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10 Attorneys for Defendant
11 Watkins Incorporated

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF SAN DIEGO**

14 BRAD VAN PATTEN, an individual,
15
16 Plaintiffs,
17
18 v.
19
20 WATKINS Incorporated, a Delaware
21 corporation; TARGET Corporation, a
22 Delaware Corporation; and DOES 1 through
23 10, inclusive,
24
25 Defendant.

CASE NO.: 37-2021-00035161-CU-MC-CTL
[PROPOSED] CONSENT JUDGMENT

26 **1. INTRODUCTION**

27 **1.1. The Parties.** This Settlement Agreement is entered into by and between Brad Van
28 Patten (“Van Patten”) and Watkins Incorporated (“Watkins”). Together, Van Patten and Watkins
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. Van
Patten alleges that Watkins 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”).

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1 **1.2. General Allegations.** Van Patten alleges that Watkins has exposed individuals to
2 the chemical Pulegone from its sales of Pure Peppermint Extract products without first providing
3 users and consumers of the product with a clear and reasonable health hazard exposure warning as
4 required pursuant to Proposition 65. Pulegone is listed pursuant to Proposition 65 as a chemical
5 known to the State of California to cause cancer.

6 **1.3. Product Description.** The products covered by this Settlement Agreement are all
7 Pure Peppermint Extract products, including, but not limited to, all varieties and pack sizes (the
8 “Products”) that have been imported, distributed, offered for sale, and/or sold in California by
9 Watkins or its affiliates.

10 **1.4. Notice of Violation, Complaint, and Jurisdiction.** On or about March 17, 2021,
11 Van Patten served Watkins and various public enforcement agencies with a document entitled
12 “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “Notice”). The
13 Notice provided Watkins and such others, including public enforcers, with notice that alleged that
14 Watkins was in violation of California Health & Safety Code § 25249.6, for failing to warn
15 California consumers and customers that use of the Products will expose them to Pulegone. No
16 public enforcer has diligently prosecuted the allegations set forth in the Notice. On August 17,
17 2021, based on the Notice and the absence of any authorized public prosecutor of Proposition 65
18 having filed a suit based on the allegations contained therein, Van Patten filed a complaint in the
19 Superior Court of and for San Diego County (the “Court”), Case No. 37-2021-00035161-CU-MC-
20 CTL (the “Action”). For purposes of this Consent Judgment, the Parties stipulate that the Court
21 has jurisdiction over the allegations in the Complaint and personal jurisdiction over Watkins, that
22 venue is proper in the County of San Diego, and that the Court has jurisdiction to enter this Consent
23 Judgment as a full and final resolution of the claims and allegations which were or could have been
24 raised in the Action based on the facts alleged therein and/or in the Notice.

25 **1.5. No Admission.** Watkins denies the material factual and legal allegations contained
26 in the Notice and maintains that, to the best of its knowledge, all products that are or have been sold
27 and distributed in California, including the Products, have been and are in compliance with all laws.

1 Nothing in this Settlement Agreement shall be construed as an admission by Watkins of any fact,
2 finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement
3 constitute or be construed as an admission by Watkins of any fact, finding, conclusion, issue of
4 law, or violation of law, such being specifically denied by Watkins. However, this Section 1.5 shall
5 not diminish or otherwise affect the obligations, responsibilities, and duties under this Settlement
6 Agreement. Notwithstanding the allegations in the Notice, Watkins maintains that it has not
7 knowingly manufactured, or caused to be manufactured, the Products for sale in California in
8 violation of Proposition 65.

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

12 **2. INJUNCTIVE RELIEF**

13 **2.1. Commitment to Keep Relevant Levels of Pulegone Below Warning Thresholds.**
14 As of the Effective Date, and continuing thereafter, Watkins agrees that it shall take any and all
15 necessary measures to ensure that unnaturally occurring Pulegone levels in the Products, to the
16 extent contributed by any ingredient(s) other than pure peppermint oil, are kept below levels
17 requiring a cancer warning under Proposition 65 based on scientific evidence equivalent or better
18 in quality to that which formed the basis for the Proposition 65 listing of Pulegone as a carcinogen.
19 Further, Watkins shall take any reasonable steps widely adopted by its industry to reduce Pulegone
20 levels in any pure peppermint oil in the Products, to the extent such steps do not limit the ability to
21 label and market the Products, unqualifiedly, as “pure peppermint oil” under any and all applicable
22 laws and regulations.

