

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Michael DiPirro (“DiPirro”) and The Love Shack Cooperative, Inc. (“Love Shack”), with DiPirro and Love Shack individually referred to as a “Party” and collectively as the “Parties.” DiPirro is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Love Shack employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

DiPirro alleges that Love Shack sells, or distributes for sale in the state of California, marijuana intended for smoking and paraphernalia for smoking marijuana, the consumption and use of which results in the chemical marijuana smoke, without first providing the clear and reasonable exposure warning required by Proposition 65. Marijuana smoke is listed pursuant to Proposition 65 as a chemical that is known to the state of California to cause cancer.

### 1.3 Product Description

The products covered by this Settlement Agreement are marijuana intended for smoking and paraphernalia for smoking marijuana, the consumption and use of which results in the chemical marijuana smoke, that are sold, or distributed for sale in California by Love Shack, including, but not limited to, unprocessed marijuana intended to be heated until combustion, then inhaled (specifically, flowers, leaves, and other organic parts of marijuana plants such as kief), and paraphernalia for smoking marijuana, including, but not limited to, bongs, pipes, papers, and most vaporizers (“Products”).

#### **1.4 Notice of Violation**

On or about December 26, 2014, DiPirro served Love Shack and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the recipients of DiPirro’s allegation that Love Shack violated Proposition 65 by failing to warn its customers and consumers in California that the Products expose users to marijuana smoke. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

#### **1.5 No Admission**

Love Shack denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has sold, or distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Love Shack of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Love Shack of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Love Shack. This section shall not, however, diminish or otherwise affect Love Shack’s obligations, responsibilities, and duties under this Settlement Agreement.

#### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean May 29, 2015.

## **2. INJUNCTIVE RELIEF: WARNINGS**

Commencing on the Effective Date, Love Shack shall provide clear and reasonable warnings as set forth below, for all Products sold in California. Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which specific Product the warning applies, so as

to minimize the risk of consumer confusion.

(a) **Entry Door:** On all entry doors or doorways into any room in which a customer can purchase any Product from Love Shack, Love Shack shall post a sign with warning language as shown below, with the text in [brackets] being optional at the discretion of Love Shack. The warning sign shall be at least 9 inches by 11 inches, and posted at a height that will make it conspicuous and easy to read for the average person. The text of the warning shall be printed in black ink, in a font that is easy to read and legible, but in no case less than a size 36 font.

**WARNING: Use of this product will expose you to marijuana smoke, a chemical known to the State of California to cause cancer [and birth defects or other reproductive harm]. [Do not use near pregnant women, children or pets.]**

(b) **Membership Agreement.** Love Shack shall provide a warning in its Membership Agreement, which shall be on the first page, as shown below, with the text in [brackets] being optional at the discretion of Love Shack. The warning shall be printed in black ink, in a font that is easy to read and legible, in at least a size 12 font, at either the top or the bottom, separated from its surrounding text. Each member shall initial the text of the warning to show he or she read and understood the warning.

**WARNING: Marijuana smoke is a chemical known to the State of California to cause cancer. [Do not use near pregnant women, children or pets.]**

(c) **Internet Website Warning.** In order that customers will view the warning before making the decision to purchase the Products, Love Shack shall provide a warning for such Products on its own website and any other website where it controls posts that advertise its Products with prices (including, but not limited to, WeedMaps.com). The warning may be given either: (a) on the same web page on which a Product is displayed; (b) on the same web page as the order form for a Product (if applicable); (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process (if applicable). The following warning statement shall be used and shall appear in any of the above

instances adjacent to or immediately following the display, description, or price of the Product for which it is given in the same type size or larger than the Product description text:

**WARNING: Use of this product will expose you to marijuana smoke, a chemical known to the State of California to cause cancer.**

(d) **Warnings for Deliveries.** For all Products that are purchased via orders placed via telephonic communications (or any other method other than via the Internet) to be delivered to the purchaser, Love Shack shall either, at its option: a) provide a warning as shown below on the receipt; OR b) include in the delivery bag a warning as shown below, on an insert that is at least half the size of the Product. In either case, the warning shall be provided as shown below, with the text in [brackets] being optional at the discretion of Love Shack, with the warning text printed in black ink, in a font that is easy to read and legible, in a font size of at least 12, and set aside from all other text.

