

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and Supervalu Inc. (“Supervalu”), with Johnson and Supervalu 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 Supervalu 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 Supervalu manufactures, sells, and/or distributes for sale in California, ceramic mugs with exterior designs containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Johnson alleges that Supervalu failed to provide the health hazard warning required by Proposition 65 for exposures to lead.

1.3 Product Description

The products covered by this Settlement Agreement are defined as ceramic mugs with exterior designs called “*SVI Peach Ceramic Mugs*” that are manufactured, sold, and/or distributed for sale in California by Supervalu (hereinafter referred to as “Products”).

1.4 Notice of Violation

On October 14, 2022, Johnson served Supervalu Inc., Winco Foods, LLC, and the requisite public enforcement agencies with a 60-Day Notice of Violation (the “Notice”), alleging that they violated Proposition 65 when they failed to warn their customers and

consumers in California of the health hazards associated with exposures to lead from the Products. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Supervalu 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, including Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Supervalu 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 Supervalu of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Supervalu. This Section shall not, however, diminish or otherwise affect Supervalu's obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean February 17, 2023.

2. INJUNCTIVE RELIEF: REFORMULATION/WARNINGS

2.1 Reformulation Standards

"Reformulated Products" are defined as those Products that: (a) contain no more than 90 parts per million ("ppm") lead in any decoration, colored artwork, designs and/or marking on the surface 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; (b) yield no more than 1.0 microgram of lead on any surface sampled and analyzed pursuant to the NIOSH 9100 testing protocol; and (c) yield a result of non-detect (defined as no more than 25 ppm by weight of lead) for any decorations located in the upper 20

millimeters of a Product, i.e., the “Lip-and-Rim” area when analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent methodologies used by state and federal agencies to determine lead content in a solid substance.

If the decoration is tested after it is affixed to the Product, the percentage of the lead by weight must be related only to the decorating materials and must not include any quantity attributable to non-decorating material (e.g., ceramic substrate).


2.2 Reformulation/Warning Commitment

As of the Effective Date, Supervalu shall not manufacture the Products for ultimate sale in the State of California unless they are Reformulated Products pursuant to Section 2.1 or include appropriate health hazard warnings pursuant to Section 2.3 below.


2.3 Product Warnings

As of the Effective Date, all Products manufactured for ultimate sale in California that do not qualify as Reformulated Products, shall be associated with a clear and reasonable warning pursuant to this Section and as authorized by safe harbor warning regulations at 27 Cal. Code Regs. Section 25601 *et seq.*¹ Consistent with the Proposition 65 safe harbor warning regulations, warnings for sales at brick-and-mortar locations shall be permitted on Products, on Product labels, via shelf tags that associate the Product(s) with the warning, or by point-of-sale warnings. Supervalu further agrees that the warning will 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 purchase or use. For purposes of this Settlement Agreement, a clear and reasonable warning for the Products shall contain one of the following statements:

¹ Should these warning safe harbor provisions be amended, Supervalu’s compliance with the amended version of the regulations shall constitute compliance with this Agreement.

 **WARNING:** [Cancer and] Reproductive Harm-
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 [cancer and] birth defects and other reproductive harm. For more information go to www.P65Warnings.ca.gov.

In the event the Office of Environmental Health Hazard Assessment (“OEHHA”) promulgates one or more regulations requiring or permitting specific safe harbor warning text and/or methods of transmission relevant to the Products that are different than those set forth above, Supervalu shall be entitled to use, at its discretion, such other specific safe harbor warning text and/or methods of transmission without being deemed in breach of this Agreement.

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, Supervalu agrees to pay \$2,000 in civil penalties within ten (10) business days of 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. Supervalu shall make its payment in two checks, delivered to the address in section 3.3, as follows: (1) “OEHHA” in the amount of \$1,500; and (2) “Dennis Johnson” in the amount of \$500.

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. Shortly after the other settlement terms had been reached, Supervalu expressed a desire to resolve Johnson's fees and costs. The Parties reached an accord on the compensation due to Johnson's counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, within ten (10) business days of the Effective Date, Supervalu agrees to pay \$15,500, in the form of a check made payable to "Voorhees & Bailey, LLP," for all fees and costs incurred investigating, bringing this matter to the attention of Supervalu's management, and negotiating a settlement. The payments set forth in Section 3 are the exclusive payments due between the Parties.

