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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

AS YOU SOW,  
  
Plaintiff,  
  
v.  
  
ASCENDIA BRANDS, INC., *et al.*,  
  
Defendant.

CASE NO. CGC-09-488616  
**[PROPOSED] CONSENT JUDGMENT**

**1. INTRODUCTION**

1.1 On May 21, 2009, Plaintiff As You Sow (“AYS”) filed a Complaint for civil penalties and injunctive relief against Defendants Limited Brands, Inc. (“Limited Brands”) and Bath & Body Works, LLC (“B&BW” or “Defendant”)<sup>1</sup> in this Court. The Complaint alleges, in part, that Limited Brands and B&BW violated the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5, *et seq.* (“Proposition 65”) by selling personal care products that contain formaldehyde and/or 1,4-dioxane, chemicals known to the State of California to cause cancer, without providing a clear and reasonable warning.

1.2 The alleged violations addressed in the Complaint were described in AYS’s Notice of Violation dated March 11, 2009 served on the California Attorney General, other public

<sup>1</sup> B&BW is named in the Complaint as Bath & Body Works, Inc.

1 enforcers, Limited Brands, and B&BW.

2 1.3 AYS filed a notice of dismissal of its claims regarding formaldehyde against  
3 Limited Brands and B&BW with the Court on November 18, 2010.

4 1.4 B&BW is a business entity that employs more than ten persons and manufactures,  
5 distributes, and/or offers personal care products for sale in the State of California.

6 1.5 Limited Brands is a holding company that has officers and no employees.

7 1.6 For purposes of this Consent Judgment only, the Parties stipulate that this Court  
8 has jurisdiction over the allegations of violations contained in the Complaint and personal  
9 jurisdiction over Defendant as to the acts alleged in the Complaint, that venue is proper in the  
10 County of San Francisco, and that this Court has jurisdiction to enter this Consent Judgment.

11 1.7 Nothing in this Consent Judgment is or shall be construed as an admission by the  
12 Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with  
13 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,  
14 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall  
15 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any  
16 other legal proceeding. This Consent Judgment is the product of negotiation and compromise and  
17 is accepted by the Parties for purposes of settling, compromising and resolving issues disputed in  
18 this action.

19 **2. DEFINITIONS**

20 2.1 "Personal Care Products" means: American Girl Real Beauty Inside & Out Shower  
21 Gel – Apple Blossom; American Girl Real Beauty Inside & Out Shower Gel – Sunny Orange;  
22 American Girl Hopes and Dreams Glistening Shower and Bath Wash; Goldie LLC for Bath &  
23 Body Works Tinker Bell Bubble Bath; C.O. Bigelow®-branded washes, bubble baths, soaps,  
24 shower gels, shampoos, shower creams, scrubs, buffs, and conditioners sold by B&BW; Breathe-  
25 branded washes, bubble baths, soaps, shower gels, shampoos, shower creams, scrubs, buffs, and  
26 conditioners; Patricia Wexler, M.D. Dermatology-branded washes, bubble baths, soaps, shower  
27 gels, shampoos, shower creams, scrubs, buffs, and conditioners; and B&BW-branded washes,  
28 bubble baths, soaps, shower gels, shampoos, shower creams, scrubs, buffs, and conditioners.

1           2.2    “Covered Products” means Personal Care Products that are manufactured by,  
2 distributed, or sold for resale by B&BW, with the exception of Personal Care Products  
3 manufactured by Guest Supply. This Consent Judgment does not apply to Personal Care  
4 Products manufactured by Guest Supply.

5           2.3    “Category” means a type of Personal Care Product (*i.e.*, wash, bubble bath, soap,  
6 shower gel, shampoo, shower cream, scrub, buff, or conditioner).

7           2.4    “Brand” means a collection of product groups, product lines, and/or individual  
8 products organized under a specified name (by way of example only, Antibacterial,  
9 Aromatherapy, Bath & Body Works Signature® Collection, Breathe, C.O. Bigelow®, Patricia  
10 Wexler, M.D. Dermatology, and True Blue Spa® are all Brands).

11          2.5    “Effective Date” is the date on which this Consent Judgment is entered by the  
12 Court.

