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23 Attorneys for Defendant
24 THE PASTENE COMPANIES, LTD.

25 SUPERIOR COURT OF THE STATE OF CALIFORNIA
26 COUNTY OF SAN DIEGO

27 BRAD VAN PATTEN, an individual

28 Plaintiff,

v.

THE PASTENE COMPANIES, LTD., a
Massachusetts corporation; and DOES 1 through 10,
inclusive

Defendants.

Case No.: 37-2020-00027206-CU-MC-CTL

**[PROPOSED] CONSENT JUDGMENT
AS TO DEFENDANT THE PASTENE
COMPANIES, LTD.**

Violation of Proposition 65, the Safe
Drinking Water and Toxic Enforcement Act
of 1986 (*Health & Safety Code*, § 25249.5,
et seq.)

Action Filed: August 4, 2020

Trial Date: None Set

FILED
Clerk of the Superior Court

NOV 04 2020

By: B. Orihuela, Deputy

VIA FAX

1 Plaintiff Brad Van Patten (“Van Patten”) and Defendant The Pastene Companies, Ltd.
2 (“Pastene”) enter into this Proposed Stipulated Consent Judgment (“Consent Judgment”) to settle
3 Van Patten’s allegations in his Complaint brought under Cal. Health & Safety Code §§ 25249.5 *et*
4 *seq.* (“Proposition 65”). The effective date of this Consent Judgment shall be the date upon which
5 the Court approves and enters this Consent Judgment (the “Effective Date”). Van Patten and
6 Pastene are collectively referred to herein as the “Parties” and individually as a “Party.”

7 **1. INTRODUCTION**

8 1.1 Van Patten is an individual residing in the State of California who seeks to promote
9 awareness of exposure to toxic chemicals and improve human health by reducing or eliminating
10 hazardous substances contained in consumer products.

11 1.2 Pastene is a Massachusetts corporation with its principal place of business at 330
12 Turnpike Street, Suite 100, Canton, Massachusetts. Van Patten alleges that Pastene is a person in
13 the course of doing business as that term is defined in Proposition 65, which Pastene does not
14 dispute for the sole purpose of this Consent Judgment and the resolution of the subject claims.

15 1.3 Van Patten alleges that Pastene has been responsible for the distribution and/or sale,
16 in the State of California, of pitted ripe olives (the “Covered Products”) that expose users of the
17 Covered Products to acrylamide without first providing “clear and reasonable warning” as required
18 under Proposition 65. Acrylamide is listed as a carcinogen and a reproductive toxicant pursuant to
19 Proposition 65. Pastene denies Van Patten’s claims and maintains that the Covered Products
20 comply with Proposition 65 and all applicable laws. The Covered Products include pitted ripe
21 olives sold in different forms of packaging, including but not limited to cans and jars, as well as
22 pitted ripe olives in various forms, including but limited to whole, sliced, and chopped.

23 1.4 On or about April 17, 2020, Van Patten served Pastene and various public
24 enforcement agencies with a document entitled “60-Day Notice of Violation” that provided public
25 enforcers and the noticed entities with notice of alleged violations of Proposition 65 for failing to
26 warn consumers of the presence of acrylamide in the Covered Products (the “Notice”). On August
27 4, 2020, Van Patten filed the complaint in this action, naming Pastene as defendant.

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1 1.5 The Parties enter into this Consent Judgment to settle disputed claims and defenses
2 in this action.

3 1.6 By execution of this Consent Judgment, the Parties do not admit any facts or
4 conclusions of law, including, but not limited to, any facts or conclusions of law regarding any
5 violation of Proposition 65, or any other statutory, regulatory, common law, or equitable doctrine.
6 Nothing in this Consent Judgment shall be construed as an admission by the Parties of any fact,
7 conclusion of law, issue of law, or violation of law, except with respect to an action seeking to
8 enforce the terms of this Consent Judgment. Nothing in this Consent Judgment, nor compliance
9 with its terms, shall constitute or be construed, considered, offered, or admitted as evidence of an
10 admission or evidence of fault, wrongdoing, or liability by Pastene, its officers, directors,
11 employees, members, managers, shareholders, equity owners, parents, subsidiaries or affiliated
12 corporations, in any administrative or judicial proceeding or litigation in any court, agency, or
13 forum. Except for the allegations settled and compromised, nothing in this Consent Judgment shall
14 prejudice, waive, or impair any right, remedy, argument, or defense that Van Patten or Pastene may
15 have against one another in any other pending legal proceeding as to allegations unrelated to this
16 action or claims released herein.

