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FILED
ALAMEDA COUNTY

SEP 17 2020

CLERK OF THE SUPERIOR COURT

By [Signature] Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

ENVIRONMENTAL HEALTH
ADVOCATES, INC., an organization,

Plaintiff,

v.

NOTHING BUNDT FRANCHISING, LLC, a
Nevada corporation, DOES 1 through 100,
inclusive,

Defendants.

Case No.: RG20052139
Reservation No.: R-2159704

**SECOND AMENDED [~~PROPOSED~~]
JUDGMENT PURSUANT TO
TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT AS TO DEFENDANT
NOTHING BUNDT FRANCHISING,
LLC.**

Date: September 17, 2020
Time: 3:30 p.m.
Dept.: 17
Judge: Hon. Frank Roesch

Case Filed: January 27, 2020
Trial Date: Not set

Plaintiff Kim Embry and Defendant Nothing Bundt Franchising, LLC. agreed through their respective counsel to enter judgment pursuant to the terms of their settlement in the form of a stipulated judgment ("Consent Judgment"). This Court issued an Order approving the Proposition 65 Settlement and Consent Judgment on Sept 17, 2020.

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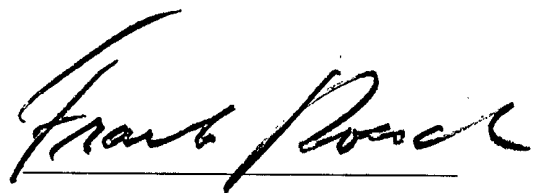
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IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health and Safety Code, section 25249.7(f)(4) and Code of Civil Procedure, section 664.6, judgment is hereby entered in accordance with the terms of the Consent Judgment attached hereto as Exhibit A.

By stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure, section 664.6.

IT IS SO ORDERED.

Dated: 9/17/2020



JUDGE OF THE SUPERIOR COURT

Exhibit A

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 Email: noam@glicklawgroup.com

5 **NICHOLAS & TOMASEVIC, LLP**
Craig M. Nicholas (SBN 178444)
6 Jake Schulte (SBN 293777)
225 Broadway, Suite 1900
7 San Diego, California 92101
Tel: (619) 325-0492
8 Email: cnicholas@nicholaslaw.org
Email: jschulte@nicholaslaw.org

9 Attorneys for Plaintiff
10 Environmental Health Advocates, Inc.

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

14 ENVIRONMENTAL HEALTH ADVOCATES, INC., a California corporation
15
16 Plaintiff,
17
18 v.
19 NOTHING BUNDT FRANCHISING, LLC
DBA NOTHING BUNDT CAKES, a Nevada
corporation; and DOES 1 through 100,
inclusive,
20 Defendants.

Case No.:
[PROPOSED] CONSENT JUDGMENT AS
TO NOTHING BUNDT FRANCHISING,
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 Environmental Health Advocates, Inc.
4 ("EHA") on one hand, and Nothing Bundt Franchising, LLC ("Defendant" or "NBF") on the other
5 hand, with EHA and NBF individually referred to as a "Party" and collectively as the "Parties."

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 NBF 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 NBF manufactures, imports, sells, and distributes for sale in California, cakes
16 that contain acrylamide. EHA further alleges that NBF does so without providing a sufficient health
17 hazard warning as required by Proposition 65 and related regulations. Pursuant to Proposition 65,
18 acrylamide is listed as a chemical known to cause cancer and reproductive harm. NBF denies that
19 warnings are required under Proposition 65 for any exposures to acrylamide in the Products, and NBF
20 maintains that it has complied with all applicable federal and state laws, including but not limited to
21 Proposition 65.

22 **1.5 Product Description**

23 For purposes of this Consent Judgment "Product" or "Products" are all of NBF's bundt cakes
24 flavors including "Chocolate Chocolate Chip Bundt Cake", "Classic Vanilla Bundt Cake", "Red Velvet Bundt
25 Cake", "White Chocolate Raspberry Bundt Cake", "Confetti Bundt Cake", "Carrot Bundt Cake", "Lemon
26 Bundt Cake", "Marble Bundt Cake", "Pecan Praline Bundt Cake", "Gluten-Free Chocolate Chip", "Cookie
27 Bundt Cake", "Peanut Butter Chocolate Swirl Bundt Cake", "Chocolate Turtle Bundt Cake", "Strawberries &
28 Bundt Cake", "Peanut Butter Chocolate Swirl Bundt Cake", "Chocolate Turtle Bundt Cake", "Strawberries &

1 Cream Bundt Cake”, “Lemon Raspberry Bundt Cake”, “Pumpkin Spice Bundt Cake”, “Peppermint Chocolate
2 Chip Bundt Cake”, “Blueberry Bliss Bundt Cake”, “Snickerdoodle Bundt Cake”, “Salted Caramel Bundt Cake”.
3 manufactured, imported, sold, or distributed for sale in California by NBF and Releasees, define *infra*.

