

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 Environmental Health Advocates, Inc.

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

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

21 ENVIRONMENTAL HEALTH
22 ADVOCATES, INC., a California organization,

23 Plaintiff,

24 v.

25 BASE CULTURE, INC., a Florida
26 corporation, and DOES 1 through 100,
27 inclusive,

28 Defendants.

Case No. RG21092656

[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”), on the one hand, and Base Culture, Inc. (“Base Culture” or “Defendant”), on the other hand, with EHA and Base Culture 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

Base Culture 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 Base Culture manufactures, imports, sells, and distributes for sale keto bread products that expose consumers in California to acrylamide at levels that require a Proposition 65 warning. Further, EHA alleges that Base Culture knew of the exposure to acrylamide and therefore violated its duty to warn individuals in California. Base Culture denies the allegations as well as any wrongdoing.

1.5 Notices of Violation

On January 22, 2021, EHA served Base Culture, Whole Foods Market California, Inc., the California Attorney General, and all other required public enforcement agencies with a 60-Day Notice of Violation of Proposition 65. (“Initial Notice”). The Initial Notice alleged that Base Culture violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated with exposures to acrylamide contained in its “Base Culture Original Keto Bread.”

On March 18, 2021, EHA served Base Culture, Whole Foods Market California, Inc., the California Attorney General, and all other required public enforcement agencies with an Amended 60-

1 Day Notice of Violation of Proposition 65. (“Amended Notice”). The Amended Notice included all
2 varieties of Base Culture’s keto bread products.

3 No public enforcer has commenced or is otherwise prosecuting an action to enforce the
4 violations alleged in the Initial Notice or Amended Notice (hereinafter, the “Notices”).

5 **1.6 “Covered Products” Description**

6 The products covered by this Consent Judgment are keto bread including, but not limited to,
7 “Original Keto Bread,” “Soft Sandwich Bread,” “7 Nut & Seed Bread,” “Cinnamon Raisin Bread,” and
8 “Cheese Bread,” manufactured or processed by Base Culture that allegedly contain acrylamide and are
9 imported, sold, shipped, delivered or distributed for sale to consumers in California by Releasees (as
10 defined in section 4.1) (“Covered Products”), whether sold under the brand name Base Culture, or any
11 other brand or private label at all grocery, retail, and other locations and sales channels, including on
12 the Internet.

13 **1.7 Complaint**

14 On March 19, 2021, EHA filed a Complaint against Base Culture for the alleged violations of
15 Proposition 65 that are the subject of the Notices (“Complaint”).

16 **1.8 No Admission**

17 Base Culture 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. Nothing
20 in this Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law,
21 issue of law, or violation of law, nor shall compliance with this Consent Judgment be construed as an
22 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall
23 not, however, diminish or otherwise affect Base Culture’s obligations, responsibilities, and duties under
24 this Consent Judgment.

25 **1.9 Jurisdiction**

26 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this
27 Court has jurisdiction over Base Culture as to the allegations in the Complaint, that venue is proper in
28

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 and Compliance Date

For purposes of this Consent Judgment, the term “Effective Date” means the date on which the Court grants the motion for approval of this Consent Judgment, as discussed in Section 5. The Compliance Date is the date that is sixty (60) days after the Effective Date. In the event that Proposition 65 and its regulations are repealed or preempted as to food products, or are otherwise amended to exclude acrylamide in foods, then Base Culture shall have no further reformulation or warning obligations pursuant to this Consent Judgment.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Reformulation of Covered Products

Any Covered Products that Base Culture sells, imports, or distributes for sale in California on and after the Compliance Date 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.

2.2 Clear and Reasonable Warnings

For Covered Products that contain acrylamide in a concentration exceeding the 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 Compliance Date, Base Culture shall provide one of the following Proposition 65 warnings:

Option 1:

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

Option 2:

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

1 The word “**WARNING**” shall be displayed in all capital letters and bold print. This warning
2 statement shall be prominently displayed on the packaging of the Covered Products, or on a placard,
3 shelf tag, or sign provided that the statement is displayed with such conspicuousness, as compared with
4 other words, statements, or designs as to render it likely to be read and understood by an ordinary
5 individual prior to sale. If the warning statement is displayed on the Covered Products’ label, it must
6 be set off from other surrounding information. The same warning shall be posted on any websites
7 where Covered Products are sold into California. If subsequently enacted changes to Proposition 65
8 or its implementing regulations require the use of additional or different information on any warning
9 specifically applicable to the Covered Products (the “New Safe Harbor Warning”), the Parties agree
10 that the New Safe Harbor Warning may be utilized in place of or in addition to, as applicable, the
11 warnings set forth in this Section.

