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HEATHER RUSSINKO, ELIZABETH
CIBOTARIU, MARTHA RABELLO, and the
NEW JERSEY HOME BAKERS
ASSOCIATION

Plaintiffs

v.

THE NEW JERSEY DEPARTMENT OF
HEALTH and CHRISTOPHER RINN, in his
official capacity as Acting Commissioner of
the New Jersey Department of Health

Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: UNION COUNTY

DOCKET NO.:

COMPLAINT

Plaintiffs Heather Russinko, Elizabeth Cibotariu, Martha Rabello and the New Jersey Home Bakers Association (collectively “Plaintiffs”), by and through counsel, hereby sue Defendants, the New Jersey Department of Health, and Christopher Rinn, in his official capacity as Acting Commissioner of the New Jersey Department of Health, (collectively “Defendants”), and allege as follows:

SUMMARY OF ACTION

1. This is a civil rights lawsuit to vindicate the right of New Jerseyans to earn an honest living by legally selling safe and delicious home-baked goods and other homemade foods to their friends, neighbors, and other consumers.

2. New Jersey is the *only* state to ban the sale of home-baked goods. This ban even extends to baked goods that the state does not consider “potentially hazardous”—that is, baked goods, such as cookies, muffins, breads, and cakes that do not require refrigeration, are shelf stable, and very safe. Violators of the ban face up to \$1,000 in fines for a first offense. New Jersey has no genuine health or safety reason for maintaining the ban on selling not-potentially hazardous, home-baked goods. There is no report of anyone, anywhere, ever becoming sick from an improperly baked good. In addition, this ban is hurting hundreds of New Jerseyans across the state who just want to sell their baked goods to support themselves and their families. Preventing the sale of home-baked goods is thus arbitrary and irrational in violation of the New Jersey’s Constitution’s Due Process guarantee.

3. New Jersey’s ban covers the sale of all other homemade foods, as well. Yet the state exempts from the ban any home-baked goods and other not-potentially hazardous homemade foods if sold for charity. These other foods include chocolates, hard candies, dried herbs and spices, maple syrups, honeys, dried cookie and cake mixes, and dried pastas. Allowing home-baked goods and other homemade foods to be sold to support a nonprofit, but not to support one’s family, violates the New Jersey Constitution’s Equal Protection guarantee.

JURISDICTION AND VENUE

4. Plaintiffs bring this lawsuit for declaratory and injunctive relief under the New Jersey Declaratory Judgment Act, N.J.S.A. 2A:16-52, and the New Jersey Civil Rights Act, N.J.S.A. 10:6-2(c), for violations of art. I, ¶ 1 of the New Jersey Constitution.

5. Plaintiffs seek declaratory and injunctive relief concerning the licensing and other requirements for retail food establishments set forth in Chapters 3 and 15 of Title 24 of the New Jersey statutes and Chapter 24 of the State Sanitary Code, codified at N.J.A.C. 8:24-1.1 to 8:24-10.2, insofar as they apply to persons preparing and selling not-potentially hazardous home-baked goods and other not-potentially hazardous homemade foods directly to consumers. As applied to such persons, these statutes and regulations violate the Due Process and Equal Protection clauses and guarantees of art. I, ¶ 1 of the New Jersey Constitution.

6. This Court has jurisdiction pursuant to the New Jersey Civil Rights Act, N.J.S.A. 10:6-2(d), and the N.J. Constitution, art. VI, § III, ¶ 2.

7. Venue is proper in this Court pursuant to N.J. Court Rules, R. 4:3-2(a)(2) as the cause(s) of action arose in this county.

THE PARTIES

8. Plaintiff Heather Russinko is a resident of Sussex County, New Jersey, where she works full time and raises her 14-year old son as a single mom. Heather would like to sell her home-baked goods, homemade chocolates, and homemade dried cookie mixes to help support herself and her son. Heather is also a founder, member, and part of the Leadership Committee of Plaintiff NJ Home Bakers Association.

9. Plaintiff Elizabeth “Liz” Cibotariu is a resident of Ocean County, New Jersey. Liz is a mother of two young daughters, an Iraq War veteran, and a helicopter technician. Liz

would like to sell her home-baked goods to help support herself and her family. Liz is also a founder, member, and part of the Leadership Committee of the NJ Home Bakers Association.

10. Plaintiff Martha Rabello is a resident of Union County, New Jersey. Martha is a former pastry chef and bakery owner and is now a stay-at-home mom for her two young sons. Martha would like to sell her home-baked goods and homemade chocolates to help support herself and her family. Martha is also a founder, member, and part of the Leadership Committee of the NJ Home Bakers Association.

