

## 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 Lily of the Desert Inc. (“LOD”) on the other hand, with LOD and PHSA 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 LOD employs ten or more persons, and PHSA alleges that LOD 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”).

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

1.2.4 LOD disputes that the Covered Products contained acetaldehyde at any levels that would trigger a warning under Proposition 65.

#### 1.3 Product Description.

The products covered by this Settlement Agreement are the 7-Eleven Instant Hand Sanitizer products (UPC 05248709631), which were imported, sold and/or distributed for sale in California by LOD (“Covered Products”).

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

On August 6, 2021, PHSA served 7-Eleven Corporation (“7-Eleven”), and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), related to the Covered Products, alleging that 7-Eleven violated Proposition 65. The Notice alleged that 7-Eleven had 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. LOD subsequently advised PHSA that it supplied the Covered Products to 7-Eleven and that it desired to resolve the allegations in the Notice about the Covered Products.

PHSA thereafter provided LOD with test results in PHSA’s possession concerning its allegations. LOD 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 the Parties as set forth below concerning the Parties’ and the Covered Products’ compliance with Proposition 65. Specifically, PHSA alleges that LOD 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. LOD denies that such a warning is required under Proposition 65 or any otherwise applicable law.

LOD 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 LOD 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 LOD of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by LOD. This Section shall not, however, diminish or otherwise affect LOD'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 date the Agreement is fully executed by the Parties.

**2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

**2.1 Standard.** LOD has indicated that it has discontinued the manufacture distribution and sale of the Covered Products. To the extent it elects to begin manufacturing, distributing or selling the Covered Products again in California, such Covered Products shall be accompanied by a warning described below or contain less than or equal to the concentration of acetaldehyde permitted at such time by the Food and Drug Administration 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 ("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, LDOA may not distribute or sell new Covered Products in California that do not contain the warnings set forth in Paragraph 2.3 or comply with the Standard.

**2.2 Warning Option.** Covered Products that require a warning 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, LOD shall ensure that any Covered Products that it ships to California retailers or for sale in California include a clear

and reasonable warning if the Covered Product does not meet the Standard. 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, LOD shall be entitled to use, at its discretion, such other warning text and/or methods of transmission without being deemed in breach of this Agreement

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

LOD shall pay a civil penalty of \$1,000 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. LOD 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 \$750 representing 75% of the initial civil penalty and (b) one check to "Kawahito Law Group in Trust for PHSA" in the amount of \$250, 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 within 10 days of the Effective Date and receipt of W-9s for the payees 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 agreement. More specifically, LOD shall pay the total amount of \$19,000 for fees and costs incurred by PHSA as a result of investigating, bringing this matter to the attention of LOD, and negotiating a settlement. LOD shall wire the funds (instructions will be provided upon request) or make payment by check payable to “Kawahito Law Group APC.” The payment shall be delivered within 10 days of the Effective Date and receipt of W-9 for the payee 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.**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, PHSA in its representative capacity, and on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims relating to alleged acetaldehyde exposures from the Covered 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) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against (a) LOD, (b) each of LOD's downstream distributors (including but not limited to 7-Eleven), wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, members, customers, owners, purchasers, users, and (c) LOD's past and current parent companies, corporate affiliates, subsidiaries, related companies (including, without limitation, L.O.D.C. Group, Ltd.), and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and the successors and assigns of each of them. (collectively "Releasees").

PHSA also, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees and not in its representative capacity, provides a general 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 any nature, character or kind, known or unknown, suspected or unsuspected, against LOD and the Releasees relating to alleged acetaldehyde exposures from the Covered Products. PHSA acknowledges that it is familiar with California Civil Code section 1542, which provides as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

PHSA, only on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of California Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.

## **5.2 LOD'S Release of PHSA.**

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

## **5.3 Public Benefit.**

It is LOD's contention that the commitments it has agreed to herein, and actions to be taken by LOD 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 LOD that to the extent any other private party initiates any action alleging a violation of Proposition 65 with respect to LOD 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, such private party action would not confer a significant benefit on the general public provided that LOD is in material compliance with this Settlement Agreement.

## **5.4 Enforcement of Settlement Agreement.**

Any party may file suit before 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 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 LOD:

Glyn Halford  
Lily of the Desert  
1887 Geesling Rd.  
Denton, TX 76208

with a copy to:

Baxter Banowsky  
12801 N. Central Expressway, Ste 1700  
Dallas, TX 75243

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. LDOA  
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.



**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. 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: \_\_\_\_\_

Date: 7-12-22

By: \_\_\_\_\_  
Public Health and Safety Advocates, LLC

By:   
Lily of the Desert, Inc.

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Date:

7-12-22

By:

  
Public Health and Safety Advocates, LLC

**AGREED TO:**

Date:

\_\_\_\_\_

By:

\_\_\_\_\_  
Lily of the Desert, Inc.