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BRAD VAN PATTEN

ELECTRONICALLY RECEIVED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court

SEP 24 2021

By: A. TAYLOR

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

BRAD VAN PATTEN, and individual,

Plaintiff,

v.

GOYA FOODS, Inc., a Delaware corporation;
AMAZON.COM, Inc., a Delaware Corporation;
and DOES 1 through 10, inclusive

Defendants.

Case No. 37-2020-00035232-CU-MC-CTL

~~AMENDED~~[PROPOSED] CONSENT
JUDGMENT

1. INTRODUCTION

1.1 The Parties. This Consent Judgment ("Consent Judgment") is entered into by and between Brad Van Patten ("Van Patten") and Goya Foods, Inc. ("Goya"). Together, Van Patten and Goya are collectively referred to as the "Parties." Van Patten is an individual who resides in the State of California, and seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Goya is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Cal. Health & Safety Code § 25249.6, *et seq.* ("Proposition 65").

AMENDED CONSENT JUDGMENT

1 **1.2 General Allegations.** Van Patten alleges that acrylamide is listed pursuant
2 to Proposition 65 as a chemical known to the State of California to cause cancer. Van
3 Patten alleges that Goya has exposed individuals to acrylamide from its sales of Goya
4 Plantain Chips without first providing users and consumers of the product with a clear and
5 reasonable cancer warnings required pursuant to Proposition 65.

6 **1.3 Product Description.** The products covered by this Consent Judgment are
7 all Non-California Compliant Goya Plantain Chips, including, without limitation, all
8 varieties and pack sizes of Product (the "Non-Compliant California Products") that have
9 been manufactured, imported, distributed, offered for sale, and/or sold in California by
10 Goya or its affiliates.

11 **1.4 Notice of Violation, Complaint, and Jurisdiction.** On July 7, 2020, Van
12 Patten served Goya and various public enforcement agencies with a document entitled
13 "Notice of Violation of California Health & Safety Code § 25249.6 et seq." (the "Notice").
14 The Notice provided Goya and such others, including public enforcers, with notice that
15 alleged that Goya was in violation of Proposition 65 for failing to warn California
16 consumers and customers that use of the Non-Compliant California Products will expose
17 them to acrylamide. No public enforcer has diligently prosecuted the allegations set forth
18 in the Notice. On October 2, 2020, based on the Notice and the absence of any authorized
19 public prosecutor of Proposition 65 having filed a suit based on the allegations contained
20 therein, Van Patten filed a complaint in the Superior Court of and for San Diego County
21 (the "Court"), Case No. 37-2020-00035232-CU-MC-CTL (the "Action"). For purposes of
22 this Consent Judgment, the Parties stipulate that the Court has jurisdiction over the
23 allegations in the Complaint and personal jurisdiction over Goya, that venue is proper in
24 the County of San Diego, and that the Court has jurisdiction to enter this Consent Judgment
25 as a full and final resolution of the claims and allegations which were or could have been
26 raised in the Action based on the facts alleged therein and/or in the Notice.

1 **1.5 No Admission.** This Consent Judgment resolves claims that are denied and
2 disputed. The Parties enter into this Consent Judgment as a full and final resolution of any and all
3 claims between the Parties for the purpose of avoiding prolonged litigation. Goya denies each and
4 every material allegations contained in the Notices and the Action and maintains that it has not
5 violated Proposition 65 and/or is not subject to that law. Nothing in this Consent Judgment shall
6 be construed as an admission by Goya of any fact, finding, issue of law, or violation of law; nor
7 shall compliance with this Consent Judgment constitute or be construed as an admission by Goya
8 of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied
9 by Goya. However, this Section 1.5 shall not diminish or otherwise affect the obligations,
10 responsibilities, and duties of Goya under this Consent Judgment.

11 **1.6 Effective Date.** For purposes of this Consent Judgment, the term “Effective
12 Date” shall mean the date this Consent Judgment has been approved by the Court and Van
13 Patten has provided notice to Goya that it has been entered in the Court’s records as a
14 consent judgment.

