

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson (“Johnson”) and Aquarius, Ltd. (“Aquarius”), with Johnson and Aquarius each individually referred to as a “Party” and collectively as the “Parties.” Johnson is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. Johnson 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, California Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Johnson alleges that Aquarius manufactures, sells, offers for sale and distributes in California, toiletry bags containing di(2-ethylhexyl) phthalate (“DEHP”) and diisononyl phthalate (“DINP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause cancer, birth defects and other reproductive harm and DINP is listed pursuant to Proposition 65 as a chemical known to cause cancer. Johnson alleges that Aquarius failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP and DINP.

### 1.3 Product Description

The products covered by this Settlement Agreement are toiletry bags containing DEHP and/or DINP that are manufactured, imported, offered for sale, sold, or distributed for sale in California by Aquarius including, but not limited to, the “*Arrow USA 1851 Men’s Travel Bag*,” UPC: 0 83009 08190 4 and the “*James Campbell Toiletry Bag*” SS-TL 10501AQ Black; UPC: 0 83009 15288 8 (hereinafter referred to as “Products”).

#### **1.4 Notice of Violation**

On September 10, 2019, Johnson served Cluett, Peabody & Co., Inc. and Ross Stores, Inc. with a 60-Day Notice and on November 13, 2019, Johnson served Aquarius, Cluett, Peabody & Co., Inc., and Ross Stores, Inc. and the requisite public enforcement agencies with a Supplemental 60-Day Notice of Violation (“Notice”), alleging that Aquarius violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from its Products. After issuing the Notice, Johnson’s further investigation indicated that the Products also contained DINP. To the knowledge of the Parties, no public enforcer has commenced and is diligently prosecuting 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 all of the products that are or have been manufactured, offered for sale, imported, sold 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, conclusion, 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. This Section shall not, however, diminish or otherwise affect Aquarius’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 this Agreement is last executed by either Party.

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

### **2.1 Reformulation Standards**

“Reformulated Products” are defined as those Products containing DEHP and DINP each 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 methodologies utilized by federal or state agencies for the purpose of determining the DEHP and DINP content in a solid substance.

### **2.2 Reformulation/Warning Commitment**

As of 120 days after the Effective Date, Aquarius shall not cause the manufacture of Products for sale in the State of California, unless they are Reformulated Products or contain appropriate health hazard warnings pursuant to Section 2.3 below. Any Products manufactured prior to or within 120 days after the Effective Date, are not subject to the requirements of this Section 2.2 and have been included in the calculation of the civil penalty payment in Section 3.1. The Parties agree and intend that compliance with the terms of this Settlement Agreement shall constitute compliance with Proposition 65 with respect to exposures to DEHP and DINP from the Products.

### **2.3 Product Warnings**

As of 120 days after the Effective Date, all Products Aquarius causes the manufacture of, for sale in California, that do not qualify as Reformulated Products, shall bear a clear and reasonable warning pursuant to this Section. Aquarius further agrees that the warning will be prominently placed with such conspicuousness when 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 of use. For purposes of this Settlement Agreement, a clear and reasonable warning for the Products shall consist of a warning affixed directly to the product or product packaging, label, or tag, for Products sold in California and contain one of the following statements:

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

OR

**⚠ WARNING:** This product can expose you to chemicals including di(2-ethylhexyl)phthalate [or diisononyl phthalate], 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).

In the above warning, the brackets [ ] are to indicate that either or both chemicals may be identified, depending on the chemical composition of the Product. Aquarius shall be entitled to use, at its discretion, such other Office of Environmental Health Hazard Assessment (“OEHHA”) promulgated warning text and/or methods of transmission without being deemed in breach of this Agreement.

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Civil Penalty Payment**

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Aquarius agrees to pay, no later than 30 days after the Effective Date \$2,200 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Johnson, and delivered to the address in Section 3.3 herein. Aquarius will provide its payment, in two checks as follows: (1) “OEHHA” in the amount of \$1,650; and (2) “Dennis Johnson” in the amount of \$550.

