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Brad Van Patten

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

BRAD VAN PATTEN, an individual

Plaintiff,

v.

SC Johnson Professional, Inc., a Delaware
Corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No. 37-2019-00034383-CU-NP-CTL

[PROPOSED] CONSENT JUDGMENT

1. INTRODUCTION

1.1 **The Parties.** This settlement and consent judgment (“Settlement”) is entered into by and between Brad Van Patten (“Van Patten”) and SC Johnson Professional USA, Inc. (“SC Johnson”). Together, Van Patten and SC Johnson are collectively referred to as the “Parties.” Van Patten is an individual that resides in the State of California. SC Johnson is a company which employs ten or more persons and distributes products in the United States, including to California.

1.2 **General Allegations.** Van Patten alleges that SC Johnson is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code Sections 25249.6 et seq. (“Proposition 65”) and that cocamide diethanolamine is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer. Van Patten alleges that SC Johnson has therefore exposed individuals to cocamide diethanolamine from its sales of DEB Pearlescent Antibacterial Soap without first providing users of the product with a clear and reasonable cancer warning as required pursuant to Proposition 65. SC Johnson denies Van Patten’s allegations and claims and, for a variety of reasons, avers that it is not required to provide such Proposition 65 warnings for the DEB Pearlescent Antibacterial Soap distributed for sale in California.

1.3 **Product Description.** The products covered by this Settlement are all DEB Pearlescent Antibacterial Soap, including, without limitation, all varieties and bottle and dispenser types and sizes that contain cocamide diethanolamine (the “Products”) that have been manufactured, imported, distributed, offered for sale or sold in California by SC Johnson, its affiliates or their predecessors.

1.4 **Notice of Violation, Complaint, and Jurisdiction.** On March 6, 2019 Van Patten served SC Johnson Professional, Inc. and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6 et seq.” (the “Notice”). On May 18, 2020, Van Patten served SC Johnson and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6 et seq.” (the “SCJ USA Notice”). The SCJ USA Notice provided SC Johnson and others, including public

1 enforcers, with notice that alleged that SC Johnson was in violation of California Health & Safety
2 Code § 25249.6 for failing to warn California consumers and customers that use of the Products
3 will expose them to cocamide diethanolamine. No public enforcer has diligently prosecuted the
4 allegations set forth in the Notice or the SCJ USA Notice. On July 3, 2019, Van Patten filed a
5 complaint (“Complaint”) in the Superior Court of and for San Diego County (the “Court”) , Case
6 No. 37-2019-00034383-CU-NP-CTL. Pursuant to Stipulation executed concurrently herewith, Van
7 Patten named SC Johnson as Doe 1. For purposes of this Settlement, the Parties stipulate that this
8 Court has jurisdiction over the allegations of violations contained in the Complaint and personal
9 jurisdiction over SC Johnson, that venue is proper in the County of San Diego, and that this Court
10 has jurisdiction to enter this Settlement as a consent judgment as a full and final resolution of the
11 claims and allegations contained in the Complaint.

12 **1.5 No Admission.** This Settlement resolves claims that are denied and disputed. The
13 Parties enter into this Settlement as a full and final settlement of any and all claims between the
14 Parties for the purpose of avoiding prolonged litigation. Nothing in this Settlement shall be
15 construed as an admission by SC Johnson of any fact, finding, conclusion, issue of law, or violation
16 of law; nor shall compliance with this Settlement constitute or be construed as an admission by SC
17 Johnson of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
18 denied by SC Johnson. However, this Section 1.5 shall not diminish or otherwise affect SC
19 Johnson’s obligations, responsibilities and duties under this Settlement.

20 **1.6 Effective Date.** For purposes of this Settlement, the term “Effective Date” shall
21 mean the date that Van Patten has provided notice to SC Johnson that this Settlement has been
22 entered in the Court’s records as a consent judgment.

23 **2. INJUNCTIVE RELIEF**

24 **2.1** As of the Effective Date, and continuing thereafter, SC Johnson shall take any and all
25 necessary measures to ensure the Products are not sold by it in the State of California.
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3. SETTLEMENT PAYMENTS

3.1 Civil Penalties

In settlement of all the claims referred to in this Settlement, SC Johnson shall pay \$2,500 as a civil penalty, allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the payment to be remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the payment remitted to Van Patten no later than ten (10) business days following the Effective Date. More specifically, SC Johnson shall issue two separate checks for the payment to (a) “Office of Environmental Health Hazard Assessment” in the amount of \$1,875 (75%); and to (b) “Law Offices of George Rikos in Trust for Brad Van Patten” in the amount of \$625 (25%). These payments shall be delivered as follows:

(i) The payment owed to Van Patten shall be delivered to the following address:

George Rikos
Law Offices of George Rikos
Attn. Van Pattern v. SC Johnson Settlement
555 West Beech Street, Suite 500
San Diego, CA 92101

(ii) The payment owed to OEHHA (EIN: 68-0284486) shall be delivered directly to OEHHA (Memo Line “Prop 65 Penalties”) at the following address:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
Attn. Prop 65 Penalties – Van Patten v. SC Johnson Settlement
1001 I Street
Sacramento, CA 95814

SC Johnson shall provide Van Patten’s counsel with a copy of the check it sends to OEHHA with its payment to Van Patten. Late payments by SC Johnson shall be subject to additional penalties of \$100/day to be allocated between OEHHA and Van Patten in the same ratio as set forth above. Van Patten’s counsel shall provide SC Johnson with an IRS W-9 form for its firm and trust account for Van Patten within three (3) days of the Effective Date and SC Johnson’s payment deadlines under this Agreement shall be tolled pending its receipt of the W-9 form. In association with the issuance of the payments under this Settlement, SC Johnson will issue IRS 1099 forms as appropriate given the payees.

