

1 Elham Shabatian (SBN 221953)
2 Cliffwood Law Firm
3 12100 Wilshire Blvd., Suite 800
4 Los Angeles, CA 90025
5 Ph: (310) 200-3227
6 Email: ellie@cliffwoodlaw.com
7 Attorneys for Plaintiff Clean Product Advocates LLC

8 David L. Prince (SBN 113599)
9 1912 East Vernon Avenue, Suite 100
10 Los Angeles, CA 90058
11 Ph: (323) 234-2989
12 Email: dlp@redchamber.com
13 Attorneys for Defendant Aqua Star (USA) Corp.

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF LOS ANGELES**

16 **CLEAN PRODUCT ADVOCATES, LLC, a**
17 **California Limited Liability Company,**

18 **Plaintiff,**

19 **vs.**

20 **AQUA STAR; AQUA STAR (USA) CORP.;**
21 **WINCO FOODS, LLC; WINCO FOODS;**
22 **DOES 1-100**

23 **Defendants.**

CASE NO. 23STCV15294

SETTLEMENT AGREEMENT

Judge: Hon. Jill Feeney
Dept.: 78

Complaint Filed: June 30, 2023
Trial Date: None set

24 **1. INTRODUCTION**

25 1.1 **The Parties.** This Settlement Agreement is entered into by and between CLEAN
26 PRODUCT ADVOCATES, LLC ("CPA" or "Plaintiff") on the one hand, and Aqua Star (USA)
27 Corp. ("Defendant") on the other hand. Together, Plaintiff and Defendant are collectively referred
28 to as the "Parties." Plaintiff is a California Limited Liability Company and as a private enforcer

1 and in the public interest, seeks to promote awareness of exposures to toxic chemicals and to
2 improve human health by reducing or eliminating hazardous substances contained in consumer
3 products. Plaintiff alleges that Defendant is an entity in the course of doing business for purposes
4 of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6,
5 et seq. ("Proposition 65").

6 **1.2 Complaint and General Allegations.** Plaintiff alleges that a product
7 manufactured, distributed, or sold by Defendant contains cadmium, a chemical listed under
8 Proposition 65 as a reproductive toxin, and exposes consumers to this chemical at a level
9 requiring a Proposition 65 warning. On June 30, 2023, plaintiff initiated this action by filing a
10 Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint")
11 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*
12 ("Proposition 65"), against Defendants Aqua Star, Aqua Star (USA) Corp, Winco Foods, LLC
13 and Winco Foods. On December 31, 2023, plaintiff filed a request for dismissal of the
14 complaint as to defendants Aqua Star and Winco Foods only and will file a request for
15 dismissal without prejudice of the complaint as to defendant Winco Foods, LLC within ten
16 (10) days of filing this agreement with the Court for approval. For purposes of this agreement,
17 the parties agree that Plaintiff has alleged Defendant is a business entity which employed ten or
18 more persons at all times relevant to this action and qualifies as a "person in the course of
19 doing business" within the meaning of Proposition 65 and that Defendant manufactures,
20 distributes and/or sells the Covered Product.

21 **1.3 Covered Products:** As used herein the term "Covered Products" shall mean "Wild
22 Calamari Rings & Tentacles".

23 **1.4 Notice of Violation.** On July 12, 2022, Plaintiff served Defendant, and various public
24 enforcement agencies with documents entitled "Notice of Violation of California Health & Safety
25 Code § 25249.6, et seq." (the "Notice"). The Notice provided Defendant and others, including
26 public enforcers, with notice that alleged that Defendant was in violation of California Health &
27 Safety Code § 25249.6, for failing to warn California consumers and customers that use of the
28

Product will expose them to cadmium. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission. Defendant denies the material factual and legal allegations contained in the Notice and Complaint and maintains that, to the best of its knowledge, all products that are or have been sold and distributed in California, including the Covered Product have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Defendant 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 Defendant of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Defendant. However, this § 1.5 shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Further, notwithstanding the allegations in the Complaint and Notice, Defendant maintains that it has not knowingly manufactured, imported, distributed or sold or caused to be manufactured, imported, distributed or sold the Covered Product for sale 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 approved by the Court.