15 **2. INJUNCTIVE RELIEF**

16 **2.1 California Compliant Products**

17 Goya alleges it has two manufacturing processes. One of the processes is expressly
18 intended to address requirements for acrylamide under Proposition 65, such that acrylamide levels
19 are on average kept below the level requiring a cancer warning under Proposition 65 based on an
20 average consumer’s level and frequency of consumption of the chips and a 1×10^{-5} cancer risk
21 for acrylamide based on scientific evidence equivalent or better in quality to that which formed the
22 basis for the Proposition 65 listing of acrylamide as a carcinogen. These products are intended to
23 be sold in California. Without any implied meaning or admission, these products will be referred
24 herein as “California Compliant Products”.

1 **2.2 Non-California Compliant Products**

2 Goya's second manufacturing process is not expressly intended to address acrylamide
3 requirements under Proposition 65. Without any implied meaning or admission, these products
4 are referred to herein as "Non-California Compliant Products". It is Goya's position that the
5 products purchased by Van Patten in California were Non-California Compliant Products and
6 never intended to be sold in California. As of the Effective Date, and continuing thereafter, Goya,
7 will cease the import, distribution, or sale of its Non-California Compliant Products in California.

8 **3. CONSENT JUDGMENT PAYMENTS**

9 **3.1 Civil Penalties**

10 Goya shall pay \$5,000 as a civil penalty, allocated in accordance with Cal. Health
11 & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the penalty to be remitted to the
12 California Office of Environmental Health Hazard Assessment ("OEHHA") and the
13 remaining 25% of the Penalty remitted to Van Patten no later than ten (10) days following
14 the Effective Date. More specifically, Goya shall issue two separate checks for the civil
15 penalty payment to (a) "Office of Environmental Health Hazard Assessment" in the
16 amount of \$3,750 (75%); and to (b) "Law Offices of George Rikos in Trust for Brad Van
17 Patten" in the amount of \$1,250 (25%). Within ten (10) days of the Effective Date, Goya
18 shall deliver these payments as follows:

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

21 George Rikos
22 Law Offices of George Rikos
23 555 West Beech, Suite 500
24 San Diego, CA 92101

25 (ii) The penalty payment owed to OEHHA (EIN: 68-0284486) shall be
26 delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at the following
27 address:

1 Mike Gyurics
2 Fiscal Operations Branch Chief
3 Office of Environmental Health Hazard Assessment
4 Attn. Prop 65 Penalties – Van Patten v. Goya Consent Judgment
5 1001 I Street
6 Sacramento, CA 95814

7 Goya shall provide Van Patten's counsel with a copy of the check it sends to OEHHA with
8 its penalty payment to Van Patten. Goya's payment obligations shall be tolled until it
9 receives an IRS W-9 form for each payee. In association with the issuance of the payments
10 under this Consent Judgment, Goya will issue IRS 1099 forms as appropriate given the
11 payees.

12 **3.2 Attorneys' Fees and Litigation Costs**

13 Within ten (10) days of the Effective Date, Goya shall reimburse Van Patten's
14 counsel \$60,000 for fees and costs incurred as a result of investigating and bringing this
15 matter to Goya's attention, negotiating a Consent Judgment in the public interest, and
16 obtaining the Court's approval of the Consent Judgment and its entry as a consent
17 judgment. Goya shall issue a check for this amount payable to "Law Offices of George
18 Rikos" and deliver it to the address identified in Section 3.1 above. Goya's payment
19 obligations shall be tolled until it receives an IRS W-9 form for this payee.