**WARNING: Use of this product will expose you to marijuana smoke, a chemical known to the State of California to cause cancer [and birth defects or other reproductive harm]. [Do not use near pregnant women, children or pets.]**

(e) **Warning Sign at Festivals/Conferences.** For all festivals, conferences, and the like that take place in California, in which Love Shack operates a booth or other space from which it sells any of the Products, Love Shack shall post a sign with warning language as shown below, with the text in [brackets] being optional at the discretion of Love Shack. The warning sign shall be at least 9 inches by 11 inches, and posted at a height and location that will make it conspicuous and easy to read for the average person. The text of the warning shall be printed in black ink, in a font that is easy to read and legible, but in no case less than a size 36 font.

**WARNING: Use of this product will expose you to marijuana smoke, a chemical known to the State of California to cause cancer [and birth defects or other reproductive harm]. [Do not use near pregnant women, children or pets.]**

(f) **Additional Warnings.** If Love Shack chooses Option 2 under Section 3.2 in order to waive the second civil penalty, it shall provide additional warnings as follows:

(i) **Product Labeling.** Love Shack shall affix a warning to the packaging, labeling, or directly on each Product sold in retail outlets in California by Love Shack or any person selling the Products as shown below, with the text in [brackets] being optional at the discretion of Love Shack. The warning text shall be printed in black ink, in a font that is easy to read and legible, in the same type size or larger than the Product's description text, but in no case less than a 12 font, regardless of the size of the packaging. Employees will be instructed not to write over the text of the warning for any reason.

As an alternative, for packaging that contains no other labeling and is no larger than 1" X 1", Love Shack may meet its warning requirement by providing the warning on a separate piece of paper, handed to the customer with the product in such a way that the language is immediately visible, conspicuous, plain and clear. The piece of paper shall be at least 3" x 4", and shall state the warning as shown below, with the text in [brackets] being optional at the discretion of Love Shack, with the warning text printed in black ink, in a font that is easy to read and legible, in a font size of at least 12, and set aside from all other text.

**WARNING: Use of this product will expose you to marijuana smoke, a chemical known to the State of California to cause cancer. [Do not use near pregnant women, children or pets.]**

(ii) **Point-of-Sale Warnings.** In order that customers will view the warning before making the decision to purchase the Products, Love Shack shall also post warning signs, in the form below, in close proximity to the point of display of the Products. The warning text shall be in the same type size or larger than the Product's description text.

**WARNING: Marijuana smoke is a chemical known to the State of California to cause cancer.**

**3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

**3.1 Initial Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b).**

Love Shack shall make an initial civil penalty payment of \$2,500, in accordance with this section, on or before the Effective Date. The penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to DiPirro in accordance with Section 3.3 below. The penalty payment shall be delivered to the address listed in Section 3.3 below.

**3.2 Second Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b).**

On or before September 30, 2015, Love Shack shall pay a second civil penalty of \$5,000. As an incentive to significantly reduce the use of plastic in its dispensary location(s), however, the second civil penalty shall be waived in its entirety if an officer of Love Shack certifies in writing that as of September 30, 2015, Love Shack will, for all of its Products sold and offered for sale in all of its California dispensary locations **either**:

**Option 1)** use only glass, cardboard or paper packaging (including, but not limited to, regular or reusable glass containers for dried marijuana bud, paper bags for each total purchase, cardboard packaging for pre-filled cartridges and/or straw coverings for pre-rolled cigarettes and pre-filled cartridges); **-or-**

**Option 2)** provide the Additional Warnings as set forth in Section 2(f) above.

Such certification, along with date-stamped photographs showing proof of compliance with the Option chosen, must be received by the Law Offices of David R. Bush on or before September 30, 2015. The second civil penalty payment shall be apportioned in accordance with California Health & Safety Code § 25249.12(c) & (d), with 75% of these funds remitted to OEHHA and the remaining 25% of the penalty remitted to DiPirro in accordance with Section 3.3.