1.7 Except as expressly set forth herein, nothing in this agreement shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any current or future legal proceeding unrelated to these proceedings.

2. JURISDICTION AND VENUE

For purposes of this agreement and any further court action that may become necessary to enforce this agreement, the Parties stipulate that this Court has subject matter jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction over Defendant as to the acts alleged in the Complaint, that venue is proper in Los Angeles County, and that this Court has jurisdiction to approve this agreement as a full and final resolution of all claims up through and including the Effective Date that were or could have been asserted in this action based on the facts alleged in the Notice and Complaint.

1 **3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

2 3.1 Beginning on the Effective Date, Defendant shall be permanently enjoined from
3 manufacturing for sale in the State of California, "distributing into the State of California," or
4 directly selling in the State of California, any Covered Product that exposes a person to a
5 "Daily Cadmium Exposure Level" of more than 4.1 micrograms of cadmium per day unless it
6 meets the warning requirements under Section 3.2.

7 3.11 As used in this agreement, the term "distributing into the State of California" shall
8 mean to directly ship a Covered Product into California for sale in California or to sell a
9 Covered Product to a distributor that Defendant knows or has reason to know will sell the
10 Covered Product in California. The injunctive relief in Section 3 does not apply to any Covered
11 Product that has left the possession and is no longer under the control of Defendant prior to the
12 Effective Date and all claims as to such Covered Products are released in this agreement.

13 3.1.2 For purposes of this agreement, the "Daily Cadmium Exposure Level" shall be
14 measured in micrograms, and shall be calculated using the following formula: micrograms of
15 Cadmium per gram of product, multiplied by grams of product per serving of the product
16 (using the largest serving size appearing on the product label), multiplied by servings of the
17 product per day (using the largest number of recommended daily servings appearing on the
18 label), which equals micrograms of Cadmium exposure per day. If the label contains no
19 recommended daily servings, then the number of recommended daily servings shall be one.

20 **3.2 Clear and Reasonable Warning**

21 If Defendant is required to provide a warning pursuant to Section 3.1, the warning
22 substantially in the following form needs to be utilized for Covered Products ("Warning"):

23 **WARNING:** Consuming this product can expose you to chemicals including cadmium
24 which is known to the State of California to cause birth defects or other reproductive harm.
For more information go to www.P65Warnings.ca.gov/food.

25 Defendant shall use the phrase "birth defects or other reproductive harm" in the Warning
26 if Defendant has reason to believe that the "Daily Cadmium Exposure Level" is greater than 4.1
27 micrograms of Cadmium as determined pursuant to the quality control methodology set forth in
28 Section 3.1.2 or if Defendant has reason to believe that another Proposition 65 chemical is present

which may require a warning.

The Warning shall be securely affixed to or printed upon the label of the Covered Product and it must be set off from other surrounding information and enclosed in a box. In addition, if the Covered Product is sold over the internet purchased by a consumer located in California when ordering the Covered Product, the Warning shall appear on the checkout page in full text or through a clearly marked hyperlink using the word "WARNING" in all capital and bold letters when a California delivery address is indicated for said purchase of the Covered Product. If a hyperlink is used, the hyperlink must go directly to a page prominently displaying the Warning without content that detracts from the Warning. An asterisk or other identifying method must be utilized to identify which product on the checkout page is subject to the Warning.

The Warning shall be at least the same size as the largest of any other health or safety warnings also appearing on the website or on the label and the word "WARNING" shall be in all capital letters and in bold print. No statements intended to or likely to have the effect of diminishing the impact of the Warning on the average lay person shall accompany the Warning. Further, no statements may accompany the Warning that state or imply that the source of the listed chemical has an impact on or results in a less harmful effect of the listed chemical.