13    **3.    INJUNCTIVE RELIEF**

14          3.1    **Reformulation**

15               3.1.1   **Interim Reformulation Requirements.** As of May 1, 2011, B&BW shall  
16 not manufacture for sale in California or manufacture for sale to a third party for retail sale in  
17 California American Girl Real Beauty Inside & Out Shower Gel – Apple Blossom; American Girl  
18 Real Beauty Inside & Out Shower Gel – Sunny Orange; American Girl Hopes and Dreams  
19 Glistening Shower and Bath Wash; and Goldie LLC for Bath & Body Works Tinker Bell Bubble  
20 Bath.

21               3.1.2   **Final Reformulation Requirements.** As of December 1, 2011, B&BW  
22 shall not manufacture for sale in California or manufacture for sale to a third party for retail sale  
23 in California any Covered Product that contains more than 10 parts per million (ppm) of 1,4-  
24 dioxane allowing for normal analytical variability as defined by the quality control methodology  
25 set forth in Exhibit A attached hereto.

26          3.2    **Testing.**

27               3.2.1    On December 1, 2011, or the first date of any manufacture of Covered  
28 Products after December 1, 2011, whichever occurs later, B&BW shall, on a quarterly basis,

1 randomly select two samples (with different SKUs) of each Category of Covered Product from  
2 one Brand (by way of example only, two washes, two bubble baths, two soaps, two shower gels,  
3 and two shampoos from one of B&BW's Branded product lines) for testing. This process shall  
4 continue on a quarterly basis with respect to each B&BW Brand (by way of example only, first  
5 Brand A, then Brand B, Brand C, Brand D, and finally Brand E) for testing to confirm that the  
6 products conform to the reformulation standard set forth in Section 3.1.2 herein. The Parties  
7 acknowledge that there may be instances in which the testing of a Category of Covered Product  
8 for a given Brand occurs in a subsequent quarter due to variability in manufacturing runs (by way  
9 of example only, two washes, two bubble baths, and two soaps from Brand A tested in Quarter 1  
10 and two shower gels and two shampoos from Brand A tested in Quarter 2 along with Brand B  
11 products).

12           3.2.2 If each pair of samples yields a test result of less than 10 ppm (+25%, *i.e.*,  
13 12.5 ppm) of 1,4-dioxane, B&BW shall have no further obligation to conduct testing of the tested  
14 Category of Covered Product for that Brand.

15           3.2.3 If any sample yields a test result of more than 10 ppm (+25%, *i.e.*, 12.5  
16 ppm) of 1,4-dioxane, then B&BW will retest, in duplicate, the same product from the same  
17 container to determine the impact of normal analytical variability. The mean of these duplicate  
18 results will be considered the final analytical result. If the final analytical result meets QC  
19 requirements (*i.e.*, < 25% relative percent difference) and yields a test result of less than 10 ppm  
20 (+25%, *i.e.*, 12.5 ppm) of 1,4-dioxane, then B&BW shall have no further obligation to conduct  
21 testing of the tested Category of Covered Product for the Brand.

22           3.2.4 If the final analytical result exceeds 10 ppm + 25% (*i.e.*, > 12.5 ppm),  
23 B&BW will then test two (2) additional random samples from two (2) different lots of that  
24 Category of Covered Product from the selected Brand. If the result of the testing of the two (2)  
25 additional random samples of that Category of Covered Product from the selected Brand meets  
26 the reformulation standards in Section 3.1.2 above, then B&BW shall have no further obligation  
27 to conduct testing of the tested Category of Covered Product for that Brand. If the result of the  
28 testing of the two (2) additional random samples of that Category of Covered Product fails to

1 meet the reformulation standards in Section 3.1.2 above, then B&BW shall notify AYS of the  
2 violation and either provide a warning for the product, or discontinue distribution for sale in  
3 California of that Category of Covered Product for that Brand until the Category of Covered  
4 Product is reformulated to comply with Section 3.1.2 above.

5 3.2.5 Testing shall continue until each Category of Covered Product for each  
6 Brand in existence as of the date of entry of this Consent Judgment by the Court has been tested  
7 pursuant the Procedures set forth in Section 3.2. B&BW shall perform all testing pursuant to this  
8 Consent Judgment using the protocol set out in Exhibit A to this document.

