

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

**1.1 The Parties.** This Settlement Agreement is entered into by and between Anthony Ferreiro (“Ferreiro”) and Aquarius, Ltd. (“Aquarius”). Together, Ferreiro and Aquarius are collectively referred to as the “Parties.” Ferreiro is an individual who resides in the State of California, and seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Ferreiro alleges that Aquarius is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

**1.2 General Allegations.** Ferreiro alleges that Aquarius has exposed individuals to the chemical di-(2-ethylhexyl) phthalate (DEHP) from its sales of lanyards[sic] without first providing users and consumers of the product with a clear and reasonable health hazard exposure warning as required pursuant to Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and reproductive toxicity.

**1.3 Product Description.** The products covered by this Settlement Agreement are lanyards that have been manufactured, imported, distributed, offered for sale and/or sold in California by Aquarius (the “Products”).

**1.4 Notice of Violation.** On November 13, 2019, Ferreiro served Aquarius, Spencer Gifts, LLC (“Spencer Gifts”) and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, *et seq.*” (the “Notice”). The Notice provided Aquarius and such others, including public enforcers, with notice that alleged that Aquarius was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of the Products will expose them to DEHP. To the knowledge of the Parties, no public enforcer has diligently prosecuted the allegations set forth in the Notice.

**1.5 No Admission.** Aquarius denies the material factual and legal allegations contained in the Notice and maintains that, to the best of its knowledge, all products that are or have been manufactured, imported, sold, offered for sale 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 Aquarius of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Aquarius of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Aquarius. However, this § 1.5 shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Aquarius maintains that it has not knowingly manufactured, caused to be manufactured, imported, offered for sale, sold, or distributed the Products in California in violation of Proposition 65.

**1.6 Effective Date.** For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date this Agreement is last executed by the Parties.

## **2. INJUNCTIVE RELIEF: WARNINGS**

**2.1 Reformulation of Products.** As of one hundred eighty (180) days after the Effective Date, and continuing thereafter, Products that Aquarius directly manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be Reformulated Products pursuant to § 2.2, below; or (b) have a clear and reasonable warning pursuant to §§ 2.3 and 2.4, below. For purposes of this Settlement Agreement, a “Reformulated Product” is a Product that is in compliance with the standard set forth in § 2.2, below. The warning requirement set forth in §§ 2.3 and 2.4 shall not apply to any Reformulated Product.

**2.2 Reformulation Standard.** “Reformulated Products” shall mean Products that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by federal or state government agencies for the purpose of determining the phthalate content in a solid substance.

**2.3 Clear and Reasonable Warning.** Commencing one hundred eighty (180) days after the Effective Date, and continuing thereafter, a clear and reasonable warning as set forth in this §§ 2.3 and 2.4 must be provided for all Products that Aquarius manufactures, imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There shall be no obligation for

Aquarius to provide a warning for Products that entered the stream of commerce prior to one hundred eighty (180) days after the Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 2.3(a) or (b), respectively:

(a) **Warning.** The “Warning” shall consist of the statement:

**⚠ WARNING:** This product can expose you to chemicals including di(2-ethylhexyl) phthalate (DEHP), which are 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](http://www.P65Warnings.ca.gov).

(b) **Alternative Warning:** Aquarius may, but is not required to, use the alternative short-form warning as set forth in this § 2.3(b) (“**Alternative Warning**”) as follows:

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

**2.4** A **Warning** or **Alternative Warning** provided pursuant to § 2.3 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:**”. The warning shall be affixed to or printed on the Product’s packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic process, providing that the warning is displayed 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. The warning may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the Product and shall be at least the same size as those other safety warnings.

If Aquarius sells Products via an internet website to customers located in California, the warning requirements of this section shall be satisfied by providing either the foregoing Warning or Alternative Warning or a clearly marked hyperlink to the Warning or Alternative Warning using the word “**WARNING**” on the Product’s display page, or otherwise prominently displaying the Warning or Alternative Warning to the purchaser prior to completing the purchase. Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent

to or immediately following the display, description, price, or checkout listing of the Product, if the symbol is cross-referenced to the Warning or Alternative Warning that appears elsewhere on the same web page in a manner that clearly associates it with the Product(s) to which the warning applies.

**2.5 Compliance with Warning Regulations.** Aquarius shall be deemed to be in compliance with this Settlement Agreement by either adhering to §§ 2.3 and 2.4 of this Settlement Agreement or by complying with warning requirements adopted by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") after the Effective Date.

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

In settlement of all the claims referred to in this Settlement Agreement, Aquarius shall pay \$1,500.00 as a Civil Penalty in accordance with this Section. The Civil Penalty payment shall be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the Penalty remitted to OEHHA (\$1,125) and the remaining 25% of the Penalty remitted to Ferreiro (\$375). The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below. For all amounts due and owing that are not received within the payment times set forth below, Aquarius shall pay a late civil penalty payment fee equal to \$100/day to be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) and (d).

**3.1 Civil Penalty.** Within thirty (30) business days of the Effective Date, Aquarius shall issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,125.00; and to (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$375.00. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below.

**3.2 Payment Procedures.**

**(a) Issuance of Payments.** Payments shall be delivered as follows:

(i) All payments owed to Ferreiro, pursuant to § 3.1, shall be delivered to the following payment address:

Evan J. Smith, Esquire  
Brodsky & Smith, LLC  
Two Bala Plaza, Suite 510  
Bala Cynwyd, PA 19004

(ii) All payments owed to OEHHA (EIN: 68-0284486), pursuant to § 3.1, shall be delivered directly to OEHHA (Memo Line “Prop 65 Penalties”) at one of the following addresses:

For United States Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95814

(b) **Copy of Payments to OEHHA.** Aquarius agrees to provide Ferreiro’s counsel with a copy of the checks payable to OEHHA, simultaneous with its penalty payment to Ferreiro, to be delivered to the address provided in § 3.2(a)(i), as proof of payment to OEHHA.

