

1 **SETTLEMENT AGREEMENT**

2 **1. INTRODUCTION**

3 **1.1 Shefa LMV, LLC and BATH & BODY WORKS, LLC**

4 This Settlement Agreement is entered into by and between Shefa LMV, LLC (“Shefa
5 LMV”) and BATH & BODY WORKS, LLC (“BBW”), with Shefa LMV and BBW collectively
6 referred to as the “Parties,” and individually as a “Party.” Shefa LMV and BBW enter into this
7 agreement Settlement Agreement for the purpose of avoiding prolonged and costly litigation to
8 settle Shefa LMV's allegations that BBW violated Proposition 65.

9 Shefa LMV is an entity in the State of California, which has asserted that it seeks to
10 promote awareness of exposure to toxic chemicals and to improve human health by reducing or
11 eliminating hazardous substances contained in consumer and commercial products. BBW is a
12 Delaware limited liability company, with its principal offices located at Seven Limited Parkway
13 East, Reynoldsburg, Ohio 43068. BBW is a leading specialty retailer of personal care products.
14 Shefa LMV alleges that BBW employs ten or more persons and is a person in the course of doing
15 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California
16 Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

17 **1.2 General Allegations**

18 Shefa LMV alleges that BBW has manufactured, imported, distributed, and/or sold liquid
19 hand soaps that contain diethanolamine (“DEA”) without the requisite Proposition 65 warnings.
20 DEA was added to the Proposition 65 list on June 22, 2012 as known to cause cancer.

21 **1.3 Product Description**

22 As used in this Settlement Agreement, “Products” shall mean personal care products
23 including hand soaps which Shefa LMV alleges contain DEA, including, without limitation, but
24 specifically, Vineyard Berries, Caribbean Escape, Bourbon Peach, Crimson Plum, Farmstand
25 Apple, Wildberry Fresia, Dancing Waters, and Heirloom Pear, that are manufactured, imported,
26 distributed, and/or sold by BBW for sale in the State of California.

27 **1.4 Notice of Violation**

28 On August 20, 2013 Shefa LMV served BBW and various public enforcement agencies

1 with a document entitled “60-Day Notice of Violation” (the “August 20, 2013 Notice”) that
2 provided recipients with notice alleging that BBW was in violation of Proposition 65 for failing to
3 warn consumers and customers that the Products exposed users to DEA and benzophenone.

4 On September 19, 2013, Deputy Attorney General (“AG”) Harrison M. Pollak advised
5 counsel for Shefa LMV in writing that the documentation Shefa LMV submitted to the AG’s
6 Office in support of its certificate of merit pursuant to California Health & Safety Code §
7 25249.7(f)(1) failed to provide evidence that the products subject to the August 20, 2013 Notice
8 expose persons to a listed chemical. On this basis, Deputy AG Pollak requested that the August
9 20, 2013 Notice be withdrawn immediately.

10 On November 22, 2013, Shefa LMV served BBW and various public enforcement
11 agencies with a subsequent Notice (the “Notice”) that provided recipients with notice alleging
12 that BBW was in violation of Proposition 65 for failing to warn consumers and customers that the
13 Products exposed users to DEA and cocamide diethanolamine (“cocamide DEA”). No public
14 enforcer has diligently prosecuted the allegations set forth in the Notice.

15 On December 20, 2013, Deputy AG Pollak wrote to counsel for Shefa LMV to clarify the
16 scope of the Notice. Based on the confidential information Shefa LMV submitted to the AG’s
17 Office in support of the certificate of merit for the Notice pursuant to California Health & Safety
18 Code § 25249.7(f)(1) and e-mail communications with Shefa LMV’s counsel, the Notice applies
19 only to DEA in the Products.

