

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the United States Small Business Administration, Caribe Holdings Cayman Co. Ltd. (“Caribe”), PuraCap International LLC (“PuraCap”), and GNGH2, Inc. (“Relator”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Caribe Holdings Cayman Co. Ltd. (“Caribe”) is a pharmaceutical manufacturer with a principal place of business at Road 698 Km 0.8, Barrio Mameyal, Dorado, Puerto Rico 00646. Caribe maintains corporate headquarters at 100 Somerset Corp. Blvd., Suite 300, Bridgewater, NJ 08807. PuraCap International LLC (“PuraCap”) is a Delaware limited liability company with a registered office at 2711 Centerville Road, Suite 400, Wilmington, Delaware, 19808; it is a holding company that owns 100% of the shares of Caribe.

B. On or about April 12, 2023, Relator filed a *qui tam* action in the United States District Court for the District of New Jersey captioned *United States ex rel. GNGH2, Inc. v. PuraCap International LLC, et al.*, Civil Action No. 23-2068, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”).

C. The United States contends that it has certain civil claims against Caribe arising from the facts and conduct described in this paragraph:

- (i) On or about March 4, 2021, Caribe applied for a loan pursuant to the Paycheck Protection Program (“PPP”) under the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”).
- (ii) In submitting the PPP loan application, Caribe certified that it “is not a business concern or entity [] for which an entity created in or organized under the laws of the People’s Republic of China . . . or that has significant operations in the People’s Republic of China . . . owns or holds, directly or indirectly, not less than 20 percent of the economic interest of the business concern or entity, including as equity shares or a capital or profit interest in a limited liability company or partnership.”
- (iii) At the time Caribe submitted the application, it was, in fact, “a business concern or entity [] for which an entity created in or organized under the laws of the People’s Republic of China . . . or that has significant operations in the People’s Republic of China . . . owns or holds, directly or indirectly, not less than 20 percent of the economic interest of the business concern or entity, including as equity shares or a capital or profit interest in a

limited liability company or partnership.” Caribe would not have qualified for the PPP loan if it answered the question accurately.

- (iv) On or about March 31, 2021, and based on Caribe’s application, SBA approved a PPP loan to Caribe totaling \$1,200,900. In connection with the PPP loan, SBA also paid a loan processing fee to the lender totaling approximately \$36,027, and interest on the PPP loan of approximately \$7,472.

That conduct is referred to below as the Covered Conduct.

D. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement.

E. This Settlement Agreement is neither an admission of liability by Caribe or PuraCap, nor a concession by the United States or the Relator that their claims are not well founded.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Caribe shall pay to the United States one million, nine-hundred ninety-one thousand and thirty-eight dollars (\$1,991,038) (“Settlement Amount”), of which one million, two hundred forty-four thousand, three hundred ninety-nine dollars (\$1,244,399) is restitution, by electronic funds

transfer pursuant to written instructions to be provided by the United States Attorney's Office for the District of New Jersey. The date that all of the parties have signed agreement is the "Effective Date of the Agreement." Caribe shall pay the Settlement Amount within 30 days of the Effective Date of the Agreement.

2. Conditioned upon the United States receiving the Settlement Amount and as soon as feasible after receipt, the United States shall pay one hundred, ninety-nine thousand, one hundred and three dollars (\$199,103) to Relator by electronic funds transfer (Relator's Share).

3. Relator agrees to waive—and hereby waives—any claim for attorney's fees and/or costs, whether under 31 U.S.C. § 3730(d) or otherwise, on Relator's own behalf and for any party claiming under or through Relator.

4. Subject to the exceptions in Paragraph 6 (concerning reserved claims) and Paragraph 7 (concerning default), below, and upon the United States' receipt of the Settlement Amount, the United States releases Caribe and PuraCap from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812 or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

5. Subject to the exceptions in Paragraph 6 below, and upon the United States' receipt of the Settlement Amount, Relator, for himself and for

his/her heirs, successors, attorneys, agents, and assigns, forever and irrevocably, releases Caribe and PuraCap and their respective directors, officers, employees and advisors from any civil monetary claim the Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

6. Notwithstanding the releases given in Paragraph 4 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in the Agreement, any administrative liability or enforcement right, or any administrative remedy, including the suspension and debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement; or
- f. Any liability of individuals.

7. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement

is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relator's receipt of the Relator's Share, Relator and his heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

8. Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, forever and irrevocably, releases Caribe and PuraCap, and their respective directors, officers, employees and advisors, from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorneys' fees and costs.

9. Caribe and PuraCap waive and shall not assert any defenses they may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

10. Caribe and PuraCap fully and finally release the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however

denominated) that Caribe and PuraCap have asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct or the United States' investigation or prosecution thereof.

11. Caribe and PuraCap fully and finally release the Relator from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Caribe and PuraCap have asserted, could have asserted, or may assert in the future against the Relator, related to the Covered Conduct and the Relator's investigation and prosecution thereof.

12. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of Caribe or PuraCap, and their present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) Caribe's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement;

- (5) the payment Caribe makes to the United States pursuant to this Agreement and any payments that Caribe may make to Relator, including costs and attorneys fees,

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by Caribe, and Caribe shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, Caribe shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Caribe or any of its subsidiaries or affiliates from the United States. Caribe agrees that the United States, at a minimum, shall be entitled to recoup from Caribe any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine Caribe's books and records and to disagree with any calculations submitted by Caribe or any of its subsidiaries or affiliates regarding any Unallowable

Costs included in payments previously sought by Caribe, or the effect of any such Unallowable Costs on the amount of such payments.

13. This Agreement is intended to be for the benefit of the Parties only.

14. Upon receipt of the payment described in Paragraph 1 above, the Relator and the United States shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1).

15. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

16. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

17. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District of New Jersey. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

18. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

19. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

20. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

21. This Agreement is binding on Caribe's and PuraCap's successors, transferees, heirs, and assigns.

22. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

23. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

24. This Agreement is effective on the date of signature of the last signatory to the Agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

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THE UNITED STATES OF AMERICA

DATED: 02/12/2024

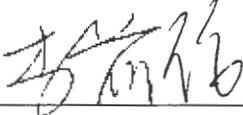
BY: DAVID SIMUNOVICH Digitally signed by DAVID
SIMUNOVICH
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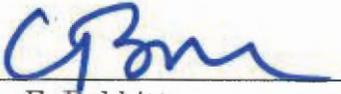
David V. Simunovich
Assistant United States Attorney
Healthcare Fraud Unit
U.S. Attorney's Office
District of New Jersey

CARIBE HOLDINGS CAYMAN CO LTD – DEFENDANT

DATED: 2/9/24
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PuraCap International LLC

GNGH2, Inc. - RELATOR

DATED: 2/9/2024

BY: 

David Abrams, Esq.
GNGH2, Inc.
Relator