

1 Brian Irion, Esq. (SBN #119865)
 2 Law Offices of Brian Irion
 3 611 Veterans Blvd., Suite 209
 4 Redwood City, CA 94063
 5 Tel: 650.363.2600
 6 Fax: 650.363.2606
 7 Email: birion@thedesq.com

8 Warren J. Krauss, Esq. (SBN #49568)
 9 Matthew Fischer, Esq. (SBN #191451)
 10 Sedgwick Detert Moran & Arnold LLP
 11 One Market Plaza, Steuart Twr, 8th Fl.
 12 San Francisco, CA 94105
 13 Tel: 415-781-7800
 14 Email: warren.krauss@sdma.com
 15 Email: matthew.fischer@sdma.com

Attorneys for Aqua Craft, Inc.

16 UNITED STATES DISTRICT COURT
 17 NORTHERN DISTRICT OF CALIFORNIA
 18 SAN JOSE DIVISION

19 AQUA CRAFT, INC., a California corporation,
 20 Plaintiff,
 21 vs.
 22 SEACHEM LABORATORIES, INC., a Georgia
 23 corporation,
 24 Defendant

CASE NO. 10cv-01728 LHK

25 **STIPULATION FOR DISMISSAL OF
 26 ACTION WITH PREJUDICE**

[PROPOSED ORDER]

27 AND RELATED COUNTERCLAIM
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1 The parties to this action, by and through their respective counsel, hereby stipulate to the
2 dismissal of this action with prejudice, the Court to retain jurisdiction pursuant to paragraph 16 of the
3 attached Exhibit A.

4 Respectfully submitted,

5
6 Dated: February 7, 2011

7 /s _____
8 Brian Irion
9 LAW OFFICES OF BRIAN IRION
10 Attorneys for Aqua Craft, Inc.

11
12 Dated: February 7, 2011

13 /s _____
14 David Lilenfeld, Esq.
15 LILENFELD PC
16 Attorneys for Seachem Laboratories, Inc.

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18 IT IS SO ORDERED:

19 Dated February 25, 2011

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22 Hon. Lucy Koh, Judge
23 United States District Court
24 Northern District of California
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EXHIBIT A

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into as of January 13, 2010 (the "Effective Date") by and between Seachem Laboratories, Inc. ("Seachem"), a corporation duly organized and existing under the laws of the State of Georgia, and Aqua Craft, Inc. ("Aqua Craft"), a corporation duly organized and existing under the laws of the State of California. Seachem and Aqua Craft are collectively referred to herein as the "Parties."

RECITALS

Whereas, Aqua Craft initiated a civil action against Seachem in the United States District Court for the Northern District of California, styled *Aqua Craft, Inc. v. Seachem Laboratories, Inc.*, Civil Action No. CV-10-1728-DMR (the "Action"), alleging certain trademark-related claims;

Whereas, Seachem answered Aqua Craft's Complaint and filed counterclaims alleging certain trademark-related and unfair competition claims (the "Counter-Action");

Whereas, the Action and the Counter-Action are collectively referred to herein as the "Litigation";

Whereas, the Parties hereby enter into this Agreement to finally and forever compromise, resolve and settle the Litigation on mutually agreeable terms, without admission of any liability by any party, and without admission as to the merits of any contentions of any party;

NOW, THEREFORE, upon execution of this Agreement, the Parties hereby agree as follows:

1. Dismissals/Withdrawals

(a) Aqua Craft agrees to dismiss with prejudice all claims asserted against Seachem in the Action and further agrees that neither it nor any of its agents or representatives will contest, oppose or challenge any registered trademark or application listed in Seachem's Counter-Action as of November 30, 2010 in the Litigation;

(b) Seachem agrees to dismiss with prejudice all claims asserted against Aqua Craft in the Counter-Action;

(c) Within seven (7) business days of the Effective Date of this Agreement, Aqua Craft will file a letter notifying the Trademark Trial and Appeal Board that it will not oppose Seachem's application to federally register the mark Seachem (Application No. 77/7804360) and Aqua Craft further agrees not to petition to cancel any registration born from that Application;

01-12-2011 Draft Settlement Agreement.docx

(b) No later than the Effective Date, cease and desist from producing any printed material displaying the phrase "Sea the Difference";

(c) No later than the Effective Date, cease and desist from displaying at any trade show or industry gathering the phrase "Sea the Difference";

(d) No later than eight (8) months from the Effective Date, cease and desist from using in any form, including but not limited to the those forms identified in paragraphs 2(a)-(c) above as well as on any portion of any website operated by Seachem, the phrase "Sea the Difference";

(e) Seachem shall receive from Aqua Craft twenty (20) days to cure any failure to comply with paragraphs 2(a)-(d) above. Such cure period shall commence upon written notice from Aqua Craft of the failure to comply. Such notice shall be mailed to Greg Morin at Seachem Laboratories, Inc. at 1000 Seachem Drive, Madison, Georgia 30650 and mailed by any method that requires the signature of the recipient. A copy shall be sent to David M. Lilienfeld at Lilienfeld PC, 2964 Peachtree Road, Suite 720, Atlanta, Georgia 30305 by any method that requires the signature of the recipient. Said notice shall specify the location of Seachem's use of "Sea the Difference" so that it can be remedied by Seachem. In the event Seachem cures within the twenty (20) day period, no claim can be brought for violation of paragraph 2(a)-(d) on the basis of the conduct that was cured.

