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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

**AMENDED [PROPOSED] CONSENT  
JUDGMENT**

(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” or “Plaintiff”), on the one hand, and Base Culture, Inc. (“Base Culture” or “Defendant”), on  
5 the other hand, with EHA and Base Culture each individually referred to as a “Party” and collectively  
6 referred to as the “Parties.”

7 **1.2 Plaintiff**

8 EHA is a corporation organized in the state of California, acting in the interest of the general  
9 public. It 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 Base Culture employs ten or more individuals and is a “person in the course of doing business”  
13 for 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 EHA alleges that Base Culture manufactures, imports, sells, and distributes for sale keto bread  
17 products that expose consumers in California to acrylamide at levels that require a Proposition 65  
18 warning. Further, EHA alleges that Base Culture knew of the exposure to acrylamide and therefore  
19 violated its duty to warn individuals in California. Base Culture denies the allegations as well as any  
20 wrongdoing.

21 **1.5 Notices of Violation**

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

27 On March 18, 2021, EHA served Base Culture, Whole Foods Market California, Inc., the  
28 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 Initial Notice (“Complaint”).

16 On June 16, 2021, EHA filed a First Amended Complaint (“FAC”) against Base Culture. The  
17 FAC added the additional products specified in the Amended Notice.

18 **1.8 No Admission**

19 Base Culture denies the material factual and legal allegations of the Notices and Complaint and  
20 maintains that all of the products it has manufactured, imported, sold, and/or distributed for sale in  
21 California, including the Covered Products, have been, and are, in compliance with all laws. Nothing  
22 in this Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law,  
23 issue of law, or violation of law, nor shall compliance with this Consent Judgment be construed as an  
24 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall  
25 not, however, diminish or otherwise affect Base Culture’s obligations, responsibilities, and duties under  
26 this Consent Judgment.  
27  
28

1           **1.9     Jurisdiction**

2           For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this  
3 Court has jurisdiction over Base Culture as to the allegations in the Complaint, that venue is proper in  
4 the 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.

6           **1.10     Effective Date and Compliance Date**

7           For purposes of this Consent Judgment, the term “Effective Date” means the date on which the  
8 Court grants the motion for approval of this Consent Judgment, as discussed in Section 5. The  
9 Compliance Date is the date that is sixty (60) days after the Effective Date. In the event that Proposition  
10 65, and its regulations are repealed or preempted as to food products, or are otherwise amended to  
11 exclude acrylamide in foods, then Base Culture shall have no further reformulation or warning  
12 obligations pursuant to this Consent Judgment.

13 **2.     INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

14           **2.1     Reformulation of Covered Products**

15           Any Covered Products that Base Culture sells, imports, or distributes for sale in California on  
16 and after the Compliance Date shall not exceed 100 parts per billion (“ppb”) for acrylamide, using tests  
17 performed by a laboratory accredited by the State of California, a federal agency, or a nationally  
18 recognized accrediting organization, using LC-MS/MS (Liquid Chromatograph-Mass Spectrometry),  
19 unless such Covered Products comply with the warning requirements of Section 2.2.

20           **2.2     Clear and Reasonable Warnings**

21           For Covered Products that contain acrylamide in a concentration exceeding the ppb level set  
22 forth in Section 2.1 above, and which are manufactured and packaged for distribution for authorized  
23 sale or use in California on or after the Compliance Date, Base Culture shall provide one of the  
24 following Proposition 65 warnings:

25           **Option 1:**

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

1           **Option 2:**

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

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

14                   **2.3     Sell-Through Period**

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

20                   **3.     MONETARY SETTLEMENT TERMS**

21                   **3.1     Settlement Amount**

22          Base Culture shall pay fifty thousand dollars (\$50,000.00) in settlement and total satisfaction  
23          of all the claims referred to in the Notices, the Complaint, and this Consent Judgment. This includes  
24          civil penalties in the amount of five thousand dollars (\$5,000.00) pursuant to Health and Safety Code  
25          section 25249.7(b) and attorneys’ fees and costs in the amount of forty-five thousand dollars  
26          (\$45,000.00) 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.

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

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

All payments owed to OEHHA (EIN: 68-0284486) shall be delivered directly to OEHHA (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

Base Culture agrees to provide EHA’s counsel with a copy of the check payable to OEHHA, 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.

1 **3.3 Attorneys' Fees and Costs**

2 The portion of the settlement attributable to attorneys' fees and costs shall be paid to EHA's  
3 counsel, who are entitled to attorneys' fees and costs incurred by it in this action, including but not  
4 limited to investigating potential violations, bringing this matter to Base Culture's attention, as well as  
5 litigating and negotiating a settlement in the public interest.

6 Base Culture shall provide their payment to EHA's counsel in two checks, divided equally,  
7 payable to Glick Law Group, PC (\$22,500) and Nicholas & Tomasevic, LLP (\$22,500) respectively.

8 The addresses for these two entities are:

9  
10 Noam Glick  
11 Glick Law Group  
225 Broadway, 19<sup>th</sup> Floor  
San Diego, CA 92101

12 Craig Nicholas  
13 Nicholas & Tomasevic, LLP  
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 OEHHA (\$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  
28

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

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

7       **4. CLAIMS COVERED AND RELEASED**

8           **4.1 EHA’s Public Release of Proposition 65 Claims**

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

25           **4.2 EHA’s Individual Release of Claims**

26           EHA, in its individual capacity, also provides a release to Base Culture and/or Releasees, which  
27 shall be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action,  
28 obligations, costs, expenses, attorney’s fees, damages, losses, claims, liabilities, and demands of every



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.  
10

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.

15 **6. SEVERABILITY**

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

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.

26 ///

27 ///

28 ///

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

If to EHA:

Jake Schulte  
Nicholas & Tomasevic, LLP  
225 Broadway, 19th Floor  
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**

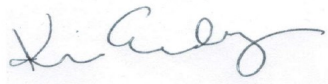
10 This Consent Judgment contains the sole and entire agreement and understanding of the Parties  
11 with respect to the entire subject matter herein, and any and all prior discussions, negotiations,  
12 commitments, and understandings related hereto. No representations, oral or otherwise, express 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:**

**AGREED TO:**

16 Date: September 20, 2021

Date: September 26, 2021

17  
18 By:   
19 ENVIRONMENTAL HEALTH  
20 ADVOCATES, INC.

By:   
BASE CULTURE, INC.

21  
22 **IT IS SO ORDERED.**

23  
24 Date: \_\_\_\_\_

25  
26 JUDGE OF THE SUPERIOR COURT