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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

BRAD VAN PATTEN, an individual

Plaintiff,

v.

BARBERI INTERNATIONAL, Inc., a Florida
corporation; MAYTE, Inc., a Florida corporation;
and DOES 1 through 10, inclusive

Defendants.

Case No. 37-2021-00047471-CU-MC-CTL

[PROPOSED] CONSENT JUDGMENT

Judgment shall be entered pursuant to the terms of the Settlement Agreement attached and incorporated herein as Exhibit A.

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.


AGREED TO:

Date: 11/23/2021

By: Bradley Van Patten
Brad Van Patten

AGREED TO:

Date: 11/23/2021

By: 
Defendants
BARBERI INTERNATIONAL, Inc. &
MAYTE, Inc

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

DATED: _____

JUDGE OF THE SUPERIOR COURT

Exhibit A

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Brad Van Patten (“Van Patten”) and Barberi International, Inc. (“Barberi”). Together, Van Patten and Barberi 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 Barberi 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 Barberi has exposed individuals to the chemical acrylamide from its sales of Plantain Chips without first providing users and consumers of the product with a clear and reasonable health hazard exposure warning 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 Plantain Chips, including, including but not limited to, all varieties and pack sizes (the “Products”) that have been imported, distributed, offered for sale and/or sold in California by Releasees (as defined in section 5.1) .

1.4 Notice of Violation. On March 25, 2021, Van Patten served Barberi 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 Barberi and such others, including public enforcers, with notice that alleged that Barberi was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of the Products will expose them to acrylamide. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

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

2. INJUNCTIVE RELIEF: CEASE SALES OR CLEAR AND REASONABLE WARNINGS

2.1 Compliance with Proposition 65 Warning Regulations. As of the Effective Date, and continuing thereafter, Barberi shall cease sales of the Products in California. In the alternative, a clear and reasonable exposure warning as set forth in this §§ 2.1 and 2.2 must be provided for the Product. There shall be no obligation for such an exposure warning to be provided for Products that entered the stream of commerce prior to the Effective Date. Stream of commerce shall mean and refer to any Product that Barberi manufactured, labeled, sold and/or distributed prior to the Effective Date. The warning shall consist of either the Warning or Alternative Warning described in §§ 2.1(a) or (b), respectively:

(a) **Warning.** The “Warning” shall consist of the statement:

⚠WARNING: This product can expose you to Acrylamide which is known to the State of California to cause cancer, birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

(b) **Alternative Warning:** Violator may, but is not required to, use the alternative short-form warning as set forth in this § 2.3(b) (“Alternative Warning”) as follows:

 **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

2.2 **A Warning or Alternative Warning** provided pursuant to § 2.1 must have the term “**WARNING:**” printed in all capital letters and in bold font. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the label for the Products does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the Products’ packaging or labeling and displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use.

2.3 **Compliance with Warning Regulations.** Barberi shall be deemed to be in compliance with this Settlement Agreement by either ceasing sales, or, in the alternative adhering to §§ 2.1 and 2.2 of this Settlement Agreement or by complying with warning requirements adopted by the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”).

2.4 **Sell-Through Period.** Notwithstanding anything else in this Settlement Agreement, the Products that are manufactured on or prior to the Effective Date shall be subject to release of liability pursuant to this Settlement Agreement, without regard to when such Products were, or are in the future, distributed or sold to customers. As a result, the obligation of Barberi, or any Releasees (if applicable), do not apply to Products manufactured on or prior to the Effective Date.

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

In settlement of all the claims referred to in this Settlement Agreement, Barberi shall pay \$3000 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 § 3.2, below. For all amounts due and owing that are not received within the payment times set forth below, Barberi 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).

3.1 Civil Penalty. Barberi shall issue two separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$2,250 (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 § 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 § 3.1 shall be delivered to the following payment address:

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 § 3.1 shall be delivered directly to OEHHA (Memo Line “Prop 65 Penalties”) at the following addresses, 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.** Barberi 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 § 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 Barberi 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

Barberi shall reimburse Van Patten's counsel \$42,000 for fees and costs incurred as a result of investigating and bringing this matter to Barberi's attention, and negotiating a settlement in the public interest. Within ten (10) days of the Effective Date, Barberi shall issue a check payable to "Law Offices of George Rikos" in the amount of \$17,000 for delivery to the address identified in § 3.2(a)(i), above, and the remaining \$25,000 in 30 days thereafter, to the same address.

5. RELEASE OF ALL CLAIMS

5.1 Release of Barberi and Downstream Customers and Entities. This Settlement Agreement is a full, final and binding resolution between Van Patten, acting on his own behalf, and Barberi, 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 ("Releasers") for failure to provide warnings for alleged exposures to acrylamide contained in the Products, and Releasers hereby release any such claims against Barberi and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom Barberi directly or indirectly distributes or sells

the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, and its respective subsidiaries, affiliates and parents, franchisees, cooperative members, brands and licensees, including but not limited to Mayte; Lulu; Amazon.com, Inc.; Montalvan Sales, Inc; and Mi Colombia Mia (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 Products.

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

5.2 Barberi's Release of Van Patten. Barberi, 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 Barberi, 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 §§

5.1 and 5.2, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 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 Barberi each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

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

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

For Barberi:

Daniel Calvo
Calbar World Foods
President-CEO
daniel@calbarworldfoods.com

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 Barberi 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 Barberi 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, Barberi 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 \$10,000 , exclusive of fees and cost that may be incurred on appeal. Barberi 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 Barberi, within twenty (20) business days after its receipt of any invoice from Van Patten for work performed under this

paragraph. Barberi understands no motion to approve any proposed consent judgment will be filed absent payment for the work performed under this paragraph.

AGREED TO:

Date: _____

By: _____
Brad Van Patten

AGREED TO:

Date: 10/8/21

By: 
Barberi International, Inc.

Julio Barberi
President.

paragraph. Barberi understands no motion to approve any proposed consent judgment will be filed absent payment for the work performed under this paragraph.

AGREED TO:

AGREED TO:

Date: 10/11/2021

Date: 10/18/21

By: Brad Van Patten
Brad Van Patten

By: [Signature]
Barberi International, Inc.

Julio Barberi
President.