23 **2.2. Testing.** Watkins shall not be prejudiced from establishing that an alternative
24 Pulegone concentration level is more appropriate based on the criteria set forth in Section 2.1 and
25 the Proposition 65 regulations, including but not limited to 27 C.C.R. § 25501. Such annual
26 Pulegone testing shall be performed by Eurofins, Silliker, KPrime, or another accredited laboratory
27 using either:
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- 1 1. GC/MS (Gas Chromatograph/Mass Spectrometry),
- 2 2. LC-MS/MS (Liquid Chromatograph-Mass Spectrometry), or
- 3 3. any other testing method agreed upon by the Parties or approved by the Environmental
- 4 Protection Agency (EPA) or OEHHA.

5 **3. CONSENT JUDGMENT PAYMENTS**

6 **3.1. Civil Penalties.** Watkins shall pay \$2,000 as a Civil Penalty in accordance with this
7 Section. The Civil Penalty payment shall be allocated in accordance with California Health &
8 Safety Code § 25249.12(c)(1) and (d), with 75% of the Civil Penalty remitted to OEHHA and the
9 remaining 25% of the Civil Penalty remitted to Van Patten. The Civil Penalty payment(s) shall be
10 delivered to the addresses identified in Section 3.2.1, below. For all amounts due and owing that
11 are not received within the payment times set forth below, Watkins shall pay a late Civil Penalty
12 payment fee equal to \$100/day to be allocated in accordance with California Health & Safety Code
13 § 25249.12(c)(1) and (d).

14 **3.2. Payment Procedures.** Watkins shall issue two separate checks for the Civil Penalty
15 payment to (a) “OEHHA” in the amount of \$1,500 (75%); and (b) “Law Offices of George Rikos
16 in Trust for Brad Van Patten” in the amount of \$500 (25%). The Civil Penalty payment(s) shall be
17 delivered to the addresses identified below:

18 **3.2.1.** Payments shall be delivered as follows:

19 (i) All payments owed to Van Patten, pursuant to Section 3.1 shall be delivered
20 to the following payment address:

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

24 (ii) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section 3.1
25 shall be delivered directly to OEHHA (Memo Line “Prop 65 Penalties”) at the
26 following addresses, and shall be sent no later than 10 days following the Effective
27 Date:

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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

3.2.2. Copy of Payments to OEHHA. Watkins 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 Section 3.2.1(i), as proof of payment to OEHHA.

3.2.3. 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 Watkins will issue IRS 1099 forms as appropriate):

- (i) “Law Offices of George Rikos” at the address provided in Section 3.2.1(i);
- and
- (ii) “Office of Environmental Health Hazard Assessment” at 1001 I Street, Sacramento, CA 95814.

3.3. Attorneys’ Fees and Litigation Costs. Within 10 days of the Effective Date, Watkins shall reimburse Van Patten’s counsel \$37,000 for fees and costs incurred as a result of investigating and bringing this matter to Watkins’ attention, and negotiating a settlement in the public interest, and obtaining the Court’s approval and entry of this Consent Judgment. Watkins shall issue a check payable to “Law Offices of George Rikos” in the amount of \$37,000 for delivery to the address identified in Section 3.2.1(i), above.

