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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

ENVIRONMENTAL HEALTH  
ADVOCATES, INC.,

Plaintiff,

v.

LAGO USA INC.,

Defendant.

Case No. HG21085439

**[PROPOSED] CONSENT JUDGMENT**

1     **1. INTRODUCTION**

2             **1.1 Parties**

3             This Consent Judgment is entered into by and between Environmental Health Advocates,  
4 Inc. (“EHA”) and Lago USA Inc. (“Lago”) (collectively the “Parties”).

5             **1.2 Plaintiff**

6             EHA is an organization residing in California and acting in the interest of the general public.  
7 EHA seeks to promote awareness of exposures to toxic chemicals and to improve human health by  
8 reducing or eliminating hazardous substances in consumer products.

9             **1.3 Defendant**

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

13            **1.4 General Allegations**

14            EHA alleges that Lago manufactures, imports, sells, and distributes for sale wafer products  
15 that contain acrylamide. EHA further alleges that Lago does so without providing a sufficient health  
16 hazard warning as required by Proposition 65 and related Regulations. Pursuant to Proposition 65,  
17 acrylamide is listed as a chemical known to cause cancer and reproductive harm.

18            **1.5 Definitions**

19            (i)       “Covered Products” means animal cookies and animal crackers (sweet), thin  
20 and crispy cookies, and sandwich wafers that are manufactured, imported, sold, or distributed by  
21 Defendant Releasees, defined below, for sale in California, including products manufactured by  
22 Lago and its affiliates for sale under Lago’s customers’ private label brands.

23            (ii)      “Average Concentration” means the average of concentrations measured in  
24 multiple items or individual packaging units of the Covered Product in the form the Covered  
25 Product is sold to California consumers. The Average Concentration of acrylamide in a Covered  
26 Product shall be determined by randomly selecting and testing at least one sample each from eleven  
27 different lots of the product that were produced on dates spread out roughly evenly over a period  
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1 of at least 60 days, excluding the single sample with the highest concentration, which shall not be  
2 included for purposes of averaging.

3 (iii) “Unit Concentration” means the concentration measured in a single Covered  
4 Product item or individual packaging unit of the specific Covered Product in the form the product  
5 is sold to California consumers.

6 (iv) “Releasees” means and includes: Lago USA Inc., its parents, subsidiaries,  
7 affiliated entities, directors, officers, employees, agents, shareholders, successors, assigns, insurers,  
8 and attorneys (the “Defendant Releasees”) and all entities to which Defendant Releasees directly  
9 or indirectly distribute or sell Covered Products, including but not limited to distributors,  
10 wholesalers, customers, retailers, franchisees, licensors, and licensees (the “Downstream  
11 Defendant Releasees”).

## 12 **1.6 Notices of Violation**

13 On September 24, 2020, EHA served Lago, Harvest International Market, the California  
14 Attorney General, and all other required public enforcement agencies with a 60-Day Notice of  
15 Violation of California Health and Safety Code section 25249.6 *et seq.* (“Notice”). The Notice  
16 alleged that Lago violated Proposition 65 by failing to sufficiently warn consumers in California of  
17 the health hazards associated with exposures to acrylamide contained in “Gastone Lago Hazelnut  
18 Wafers” (the “September 24 Notice”).

19 On October 22, 2020, EHA served Lago, Lion Supermarket Stores, Incorporated, the  
20 California Attorney General, and all other required public enforcement agencies with a 60-Day  
21 Notice of Violation of California Health and Safety Code section 25249.6 *et seq.* (“Notice”). The  
22 Notice alleged that Lago violated Proposition 65 by failing to sufficiently warn consumers in  
23 California of the health hazards associated with exposures to acrylamide contained in “Lago Wafer  
24 Cookies with Chocolate Cream Filling Sugar Free” (the “October 22 Notice”) (collectively, with  
25 the September 24 Notice, the “Notices”).

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

On January 11, 2021, EHA filed a Complaint against Lago alleging the violations of Health and Safety Code section 25249.6 that are the subject of the Notices (“Complaint”).