11. Plaintiff NJ Home Bakers Association is an unincorporated nonprofit organization located in New Jersey. It currently has 10 members in counties across the state, including Heather, Liz, and Martha. It has the purpose of educating, supporting, and galvanizing New Jersey's home baking community in an effort to legalize the sale of not-potentially hazardous home-baked goods and other not-potentially hazardous homemade foods. It participates in this lawsuit on behalf of its members, who all wish to sell their home-baked goods, and other not-potentially hazardous homemade foods, to support themselves and their families.

12. Defendant New Jersey Department of Health ("NJDOH") is a governmental department of the State of New Jersey created and empowered under N.J.S.A. 26:1A-2, 26:1A-37 and 24:2-1. It is charged with enforcing and implementing laws, regulations, and policies to carry out the food regulation scheme set forth in Chapters 3 and 15 of Title 24 of the New Jersey statutes and Chapter 24 of the State Sanitary Code, codified at N.J.A.C. 8:24-1.1 to 8:24-10.2.

13. Defendant Christopher Rinn is the Acting Commissioner of the NJDOH. Mr. Rinn has direct authority over NJDOH personnel, as well as the responsibility and practical ability to ensure that laws, regulations, and policies that the NJDOH is charged with enforcing

and implementing are enforced and implemented in accordance with the New Jersey Constitution. Mr. Rinn is sued in his official capacity.

STATEMENT OF FACTS

NEW JERSEY'S BAN ON THE SALE OF HOME-BAKED GOODS AND OTHER HOMEMADE FOODS

14. New Jersey is the last state in the country with a ban on selling home-baked goods.

15. Until recently, Wisconsin also banned the sale of home-baked goods, but the ban was declared unconstitutional pursuant to state substantive due process and equal protection guarantees, and enjoined by a state trial court.

16. New Jersey's ban is stricter than Wisconsin's was in that it also covers all other homemade foods.

17. New Jersey's ban applies even if home bakers and other home food producers simply want to sell their goods directly to friends, neighbors, or farmers' market patrons.

18. Instead of allowing the sale of homemade foods, New Jersey requires those who wish to sell their goods to be licensed. N.J.S.A. 24:15-13. In order to be licensed, a person is not permitted to use their home kitchen and must instead access a commercial-grade kitchen. N.J.A.C. 8:24-2.1(c)(1), 8:24-3.2(a)(2).

19. Those selling their food directly to consumers must be licensed as a "retail food establishment." *See* N.J.A.C. 8:24-1.5 (definition of a retail food establishment).

20. A retail food establishment is defined, in part, as "[a]n operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food." *Id.*

21. The licensing requirements for retail food establishments are onerous, intrusive, and costly.

22. Most significantly, the use of a kitchen “in a private home” is prohibited for a retail food establishment. N.J.A.C. 8:24-2.1(c)(1) (prohibiting “retail food establishment operations” that are “conducted in a private home”); N.J.A.C. 8:24-3.2(a)(2) (“Food prepared in a private home shall not be used or offered for human consumption in a retail food establishment”); *see also* N.J.A.C. 8:24-1.5 (definition of “retail food establishment”).

23. Instead, retail food establishments require use of a commercial-grade kitchen that is completely separate from one’s home kitchen.

24. These commercial-grade kitchens must comply with hundreds of statutes and regulations regarding their structure, equipment, and processes. These statutes and regulations are set forth in Chapter 15 of Title 24 of the New Jersey statutes and Chapter 24 of the State Sanitary Code, codified at N.J.A.C. 8:24-1.1 to 8:24-10.2. *See, e.g.*, N.J.S.A. 24:15-2 (governing retail food establishment “[c]leaniness, lighting, plumbing, and ventilation”); *id.* at 24:15-3 (governing retail food establishment “[c]onstruction of walls and floors”); N.J.A.C. 8:24-4.1 (governing retail food establishment “[m]aterials for construction and repair”); *id.* at 8:24-4.2 (governing retail food establishment “[d]esign and construction”); *id.* at 8:24-4.6 (governing retail food establishment “[c]leaning of equipment and utensils”).

25. Accessing a commercial-grade kitchen is extremely burdensome and costs tens of thousands of dollars per year. Even renting a shared commercial kitchen typically costs about \$25 to \$35 an hour, in addition to storage fees and other expenses. Young mothers with children also have to consider childcare expenses. Moreover, not many shared commercial kitchens exist,

and as a result, it is extremely difficult to find available shared kitchen space in convenient locations.

