

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Parties

This Settlement Agreement is entered into by and between Public Health And Safety Advocates, LLC (“PHSA”), on the one hand, and Garcoa, Inc., Garcoa Laboratories, and Sigan America LLC (collectively, “GARCOA”), on the other hand. GARCOA and PHSA are each individually referred to as a “Party” and collectively as the “Parties.”

#### 1.2 Introduction and General Allegations.

1.2.1 PHSA is a limited liability company duly organized and existing in the State of California, which seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products.

1.2.2 PHSA alleges that GARCOA employs ten or more persons, and PHSA alleges that GARCOA 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 sections 25249.6 *et seq.* (“Proposition 65”).

1.2.3 PHSA alleges that GARCOA imported, sold, and/or distributed for sale in California Covered Products, as defined below, that contain acetaldehyde, a chemical listed pursuant to Proposition 65 known by the State of California to cause cancer. PHSA further alleges that GARCOA failed to provide the health hazard warning required by Proposition 65 for exposures to acetaldehyde from the Covered Products.

#### 1.3 Product Description.

The products covered by this Settlement Agreement are Clean n Natural Hand Sanitizer, which were imported, sold, and/or distributed for sale in California by GARCOA (the “Covered Products”).

#### **1.4 60 Day Notice of Violation and Exchange of Information.**

On July 19, 2021, PHSA served GARCOA and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), related to the Covered Products, alleging that GARCOA violated Proposition 65. The Notice alleges that GARCOA failed to warn their customers and consumers in California of the health hazards associated with exposures to acetaldehyde from the import, sale, and/or distribution of the Covered Products.

PHSA subsequently provided GARCOA with test results in PHSA’s possession concerning its allegations. GARCOA provided PHSA with sales data related to the Covered Products. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

#### **1.5 No Admission.**

The Parties enter into this Settlement Agreement to settle disputed claims between them as set forth below concerning the Parties’ and the Covered Products’ compliance with Proposition 65. Specifically, PHSA alleges that GARCOA imported, manufactured, sold or distributed for sale in the state of California, Covered Products which contained acetaldehyde without first providing the clear and reasonable exposure warning required by Proposition 65. GARCOA denies that such a warning is required under Proposition 65 or any otherwise applicable law.

GARCOA further denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has imported, manufactured, and/or sold and distributed in California, including the Covered Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by GARCOA 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 GARCOA of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by GARCOA. This Section shall not, however, diminish or otherwise affect GARCOA’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 the last date on which this Settlement Agreement is fully executed by the Parties.

## 2. **INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

2.1 **Reformulation Standard.** GARCOA has indicated that does not manufacture any Covered Products with acetaldehyde and that it has discontinued the manufacture, distribution, and sale of Clean n Natural Hand Sanitizer. To the extent GARCOA elects to begin manufacturing, distributing, or selling Covered Products containing acetaldehyde in California, such Covered Products shall be deemed to comply with Proposition 65, and be exempt from any Proposition 65 warning requirements with respect to acetaldehyde, if the Products meet the standard of "Reformulated Products." "Reformulated Products" shall mean Covered Products containing less than or equal to 10 parts per million when analyzed pursuant to a headspace GC-MS method, test methods described in the USP Alcohol Monograph, or equivalent methodologies utilized by federal or state agencies for the purpose of determining acetaldehyde content in hand sanitizers ("Reformulation Standard"). Covered Products, currently in the channels of distribution with distributors and retailers may continue to be sold-through. However, as of the Effective Date, GARCOA may not distribute or sell new Covered Products in California that are not Reformulated Products or do not contain the warnings set forth in Paragraph 2.3.

2.2 **Warning Option.** Covered Products that are not reformulated or do not meet the Reformulation Standard set forth in Section 2.1 above shall be accompanied by a warning as described in Section 2.3 below. This warning shall only be required as to Covered Products that are sold or shipped out to consumers, retailers, or distributors in California after the Effective Date. No Proposition 65 warning for acetaldehyde shall be required as to any Covered Products that are already in the stream of commerce as of the Effective Date.

