

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

**1.1 The Parties.** This Settlement Agreement is entered into by and between Brad Van Patten (“Van Patten”) and Barilla America, Inc. (“Barilla”). Together, Van Patten and Barilla are collectively referred to as the “Parties.” Van Patten is an individual that 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. Van Patten alleges that Barilla 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 § 25249.6, et seq. (“Proposition 65”).

**1.2 General Allegations.** Van Patten alleges that Barilla has exposed individuals to the chemical acrylamide from its sales of Light Rye Crackers without first providing users and consumers of the product with a clear and reasonable health hazard exposure warning as required pursuant to Proposition 65. Acrylamide is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer.

**1.3 Product Description.** The products covered by this Settlement Agreement are Light Rye Crackers (the “Products”) that have been imported, distributed, offered for sale and/or sold in California by Barilla.

**1.4 Notice of Violation.** On October 16, 2018, Van Patten served Barilla and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “Notice”). The Notice provided Barilla and such others, including public enforcers, with notice that alleged that Barilla was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of the Products will expose them to acrylamide. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

**1.5 No Admission.** Barilla denies the material factual and legal allegations contained in the Notice and maintains that, to the best of its knowledge, all products that are or have been sold

and distributed in California, including the Products, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Barilla of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Barilla of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Barilla. However, this § 1.5 shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Barilla maintains that it has not knowingly manufactured, or caused to be manufactured, the Products for sale in California in violation of Proposition 65.

**1.6 Effective Date.** For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date this Agreement is last executed by the Parties.

**2. INJUNCTIVE RELIEF: Product Monitoring**

**2.1 Monitoring of Products.** As of the Effective Date, and continuing thereafter for so long as Barilla sells Products in California, Products that Barilla directly manufactures, imports, distributes, sells, or offers for sale in California shall be tested and monitored for acrylamide levels on an annual basis and shall take any and all necessary measures to ensure that acrylamide levels do not increase. The testing should be performed by an accredited laboratory using either:

1. GC/MS (Gas Chromatograph/Mass Spectrometry),
2. LC-MS/MS (Liquid Chromatograph-Mass Spectrometry),
3. or any other testing method agreed upon by the Parties.

**3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

In settlement of all the claims referred to in this Settlement Agreement, Barilla shall pay \$10,500.00 as a Civil Penalty in accordance with this Section. The Civil Penalty payment shall be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the Penalty remitted to OEHHA and the remaining 25% of the Penalty remitted to Van Patten.

The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below. For all amounts due and owing that are not received within the payment times set forth below, Barilla shall pay a late civil penalty payment fee equal to \$100/day to be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d).

**3.1 Civil Penalty.** Barilla shall issue two separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$9,450.00 (90%); and to (b) “Law Offices of George Rikos in Trust for Brad Van Patten” in the amount of \$1,050.00 (10%). The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below.

**3.2 Payment Procedures.**

(a) **Issuance of Payments.** Payments shall be delivered as follows:

(i) All payments owed to Van Patten, pursuant to § 3.1 shall be delivered to the following payment address:

George Rikos  
Law Offices of George Rikos  
225 Broadway, Suite 2100  
San Diego, CA 92101

(ii) All payments owed to OEHHA (EIN: 68-0284486), pursuant to § 3.1 shall be delivered directly to OEHHA (Memo Line “Prop 65 Penalties”) at the following addresses, and shall be sent no later than 10 business days following the Effective Date:

For United States Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street

Sacramento, CA 95814

(b) **Copy of Payments to OEHHA.** Barilla agrees to provide Van Patten's counsel with a copy of the checks payable to OEHHA, simultaneous with its penalty payments to Van Patten, to be delivered to the address provided in § 3.2(a)(i), as proof of payment to OEHHA.

(C) **Tax Documentation.** Van Patten agrees to provide IRS W-9 forms for each of the following payees under this Settlement Agreement along with his executed copy of the Settlement Agreement (and Barilla will issue IRS 1099 forms as appropriate):

(i) "Van Patten";

(ii) "Law Offices of George Rikos" at the address provided in Section 3.2(a)(i); and

(iii) "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA 95814.

#### **4. REIMBURSEMENT OF FEES AND COSTS**

Barilla shall reimburse Van Patten's counsel \$61,000.00 for fees and costs incurred as a result of investigating and bringing this matter to Barilla's attention, and negotiating a settlement in the public interest. Within ten (10) business days of the Effective Date, Barilla shall issue a check payable to "Law Offices of George Rikos" in the amount of \$61,000.00 for delivery to the address identified in § 3.2(a)(i), above.

#### **5. RELEASE OF ALL CLAIMS**

**5.1 Release of Barilla and Downstream Customers and Entities.** This Settlement Agreement is a full, final and binding resolution between Van Patten, acting on his own behalf, and Barilla, of any violation of Proposition 65 that was or could have been asserted by Van Patten or on behalf of his past and current agents, representatives, attorneys, successors, and/or assigns ("Releasers") for failure to provide warnings for alleged exposures to acrylamide contained in the Products, and Releasers hereby release any such claims against Barilla and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom Barilla directly or indirectly distributes or sells

the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, and its respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees (collectively, the "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on their failure to warn of alleged exposure to the chemical acrylamide from use of the Products.

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

**5.2 Barilla's Release of Van Patten.** Barilla, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Van Patten, his attorneys and other representatives, for any and all actions taken or statements made by Van Patten and/or his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter or with respect to the Products.

**5.3 California Civil Code § 1542.** It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. Van Patten on behalf of himself only, on one hand, and Barilla, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in §§ 5.1 and 5.2, above, may include unknown claims, and nevertheless waive

California Civil Code § 1542 as to any such unknown claims. California Civil Code § 1542 reads as follows:

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

Van Patten and Barilla each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

**5.4 Deemed Compliance with Proposition 65.** Compliance by Barilla with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to acrylamide from use of the Products.

**5.5. Public Benefit.** It is Barilla's understanding that the commitments it has agreed to herein, and actions to be taken by Barilla under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of Barilla that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Barilla's failure to provide a warning concerning exposure to acrylamide prior to use of the Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Settlement Agreement, provided that Barilla is in material compliance with this Settlement Agreement.

## **6. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the

Settlement Agreement being contrary to the intent of the Parties in entering into this Settlement Agreement.

7. **GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the law of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable or limited by reason of law generally, or as to the Products, Barilla shall provide written notice to Van Patten of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, a Product is so affected.

8. **NOTICES**

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

For Barilla:

Steven Blonder  
Much Shelist, P.C.  
191 North Wacker Drive, Suite 1800  
Chicago, IL 60606

For Van Patten:

George Rikos  
LAW OFFICES OF GEORGE RIKOS  
225 Broadway, Suite 2100  
San Diego, CA 92101

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

9. **COUNTERPARTS: SIGNATURES**

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

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

Van Patten agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

**11. MODIFICATION**

This Settlement Agreement may be modified only by a written agreement of the Parties.

**12. ENTIRE AGREEMENT**

This Settlement Agreement 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. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Brad Van Patten

By: \_\_\_\_\_

Barilla America



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

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**13. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: 05/08/19

Date: \_\_\_\_\_

By:   
Brad Van Patten

By: \_\_\_\_\_  
Barilla America

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The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 05/10/19

Date: 05/10/2019

By: Brad Van Patten  
Brad Van Patten

By: TREERIDSON  
Barilla America

By: Talita Ericsson, General Counsel