20 **1.5 No Admission**

21 BBW denies the material, factual, and legal allegations contained in Shefa LMV’s Notice
22 and maintains that all of its products sold, manufactured, imported, and/or distributed in
23 California, including the Products, have been in compliance with all laws. Nothing in this
24 Settlement Agreement, nor compliance with its terms, shall constitute or be construed,
25 considered, offered, or admitted as evidence of an admission of evidence of fault, wrongdoing,
26 negligence, strict liability, or any other liability, conduct, or responsibility by BBW, its officers,
27 directors, managing agents, employees, or parents, subsidiaries, or affiliated corporations or
28 entities of any fact, finding, conclusion, issue of law or violation of law in any administrative,

1 judicial or other proceeding, or litigation in any court, agency, or forum.

2 Furthermore, any trace DEA detected in the Products does not represent any significant
3 risk to consumers, as discussed further below in the Section entitled "Scientific Position."
4 However, this Section shall not diminish or otherwise affect BBW's obligations, responsibilities,
5 and duties under this Settlement Agreement.

6 **1.6 Scientific Position**

7 The Products in the NOV do not contain DEA as a listed ingredient. It is BBW's position
8 that the level of DEA contained in the Products presents No Significant Risk ("NSR") of cancer
9 to consumers based on scientific analysis conducted by the Personal Care Products Council
10 ("PCPC") of which BBW is a member (See PCPC NSRL Derivation Report for DEA dated July
11 22, 2013 and BBW's internal risk assessment dated June 2014), both provided to Shefa LMV's
12 counsel prior to the Effective Date under a confidentiality agreement, and a study whose abstract
13 was cited by Shefa LMV's counsel during settlement negotiations. (See Wang B, Amacher DE,
14 Whittaker MH. Derivation of a No-Significant-Risk-Level (NSRL) for diethanolamine (DEA).
15 Regul Toxicol Pharmacol. 2014 Feb; 68(1): 76-84.)

16 **1.7 Consent to Jurisdiction**

17 For purposes of this Settlement Agreement, the parties stipulate that California courts
18 have jurisdiction over BBW as to the allegations contained in the Notice, that venue is proper in
19 the County of Alameda, and that this Court has jurisdiction to enter and enforce provisions of this
20 Settlement Agreement.

21 **1.8 Execution Date**

22 For purposes of this Settlement Agreement, the term "Execution Date" shall mean the date
23 this Settlement Agreement is signed by both parties.

24 **1.9 Effective Date**

25 For purposes of this Settlement Agreement, the term "Effective Date" shall mean January
26 15, 2015.

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1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 **2.1 Reformulation of Covered Products**

3 As of the Effective Date, BBW shall not manufacture, distribute, sell or offer for sale to
4 California consumers any Product that contains Lauramide DEA as a listed ingredient.
5 Lauramide DEA, although not on the Proposition 65 list, was identified as a listed ingredient in
6 the Products and as the presumed source of DEA contamination in those products, in an October
7 18, 2013 opinion letter from XRF Research, Inc. to Shefa LMV's counsel, Daniel Greenbaum,
8 which was transmitted to counsel for BBW on 2/27/14. For purposes of this Settlement
9 Agreement, a product "contains Lauramide DEA" if Lauramide DEA is an intentionally added
10 ingredient in the product and/or part of the product formulation.

11 **2.2 Sell-Through Period**

12 BBW's Products manufactured and distributed for retail sale prior to the Effective Date
13 shall be subject to the release of liability pursuant to Section 4 of this Settlement Agreement with
14 respect to BBW's obligation to reformulate the Products, without regard to when such Products
15 were, or are in the future, sold to consumers, whether by internet sales or any other means.

16 **3. MONETARY PAYMENTS**

17 **3.1 Payment Into California Safe Drinking Water and Toxic Enforcement Fund**
18 **Pursuant to Health & Safety Code § 25249.12(c)**

19 In settlement of all the claims referred to in this Settlement Agreement, BBW shall pay
20 \$5,000, of which 75% (\$3,750) shall be remitted to the State of California's Office of
21 Environmental Health Hazard Assessment ("OEHHA") for deposit into the Safe Drinking Water
22 and Toxic Enforcement Fund pursuant to California Health & Safety Code Section 25249.12(c),
23 and of which the remaining 25% (\$1,250) shall be paid to Shefa LMV, pursuant to the Payment
24 Procedures in Section 3.3.

