

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and Garden House (HK) Co., Ltd (“Garden House”), with Johnson and Garden House each individually referred to as a “Party” and collectively as the “Parties.” Johnson is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. Johnson alleges that Garden House is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Johnson alleges that Garden House manufactures, sells, and/or distributes for sale in California, metal and glass tabletop trees. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Johnson alleges that Garden House failed to provide a Proposition 65 warning for exposures to lead.

### 1.3 Product Description

The products covered by this Settlement Agreement are specifically defined as, and limited to, the “*Kirkland’s Tabletop Christmas Tree*” SKU: 32-262200 (hereinafter referred to as the “Products”).

### 1.4 Notice of Violation

On June 10, 2022, Johnson served Kirkland’s Stores, Inc. and the requisite public enforcement agencies with a 60-Day Notice of Violation, alleging that it violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to lead from the Products. Garden House was subsequently identified as the manufacturer/supplier of the Products to Kirkland’s. No

public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

### **1.5 No Admission**

Garden House denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has 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 Garden House of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Garden House of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Garden House. This Section shall not, however, diminish or otherwise affect Garden House' obligations, responsibilities, and duties under this Settlement Agreement.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean September 30, 2022.

## **2. INJUNCTIVE RELIEF: REFORMULATION/WARNINGS**

### **2.1 Reformulation Standards**

"Reformulated Products" are defined as those Products that: (a) contain no more than 100 parts per million ("ppm") lead in any accessible component of the Products when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3050B or equivalent methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance; *and* (b) yield no more than 1.0 microgram of lead on any surface sampled and analyzed pursuant to the NIOSH 9100 testing protocol.

### **2.2 Reformulation/Warning Commitment**

As of the Effective Date, Garden House shall not manufacture, import, distribute, sell or offer the Products for sale in the State of California unless they are Reformulated

Products pursuant to Section 2.1 or contain appropriate warnings pursuant to Section 2.3 below.

### **2.3 Product Warnings**

As of the Effective Date, all Products Garden House sells and/or distributes for sale in California that do not qualify as Reformulated Products, shall bear a clear and reasonable warning pursuant to this Section. Garden House further agrees that the warning shall be prominently placed with such conspicuousness when compared with other words, statements, designs or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of use. For purposes of this Consent Judgment, a clear and reasonable warning for the Products shall consist of a warning affixed directly to the product or product packaging, label, or tag, for Products sold in California, and contain one of the following statements:

⚠ **WARNING:** Reproductive Harm- [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

**OR**

⚠ **WARNING:** This product can expose you to chemicals including lead, which are known to the State of California to cause birth defects and other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

## **3. MONETARY SETTLEMENT TERMS**

### **3.1 Civil Penalty Payment**

Pursuant to Health and Safety Code section 25249.7(b)(2), and as consideration for the releases contained in Sections 4.1 and 4.2 below, Garden House agrees to pay \$1,400 in civil penalties no later than the Effective Date. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Johnson. Garden House shall make its payment via wire transfer to Voorhees & Bailey, LLP, which shall provide the wire instructions to Garden House. Voorhees &

Bailey shall then distribute the penalty payments as follows: (1) "OEHHA" in the amount of \$1,050; and (2) "Dennis Johnson" in the amount of \$350.

### **3.2 Attorneys' Fees and Costs**

The Parties acknowledge that Johnson and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to his counsel, thereby leaving the issue to be resolved after the material terms of the agreement had been settled. No later than the Effective Date, Garden House agrees to pay \$15,100, via wire transfer to Voorhees & Bailey, LLP" for all fees and costs incurred investigating, bringing this matter to the attention of Garden House's management, and negotiating a settlement.

### **3.3 Payment Address**

All payments under this Settlement Agreement shall be delivered via wire transfer to Voorhees & Bailey, LLP no later than the Effective Date.

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 Johnson's Release of Proposition 65 Claims**

Johnson acting on his own behalf, and *not* on behalf of the public, releases Garden House, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Garden House directly or indirectly distributes or sells the Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, importers, and licensees, including, but not limited to, Kirkland's Stores, Inc. (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to lead in the Products. The Parties understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Garden House.

#### **4.2 Johnson's Individual Release of Claims**

Johnson, in his individual capacity only and *not* in his representative capacity, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of Johnson of any nature, character, or kind, whether known or unknown, suspected or unsuspected, including but not limited to all failure to warn claims, arising out of alleged or actual exposures to lead in the Products manufactured, imported, distributed, or sold by Garden House prior to the Effective Date. The Parties understand and agree that this Section 4.2 release shall not extend upstream to any entities that manufactured the Products, or any component parts thereof, or any distributors or suppliers who sold the Products, or any component parts thereof to Garden House. Nothing in this Section affects Johnson's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Garden House's Products.

#### **4.3 Garden House's Release of Johnson**

Garden House, on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Johnson and his attorneys and other representatives, for any and all actions taken or statements made by Johnson and his attorneys and other representatives, whether in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

#### **5. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is deemed by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

**6. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws 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 by reason of law generally, or as to the Products, then Garden House shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

**7. NOTICE**

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

**For Garden House:**

Ryan Landis  
CMB G<sub>3</sub> Law LLC  
100 Spectrum Center Drive; Suite 820  
Irvine, CA 92618

**For Johnson:**

Dennis Johnson  
c/o Voorhees & Bailey, LLP  
990 Amarillo Avenue  
Palo Alto, CA 94303

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

**8. COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

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

Johnson and his attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

**10. MODIFICATION**

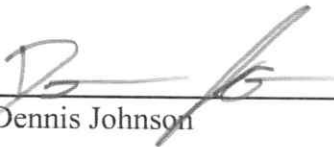
This Settlement Agreement may be modified only by written agreement of the Parties.

**11. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

Date: 9/26, 2022

By:   
Dennis Johnson

**AGREED TO:**

Date: 9/28, 2022

By:   
  
Garden House (HK) Co., Ltd