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

21 **4.1 Release of Goya and Downstream Customers and Entities.** This Consent
22 Judgment is a full, final and binding resolution between Van Patten, acting on his own
23 behalf and in the public interest, and Goya of any violation of Proposition 65 that was or
24 could have been asserted by Van Patten or on behalf of his past and current agents,
25 representatives, attorneys, predecessors, successors, and/or assigns (collectively,
26 "Releasors") for failure to provide warnings for alleged exposures to acrylamide contained
27 in the Non-Compliant California Products, and Releasors hereby release any such claims
28 against Goya and its parents, shareholders, members, directors, officers, managers,

1 employees, representatives, agents, attorneys, divisions, subdivisions, subsidiaries,
2 partners, sister companies, and affiliates, and their predecessors, successors, and assigns
3 (collectively, "Goya Releasees"), and each entity to whom Goya directly or indirectly
4 distributes or sells the Non-Compliant California Products, including but not limited to,
5 downstream distributors, wholesalers, customers, and retailers, and their respective
6 subsidiaries, affiliates and parents, franchisees, cooperative members, and licensees
7 (collectively, "Downstream Releasees"), from all claims for violations of Proposition 65
8 with respect to any Non-Compliant California Products manufactured, distributed, and/or
9 sold by Goya prior to the Effective Date based on failure to warn of alleged exposure to
10 the chemical acrylamide from the Non-Compliant California Products.

11 In further consideration of the promises and agreements herein contained, and for
12 the payments to be made pursuant to Section 3 above, Van Patten, on behalf of himself, his
13 past and current agents, representatives, attorneys, successors, and/or assignees, hereby
14 covenants not to sue and waives any right to institute or participate in, directly or indirectly,
15 any form of legal action and releases all claims that he may have, including without
16 limitation, all actions and causes of action in law and in equity, all obligations, expenses
17 (including without limitation all attorneys' fees, expert fees, and investigation fees, and
18 costs), damages, losses, liabilities and demands against any of the Goya Releasees and/or
19 Downstream Releasees of any nature, character, or kind, whether known or unknown,
20 suspected or unsuspected, limited to and arising out of the alleged or actual exposure to
21 chemicals contained in Goya's crackers.

22 **4.2 Goya's Release of Van Patten.** Goya, on behalf of itself, its past and current
23 agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all
24 claims against Van Patten, his attorneys, and other representatives, for any and all actions
25 taken or statements made by Van Patten and/or his attorneys and other representatives,
26 whether in the course of investigating claims or otherwise seeking to enforce Proposition
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1 65 against it in this matter.

2 **4.3 California Civil Code Section 1542.** It is possible that other claims not
3 known to the Parties arising out of the facts alleged in the Notice and relating to the Non-
4 Compliant California Products will develop or be discovered. Van Patten on behalf of
5 himself only, on one hand, and Goya, on the other hand, acknowledge that this Consent
6 Judgment is expressly intended to cover and include all such claims up through the
7 Effective Date, including all rights of action therefor. The Parties acknowledge that the
8 claims released in Sections 4.1 and 4.2, above, may include unknown claims, and
9 nevertheless waive California Civil Code Section 1542 as to any such unknown claims.

10 California Civil Code Section 1542 reads as follows:

11 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT**
12 **THE CREDITOR OR RELEASING PARTY DOES NOT KNOW**
13 **OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME**
14 **OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY**
15 **HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS**
16 **OR HER CONSENT JUDGMENT WITH THE DEBTOR OR**
17 **RELEASED PARTY.**

18 Van Patten and Goya each acknowledge and understand the significance and consequences
19 of this specific waiver of California Civil Code Section 1542.

20 **4.4 Deemed Compliance with Proposition 65.** Compliance by Goya with this
21 Consent Judgment constitutes compliance with Proposition 65 with respect to exposure to
22 acrylamide from the Non-Compliant California Products. Non-Compliant California
23 Products distributed by Goya prior to the Effective Date may be sold through as previously
24 manufactured and labeled.