#### **3.2 Attorneys’ Fees and Costs**

The Parties acknowledge that Johnson and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of the Settlement Agreement had been settled. The Parties reached an accord on the compensation due to Johnson’s counsel under general contract principles and the private attorney general

doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, Aquarius agrees to pay Voorhees & Bailey, LLP, \$16,000, for all fees and costs incurred investigating, bringing this matter to the attention of Aquarius's management, and negotiating a settlement. Aquarius shall pay the attorneys' fee and costs in two installments. Aquarius shall pay the first installment no later than 30 days after the Effective date in the form of a check made payable to "Voorhees & Bailey, LLP" in the amount of \$6,900. Aquarius shall pay the second installment no later than 60 days after the Effective Date in the form of a check made payable to "Voorhees & Bailey, LLP" in the amount of \$9,100.

### **3.3 Payment Amount and Address**

All payments under this Settlement Agreement shall be delivered to the following address:

Voorhees & Bailey, LLP  
990 Amarillo Avenue  
Palo Alto, CA 94303

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 Johnson's Release of Proposition 65 Claims**

This Settlement Agreement is a full, final and binding resolution and release between Johnson, acting on his own behalf and *not* on behalf of the public, and Aquarius, Aquarius's parents, subsidiaries, partners, affiliated entities, shareholders, members, marketplaces, directors, officers, agents, employees, attorneys, predecessors, successors, and assignees, and each entity to whom Aquarius directly or indirectly distributes, offers to sell, or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, importers, and licensees, including but not limited to Ross Stores, Inc., The TJX Companies, Inc. (TJ Maxx), Cluett, Peabody & Co., Inc. and its respective subsidiaries, affiliates, parents, shareholders, directors, officers, agents, employees, attorneys, successors, assignees, franchisees, cooperative members, and licensees (collectively, "Releasees"), from all

claims for violations of Proposition 65 relating to unwarned exposures to DEHP and/or DINP in the Products. The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Aquarius, except to the extent those Products or component parts are related to Aquarius's products.

#### **4.2 Johnson's Individual Release of Claims**

Johnson, in his individual capacity only, provides a release herein on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, 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 Johnson of any nature, character, or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to DEHP and/or DINP in the Products manufactured, imported, distributed, offered for sale, or sold by Aquarius prior to the Effective Date. The Parties further understand and agree that this Section 4.2 release shall not extend upstream to any entities that manufactured the Products, or any component parts thereof, or any distributors or suppliers who sold the Products, or any component parts thereof to Aquarius. Nothing in this Section affects Johnson's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Aquarius' Products.

#### **4.3 Aquarius' Release of Johnson**

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

**5. 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.

**6. 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 Aquarius may provide written notice to Johnson of any asserted change in the law and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

**7. 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; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For Aquarius:

Sandy Schonwald, President  
Aquarius, Ltd.  
3200 S. Kingshighway  
St. Louis, MO 63139

Malcolm C. Weiss, Partner  
Hunton Andrews Kurth LLP  
550 South Hope Street, Suite 2000  
Los Angeles, CA 90071

For Johnson:

Voorhees & Bailey, LLP  
Proposition 65 Coordinator  
990 Amarillo Avenue  
Palo Alto, CA 94303

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.

**8. 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.

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

Johnson and his attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

**10. MODIFICATION**

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

**11. 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.

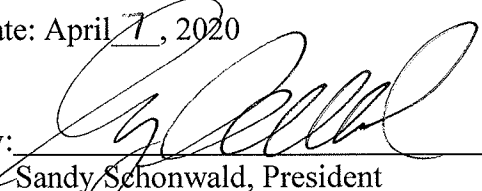
**AGREED TO:**

Date: April 8, 2020

By:   
DENNIS JOHNSON

**AGREED TO:**

Date: April 7, 2020

By:   
Sandy Schonwald, President  
AQUARIUS, LTD.