1 **3.2 Attorneys' Fees and Litigation Costs**

2 Within ten (10) business days of the Effective Date, SC Johnson shall reimburse Van
3 Patten's counsel \$19,500 for fees and costs incurred as a result of investigating and bringing this
4 claim, negotiating a settlement, and obtaining the Court's approval of the Settlement and its entry
5 as a consent judgment. SC Johnson shall issue a check for this amount payable to "Law Offices
6 of George Rikos" and deliver it to the address identified in Section 3.1 above. Except as
7 specifically provided in this Section 3, each Party shall bear its own costs in connection with this
8 action.

9 **4. MATTERS COVERED BY THIS CONSENT JUDGMENT**

10 **4.1 Release of SC Johnson and Downstream Customers and Entities.** This
11 Settlement is a full, final and binding resolution between Van Patten, acting on his own behalf and
12 in the public interest, and SC Johnson, of any violation of Proposition 65 that was or could have
13 been asserted by Van Patten or others in the public interest, or on behalf of their past and current
14 agents, representatives, attorneys, successors, and/or assigns ("Releasers") for failure to provide
15 warnings for alleged exposures to cocamide diethanolamine or cocamide contained in the Products,
16 and Releasers hereby release any such claims against SC Johnson and its parents, subsidiaries,
17 affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys,
18 successors and assignees, and each entity to which SC Johnson directly or indirectly distributes or
19 sells the Products, including but not limited to, downstream distributors, sales agents, wholesalers,
20 customers, retailers, group purchasing organizations, and their respective subsidiaries, affiliates and
21 parents, franchisees, cooperative members, licensees and customers (collectively, the "Releasees"),
22 from all claims for violations of Proposition 65 from use or sale of the Products.

23 In further consideration of the promises and agreements herein contained, and for the
24 payments to be made pursuant to Section 3 above, Van Patten, on behalf of himself, his past and
25 current agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue
26 and waives any right to institute, participate in, directly or indirectly, any form of legal action and
27 releases all claims that he or any of them may have, including without limitation, all actions and
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1 causes of action in law and in equity, all obligations, expenses (including without limitation all
2 attorneys' fees, expert fees, and investigation fees, and costs), damages, losses, liabilities and
3 demands against any of the Releasees of any nature, character, or kind, whether known or unknown,
4 suspected or unsuspected.

5 **4.2 SC Johnson's Release of Van Patten.** SC Johnson, on behalf of itself, its past and
6 current agents, representatives, attorneys, successors and assignees, hereby waives any and all
7 claims against Van Patten, his attorneys and other representatives, for any and all actions taken or
8 statements made by Van Patten or his attorneys and other representatives, whether in the course of
9 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter.

10 **4.3 California Civil Code Section 1542.** It is possible that other claims not known to
11 the Parties will develop or be discovered. Van Patten on behalf of himself only, on one hand, and
12 SC Johnson, on the other hand, acknowledge that this Settlement is expressly intended to cover and
13 include all such claims up through the Effective Date, including all rights of action therefor. The
14 Parties acknowledge that the claims released in Sections 4.1 and 4.2, above, may include unknown
15 claims, and nevertheless waive California Civil Code Section 1542 as to any such unknown claims.
16 California Civil Code Section 1542 reads as follows:

17 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
18 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT**
19 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING**
20 **THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD**
21 **HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH**
22 **THE DEBTOR OR RELEASED PARTY.**

23 Van Patten and SC Johnson each acknowledge and understand the significance and consequences
24 of this specific waiver of California Civil Code Section 1542.

25 **4.4 Deemed Compliance with Proposition 65.** Compliance by SC Johnson with this
26 Settlement following the Effective Date constitutes compliance with Proposition 65 with respect to
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1 exposure to cocamide diethanolamine from the Products. Products distributed by SC Johnson prior
2 to the Effective Date may be sold through as previously manufactured and labeled.

3 **5. ENTRY OF CONSENT JUDGMENT**

4 The Parties hereby request that the Court promptly enter this Settlement as a
5 consent judgment based on the motion for its approval Van Patten will be making
6 pursuant to Section 10 below. Upon entry of the Settlement as consent judgment, Van
7 Patten and SC Johnson waive their respective rights to a hearing or trial on the allegations
8 contained in the Complaint.