(f) This paragraph 2 is intended to effect a phase out of Seachem's current use of the phrase "Sea the Difference" and not grant a license or permission for Seachem to commence use of any confusingly similar phrase or mark during the phase out period.

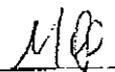
3. Use of Product Names

(a) Both Aqua Craft and Seachem agree that, from the Effective Date of this Agreement, neither will name any of its products with the same name of the other's products to the extent such products were commercially available prior to the Effective Date of this Agreement.

4. Initial Neutral Determination

(a) Both Aqua Craft and Seachem agree that they will not refer to the other by name or any of the other's products by name in any advertisement, whether comparative or otherwise, in a false or misleading manner.

(b) If in the future, either Aqua Craft or Seachem believes the other has violated paragraph 3(a) or 4(a) above, then that party shall submit any dispute arising hereunder to be evaluated by an independent third-party neutral, which will be designated pursuant to paragraph 4(d) below.

Aqua Craft: 
Seachem: 

- (c) The neutral shall make a prompt evaluation whether the material violated paragraph 3(a) or 4(a). If the neutral initially determines the material violated paragraph 3(a) or 4(a), then the party charged will bear the costs of the neutral evaluation and vice versa. If the party charged continues the use or the publication if the initial determination finds a violation of paragraph 3(a) or 4(a), then the complaining party may bring an action under this Agreement in the forum of its choice notwithstanding the provisions of paragraph 16 below.
- (d) In the first instance, the Parties agree the independent third-party neutral shall be attorney Nathan Lane III, who served as a mediator in this action. Should Mr. Lane be unavailable, then the parties shall promptly agree upon an alternate independent third-party neutral. Should the parties be unable to agree to a neutral, then each shall select their own neutral, who together will choose a neutral.
- (e) The Parties shall use their best efforts to complete the neutral evaluation process within thirty (30) days from the date the complaining party requests a neutral evaluation under paragraph 4(b) above.

5. Mutual Releases

Subject to the terms and conditions of this Agreement, the Parties hereby fully and finally release each other from all claims, liabilities, demands and causes of action at law or in equity, including, but not limited to, those brought in the Litigation. "Parties," as used in this Paragraph, refers to Aqua Craft, Seachem and their respective predecessors, successors, subsidiaries, divisions, alter egos, affiliated corporations, and related entities, as well as their respective past or present officers, directors, trustees, administrators, employees, attorneys, assigns, agents, and representatives, and any or all of them.

Each Party, having been advised by counsel, acknowledges that it is familiar with the provisions of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR

The Parties hereby expressly waive and relinquish all rights and benefits under this section and any law or legal principle of similar effect in any jurisdiction with respect to the release granted herein, including but not limited to the release of unknown claims.

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Aqua Craft: *MIR*
Seachem: *WM*

6. Representation

The Parties represent that none of the claims asserted in the Litigation have been assigned or transferred to any person or entity not a Party to, and bound by, this Agreement.

7. No Reliance Upon Other Representations

Each Party represents and warrants that it has not relied upon any statement or representation by any other Party or any of its officers, directors, agents, employees or attorneys in executing this Agreement or in making the settlement provided for herein. There are no other promises or warranties by any Party or its representatives other than those expressly set forth in this Agreement.

8. Agreement Entered into with Advice of Counsel

Each Party represents that it has received legal advice with respect to the legal effect of this Agreement.

9. Expenses and Attorneys Fees for this Dispute

Subject to the provisions of paragraph 14 below relating to the any dispute arising out of this Agreement, each Party shall be responsible for all of its own attorneys' fees, costs and expenses incurred in connection with this dispute, the Litigation, including, but not limited to, those incurred in the negotiation, preparation and execution of this Agreement.

10. Entire Agreement

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter herein. All previous and collateral agreements, representations, warranties, promises and conditions are superseded by this Agreement. Any representations, promises or conditions relating to such subject matter not incorporated into this Agreement shall not be binding on any Party.

11. Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

12. Authority to Execute Agreement; Admissibility

The Parties covenant and warrant that the persons whose signatures and initials appear on behalf of them are duly authorized and empowered to execute this Agreement on behalf of them and that this Agreement is legally binding and may be admitted in evidence and enforced in a court of law.