1 **5. ENTRY OF CONSENT JUDGMENT**

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

7 **6. SEVERABILITY**

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

14 **7. GOVERNING LAW/ENFORCEMENT**

15 The terms of this Consent Judgment shall be governed by the law of the State of
16 California and apply within the State of California. The rights to enforce the terms of this
17 Consent Judgment are exclusively conferred on the Parties hereto. Any Party may, after
18 providing sixty (60) days' written notice and meeting and conferring within a reasonable
19 time thereafter to attempt to resolve any issues, by motion or application for an order to
20 show cause before this Court, enforce the terms and conditions contained in this Consent
21 Judgment. In the event that Proposition 65 or its regulations applicable to the Non-
22 Compliant California Products are repealed, or are otherwise rendered inapplicable or
23 invalid, including but not limited to by reason of law generally, due to federal preemption,
24 or the First Amendment commercial speech rights of the U.S. Constitution, as determined
25 by a court of competent jurisdiction of an agency of the federal government, then Goya
26 shall provide written notice to Van Patten of any asserted repeal or determination. Upon
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1 Goya's written notice, Goya shall have no further obligations pursuant to this Consent
2 Judgment to the extent such repeal or determination affects Goya's obligations with respect
3 to the Product.

4 **8. NOTICES**

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

9 For Goya:

10 Naoki Kaneko, Esq.
11 Shook, Hardy & Bacon
12 5 Park Plaza, Suite 1600
13 Irvine, California 92614

14 For Van Patten:

15 George Rikos, Esq.
16 Law Offices of George Rikos
17 555 West Beech, Suite 500
San Diego, CA 92101

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

20 **9. COUNTERPARTS: SIGNATURES**

21 This Consent Judgment may be executed in counterparts and by facsimile or .pdf
22 signature, each of which shall be deemed an original, and all of which, when taken together,
23 shall constitute one and the same document.

1 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

8 **11. MODIFICATION**

9 Unless otherwise provided for herein, this Consent Judgment may be modified only
10 by a written agreement of the Parties and the approval of the Court or upon a duly noticed
11 motion of either Party for good cause shown. Neither Party shall unreasonably withhold
12 agreement to any modification requested by the other Party based on an amendment to
13 Proposition 65 or its supporting regulations or a change in the law. If the parties reach
14 agreement as to modification of the Consent Judgment, such stipulation shall be sent to the
15 Office of the Attorney General at least 21 days in advance of its submission to the Court
16 for approval.

17 If the parties are unable to reach agreement on a proposed modification, either Party
18 may file a notice motion for modification with the Court for good cause shown, provided
19 a copy of the motion is also served on the other Party and the Office of the Attorney
20 General.

21 **12. ENTIRE AGREEMENT**

22 This Consent Judgment contains the sole and entire agreement of the Parties and
23 any and all prior negotiations and understandings related hereto shall be deemed to have
24 been merged within it. No representations or terms of agreement other than those contained
25 herein exist or have been made by any Party with respect to the other Party or the subject
26 matter hereof. This Consent Judgment shall have no effect if it is not approved by the
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1 Court and entered as a consent judgment.

2 13. AUTHORIZATION

3 The undersigned are authorized to execute this Consent Judgment and have read,
4 understood and agree to all of the terms and conditions contained in this Consent Judgment.

APPROVED AS TO FORM AND CONTENT: Date: 9/20/21 By: <u>George Rikos</u> George Rikos Counsel to Brad Van Patten	APPROVED AS TO FORM AND CONTENT: Date: 09/20/2021 By: <u>Naoki Kaneko</u> Naoki Kaneko, Esq. Counsel for Goya Foods, Inc.
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AGREED TO:	AGREED TO:
Date: <u>9/20/2021</u>	Date: <u>Sept 20 2021</u>
By: <u>Brad Van Patten</u> Brad Van Patten	By: <u>Naoki Kaneko</u> Goya Foods, Inc.

17
18 IT IS SO ORDERED, ADJUDGED AND DECREED THAT THE CONSENT
19 JUDGMENT SET FORTH ABOVE SHALL PROMPTLY BE ENTERED AS A
20 CONSENT JUDGMENT IN THIS COURT:

21 DATED: 9-24-21

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JUDGE OF THE SUPERIOR COURT

JOEL R. WOHLFEIL