26. The retail food establishment license has other requirements, as well, including a lengthy application, pre-operational inspection, future inspections, and payment of an annual licensing fee. N.J.S.A. 24:15-13; N.J.A.C. 8:24-8.2; *id.* at 8:24-9.1 to 9.2.

27. In short, New Jersey residents are prohibited from selling baked goods and other homemade foods made in their home kitchens and, instead, must build or lease a commercial-grade kitchen, receive licensure as a retail food establishment, abide by hundreds of pages of regulations, subject themselves to governmental inspection, and pay the government fees.

28. Failure to comply with these restrictions is punishable as a first offense by up to \$1,000 in fines. N.J.S.A. 26:1A-10.

New Jersey's ban covers "not-potentially hazardous" home-baked goods and other not-potentially hazardous homemade foods.

29. New Jersey's licensing requirements apply even to the sale of baked goods and other foods that are "not-potentially hazardous"—that is, even foods that do not "require[] temperature control" and cannot support "[t]he rapid and progressive growth of infectious or toxigenic microorganisms." N.J.A.C. 8:24-1.5 (giving the definition of both "potentially hazardous food" and the definition of what is *not* considered to be a "potentially hazardous food"); N.J.A.C. 8:24, et seq. (using the term "not-potentially hazardous food" and "non potentially hazardous food" interchangeably, throughout).

30. In layman's terms, "not-potentially hazardous" food means food that does not require refrigeration, is shelf safe, and is safe for consumption.

31. Not-potentially hazardous home-baked goods include most cookies, muffins, breads, and cakes that are commonly baked at home.

32. Not-potentially hazardous baked goods are extremely safe, as bacteria that causes foodborne illness is killed at temperatures far below normal baking temperatures.

33. Indeed, there is no report of anyone ever becoming sick from an improperly baked good.

34. Nevertheless, the sale of not-potentially hazardous home-baked goods is flatly prohibited in New Jersey.

35. New Jersey's ban also covers the sale of all other not-potentially hazardous homemade foods, including chocolates, hard candies, dried herbs and spices, maple syrups, honeys, dried cookie and cake mixes, and dried pastas.

36. Like home-baked goods, these other homemade goods are extremely safe.

License Exemption for Religious or Charitable Sales

37. New Jersey has one exemption to its ban on selling home-baked goods and other homemade foods. Specifically, the state excludes from the definition of “retail food establishment”—and, thus, from all appurtenant licensing requirements and regulations—“[a] kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function such as a religious or charitable organization’s bake sale.” N.J.A.C. 8:24-1.5.

38. The unlimited sale of such foods is allowed so long as “the consumer is informed by a clearly visible placard at the sales or service location that the food is prepared in a kitchen that is not subject to regulation and inspection by the health authority.” *Id.*

39. These exempted sales include not-potentially hazardous home-baked goods, as well as all other not-potentially hazardous foods prepared in a home kitchen.

40. As explained below, not-potentially hazardous home-baked goods and other not-potentially hazardous homemade foods are exactly what the Plaintiffs wish to sell. The Plaintiffs, however, are prohibited from selling them solely because they wish to sell them to support themselves and their families, rather than a religious or charitable cause.

ILLEGITIMATE RATIONALE BEHIND HOME-BAKED GOOD BAN

41. The reason New Jersey requires a retail food establishment license for selling baked goods and other not-potentially-hazardous foods to support oneself and one's family appears to be to protect licensed bakers and other commercial food producers from competition from would-be home bakers and other home-food producers.

42. Since 2011, multiple bills to allow the sale of homemade foods have been introduced in the legislature.

43. These bills are sometimes known as the "Homebakers' Bills."

44. These bills have had broad bipartisan support.

45. For example, Bill A1761 passed the Assembly unanimously in 2013 and Bill A1244 passed the Assembly unanimously in 2014.

46. Both of these bills would have allowed the unlicensed sale of not-potentially hazardous home-baked goods, as long as the seller indicated with a sign at the time of sale that the baked goods were not subject to regulation and inspection.

47. Although identical bills originated in the Senate (S93 and S136), they were never allowed a vote on the Senate floor.

48. That is because Senator Joseph Vitale, chairman of the Senate's Health, Human Services and Senior Citizens Committee, refused to give the bills a hearing or otherwise let the bills out of committee.

49. The most recent Homebakers' Bill to be introduced in the legislature is Bill A3618.

50. Bill A3618 is broader than previous Homebakers' Bills in that it would allow the unlicensed sale of multiple types of not-potentially hazardous homemade foods, not just home-baked goods. Unlike previous bills, it also caps each seller at \$50,000 in annual gross sales.

