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Attorneys for Plaintiff
Environmental Health Advocates, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

ENVIRONMENTAL HEALTH
ADVOCATES, INC.,

Plaintiff,

v.

THE SAVE MART COMPANIES, INC., a
California corporation, and DOES 1 through
100, inclusive,

Defendants.

Case No. RG21103798

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. § 664.6)

1. **INTRODUCTION**

1.1 **Parties**

This Consent Judgment is entered into by and between Environmental Health Advocates, Inc., (“EHA” or “Plaintiff”) and Save Mart Supermarkets, a California corporation, d/b/a The Save Mart Companies (“Defendant” or “Save Mart”) with EHA and Save Mart each individually referred to as a “Party” and collectively referred to as the “Parties.”

1.2 **Plaintiff**

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

1.3 **Defendant**

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

1.4 **General Allegations**

EHA alleges that Save Mart manufactures, imports, sells, and distributes for sale bakery croutons, including Lucky’s Bakery Croutons, that contains acrylamide. EHA further alleges that Save Mart does so without providing a sufficient health hazard warning as required by Proposition 65 and related Regulations. Pursuant to Proposition 65, acrylamide is listed as a chemical known to cause cancer, birth defects and other reproductive harm. Save Mart denies that a warning is required.

1.5 **Notices of Violation**

On or around December 31, 2020, EHA served Save Mart, the California Attorney General, and all other required public enforcement agencies with a 60-Day Notice of Violation of Proposition 65 (“Notice”). The Notice alleged that Save Mart had violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated with exposures to acrylamide contained in bakery croutons, including Lucky’s Bakery Croutons.

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

3 **1.6 Product Description**

4 The products covered by this Consent Judgment are bakery croutons manufactured or
5 processed by or for the Save Mart Group (as defined in section 4.1) that allegedly contain
6 acrylamide and are imported, sold, shipped, delivered, or distributed for sale to consumers in
7 California by Releasees (as defined in section 4.1) ("Covered Products").

8 **1.7 State of the Pleadings**

9 On or around June 30, 2021, EHA filed a Complaint against Save Mart for the alleged
10 violations of Proposition 65 that are the subject of the Notice. ("Complaint").

11 **1.8 No Admission**

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

20 **1.9 Jurisdiction**

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

25 **1.10 Effective Date**

26 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
27 the Court grants the motion for approval of this Consent Judgment, as discussed in Section 5.
28

2. **INJUNCTIVE RELIEF**

2.1 **Reformulation of Covered Products**

Except as otherwise provided herein, any Covered Products that are manufactured on and after the Effective Date that the Save Mart Group sells in California or distributes for sale in California shall not exceed 100 parts per billion (“ppb”) for acrylamide, using tests performed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization, using LC-MS/MS (Liquid Chromatograph-Mass Spectrometry), unless such Covered Products comply with the warning requirements of Section 2.2. As used in this Section 2, “distributed for sale in California” means to directly ship Covered Products into California or to sell Covered Products to a distributor the Save Mart Group knows will sell Covered Products in California.

2.2 **Clear and Reasonable Warnings**

For Covered Products that contain acrylamide in a concentration exceeding the 100-ppb level set forth in section 2.1 above, and which are manufactured and packaged for distribution for authorized sale or use in California on or after the Effective Date, the Save Mart Group shall provide one of the following warning statements.

Option 1:

WARNING: This product can expose you to chemicals including Acrylamide, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

Option 2:

WARNING: Cancer and Reproductive Harm –
www.P65Warnings.ca.gov

This warning statement shall be prominently displayed on the Covered Products, on the packing of the Covered Products, or on a placard, shelf tag, or sign provided that the statement is displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual prior to sale. If the warning statement is displayed on the Covered Products’ label, it must be set off from other surrounding information. The same warning shall be posted on any websites under the exclusive control of the

1 Save Mart Group where Covered Products are sold into California. If other warnings are
2 required or allowed by Proposition 65 regulations adopted by OEHHA, such warnings may
3 be used in lieu of the options listed above.

4 **2.3 Sell-Through Period**

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

10 **3. MONETARY SETTLEMENT TERMS**

11 **3.1 Settlement Amount**

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

17 **3.2 Civil Penalty**

18 The portion of the settlement attributable to civil penalties shall be allocated according to
19 Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the
20 penalty. Three thousand, seven hundred and fifty dollars (\$3,750.00), paid to the California Office
21 of Environmental Health Hazard Assessment ("OEHHA"), and the remaining twenty-five percent
22 (25%) of the penalty, one thousand, two hundred and fifty dollars (\$1,250.00), paid to EHA
23 individually. These payments will be sent to the below addresses within fourteen (14) days of the
24 Effective Date.

25 All payments owed to EHA shall be delivered to the following address:

26 Environmental Health Advocates
27 225 Broadway, Suite 1900
28 San Diego, CA 92101

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

For United States Postal Service Delivery:

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

For Federal Express 2-Day Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

Save Mart agrees to provide EHA's counsel with a copy of the check payable to OEHHHA, simultaneous with its penalty payments to EHA.

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

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

3.3 Attorneys' Fees and Costs

The portion of the settlement attributable to attorneys' fees and costs, forty-five thousand dollars (\$45,000.00), shall be paid to EHA's counsel, who are entitled to attorneys' fees and costs incurred by it in this action, including but not limited to investigating potential violations, bringing this matter to Save Mart's attention, as well as litigating and negotiating a settlement in the public interest.

