

1 George Rikos (State Bar No. 204864)
2 **LAW OFFICES OF GEORGE RIKOS**
3 555 West Beech Street, Suite 500
4 San Diego, California 92101
5 Telephone: (858) 342-9161
6 Facsimile: (858) 724-1453
7 Email: george@gerorgerikoslaw.com

8 Attorneys for Plaintiff,
9 BRAD VAN PATTEN

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN DIEGO

12 BRAD VAN PATTEN, an individual

Case No. 37-2020-00043693-CU-MC-CTL

13 Plaintiff,

14 v.

[PROPOSED] AMENDED CONSENT
JUDGMENT

15 INKA CROPS, S.A. a Peruvian Corporation;
16 and DOES 1 through 10

17 Defendants.

18 **1. INTRODUCTION**

19 **1.1 The Parties.** This Consent Judgment (“Consent Judgment”) is entered into by
20 and between VAN PATTEN (“PLAINTIFF”) and INKA CROPS, S.A, (“DEFENDANT”).
21 Together, PLAINTIFF and DEFENDANT are collectively referred to as the “Parties.”
22 PLAINTIFF is an individual that reside in the State of California and seeks to promote awareness
23 of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous
24 substances contained in consumer products. DEFENDANT is a person in the course of doing
25 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Cal. Health
& Safety Code § 25249.6, *et seq.* (“Proposition 65”).

26 **1.2 General Allegations.** PLAINTIFF alleges acrylamide is listed pursuant to
27 Proposition 65 as a chemical known to the State of California to cause cancer.

1 PLAINTIFFS allege that DEFENDANT has exposed individuals to acrylamide from its
2 sales of Plantain Chips without first providing users and consumers of the product with a
3 clear and reasonable cancer warning as required pursuant to Proposition 65.

4 **1.3 Product Description.** The products covered by this Consent Judgment are
5 Plantain Chips, including, without limitation, all varieties and pack sizes of Plantain Chips,
6 including all flavors, cut types (crinkle, flat cut, cubed, etc.), and styles (croutons, tostones,
7 etc.), that have been manufactured, imported, distributed, offered for sale, and/or sold in
8 California by DEFENDANT or its affiliates (the “Products”), whether sold under the Inka
9 Crops brand, any other brand, or private label at all grocery, retail and other locations and
10 sales channels, including on the internet. This Consent Judgment covers the Products to
11 the extent that they are incorporated as an ingredient in any food product made or sold by
12 others.

13 **1.4 Notice of Violation, Complaint, and Jurisdiction.** On July 30, 2020 and
14 August 6, 2020, respectively, PLAINTIFF served DEFENDANT and various public
15 enforcement agencies with a document entitled “Notice of Violation of California Health
16 & Safety Code § 25249.6 et seq.” (the “Notice”). The Notice provided DEFENDANT and
17 such others, including public enforcers, with notice that alleged that DEFENDANT was in
18 violation of Proposition 65 for failing to warn California consumers and customers that use
19 of the Products will expose them to acrylamide. No public enforcer has diligently
20 prosecuted the allegations set forth in the Notice. On November 30, 2020, based on the
21 Notice and the absence of any authorized public prosecutor of Proposition 65 having filed
22 a suit based on the allegations contained therein, PLAINTIFF filed a complaint in the
23 Superior Court of and for San Diego County (the “Court”), Case No. 37-2020-00043693-
24 CU-MC-CTL (the “Action”). For purposes of this Consent Judgment, the Parties stipulate
25 that the Court has jurisdiction over the allegations in the Complaint and personal
26 jurisdiction over DEFENDANT, that venue is proper in the County of San Diego, and that
27

1 the Court has jurisdiction to enter this Consent Judgment as a full and final resolution of
2 the claims and allegations which were or could have been raised in the Action based on the
3 facts alleged therein and/or in the Notice.

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

14 **1.6 Effective Date.** For purposes of this Consent Judgment, the term “Effective
15 Date” shall mean the date this Consent Judgment has been approved by the Court and
16 PLAINTIFFS have provided notice to DEFENDANT that it has been entered in the Court’s
17 records as a consent judgment.

18 **1.7 Compliance Date.** For purposes of this Consent Judgment, the term “Compliance
19 Date” shall mean August 1, 2021.