**1.8 No Admission**

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

**1.9 Jurisdiction**

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

**1.10 Effective Date**

For purposes of this Consent Judgment, the term “Effective Date” means that date certain falling six calendar months after the date on which the Court grants the motion for approval and entry of this Consent Judgment, as discussed in Section 5.

**2. INJUNCTIVE RELIEF**

**2.1 Acrylamide Content of Covered Products**

Commencing on the Effective Date, and continuing thereafter, Defendant Releasees shall only manufacture, ship, or sell in California Covered Products that contain acrylamide concentrations by weight as determined by Liquid Chromatograph-Mass Spectrometry analysis conducted by a laboratory that is ISO 17025-compliant, as follows:

<b>Covered Product</b>	<b><u>Average Concentration</u></b>	<b>Maximum Unit Concentration</b>
Animal cookies and animal crackers (sweet):	75 parts per million (ppm)	100 ppm
Thin and crispy cookies	281 ppm	300 ppm
Sandwich wafers	115 ppm	N/A

**2.2 Sell-Through Period**

The acrylamide concentration limits of Section 2.1 shall not apply Covered Products manufactured by Defendant Releasees before the Effective Date or to Covered Products distributed, sold or offered for sale outside of the State of California.

**3. MONETARY SETTLEMENT TERMS**

**3.1 Settlement Amount**

Lago shall pay \$75,000 in settlement and total satisfaction of all the claims referred to in the Notices, the Complaint, and this Consent Judgment. This includes civil penalties in the amount of \$8,000 pursuant to Health and Safety Code section 25249.7(b) and attorney’s fees and costs in the amount of \$67,000 pursuant to Code of Civil Procedure section 1021.5.

**3.2 Civil Penalty**

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

The portion of the penalty owed to EHA (totaling \$2,000) shall be paid by one check payable to the Glick Law Group Client Trust Account and delivered to the following payment address:

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

1 The portion of the penalty owed to OEHHA (EIN: 68-0284486) (totaling \$6,000) shall be  
2 delivered directly to OEHHA (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 Sacramento, CA 95814

14 Lago agrees to provide EHA’s counsel with a copy of the check payable to OEHHA,  
15 simultaneous with its penalty payments to EHA.

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

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

### 23 **3.3 Attorney’s Fees and Costs**

24 The portion of the settlement attributable to attorney’s fees and costs (\$67,000) shall be paid  
25 to EHA’s counsel, to reimburse attorney’s fees and costs incurred by her in this action, including  
26 but not limited to investigating potential violations, bringing this matter to Lago’s attention, as well  
27 as litigating and negotiating a settlement in the public interest.

28 Lago shall provide its payment to EHA’s counsel in two checks, divided equally, payable  
to Glick Law Group, PC (\$33,500) and Nicholas & Tomasevic, LLP (\$33,500) respectively. The  
addresses for these two entities are:

1 Noam Glick  
2 Glick Law Group  
3 225 Broadway, 19th Floor  
4 San Diego, CA 92101

5 Craig Nicholas  
6 Nicholas & Tomasevic, LLP  
7 225 Broadway, 19th Floor  
8 San Diego, CA 92101

### 9 **3.4 Timing**

10 The above-mentioned checks will be issued within 14 days of the Effective Date.

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

### 12 **4.1 EHA's Public Release of Proposition 65 Claims**

13 This Consent Judgment is a full, final, and binding resolution between EHA acting on its  
14 own behalf, and on behalf of the public interest, and Releasees of all claims arising under  
15 Proposition 65 based on exposure to and/or failure to warn about exposure to, acrylamide from  
16 Covered Products manufactured, imported, sold, or distributed by Defendant Releasees before the  
17 Effective Date.