Save Mart shall provide their payment to EHA's counsel in two installments starting within fourteen (14) days of the Effective Date and continuing thereafter for sixteen (16) days.

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1 The first installment shall be in the total amount of thirty-five thousand dollars
2 (\$35,000.00) payable in the amount of seventeen thousand five hundred dollars (\$17,500.00)
3 to Glick Law Group, PC and seventeen thousand five hundred dollars (\$17,500.00) to
4 Nicholas & Tomasevic, LLP, respectively.

5 The second installment shall be in the total amount of ten thousand dollars (\$10,000.00)
6 payable in the amount of five thousand dollars (\$5,000.00) to Glick Law Group, PC and five
7 thousand dollars (\$5,000.00) to Nicholas & Tomasevic, LLP, respectively. If the first installment of
8 thirty-five thousand dollars (\$35,000.00) is paid on time, then the second installment of ten
9 thousand dollars (\$10,000.00) will be waived by EHA and EHA's counsel. The addresses for these
10 two entities are:

11
12 Noam Glick
13 Glick Law Group
14 225 Broadway, 19th Floor
San Diego, CA 92101

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

17 18 **3.4 Timing**

19 The first installment of the above-mentioned checks will be sent within fourteen (14) days of
20 the Effective Date, and the second installment, unless waived pursuant to Section 3.3, will be sent
21 within thirty (30) days of the Effective Date. If the deadline is on Sunday or holiday, it will be
22 extended until the next day that is not a holiday.

23 **4. CLAIMS COVERED AND RELEASED**

24 **4.1 EHA's Public Release of Proposition 65 Claims**

25 Plaintiff acting on its own behalf and in the public interest releases Save Mart and its parents,
26 subsidiaries, affiliated entities under common ownership, branded markets, its directors, officers,
27 principals, agents, employees, attorneys, insurers, accountants, predecessors, successors, and assigns
28 (collectively, the "Save Mart Group"), each entity to whom the Save Mart Group directly or

indirectly distributes, ships, or sells the Covered Products including but not limited to downstream distributors, wholesalers, customers, and retailers, franchisees, franchisors, cooperative members, suppliers, licensees, and licensors, and all of the foregoing entities' owners, directors, officers, agents, principals, employees, attorneys, insurers, accountants, representatives, predecessors, successors, and assigns (collectively referred to as the "Releasees") from all claims for violations of Proposition 65 up through the Effective Date based on exposure to acrylamide from Covered Products. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to acrylamide from Covered Products.

4.2 EHA's Individual Release of Claims

EHA, in its individual capacity, also provides a release to Save Mart and/or Releasees, which shall be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of every nature, character, and kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to acrylamide in Covered Products manufactured, imported, sold, or distributed by the Save Mart Group before the Effective Date. With respect to the foregoing waivers and releases in this paragraph, EHA hereby specifically waives any and all rights and benefits which it now has, or in the future may have, conferred by virtue of the provisions of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT 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.

4.3 Save Mart's Release of EHA

Save Mart on its own behalf, and on behalf of Releasees as well as its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA and its attorneys and other representatives, for any and all actions taken or statements

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1 made by EHA and its attorneys and other representatives, whether in the course of
2 investigating claims, otherwise seeking to enforce Proposition 65 against them, in this
3 matter or with respect to the Covered Products.

4 **5. COURT APPROVAL**

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

8 **6. SEVERABILITY**

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

12 **7. GOVERNING LAW**

13 The terms of this Consent Judgment shall be governed by the laws of the state of California
14 as applied within the state of California. In the event that Proposition 65 is repealed, or is otherwise
15 rendered inapplicable for reasons, including but not limited to changes in the law, then Save Mart
16 may provide written notice to EHA of any asserted change, and shall have no further injunctive
17 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered
18 Products are so affected.

19 In the event the California Office of Health Hazard Assessment adopts a regulation or
20 safe use determination, or issues an interpretive guideline that exempts Covered Products
21 from meeting the requirements of Proposition 65; or if the Ninth Circuit Court of Appeals
22 upholds the District Court decision to grant a preliminary injunction in *California Chamber of*
23 *Commerce v. Becerra*, No. 2:19-cv-01019-KJM-JDP (E.D. Cal.); or if Proposition 65 is
24 determined to be preempted by federal law or a burden on First Amendment rights with
25 respect to acrylamide in Covered Products or Covered Products substantially similar to
26 Covered Products, then the Save Mart Group shall be relieved of its obligation to comply with
27 Section 2 herein.
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8. NOTICE

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

If to Save Mart:

Jeffrey Parker
Sheppard Mullin
333 South Hope Street 43rd Floor
Los Angeles, CA 90071

If to EHA:

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

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

9. COUNTERPARTS; DIGITAL SIGNATURES

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

10. POST EXECUTION ACTIVITIES

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

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1 **11. MODIFICATION**

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

6 **12. AUTHORIZATION**

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

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

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


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14. ENTIRE AGREEMENT


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

AGREED TO:

Date: September 27, 2021

By: 
ENVIRONMENTAL HEALTH
ADVOCATES, INC.**AGREED TO:**

Date: 10/4/2021

By: 
SAVE MART SUPERMARKETS**IT IS SO ORDERED.**

Date: _____

JUDGE OF THE SUPERIOR COURT