20 **2. INJUNCTIVE RELIEF**

21 **2.1 Reformulation of Product**

22 Subject to Section 2.2, any Products that DEFENDANT elects to manufacture,
23 import, distribute, sell, or offer for sale in California manufactured after the Compliance
24 Date shall not exceed 260 parts per billion (“ppb”) on average for acrylamide
25 (“Reformulation Level”), as set forth in Section 2.3. As used in this Section 2.1, “for sale
26 in California” means to directly ship a Product into California or to sell a Product to a
27

1 distributor that DEFENDANT knows will sell the Product in California.

2 **2.1.1. Sell-Through Provision.** Notwithstanding anything else in this
3 Consent Judgment, Defendant shall not be subject to further liability for any Products that
4 were manufactured before the Compliance Date, regardless of when such Products were,
5 or are in the future, distributed or sold to customers.

6 **2.2 Reformulation Level and Changes in Proposition 65**

7 (a) Nothing in this Consent Judgment shall be interpreted to mean that the
8 Reformulation Level is the lowest feasible level for acrylamide in the Products or that it is
9 even a feasible level for the Products.

10 (b) Nothing in this Consent Judgment shall prejudice DEFENDANT from, at its
11 option, establishing that an alternative acrylamide concentration level is more appropriate
12 based on the criteria set forth under Proposition 65 and its implementing regulations.

13 (c) If (i) Proposition 65 or its implementing regulations are changed from their
14 terms as they exist on the date the Parties stipulated to this Consent Judgment with respect
15 to levels of acrylamide that trigger Proposition 65's warning obligations; or (ii) a
16 California agency in charge of overseeing Proposition 65 (*e.g.*, the California Office of
17 Environmental Health Hazard Assessment) takes some other final regulatory action
18 concerning acrylamide and products similar to the Products, including but not limited to
19 establishing whether and when there is any exposure to acrylamide from products similar
20 to the Products and/or that alternative acrylamide levels trigger warning requirements for
21 products similar to the Products, then: DEFENDANT, at its sole and absolute discretion,
22 shall be entitled to comply with such law, regulation, or action or the requirements of this
23 Consent Judgment.

24 **2.3 Testing**

25 (a) Compliance with the Reformulation Level is determined by randomly
26 selecting and testing at least one sample each from at least four (4) and up to eight (8)
27

1 different lots of a particular Covered Product (or the maximum number of lots available
2 for testing if fewer than four), during a testing period of at least 365 days, for a total of ten
3 (10) samples. The mean and standard deviation shall be calculated using the sampling data.
4 Any data points or outliers that are more than three standard deviations outside the mean
5 shall be discarded, and the mean and standard deviation recalculated using the remaining
6 data points. The mean determined in accordance with this procedure shall be deemed the
7 “Average Level.” Compliance with the Reformulation Level shall be determined using:

- 8 i. GC/MS (Gas Chromatograph/Mass Spectrometry),
- 9 ii. LC-MS/MS (Liquid Chromatograph-Mass Spectrometry), or
- 10 iii. any other testing method agreed upon by the Parties.

11 Any testing for purposes of this Consent Judgment shall be performed by Eurofins, Silliker,
12 KPrime, or any laboratory accredited by the State of California, a federal agency, or a
13 nationally recognized organization.

14 **3. CONSENT JUDGMENT PAYMENTS**

15 **3.1 Civil Penalties**

16 DEFENDANT shall pay \$10,000 as a civil penalty, allocated in accordance with
17 Cal. Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the penalty to be
18 remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”)
19 and the remaining 25% of the Penalty remitted to PLAINTIFF no later than ten (10)
20 calendar days following the Effective Date. More specifically, DEFENDANT shall issue
21 two separate checks for the civil penalty payment to (a) “Office of Environmental Health
22 Hazard Assessment” in the amount of \$7,500 (75%); and to (b) “Law Offices of George
23 Rikos in Trust” in the amount of \$2,500 (25%). Within ten (10) calendar days of the
24 Effective Date, DEFENDANT shall deliver these payments as follows:

- 25 (i) The penalty payment owed to PLAINTIFFS shall be delivered to the
26 following address:

1 George Rikos
2 Law Offices of George Rikos
3 555 West Beech, Suite 500
4 San Diego, CA 92101

5 (ii) The penalty payment owed to OEHHA (EIN: 68-0284486) shall be
6 delivered directly to OEHHA (Memo Line “Prop 65 Penalties”) at the following
7 address:

8 Mike Gyurics
9 Fiscal Operations Branch Chief
10 Office of Environmental Health Hazard Assessment
11 Attn. Prop 65 Penalties – PLAINTIFFS v. DEFENDANTS Consent Judgment
12 1001 I Street
13 Sacramento, CA 95814

14 DEFENDANT shall provide PLAINTIFFS’ counsel with a copy of the check it sends to
15 OEHHA with its penalty payment to PLAINTIFFS.