17 1.7 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
18 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
19 over Pastene as to the acts alleged in the Complaint, that venue is proper in the County of San
20 Diego, and that this Court has jurisdiction to enter and enforce this Consent Judgment.

21 **2. RELEASE**

22 2.1 This Consent Judgment is a full, final, and binding resolution between Van Patten,
23 on behalf of himself and his past and current agents, representatives, attorneys, successors, and
24 assignees (collectively, the “Releasers”), and on behalf of the public interest, and (a) Pastene, and
25 each of its directors, officers, employees, attorneys, agents, parents, and subsidiaries, and each
26 entity to whom Pastene directly or indirectly distributes or sells Covered Products, including, but
27 not limited, to downstream distributors, wholesalers, customers, and retailers; (b) all distributors,
28 wholesalers, customers, retailers, franchisees, cooperative members, and licensees of the entities

1 identified in (a), above; and (c) all past and current owners, parents, subsidiaries, affiliates, sister
2 and related companies, employees, shareholders, officers, directors, insurers, agents, attorneys,
3 predecessors, successors, and assigns of the entities and individuals identified in (a) and (b), above
4 (collectively, the "Releasees"), based on its failure to warn about alleged exposures to acrylamide
5 contained in the Covered Product that were manufactured, distributed, sold, or offered for sale to a
6 California customer before the Effective Date.

7 2.2 Van Patten, on behalf of himself and Releasors, and in the public interest, waives all
8 rights to institute or participate in, directly or indirectly, any form of legal action, and discharges
9 and releases all claims, actions, causes of action (in law or in equity), suits, liabilities, demands,
10 obligations, damages, costs, fines, penalties, losses, expenses and fees (including, but not limited to,
11 investigation fees, expert fees, and attorney's fees), and expenses (collectively, "Claims"), for
12 alleged violations of Proposition 65 alleged in the Notice and the Action from the failure to provide
13 warnings for alleged exposures to acrylamide, or for causing alleged exposures to acrylamide, in
14 Covered Products manufactured before the Effective Date. Compliance by Pastene with Section 3
15 of this Consent Judgment shall be deemed to constitute compliance by Pastene and any Releasee
16 with Proposition 65 with respect to any acrylamide in the Covered Products manufactured on or
17 after the Effective Date. Van Patten, on behalf of himself and Releasors, also releases and
18 discharges Releasees from any other statutory or common law claim arising from or relating to
19 alleged exposures to acrylamide in the Covered Products.

20 2.3 Pastene, on behalf of itself and Releasees, hereby waives any and all claims against
21 Releasors for any and all actions taken or statements made by Van Patten or Releasors in the course
22 of investigating claims or otherwise seeking to enforce Proposition 65 against Pastene in this action.

23 2.4 It is possible that other claims not known to the Parties arising out of the facts
24 alleged in the Notice and relating to the Covered Products will develop or be discovered. Van
25 Patten, on behalf of himself and Releasors, on one hand, and Pastene, on behalf of itself and
26 Releasees on the other hand, acknowledge that this Consent Judgment is expressly intended to cover
27 and include all such claims up through the Effective Date, including all rights of action therefor.
28 The Parties acknowledge that the claims released in Section 2.2 and 2.3 above may also include

1 unknown claims, and nevertheless waive California Civil Code section 1542 as to any such
2 unknown claims. California Civil Code section 1542 reads as follows:

3 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
4 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
5 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
6 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
7 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
8 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
9 OR RELEASED PARTY.

10 Van Patten and Pastene each acknowledge and understand the significance and consequences of this
11 specific waiver of California Civil Code section 1542.

12 3. INJUNCTIVE TERMS

13 3.1 After the Effective Date, Pastene shall not sell any Covered Products directly to
14 consumers in California or to retailers or distributors that Pastene knows will in turn sell to
15 consumers in California the Covered Products that Pastene sells to them, unless Pastene provides
16 one of the following warning statements:

17 **Option 1:**

18 **WARNING:** Consuming this product can expose you to [chemicals including] acrylamide,
19 which is known to the State of California to cause cancer [and birth defects or other
20 reproductive harm]. For more information, go to www.P65Warnings.ca.gov/food.