51. Bill A3618 passed the Assembly unanimously in December 2016.

52. When an identical bill—S1768—was introduced in the Senate, however, Senator Vitale again refused to allow the bill out of committee.

53. Senator Vitale publicly stated that he opposes the bills because he wants to protect commercial bakers and other food producers from competition.

54. As the Associated Press reported, Vitale said that: "If the cap is \$50,000, that's potentially \$50,000 or some portion that's out of the bottom line of a small baker."

55. As a result, hundreds of home bakers and other home food producers across the state are still banned from using their home kitchens to support themselves and their families.

PLAINTIFF HEATHER RUSSINKO

56. Plaintiff Heather Russinko is one of the many New Jerseyans harmed by the State's ban on selling not-potentially hazardous homemade foods.

57. Heather is a single mom raising a 14-year-old son. Heather left her son's father after suffering his physical and emotional abuse.

58. As part of Heather's healing process, Heather immersed herself in home baking.

59. Over the years, Heather has become very skilled at baking and makes elaborately decorated cakes, cupcakes, cake pops, and pretzels.

60. Baking at home is a way for Heather to bond with her son. At first, her son just helped and they would also watch baking shows together. But now, Heather's son has become so interested in baking and cooking that he does it on his own, even making YouTube videos of his progress.

61. Heather also uses baking as a way to stay involved with her son's school. Although Heather works a full-time job, she learned that she could still stay active in her son's school by baking for school activities, like birthday parties, her son's football team, fundraisers, and the PTA. Soon, Heather became known as the "treat mom."

62. Over the past few years, cake pops have become Heather's specialty. Cake pops are small cupcakes shaped like lollipops, covered with frosting, and placed on a stick. Now, Heather is also known at her son's school as the "Cake Pop Lady."

63. In addition to baked goods, Heather enjoys making other homemade sweets for her family and friends, as well. She makes peppermint chocolate bark and also dried cookie mixes in mason jars. For the dried cookie mixes, the recipients simply add liquids to make the mix into cookie batter for baking.

64. Numerous friends, neighbors, and people at Heather's son's school have offered to buy Heather's homemade goods.

65. At first, Heather accepted these offers, and she had much success selling her goods.

66. Heather was excited that she was turning her hobby into a business. Heather does not make much money at her job and is often one or two paychecks behind in her expenses. Heather planned to use the money from selling her goods to pay her bills and to save college tuition money for her son.

67. But Heather was forced to put her dream of running a business on hold. That is because Heather learned that selling her homemade foods is illegal.

68. Although Heather's homemade goods, including her cakes, cupcakes, cake pops, pretzels, chocolate bark, and dried cookie mixes, are not potentially hazardous, New Jersey law prohibits her from selling them because they were made in her home kitchen.

69. While it is perfectly legal for Heather to give away her homemade goods or sell them to raise money for her son's school or another charitable or religious cause, New Jersey law bars Heather from selling any of her homemade foods to support herself and her son.

70. Instead, Heather can sell homemade foods to support herself and her son only with a retail food establishment license.

71. Heather cannot meet the requirements for such a license. Heather cannot afford to either acquire or rent a commercial-grade kitchen. Nor would paying to access a commercial-grade kitchen be economically feasible for Heather to make a profit with her goods.

72. Using an offsite commercial-grade kitchen is also not compatible with Heather's full-time job. Traveling to an offsite commercial-grade kitchen to bake would require her to spend the little free time she has away from her son.

73. Moreover, Heather does not want to work in a commercial-grade kitchen because she enjoys baking in her kitchen at home.

74. As a result, Heather has had to turn down numerous offers to buy her baked goods, out of fear of being cited and penalized with thousands of dollars in fines.

75. If not for the fact that New Jersey bans her from doing so, Heather would immediately resume selling her not-potentially hazardous home-baked goods, chocolates, and dried cookie mixes directly to consumers, including to friends, neighbors, and the community at her son's school.

76. Heather estimates that she could make approximately \$20,000 in profits annually if she were able to sell her not-potentially hazardous homemade goods directly to consumers.

This amount of money would significantly improve Heather's life and the life of her son.

77. Since Heather learned of the ban, she started volunteering her time to help change the law. She has dedicated hundreds of hours to this cause over the last two years.

78. This volunteering has included tabling at the New Jersey State Fair, participating in a rally at the Capitol, meeting with a news crew in her home, meeting with the Governor's staff, and meeting with Senator Joe Vitale to try to change his mind about opposing the bills.