16 **3.2 Attorneys’ Fees and Litigation Costs**

17 Within ten (10) calendar days of the Effective Date, DEFENDANT shall reimburse
18 PLAINTIFF’s counsel \$100,000 for fees and costs incurred as a result of investigating and
19 bringing this matter to DEFENDANT’S attention, negotiating a Consent Judgment in the
20 public interest, and obtaining the Court’s approval of the Consent Judgment and its entry
21 as a consent judgment. DEFENDANT shall issue a check for this amount payable to “Law
22 Offices of George Rikos” and deliver it to the address identified in Section 3.1 above.
23 DEFENDANT’S payment obligations shall be tolled until it receives an IRS W-9 form for this
24 payee.

25 **4. MATTERS COVERED BY THIS CONSENT JUDGMENT**

26 **4.1 Release of DEFENDANT and Downstream Customers and Entities.**

27 This Consent Judgment is a full, final and binding resolution between PLAINTIFFS, acting
28 on his own behalf and in the public interest, and DEFENDANT of any violation of
Proposition 65 that was or could have been asserted by PLAINTIFFS or on behalf of his
past and current agents, representatives, attorneys, predecessors, successors, and/or assigns

1 (collectively, “Releasers”) for failure to provide warnings for alleged exposures to
2 acrylamide contained in the Products, and Releasers hereby release any such claims against
3 DEFENDANT and their parents, shareholders, members, directors, officers, managers,
4 employees, representatives, agents, attorneys, divisions, subdivisions, subsidiaries,
5 partners, sister companies, and affiliates, and their predecessors, successors, and assigns
6 (collectively, “DEFENDANT Releasees”), and each entity to whom DEFENDANT
7 directly or indirectly distributes or sells the Products, including but not limited to,
8 downstream distributors, wholesalers, customers, and retailers, and their respective
9 subsidiaries, affiliates and parents, franchisees, cooperative members, licensees, and all
10 other entities in the distribution chain of the Product (collectively, “Downstream
11 Releasees”), from all claims for violations of Proposition 65 with respect to any Products
12 manufactured, distributed, and/or sold by DEFENDANT prior to the Compliance Date
13 based on failure to warn of alleged exposure to the chemical acrylamide from the Products.

14 In further consideration of the promises and agreements herein contained, and for
15 the payments to be made pursuant to Section 3 above, PLAINTIFFS, on behalf of themselves,
16 their past and current agents, representatives, attorneys, successors, and/or assignees,
17 hereby covenants not to sue and waives any right to institute or participate in, directly or
18 indirectly, any form of legal action and releases all claims that he may have, including
19 without limitation, all actions and causes of action in law and in equity, all obligations,
20 expenses (including without limitation all attorneys’ fees, expert fees, and investigation
21 fees, and costs), damages, losses, liabilities and demands against any of the DEFENDANT
22 Releasees and/or Downstream Releasees of any nature, character, or kind, whether known
23 or unknown, suspected or unsuspected, limited to and arising out of the alleged or actual
24 exposure to chemicals contained in DEFENDANT’S Product.

25 **4.2 DEFENDANT’S Release of PLAINTIFFS.** DEFENDANT, on behalf of
26 themselves, their past and current agents, representatives, attorneys, successors, and/or
27

1 assignees, hereby waives any and all claims against PLAINTIFFS, their attorneys, and
2 other representatives, for any and all actions taken or statements made by PLAINTIFF
3 and/or his attorneys and other representatives, whether in the course of investigating claims
4 or otherwise seeking to enforce Proposition 65 against it in this matter.

5 **4.3 California Civil Code Section 1542.** It is possible that other claims not known to
6 the Parties arising out of the facts alleged in the Notice and relating to the Products will
7 develop or be discovered. PLAINTIFF on behalf of himself only, on one hand, and
8 DEFENDANT, on the other hand, acknowledge that this Consent Judgment is expressly
9 intended to cover and include all such claims up through the Compliance Date, including
10 all rights of action therefor. The Parties acknowledge that the claims released in Sections
11 4.1 and 4.2, above, may include unknown claims, and nevertheless waive California Civil
12 Code Section 1542 as to any such unknown claims. California Civil Code Section 1542
13 reads as follows:

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

21 PLAINTIFF and DEFENDANT each acknowledge and understand the significance and
22 consequences of this specific waiver of California Civil Code Section 1542.

