SETTLEMENT AND RELEASE AGREEMENT

1. INTRODUCTION

1.1. Ecological Alliance, LLC and Aquis, Inc.

This Settlement Agreement is entered into by and between Ecological Alliance, LLC ("Ecological"), on the one hand, and Aquis, Inc. ("Aquis"), on the other hand, with Ecological and Aquis collectively referred to as the "Parties."

1.2. General Allegations

Ecological alleges that Aquis manufactured and distributed and offered for sale in the State of California facial mitts containing Di(2-ethylhexyl)phthalate ("DEHP"), and that such sales have not included warnings pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.6 *et seq*. ("Proposition 65"). California has identified and listed DEHP under Proposition 65 as a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

1.3. Product Description

The products that are covered by this Settlement Agreement are defined as facial mitts that Aquis has sold, offered for sale or distributed in California and that allegedly contain DEHP, including the facial mitts referenced in Ecological's Notice of Violation. *See, infra*, Section 1.4. All such items shall be referred to herein as the "Products."

1.4. Notice of Violation

On January 31, 2019, Ecological served Aquis, Tuesday Morning, Inc. ("Tuesday Morning"), and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California with a document entitled "60-Day Notice of Violation" ("Notice") that provided Aquis and such public enforcers with notice that

Aquis was allegedly in violation of California Health & Safety Code section 25249.6 for failing to warn consumers and customers that the Products exposed users in California to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced or 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 herein and in the Notice concerning Aquis's compliance with Proposition 65. Aquis denies the material factual and legal allegations contained in Ecological's Notice and maintains that all products that it has imported, manufactured for sale, distributed for sale, shipped for sale, sold, and/or offered for sale in California, including the Products, have been and are in compliance with Proposition 65 and any other statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by Aquis of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Aquis of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Aquis on its behalf. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Aquis under this Settlement Agreement.

1.6. Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Settlement Agreement is fully executed.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

Within six months of the Effective Date (the "Compliance Date"), Aquis shall manufacture, import, distribute for sale, ship for sale, offer for sale in California, and/or

otherwise source for authorized sale in California only Reformulated Products, as defined pursuant to Section 2.1 below, unless such Products are labeled with a clear and reasonable Proposition 65 warning pursuant to Section 2.2 below. Products supplied to third parties by Aquis before the Compliance Date shall be deemed exempted from the requirements of Section 2 and shall be permitted to be sold through as previously manufactured, packaged and labeled.

2.1. Reformulation Standards

"Reformulated Products" are defined as those Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

2.2. Warning Language

Where required under this Settlement Agreement, Aquis shall provide a warning that complies with this Subsection 2.2 on all Products it imports, manufactures, distributes for sale, ships for sale, sells, or offers for sale in California that are not Reformulated Products:

(a) Aquis may use either of the following warning statements in full compliance with this Settlement Agreement:

(1) ⚠**WARNING**: This product can expose you to chemicals including DEHP, which are known to the State of California to cause cancer, birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov

(2) ⚠**WARNING**: Cancer and Reproductive Harm – www.P65Warnings.ca.gov.

(b) Where the label is not printed using the color yellow, the symbol in the warnings above may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word "WARNING."

(c) The requirements for warnings set forth in subsection (a) above are imposed pursuant to the terms of this Settlement Agreement. The Parties recognize that these are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations. In lieu of the warnings set forth in subsection (a) above, Aquis may use any warning language and methods that comply with Title 27, California Code of Regulations, §§ 25600, *et seq*., as amended August 30, 2018, and thereafter.

(d) If Proposition 65 warnings for DEHP should no longer be required, Aquis shall have no further obligations pursuant to this Settlement Agreement.

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE SECTION 25249.7(b)

Under Health & Safety Code § 25249.7(b) and in settlement of all the claims referred to in this Settlement Agreement and related to the Notice, Aquis shall pay a total of $500 in civil penalties in accordance with this Section. The penalty payment will be allocated in accordance with California Health & Safety Code section 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Ecological. Ecological's counsel shall be responsible for delivering OEHHA's portion of any penalty payment made under this Settlement Agreement.

4. REIMBURSEMENT OF FEES AND COSTS

The Parties reached an accord on the compensation due to Ecological and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Aquis shall reimburse Ecological's counsel for fees and costs, incurred as a result of investigating and bringing this matter to Aquis's attention. Aquis shall pay Ecological's counsel $9,000 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

5. PAYMENT INFORMATION

In full satisfaction of the payments in Sections 3 and 4 above, any other amounts that are or could be claimed concerning the Claims (defined in Section 6 below), and all Claims released pursuant to Section 6 below, Aquis shall make a total payment of Nine Thousand Five Hundred Dollars ($9,500) by check or wire transfer to Plaintiff's counsel, Custodio & Dubey LLP, by July 19, 2019:

Bank: Bank of America, N.A.
Routing No.: 026009593
Account No.: 325054144600
Beneficiary: Custodio & Dubey LLP

Other than this payment, each side is to bear its own attorneys' fees and costs.

6. RELEASE OF ALL CLAIMS

6.1. Release of Aquis, Downstream Customers and Upstream Vendors

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, Ecological, 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 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) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against (a) Aquis, (b) each of Aquis's distributors, wholesalers, vendors, licensors, licensees, auctioneers, retailers (including online retailers), franchisees, dealers, shareholders, directors, employees, agents, members, customers, owners, purchasers, users, suppliers, and all other upstream and downstream entities and persons in the distribution chain of the Products, and (c) Aquis's parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "Releasees").

Ecological 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 Aquis and the Releasees. Ecological acknowledges that it is familiar with California Civil Code section 1542, which provides 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.

Ecological, in its capacity only, and 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.

6.2. Aquis's Release of Ecological

Aquis waives any and all claims against Ecological, its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Ecological and its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Products.

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, then Aquis shall have no further obligations pursuant to this Settlement Agreement.

8. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the other party at the following addresses:

For Aquis:
George Gigounas, Esq.
Sean Newland, Esq.
DLA Piper LLP
555 Mission Street, Suite 2400
San Francisco, CA 94105

For Ecological:
Vineet Dubey, Esq.
Custodio & Dubey LLP
448 S. Hill St., Suite 615
Los Angeles, CA 90013

Any party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

9. COUNTERPARTS; FACSIMILE/E-SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or e-signatures, 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 SECTION 25249.7(f)

Ecological agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

11. 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 made or discussed between the parties or counsel for the parties, or proposed before the execution of this Settlement Agreement by either party or that party's counsel, whether written, oral, or otherwise. No other agreements, oral or otherwise, exist to bind either of the Parties.

12. MODIFICATION

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

13. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

14. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

AGREED TO:	AGREED TO:
Date: June 20 2019	Date: June 18 2019
By: _____	By: suveen sahib _____
On Behalf of Ecological Alliance, LLC	On Behalf of Aquis, Inc.