### 18 **4.2 EHA's Individual Release of Claims**

19 EHA, in its individual capacity, hereby releases each and all Releasees, which shall be a  
20 full and final accord and satisfaction of, as well as a bar to, all actions, causes of action, obligations,  
21 costs, expenses, attorney's fees, damages, losses, claims, liabilities, and demands of every nature,  
22 character, and kind, whether known or unknown, suspected or unsuspected, arising out of alleged  
23 or actual exposures to acrylamide in Covered Products manufactured, imported, sold, or distributed  
24 by Releasees before the Effective Date, and/or that were or could have been alleged or asserted in  
25 the Complaint.

### 26 **4.3 Lago's Release of EHA**

27 Lago, for itself and the Defendant Releasees, hereby waives any and all claims against EHA  
28 and its attorneys and other representatives, for any and all actions taken or statements made by  
EHA and its attorneys and other representatives, whether in the course of investigating claims or

1 otherwise, committed or omitted in the process of seeking to enforce Proposition 65 against it with  
2 respect to Covered Products through the date of Lago's execution of this Stipulation.

3 **4.4 Compliance with Consent Judgment as Compliance with Proposition 65.**

4 Defendant Releasees' compliance with the terms of this Consent Judgment constitutes  
5 compliance with Proposition 65 with respect to exposure to acrylamide from Covered Products that  
6 are manufactured, imported, sold, or distributed after the Effective Date. This Consent Judgment is  
7 a full, final and binding resolution of all claims that were or could have been asserted against  
8 Releasees for exposure to acrylamide from Covered Products and/or failure to warn about exposure  
9 to acrylamide from Covered Products.

10 **5. COURT APPROVAL**

11 **5.1** This Consent Judgment is not effective until it is approved and entered by the Court.  
12 EHA shall prepare and file a Motion for Approval of this Consent Judgment and Lago shall support  
13 approval of such Motion.

14 **5.2** If this Consent Judgment is not entered by the Court, it shall be of no force or effect  
15 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

16 **6. ENFORCEMENT**

17 **6.1 Enforcement Procedures.** Either Party may by motion or application for an order  
18 to show cause before this Court seek to enforce the terms of this Consent Judgment. Prior to filing  
19 any such motion or application, a Party seeking to enforce the terms of this Consent Judgment shall  
20 provide the allegedly violating party with a written notice setting forth the detailed factual and legal  
21 basis for the alleged violation ("Notice of Violation"), and if applicable, comply with the  
22 requirements of Section 6.2. The Parties shall then meet and confer during the thirty (30) day period  
23 following the date the Notice of Violation was sent in an effort to try to reach agreement on the  
24 alleged violation. After such thirty (30) day period, the Party seeking to enforce may, by new action,  
25 motion, or order to show cause before the Superior Court of Alameda, seek to enforce the terms  
26 and conditions contained in this Consent Judgment. In any enforcement proceeding, the Court shall  
27 not be limited by this Consent Judgment in fashioning remedies for failure to comply with  
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1 Proposition 65, and may order compliance with Proposition 65 by reformulation, warnings or any  
2 other method it finds compliant with the law.

3 **6.2** Prior to bringing any motion or application to enforce the acrylamide concentration  
4 requirements of Section 2.1, EHA shall provide Lago with a Notice of Violation that includes test  
5 reports demonstrating that the Covered Product contains acrylamide in excess of the Average  
6 Concentration and/or the maximum Unit Concentration, and the lot number(s) of the Covered  
7 Product allegedly in violation. Within 30 days, Lago may provide EHA with any test data that it  
8 contends rebuts the alleged violation, and may request that the sample(s) of the Covered Product  
9 tested by EHA be submitted to an independent third-party laboratory to determine the Average  
10 Concentration and Unit Concentration of the Covered Product. If the testing submitted by Lago  
11 and/or performed by the independent third-party laboratory does not resolve the alleged violation,  
12 EHA may file a motion seeking relief from the court.

13 **7. GOVERNING LAW**

14 The terms of this Consent Judgment shall be governed by the laws of the state of California  
15 as applied within the state. If Proposition 65 is repealed, or is otherwise rendered inapplicable to  
16 Covered products for any reason, including but not limited to changes in the law, then Lago shall  
17 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent  
18 that, the Covered Products are so affected.