23 **4.4 Deemed Compliance with Proposition 65.** Compliance by DEFENDANT
24 with this Consent Judgment constitutes compliance with Proposition 65 with respect to
25 exposure to acrylamide from the Products. Products distributed by DEFENDANT prior to
26 the Compliance Date may be sold through as previously manufactured and labeled.

1 **5. ENTRY OF CONSENT JUDGMENT**

2 The Parties hereby request that the Court promptly enter this Consent Judgment as
3 a consent judgment based on the motion for its approval PLAINTIFF will be making
4 pursuant to Section 10 below. Upon entry of the Consent Judgment as a consent judgment,
5 PLAINTIFF and DEFENDANT waive their respective rights to a hearing or trial on the
6 allegations contained in the Complaint.

7 **6. SEVERABILITY**

8 If, subsequent to the execution of this Consent Judgment, any of the provisions of
9 this Consent Judgment are deemed by a court to be unenforceable, the validity of the
10 enforceable provisions remaining shall not be adversely affected but only to the extent the
11 deletion of the provision deemed unenforceable does not materially affect, or otherwise
12 result in the effect of the Consent Judgment being contrary to, the intent of the Parties in
13 entering into this Consent Judgment.

14 **7. GOVERNING LAW/ENFORCEMENT**

15 The terms of this Consent Judgment shall be governed by the law of the State of
16 California and apply within the State of California. The rights to enforce the terms of this
17 Consent Judgment are exclusively conferred on the Parties hereto. Any Party may, after
18 providing sixty (60) days' written notice and meeting and conferring within a reasonable
19 time thereafter to attempt to resolve any issues, by motion or application for an order to
20 show cause before this Court, enforce the terms and conditions contained in this Consent
21 Judgment. In the event that Proposition 65 or its regulations applicable to the Products are
22 repealed, or are otherwise rendered inapplicable or invalid, including but not limited to by
23 reason of law generally, due to federal preemption, or the First Amendment commercial
24 speech rights of the U.S. Constitution, as determined by a court of competent jurisdiction
25 of an agency of the federal government, then DEFENDANT shall provide written notice
26 to PLAINTIFF of any asserted repeal or determination. Upon DEFENDANT'S written
27

1 notice, DEFENDANT shall have no further obligations pursuant to this Consent Judgment
2 to the extent such repeal or determination affects DEFENDANT’S obligations with respect
3 to the Product.

4 **8. NOTICES**

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

9 For DEFENDANT:

10 Mr. Andres Abusada
11 Inka Crops S.A.
12 Av. El Santuario 1127, Urb. Zarate
13 San Juan de Lurigancho
14 Lima 15427 - PERU
15 With copies to:

16 Mr. John Angerer
17 Inka Foods, Inc.
18 7011 Sylvan Rd., Ste. B
19 Citrus Heights, CA 95610
20 Email: JAngerer@inkafoods.com

21 Meredith Jones-McKeown, Esq.
22 Jasmine Wetherell, Esq.
23 Perkins Coie LLP
24 1888 Century Park East, Suite 1700
25 Los Angeles, CA 90067
26 Ph: (310) 788-9900
27 Email:
28 MJonesMcKeown@perkinscoie.com
JWetherell@perkinscoie.com

For PLAINTIFF:

George Rikos, Esq.
Law Offices of George Rikos
555 West Beech, Suite 500
San Diego, CA 92101
Email: george@georgerikoslaw.com

Either Party, from time to time, may specify in writing to the other Party a change of

1 address to which all notices and other communications shall be sent.

2 **9. COUNTERPARTS: SIGNATURES**

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

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

7 PLAINTIFF agrees to comply with the reporting requirements referenced in Health
8 & Safety Code Section 25249.7(f) and to seek, by formal and properly noticed motion
9 (including with service to the Office of the California Attorney General being fully
10 effectuated at least forty-five (45) days prior to a requested hearing thereon), approval of
11 this Consent Judgment’s terms pursuant to Proposition 65 and its associated entry as a
12 consent judgment by the Court.