Defendant must display the above Warning with such conspicuousness, as compared with other words, statements or designs on the label, or on its website, if applicable, to render the Warning likely to be read and understood by an ordinary individual under customary conditions of purchase or use of the product.

For purposes of this agreement, the term "label" means a display of written, printed or graphic material that is printed on or affixed to a Covered Product or its immediate container or wrapper.

For purposes of this agreement, when Defendant is required to provide a warning for the Covered Product pursuant to Section 3, Defendant may satisfy the warning requirement by providing the required information in compliance with 27 C.C.R. § 25600.2 (2024) to any business that is subject to Proposition 65 to which it is selling or transferring the Covered Product.

The Parties agree that Defendant shall be deemed to be in compliance with this Settlement Agreement by either adhering to § 3 of this Settlement Agreement or by complying with warning regulations adopted by the State of California's OEHHA. Further, Defendant agrees that, as of January 1, 2028, it shall ensure that all consumer products it manufactures, distributes, or sells in California, requiring a warning under Proposition 65, comply with the revised Proposition 65 warning regulations, including updated short-form warnings. The required warnings shall specify at least one chemical for which the warning is given, in accordance with Title 27, California Code of Regulations, Section 25603.

3.3 Foreign Language Warning Requirement: Where any Covered Product label, packaging, or accompanying written materials include information in a language other than English, Defendant agrees to provide the Proposition 65 warning in the same language(s) in addition to English. The foreign language warning must contain the same content as the English warning and must be prominently displayed.

4. SETTLEMENT PAYMENT

4.1 In full satisfaction of all potential civil penalties, additional settlement payments, attorney's fees, and costs, Defendant shall make a total payment of \$5,000.00 ("Total Settlement Amount") to Plaintiff within 30 business days of the Effective Date ("Due Date"). Defendant shall make this payment by the delivery of certified funds to Cliffwood Law Firm, Attn: Elham Shabatian. The Total Settlement Amount shall be apportioned as follows:

4.2 \$500.00 shall be considered a civil penalty pursuant to California Health and Safety Code section 25249.7(b)(1). Plaintiff shall remit 75% (\$375.00) of the civil penalty to the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety Code section 25249.12(c). Plaintiff will retain the remaining 25% (\$125.00) of the civil penalty.

4.3 \$4,5000.00 shall be distributed to the Cliffwood Law Firm as reimbursement for reasonable costs and fees incurred in bringing this action. Except as explicitly provided herein, each Party shall bear its own fees and costs.

1 **5. MODIFICATION OF AGREEMENT**

2 **5.1** This agreement may be modified only as by written stipulation of the Parties
3 and upon entry by the Court of a modified agreement or by motion of either Party and upon
4 approval by the Court of a modified agreement.

5 **5.2** If Defendant seeks to modify this agreement, then Defendant must provide
6 written notice to Plaintiff of its intent ("Notice of Intent"). If Plaintiff seeks to meet and confer
7 regarding the proposed modification in the Notice of Intent, then Plaintiff must provide written
8 notice to Defendant within thirty (30) days of receiving the Notice of Intent. If Plaintiff
9 notifies Defendant in a timely manner of Plaintiff's intent to meet and confer, then the Parties
10 shall meet and confer in good faith as required in this Section. The Parties shall meet in person
11 or via telephone within thirty (30) days of Plaintiff's notification of its intent to meet and
12 confer. Within thirty (30) days of such meeting, if Plaintiff disputes the proposed modification,
13 Plaintiff shall provide to Defendant a written basis for its position. The Parties shall continue
14 to meet and confer for an additional thirty (30) days in an effort to resolve any remaining
15 disputes. Should it become necessary, the Parties may agree in writing to different deadlines
16 for the meet-and-confer period.