79. In 2016, Heather helped found the nonprofit organization the NJ Home Bakers Association.

80. Heather is now part of the Leadership Committee of the NJ Home Bakers Association, which is the governing body of that Association.

81. Another co-founder and member of the NJ Home Bakers Association's Leadership Committee is Plaintiff Liz Cibotariu.

PLAINTIFF LIZ CIBOTARIU

82. Plaintiff Liz Cibotariu is another New Jerseyan harmed by the State's ban on selling homemade foods.

83. Liz is the mother of two young daughters, ages 4 and 8. She also works as a helicopter technician for the New Jersey Army National Guard and was a radio operator with the 42nd Infantry Division in the Iraq War.

84. Liz has a lifetime love of baking. She started to love baking as a child in Romania, where Liz was raised by her grandmother, an avid baker.

85. Liz views baking as an art form, and it has become an important creative outlet in her life. Now, Liz frequently bakes for her friends and family.

86. Liz makes cakes, cupcakes, and cake pops.

87. Buying baking ingredients and supplies, however, is a significant financial strain for Liz.

88. Although Liz sometimes receives gifts of pans and decorating tools from her friends and family in exchange for making them baked goods, Liz does not bake as much as she would like because of the expense.

89. Liz would like to sell her home-baked goods to both cover the costs of her hobby and to supplement her family's income.

90. Although Liz's home-baked goods, including her cakes, cupcakes, and cake pops, are not-potentially hazardous, New Jersey law prohibits her from selling them because they were made in her home kitchen.

91. While it is perfectly legal for Liz to give away her goods or sell them for a religious or charitable cause, New Jersey law bars Liz from selling any of her home-baked goods to support herself and her family.

92. Instead, New Jersey law allows Liz to sell baked goods to support herself and her family only with a retail food establishment license.

93. Liz cannot meet the requirements for such a license, as she does not have access to a commercial-grade kitchen. Liz cannot afford the expense of either acquiring or renting a commercial-grade kitchen. Nor would paying to access a commercial-grade kitchen be economically feasible for Liz to make a profit with her baked goods.

94. Using an offsite commercial-grade kitchen is also not compatible with Liz's full time job as a helicopter technician. Traveling to an offsite commercial-grade kitchen to bake would require her to spend the little free time she has away from her husband and two daughters.

95. Moreover, Liz does not want to work in a commercial-grade kitchen because she enjoys baking in her kitchen at home.

96. As a result, Liz has had to turn down numerous offers to buy her baked goods, out of fear of being cited and penalized with thousands of dollars in fines.

97. Liz estimates that she could make approximately \$3,000 in profits annually if she were able to sell her not-potentially hazardous home-baked goods directly to consumers. Liz would like to put this money toward college tuition funds for her daughters.

98. If not for the fact that New Jersey bans her from doing so, Liz would immediately start selling her not-potentially hazardous home-baked goods directly to consumers, including to family, friends, and neighbors.

99. Since Liz learned of the home-baking ban, she started volunteering her time to help change the law. She has dedicated hundreds of hours to this cause over the last 2 years.

100. This volunteering has included tabling at the New Jersey State Fair, participating in a rally at the Capitol, talking to reporters, meeting with the Governor's staff, baking for charitable events, and meeting with Senator Joe Vitale to try to change his mind about opposing the bills.

101. In 2016, Liz helped found the nonprofit organization, the NJ Home Bakers Association.

102. Liz is now part of the Leadership Committee of the NJ Home Bakers Association, which is the governing body of that Association.

103. Another cofounder and member of the Leadership Committee of the NJ Home Bakers Association is Plaintiff Martha Rabello.

PLAINTIFF MARTHA RABELLO

104. Plaintiff Martha Rabello is also harmed by the State's ban on selling homemade foods.

105. Martha is a trained pastry chef and used to work in a bakery in Brooklyn, NY.

106. After moving to New Jersey, Martha rented a shared commercial-grade kitchen, where she baked cookies and sold them wholesale to other bakeries.

107. Martha specialized in baking Brazilian-inspired cookies. Martha lived in Brazil for 25 years and Martha's parents and husband are all native Brazilians.

108. But renting the commercial-grade kitchen was difficult, expensive, and inconvenient for Martha.

109. Although Martha spent months looking for a shared commercial-grade kitchen to rent, she had difficulty finding one that she could afford. Many shared kitchens charged \$35 an hour or more.

110. Martha initially settled on a shared kitchen that was an hour away and that charged \$20 an hour. Martha rented this kitchen for several months.