9 3.2.6 B&BW agrees to provide a written certification, under penalty of perjury,  
10 to As You Sow, following the completion of each quarter of testing, that the Covered Products  
11 that underwent testing were selected randomly for testing consistent with the protocol set out in  
12 Exhibit A.

13 3.2.7 B&BW shall retain copies of its test data for a period of three years from  
14 the date testing commenced and shall provide all test data to As You Sow upon written request  
15 and consummation of a satisfactory confidentiality agreement that permits enforcement of this  
16 Consent Judgment and protects the information shared from non-mandatory public disclosure. If  
17 copies of test data are requested pursuant to this Section 3.2.7, the Parties shall cooperate in good  
18 faith to prepare and consummate a satisfactory confidentiality agreement.

19 3.3 **Warning for Covered Products.** A Covered Product manufactured, distributed,  
20 or sold by B&BW may, as an alternative to meeting the reformulation standards in Section 3.1.2  
21 above or discontinuing distribution for sale in California pursuant to Section 3.2.4 above, be sold  
22 or offered for retail sale in California after December 1, 2011, with a Clear and Reasonable  
23 Warning that complies with the provisions of Section 3.3.1.

24 3.3.1 **Proposition 65 Warning.** A Clear and Reasonable Warning under this  
25 Consent Judgment shall state:

26 WARNING: This product contains 1,4-dioxane, a chemical known to the State of  
27 California to cause cancer.

28 This statement shall be prominently displayed on the Covered Product or the packaging of

1 the Covered Product with such conspicuousness, as compared with other words, statements or  
2 designs, as to render it likely to be read and understood by an ordinary individual prior to sale.  
3 For internet, catalog or any other sale where the consumer is not physically present and cannot  
4 see a warning displayed on the covered Product or the packaging of the Covered Product prior to  
5 purchase or payment, the warning statement shall be displayed in such a manner that it is likely to  
6 be read and understood prior to the authorization of or actual payment.

7 **4. PAYMENT**

8 4.1 **Payments by Defendant.** Within fifteen (15) days after entry of this Consent  
9 Judgment by the Court, B&BW shall make a total payment of \$105,000 to AYS as follows:

10 4.1.1 B&BW shall pay \$2,500 in civil penalties to be distributed to the State of  
11 California.

12 4.1.2 B&BW shall pay \$53,500 in lieu of additional civil penalties in the form of  
13 a check made payable to “Shute, Mihaly & Weinberger LLP, Attorney Client Trust Account”  
14 with this amount to be used by AYS for grants to California non-profit organizations and by AYS  
15 Foundation Environmental Enforcement Fund. These funds shall be used to reduce exposures to  
16 toxic chemicals and to increase consumer, worker and community awareness of the health  
17 hazards posed by toxic chemicals in California. In deciding among the grantee proposals, the  
18 AYS Board of Directors (“Board”) takes into consideration a number of important factors,  
19 including: (1) the nexus between the harm done in the underlying case(s), and the grant program  
20 work; (2) the potential for toxics reduction, prevention, remediation or education benefits to  
21 California citizens from the proposal; (3) the budget requirements of the proposed grantee and the  
22 alternate funding sources available to it for its project; and (4) the Board’s assessment of the  
23 grantee’s chances for success in its program work. AYS shall ensure that all funds will be  
24 disbursed and used in accordance with AYS’s mission statement, articles of incorporation, and  
25 bylaws and applicable state and federal laws and regulations. The check shall be delivered by  
26 overnight delivery to Robert S. Perlmutter, Shute, Mihaly & Weinberger LLP, 396 Hayes Street,  
27 San Francisco, CA 94102.

28 4.1.3 B&BW shall pay \$49,000 in the form of a check made payable to “Shute,

1 Mihaly & Weinberger LLP, Attorney Client Trust Account” as reimbursement for the  
2 investigation fees and costs, testing costs, attorneys’ fees and other litigation costs and expenses.  
3 The check shall be delivered by overnight delivery to Robert S. Perlmutter, Shute, Mihaly &  
4 Weinberger LLP, 396 Hayes Street, San Francisco, CA 94102.

5 **5. MODIFICATION**

6 5.1 This Consent Judgment may be modified by express written agreement of the  
7 Parties with the approval of the Court, or by an order of the Court upon motion and in accordance  
8 with law.