17 **5.3** In the event that Defendant initiates or otherwise requests a modification under
18 this agreement, and the meet and confer process leads to a joint motion or application for a
19 modification of the agreement, Defendant shall reimburse Plaintiff its costs and reasonable
20 attorney's fees for the time spent in the meet-and-confer process and filing and arguing the
21 motion or application.

22 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF AGREEMENT**

23 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or
24 terminate this agreement.

25 **7. APPLICATION OF AGREEMENT**

26 This agreement may apply to, be binding upon, and benefit the Parties and their respective
27 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
28 franchisees, licensees, customers (excluding private labelers), distributors, wholesalers, retailers,

1 predecessors, successors, and assigns. This agreement shall have no application to any Covered
2 Product that is distributed or sold exclusively outside the State of California and that is not used
3 by California consumers, except that Plaintiff fully releases Defendant from any and all claims
4 pertaining to the Covered Product that may be brought by Plaintiff in any jurisdiction other than
5 California.

6 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

7 **8.1** This agreement is a full, final, and binding resolution between Plaintiff, on
8 behalf of itself and in the public interest, and Defendant and its respective officers, directors,
9 shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
10 franchisees, licensees, customers (not including private label customers of Defendant),
11 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
12 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any
13 of them (collectively, "Released Parties"). Plaintiff, on behalf of itself and in the public
14 interest, hereby fully releases and discharges the Released Parties from any and all claims,
15 actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and
16 expenses asserted, or that could have been asserted from the handling, use, or consumption of
17 the Covered Product, as to any alleged violation of Proposition 65 or its implementing
18 regulations arising from the failure to provide Proposition 65 warnings on the Covered Product
19 regarding cadmium up to and including the Effective Date.

20 **8.2** Plaintiff on its own behalf only, and Defendant on its own behalf only,
21 further waive and release any and all claims they may have against each other for all actions or
22 statements made or undertaken in the course of seeking or opposing enforcement of
23 Proposition 65 in connection with the Notice and Complaint up through and including the
24 Effective Date, provided, however, that nothing shall affect or limit any Party's right to seek to
25 enforce the terms of this agreement.

26 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
27 alleged in the Notice and Complaint, and relating to the Covered Product, will develop or be
28 discovered. Plaintiff on behalf of itself only, and Defendant on behalf of itself only,

1 acknowledge that this agreement is expressly intended to cover and include all such claims up
2 through and including the Effective Date, including all rights of action therefore. Plaintiff and
3 Defendant acknowledge that the claims released in above may include unknown claims, and
4 nevertheless waive California Civil Code section 1542 as to any such unknown claims.

5 California Civil Code section 1542 reads as follows:

6 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
7 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
8 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE
9 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
PARTY.

10 Plaintiff on behalf of itself only, and Defendant on behalf of itself only, acknowledge and
11 understand the significance and consequences of this specific waiver of California Civil Code
12 Section 1542.

13 **8.4** Compliance with the terms of this agreement shall be deemed to constitute
14 compliance with Proposition 65 by any releasee regarding alleged exposures to Cadmium in
15 the Covered Product.

16 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

17 In the event that any of the provisions of this agreement are held by a court to be
18 unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected
19 but in no event the releases provided herein shall ever be construed as unenforceable once this
20 agreement has been approved by the Court as set forth in Section 12 below.

21 **10. GOVERNING LAW**

22 The terms and conditions of this agreement shall be governed by and construed in
23 accordance with the laws of the State of California.

24 **11. PROVISION OF NOTICE**

25 All notices required to be given to either Party to this agreement by the other shall be in
26 writing and sent to the following agents listed below via first-class mail or via electronic mail
27 where required. Courtesy copies via email may also be sent.
28

FOR CLEAN PRODUCTS ADVOCATES, LLC:

Elham Shabatian
Cliffwood Law Firm, PC
12100 Wilshire Boulevard
Suite 800
Los Angeles, California 90025
Ph: (310) 200-3227
Email: ellie@cliffwoodlaw.com

FOR AQUA STAR (USA) CORP.