111. After many hours of additional research, Martha was able to persuade a church closer to her home to let her rent its commercial-grade kitchen in its basement for \$25 an hour. Martha rented this kitchen for a year.

112. Martha ended her baking business after she had her two sons, now 2 and 5 years old, and became a stay-at-home mom.

113. Martha would now like to supplement her husband's income with her baking. Specifically, Martha would like to use her home kitchen to bake her Brazilian-inspired cookies for sale directly to consumers.

114. Martha would also like to use her home kitchen to make chocolates for sale. Currently, Martha makes chocolate bark every year at Christmas for herself and her family.

115. Although Martha's homemade goods, including her cookies and chocolate bark, are not-potentially hazardous, New Jersey law prohibits her from selling them because they were made in her home kitchen.

116. While it is perfectly legal for Martha to give away her goods or sell them for a religious or charitable cause, New Jersey law bars Martha from selling any of her homemade foods to support herself and her family.

117. Instead, Martha can sell homemade foods to support herself or her family only with a retail food establishment license.

118. Martha cannot meet the requirements for such a license.

119. Martha cannot afford to pay for the hourly rental fee, as well as for childcare, during the time she would have to rent a commercial-grade kitchen.

120. In addition, traveling to an offsite commercial-grade kitchen to bake would require Martha to spend the little free time she has away from her husband and two sons.

121. Moreover, Martha does not want to work in a commercial-grade kitchen because she enjoys baking and making chocolate in her kitchen at home.

122. As a result, Martha has had to turn down numerous offers to buy her homemade goods, out of fear of being cited and penalized with thousands of dollars in fines.

123. If not for the fact that New Jersey bans her from doing so, Martha would immediately start selling her not-potentially hazardous home-baked goods and chocolates directly to consumers, including to family, friends, and neighbors.

124. Martha estimates that she could make approximately \$5,000 in profits annually if she were able to sell her not-potentially hazardous home-baked goods and chocolates directly to consumers.

125. Since Martha learned of the homemade-food ban, she started volunteering her time to help change the law. She has dedicated hundreds of hours to this cause over the last two years.

126. This volunteering has included tabling at the New Jersey State Fair, participating in a rally at the Capitol, building a website for the Association, answering social media inquiries and emails regarding the homemade-food ban, talking to reporters, baking for charitable events, visiting with legislators at the Capitol, meeting with the Governor's staff, and meeting with Senator Joe Vitale to try to change his mind about opposing the bills.

127. In 2016, Martha helped found the nonprofit organization the NJ Home Bakers Association.

128. Martha is now a part of the Leadership Committee of the NJ Home Bakers Association, which is the governing body of that Association. This Association is the fourth Plaintiff in this lawsuit.

PLAINTIFF NJ HOME BAKERS ASSOCIATION

129. The NJ Home Bakers Association ("The Association") was founded in 2016 by Heather, Liz, Martha, and seven other likeminded home bakers from across the state.

130. The Association is an unincorporated, nonprofit organization.

131. The goal of the Association is to educate, support, and galvanize New Jersey's home baking community in an effort to legalize the sale of not-potentially hazardous home-baked goods and other not-potentially hazardous homemade foods.

132. Pursuant to that goal, the Association has pursued several activities to try to change the law. These activities include participating in a rally at the Capitol, visiting with legislators at the Capitol, submitting testimony at legislative hearings on the Homebakers' Bills, meeting with the Governor's staff, working closely with legislators on drafting bill language, and meeting with Senator Joe Vitale to try to change his mind about opposing the bills.

133. The Association has also pursued a number of activities to raise public awareness about the homemade-food ban, including hosting a website and several social media pages, baking for charitable events, tabling at public events and festivals, maintaining a mailing list with over 700 email addresses, talking to reporters, and publishing an opinion piece in the *Wall Street Journal*.

134. In addition to Heather, Liz, and Martha, the Association has seven other members who live in New Jersey.

135. All of these members helped found the Association and all of these members are part of the Association's Leadership Committee, which is the governing body of that Association.

136. All these members are also home bakers who wish to sell their not-potentially hazardous home-baked goods, and other not-potentially hazardous homemade goods, directly to consumers.

137. However, none of these members can sell their not-potentially hazardous homemade goods without risking thousands of dollars in fines.

138. One of these members is Thomas "Scott" King. Scott lives in Atlantic County, New Jersey. Scott moved to New Jersey in 2014 after living in California, where he legally sold homemade cakes, cupcakes, cookies, and chocolates from his home.

139. After Scott moved to New Jersey, he was shocked to learn that he could not legally continue his home business. Scott lost a substantial part of his income as a result.