12 **2.3 Sell-Through Period**

13 Notwithstanding anything else in this Consent Judgment, the Covered Products that are
14 manufactured on or prior to the Compliance Date shall be subject to release of liability pursuant to this
15 Consent Judgment, without regard to when such Covered Products were, or are in the future, distributed
16 or sold to customers. As a result, the obligation of Base Culture, or any Releasees (if applicable), does
17 not apply to Covered Products manufactured on or prior to the Compliance Date.

18 **3. MONETARY SETTLEMENT TERMS**

19 **3.1 Settlement Amount**

20 Base Culture shall pay fifty thousand dollars (\$50,000.00) in settlement and total satisfaction
21 of all the claims referred to in the Notices, the Complaint, and this Consent Judgment. This includes
22 civil penalties in the amount of five thousand dollars (\$5,000.00) pursuant to Health and Safety Code
23 section 25249.7(b) and attorneys’ fees and costs in the amount of forty-five thousand dollars
24 (\$45,000.00) pursuant to Code of Civil Procedure section 1021.5.

25 **3.2 Civil Penalty**

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

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

4 Environmental Health Advocates
5 225 Broadway, Suite 1900
6 San Diego, CA 92101

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

8 For United States Postal Service Delivery:

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

14 For Federal Express 2-Day Delivery:

15 Mike Gyurics
16 Fiscal Operations Branch Chief
17 Office of Environmental Health Hazard Assessment
18 1001 I Street
19 Sacramento, CA 95814

20 Base Culture agrees to provide EHA’s counsel with a copy of the check payable to OEHHA,
21 simultaneous with its penalty payments to EHA.

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

- 24 • “Glick Law Group” (EIN: 47-1838518) at the address provided in Section 3.2(a)(i);
- 25 • “Nicholas & Tomasevic” (EIN: 46-3474065) at the address provided in Section 3.2(a)(i);
- 26 and
- 27 • “Office of Environmental Health Hazard Assessment” 1001 I Street, Sacramento, CA
28 95814.

3.3 Attorneys’ Fees and Costs

The portion of the settlement attributable to attorneys’ fees and costs shall be paid to EHA’s
counsel, who are entitled to attorneys’ fees and costs incurred by it in this action, including but not

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

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

6
7 Noam Glick
8 Glick Law Group
9 225 Broadway, 19th Floor
10 San Diego, CA 92101

11 Craig Nicholas
12 Nicholas & Tomasevic, LLP
13 225 Broadway, 19th Floor
14 San Diego, CA 92101

15 **3.4 Timing**

16 The above-mentioned checks will be issued as follows:

17 Within ten (10) days of the Effective Date: Base Culture will issue the civil penalty checks to
18 EHA (\$1,250) and OEHHHA (\$3,750); as well as the first installment payment of EHA's attorneys' fees
19 and costs totaling \$5,000 – with \$2,500 issued to Nicholas & Tomasevic, LLP and \$2,500 issued to
20 Glick Law Group.

21 Within forty (40) days of the Effective Date: Base Culture will issue its second installment
22 payment of EHA's attorneys' fees and costs totaling \$10,000 – with \$5,000 issued to Nicholas &
23 Tomasevic, LLP and \$5,000 issued to Glick Law Group.

24 Within seventy (70) days of the Effective Date: Base Culture will issue its third installment
25 payment of EHA's attorneys' fees and costs totaling \$10,000 – with \$5,000 issued to Nicholas &
26 Tomasevic, LLP and \$5,000 issued to Glick Law Group.

27 Within one hundred (100) days of the Effective Date: Base Culture will issue its fourth
28 installment payment of EHA's attorneys' fees and costs totaling \$10,000 – with \$5,000 issued to
Nicholas & Tomasevic, LLP and \$5,000 issued to Glick Law Group.