David L. Prince
1912 East Vernon Avenue, Suite 100
Los Angeles, CA 90058
Ph: (323) 234-2989
Email: dlp@redchamber.com

12. COURT APPROVAL

12.1 Upon execution of this agreement by the Parties, Plaintiff shall notice a Motion for Court Approval. The Parties shall use their best efforts to support approval by the Court of this agreement. All costs and fees associated with the motion shall be borne solely by Plaintiff.

12.2 If the California Attorney General objects to any term in this agreement, the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible, prior to the hearing on the motion.

12.3 If this agreement is not approved by the Court, it shall be void and have no force or effect.

13. EXECUTION AND COUNTERPARTS

This agreement may be executed in counterparts, which taken together shall be deemed to constitute one document. A facsimile or .pdf signature shall be construed to be as valid as the original signature.

14. DRAFTING

The terms of this agreement have been reviewed by the respective counsel for each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and

1 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
2 construction of this agreement, no inference, assumption, or presumption shall be drawn, and no
3 provision of this agreement shall be construed against any Party, based on the fact that one of the
4 Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any portion of the
5 agreement. It is conclusively presumed that all of the Parties participated equally in the
6 preparation and drafting of this agreement.

7 **16. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

8 If a dispute arises with respect to either Party's compliance with the terms of this
9 agreement approved by the Court, the Parties shall meet and confer in person, by telephone,
10 and/or in writing and endeavor to resolve the dispute in an amicable manner. No action or motion
11 may be filed in the absence of such a good faith attempt to resolve the dispute beforehand.

12 **17. ENFORCEMENT**

13 Plaintiff may, by motion or order to show cause before the Superior Court of Los
14 Angeles County, enforce the terms and conditions contained in this agreement. In any action
15 brought by Plaintiff to enforce this agreement, Plaintiff may seek recovery of its reasonable ,
16 attorney's fees court costs.

17 **18. ENTIRE AGREEMENT, AUTHORIZATION**

18 18.1 This agreement contains the sole and entire agreement and understanding of
19 the Parties with respect to the entire subject matter herein, including any and all prior
20 discussions, negotiations, commitments, and understandings related thereto. No
21 representations, oral or otherwise, express or implied, other than those contained herein have
22 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
23 herein, shall be deemed to exist or to bind any Party. Further, upon Court approval of this
24 agreement and execution of the terms contained herein, Plaintiff's Complaint shall be
25 dismissed with prejudice.

26 18.2 Each signatory to this agreement certifies that he or she is fully authorized by the
27 Party he or she represents to stipulate to this agreement.
28

1 **19. REQUEST FOR FINDINGS & APPROVAL OF SETTLEMENT**

2 This agreement has come before the Court upon the request of the Parties. The Parties
3 request the Court to fully review this agreement and, being fully informed regarding the matters
4 which are the subject of this action, to:

5 (1) Find that the terms and provisions of this agreement represent a fair and equitable
6 settlement of all matters raised by the allegations of the Complaint that the matter has been
7 diligently prosecuted, and that the public interest is served by such settlement; and

8 (2) Make the findings pursuant to California Health and Safety Code section
9 25249.7(f)(4) and approve the Settlement.

10 **IT IS SO STIPULATED:**

11 Dated: _____, 2025
12 6/25/2025

CLEAN PRODUCT ADVOCATES, LLC

13 By: 
14 Dekee Yangzom

15
16
17 Dated: 6/25/2025, 2025

AQUA STAR (USA) CORP.

18
19 Signed by:

0D8E6441631A445...

20 By: Amy Cross

21 Its: Chief Financial Officer

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER APPROVING AGREEMENT

Based upon the Parties' Stipulation, and good cause appearing, this agreement is approved and is hereby entered according to its terms.

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____, 2025

Judge of the Superior Court