2.3 **Warning Language.** Commencing on the Effective Date, GARCOA shall ensure that any unreformulated Covered Products that it ships to California retailers or for sale in

California include a clear and reasonable warning. The warning shall be affixed to the packaging or labeling using language similar to the warnings below:

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

OR

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

The warning shall be prominently displayed with such conspicuousness as 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 before purchase or use. Each warning shall be provided in a manner such that the consumer or user is reasonably likely to understand to which specific Product the warning applies, so as to minimize the risk of consumer confusion. In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, GARCOA shall be entitled to use, at its discretion, such other warning text and/or methods of transmission without being deemed in breach of this Settlement Agreement

### **3. CIVIL PENALTY PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

GARCOA shall pay a civil penalty of \$2,000 to be apportioned in accordance with California Health & Safety Code §§ 25249.12(c) & (d), with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to PHSA. GARCOA shall issue two separate checks for the penalty payment: (a) one check made payable to the Kawahito Law Group in Trust for the State of California's Office of Environmental Health Hazard Assessment ("in Trust for OEHHA") in the amount of \$1,500 representing 75% of the initial civil penalty and (b) one check to "Kawahito Law Group in Trust for PHSA" in the amount of \$500, representing 25% of the initial civil penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486). The payment shall be delivered on or before June 30<sup>th</sup>, 2022 to the following address:

James Kawahito, Esq.

Kawahito Law Group APC  
300 Corporate Pointe Ste 340  
Culver City, CA 90230

Payment may also be made by wire or ACH or wire transfer. Instructions will be provided separately upon request.

#### **4. REIMBURSEMENT OF FEES AND COSTS**

The Parties acknowledge that PHSA and its counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving any fee reimbursement issue to be resolved after the material terms of the agreement had been settled. The Parties reached an accord on the compensation due to PHSA and its counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure (CCP) § 1021.5, for all work performed through the mutual execution of this Settlement Agreement. More specifically, GARCOA shall pay the total amount of \$23,000 for fees and costs incurred by PHSA as a result of investigating, bringing this matter to the attention of GARCOA, and negotiating a settlement. GARCOA shall wire the funds (per the instructions will be provided upon request) or make payment by check payable to “Kawahito Law Group APC.” The payment shall be delivered on or before June ~~30~~, 2022 to the following address:

James Kawahito, Esq.  
Kawahito Law Group APC  
300 Corporate Pointe Ste 340  
Culver City, CA 90230

#### **5. RELEASE OF ALL CLAIMS**

##### **5.1 Full, Final, and Binding Resolution of Proposition 65 Allegations.**

PHSA, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, releases GARCOA of any violation of Proposition 65 that was or could have been asserted by PHSA against GARCOA, Sigan America, LLC, and Garcoa Laboratories, and each of their respective parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, assignees, licensors, each manufacturer or

other entity supplying GARCOA with the Covered Products, and each entity to which GARCOA directly or indirectly distributed, shipped, or sold the Covered Products, including, but not limited to, Sigan America, LLC and Garcoa Laboratories, and each of their respective downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees and their owners, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, and assignees (collectively "Releasees") for any and all claims based on their alleged or actual failure to warn about alleged exposures to acetaldehyde contained in the Covered Products that were allegedly manufactured, imported, distributed, sold, and/or offered for sale by GARCOA, Sigan America, LLC, and Garcoa Laboratories either directly or through the Releasees in California before the Effective Date. This Release shall also cover any Covered Products that were in the stream of commerce prior to the Effective Date. However, as of and following the Effective Date, no new Covered Products shall be shipped to or distributed in California that are not Reformulated Products or contain the warnings set forth in Sections 2.2 and 2.3. This release is provided in PHSA's individual capacity and is not a release on behalf of the public.

