

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and Western Cactus Enterprises, Inc. (“Western Cactus”), with Johnson and Western Cactus 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 Western Cactus 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 Western Cactus manufactures, sells, and/or distributes for sale in California, ceramic pots 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 Western Cactus 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 specifically defined as, and limited to, the *Western Cactus 4” Sugar Skull; UPC: 8 50064 32054 1*, that are sold or distributed for sale in California by Western Cactus (hereinafter referred to as “Products”).

1.4 Notice of Violation

On January 16, 2026, Johnson served Western Cactus, Grocery Outlet Inc., and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that the notice recipients violated Proposition 65 by failing to warn 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

Western Cactus 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 Western Cactus 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 Western Cactus of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Western Cactus. This Section shall not, however, diminish or otherwise affect Western Cactus's obligations, responsibilities, and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice and/or its compliance with this Settlement Agreement, Western Cactus maintains that it has not knowingly or intentionally caused exposures to chemicals in violation of Proposition 65 as Western Cactus does not manufacture the Products. The Parties further acknowledge that Western Cactus's upstream supplier of the Products, Dysun International Development Ltd. ("Dysun"), is included within the Releasees identified in Sections 4.1 and 4.2 below, and that nothing in this Settlement Agreement, and no participation, contribution, cooperation, or involvement by Dysun in connection with the resolution of this matter, shall constitute or be construed as an admission by Dysun of any fact, finding, conclusion, issue of law, liability, product defect, wrongdoing, or violation of Proposition 65, all of which are expressly denied by Dysun. Nothing in this Settlement Agreement shall prejudice, waive, or impair any right, argument, or defense that the Parties may have with respect to the allegations contained in the Notice or with respect to any other future legal proceedings, except as otherwise provided herein.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean August 31, 2026.

2. INJUNCTIVE RELIEF

2.1 Reformulation/Warning Commitment

Within 90 (ninety) days of the Effective Date (“Compliance Date”), Western Cactus shall not import, distribute, sell, or offer the Products for sale in the State of California that contain (1) any intentionally added lead, or (2) any intentionally added ingredient that causes lead to be in the Products, unless they are Reformulated Products pursuant to Section 2.2 or the Products bear a Proposition 65 warning pursuant to Section 2.3. The parties acknowledge that Western Cactus's commitment to reformulate the Products, in lieu of providing a clear and reasonable warning, is not the exclusive method of complying with Proposition 65.

Additionally, Western Cactus shall not knowingly sell Products that contain lead that is not intentionally added. Within 90 (ninety) days of discovering, determining, or being advised by a supplier that non-intentionally added lead is present in the Products, Western Cactus shall (1) reformulate the Products pursuant to Section 2.2 or (2) update the Products to have a Proposition 65 warning pursuant to Section 2.3.

No warnings shall be required for Products that were manufactured prior to the Compliance Date or that were already in the stream of commerce prior to the Compliance Date, regardless of the date such Products are sold or used in California, because such Products have been included in the calculation of the civil penalties contained in section 3.1 and are subject to the releases contained herein.

2.2 Reformulated Products.

“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; and (b) yield no more than 1.0 microgram of lead on any surface sampled and analyzed pursuant to the NIOSH 9100 testing protocol or equivalent methodologies used by state and federal agencies to determine lead content on a solid substance.

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

2.3 Warnings.

Where warnings are required pursuant to Section 2.1, a clear and reasonable warning shall be provided, as set forth herein.

2.3.1 Warning Content. For purposes of this Settlement Agreement, the parties agree that a clear and reasonable warning shall consist of one of the following warning statements:

 **WARNING:** Risk of cancer and reproductive harm from exposure to lead.
See www.P65Warnings.ca.gov

OR

 **WARNING:** Can expose you to lead, a carcinogen and reproductive toxicant.
See www.P65Warnings.ca.gov

OR

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

OR; (only for Products labeled before December 31, 2027)

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

The above warning statements must print the word “**WARNING:**” in all capital letters and in bold font, followed by a colon. 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 sign or 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:**”.

2.3.2 Method of Transmission

Product Labeling. Western Cactus shall affix one of the foregoing warning statements to the packaging, labeling or directly to a specific Product. The warning statement shall be affixed to the Product, Products’ packaging or labeling and placed 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. Where the short-form warning statement is provided on the label, the entire warning must be in a type size no smaller than the largest type size used for other consumer information on the product label. In no case shall the short-form warning statement appear in a type size smaller than six-point type.

Internet. In addition to the product labeling, where Western Cactus offers Products to California customers via its own proprietary internet website or any website over which Western Cactus has control, Western Cactus shall provide a clear and reasonable internet web page warning to customers located in California. The warning statement shall appear either: (i) on the same web page on which a Product is displayed and/or described; (ii) on the same page as the price for the Product; or (iii) on one or more web pages displayed to a California purchaser prior to completion of the checkout process. Alternatively, the warning statement shall be provided using a clearly marked hyperlink using the word “WARNING” on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase. If the product label warning is provided using the short-form warning statement, the warning provided on the website may use the same content. A warning is not prominently displayed if the purchaser must search for it in the general content of the website. Where Western Cactus does not have control over the content of known third-party internet sellers to whom Western Cactus supplies Products, Western Cactus shall

provide such sellers with written notice, in accordance with Title 27, California Code of Regulation, Section 25600.2, of their warning obligations. Third-party internet sellers who receive notice pursuant to Section 25600.2 and fail to provide a clear and reasonable Proposition 65 warning pursuant to this section, shall not be deemed in compliance with this Settlement Agreement and shall not receive any benefit or protection afforded hereunder.