9 **6. CLAIMS COVERED AND RELEASED**

10 6.1 This Consent Judgment is a full, final and binding resolution between AYS on  
11 behalf of itself and the public interest, Limited Brands, and B&BW, and B&BW’s parents,  
12 subsidiaries, directors, officers, employees, and attorneys, and each entity to whom it directly or  
13 indirectly distributes or sells Covered Products, including but not limited to distributors,  
14 wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees of  
15 any violation of Proposition 65 that was or could have been asserted in the Complaint against  
16 Limited Brands and B&BW based on failure to warn about the alleged exposure to 1,4-dioxane  
17 contained in Personal Care Products that were manufactured prior to December 1, 2011. The  
18 foregoing release does not apply to Personal Care Products manufactured by Guest Supply.

19 **7. NOTICE**

20 7.1 When any Party is entitled to receive any notice under this Consent Judgment, the  
21 notice shall be sent by either (i) first-class, registered, certified mail, return receipt requested, (ii)  
22 overnight courier, or (iii) personal messenger to the following:

23 **FOR AS YOU SOW:**

24 Larry Fahn, President  
25 Kara Buchner, Staff Attorney  
26 311 California Street, Suite 510  
27 San Francisco, CA 94104  
28 Telephone: (415) 391-3212  
Facsimile: (415) 391-3245

1 **With a copy to:**

2 Robert S. Perlmutter, Esquire  
3 Shute, Mihaly & Weinberger LLP  
4 396 Hayes Street  
5 San Francisco, CA 94102  
6 Telephone: (415) 552-7272  
7 Facsimile: (415) 552- 5816

8 **FOR BATH & BODY WORKS, LLC**

9 Douglas L. Williams  
10 Executive Vice President and General Counsel  
11 3 Limited Parkway  
12 Columbus, Ohio 43230  
13 Telephone: (614) 415-1652  
14 Facsimile: (614) 415-7188

15 **With a copy to:**

16 Georgia C. Ravitz, Esquire  
17 Arent Fox LLP  
18 1050 Connecticut Avenue, NW  
19 Washington, DC 20036  
20 Telephone: (202) 857-8939  
21 Facsimile: (202) 857-6395

22 and

23 Savalle C. Sims, Esquire  
24 Arent Fox LLP  
25 1050 Connecticut Avenue, NW  
26 Washington, DC 20036  
27 Telephone: (202) 857-8948  
28 Facsimile: (202) 857-6395

1 **8. COURT APPROVAL**

2 8.1 This Consent Judgment shall become effective upon entry by the Court. AYS  
3 shall prepare and file a Motion for Approval of this Consent Judgment, consistent with Health  
4 and Safety Code section 25249.7(f), and B&BW shall support entry of this Consent Judgment.

5 8.2 If this Consent Judgment is not entered by the Court in its entirety, without  
6 alteration, deletion, or amendment, unless otherwise so stipulated by the Parties, it shall be of no  
7 force or effect and shall never be introduced or otherwise used in any proceeding for any purpose  
8 other than to allow the Court to determine if there was a material breach of Section 8.1.

9 8.3 If the Court enters this Consent Judgment, AYS shall, within ten (10) business  
10 days after the Effective Date, electronically provide or otherwise serve a copy of it and the report



1 required pursuant to 11 Cal. Code Regs. Section 3004 to and/or on the California Attorney  
2 General's Office.

3 **9. ENFORCEMENT OF CONSENT JUDGMENT**

4 9.1 The Parties may, by motion or order to show cause before this Court, and upon  
5 notice having been given to all Parties in accordance with Section 7 above, enforce the terms and  
6 conditions of this Consent Judgment and seek whatever fines, costs, penalties, or remedies are  
7 provided by law.

8 9.2 The Parties may enforce the terms of this Consent Judgment pursuant to Section  
9 9.1 only after the complaining party has first given thirty (30) days notice to the Party allegedly  
10 failing to comply with the terms and conditions of the Consent Judgment and has attempted, in an  
11 open and good faith manner, to resolve such Party's alleged failure to comply.

12 **10. OTHER TERMS**

13 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
14 California.