140. If not for the fact that New Jersey bans him from doing so, Scott—and the other members of the Association—would immediately start selling their not-potentially hazardous home-baked goods, and other not-potentially hazardous homemade goods, directly to consumers, including to family, friends, and neighbors.

CONSTITUTIONAL VIOLATIONS
(AS TO ALL DEFENDANTS)

**COUNT I: THE BAN ON SELLING HOME-BAKED GOODS VIOLATES THE DUE
PROCESS GUARANTEE OF THE NEW JERSEY CONSTITUTION**

141. Plaintiffs re-allege and incorporate by reference the allegations contained in all of the preceding paragraphs.

142. The Due Process guarantee of art. I, ¶ 1 of the New Jersey State Constitution provides that “[a]ll persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.”

143. The Due Process guarantee protects, among other things, the right to pursue a chosen calling and operate a lawful business without arbitrary, irrational, unreasonable, or oppressive governmental interference.

144. As applied to persons producing and selling not-potentially hazardous home-baked goods directly to consumers, New Jersey’s retail food establishment licensing requirements, which ban the sale of baked goods made in a home kitchen, are arbitrary, irrational, unreasonable, and oppressive.

145. As applied to persons selling not-potentially hazardous home-baked goods directly to consumers, the ban restricts and prohibits the ability of Plaintiffs, members of the NJ Home Bakers Association, and other New Jersey home bakers to pursue their chosen calling.

146. Not-potentially hazardous home-baked goods are safe for human consumption whether or not they are produced in a licensed commercial-grade kitchen. Accordingly, New Jersey's ban on the sale of not-potentially hazardous home-baked goods serves no public health or safety objective.

147. New Jersey has no compelling, substantial, or legitimate governmental interest in banning the sale of not-potentially hazardous home-baked goods directly to consumers.

148. New Jersey's ban, as it applies to the sale of not-potentially hazardous home-baked goods directly to consumers, is not necessary to achieve, narrowly tailored to, reasonably related to, or rationally related to any compelling, substantial, or legitimate governmental interest.

149. The actual purpose of banning the sale of not-potentially hazardous home-baked goods directly to consumers is to protect existing commercially licensed food businesses from competition.

150. Protecting existing commercially licensed food businesses from competition is not a legitimate governmental interest.

151. As applied to persons producing and selling not-potentially hazardous home-baked goods directly to consumers, the licensing and other requirements set forth in Chapters 3 and 15 of Title 24 of the New Jersey statutes and Chapter 24 of the State Sanitary Code, codified at N.J.A.C. 8:24-1.1 to 8:24-10.2, violate the Due Process guarantee of art. I, ¶ 1 of the New Jersey Constitution.

152. But for the fact that the statutory and regulatory provisions set forth in paragraph 151, above, prevent them from doing so, Plaintiffs, and members of the NJ Home Bakers Association, would sell not-potentially hazardous home-baked goods directly to consumers.

153. Plaintiffs, and members of the NJ Home Bakers Association, have no other legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights caused by the statutory and regulatory provisions set forth in paragraph 151, above.

154. Unless the statutory and regulatory provisions set forth in paragraph 151 are declared unconstitutional and permanently enjoined as applied to persons producing and selling not-potentially hazardous home-baked goods directly to consumers, Plaintiffs, and members of the NJ Home Bakers Association, will continue to suffer great and irreparable harm.

COUNT II: THE BAN ON SELLING HOME-BAKED GOODS AND OTHER HOMEMADE FOODS VIOLATES THE EQUAL PROTECTION GUARANTEE OF THE NEW JERSEY CONSTITUTION

155. Plaintiffs re-allege and incorporate by reference all of the allegations contained in all of the preceding paragraphs.

156. Like the Due Process guarantee, the Equal Protection guarantee is found in art. I, ¶ 1 of the New Jersey State Constitution. It provides that “All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.”

157. The Equal Protection guarantee protects the right of similarly situated individuals to be treated similarly.

158. New Jersey law has an exemption to its retail food establishment license requirement for those making food in “[a] kitchen in a private home if only food that is not-potentially hazardous is prepared for sale or service at a function such as a religious or charitable organization’s bake sale if the consumer is informed by a clearly visible placard at the sales or service location that the food is prepared in a kitchen that is not subject to regulation and inspection by the health authority.” N.J.A.C. 8:24-1.5.

159. Those who wish to sell not-potentially hazardous homemade foods, including baked goods, directly to consumers for profit are similarly situated to those who wish to sell not-potentially hazardous homemade foods, including baked goods, directly to consumers at a religious or charitable function.

