

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Brad Van Patten (“Van Patten”) and Artisan Tropic, LLC (“Artisan Tropic”). Together, Van Patten and Artisan Tropic 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 Artisan Tropic 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 Artisan Tropic has exposed individuals to the chemical acrylamide from its sales of plantain and cassava strips without first providing users and consumers of the products with clear and reasonable health hazard exposure warnings 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 Artisan Tropic plantain and cassava strips, including, but not limited to, all varieties and package sizes (the “Covered Products”) that have been imported, distributed, offered for sale and/or sold in California by Artisan Tropic or its affiliates.

1.4 Notice of Violation. On May 6, 2020, Van Patten served Artisan Tropic 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 Artisan Tropic and such others, including public enforcers, with notice that alleged that Artisan Tropic was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of Artisan Tropic’s plantain strips will expose them to acrylamide. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission. Artisan Tropic 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 Covered Products, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Artisan Tropic 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 Artisan Tropic of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Artisan Tropic. However, this Section 1.5 shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Artisan Tropic 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 and Compliance Date. For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date this Agreement is last executed by the Parties. For the Covered Products, the “Compliance Date” shall mean the date that is three months from the Effective Date.

2. INJUNCTIVE RELIEF:

2.1 Product Reformulation

For any Covered Products that are manufactured or processed on or after the Compliance Date that are Distributed in California, the average acrylamide concentration (the “Average Level”) shall not exceed 290 ppb by weight as determined by the testing protocol set forth in Section 2.2 of this Settlement Agreement (“Reformulation Option”). “Distributed in California” means to directly ship a Covered Product into California or to sell a Covered Product to a distributor that Artisan Tropic knows will sell the Covered Product in California. Nothing in this Settlement Agreement shall prejudice Artisan Tropic’s rights to establish that an alternative acrylamide concentration level is more appropriate based on the Proposition 65 statute or regulations as they are now constituted or may be amended. The prohibition in this section shall not apply to Covered Products Distributed in California that contain a Proposition 65 compliant warning as set forth in Section 2.3.

2.2 Testing

Artisan Tropic may establish the Average Level by averaging acrylamide concentration level test results derived from three samples from three different production lots or batches of each of the Covered Products (or from as many lots or batches as are available if there are fewer than three) that may or will be Distributed in California. This testing will be conducted on an annual basis. Such acrylamide testing shall be performed by Eurofins, Silliker, KPrime or another accredited laboratory using either:

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

All test results of acrylamide concentrations shall remain confidential unless required to be produced to the California Attorney General or court order.

2.3 Warning Alternative

Commencing on or before the Compliance Date, Covered Products that Artisan Tropic Distributes in California that do not meet the Reformulation Option standard set forth in Section 2.1 above shall be accompanied by an on-product warning label that reads: “**WARNING:** Cancer – www.P65Warnings.ca.gov”, which shall be immediately preceded on the left by a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline unless the remainder of the package labeling is not printed with the color yellow, in which case the symbol may be printed in black and white (“Warning Text”). The entire warning must be in a type size no smaller than the largest type size used for other Consumer Information on the product, but in no case smaller than 6-point type. “Consumer Information” includes warnings, directions for use, ingredient lists, and nutritional information, but does not include the brand name, product name, company name, location of manufacture, or product advertising. For Covered Products contained in multi-packs that are not intended for individual sale, the warning may appear on the outer packaging and is not required to be displayed on the individual packages not intended for sale. For internet purchases on websites owned

or controlled by Artisan Tropic, the Warning Text shall also appear on the display page of the Covered Products, or by otherwise prominently displaying the warning to a purchaser with a California delivery address prior to completing the purchase. Nothing in this Section 2.3 shall prevent Artisan Tropic, in its sole discretion, from modifying or changing the warning specified herein as long as the warning fully complies with Proposition 65 and the regulations promulgated thereunder, both as may be amended from time to time. For the avoidance of doubt, Artisan Tropic shall be deemed in compliance with this Settlement Agreement by either adhering to Sections 2.1 and 2.2 of this Settlement Agreement or by complying with the warning alternative in this Section 2.3.

2.4 Sell-Through Period

Notwithstanding anything else in this Settlement Agreement, the Covered Products that are manufactured or processed prior to the Compliance Date shall be subject to the release of liability contained herein, without regard to when such products were, or are in the future, shipped, delivered, distributed or sold to customers in California. As a result, the obligation of Releasees do not apply to the Covered Products manufactured or processed prior to the Compliance Date.

