, CA 92101

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

**3.4 Timing**

The above-mentioned checks will be issued within fourteen (14) of the Effective Date.

**4. CLAIMS COVERED AND RELEASED**

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

For any claim or violation arising under Proposition 65 alleging a failure to warn about exposures to acrylamide from Covered Products manufactured, imported, sold, or distributed by Surge prior to the Effective Date, Embry, acting for the general public, releases Surge of any and all liability. This includes Surge's owners, parents, subsidiaries, affiliated entities under common ownerships, its directors, officers, agents, employees, attorneys, and each entity to whom Surge directly or indirectly distributes or sells Covered Products, including but not limited to downstream distributors, wholesales, customers, retailers, franchisees, cooperative members and licensees, (collectively, the "Releasees"). Releasees include defendants, their parents, and all subsidiaries and affiliates thereof and their respective employees, agents, and assigns that sell Covered 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 acrylamide from Covered Products manufactured, imported, sold, or distributed by Surge 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 Surge and/or Releasees for failure to provide warnings for alleged exposure to acrylamide contained in Covered Products.

1                   **4.2     Embry’s Individual Release of Claims**

2                   Embry, in her individual capacity, also provides a release to Surge and/or Releasees, which  
3 shall be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action,  
4 obligations, costs, expenses, attorney’s fees, damages, losses, claims, liabilities, and demands of  
5 every nature, character, and kind, whether known or unknown, suspected or unsuspected, arising out  
6 of alleged or actual exposures to acrylamide in Covered Products manufactured, imported, sold, or  
7 distributed by Surge before the Effective Date.

8                   **4.3     Surge’s Release of Embry**

9                   Surge on its own behalf, and on behalf of Releasees as well as its past and current agents,  
10 representatives, attorneys, successors, and assignees, hereby waives any and all claims against Embry  
11 and its attorneys and other representatives, for any and all actions taken or statements made by Embry  
12 and its attorneys and other representatives, whether in the course of investigating claims, otherwise  
13 seeking to enforce Proposition 65 against them, in this matter or with respect to Covered Products.  
14

15                   **5.     COURT APPROVAL**

16                   This Consent Judgment is not effective until it is approved by the Court and shall be null and  
17 void if it is not approved by the Court within one year after it has been fully executed by the Parties,  
18 or by such additional time as the Parties may agree to in writing.  
19

20                   **6.     SEVERABILITY**

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

25                   **7.     GOVERNING LAW**

26                   The terms of this Consent Judgment shall be governed by the laws of the state of California as  
27 applied within the state of California. In the event that Proposition 65 is repealed, or is otherwise  
28 rendered inapplicable for reasons, including but not limited to changes in the law, then Surge 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 Covered  
3 Products are so affected.

4 **8. NOTICE**

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

8 If to Surge:

9 George C. Salmas  
10 Michael Hambly  
11 The Food Lawyers  
12 1880 Century Park East  
13 Suite 611  
14 Los Angeles, CA 90067

If to Embry:

Noam Glick  
Glick Law Group, PC  
225 Broadway, 19th Floor  
San Diego, CA 92101

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

15 **9. COUNTERPARTS; DIGITAL SIGNATURES**

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

19 **10. POST EXECUTION ACTIVITIES**

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

1 **11. MODIFICATION**

2 This Consent Judgment may be modified by: (i) a written agreement of the Parties and entry  
3 of a modified consent judgment thereon by the Court; or (ii) a successful motion or application of any  
4 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, or 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 *[Rest of page intentionally left blank]*

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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, 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.

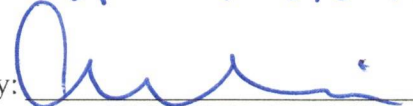
7  
8 **AGREED TO:**

**AGREED TO:**

9 Date: 02/11/2021

Date: 2-24-2021

10  
11 By:   
12 Kim Embry

11 By:   
12 Surge Global Bakeries Holdings LLC

13  
14 Ash Aghasi

15 **IT IS SO ORDERED.**

16  
17 Date: \_\_\_\_\_

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT