

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 150 OF 2019

BETWEEN: -

ROBERTO SILVA

Plaintiff

-AND-

ROBERT NOWACK

First Defendant

PURE AIR LTD

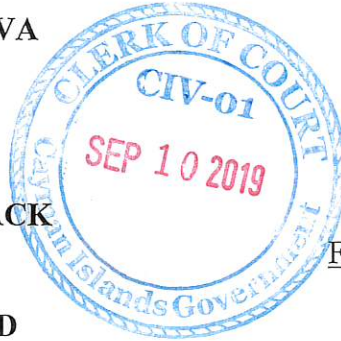
Second Defendant

CONOR PACIFIC INTERNATIONAL LTD

Third Defendant

CONOR PACIFIC CANADA INC

Fourth Defendant



WRIT OF SUMMONS

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim set out on the next page.

Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, P.O. Box 495 GT, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 10 day of September 2019.

NOTE – This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of jurisdiction, 6 months) beginning with the date of issue unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

STATEMENT OF CLAIM

- 1) The Plaintiff, Roberto Silva (“Mr. Silva”) is a citizen and resident of Cayman. His address is 622, South Church Street, Grand Cayman.
- 2) The First Defendant, Robert Nowack (“Mr. Nowack”), is a citizen and resident of Canada. He is sole director and President of the Second Defendant.
- 3) The Second Defendant, Pure Air Ltd (formerly P.M. Industrial Gas Ltd., P.M. Welding Ltd.) (the “Company”), is a company registered in the Cayman Islands operating pursuant to the Local Companies (Control) Law (2015 Revision) (“LCCL”) whose registered office is at Foreshore Corporate Services Ltd, PO Box 1994, Queensgate Building, 4th Floor, South Church Street, Grand Cayman KY1-1104. The Company shareholding is held by the Plaintiff, Josephine and Stephen Bains, and the Third Defendant, Conor Pacific International Ltd. The Company operates as a medical and industrial gas distributor.
- 4) The Third Defendant, Conor Pacific International Ltd (formerly known as JBZ (2001) Ltd) (“Conor Pacific International”), is a company registered in the Cayman Islands whose registered office is PO Box 1994, Grand Cayman KY1-1104. The Second Defendant is recorded as the majority shareholder of the Company holding 83.8% of the shares.
- 5) The Fourth Defendant, Conor Pacific Canada Inc, is a company registered in Canada whose registered office is 25th Floor, 700 West Georgia Street, Vancouver, V7Y 1B3 and whose corporation number is 1060740-1 (“Conor Pacific Canada”). Conor Pacific Canada was incorporated on 26 June 2018 and, following 2 separate amalgamations, is the successor company to the following predecessor companies:
 - a) Conor Pacific Inc (corporation number 833370-0), a company registered in Canada whose registered office is 25th Floor, 700 West Georgia Street, Vancouver, V7Y 1B3 (now inactive);

- b) Conor Pacific Canada Inc (corporation number 440036-4) a company registered in Canada whose registered office is Suite 2400, 745 Thurlow Street, Vancouver, BC, V6E 0C5 (now inactive); and
- c) Conor Pacific Canada Inc (corporation number 243442-3) a company registered in Canada whose registered office is 595 Burrard St, Suite 2600 Vancouver, BC, V7X 1L3 (which amalgamated with corporation number 440036-4 on 1 January 2007) (now inactive).

(collectively, the "Predecessor Companies").

- 6) Mr. Nowack is the sole director and directly or indirectly the beneficial owner and controlling mind of Conor Pacific Canada. Mr. Nowack was also the sole director and directly or indirectly the beneficial owner and controlling mind of each of the Predecessor Companies at the date of amalgamation.
- 7) Conor Pacific Canada, when referred to, includes its Predecessor Companies.
- 8) Conor Pacific International and Conor Pacific Canada when referred to collectively shall be referred to as the "Corporate Defendants".

Relevant Background

The Company's Shareholding

- 9) The Company was incorporated on 10 March 1977 and its operation within the Cayman Islands remains subject to the provisions of the LCCL, the Companies Law (2018 Revision) (the "Law") and the Memorandum and Articles of Association as amended on 22 March 1977 (the "Articles").
- 10) The shareholding of the Company consists of 1000 issued shares. According to the Register of Members filed by the Company, in 2001 Conor Pacific International held 986 of the issued shares and 14 shares were held jointly by Stephen and Josephine Bains ("Mr. and Mrs. Bains").

- 11) Mr. and Mrs. Bains and Conor Pacific International's shareholdings in the Company are subject to a shareholders agreement dated 2 October 2000 (the "Bains' Shareholders Agreement"). The relevant terms of that agreement are as follows:
- a) That Stephen Bains would be elected as a director until such time as he is no longer a shareholder;
 - b) All financial statements for the Company will be prepared in accordance with generally accepted accounting principles. Financial statements will be prepared and circulated quarterly. Annually, and after each year-end, the Company will secure a review engagement report from a major international auditing firm; and
 - c) If, and when, distributions of dividends are made to other shareholders, Mr. and Mrs. Bains shall be entitled to a pro-rated share of any distribution.
- 12) On 15 February 2003 Mr. Silva was employed by the Company as General Manager and Vice President. The terms of his employment were set out in a term sheet dated 13 February 2003 (the "Term Sheet").
- 13) On 23 June 2005 Mr. Silva entered into a share purchase agreement with Conor Pacific International whereby he purchased 100 ordinary shares (representing 10% of the total issued shares) in the Company from Conor Pacific International for consideration in the amount of CI\$ 200,000 (the "2005 Share Purchase Agreement"). Conor Pacific International warranted in that agreement that there were no agreements or arrangements in force, other than that agreement, which grant to any person any rights over or in connection with those shares.
- 14) On or about the same time Mr. Silva entered into a shareholder's agreement with Conor Pacific International and the Company (the "2005 Shareholders Agreement"). That agreement contained the following express terms:
- (A) The Company has at the date of this Agreement an authorized ordinary share capital of CI\$ 200,000 divided into 200,000 ordinary shares of CI\$ 1.00 each ("Shares") of which*

1,000 Shares have been issued fully paid and are presently registered in the name of [Conor Pacific International]...

2.1 Each of the parties to this Agreement confirms to the other parties that this Agreement constitutes a valid and legally binding obligation of it and that the implementation of this Agreement will not infringe any obligations of it or require any third-party consents which have not been obtained...

4.1 Subject at all times to the working capital needs of the [Company] and to the payment of required interest and principal payments on all debt, the parties agree that the [Company's] free cash flow (revenue less operating expense and interest and principal payments) shall be distributed to the Shareholders monthly on a pro rata basis....

8.1 The right to transfer Shares (save as provided in this Agreement) shall be subject to the rights and restrictions set out in this Agreement and no Share or any interest therein may be transferred to or become vested in any person.... otherwise than in accordance with such provisions...

8.2 If a Shareholder at any time attempts to deal with, or dispose of, a Share or any interest therein or right attaching thereto otherwise than in accordance with the provisions of this Agreement, any attempt shall have no effect and it shall be deemed immediately prior to such attempt to have given a Transfer Notice in respect of such Share. All share certificates shall be endorsed with a reference to this Agreement...

9.4.2 (d) in the event of a forced sale as required under clause 10, such sum per share as shall be 6 x the average EBITDA over the prior four years (as reflected in the annual financial statements prepared by the independent auditors of the [Company]) less outstanding debt."

10.1 On the occurrence of any of the following events, a Transfer Notice shall be deemed to have been given in respect of the relevant Shares at the price specified:

b) *In the event of [Mr. Silva] ceasing to be employed by [the Company] (by reason of termination in accordance with the terms of [Mr. Silva's] Employment Contract other than termination for cause) the Company may at its option purchase the Shares held by [Mr. Silva] at the Prescribed Price.*

c) *In the event of [Mr. Silva's] employment with the Company being terminated for cause.... the [Company] shall purchase the Shares held by [Mr. Silva] and a Transfer Notice shall be deemed to have been given in respect of the [Mr. Silva's] Shares with the relevant Prescribed Price less (i) the actual cost of recruiting a replacement employee, subject to a maximum liability of CI\$40,000, (ii) all damages suffered by the Company as a result of any act or omission by [Mr. Silva] and (iii) all direct uninsured costs incurred by the Company in relation to such termination....”*

11.1 The Board shall comprise two representatives nominated by [Conor Pacific International] and one representative nominated by [Mr. Silva].

11.2 The authority of the Board in relation to any proposed sale of all or substantially all of the assets of the Company shall be subject to the prior unanimous approval of the Shareholders.”

- 15) On 11 November 2005, 100 ordinary shares in the Company were transferred by Conor Pacific International to Mr. Silva in accordance with the 2005 Share Purchase Agreement.
- 16) Mr. Silva and Conor Pacific International entered into a further share purchase agreement dated 29 February 2008 (the “2008 Share Purchase Agreement”). Pursuant to that agreement Mr. Silva agreed to purchase 5% of the issued ordinary shares in the Company in exchange for total aggregate consideration of CI\$ 187,500.
- 17) On 29 November 2010, 48 of the issued ordinary shares in the Company (4.8%) were transferred by Conor Pacific International to Mr. Silva in accordance with 2008 Share Purchase Agreement.

- 18) Despite the terms of the Bains' Shareholders Agreement and the 2005 Shareholders Agreement requiring the appointment of directors to the Company by the Bains and Mr. Silva, at all times Mr. Nowack remained the sole director of the Company.

Advances/Dividends from the Company

- 19) The Company's Article of Association (the "Articles") state the following with respect to the payment of dividends and accounting:

"107. Subject to the Law, the Directors may from time to time declare dividends on shares of the Company outstanding and authorize payment of the same out of the funds of the Company PROVIDED HOWEVER that the Directors may from time to time pay to the members such interim dividends as appears to the Directors to be justified by the profits of the Company.

108. The Directors may, before declaring any dividends, set aside such sums as they think proper as a reserve or reserves which shall, at the discretion of the Directors, be applicable for any purpose of the Company and pending such application may, at the like discretion, be employed in the business of the Company.

109. No dividend shall be payable except out of the profits of the Company.

115. The directors shall cause proper books of account to be kept with respect to:-

(a) All sums of money received and expended by the Company and the matters in respect of which the receipt or expenditure takes place....

(c) The assets and liabilities of the Company.

Proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the Company's affairs and to explain its transactions".

- 20) Mr. Nowack in his capacity as sole director made all determinations as to dividends issued by the Company to its shareholders and the use of company funds. As set out below, these decisions have had a detrimental impact upon the Company and its members and employees (many of whom have since left).
- 21) Mr. Nowack, prior to Mr. Silva becoming a shareholder of the Company in 2005, caused the Company to make frequent payments to Corporate Defendants which he owned and controlled. Mr. Nowack would cause these payments to be recorded by the Company as advances or loans or dividends.
- 22) Subsequent to Mr. Silva becoming a shareholder, Mr. Nowack continued to make such payments. On some occasions when Mr. Nowack caused the Company to make a payment to one of the Corporate Defendants, he would also cause the Company to issue a payment to Mr. Silva in an amount corresponding to Mr. Silva's shareholding (first 10% and then 15%). On other occasions, no such corresponding payment was made.
- 23) As at 31 December 2011, the Company's Consolidated Financial Statements (unaudited) stated that the total advances to related parties by the Company was CI\$ 2,472,492 (US\$ 3,021,271). The notes to those financial statements record that those advances relate to receivables from corporate shareholders of the Company, were non-interest bearing and had no fixed terms of repayment. The statements also recorded the total dividends issued by the Company in 2011 as CI\$ 661,557, and in 2010 as CI\$ 607,557.
- 24) Throughout 2012, 2013 and 2014, Mr. Nowack continued to cause the Company to make payments to the Corporate Defendants which were not recorded as dividend distributions or supported by loan agreements. In communications with Mr. Silva dated 30 January 2014, Mr. Nowack instructed Mr. Silva to transfer funds to the Corporate Defendants and referred to the Company as "Bob's ATM".
- 25) On some occasions, Mr. Nowack would classify payments to the Corporate Defendants as dividends, loans or advances and would later seek to reclassify these payments as other items on

the Company's financial statements subsequent to those payments being received by the Corporate Defendants or Mr. Silva.

- 26) In 2012, Mr. Nowack caused the Company to loan CAD\$ 150,000 (then US\$ 151,502) to Conor Pacific Development, Inc ("CPDI"), a wholly owned subsidiary of Conor Pacific International, on terms whereby principle and interest would be repaid in 90 days and interest would accrue at 6% per annum (the "CPDI Loan"). The Company's Consolidated Financial Statements (unaudited) for the year ending 31 December 2014 (which incorrectly record this as a loan advanced in 2014) record that as at 31 December 2014 the principle and cumulative unpaid interest on the CPDI Loan was \$178,039. This loan is not referred to in any later financial statements of the Company. As far as the Plaintiff is aware, this is because Mr. Nowack directed that it be included in the receivables due to the Company from Conor Pacific International. As at the date of this Statement of Claim, the CPDI Loan has never been repaid in full or at all.

- 27) In 2014, one of several payments made by the Company to Conor Pacific International in the amount of US\$ 1,717,134 was stated to be in connection with a loan to two of the Company's subsidiaries, Pure Air (US) Inc ("Pure Air US") and Pure Air Daigle, L.L.C. ("Pure Air Daigle") (the "Company's Subsidiaries") for the purposes of assisting Pure Air US in the acquisition of Pure Air Daigle. In order to fund that payment, Mr. Nowack caused the Company to obtain a facility from the Royal Bank of Canada (Cayman, Ltd) ("RBC") in the amount of US\$ 1,800,000. Mr. Nowack then caused the Company to transfer the US\$ 1,717,134 to an account of Conor Pacific, Inc (now Conor Pacific Canada) on an interest free and no repayment basis. Mr. Nowack then caused the Company's Subsidiaries to enter into a secured loan agreement with Conor Pacific, Inc. whereby the Company's Subsidiaries were required to repay those funds with significant interest on or before 30 October 2019. While the Company's Subsidiaries have made payments to Conor Pacific, Inc. pursuant to these agreements, Conor Pacific, Inc. has not made any repayments to the Company. These transactions will hereafter be referred to as the "Subsidiary Financing".

- 28) In February 2016, Mr. Nowack informed Mr. Silva that in 2014 and 2015 Mr. Silva had received dividends in excess of his entitlement. Mr. Nowack demanded Mr. Silva repay the alleged

overpayment of dividends and threatened his employment if he did not comply. Mr. Silva was provided with purported minutes of their meeting that set out the dividends which Mr. Nowak claimed had been issued from 2011 through 2015. These dividend payments do not reconcile with the amounts reported in the Company's coinciding financial reports for those same years.

- 29) Mr. Silva and the Company's CFO and external accounts regularly made enquiries with Mr. Nowack concerning the various payments being made to the Corporate Defendants and the manner in which dividends were being calculated and paid. In June 2016, Mr. Nowack responded aggressively to Mr. Silva's requests for information. Mr. Nowak refused to provide Mr. Silva access to the financial information concerning the Company, as he had in the past, which would allow Mr. Silva to attempt to determine when dividends would fall due, when they had been declared and to reconcile the payments advanced to the Corporate Defendants. At this time Mr. Nowak again purported to reclassify certain payments that had been received by the Corporate Defendants as not being attributable as dividends. This reclassification created an alleged overpayment of dividends to Mr. Silva. Based on these alleged overpayments Mr. Nowak accused Mr. Silva of improperly receiving benefits and taking dividends improperly. In or about this same time, Lisa Payne who was employed as the Chief Financial Officer and the Chief Operating Officer of the Company and the Corporate Defendants, and Tyler Wilson, the Company's Financial Controller, both resigned.
- 30) In 2017, for reasons known only to himself Mr. Nowack caused the Company to instruct two different accounting firms to prepare the Company's consolidated financial statements for the financial years 2015 and 2016. Whilst the statements recorded significantly different payments made to the Corporate Defendants and amounts due from the Corporate Defendants as receivables, the statements recorded that by the end of 2016 the receivables due from the Corporate Defendants had increased to somewhere between US\$ 6.8 Million and US\$ 7.1 million.
- 31) The information contained within the Company's Consolidated Financial Statements (unaudited) is inconsistent, however from those statements it appears that from 2011 through 2015 the Company made advances to the Corporate Defendants in the total amount of US\$ 3,888,752 and paid dividends of US\$ 485,097 (however there is no record of who received those dividends).

This is sharply contrasted by the information provided by Mr. Nowack to Mr. Silva which states that the total dividends paid in that same period is US\$ 1,921,317.

- 32) In 2018, Mr. Nowack alleged that Mr. Silva had been overpaid dividends that were due to Stephen and Josephine Bains as Mr. Nowak alleged Mr. Silva's shareholding was only 13.6% and not the 15% purchased by Mr. Silva pursuant to the share purchase agreements and upon which distributions had been calculated since 2008. Mr. Nowack insisted that the Corporate Defendants' ownership in the Company was 85%, Mr. Silva's was 13.6%, and Stephen and Josephine Bains' was 1.4%. Mr. Nowack subsequently purported to reduce dividends due to Mr. Silva by \$140,000 being the amount of the alleged overpayment of dividends. Mr. Nowak then instructed Mr. Silva that as a result of Mr. Silva allegedly receiving dividends due to Bains that he, Mr. Silva, should rectify the matter by purchasing Bains shares.
- 33) In addition to the foregoing irregularities, the Company's financial records indicate that Mr. Nowack caused expenses to be charged to the Company which were properly expenses of the Corporate Defendants. By way of example:
- a) between May 2013 and May 2016, the Company employed Mr. Jeff Ellis as President and paid him a salary of approximately \$150,000 per year. At Mr. Nowack's direction, and despite Mr. Ellis being paid by the Company, Mr. Ellis performed his employment obligations in favour of the Corporate Defendants;
 - b) whenever advances were made to Conor Pacific Canada, they attracted foreign transaction fees. These fees were recorded as expenses of the Company and paid by the Company despite these advances either being loan advances (in which case at the very least they should have been divided equally between the Company and Conor Pacific Canada), or dividends payments properly due to Conor Pacific International, the payment of which would not have attracted any foreign transaction charges; and
 - c) Mr. Nowack caused the Company to record advances to Conor Pacific Canada as having been reduced by the amount of foreign transaction fees charged by RBC on those overseas

payments (despite these having been paid by the Company), and thereafter for the advances to Mr. Silva to be calculated as 15% of the reduced amount.

- 34) Further, communications between Mr. Nowack and Matt Ledoux of Going Sebastien Fisher LeBouef LLP (the Company's accountants) indicate that in January 2016 Mr. Nowack caused \$20,000 to be advanced by the Company to Conor Pacific, Inc. to be paid into an account with RBC belonging to Mr. Nowack.

Mr. Silva's Employment

- 35) As a result of ongoing concerns with the financial management of the Company Mr. Silva regularly queried Mr. Nowack's financial management of the Company and their personal and professional relationship eventually deteriorated.
- 36) On 25 September 2018, Mr. Silva was purportedly suspended by Mr. Nowack in reliance upon allegations of misconduct and the indication that the Company would be conducting an investigation into same. In the letter purportedly suspending Mr. Silva dated 25 September 2018 stated that Mr. Silva would be removed as a director of the Company and its subsidiaries (despite him never being a director of those companies), in breach of Cayman Islands' employment law that Mr. Silva's salary and health insurance benefits would be reduced. On the same date, Mr. Nowack sent an email to the Company's bank manager requesting that Mr. Silva be removed from the mandate for the Company's bank accounts falsely alleging that Mr. Silva had misappropriated \$100,000 per year of Company funds. Despite these allegations and Mr. Silva's alleged suspension, Mr. Nowack insisted upon Mr. Silva continuing to carry out his duties with the Company.
- 37) By 12 October 2018, no investigation had taken place and it being clear to Mr. Silva that the purported misconduct was a ruse created by Mr. Nowack, Mr. Silva submitted a notice of resignation to the Company resigning with immediate effect and in reliance upon repudiatory breaches of the terms of his employment.

On the basis of the purported misconduct Mr. Nowack subsequently attempted to force Mr. Silva to agree to forfeit his shares of the Company in exchange for the Company foregoing any alleged claims against Mr. Silva.

Fiduciary Duties

- 38) As a Director of the Company, Mr. Nowack owed the following fiduciary duties:
- a) A duty to act in good faith at all times;
 - b) A duty to act *bona fide* in the interests of the Company;
 - c) A duty to act for the proper purposes of the Company in relation to its affairs;
 - d) A duty to act only in such a way as he honestly considered was in the best interests of the Company and for the benefit of its shareholders as a whole and not to prefer the interests or himself, his related parties or any other party over those of the Company;
 - e) A duty to act in accordance with the Company's Articles of Association;
 - f) A duty to act only within his powers and within the scope of his authority;
 - g) A duty to exercise independent judgment;
 - h) A duty not to place himself in a position where his duty to the Company and his own interests might conflict;
 - i) A duty to refrain from self-dealing;
 - j) In the event of any conflict or potential conflict arising, a duty to ensure that he disclosed to the Company all of the facts in his knowledge and their implications;
 - k) A duty without the informed consent of the Company to refrain from making a secret profit from transactions with the Company or with third parties with whom he was dealing whether in his capacity as a director of the Company or otherwise; and
 - l) A duty to account for any such secret profit.
- 39) Further or alternatively, as a director of the Company Mr. Nowack was a trustee of the assets of the Company and/or owed obligations as a trustee in respect of the assets of the Company.

Breach of Fiduciary Duties by Mr. Nowak

- 40) In view of his actions as set out in paragraphs 9 through 39 above, Mr. Nowack acted in breach of his fiduciary duties to the Company.

Particulars

Dividends

- 41) In breach of his fiduciary duties, Mr. Nowack has:
- a) caused the Company to issue dividends and or make payments to himself and/or the Corporate Defendants in preference to the other shareholders of the Company. Without a full and proper accounting the Plaintiff cannot provide full particulars, however, as set out in paragraph 31 above pursuant to the Consolidated Financial Statements between 2011 and 2015 alone US\$ 3,888,752 in payments were made to the Corporate Defendants.
 - b) failed to cause the Company to pay corresponding dividends to the other shareholders of the Company as were paid to the Corporate Defendants;
 - c) failed to cause the Company to keep proper books and accounts in accordance with the Articles of the Company;
 - d) failed to properly issue dividends in accordance with the Articles of the Company;
 - e) caused the Company to improperly incur expenses of the Corporate Defendants.
- 42) Alternatively, to the extent that Mr. Nowack may claim that any portion of the payments to himself or the Corporate Defendants were loans, even if accepted, Mr. Nowack breached his fiduciary duties to the Company in causing the Company to make the loans as:
- a) the loans carried no interest or date of repayment and remain outstanding;

- b) there was no legitimate business purpose for the loans;
- c) the loans were made for Mr. Nowack's personal benefit in preference to the best interests of the Company;
- d) the loans were not in fact loans but instead payments to himself and/or the Corporate Defendants.

The Subsidiary Financing

- 43) Mr. Nowack caused the Company to procure a loan in the amount of US\$ 1.8 Million dollars for the alleged purposes of financing an asset acquisition by one of the Company's Subsidiaries. In breach of his fiduciary duties, Mr. Nowack caused the following to occur:
- a) He caused the Company to transfer US\$ 1,717,134 to Conor Pacific Inc (now Conor Pacific Canada) without any obligations of repayment or interest. He then diverted and retained US\$ 448,787 of those funds for Conor Pacific Inc and/or his own personal benefit.
 - b) Despite the "loan" to Conor Pacific Inc carrying with it no interest and no date of repayment, the US\$ 1,268,347 which was then loaned to the Company's Subsidiaries from Conor Pacific Inc included a punitive interest rate of 2% per month, compounding monthly and required repayment;
 - c) Whereas the Company's Subsidiaries have made payments to Conor Pacific Inc in connection with the foregoing, no payments have been made by Conor Pacific Inc to the Company.
- 44) With respect to the matter aforesaid, Mr. Nowak did not act in *bona fide* in the interests of the Company or in the best interests of the Company. He caused the Company financial harm by causing it to divert assets away from the Company to himself and/or the Corporate Defendants. Mr. Nowak allowed his duty to the Company and his personal interest to conflict and he benefited from that conflict by transferring assets away from the Company to himself and/or the Corporate Defendants. Mr. Nowak did not act for the benefit of the Company's shareholders as a whole and

instead preferred his own interests and/or the Corporate Defendants. Mr. Nowak failed to act in accordance with Articles with respect to the declaration of dividends. He engaged in self-dealing and by virtue of which obtained a secret profit.