(c) **Tax Documentation.** Aquarius agrees to provide a completed IRS 1099 for its payments to, and Ferreiro agrees to provide IRS W-9 forms for, each of the following payees under this Settlement Agreement:

(i) “Anthony Ferreiro” whose address and tax identification number shall be provided within five (5) days after this Settlement Agreement is fully executed by the Parties;

(ii) “Brodsky & Smith, LLC” (EIN: 23-2971061) at the address provided in Section 3.2(a)(i); and

(iii) “Office of Environmental Health Hazard Assessment” 1001 I Street, Sacramento, CA 95814.

4. **REIMBURSEMENT OF FEES AND COSTS**

The Parties acknowledge that Ferreiro and his counsel offered to reach preliminary agreement on the material terms of this dispute before reaching terms on the amount of fees and costs to be reimbursed to them. The Parties thereafter reached an accord on the compensation due to Ferreiro and his counsel under general contract principles and the private attorney general doctrine and principles codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. Under these legal principles, Aquarius shall reimburse Ferreiro's counsel for fees and costs incurred as a result of investigating and bringing this matter to Aquarius's attention, and negotiating a settlement in the public interest. Within thirty (30) business days of the Effective Date, Aquarius shall issue a check payable to "Brodsky & Smith, LLC" in the amount of \$16,000.00 for delivery to the address identified in § 3.2(a)(i), above.

**5. RELEASE OF ALL CLAIMS**

**5.1 Release of Aquarius and Downstream Customers and Entities.** This Settlement Agreement is a full, final and binding resolution between Ferreiro, acting on his own behalf, and Aquarius, of any violation of Proposition 65 that was or could have been asserted by Ferreiro or on behalf of his past and current agents, representatives, attorneys, successors, and/or assigns ("Releasers") for all claims for violations of Proposition 65 based on alleged exposures to DEHP from the Products as set forth in the Notice, with respect to any Products manufactured, distributed, offered for sale or sold by Aquarius prior to one hundred eighty (180) days after the Effective Date. Releasers hereby release all such claims against Aquarius and its parents, subsidiaries, partners, affiliated entities, shareholders, members, marketplaces, directors, officers, agents, employees, attorneys, and their predecessors, successors and assignees, including without limitation Aquarius, and each entity from whom they obtain and to whom they directly or indirectly distribute offer to sell or sell the Products, including but not limited to, manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees, retailers, and its respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees, including but not limited to Spencer Gifts, LLC and its respective subsidiaries, affiliates and parents, shareholders, directors, officers, agents, employees, attorneys, successors and assignees, franchisees, cooperative members and licensees (collectively, the

“Releasees”), from all claims for violations of Proposition 65 through one hundred eighty (180) days after the Effective Date.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to §§ 3 and 4 above, Ferreiro, on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and waives all right to institute, participate in, directly or indirectly, any form of legal action against and releases Aquarius and all Releasees from any and all claims that he may have, including without limitation, all actions and causes of action in law and in equity, all obligations, expenses (including without limitation all attorneys’ fees, expert fees, and investigation fees, and costs), damages, losses, liabilities and demands against any of the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of the alleged or actual exposure to the chemical DEHP in the Products.

**5.2 Aquarius’s Release of Ferreiro.** Aquarius, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Ferreiro, his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Ferreiro and/or his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter or with respect to the Products.

**5.3 California Civil Code § 1542.** It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. Ferreiro on behalf of himself only, on one hand, and Aquarius, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in §§ 5.1 and 5.2, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 1542 reads 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.

Ferreiro and Aquarius each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

**5.4 Deemed Compliance with Proposition 65.** The Parties agree that compliance by Aquarius with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to DEHP from use of the Products.

**5.5. Public Benefit.** It is Aquarius's understanding that the commitments it has agreed to herein, and actions to be taken by Aquarius 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 Aquarius that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Aquarius failure to provide a warning concerning exposure to DEHP prior to use of the Products it has 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 Aquarius is in material compliance with this Settlement Agreement.

**6. 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 enforceable provisions remaining shall not be adversely affected but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Settlement Agreement being contrary to the intent of the Parties in entering into this Settlement Agreement.

**7. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the law 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 or limited by reason of law generally, or as to the Products, Aquarius shall have



no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, a Product is so affected.

**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; (ii) valid email; or (iii) overnight or two-day courier on any party by the other party to the following addresses:

For Aquarius:

Malcolm C. Weiss  
Aaron Wilensky  
Hunton Andrews Kurth LLP  
550 South Hope Street  
Suite 2000  
Los Angeles, CA 90071  
mweiss@huntonak.com  
awilensky@huntonak.com

For Ferreiro:

Evan J. Smith  
Brodsky & Smith, LLC  
Two Bala Plaza, Suite 510  
Bala Cynwyd, PA 19004  
esmith@brodskysmith.com

Either 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: SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or .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)**

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

**11. MODIFICATION**

This Settlement Agreement may be modified only by a 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 and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: 3/12/20

Date: 3/9/20

By: Anthony Ferrero  
Anthony Ferrero

By: [Signature]  
On Behalf of Aquarius, Ltd.