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23 Attorneys for Defendant
24 THE PASTENE COMPANIES, LTD.

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BRAD VAN PATTEN, an individual

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

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.
28

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

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

1 The Parties acknowledge that the claims released in Section 2.2 and 2.3 above may also include
2 unknown claims, and nevertheless waive California Civil Code section 1542 as to any such
3 unknown claims. California Civil Code section 1542 reads as follows:

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

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

13 **3. INJUNCTIVE TERMS**

14 3.1 After the Effective Date, Pastene shall not sell any Covered Products directly to
15 consumers in California or to retailers or distributors that Pastene knows will in turn sell to
16 consumers in California the Covered Products that Pastene sells to them, unless a warning is
17 provided to consumers that is consistent with the applicable sections of Article 6 of Title 27,
18 California Code of Regulations, as in effect on the Effective Date. Covered Products sold, shipped,
19 or distributed for sale by Pastene in California prior to the Effective Date may be sold in California
20 after the Effective Date without a warning that is consistent with the applicable sections of Article 6
21 of Title 27, California Code of Regulations.

22 3.2 Nothing in this Consent Judgment shall be interpreted to relieve Pastene from any
23 obligation to comply with any other pertinent state or federal law or regulation.

24 **4. PAYMENTS**

25 4.1 Pastene agrees to pay a total settlement amount of \$45,000 within ten (10) days of
26 the Effective Date by separate checks apportioned as follows:

27 4.1.1 Penalty: Pastene shall issue two separate checks for a total of \$2,500 as
28 penalties pursuant to Health & Safety Code § 25249.12: (a) one check made payable to the State of
California's Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of
\$1,875 representing 75% of the total penalty; and (b) one check to Brad Van Patten in the amount of

1 \$625, representing 25% of the total penalty. Both checks shall be delivered to: The Law Offices of
2 George Rikos, 555 West Beech Street, Suite 500, San Diego, California 92101.

3 4.1.2 Attorneys' Fees and Costs: Pastene shall issue a check for \$42,500 to the
4 Law Offices of George Rikos, as Van Patten's attorneys, for its investigation fees and costs and
5 attorneys' fees and costs. The check shall be delivered to: The Law Offices of George Rikos, 555
6 West Beech Street, Suite 500, San Diego, California 92101. Before the Effective Date, The Law
7 Offices of George Rikos shall provide Pastene with its Employer Identification Number.

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

9 5.1 This Consent Judgment may be executed in counterparts, which taken together shall
10 be deemed to constitute the same document. A facsimile or portable document format (PDF)
11 signature shall be as valid as the original.

12 **6. ENTIRE AGREEMENT**

13 6.1 This Consent Judgment contains the sole and entire agreement and understanding of
14 the Parties with respect to the entire subject matter hereof, and all related prior discussions,
15 negotiations, commitments, and understandings. No other agreements, oral or otherwise, exist to
16 bind any of the Parties.

17 **7. MODIFICATION OF CONSENT JUDGMENT**

18 7.1 This Consent Judgment may be modified from time to time by express written
19 agreement of the Parties, with the approval of the Court and prior notice to the Attorney General's
20 Office, or by an order of this Court upon motion and prior notice to the Attorney General's Office
21 and in accordance with law.

22 7.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
23 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

24 **8. APPLICATION OF CONSENT JUDGMENT**

25 8.1 This Consent Judgment shall apply to, be binding upon, and inure to the benefit of,
26 Van Patten and the Releasors identified in Section 2 above.

1 **9. ENFORCEMENT OF CONSENT JUDGMENT**

2 9.1 Any Party may file a motion with the Court consistent with the terms and conditions
3 set forth in paragraph 9.2 of this Consent Judgment, to enforce the terms and conditions contained
4 in this Consent Judgment. The prevailing Party shall be entitled to its reasonable attorneys' fees
5 and costs incurred in such enforcement.

6 9.2 Prior to bringing any motion, order to show cause, or other proceeding to enforce
7 any terms of this Agreement, Van Patten shall provide a Notice of Violation ("NOV") to Pastene.
8 The NOV shall include, for each Covered Product alleged to be violation of this Agreement: the
9 date of alleged violations(s), place of sale, date and proof of purchase (if relevant), and any test data
10 obtained by Van Patten regarding each such Covered Product. Van Patten shall take no further
11 action regarding any alleged violation nor seek any monetary recovery for himself, his agents or his
12 counsel if, within 30 days of receiving such NOV, Pastene demonstrates that no such violation of
13 this Agreement has occurred. Should Van Patten, after receiving Pastene's response to the NOV,
14 contend that a violation of the Agreement as has occurred, the Parties shall meet and confer
15 concerning resolution of such dispute for a period of at least 30 days, following which either Party
16 may seek relief under Section 9.1.