25 **3.2 Reimbursement of Shefa LMV's Fees and Costs**

26 The parties acknowledge that Shefa LMV and its counsel offered to resolve this dispute
27 without reaching terms on the account of fees and costs to be reimbursed to them, thereby leaving
28 this fee issue to be resolved after the material terms of the agreement had been settled. BBW

1 expressed a desire to resolve the fee and cost issue after the other settlement terms had been
2 agreed. The Parties then attempted to (and did) reach an accord on the compensation due to
3 Shefa LMV and its counsel under general contract principles and the private attorney general
4 doctrine codified at California Health & Safety Code § 1021.5, for all work performed in this
5 matter, except fees that may be incurred on appeal. Under these legal principles, BBW shall pay
6 the amount of \$19,000 for fees and costs incurred investigating, litigating and enforcing this
7 matter, including the fees and costs incurred (and yet to be incurred) drafting and negotiating a
8 settlement.

9 3.3 Payment Procedures

10 All payments required by Sections 3.1 and 3.2 shall be within ^{thirty (30) ~~ten (10)~~} days of the
11 Execution Date, in checks payable as follows:

- 12 (a) one check to the OEHHA in the amount of \$3,750;
- 13 (b) one check to "Law Offices of Daniel N. Greenbaum in Trust for Shefa LMV,
14 LLC" in the amount of \$1,250; and
- 15 (c) one check to "Law Offices of Daniel N. Greenbaum" in the amount of \$19,000.

16 3.4 Issuance of 1099 Forms

17 BBW shall issue separate 1099 forms as follows:

- 18 (a) one 1099 form to the "Office of Environmental Health Hazard Assessment" (EIN:
19 68-0284486) in the amount of \$3,750;
- 20 (b) a second 1099 form to "Shefa LMV, LLC" in the amount of \$1,250, whose tax
21 identification number shall be furnished to BBW at the time this settlement agreement is
22 executed; and
- 23 (c) a third 1099 form to "Law Offices of Daniel N. Greenbaum (EIN: 45-3084082) in
24 the amount of \$19,000.

25 3.5 Issuance of Payments

26 3.5.1 All payments owed to Shefa LMV and counsel for Shefa LMV, pursuant to
27 Sections 3.1 and 3.2 shall be delivered to the following address:

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1 Daniel N. Greenbaum, Esq.
2 Law Office of Daniel N. Greenbaum
3 7120 Hayvenhurst Avenue, Suite 320
4 Van Nuys, CA 91406

5 **3.5.2** All payments owed to OEHHA (EIN: 68-0284486) pursuant to Section 3.1, shall
6 be delivered directly to OEHHA (Memo line: "Safe Drinking Water and Toxic Enforcement
7 Fund") at the following addresses:

8 Mike Gyrics
9 Fiscal Operations Branch Chief
10 Office of Environmental Health Hazard Assessment
11 P.O. Box 4010
12 Sacramento, CA 95812-4010

13 with a copy of the check payable to OEHHA mailed to the Law Office of Daniel N. Greenbaum
14 at the address set forth above in Section 3.5.1, as proof of payment to OEHHA specifically for
15 deposit into the Safe Drinking Water and Toxic Enforcement Fund.

16 **4. CLAIMS COVERED AND RELEASED**

17 **4.1 Shefa LMV's Release of BBW**

18 Shefa LMV, acting on its own behalf or on behalf of its past and current agents,
19 representatives, managers, members, officers, employees, agents, attorneys, successors, and/or
20 assignees, hereby releases BBW, its parent companies, subsidiaries, affiliated entities that are
21 under common ownership, directors, officers, shareholders, managing agents, insurers,
22 employees, attorneys, predecessors, successors, and assigns (collectively the "Releasees") and
23 each entity to whom BBW directly or indirectly distributes or sells Products, including but not
24 limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative
25 members, licensors, and licensees (collectively the "Downstream Releasees") from all claims for
26 violations of Proposition 65 based on exposure to DEA from the Products as set forth in the
27 Notice. Compliance with the terms of this Settlement Agreement constitutes compliance with
28 Proposition 65, for Shefa LMV's purposes only, with respect to exposures to DEA from the
Products as set forth in the Notice.