3.3 Payment Address

All payments under this Settlement Agreement shall be delivered to the following address:

Voorhees & Bailey, LLP
990 Amarillo Avenue
Palo Alto, CA 94303

4. CLAIMS COVERED AND RELEASED

4.1 Johnson's Release of Proposition 65 Claims

Johnson acting on his own behalf, releases Supervalu, its parents, subsidiaries, affiliated entities under common ownership, predecessors, successors, directors, officers, agents employees, suppliers, manufacturers, attorneys, and each entity to whom Supervalu directly or indirectly distributes or sells the Products, including, but not limited, to downstream distributors, wholesalers, customers, vendors, purchasers, franchisees, shareholders, cooperative members, importers, licensees, and retailers, including but not limited to Winco Foods, LLC and its respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 for Products manufactured on or before

the Effective Date based on unwarned exposures to lead. This release includes Products in the stream of commerce prior to the Effective Date, as they have been included in the calculation of the civil penalty payment.

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, distributed, and/or sold by Supervalu prior to the Effective Date. Nothing in this Section affects Johnson's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve the Products.

4.3 Supervalu's Release of Johnson

Supervalu, 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.

4.4 General Release

The Parties acknowledge that the claims released in Sections 4.1, 4.2 and 4.3 above may include unknown claims, and the Parties nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 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.

Johnson, on behalf of himself only, and Supervalu, on behalf of itself only, acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542. The Parties expressly waive and relinquish any and all rights and benefits that they may have under, or which may be conferred on them by any other state or federal statute or common law principle of similar effect, to the fullest extent that they may lawfully waive such rights or benefits pertaining to the released matters.

4.5 Public Interest

The Parties understand that the commitments Supervalu has agreed to herein, and actions to be taken by Supervalu under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure section 1021.5. As such, it is the intent of the Parties that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Supervalu's failure to provide a Proposition 65 warning on the Products it has manufactured on or before the Effective Date, such private party action would not confer a significant benefit on the general public as to the Products addressed in this Settlement Agreement, provided that Supervalu is in material compliance with this Agreement. The Parties agree that the understandings and intentions expressed in this Section are applicable only to the Notice and the Products at issue and are not to be construed as a general understanding or intention with respect to other products manufactured, distributed, sold or offered for sale in California by any other entity.

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 or the application of law to the Products as alleged in the Notice, then Supervalu may provide written notice to Johnson of any asserted change in the law and 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. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES

If a dispute arises with respect to either Party's compliance with the terms of this Agreement, the Parties shall meet and confer in person, by telephone, and/or in writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed in the absence of such a good faith attempt to resolve the dispute beforehand. Any party that fails to meet and confer or otherwise attempt in good faith to resolve any dispute arising under this Agreement prior to seeking judicial enforcement, shall forfeit any attorneys' fees and costs to which that Party may otherwise be entitled.

8. 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 Supervalu:

Will Wagner
Arnold & Porter
Three Embarcadero Center, 10th Floor
San Francisco, CA 94111

For Johnson:

Dennis Johnson
c/o Voorhees & Bailey, LLP
535 Ramona Street; Suite 5
Palo Alto, CA 94301

Copy to:
UNFI
Attn.: Legal Department
313 Iron Horse Way
Providence, RI 02908

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.

9. 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.

10. 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).

11. MODIFICATION

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

12. 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.

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13. ENTIRE AGREEMENT

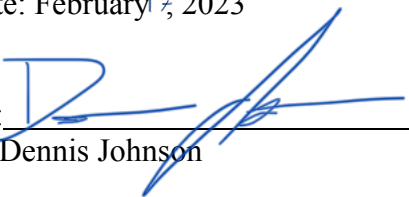
This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

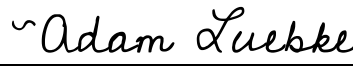
AGREED TO:

AGREED TO:

Date: February 17, 2023

Date: February 16, 2023

By: 
Dennis Johnson

By: 
Supervalu Inc.