Aqua Craft: MAQ
Seachem: CM

13. Execution

This Agreement may be executed in counterparts, each of which shall be deemed an original and all such counterparts together shall constitute but one and the same instrument. This Agreement may be executed by facsimile signatures, which shall be deemed for all purposes as originals.

14. Severability

Should any provision of this Agreement be held invalid or illegal, such provision shall not give rise to invalidate the Agreement but shall be construed as if to omit any invalid or illegal part, and all remaining rights and obligations of the Parties shall be construed and enforced accordingly.

15. Attorney Fees for Disputes Arising out of this Agreement

Should any action be commenced concerning or arising out of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and expert witness fees, including those incurred in post-judgment enforcement efforts.

16. Retention of Jurisdiction and Venue

(a) The court in the litigation (The United States District Court for the Northern District of California) shall retain jurisdiction to resolve any and all disputes concerning or arising out of this Agreement either (i) from the date of this Agreement plus three hundred thirty (330) days (approximately eight (8) months plus 90 days), or (ii) ninety (90) days after Seachem notifies Aqua Craft in writing that it has complied with paragraph 2 and 3 above, whichever is sooner.

(b) After the court in the litigation no longer retains jurisdiction under paragraph 16(a) above, any action commenced by Aqua Craft against Seachem shall be brought in The United States District Court for the Middle District of Georgia or any state court sitting within The United States District Court for the Middle District of Georgia, subject to the provisions of paragraph 4, above.

(c) After the court in the litigation no longer retains jurisdiction under paragraph 16(a) above, any action commenced by Seachem against Aqua Craft shall be brought in The United States District Court for the Northern District of California or any state court sitting within The United States District Court for the Northern District of California, subject to the provisions of paragraph 4, above.

Aqua Craft: MGP
Seachem: CM

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective as of the Effective Date.

AQUA CRAFT, INC.

By: *Michael DePrete*
Name: Michael DePrete
Title: CEO
Date: 1-25-2011

SEACHEM LABORATORIES, INC.

By: *Gregory Marin*
Name: Gregory Marin
Title: CEO
Date: 1-21-2011

Aqua Craft: *MDP*
Seachem: *GM*

Exhibit A

	Serial Number	Reg. Number	Word Mark	Check Status	Live/Dead
1	85004104	3873356	SEA THE DIFFERENCE	TARR	LIVE
2	85116069		ACP PH	TARR	LIVE
3	85116066		ACP PH	TARR	LIVE
4	85116063		ACP BUFFER + DKH	TARR	LIVE
5	85116060		ACP 8.3 BUFFER	TARR	LIVE
6	85116059		ACP PH 8.0	TARR	LIVE
7	85116055		ACP PH 7.5	TARR	LIVE
8	85116052		ACP PH 7.0	TARR	LIVE
9	85116049		ACP PH 6.5	TARR	LIVE
10	85116043		ACP PH 6.0	TARR	LIVE
11	78934121	3260740	ECOSEA	TARR	LIVE
12	78212447	2904699	MARINE AQUARIST	TARR	LIVE
13	78212440	2906223	MARINE ENVIRONMENT	TARR	LIVE
14	78212427	2879209	BIO-SEA	TARR	LIVE
15	78212419	2797835	MEERSALTZ	TARR	LIVE
16	78212408	2871498	CORAL MARINE	TARR	LIVE
17	78233193	3209532	13045 PROCESS	TARR	LIVE
18	78212466	3202565	AQUA CRAFT PRODUCTS	TARR	LIVE
19	77921977	3859643	AQUA CAL	TARR	LIVE
20	77933174	3825150	LIQUID ASSETS	TARR	LIVE
21	77921975	3825124	SEA SAFE	TARR	LIVE
22	77893371	3824668	SEA TRACE	TARR	LIVE
23	77041360	3283960	REEF AQUARIUM GUIDE	TARR	LIVE

Aqua Craft: M. Up
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Exhibit B

	<u>Serial Number</u>	<u>Reg. Number</u>	<u>Word Mark</u>	<u>Live/Dead</u>
1	77927043		AQUAVITRO	LIVE
2	77780436		SEACHEM	LIVE
3	77583040	3796650	FURPET	LIVE
4	77582931	3765969	JURASSIPET	LIVE
5	77582984	3762186	AVIPET	LIVE
6	77772221	3746548	TIMBUKTU OUTDOORS	LIVE
7	77669781	3727572	DISCUS BUFFER	LIVE
8	77583055	3700968	TIMBUKTU OUTDOORS	LIVE
9	77582134	3688434	ALERT	LIVE
10	77582077	3615759	STABILITY	LIVE
11	77582059	3615757	PURIGEN	LIVE
12	77582038	3615753	PRIME	LIVE
13	77581098	3615684	FLOURITE	LIVE
14	77428824	3484867	REEF COMPLETE	LIVE

Aqua Craft: MUP

Seachem: am

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