160. Yet those who wish to sell not-potentially hazardous homemade foods, including baked goods, for profit—that is, to support themselves and their family instead of a religious or charitable organization—are prohibited from doing so. Instead, a person can only sell not-potentially hazardous foods, including baked goods, for profit with a retail food establishment license, while those selling not-potentially hazardous homemade foods for a religious or charitable organization are exempted from the homemade-food ban, licensure, and all of the regulations on licensees.

161. There is no rational reason to regulate those who wish to sell not-potentially hazardous homemade foods, including baked goods, for profit more harshly than those selling the same exact foods for a church, charity, or other nonprofit.

162. There is no substantial distinction between those who wish to sell not-potentially hazardous homemade foods, including baked goods, for profit more harshly than those selling the same exact foods for a church, charity, or other nonprofit.

163. Classifying those who wish to sell not-potentially hazardous homemade foods, including baked goods, for profit differently than exempted persons who sell not-potentially hazardous homemade foods, including baked goods, for a church, charity, or other nonprofit is not germane to furthering any compelling, substantial, or legitimate governmental interest.

164. Those who wish to sell not-potentially hazardous homemade foods, including baked goods, for profit are not so different from exempted persons who sell not-potentially hazardous homemade foods, including baked goods, for a church, charity, or other nonprofit as to reasonably suggest the propriety of substantially different legislation for these groups.

165. Indeed, not-potentially hazardous homemade foods, including baked goods, made for profit are just as safe as, if not safer than, not-potentially hazardous homemade foods, including baked goods, made for a church, charity, or other nonprofit.

166. As applied to persons producing and selling not-potentially hazardous homemade foods made for profit, including baked goods, the licensing and other requirements set forth in Chapters 3 and 15 of Title 24 of the New Jersey statutes and Chapter 24 of the State Sanitary Code, codified at N.J.A.C. 8:24-1.1 to 8:24-10.2, violate the Equal Protection guarantee of art. I, ¶ 1 of the New Jersey Constitution.

167. But for the fact that the statutory and regulatory provisions set forth in paragraph 166 prevent from them from doing so, Plaintiffs, and the members of the NJ Home Bakers Association, would sell not-potentially hazardous homemade goods, including baked goods, directly to consumers.

168. Plaintiffs and the members of the NJ Home Bakers Association have no other legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable

harm to their constitutional rights caused by the statutory and regulatory provisions set forth in paragraph 166 above.

169. Unless the statutory and regulatory provisions set forth in paragraph 166, above, are declared unconstitutional and permanently enjoined as applied to persons producing and selling not-potentially hazardous homemade foods, including baked goods, directly to consumers, Plaintiffs, and the members of the NJ Home Bakers Association will continue to suffer great and irreparable harm.

REQUEST FOR RELIEF

Plaintiffs respectfully request that the Court grant the following relief:

A. A declaratory judgment that, as applied to Plaintiffs and other persons producing and selling not-potentially hazardous home-baked goods directly to consumers, the licensing and other requirements for retail food establishments set forth in Chapters 3 and 15 of Title 24 of the New Jersey statutes and Chapter 24 of the State Sanitary Code, codified at N.J.A.C. 8:24-1.1 to 8:24-10.2, violate the Due Process guarantee of art. I, ¶ 1 of the New Jersey Constitution;

B. A declaratory judgment that, as applied to Plaintiffs and other persons producing and selling not-potentially hazardous homemade foods (including home-baked goods) directly to consumers, the licensing and other requirements for retail food establishments set forth in Chapters 3 and 15 of Title 24 of the New Jersey statutes and Chapter 24 of the State Sanitary Code, codified at N.J.A.C. 8:24-1.1 to 8:24-10.2, violate the Equal Protection guarantee of art. I, ¶ 1 of the New Jersey Constitution;

C. A preliminary and permanent injunction prohibiting Defendants from enforcing the licensing and other requirements for retail food establishments set forth in Chapters 3 and 15 of Title 24 of the New Jersey statutes and Chapter 24 of the State Sanitary Code, codified at

N.J.A.C. 8:24-1.1 to 8:24-10.2, against Plaintiffs and other persons producing and selling not-potentially hazardous homemade foods (including home-baked goods) directly to consumers;

- D. Reasonable costs and attorneys' fees; and
- E. Such other legal or equitable relief as this Court may deem appropriate and just.

Dated: December 6, 2017

Respectfully submitted,



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**Lead Counsel for Plaintiffs; Applications for Admission Pro Hac Vice to be filed*