21 **Option 2:**

22 **WARNING:** Cancer [and Reproductive Harm] – www.P65Warnings.ca.gov/food

23 The warning in Option 2 may be used only if the warning appears on the product container
24 or labeling. Terms in bracketing are optional. The word “**WARNING**” shall be displayed in all
25 capital letters and bold print. This warning statement shall be prominently displayed on the
26 Product, on the packaging of the Product, or on a placard, shelf tag, or sign, provided that the
27 statement is displayed with such conspicuousness, as compared with other words, statements, or
28 designs as to render it likely to be read and understood by an ordinary individual prior to sale. If the
warning statement is displayed on the Product’s label, it must be set off from other surrounding
information and enclosed in a text box. If the warning statement is displayed on a placard, shelf tag,
or sign where the Product is offered for sale, the warning placard or sign must enable an ordinary
individual to easily determine which Products the warning applies to, and to differentiate between

1 the Products and other products to which the warning statement does not apply. For sales by
2 Defendant on the internet or by catalog where the consumer is not physically present, the warning
3 statement shall be displayed in such a manner that it is likely to be read and understood by an
4 ordinary individual prior to the authorization of or actual payment.

5 3.2 Covered Products sold, shipped, or distributed for sale by Pastene in California prior
6 to the Effective Date may be sold in California after the Effective Date without any Proposition 65
7 warning.

8 3.3 In addition, Pastene may follow the notification procedure set out in Title 27
9 California Code of Regulations section 25600.2 or a similar procedure where Pastene instructs its
10 distributor or retailer customers to provide warnings for the Covered Products consistent with
11 Section 3.1 above.

12 3.4 Nothing in this Consent Judgment shall be interpreted to relieve Pastene from any
13 obligation to comply with any other pertinent state or federal law or regulation.

14 4. PAYMENTS

15 4.1 Pastene agrees to pay a total settlement amount of \$45,000 within ten (10) days of
16 the Effective Date by separate checks apportioned as follows:

17 4.1.1 Penalty: Pastene shall issue two separate checks for a total of \$2,500 as
18 penalties pursuant to Health & Safety Code § 25249.12: (a) one check made payable to the State of
19 California's Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of
20 \$1,875 representing 75% of the total penalty; and (b) one check to Brad Van Patten in the amount of
21 \$625, representing 25% of the total penalty. Both checks shall be delivered to: The Law Offices of
22 George Rikos, 555 West Beech Street, Suite 500, San Diego, California 92101.

23 4.1.2 Attorneys' Fees and Costs: Pastene shall issue a check for \$42,500 to the
24 Law Offices of George Rikos, as Van Patten's attorneys, for its investigation fees and costs and
25 attorneys' fees and costs. The check shall be delivered to: The Law Offices of George Rikos, 555
26 West Beech Street, Suite 500, San Diego, California 92101. Before the Effective Date, The Law
27 Offices of George Rikos shall provide Pastene with its Employer Identification Number.

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1 **5. EXECUTION IN COUNTERPARTS AND FACSIMILE**

2 5.1 This Consent Judgment may be executed in counterparts, which taken together shall
3 be deemed to constitute the same document. A facsimile or portable document format (PDF)
4 signature shall be as valid as the original.

5 **6. ENTIRE AGREEMENT**

6 6.1 This Consent Judgment contains the sole and entire agreement and understanding of
7 the Parties with respect to the entire subject matter hereof, and all related prior discussions,
8 negotiations, commitments, and understandings. No other agreements, oral or otherwise, exist to
9 bind any of the Parties.

10 **7. MODIFICATION OF CONSENT JUDGMENT**

11 7.1 This Consent Judgment may be modified from time to time by express written
12 agreement of the Parties, with the approval of the Court and prior notice to the Attorney General's
13 Office, or by an order of this Court upon motion and prior notice to the Attorney General's Office
14 and in accordance with law.

15 7.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
16 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

17 **8. APPLICATION OF CONSENT JUDGMENT**

18 8.1 This Consent Judgment shall apply to, be binding upon, and inure to the benefit of,
19 Van Patten and the Releasors identified in Section 2 above.

20 **9. ENFORCEMENT OF CONSENT JUDGMENT**

21 9.1 Any Party may file a motion with the Court consistent with the terms and conditions
22 set forth in paragraph 9.2 of this Consent Judgment, to enforce the terms and conditions contained
23 in this Consent Judgment. The prevailing Party shall be entitled to its reasonable attorneys' fees
24 and costs incurred in such enforcement.