4 **1.6 Notice of Violation**

5 On August 15, 2019 EHA served NBF, the California Attorney General, and all other required
6 public enforcement agencies with a 60-Day Notice of Violation of California Health and Safety Code
7 section 25249.6 *et seq.* (“Notice”). The Notice alleged that NBF violated Proposition 65 by failing to
8 sufficiently warn consumers in California of the health hazards associated with exposures to
9 acrylamide contained in its “Chocolate Chocolate Chip Bundt Cakes.” On January 24, 2020, EHA
10 served NBF, the California Attorney General, and all other required public enforcement agencies with
11 a 60-Day Notice of Violation identifying the other Products referenced herein.
12

13 No public enforcer has commenced or is otherwise prosecuting an action to enforce the
14 violations alleged in the Notice.
15

16 **1.7 Complaint**

17 On January 27, EHA filed a Complaint against Defendant for the alleged violations of Health
18 and Safety Code section 25249.6 that are the subject of the Notice (“Complaint”).

19 **1.8 No Admission**

20 By stipulating to the entry of this Consent Judgment and agreeing to provide the relief and
21 remedies specified herein, NBF does not admit that is has violated, or threatened to violate, Proposition
22 65 or any other law or legal duty, and NBF does not admit that the chemical acrylamide in food poses
23 any risk to human health.

24 Nothing in this Consent Judgment shall be construed as an admission of any fact, finding,
25 conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment
26 be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law.
27 This Section shall not, however, diminish or otherwise affect NBF’s obligations, responsibilities, and
28

1 duties under this Consent Judgment, subject to subsequent modifications thereof or Court orders
2 regarding any such obligation, responsibility, and/or duty.

3 **1.9 Jurisdiction**

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

8 **1.10 Effective Date and Compliance Date**

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

12 **2. INJUNCTIVE RELIEF**

13 **2.1 Clear and Reasonable Warnings**

14 Commencing on the Compliance Date, and continuing thereafter, NBF agree to only
15 manufacture for sale, purchase for sale, import for sale, or distribute for sale in or into California the
16 Product that is sold with a health hazard warning as provided for in Section 2.2 if such a warning is
17 required for the Product under Section 25249.6 of Proposition 65, absent reformulation of one or more
18 of the Products such that those Products that are sold in California or distributed for sale in California
19 shall not exceed an Average Level of 180 ppb of acrylamide. The Average Level shall be determined:
20 (a) by randomly selecting and testing at least one sample each from five different lots of the product
21 (or the maximum number of lots available for testing if less than five) during a testing period of at
22 least 60 days; and (b) using tests performed by a laboratory accredited by the State of California, a
23 federal agency, or a nationally recognized accrediting organization, using LC-MS/MS (Liquid
24 Chromatograph-Mass Spectrometry).

25 **2.2 General Warning Requirements**

26 NBF agrees that each warning shall be prominently displayed on a label, labeling, or
27 sign, and displayed with such conspicuousness, as compared with other words, statements, designs, or
28

1 devices as to render it likely to be read and understood by an ordinary individual under customary
2 conditions before purchase or use.

3
4 1) **WARNING:** Consuming this product can expose you to chemicals
5 including Acrylamide, which is known to the State of California to cause
6 cancer, birth defects, or other reproductive harm. For more information go
7 to www.P65Warnings.ca.gov/food.

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15 **3. MONETARY SETTLEMENT TERMS**

16 **3.1 Settlement Amount**

17 Defendant shall pay sixty-three thousand dollars (\$63,000.00) in settlement and total
18 satisfaction of all the claims referred to in the Notices, the Complaint, and this Consent Judgment.
19 This includes civil penalties in the amount of seven thousand dollars (\$7,000.00) pursuant to Health
20 and Safety Code section 25249.7(b) and attorney's fees and costs in the amount fifty-six thousand
21 dollars (\$56,000.00) pursuant to Code of Civil Procedure section 1021.5 and Health and Safety Code
22 section 25249 et seq.

23 **3.2 Civil Penalty**

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

28 All payments owed to EHA, shall be delivered to the following payment address:

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

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

1 For United States Postal Delivery:

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

7 For Non-United States Postal Service Delivery:

8 Mike Gyuries
9 Fiscal Operations Branch Chief
10 Office of Environmental Health Hazard Assessment
11 1001 I Street
12 Sacramento, CA 95814

13 NBF agrees to provide EHA's counsel with a copy of the check payable to OEHHA
14 simultaneous with its penalty payment to EHA.

15 The Parties will exchange completed IRS 1099, W-9, or other forms as required. Relevant
16 information for Glick Law Group and N&T are set out below:

- 17
- 18 • "Environmental Health Advocates, Inc." whose address and tax identification number
19 shall be provided within five (5) days after this Consent Judgment is fully executed by
20 the parties
 - 21 • "Glick Law Group" (EIN: 47-1838518) at address provided in Section 3.2;
 - 22 • "Nicholas & Tomasevic" (EIN: 46-3474065) at address provided in Section 3.3; and
 - 23 • "Office of Environmental Health Hazard Assessment at 1001 I Street, Sacramento, CA
24 95814.