15 10.2 This Consent Judgment shall apply to and be binding upon AYS and B&BW, and  
16 their respective divisions, subdivisions, and subsidiaries, and the successors or assigns of any of  
17 them.

18 10.3 This Consent Judgment contains the sole and entire agreement and understanding  
19 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
20 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein  
21 and therein. There are no warranties, representations, or other agreements between the Parties  
22 except as expressly set forth herein. No representations, oral or otherwise, express or implied,  
23 other than those specifically referred to in this Consent Judgment have been made by any Party  
24 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,  
25 shall be deemed to exist or to bind any of the Parties hereto. No supplementation, modification,  
26 waiver, or termination of this Consent Judgment shall be binding unless executed in writing by  
27 the Party to be bound thereby. No waiver of any of the provisions of this Consent Judgment shall  
28 be deemed or shall constitute a waiver of any of the other provisions hereof whether or not

1 similar, nor shall such waiver constitute a continuing waiver.

2 10.4 The stipulations to this Consent Judgment may be executed in counterparts and by  
3 means of facsimile or portable document format (pdf), which taken together shall be deemed to  
4 constitute one document.

5 10.5 Each signatory to this Consent Judgment certifies that that he or she is fully  
6 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into  
7 and execute the Consent Judgment on behalf of the party represented and legally to bind that  
8 Party.

9 10.6 The parties, including their counsel, have participated in the preparation of this  
10 Consent Judgment, which is the result of the joint efforts of the Parties. This Consent Judgment  
11 was subject to revision and modification by the Parties and has been accepted and approved as to  
12 its final form by all Parties and their counsel. Any uncertainty or ambiguity existing in this  
13 Consent Judgment shall not be interpreted against any Party as a result of the manner of the  
14 preparation of this Consent Judgment.

15  
16 **IT IS SO STIPULATED:**

17  
18 **AS YOU SOW**

19  
20 Larry Fahn  
Signature

21  
22 Larry Fahn  
Printed Name

23  
24 President, As You Sow  
Title

25  
26 05/10/2011  
Date

27  
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**BATH & BODY WORKS, LLC**

*Douglas L. Williams*  
Signature

Douglas L. Williams  
Printed Name

Executive Vice President and General Counsel  
Title

May 11, 2011  
Date

**LIMITED BRANDS, INC.**

*Douglas L. Williams*  
Signature

Douglas L. Williams  
Printed Name

Executive Vice President and General Counsel  
Title

May 11, 2011  
Date

APPROVED AS TO FORM:

Dated: May 12, 2011

**ARENT FOX LLP**

*Debra Albin-Riley*  
DEBRA ALBIN-RILEY  
SAVALLE C. SIMS  
Attorneys for Defendant  
LIMITED BRANDS, INC. AND BATH &  
BODY WORKS, LLC

APPROVED AS TO FORM:

Dated: \_\_\_\_\_, 2011

**SHUTE, MIHALY, WEINBERGER LLP**

Robert S. Perlmutter  
ROBERT S. PERLMUTTER  
Attorneys for Plaintiff  
AS YOU SOW

1 **BATH & BODY WORKS, LLC**

2

3 \_\_\_\_\_  
Signature

4 Douglas L. Williams  
Printed Name

5 Executive Vice President and General Counsel  
6 Title

7 \_\_\_\_\_  
Date

8

9 **LIMITED BRANDS, INC.**

10

11 \_\_\_\_\_  
Signature

12 Douglas L. Williams  
Printed Name

13 Executive Vice President and General Counsel  
14 Title

15 \_\_\_\_\_  
Date

16

17 APPROVED AS TO FORM:

18 Dated: \_\_\_\_\_, 2011

**ARENT FOX LLP**

19 \_\_\_\_\_  
20 DEBRA ALBIN-RILEY  
SAVALLE C. SIMS  
Attorneys for Defendant  
21 LIMITED BRANDS, INC. AND BATH &  
BODY WORKS, LLC

22

23

24 APPROVED AS TO FORM:

25 Dated: 5/10/11, 2011

**SHUTE, MIHALY, WEINBERGER LLP**

26 \_\_\_\_\_  
27 ROBERT S. PERLMUTTER  
Attorneys for Plaintiff  
28 AS YOU SOW