17 **10. NOTIFICATION REQUIREMENTS**

18 10.1 Any notice required or permitted hereunder shall be effective only if given in writing
19 and delivered in person, certified or registered mail return receipt requested, or traceable overnight
20 delivery service, to the following designees:

21 For Van Patten:

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

25 For Pastene:

26 John F. Franciosa
27 The Pastene Companies, Ltd.
28 330 Turnpike Street
Canton, Massachusetts, 02021

With a copy to its counsel:

1 Trenton H. Norris
2 Arnold & Porter Kaye Scholer LLP
3 Three Embarcadero Center, 10th Floor
4 San Francisco, California 94111

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

7 **11. SEVERABILITY**

8 11.1 If, subsequent to the execution of this Consent Judgment, any of the provisions of
9 this Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
10 provisions remaining shall not be adversely affected, unless the Court finds that any unenforceable
11 provision is not severable from the remainder of this Agreement.

12 **12. GOVERNING LAW**

13 12.1 The terms of this Consent Judgment shall be governed by the laws of the State of
14 California and apply within the State of California. In the event that Proposition 65 or its
15 implementing regulations (including but not limited to the “safe harbor no significant risk level” for
16 acrylamide set forth at Cal. Code Regs., tit. 27, section 25705, subdivision (c)(2) or any “alternative
17 risk level” adopted by regulation or final decision of a court of competent jurisdiction) are repealed,
18 preempted, found by a court of competent jurisdiction to be otherwise unlawful or unconstitutional
19 with respect to products similar to the Covered Products, or are rendered inapplicable by reason of
20 law generally, or if the lead agency for Proposition 65 (currently OEHHA) takes some other final
21 regulatory action for products similar to the Covered Products in a manner that impacts the no
22 significant or alternative risk level for acrylamide or otherwise determines that warnings for
23 acrylamide are not required for such products as currently produced or as they may be reformulated,
24 then Pastene may provide written notice to Van Patten and may manufacture, sell, ship for sale,
25 and/or distribute Covered Products for sale in California without a warning if the Covered Products
26 do not create an exposure to acrylamide in excess of any changed or modified safe harbor no
27 significant risk level or alternative risk level or other requirement of the lead agency for Proposition
28 65.

1 **13. COURT APPROVAL**

2 13.1 This Consent Judgment is not effective until it is approved and entered by the Court.
3 The Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a
4 noticed motion is required for judicial approval of this Consent Judgment, which Van Patten shall
5 prepare and file.

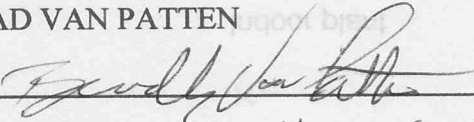
6 **14. RETENTION OF JURISDICTION**

7 14.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent
8 Judgment.

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

10 15.1 Van Patten agrees to comply with the reporting requirements referenced in Health
11 and Safety Code section 25249.7(f).

12
13 **IT IS SO STIPULATED:**

14
15 BRAD VAN PATTEN
16 Dated: 08/14/2020 By: 
17 Printed Name: Bradley Van Patten
18 Title: _____

19
20 THE PASTENE COMPANIES, LTD.
21 Dated: _____ By: _____
22 Printed Name: _____
23 Title: _____

24 **IT IS SO ORDERED:**

25
26 Dated: _____
27 _____
28 Judge of the Superior Court

1 **13. COURT APPROVAL**

2 13.1 This Consent Judgment is not effective until it is approved and entered by the Court.
3 The Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a
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10 15.1 Van Patten agrees to comply with the reporting requirements referenced in Health
11 and Safety Code section 25249.7(f).

12
13 **IT IS SO STIPULATED:**

14
15 BRAD VAN PATTEN

16 Dated: _____

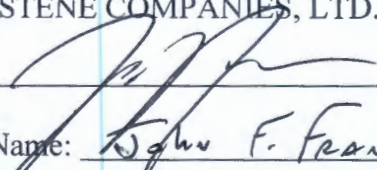
16 By: _____

17 Printed Name: _____

18 Title: _____

19
20 THE PASTENE COMPANIES, LTD.

21 Dated: 8/18/2020

21 By: 

22 Printed Name: John F. Francisco

23 Title: C.O.O.

24 **IT IS SO ORDERED:**

25
26 Dated: _____

27 _____
28 Judge of the Superior Court