1 Within one hundred and thirty (130) days of the Effective Date: Base Culture will issue its fifth
2 and final installment payment of EHA's attorneys' fees and costs totaling \$10,000 – with \$5,000 issued
3 to Nicholas & Tomasevic, LLP and \$5,000 issued to Glick Law Group.

4 **4. CLAIMS COVERED AND RELEASED**

5 **4.1 EHA's Public Release of Proposition 65 Claims**

6 For any claim or violation arising under Proposition 65 alleging a failure to warn about
7 exposures to acrylamide from Covered Products manufactured, imported, sold, or distributed by Base
8 Culture prior to the Compliance Date, EHA, acting for the general public, releases Base Culture of any
9 and all liability arising under Proposition 65. This includes Base Culture's owners, parents,
10 subsidiaries, affiliated entities under common ownerships, its directors, officers, agents, employees,
11 attorneys, and each entity to whom Base Culture directly or indirectly distributes or sells Covered
12 Products, including but not limited to downstream distributors, wholesales, customers, retailers,
13 franchisees, cooperative members and licensees, (collectively, the "Releasees"). Releasees include
14 defendants, their parents, and all subsidiaries and affiliates thereof and their respective employees,
15 agents, and assigns that sell Base Culture's Covered Products. Compliance with the terms of this
16 Consent Judgment constitutes compliance with Proposition 65 with respect to the alleged or actual
17 failure to warn about exposures to acrylamide from Covered Products manufactured, imported, sold,
18 or distributed by Base Culture after the Compliance Date. This Consent Judgment is a full, final and
19 binding resolution of all claims that were or could have been asserted against Base Culture and/or
20 Releasees for failure to provide warnings for alleged exposure to acrylamide contained in Covered
21 Products.
22

23 **4.2 EHA's Individual Release of Claims**

24 EHA, in its individual capacity, also provides a release to Base Culture and/or Releasees, which
25 shall be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action,
26 obligations, costs, expenses, attorney's fees, damages, losses, claims, liabilities, and demands of every
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1 nature, character, and kind, whether known or unknown, suspected or unsuspected, arising out of
2 alleged or actual exposures to acrylamide in Covered Products manufactured, imported, sold, or
3 distributed by Base Culture before the Compliance Date.

4 **4.3 Base Culture's Release of EHA**

5 Base Culture on its own behalf, and on behalf of Releasees as well as its past and current agents,
6 representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA
7 and its attorneys and other representatives, for any and all actions taken or statements made by EHA
8 and its attorneys and other representatives, whether in the course of investigating claims, otherwise
9 seeking to enforce Proposition 65 against them, in this matter or with respect to the Covered Products.
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11 **5. COURT APPROVAL**

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

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

19 **7. GOVERNING LAW**

20 The terms of this Consent Judgment shall be governed by the laws of the state of California as
21 applied within the state of California. In the event that Proposition 65 is repealed, or is otherwise
22 rendered inapplicable for reasons, including but not limited to changes in the law, then Base Culture
23 may provide written notice to EHA of any asserted change, and shall have no further injunctive
24 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
25 so affected.

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1 **8. NOTICE**

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

5 If to Base Culture:

6 Jennifer M. Adams
7 Amin Talati Wasserman, LLP
8 100 S. Wacker Dr. STE 2000
9 Chicago, IL 60606

5 If to EHA:

6 Jake Schulte
7 Nicholas & Tomasevic, LLP
8 225 Broadway, 19th Floor
9 San Diego, CA 92101

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

11 **9. COUNTERPARTS; DIGITAL SIGNATURES**

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

15 **10. POST EXECUTION ACTIVITIES**

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

25 **11. MODIFICATION**

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

1 **12. AUTHORIZATION**

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

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


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

9 **14. ENTIRE AGREEMENT**

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

15 **AGREED TO:**

16 Date: March 25, 2021.

17 By: 
18 ENVIRONMENTAL HEALTH
19 ADVOCATES, INC.

15 **AGREED TO:**

16 Date: 3/26/21

17 By: 
18 BASE CULTURE, INC.

21 **IT IS SO ORDERED.**

22 Date: _____

23 _____
24 JUDGE OF THE SUPERIOR COURT
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