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

3.1 Civil Penalty.

In settlement of all the claims referred to in this Settlement Agreement, Artisan Tropic shall pay \$3,000.00 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 Section 3.2, below. For all amounts due and owing that are not received within the payment times set forth below, Artisan Tropic 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).

Artisan Tropic shall issue two separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$2,250.00 (75%); and to (b) “Law Offices of George Rikos in Trust for Brad Van

Patten” in the amount of \$750 (25%). The Civil Penalty payment(s) shall be delivered to the addresses identified in Section 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 Section 3.1 shall be delivered to the following payment address no later than 10 days following the Effective Date:

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 Section 3.1 shall be delivered directly to OEHHA (Memo Line “Prop 65 Penalties”) at the following address, and shall be sent no later than 10 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. Artisan Tropic agrees to provide Van Patten’s counsel with a copy of the check payable to OEHHA, simultaneous with its penalty payment to Van Patten, to be delivered to the address provided in Section 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 Artisan Tropic 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

Artisan Tropic shall reimburse Van Patten’s counsel \$46,000.00 for fees and costs incurred as a result of investigating and bringing this matter to Artisan Tropic’s attention, and negotiating a settlement in the public interest. Within ten (10) days of the Effective Date, Artisan Tropic shall issue a check payable to “Law Offices of George Rikos” in the amount of \$20,000.00 for delivery to the address identified in Section 3.2(a)(i), above. Thereafter, Artisan Tropic will make the following payments by check payable to “Law Offices of George Rikos”:

October 1, 2020	\$5,000
November 2, 2020	\$5,000
December 1, 2020	\$5,000
January 4, 2021	\$5,000
February 1, 2021	\$5,000
March 1, 2021	\$1,000

5. RELEASE OF ALL CLAIMS

5.1 Release of Artisan Tropic and Downstream Customers and Entities. This Settlement Agreement is a full, final and binding resolution between Van Patten, acting on his own behalf, and Artisan Tropic, 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 (“Releasors”) for failure to provide warnings for alleged exposures to acrylamide contained in the Products, and Releasors hereby release any such claims against Artisan Tropic and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors, assignees, manufacturers and each entity to whom Artisan Tropic directly or indirectly distributes or sells the Covered Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, and their 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 Covered Products.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 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, arising out of the alleged or actual exposure to the chemical acrylamide in the Covered Products.

5.2 Artisan Tropic’s Release of Van Patten. Artisan Tropic, 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 Artisan Tropic, 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 Sections 5.1 and 5.2, above, may include unknown claims, and nevertheless waive California Civil Code Section 1542 as to any such unknown claims. California Civil Code Section 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 Artisan Tropic each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code Section 1542.

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

5.5. Public Benefit. It is Artisan Tropic's understanding that the commitments it has agreed to herein, and actions to be taken by Artisan Tropic under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure Section 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of Artisan Tropic that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Artisan Tropic's failure to provide a warning concerning exposure to acrylamide prior to use of the Covered 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 Artisan Tropic 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, Artisan Tropic shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, a Covered 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 Artisan Tropic:

Camilo Guzman
5712-C Stillwell Dr
Monroe, NC 28110

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.

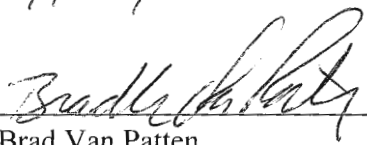
14. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement Artisan Tropic 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 Artisan Tropic 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, Artisan Tropic 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 \$15,000, exclusive of fees and cost that may be

incurred on appeal. Artisan Tropic will remit payment to the Law Offices of George Rikos, at the address set forth in Section 3.2(a) above. Such additional fees shall be paid by Artisan Tropic, within twenty (20) business days after its receipt of any invoice from Van Patten for work performed under this paragraph. Artisan Tropic understands no motion to approve any proposed consent judgment will be filed absent payment for the work performed under this paragraph.

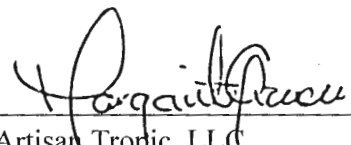
AGREED TO:

Date: 09/10/2020

By: 
Brad Van Patten

AGREED TO:

Date: 09-04-20

By: 
Artisan Tropic, LLC