In further consideration of the promises and agreements herein contained, Shefa LMV, on
its own behalf, and on behalf of its past and current agents, representatives, managers, members,

1 officers, employees, agents, attorneys, successors, and/or assignees, hereby waives any right to
2 institute or participate in, directly or indirectly, any form of legal action and releases all claims
3 that it may have, including, without limitation, all actions and causes of action in law and in
4 equity, all suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or
5 expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees arising
6 under Proposition 65 with respect to the failure to warn about exposures to DEA from Products
7 sold or distributed for sale by BBW or the Downstream Releasees before the Effective Date.

8 Shefa LMV acknowledges that it is familiar with Section 1542 of Civil Code, which
9 provides as follows:

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

16 Shefa LMV, its past and current agents, representatives, attorneys, successors, and/or
17 assignees, in its individual and not representative capacity, expressly waives and relinquishes any
18 and all rights and benefits which it may have under, or which may be conferred on it by the
19 provisions of Civil Code § 1542 as well as under any other state or federal statute or common
20 law principle of similar effect, to the fullest extent that it may lawfully waive such rights or
21 benefits pertaining to the released matters.

22 4.2 BBW's Release of Shefa LMV

23 BBW on behalf of itself, its past and current agents, representatives, attorneys, successors,
24 and/or assignees, hereby waives any and all claims against Shefa LMV, its attorneys and other
25 representatives, for any and all actions taken or statements made (or those that could have been
26 taken or made) by Shefa LMV and its attorneys and other representatives, whether in the course
27 of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter
28 with respect to the Products.

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1 **5. SEVERABILITY**

2 If, subsequent to the execution of this Settlement Agreement, any of the provisions of this
3 Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable
4 provisions remaining shall not be adversely affected.

5 **6. GOVERNING LAW**

6 **6.1** The terms of this Settlement Agreement shall be governed by the laws of the State
7 of California and the obligations of BBW hereunder as to the Products apply only within the State
8 of California.

9 **6.2** In the event that Proposition 65 is repealed, preempted or is otherwise rendered
10 inapplicable by reason of law generally, or if any of the provisions of this Settlement Agreement
11 are rendered inapplicable or no longer required as a result of any such repeal or preemption or
12 rendered inapplicable by reason of law generally as to the Products, including, without limitation,
13 the removal of DEA from OEHHA's list of Proposition 65 chemicals, then BBW shall notify
14 Shefa LMV and its counsel and may have no further obligations pursuant to this Settlement
15 Agreement with respect to, and to the extent that, the Products are so affected.

16 **6.3** This Settlement Agreement shall apply to and be binding upon the Parties and their
17 respective parents, divisions, subdivisions, and subsidiaries, successors, and assigns.

18 **6.4** The Parties, including their counsel, have jointly participated in the preparation of
19 this Settlement Agreement and this Settlement Agreement is the result of the joint efforts of the
20 Parties.

21 **6.5** This Settlement Agreement was subject to revision and modification by the Parties
22 and has been accepted and approved as to its final form by all parties and their counsel.

23 **6.6** Each Party to this Settlement Agreement agrees that any statute or rule of
24 construction providing that ambiguities are to be resolved against the drafting Party should not be
25 employed in the interpretation of this Settlement Agreement, and in this regard, the Parties hereby
26 waive California Civil Code § 1654.