13 **11. MODIFICATION**

14 Unless otherwise provided for herein, this Consent Judgment may be modified only
15 by a written agreement of the Parties and the approval of the Court or upon a duly noticed
16 motion of either Party for good cause shown. A showing of technical infeasibility or
17 commercial unreasonableness in meeting the requirements of Section 2 with respect to the
18 Products shall be deemed to constitute good cause for a modification to substitute an
19 alternative no significant risk level on the basis of 27 Cal. Code Regs. § 25703(b) in place
20 of the cancer risk level and presumptive ppb average concentration threshold set forth in
21 Sections 2.1 and 2.2, and such a modification shall not be opposed by PLAINTIFFS. Any
22 proposed modification shall be sent to the Office of the California Attorney General in
23 advance of its submission to the Court such that the Attorney General has a reasonable
24 opportunity to review and comment thereon.

25 **12. ENTIRE AGREEMENT**

26 This Consent Judgment contains the sole and entire agreement of the Parties and
27

1 any and all prior negotiations and understandings related hereto shall be deemed to have
2 been merged within it. No representations or terms of agreement other than those contained
3 herein exist or have been made by any Party with respect to the other Party or the subject
4 matter hereof. This Consent Judgment shall have no effect if it is not approved by the
5 Court and entered as a consent judgment.

6 **13. AUTHORIZATION**

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

<p>9 APPROVED AS TO FORM:</p> <p>10</p> <p>11 Date: March 4, 2021</p> <p>12</p> <p>13 By: <i>George Rikos</i> George Rikos Counsel to PLAINTIFF</p>	<p>11 APPROVED AS TO FORM:</p> <p>12</p> <p>13 Date: March 4, 2021</p> <p>14 By: <i>J. Wetherell</i> Jasmine Wetherell Counsel for DEFENDANT</p>
--	---

15 **AGREED TO:**

16 **AGREED TO:**

17 Date: _____

17 Date: _____

18

19 By: _____

19 By: _____

20 Brad Van Patten

20 INKA CROPS S.A.

21

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

25 DATED: _____

26 _____
27 JUDGE OF THE SUPERIOR COURT

28 CONSENT JUDGMENT

1 any and all prior negotiations and understandings related hereto shall be deemed to have
2 been merged within it. No representations or terms of agreement other than those contained
3 herein exist or have been made by any Party with respect to the other Party or the subject
4 matter hereof. This Consent Judgment shall have no effect if it is not approved by the
5 Court and entered as a consent judgment.

6 **13. AUTHORIZATION**

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

9 10 11 12 13 14	APPROVED AS TO FORM: Date: By: George Rikos Counsel to PLAINTIFF	APPROVED AS TO FORM: Date: By: Jasmine Wetherell Counsel for DEFENDANT
---------------------------------	---	---

15
16 **AGREED TO:**

17 Date: _____

18
19 By: _____

20 Brad Van Patten

15
16 **AGREED TO:**

17 Date: 03/04/2021

18
19 By: [Signature]

20 INKA CROPS S.A.

21
22 **IT IS SO ORDERED, ADJUDGED AND DECREED THAT THE CONSENT**
23 **JUDGMENT SET FORTH ABOVE SHALL PROMPTLY BE ENTERED AS A**
24 **CONSENT JUDGMENT BY THIS COURT:**

25 DATED: _____

26
27
28 _____
JUDGE OF THE SUPERIOR COURT

1 any and all prior negotiations and understandings related hereto shall be deemed to have
2 been merged within it. No representations or terms of agreement other than those contained
3 herein exist or have been made by any Party with respect to the other Party or the subject
4 matter hereof. This Consent Judgment shall have no effect if it is not approved by the
5 Court and entered as a consent judgment.

6 **13. AUTHORIZATION**

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

<p>9 APPROVED AS TO FORM:</p> <p>11 Date:</p> <p>13 By: George Rikos Counsel to PLAINTIFF</p>	<p>9 APPROVED AS TO FORM:</p> <p>11 Date:</p> <p>13 By: Jasmine Wetherell Counsel for DEFENDANT</p>
--	--

15 **AGREED TO:**

16 **AGREED TO:**

17 Date: 03/04/2021

18 By: 
19 Brad Van Patten

15 **AGREED TO:**

17 Date: _____

18 By: _____
19 INKA CROPS S.A.

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

24 DATED: _____

25 _____
26 JUDGE OF THE SUPERIOR COURT