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Attorneys for Plaintiff,
BRAD VAN PATTEN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

BRAD VAN PATTEN, and individual,

Plaintiff,

v.

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

[PROPOSED] CONSENT JUDGMENT

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

Defendants.

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”).

1.2 General Allegations. Van Patten alleges that acrylamide is listed pursuant

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

5 **1.3 Product Description.** The products covered by this Consent Judgment are
6 all Goya Plantain Chips, including, without limitation, all varieties and pack sizes of
7 Product (the “Products”) that have been manufactured, imported, distributed, offered for
8 sale, and/or sold in California by Goya or its affiliates.

9 **1.4 Notice of Violation, Complaint, and Jurisdiction.** On July 7, 2020, Van
10 Patten served Goya and various public enforcement agencies with a document entitled
11 “Notice of Violation of California Health & Safety Code § 25249.6 et seq.” (the “Notice”).
12 The Notice provided Goya and such others, including public enforcers, with notice that
13 alleged that Goya was in violation of Proposition 65 for failing to warn California
14 consumers and customers that use of the Products will expose them to acrylamide. No
15 public enforcer has diligently prosecuted the allegations set forth in the Notice. On October
16 2, 2020, based on the Notice and the absence of any authorized public prosecutor of
17 Proposition 65 having filed a suit based on the allegations contained therein, Van Patten
18 filed a complaint in the Superior Court of and for San Diego County (the “Court”), Case
19 No. 37-2020-00035232-CU-MC-CTL (the “Action”). For purposes of this Consent
20 Judgment, the Parties stipulate that the Court has jurisdiction over the allegations in the
21 Complaint and personal jurisdiction over Goya, that venue is proper in the County of San
22 Diego, and that the Court has jurisdiction to enter this Consent Judgment as a full and final
23 resolution of the claims and allegations which were or could have been raised in the Action
24 based on the facts alleged therein and/or in the Notice.

25 **1.5 No Admission.** This Consent Judgment resolves claims that are denied and
26 disputed. The Parties enter into this Consent Judgment as a full and final resolution of any and all
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1 claims between the Parties for the purpose of avoiding prolonged litigation. Goya denies each and
2 every material allegations contained in the Notices and the Action and maintains that it has not
3 violated Proposition 65 and/or is not subject to that law. Nothing in this Consent Judgment shall
4 be construed as an admission by Goya of any fact, finding, issue of law, or violation of law; nor
5 shall compliance with this Consent Judgment constitute or be construed as an admission by Goya
6 of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied
7 by Goya. However, this Section 1.5 shall not diminish or otherwise affect the obligations,
8 responsibilities, and duties of Goya under this Consent Judgment.

9 **1.6 Effective Date.** For purposes of this Consent Judgment, the term “Effective
10 Date” shall mean the date this Consent Judgment has been approved by the Court and Van
11 Patten has provided notice to Goya that it has been entered in the Court’s records as a
12 consent judgment.

13 **2. INJUNCTIVE RELIEF**

14 **2.1 Cease Sales**

15 Goya contends it maintains two manufacturing processes. One of the processes is
16 expressly intended to address requirements for acrylamide under Proposition 65, such that
17 acrylamide levels are on average kept below the level requiring a cancer warning under Proposition
18 65 based on an average consumer’s level and frequency of consumption of the chips and a 1 x 10-
19 5 cancer risk for acrylamide based on scientific evidence equivalent or better in quality to that
20 which formed the basis for the Proposition 65 listing of acrylamide as a carcinogen. These
21 products are intended to be sold in California. Without any implied meaning or admission, these
22 products will be referred herein as “California Compliant Products”. The other manufacturing
23 process is not expressly intended to address acrylamide requirements under Proposition 65.
24 Without any implied meaning or admission, these products will be referred herein as “Non-
25 California Compliant Products”. It is Goya’s position that the products purchased by Van Patten
26 in California were Non-California Compliant Product and never intended to be sold in California.
27

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

4 **2.2. INTENTIONALLY LEFT BLANK**

5 **2.3 CONSENT JUDGMENT PAYMENTS**

6 **Civil Penalties**

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

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

18 George Rikos
19 Law Offices of George Rikos
20 555 West Beech, Suite 500
San Diego, CA 92101

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

24 Mike Gyurics
25 Fiscal Operations Branch Chief
26 Office of Environmental Health Hazard Assessment
Attn. Prop 65 Penalties – Van Patten v. Goya Consent Judgment
1001 I Street
Sacramento, CA 95814

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

6 **3.2 Attorneys' Fees and Litigation Costs**

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

14 **3. MATTERS COVERED BY THIS CONSENT JUDGMENT**

15 **4.1 Release of Goya and Downstream Customers and Entities.** This Consent
16 Judgment is a full, final and binding resolution between Van Patten, acting on his own
17 behalf and in the public interest, and Goya of any violation of Proposition 65 that was or
18 could have been asserted by Van Patten or on behalf of his past and current agents,
19 representatives, attorneys, predecessors, successors, and/or assigns (collectively,
20 "Releasers") for failure to provide warnings for alleged exposures to acrylamide contained
21 in the Products, and Releasers hereby release any such claims against Goya and its parents,
22 shareholders, members, directors, officers, managers, employees, representatives, agents,
23 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates,
24 and their predecessors, successors, and assigns (collectively, "Goya Releasees"), and each
25 entity to whom Goya directly or indirectly distributes or sells the Products, including but
26 not limited to, downstream distributors, wholesalers, customers, and retailers, and their
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1 respective subsidiaries, affiliates and parents, franchisees, cooperative members, and
2 licensees (collectively, "Downstream Releasees"), from all claims for violations of
3 Proposition 65 with respect to any Products manufactured, distributed, and/or sold by Goya
4 prior to the Effective Date based on failure to warn of alleged exposure to the chemical
5 acrylamide from the Products.