19 **8. NOTICE**

20 Unless otherwise specified herein, all correspondence and notice required or permitted by  
21 this Consent Judgment shall be in writing and sent: (1) by personal delivery or by US Mail (first-  
22 class, registered, or certified mail, return receipt requested), or by a recognized overnight courier,  
23 to the physical address provided below, (2) with copies, not themselves constituting notice, emailed  
24 to each email address provided below:

25 If to Lago:

26 Jeffrey Margulies  
27 Norton Rose Fulbright US LLP  
28 555 South Flower Street, 41st Floor  
Los Angeles, CA 90071

If to EHA:

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

1 Gianluigi Esposito  
2 Carnelutti & Altieri Esposito Minoli PLLC  
3 551 Madison Avenue, Ste 450  
4 New York, NY 10022

5 Any Party may, from time to time, specify in writing to the other, a change of mailing or  
6 email addresses to which notices and other communications shall be sent. Any and all Notices shall  
7 be effective only if sent in compliance with this section, and after the emailed copies have been  
8 sent without reported error.

9 **9. COUNTERPARTS; DIGITAL SIGNATURES**

10 This Consent Judgment may be executed in counterparts and executed by digital, faxed, or  
11 otherwise reproduced signature. Each counterpart shall be deemed an original, and all counterparts  
12 taken together shall constitute one and the same document.

13 **10. ENTIRE AGREEMENT**

14 This Consent Judgment contains the sole and entire agreement and understanding of the  
15 Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
16 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and  
17 therein. There are no warranties, representations, or other agreements between the Parties except  
18 as expressly set forth herein. No representations, oral or otherwise, express or implied, other than  
19 those specifically referred to in this Consent Judgment have been made by any Party hereto. No  
20 other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed  
21 to exist or to bind any of the Parties hereto. Any agreements specifically contained or referenced  
22 herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto only to the  
23 extent that they are expressly incorporated herein. No supplementation, modification, waiver, or  
24 termination of this Consent Judgment shall be binding unless executed in writing by the Party to  
25 be bound thereby. No waiver of any of the provisions of this Consent Judgment shall be deemed  
26 or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall  
27 such waiver constitute a continuing waiver.  
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1 **11. MODIFICATION**

2 **11.1 General Modification Procedure**

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

6 **11.2 Alternative Compliance Measures**

7 If, after the Effective Date, either (i) a California court approves a Proposition 65 consent  
8 judgment or (ii) the Office of Environmental Health Hazard Assessment adopts or amends a  
9 regulation concerning acrylamide that (a) determines a level for providing warnings for acrylamide  
10 in Covered Products higher than the levels identified in Section 2.1, or (b) provides for different  
11 methods for testing for acrylamide levels in Covered Products, the Court, upon application by Lago,  
12 shall modify Section 2.1 in accordance with such alternative compliance measures.

13 **12. RETENTION OF JURISDICTION**

14 The Court shall retain jurisdiction of this matter to implement, enforce or modify the  
15 Consent Judgment.

16 **13. AUTHORIZATION**


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

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**AGREED TO:**

Date: March 9, 2021.

By:   
Environmental Health Advocates, Inc.

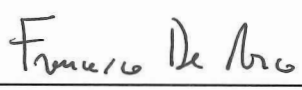
**APPROVED AS TO FORM:**

Date: March 9, 2021.

By:   
Noam Glick  
Counsel for Environmental Health  
Advocates, Inc.

**AGREED TO:**

Date: MARCH 9, 2021

By:   
FRANCESCO DE MARCO  
PRESIDENT [print name]  
Lago USA Inc.

**APPROVED AS TO FORM:**

Date: March 4, 2021

By: Jeffrey B. Margulies  
Jeffrey Margulies  
Counsel for Lago USA Inc

Digitally signed by Jeffrey B. Margulies  
DN: cn=Jeffrey B. Margulies, o=Norton Rose Fulbright  
US LLP, ou,  
email=jeff.margulies@nortonrosefulbright.com, c=US  
Date: 2021.03.04 15:29:54 -0800

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