Catalog. In addition to the product labeling, if Western Cactus sells Products via its own proprietary catalog or any catalogue over which Western Cactus has control, to customers located in California, one of the foregoing warnings statements must also be provided in the catalog in a manner that clearly associates it with the *specific* item being purchased. The catalog warning statement shall be placed 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. If a short-form warning is being provided on the label, the warning provided in the catalog may use the same content. Where Western Cactus does not have control over the content of known third-party catalog sellers to whom Western Cactus supplies Products, Western Cactus shall provide such sellers with written notice, in accordance with Title 27, California Code of Regulation, Section 25600.2, of their warning obligations. Third-party catalog sellers who receive notice pursuant to Section 25600.2 and fail to provide a clear and reasonable Proposition 65 warning pursuant to this section, shall not be deemed in compliance with this Settlement Agreement and shall not receive any benefit or protection afforded hereunder.

Languages. Where a label or tag used to provide a warning statement includes consumer information about a product in a language other than English, the warning must also be provided in that language in addition to English.

2.3.3 Safe Harbor Warnings. The parties acknowledge that the warnings required by this section are not the exclusive methods of providing Proposition

65 warnings and agree that Western Cactus may utilize “safe harbor” warning language and methods promulgated by the Office of Environmental Health Hazard Assessment and contained in 27 CCR §§ 25602-25603, applicable to lead and the Products, in effect on or after the Effective Date, without being deemed in breach of this Settlement Agreement.

2.4 Compliance with Proposition 65.

The Parties agree and intend that Western Cactus’s compliance with the terms of this Settlement Agreement shall constitute compliance by Western Cactus with Proposition 65 with respect to exposures to Lead from the Products or Reformulated Products.

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, Western Cactus agrees to pay \$1,000.00 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. Western Cactus shall make its payment in two checks, delivered to the address in section 3.3, as follows: (1) “OEHHA” in the amount of \$750.00; and (2) “Dennis Johnson” in the amount of \$250.00.

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, Western Cactus 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, Western Cactus agrees to pay, no later than the Effective Date, \$15,000.00, 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 Western Cactus’s management, and negotiating a settlement.

3.3 Payment Address and Tax Documentation

All checks under this Settlement Agreement shall be delivered to the following address and shall, thereafter, be delivered by Johnson to the respective payees:

Voorhees & Bailey, LLP
27 Pine Street; Suite 50
New Canaan, CT 06840

Johnson shall provide IRS W-9 forms for: (i) “Office of Environmental Health Hazard Assessment”, (ii) Dennis Johnson, and (iii) Voorhees & Bailey, LLP. Western Cactus shall issue complete IRS 1099 forms to each payee for their respective payment amount, including an IRS 1099-MISC form to Johnson.

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, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and fully and finally releases Western Cactus and its upstream supplier of the Products, Dysun, and each of their respective parents, subsidiaries, affiliated entities under common ownership, and each of their respective directors, officers, agents, employees, attorneys, predecessors, successors, assignees, franchisees, licensees, customers, suppliers, distributors, and each upstream entity from whom the Product was purchased by or supplied to Western Cactus or Dysun, and each entity to whom Western Cactus or Dysun directly or indirectly distributes or sells the Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers including, but not limited to Grocery Outlet Inc., franchisees, cooperative members, importers, and licensees, and

each such entity's respective parents, subsidiaries, directors, officers, agents, employees, and attorneys (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Compliance Date based on unwarned exposures to lead in the Products, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees and any associated costs) of any nature whatsoever, fixed or contingent (collectively, "Claims").

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 and costs, 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 Western Cactus or Dysun prior to the Compliance 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 Western Cactus's Products.

4.3 Western Cactus's Release of Johnson

Western Cactus, 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. PUBLIC BENEFIT

The Parties agree and acknowledge that the commitments Western Cactus has agreed to herein, and actions to be taken by Western Cactus 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, any future action alleging a violation of Proposition 65 with respect to Western Cactus, Dysun, and/or the Releasees relating to the Products they have 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 Western Cactus is in material compliance with this Settlement Agreement.

6. 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.

7. 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 lead, then Western Cactus 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.

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 Western Cactus:

Cheryl S. Chang
Blank Rome LLP
2029 Century Park East, Floor 6
Los Angeles, CA 90067

For Johnson:

Dennis Johnson
c/o Voorhees & Bailey, LLP
Proposition 65 Coordinator
27 Pine Street; Suite 50
New Canaan, CT 06840

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). If any third-party, including the California Attorney General's Office, objects to this Settlement Agreement, the parties agree to work together in good faith to support this Settlement Agreement and/or modify it to address any such concerns or objections.

11. MODIFICATION

This Settlement Agreement may be modified only by 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 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:

AGREED TO:

Date: 8/21/2026

Date: 8/31/26

By: _____

Dennis Johnson

By: _____

Western Cactus Enterprises, Inc.
Thomas Britsch
President