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

17 **4.2 Goya's Release of Van Patten.** Goya, on behalf of itself, its past and current
18 agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all
19 claims against Van Patten, his attorneys, and other representatives, for any and all actions
20 taken or statements made by Van Patten and/or his attorneys and other representatives,
21 whether in the course of investigating claims or otherwise seeking to enforce Proposition
22 65 against it in this matter.

23 **4.3 California Civil Code Section 1542.** It is possible that other claims not
24 known to the Parties arising out of the facts alleged in the Notice and relating to the
25 Products will develop or be discovered. Van Patten on behalf of himself only, on one hand,
26 and Goya, on the other hand, acknowledge that this Consent Judgment is expressly
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1 intended to cover and include all such claims up through the Effective Date, including all
2 rights of action therefor. The Parties acknowledge that the claims released in Sections 4.1
3 and 4.2, above, may include unknown claims, and nevertheless waive California Civil
4 Code Section 1542 as to any such unknown claims. California Civil Code Section 1542
5 reads as follows:

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

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

15 **4.4 Deemed Compliance with Proposition 65.** Compliance by Goya with this
16 Consent Judgment constitutes compliance with Proposition 65 with respect to exposure to
17 acrylamide from the Products. Products distributed by Goya prior to the Effective Date
18 may be sold through as previously manufactured and labeled.

19 **5. ENTRY OF CONSENT JUDGMENT**

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

25 **6. SEVERABILITY**

26 If, subsequent to the execution of this Consent Judgment, any of the provisions of
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1 this Consent Judgment are deemed by a court to be unenforceable, the validity of the
2 enforceable provisions remaining shall not be adversely affected but only to the extent the
3 deletion of the provision deemed unenforceable does not materially affect, or otherwise
4 result in the effect of the Consent Judgment being contrary to, the intent of the Parties in
5 entering into this Consent Judgment.

6 **7. GOVERNING LAW/ENFORCEMENT**

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

21 **8. NOTICES**

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

26 For Goya:
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1 Naoki Kaneko, Esq.
2 Shook, Hardy & Bacon
3 5 Park Plaza, Suite 1600
4 Irvine, California 92614

5 For Van Patten:

6 George Rikos, Esq.
7 Law Offices of George Rikos
8 555 West Beech, Suite 500
9 San Diego, CA 92101

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

12 **9. COUNTERPARTS: SIGNATURES**

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

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

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

23 **11. MODIFICATION**

24 Unless otherwise provided for herein, this Consent Judgment may be modified only
25 by a written agreement of the Parties and the approval of the Court or upon a duly noticed
26 motion of either Party for good cause shown. Neither Party shall unreasonably withhold
27 agreement to any modification requested by the other Party based on an amendment to

1 Proposition 65 or its supporting regulations or a change in the law. If the parties reach
2 agreement as to modification of the Consent Judgment, such stipulation to the Office of
3 the Attorney General at least 21 days in advance of its submission to the Court for approval.

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

8 **12. ENTIRE AGREEMENT**

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

15 **13. AUTHORIZATION**

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

APPROVED AS TO FORM AND CONTENT: Date: 7/29/2021 By: <i>George Rikos</i> George Rikos Counsel to Brad Van Patten	APPROVED AS TO FORM AND CONTENT: Date: July 29, 2021 By: <i>Naoki Kaneko</i> Naoki Kaneko, Esq. Counsel for Goya Foods, Inc.
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1 **AGREED TO:**

AGREED TO:

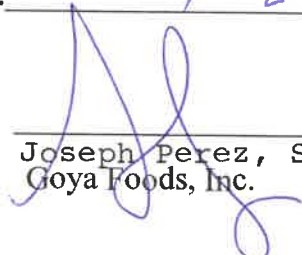
2 Date: _____

Date: 7-28-21

3
4 By: _____

By: _____

5 Brad Van Patten

6 
Joseph Perez, Sr. V.P.
Goya Foods, Inc.

7 **IT IS SO ORDERED, ADJUDGED AND DECREED THAT THE CONSENT**
8 **JUDGMENT SET FORTH ABOVE SHALL PROMPTLY BE ENTERED AS A**
9 **CONSENT JUDGMENT BY THIS COURT:**

10 DATED: _____

11 _____
JUDGE OF THE SUPERIOR COURT

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28 _____
CONSENT JUDGMENT

AGREED TO:

Date: _____

By: _____

Goya Foods, Inc.

DATED: _____

JUDGE OF THE SUPERIOR COURT

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