The Corporate Defendants

- 45) As set out above, the Corporate Defendants are directly and/or indirectly controlled and owned by Mr. Nowack. The funds and benefits received by the Corporate Defendants are directly traceable to Mr. Nowack's breaches of fiduciary duties pleaded above.
- 46) The Corporate Defendants are liable to account for the funds and benefits received as a constructive trustee on the basis of their knowing receipt of same; and/or in all the circumstances it would now be unconscionable for the Corporate Defendants to retain the same.
- 47) As a result of the matters set out above, the Company is entitled to and the Plaintiff hereby seeks on behalf and in the interest of the Company, the following relief against Mr. Nowak and the Corporate Defendants:
 - a) An account to the Company of all payments made by the Company to Mr. Nowak or the Corporate Defendants in breach of Mr. Nowak's fiduciary duties including specifically an account of all profits;
 - b) An order for payment by Mr. Nowak and/or the Corporate Defendants of equitable compensation for breach of fiduciary duty arising from Mr. Nowak's actions as set out above;
 - c) Further or alternatively, damages;
 - d) Further or alternatively, an order for payment to the Company from the Corporate Defendants equitable compensation for knowing receipt of property traceable to a breach of fiduciary duty.

- e) An order that Mr. Nowak and the Corporate Defendants pay the Company interest on all sums found to be due to it pursuant to section 34 of the Judicature Law and/or the rules of equity for such period and in such amount as the Court considers appropriate.

Declaratory Relief

- 48) In correspondence from Mr. Nowack's attorneys to Mr. Silva's attorneys on 19 June 2019, it was alleged that due to Mr. Silva's employment having been "terminated for cause" the Company was entitled and intended to affect a forced transfer of the Mr. Silva's 14.8% shareholding in the Company to Conor Pacific International at the Prescribed Price (being an agreed price based on earnings before interest tax depreciation and amortization) less deductions pursuant to clause 10(c) of the 2005 Shareholders Agreement.
- 49) In fact, no valid or binding option to purchase Mr. Silva's interest in the Company exists, or alternatively has been triggered. The basis for Mr. Silva's position includes, but is not limited to, the following:
 - a) the wording of clause 10(c) is clear and the events that could trigger an option entitling the Company to force Mr. Silva to sell his shares have not occurred;
 - b) further or in the alternative, the 2005 Shareholders Agreement could not be enforced against Mr. Silva as a result of the following misrepresentations and breaches:
 - i) It was falsely represented in the 2005 Shareholders Agreement that Conor Pacific International held 100% of the issued shares in the Company;
 - ii) it was falsely represented in the 2005 Share Purchase Agreement that there were no arrangements or arrangements in force, other than that agreement, which granted to any third party any rights over or in connection with Mr. Silva's shares;
 - iii) The agreement was breached in that the obligations due to Mr. Silva were not performed as:

(1) Mr. Silva was not permitted to appoint a director to the Company;

(2) Mr. Silva did not receive the dividends as required by and in accordance with the agreement;

(3) Mr. Silva did not receive an annual adjustment to his salary in accordance with Cayman Islands' inflation rates;

(4) Life insurance was not maintained for Mr. Silva as required under the agreement.

c) further and in any event, there is no option to purchase with respect to the 48 ordinary shares Mr. Silva purchased pursuant to the 2008 Share Purchase Agreement.

50) As a result of the matters set out above, Mr. Silva is entitled to and hereby seeks against the Defendants:

a) the following declarations of this Honourable Court:

i) That the Plaintiff's employment with the Company was not terminated for cause or in accordance with the terms of his employment;

ii) That the Company or Conor Pacific International do not have any rights pursuant to clause 10(c) of the 2005 Shareholders Agreement or otherwise entitling it to force the Plaintiff to transfer his shareholding in the Company to Conor Pacific International or any third party;

iii) That the Plaintiff is entitled to retain his shareholding in the Company and deal with it in such a manner consistent with the Law and the Articles;

iv) That in the event the Plaintiff's shareholding in the Company is transferred to Conor Pacific International or any third party without the Plaintiff's knowledge or consent the transfer shall be of no force or effect;