In further consideration of the promises and agreements herein contained, PHSA on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, also hereby waives all of its rights to institute or participate in, directly or indirectly, any form of legal action and releases any and all claims against GARCOA and Releasees including, but not limited to, Sigan America, LLC and Garcoa Laboratories, that it or they may have including, without limitation, all actions, and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, investigative fees, expert fees, and attorneys' fees for any and all claims arising under Proposition 65, and regarding the alleged or actual failure to warn about exposures to acetaldehyde in the Covered Products allegedly manufactured, sold, or distributed for sale before the Effective Date by GARCOA or Releasees.

PHSA, on behalf of itself, expressly waives and relinquishes any and all rights and benefits which it or the Releasees may have under, or which may be conferred on them by California Civil Code section 1542 or any other or any other state or federal statute or common

law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the Covered Products; Civil Code section 1542 states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR 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 THE RELEASED PARTY.

## **5.2 Public Benefit.**

It is GARCOA's contention that the commitments it has agreed to herein, and actions to be taken by GARCOA 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 GARCOA that to the extent any other private party initiates any action alleging a violation of Proposition 65 with respect to GARCOA and/or the Releasees relating to the Covered Products they have manufactured, distributed, sold, or offered for sale in California and that are subject to this Settlement Agreement, such private party action would not confer a significant benefit on the general public provided that GARCOA is in material compliance with this Settlement Agreement.

## **5.3 Enforcement of Settlement Agreement.**

Any Party may file suit in the Superior Court of the County of Los Angeles to enforce the terms and conditions contained in this Settlement Agreement. The prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

## **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 without regard to its conflicts of law principles, and apply within the State of California.

**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; (c) a recognized overnight courier; or (d) by email to designated agent of Party indicated below, to the other Party at the following addresses:

For Notices to GARCOA:

Gregory Rubin  
26135 Mureau Road  
Calabasas, CA 91302  
[greg@garcoa.com](mailto:greg@garcoa.com)

with a copy to:

Ronie M. Schmelz, Esq.  
Tucker Ellis LLP  
515 South Flower Street  
42<sup>nd</sup> Floor  
Los Angeles, CA 90071  
[ronie.schmelz@tuckerellis.com](mailto:ronie.schmelz@tuckerellis.com)

For Notices to PHSA:

PHSA, LLC  
10249 Eastborne Ave.  
Los Angeles, CA 90049

with a copy to:

James K. Kawahito, Esq.  
Kawahito Law Group APC  
Attn. PHSA v. GARCOA  
300 Corporate Pointe Ste 340  
Culver City, CA 90230  
[jkawahito@kawahitolaw.com](mailto:jkawahito@kawahitolaw.com)

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. Signatures by scanned and emailed image or facsimile transmission shall have the same force and effect as original signature and as an electronic record adopted and executed by a Party with the intent to sign the electronic record pursuant to Civil Code §§ 1633.1 *et seq.*

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

PHSA and its 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. ENTIRE AGREEMENT**

This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by, or relied on, any Party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto.


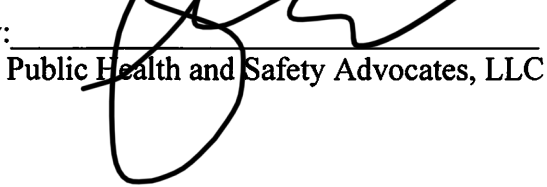
**13. INTERPRETATION**

No inference, assumption, or presumption shall be drawn, and no provision of this Settlement Agreement shall be construed against any Party, based upon the fact that one of the Parties and/or their counsel prepared or drafted any portion of this Settlement Agreement. It is conclusively presumed that the Parties participated equally in the drafting of this Settlement Agreement.

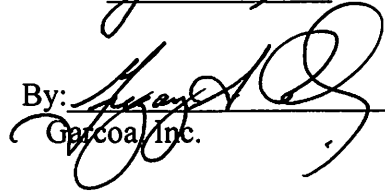
**14. AUTHORIZATION**

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:   
By:   
Public Health and Safety Advocates, LLC

**AGREED TO:**

Date: June 16, 22  
By:   
Garcoa, Inc.