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

2 **4.1. Release of Watkins and Downstream Customers and Entities.**

3 This Consent Judgment is a full, final, and binding resolution between Van Patten, acting on his
4 own behalf and in the public interest, and Watkins of any violation of Proposition 65 that was or
5 could have been asserted by Van Patten or on behalf of his past and current agents, representatives,
6 attorneys, predecessors, successors, and/or assigns (collectively, “Releasers”) for failure to provide
7 warnings for alleged exposures to Pulegone contained in the Products, and Releasers hereby release
8 any such claims against Watkins and its parents, shareholders, members, directors, officers,
9 managers, employees, representatives, agents, attorneys, divisions, subdivisions, subsidiaries,
10 partners, sister companies, and affiliates, and their predecessors, successors, and assigns
11 (collectively, “Watkins Releasees”), and each entity to whom Watkins directly or indirectly
12 distributes or sells the Products, including, but not limited to, downstream distributors, wholesalers,
13 customers, and retailers, and their respective subsidiaries, affiliates and parents, franchisees,
14 cooperative members, and licensees (collectively, “Downstream Releasees”), from all claims for
15 violations of Proposition 65 with respect to any Products manufactured, distributed, and/or sold by
16 Watkins prior to the Effective Date based on failure to warn of alleged exposure to the chemical
17 Pulegone from the Products.

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

1 **4.2. Watkins' Release of Van Patten.** Watkins, on behalf of itself and its past and
2 current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all
3 claims against Van Patten, his attorneys, and other representatives, for any and all actions taken or
4 statements made by Van Patten and/or his attorneys and other representatives, whether in the course
5 of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter or
6 with respect to the Products.

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

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

21 Van Patten and Watkins each acknowledge and understand the significance and
22 consequences of this specific waiver of California Civil Code § 1542.

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

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1 **5. ENTRY OF CONSENT JUDGMENT**

2 The Parties hereby request that the Court promptly adopt and enter this Consent Judgment
3 as one of the Court’s, based on the motion for approval Van Patten will be making pursuant to
4 Section 11 below. Unless and until the Court adopts and enters this Consent Judgment as one of
5 the Court’s, the Parties shall have no obligations hereunder and this proposed Consent Judgment
6 shall be deemed a protected settlement communication under Cal. Evid. Code §§ 1152, 1154 and,
7 accordingly, given no weight in any proceeding. Upon entry of the Consent Judgment as a consent
8 judgment, Van Patten and Watkins waive their respective rights to a hearing or trial on the
9 allegations contained in the Complaint.

10 **6. SEVERABILITY**

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

17 **7. REPRESENTATIONS AND WARRANTIES.**

18 (a) Except with respect to the Products, Van Patten has not been retained by any individuals
19 with claims against the Watkins Releasees, or any of them.

20 (b) Except with respect to the Notice and the above-captioned action, Van Patten has not
21 testified, provided documents, filed, instituted, or become a party to, or participated in the
22 investigation of, nor has he caused any other person or entity to testify, provide documents, file,
23 institute, or become a party to, or participate in the investigation of, any complaint, charge,
24 application, action, suit, proceeding, claim, or grievance against the Watkins Releasees, or any of
25 them, with any local, state, or federal entity, or any court or other body, based on any action,
26 omission, or other thing which arose on or prior to the Effective Date of this Consent Judgment,
27 whether known or unknown at the time of signing this Consent Judgment.

1 (c) Except for the Products, Van Patten is unaware, as of the Effective Date, of the filing or
2 status of any complaint, charge, application, action, suit proceeding, investigation, claim, or
3 grievances, if any, against the Watkins Releasees, or any of them, that may be pending before any
4 governmental entity, court, or other body concerning the matters asserted in this Consent Judgment.

5 (d) Except for the Products, Van Patten is unaware, as of the Effective Date, of any other
6 individuals who have or may have claims against the Watkins Releasees, or any of them.

7 (e) Van Patten has not been informed of, any other plaintiff or class member who intends
8 to bring litigation against the Watkins Releasees, or any of them.

9 (f) Van Patten has not and will not refer this matter to any other attorneys or law firms and
10 will not work with any other attorneys or law firms in any capacity to bring claims against the
11 Watkins Releasees, or any of them, in relation to the Products.