9 **6. SEVERABILITY**

10 If, subsequent to the entry of this Settlement as a consent judgment, any of the provisions
11 of this Settlement are deemed by a court to be unenforceable, the validity of the enforceable
12 provisions remaining shall not be adversely affected but only to the extent the deletion of the
13 provision deemed unenforceable does not materially affect, or otherwise result in the effect of the
14 Settlement being contrary to the intent of the Parties in entering into this Settlement.

15 **7. GOVERNING LAW/ENFORCEMENT**

16 The terms of this Settlement shall be governed by the law of the State of California and
17 apply within the State of California. The rights to enforce the terms of this Settlement are
18 exclusively conferred on the Parties hereto. Any Party may, after providing sixty (60) days written
19 notice and meeting and conferring within a reasonable time thereafter to attempt to resolve any
20 issues, by motion or application for an order to show cause before this Court, enforce the terms and
21 conditions contained in this Settlement. In the event that Proposition 65 is repealed or is otherwise
22 rendered inapplicable or limited by reason of law generally, due to federal preemption or the First
23 Amendment commercial speech rights of the U.S. Constitution, or as to the Products more
24 specifically, SC Johnson shall provide written notice to Van Patten of any asserted change in the
25 law, and shall have no further obligations pursuant to this Settlement Agreement with respect to,
26 and to the extent that, a Product is so affected.

1 **8. NOTICES**

2 Unless specified herein, all correspondence and notices required to be provided pursuant to
3 this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class
4 (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any
5 party by the other party to the following addresses:

6 For SC Johnson:

7 Chief Executive Officer
8 SC Johnson Professional USA, Inc.
9 2815 Coliseum Centre Dr.
10 Charlotte, NC 28217

11 and

12 General Counsel
13 S.C. Johnson & Son, Inc.
14 1525 Howe Street
15 Racine, Wisconsin 53403

16 and

17 Gary Roberts
18 Dentons US LLP
19 601 South Figueroa Street
20 Suite 2500
21 Los Angeles, CA 90017

22 For Van Patten:

23 George Rikos, Esq.
24 Law Offices of George Rikos
25 555 West Beech Street, Suite 500
26 San Diego, CA 92101

27 Either party, from time to time, may specify in writing to the other party a change of address to
28 which all notices and other communications shall be sent.

1 **9. COUNTERPARTS: SIGNATURES**

2 This Settlement may be executed in counterparts and by facsimile or .pdf signature, each of
3 which shall be deemed an original, and all of which, when taken together, shall constitute one and
4 the same document.
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10. **COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

Van Patten agrees to comply with the reporting requirements referenced in Health & Safety Code Section 25249.7(f) and to seek, by formal and properly noticed motion (including with service to the Office of the California Attorney General being fully effectuated at least 45 days prior to a requested hearing thereon), approval of this Settlement's terms pursuant to Proposition 65 and its associated entry as a consent judgment by the Court.

11. **MODIFICATION**

This Settlement may be modified only by a written agreement of the Parties and the approval of the Court or upon a duly noticed motion of either Party.

12. **ENTIRE AGREEMENT**

This Settlement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

13. **NO EFFECT OR USE IF NOT ENTERED**

This Settlement shall have no effect if it is not approved by the Court and entered as a consent judgment within one year of the earliest party signature. If this Settlement is not approved by the Court: (a) this Settlement and any and all prior agreements between the Parties merged herein shall terminate and become null and void, and the Complaint and action shall revert to the status that existed prior to the execution date of this Settlement; (b) no term of this Settlement or any draft thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall have any effect, nor shall any such matter be admissible in evidence for any purpose in this Complaint or action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine whether to modify the terms of the Settlement and to resubmit it for approval.

14. **AUTHORIZATION**

The undersigned are authorized to execute this Settlement and have read, understood and

1 agree to all of the terms and conditions contained of this Settlement.

| | |
|---|--|
| AGREED TO: | AGREED TO: |
| Date: <u>05/18/2020</u> | Date: _____ |
| By: <u>Brad Van Patten</u> Brad Van Patten | By: _____ SC Johnson Professional USA, Inc. |

6 **IT IS SO ORDERED, ADJUDGED TODAY AND DECREED THAT THE SETTLEMENT**
7 **SET FORTH ABOVE SHALL PROMPTLY BE ENTERED AS A CONSENT JUDGMENT**
8 **BY THIS COURT:**

9 DATED: _____

10 _____
JUDGE OF THE SUPERIOR COURT

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agree to all of the terms and conditions contained of this Settlement.

| | |
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| AGREED TO: | AGREED TO: |
| Date: _____ | Date: <u>May 15, 2020</u> |
| By: _____ | By: <u>Medip Esteade</u> |
| Brad Van Patten | SC Johnson Professional USA, Inc. |

IT IS SO ORDERED, ADJUDGED TODAY AND DECREED THAT THE SETTLEMENT SET FORTH ABOVE SHALL PROMPTLY BE ENTERED AS A CONSENT JUDGMENT BY THIS COURT:

DATED: _____

JUDGE OF THE SUPERIOR COURT

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