25 9.2 Prior to bringing any motion, order to show cause, or other proceeding to enforce
26 any terms of this Agreement, Van Patten shall provide a Notice of Violation ("NOV") to Pastene.
27 The NOV shall include, for each Covered Product alleged to be violation of this Agreement: the
28 date of alleged violations(s), place of sale, date and proof of purchase (if relevant), and any test data

1 obtained by Van Patten regarding each such Covered Product. Van Patten shall take no further
2 action regarding any alleged violation nor seek any monetary recovery for himself, his agents or his
3 counsel if, within 30 days of receiving such NOV, Pastene demonstrates that no such violation of
4 this Agreement has occurred. Should Van Patten, after receiving Pastene's response to the NOV,
5 contend that a violation of the Agreement as has occurred, the Parties shall meet and confer
6 concerning resolution of such dispute for a period of at least 30 days, following which either Party
7 may seek relief under Section 9.1.

8 **10. NOTIFICATION REQUIREMENTS**

9 10.1 Any notice required or permitted hereunder shall be effective only if given in writing
10 and delivered in person, certified or registered mail return receipt requested, or traceable overnight
11 delivery service, to the following designees:

12 For Van Patten:

13 Law Offices of George Rikos
14 555 West Beech Street, Suite 500
San Diego, California 92101

15 For Pastene:

16 John F. Franciosa
17 The Pastene Companies, Ltd.
330 Turnpike Street
18 Canton, Massachusetts, 02021

19 With a copy to its counsel:

20 Trenton H. Norris
21 Arnold & Porter Kaye Scholer LLP
Three Embarcadero Center, 10th Floor
San Francisco, California 94111

22 Any Party may change its designee(s) for purposes of notification by providing written notice of
23 such change pursuant to this section.

24 **11. SEVERABILITY**

25 11.1 If, subsequent to the execution of this Consent Judgment, any of the provisions of
26 this Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
27 provisions remaining shall not be adversely affected, unless the Court finds that any unenforceable
28 provision is not severable from the remainder of this Agreement.

1 **12. GOVERNING LAW**

2 12.1 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California and apply within the State of California. In the event that Proposition 65 or its
4 implementing regulations (including but not limited to the “safe harbor no significant risk level” for
5 acrylamide set forth at Cal. Code Regs., tit. 27, section 25705, subdivision (c)(2) or any “alternative
6 risk level” adopted by regulation or final decision of a court of competent jurisdiction) are repealed,
7 preempted, found by a court of competent jurisdiction to be otherwise unlawful or unconstitutional
8 with respect to products similar to the Covered Products, or are rendered inapplicable by reason of
9 law generally, or if the lead agency for Proposition 65 (currently OEHHA) takes some other final
10 regulatory action for products similar to the Covered Products in a manner that impacts the no
11 significant or alternative risk level for acrylamide or otherwise determines that warnings for
12 acrylamide are not required for such products as currently produced or as they may be reformulated,
13 then Pastene may provide written notice to Van Patten and may manufacture, sell, ship for sale,
14 and/or distribute Covered Products for sale in California without a warning if the Covered Products
15 do not create an exposure to acrylamide in excess of any changed or modified safe harbor no
16 significant risk level or alternative risk level or other requirement of the lead agency for Proposition
17 65.

18 **13. COURT APPROVAL**

19 13.1 This Consent Judgment is not effective until it is approved and entered by the Court.
20 The Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a
21 noticed motion is required for judicial approval of this Consent Judgment, which Van Patten shall
22 prepare and file.

23 **14. RETENTION OF JURISDICTION**

24 14.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent
25 Judgment.

26 **15. REPORTING OF THE CONSENT JUDGMENT**

27 15.1 Van Patten agrees to comply with the reporting requirements referenced in Health
28 and Safety Code section 25249.7(f).

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IT IS SO STIPULATED:

BRAD VAN PATTEN

Dated: 10/27/2020

By: *Bradley Van Patten*

Printed Name: Bradley Van Patten

Title: _____

THE PASTENE COMPANIES, LTD.

Dated: October 27, 2020

By: *JF*

Printed Name: John F. Franciosa

Title: Chief Financial Officer

IT IS SO ORDERED:

Dated: 11/4/2020

JOHN S. MEYER
Judge of the Superior Court