

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Brad Van Patten (“Van Patten”) and ARA Food Corporation (“ARA”). Together, Van Patten and ARA 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 ARA 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 ARA has exposed individuals to the chemical acrylamide from its sales of Mariquitas Classic Plantain Chips 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 all Mariquitas Classic Plantain Chips, including, including but not limited to, all varieties and pack sizes of Mariquitas Classic Plantain Chips (the “Products”) that have been imported, distributed, offered for sale and/or sold in California by ARA or its affiliates.

1.4 Notice of Violation. On December 17, 2019, Van Patten served ARA 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 ARA and such others, including public enforcers, with notice that alleged that ARA 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. ARA denies the material factual and legal allegations contained in the Notice and maintains that, to the best of its knowledge, all of its products, including the Products,

comply with all applicable laws. ARA further asserts that: (1) acrylamide is formed from the reaction of reducing sugars and the amino acid asparagine when heated at certain temperatures, and ARA does not add acrylamide to the Products; (2) ARA uses a specific manufacturing process intended to minimize the development of acrylamide during the production of Products intended for sale in California; (3) ARA does not authorize the online sale of the Products via online marketplaces hosts, including via third party sellers; and (4) ARA has no independent knowledge of, and does not intend, sales of Products sold outside of California to be sold in California. Nothing in this Settlement Agreement shall be construed as an admission by ARA 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 ARA of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by ARA. 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, ARA 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 Testing & Monitoring

2.1 ARA contends it maintains two manufacturing processes in its Florida facilities. One of the processes is expressly intended to address requirements for acrylamide under Proposition 65, such that acrylamide levels are on average kept below the level requiring a cancer warning under Proposition 65 based on an average consumer’s level and frequency of consumption of the chips and a 1×10^{-5} cancer risk for acrylamide based on scientific evidence equivalent or better in quality to that which formed the basis for the Proposition 65 listing of acrylamide as a carcinogen. These products are intended to be sold in California. Without any implied meaning or admission, these products will be referred herein as “California Compliant Products”. The other manufacturing process is not expressly intended to address acrylamide requirements under Proposition 65. Without any implied meaning or admission, these products will be referred herein as “Non-California Compliant

Products”. It is ARA’s position that the products purchased by Van Patten in California were Non-California Compliant Product and never intended to be sold in California.

As of the Effective Date, and continuing thereafter, ARA, with respect to the Non-California Complaint Products, will take commercially reasonable measures to cease the import, distribution, or sale in California.

2.2 ARA will establish an internal process to reasonably address and prevent Non-Compliant California Products from being sold, distributed or imported within California, including monitoring major online marketplaces such as Amazon.com for unauthorized sales of Products and, if any such sales are discovered, to inform such online marketplaces that the sales are not authorized and to request that such sales cease.

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

In settlement of all the claims referred to in this Settlement Agreement, ARA shall pay \$4000.00 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, ARA 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. ARA shall issue two separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$3000 (75%); and to (b) “Law Offices of George Rikos in Trust for Brad Van Patten” in the amount of \$100.00 (25%). 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
555 West Beech Street, Suite 500
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 15 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. ARA 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 ARA will issue IRS 1099 forms as appropriate):

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

(ii) “Office of Environmental Health Hazard Assessment” at 1001 I Street, Sacramento, CA 95814.

4. REIMBURSEMENT OF FEES AND COSTS

ARA shall reimburse Van Patten's counsel \$ 50,000, over four (4) installment payments, for fees and costs incurred as a result of investigating and bringing this matter to ARA's attention, and negotiating a settlement in the public interest.

4.1 On or before May 1, 2020, ARA shall deliver a check payable to "Law Offices of George Rikos" in the amount of \$ 20,000 for delivery to the address identified in § 3.2(a)(i), above.

4.2 Thirty (30) days after the payment made pursuant to Section 4.1 above, ARA shall make issue a check payable to "Law Offices of George Rikos" in the amount of \$10,000 for delivery to the same address.

4.3 Sixty (60) days after the payment made pursuant to Section 4.1 above, ARA shall make issue a check payable to "Law Offices of George Rikos" in the amount of \$10,000 for delivery to the same address.

4.4 Ninety (90) days after the payment made pursuant to Section 4.1 above, ARA shall make issue a check payable to "Law Offices of George Rikos" in the amount of \$10,000 for delivery to the same address.

5. RELEASE OF ALL CLAIMS

5.1 Release of ARA and Downstream Customers and Entities. This Settlement Agreement is a full, final and binding resolution between Van Patten, acting on his own behalf, and ARA, 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 ARA and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom ARA 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.

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 only, 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 now or in the future, 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 ARA, and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, and their respective successors and assignees, of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of any alleged or actual violation of Proposition 65. Nothing herein shall be construed as a waiver or release of Van Patten’s rights to enforce the terms of this agreement or any of the injunctive relief herein.

5.2 ARA’s Release of Van Patten. ARA, 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 in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter.

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 ARA, 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 ARA 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 ARA with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to acrylamide from use of the Products.

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, ARA 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 email as noted below and 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 ARA:

Marta de Varona, VP of Administration and Finance
ARA Food Corp.
8001 NW 60th Street
Miami, FL 33166

With copy to:

Ann Grimaldi, Esq.
Jennifer Singh, Esq.
Grimaldi Law Offices
535 Mission St., 14th Floor
San Francisco, CA 94105

ann.grimaldi@grimaldilawoffices.com
jennifer@grimaldilawoffices.com

For Van Patten:

George Rikos
LAW OFFICES OF GEORGE RIKOS
555 West Beech Street, Suite 500,
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.

14. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement ARA may ask Van Patten, in writing, to file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment, and to seek the court's approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If so requested, Van Patten agrees to reasonably cooperate with ARA and to use his best efforts, and that of his counsel, to support the entry of a consent judgment by a superior court in California. Pursuant to Code of Civil Procedure sections 1021 and 1021.5, ARA will reimburse Van Patten and his counsel

for their reasonable fees and costs incurred in filing the complaint, converting the Settlement Agreement into a proposed consent judgment and seeking judicial approval of the consent judgment, in an amount not to exceed \$10,000 in total, exclusive of fees and cost that may be incurred on appeal, if any. ARA will remit payment to the Law Offices of George Rikos, at the address set forth in Section 3.2(a) above. Such additional fees, if undisputed by ARA, shall be paid by ARA within twenty (20) business days after its receipt of any invoice from Van Patten for work performed under this paragraph. Any invoice submitted by Van Patten shall provide sufficient detail so as to allow ARA to evaluate the reasonableness of the fees and costs identified therein. If ARA disputes any invoice, it shall so notify Van Patten within ten (10) business days of receipt, and the Parties shall meet and confer to resolve the dispute. ARA understands no motion to approve any proposed consent judgment will be filed absent payment for the work performed under this paragraph.

AGREED TO:

AGREED TO:

Date: _____

Date: 04-15-20

By: _____

Brad Van Patten

By: _____


ARA Food Corporation

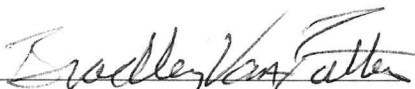
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Date: 04/15/2020

Date: _____

By: 
Brad Van Patten

By: _____
ARA Food Corporation