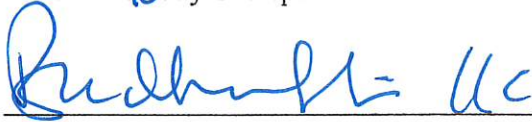
- v) That Mr. Silva is indemnified by Mr. Nowack and the Company for any financial loss Mr. Silva suffers as a result of any payments made by the Company to Mr. and Mrs. Bains in association with their shareholding in the Company;
- b) damages for breach of the 2005 Shareholders Agreement as set out above;
- c) further, Mr. Silva seeks the following mandatory and prohibitory injunctions:
 - i) an order requiring Mr. Nowack to undertake a proper accounting exercise sufficient to give a true and fair view of the state of the Company's affairs and explain its transactions including all monies paid by the Company to the remaining Defendants or any other company within the same owned and managed corporate group for the period 1 January 2008 to the date the accounts are presented, and to present those accounts to its members at a properly convened general meeting;
 - ii) an order prohibiting the transfer of Mr. Silva's shareholding without his knowledge or consent; and
- d) in the alternative, damages in lieu of injunctive relief;
- e) interest on damages from the date of issue of the Writ to the date of judgment or sooner payment in accordance with section 34 of the Judicature Law (2007 Revision) and the Judgment Debts (Rates of Interest) Rules 2012 as amended from time to time or at such rate and for such periods as this Honourable Court deems just.
- f) costs.

AND THE PLAINTIFF CLAIMS

- (1) An accounting to the Company as set out at paragraph 47 a) above;
- (2) Orders in accordance with paragraphs 47 b), d) and e) above;

- (3) Damages to the Company as set in paragraph 47 c) above;
- (4) Declarations in the form set out in paragraph 50 a) above or in such other form as deemed just by this Honourable Court;
- (5) Damages as set in paragraph 50 b) above;
- (6) Injunctive relief as set out at paragraph 50 c) above;
- (7) Damages as set in paragraph 50 d) above;
- (8) Interest as set in paragraph 50 e);
- (9) Such further or other relief as this Honourable Court may deem just;
- (10) Costs.

Dated this ^{10th} day of September 2019

A handwritten signature in blue ink, appearing to read "Broadhurst LLC", is written over a horizontal line.

BROADHURST LLC
Attorneys-at-Law for the Plaintiff

This Writ of Summons and Statement of Claim is issued by Broadhurst LLC, Attorneys-at-Law for the Plaintiff, whose address for service is P.O. Box 2503, Grand Cayman KY1-1104 or 40 Linwood Street, Cayman Islands.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. OF 2019

BETWEEN: -

ROBERTO SILVA

Plaintiff

-and-

ROBERT NOWACK

First Defendant

PURE AIR LTD

Second Defendant

CONOR PACIFIC INTERNATIONAL LTD

Third Defendant

CONOR PACIFIC CANADA INC

Fourth Defendant

**ACKNOWLEDGEMENT OF SERVICE
OF WRIT OF SUMMONS**

If you intend to instruct an Attorney to act for you, give her this form IMMEDIATELY.

Important

Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

Delay may result in judgment being entered against a Defendant whereby he may have to pay the costs of applying to set it aside.

1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.

2. State whether the Defendant intends to contest the proceedings (*tick appropriate box*) Yes [] No []

3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (*tick box*)
Yes [] No []

Service of the Writ is acknowledged accordingly.

(Signed) _____

[Attorney] for

[Defendant in Person]

Address for service:

NOTES ON ADDRESS FOR SERVICE

Attorney: where the Defendant is represented by an Attorney, state the Attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign Attorney.

Defendant in person: where the Defendant is acting in person, he must give his post office box number and physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

Endorsement by Plaintiff's Attorney (or by Plaintiff if suing in person) of his name, address and reference, if any, in the box below.

BROADHURST LLC
ATTORNEYS-AT-LAW
40 LINWOOD STREET,
GEORGE TOWN,
PO BOX 2503
CAYMAN ISLANDS, KY1-1104

Endorsement by Defendant's Attorney (or by Defendant if suing in person) of his name, address and reference, if any, in the box below.

**DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE OF
WRIT OF SUMMONS**

1. The accompanying form of *Acknowledgment of Service* should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495G, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgment of Service that he intends to contest the proceedings *must also serve a Defence* on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his Defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

3. *A Stay of Execution* against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, but he must, within that time, *issue a Summons* for a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by installments or otherwise.

See over for notes for guidance.

NOTES FOR GUIDANCE

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.
2. For the purpose of calculating the period of 14 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.
3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (the name stated on the Writ of Summons)".
4. Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after his name.
5. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, he must complete the form with the addition in paragraph 1 of the description "trading as (.....)" after his name.
6. Where the Defendant is a LIMITED COMPANY the form must be completed by an attorney or by someone authorized to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL PATIENT, an Attorney acting for a guardian ad litem must complete the form.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.