27 **7. NOTICES**

28 Unless specified herein, all correspondence and notices required to be provided pursuant
to this Settlement Agreement shall be in writing and (i) personally delivered, (ii) sent by first-
class, (registered or certified mail) return receipt requested, or (iii) sent by overnight courier to

1 one party from the other party at the following addresses:

2 To BATH & BODY WORKS, LLC To SHEFA LMV, LLC

3 Douglas L. Williams
4 Senior Vice-President and
5 General Counsel
6 L Brands, Inc.
7 Three Limited Parkway
8 Columbus, OH 43230

Daniel N. Greenbaum
LAW OFFICE OF DANIEL N. GREENBAUM
7120 Hayvenhurst Avenue, Suite 320
Van Nuys, CA 91406

9 With a copy to:

10 Debra J. Albin-Riley
11 Lynn R. Fiorentino
12 ARENT FOX LLP
13 555 West Fifth Street, 48th Floor
14 Los Angeles, CA 90013-1065

15 Any party, from time to time, may specify in writing to the other party a change of address
16 to which all notices and other communications shall be sent.

17 **8. ENFORCEMENT OF SETTLEMENT AGREEMENT**

18 **8.1** Any party may file suit before the Superior Court of the County of Alameda,
19 consistent with the terms and conditions set forth in paragraphs 8.2 and 8.3 of this Settlement
20 Agreement, to enforce the terms and conditions contained in this Settlement Agreement. The
21 prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with
22 such enforcement.

23 **8.2** No action to enforce this Settlement Agreement may be commenced or
24 maintained, and no notice of violation related to the Products may be served or filed against
25 BBW by Shefa LMV, unless the party seeking enforcement or alleging violation notifies the
26 other party of the specific acts alleged to breach this Settlement Agreement at least 90 days
27 before serving or filing any action or Notice of Violation and the entity receiving the notice
28 fails to comply with the requirements set forth in Section 8.3 below. Any notice to BBW must
contain (a) the name of the product, (b) specific dates when the product was sold after the
Effective Date in California without reformulation, (c) the store or other place at which the
product was available for sale to consumers, and (d) any other evidence or other support
for the allegations in the notice.

1 **8.3** Within 30 days of receiving the notice described in Section 8.2, BBW shall
2 either (1) send the store or other place at which the product was available for sale to the public
3 a letter directing that the offending product be immediately removed from inventory and
4 returned to BBW, or (2) refute the information provided under Section 8.2. Should the parties
5 be unable to resolve the dispute, any party may seek relief under Section 8.1.

6 **9. COUNTERPARTS; FACSIMILE/PDF SIGNATURES**

7 This Settlement Agreement may be executed in counterparts and by facsimile or PDF
8 signature, each of which shall be deemed an original, and all of which, when taken together,
9 shall constitute one and the same document. A facsimile or PDF signature shall be as valid as the
10 original.

11 **10. COMPLIANCE WITH HEALTH & SAFETY CODE 25249.7(f)**

12 Shefa LMV and its attorneys agree to comply with the reporting form requirements
13 referenced in California Health & Safety Code § 25249.7(f).

14 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

15 Shefa LMV and BBW agree to mutually employ their and their counsel's, best efforts to
16 support the entry of this agreement as a Settlement Agreement in a timely manner.

17 **12. MODIFICATION**

18 This Settlement Agreement may be modified only: (1) by written agreement of the parties
19 and upon entry of a modified Settlement Agreement by the Court thereon; or (2) upon a
20 successful motion of any party and entry of a modified Settlement Agreement by the Court.

21 **13. APPLICATION OF SETTLEMENT AGREEMENT**

22 This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of
23 Shefa LMV and the Releasees and Downstream Releasees identified in Section 4.1 above.

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14. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

Date: 2/3/15

By: *Alisa Fried*

Shefa LMV, LLC
Alisa Fried
Managing Member

AGREED TO:

Date: *1/21/2015*

By: *Douglas L Williams*

Bath & Body Works, LLC
Douglas L. Williams
Senior Vice-President and
General Counsel
L Brands, Parent Company of Bath &
Body Works, LLC