12 (g) As of the date of this Settlement Agreement, neither Van Patten nor his counsel of record
13 in this action has caused, encouraged, or induced any person or entity to bring, file, or institute an
14 action, proceeding, lawsuit, administrative proceeding, investigation, claim, or demand of any kind
15 or nature whatsoever against the Watkins Releasees, or any of them. This provision does not
16 prohibit any attorney from acting in a professional capacity consistent with any ethical obligations
17 it may have to a third party, nor does this provision limit Van Patten's counsel of record's right to
18 practice law to the fullest extent lawful.

19 (h) Van Patten and his counsel of record in this action will not solicit or seek to represent
20 any additional clients to assert similar Released Claims relating to the Products, except as required
21 by law. They further represent and warrant that they neither represent nor have any knowledge of
22 any other potential claimants with claims against the Watkins Releasees, or any of them, similar to
23 those at issue in the above-captioned action. This provision does not prohibit any attorney from
24 acting in a professional capacity consistent with any ethical obligations it may have to a third party,
25 nor does this provision limit Van Patten's counsel of record's right to practice law to the fullest
26 extent lawful.

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1 **8. GOVERNING LAW/ENFORCEMENT**

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

16 **9. NOTICES**

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

21 For Watkins:

22 J.R. Rigley
23 President
24 The Watkins Co.
24 150 Liberty Street
24 Winona, MN 55987

25 With a copy to:

26 Bao M. Vu
27 Stoel Rives LLP
27 Three Embarcadero Center, Suite 1120
28 San Francisco, CA 94111

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For Van Patten:

George Rikos, Esq.
Law Offices of George Rikos
555 West Beech, 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.

10. COUNTERPARTS: SIGNATURES

This Consent Judgment 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.

11. 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) and to seek, by formal and properly noticed motion (including with service to the Office of the California Attorney General being fully effectuated at least 45 days prior to a requested hearing thereon), approval of this Consent Judgment’s terms pursuant to Proposition 65 and its associated entry as a consent judgment by the Court.

12. MODIFICATION

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

1 **13. ENTIRE AGREEMENT**

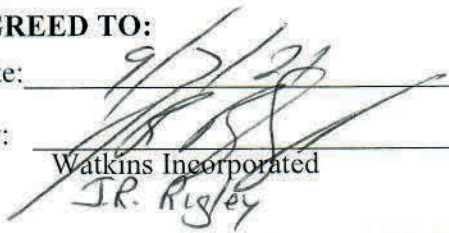
2 This Consent Judgment contains the sole and entire agreement of the Parties, and any and
3 all prior negotiations and understandings related hereto shall be deemed to have been merged within
4 it. No representations or terms of agreement other than those contained herein exist or have been
5 made by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

7 **14. AUTHORIZATION**

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

<p>APPROVED AS TO FORM:</p> <p>Date: _____</p> <p>By: _____ George Rikos Counsel to Brad Van Patten</p>	<p>APPROVED AS TO FORM:</p> <p>Date: <u></u></p> <p>By: September 8, 2021 Bao M. Vu Counsel for Watkins Incorporated</p>
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15 **AGREED TO:**
16 Date: _____
17 By: _____
18 Brad Van Patten

AGREED TO:
Date: 9/7/21
By: 
Watkins Incorporated
J.R. Rigley

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

22 DATED: _____

23 _____
JUDGE OF THE SUPERIOR COURT

Judgment shall have no effect if it is not approved by the Court and entered as a consent judgment.

14. AUTHORIZATION

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

<p>APPROVED AS TO FORM:</p> <p>Date: <u>George Rikos</u></p> <p>By: <u>10/7/21</u> George Rikos Counsel to Brad Van Patten</p>	<p>APPROVED AS TO FORM:</p> <p>Date: _____</p> <p>By: _____ Bao M. Vu Counsel for Watkins Incorporated</p>
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AGREED TO:

Date: 09/03/2021

By: Bradley Van Patten
Brad Van Patten

AGREED TO:

Date: _____

By: _____
Watkins Incorporated

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

DATED: _____

JUDGE OF THE SUPERIOR COURT