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

26 The portion of the settlement attributable to attorneys' fees and costs shall be paid to EHA's
27 counsel, who are entitled to attorney's fees and costs incurred by her in this action, including but not
28

1 limited to investigating potential violations, bringing this matter to Defendant's attention, as well as
2 litigating and negotiating a settlement in the public interest.

3 Defendant shall provide its payment to EHA's counsel in two checks, divided equally, payable
4 to Glick Law Group, PC (\$28,000.00) and Nicholas & Tomasevic, LLP (\$28,000.00) respectively.

5 The addresses for these two entities are:

6 Noam Glick
7 Glick Law Group
8 225 Broadway, Suite 2100
9 San Diego, CA 92101

10 Craig Nicholas
11 Nicholas & Tomasevic, LLP
12 225 Broadway, Suite 2100
13 San Diego, CA 92101

14 **3.4 Timing**

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

16 **4. CLAIMS COVERED AND RELEASED**

17 **4.1 EHA's Public Release of Proposition 65 Claims**

18 For any claim or violation arising under Proposition 65 alleging a failure to warn about
19 exposures to acrylamide from Products or related products manufactured, imported, sold, or
20 distributed by NBF prior to the Effective Date, EHA, acting on its own behalf and in the public interest,
21 releases NBF of any and all liability. This includes NBF's owners, parents, subsidiaries, affiliated
22 entities under common ownership, its directors, officers, agents, employees, attorneys, and each entity
23 to whom NBF directly or indirectly distributes or sells the Products, including but not limited to,
24 downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and
25 licensees, (collectively, the "Releasees"). Releasees include defendant, its parent, and all subsidiaries
26 and affiliates thereof and their respective employees, agents, and assigns that sell NBF's Products.
27 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with
28 respect to the alleged or actual failure to warn about exposures to acrylamide from Products
manufactured, imported, sold, or distributed by NBF after the Effective Date. This Consent Judgment

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1 is a full, final and binding resolution of all claims that were or could have been asserted against NBF
2 and/or Releasees for failure to provide warnings for alleged exposures to acrylamide contained in
3 Products.

4 **4.2 EHA's Individual Release of Claims**

5 EHA, in its individual capacity, also provides a release to NBF and/or Releasees, which shall
6 be a full and final accord and satisfaction of as well as a bar to all actions, causes of action, obligations,
7 costs, expenses, attorney's fees, damages, losses, claims, liabilities, and demands by EHA of any
8 nature, character, or kind, whether known or unknown, suspected or unsuspected, arising out of alleged
9 or actual exposures to acrylamide in Products manufactured, imported, sold, or distributed by NBF
10 before the Effective Date.

11 **4.3 Defendant's Release of EHA**

12 NBF, on its own behalf, hereby waives any and all claims against EHA and its attorneys and
13 other representatives, for any and all actions taken or statements made by EHA and its attorneys and
14 other representatives, whether in the course of investigating claims, otherwise seeking to enforce
15 Proposition 65 against it, in this matter or with respect to the Products.

16 **5. COURT APPROVAL**

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

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 **7. GOVERNING LAW**

25 The terms of this Consent Judgment shall be governed by the laws of the state of California
26 and apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise
27 rendered inapplicable for reasons, including but not limited to changes in the law, then Defendant may
28

1 provide written notice to EHA of any asserted change, and shall have no further injunctive obligations
2 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected.

3 **8. NOTICE**

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

7 For NBF:

8 Laura Biery
9 Honigman LLP
10 2290 First National Building 660
11 Woodward Avenue
12 Detroit, MI 48266-3506

For EHA:

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

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

13 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

17 **10. POST EXECUTION ACTIVITIES**

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

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

12. AUTHORIZATION

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

13. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES

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

[Rest of page left intentionally blank]

1 **14. 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
6 or otherwise, unless specifically referred to herein, shall be deemed to exist or to bind any Party.

7 **AGREED TO:**

AGREED TO BY (DEFENDANT)

8
9 Date: 4/6/2020

Date: 4-3-20

10 By: *Roan Blech*
11 Environmental Health Advocates, Inc.,
12 individually and acting on behalf of the
13 public interest

By: *[Signature]*
Kyle Smith [print name]

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CLERK'S CERTIFICATE OF MAILING


RE: RG20-052139 Environmental Health Advocates vs Nothing Bundt Franchising

I certify that the following is true and correct: I am the Clerk of the above-named court and not a party to this cause. I served this **Judgment**, by placing copies in envelopes addressed as shown below and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Oakland, California, following standard court practices.

Dated: 9/18/20

Chad Finke
Executive Officer/Clerk of the Superior
Court

By



Param Bir, Deputy Clerk

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