**3.3 Payments Held in Trust.** Payments shall be delivered to the Law Offices of David R. Bush, 3270 Mendocino Avenue, Suite 2E, Santa Rosa, Ca 95403, and shall be in the

form of three checks for the following amounts made payable to:

- (a) “Law Office of David R. Bush” in the amount of \$1,875 for payment to OEHHA. Law Office of David R. Bush agrees to forward such funds to OEHHA in a timely manner.
- (b) “Law Office of David R. Bush” in the amount of \$625 as payment to Michael DiPirro. David R. Bush agrees to forward such funds in a timely manner; and
- (c) “Law Offices of David R. Bush” in the amount of \$19,000, as payment for attorneys’ fees and costs pursuant to Section 4 below.

**3.4 Issuance of 1099 Forms.** Love Shack shall provide DiPirro’s counsel with a separate 1099 forms for each of its payments under this Agreement to:

- (a) “Office of Environmental Health Hazard Assessment”, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) for civil penalties paid;
- (b) “Michael DiPirro,” whose address and tax identification number shall be furnished upon request after this Agreement has been fully executed by the Parties for his portion of the civil penalties paid; and
- (c) “Law Offices of David R. Bush,” for fees and costs reimbursed pursuant to Section 4.

#### **4. REIMBURSEMENT OF FEES AND COSTS**

The parties acknowledge that DiPirro and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Love Shack then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties then attempted to (and did) reach an accord on the compensation due to DiPirro and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. Love Shack shall pay \$19,000 for

fees and costs incurred as a result of investigating, bringing this matter to Love Shack's attention, and negotiating a settlement in the public interest. Love Shack shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall make the check payable to "David R. Bush, Attorney at Law" and shall deliver payment on or before the Effective Date to the address listed in Section 3.3 above.

## **5. CLAIMS COVERED AND RELEASED**

### **5.1 DiPirro's Release of Love Shack**

This Settlement Agreement is a full, final, and binding resolution between DiPirro and Love Shack of any violation of Proposition 65 that was or could have been asserted by DiPirro, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Love Shack, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Love Shack directly or indirectly distributes or sells the Products, including, without limitation, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"), for unwarned exposures to marijuana smoke from the Products sold or distributed for sale in California by Love Shack prior to the Effective Date.

In further consideration of the promises and agreements herein contained, DiPirro, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims that he may have against Love Shack and Releasees, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 for exposures to marijuana smoke from Products sold, or distributed for sale in California by Love Shack prior to the Effective Date.



## **5.2 Love Shack's Release of DiPirro**

Love Shack, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may have against DiPirro and his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by DiPirro and his attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

## **6. POST EXECUTION CONVERSION TO CONSENT JUDGMENT**

Within twelve months of the execution of this Settlement Agreement, Love Shack may request in writing that DiPirro draft and file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment providing a release for the Products in the public interest, and seek court approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If requested, DiPirro and Love Shack agree to reasonably cooperate and to use their best efforts, and those of their counsel, to obtain an entry of judgment in accordance with the terms of this Settlement Agreement by a superior court in California in a timely manner.

Pursuant to Code of Civil Procedure sections 1021 and 1021.5, if so requested, Love Shack agrees to reimburse DiPirro and his counsel for the reasonable fees and costs incurred in connection with work performed pursuant to this section in an amount not to exceed \$12,000, exclusive of fees and cost on appeal, if any. Within ten days of receiving a monthly invoice from DiPirro's counsel for work performed under this section, Love Shack agrees to remit payment to the address provided in section 3.3.

## **7. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

**8. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the state of California and apply within the state of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Love Shack may provide written notice to DiPirro of any asserted change in the law, and have no further obligations pursuant to this Settlement Agreement, with respect to, and to the extent that, the Products are so affected.

**9. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered or certified mail, return receipt requested; or (iii) a recognized overnight courier on any party by the other party at the following addresses:

For The Love Shack Cooperative, Inc.:

James Hammer, Esq.  
871 Clayton St  
San Francisco, CA 94117

With a copy to:

Bruce Nye, Esq.  
Adams Nye Becht LLP  
222 Kearny Street, 7th Floor  
San Francisco, CA 94108

For DiPirro:

Bush + Henry  
3270 Mendocino Avenue, Suite 2E  
Santa Rosa, CA 95403

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

10. **COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts, and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

11. **POST-EXECUTION ACTIVITIES**

DiPirro agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f).

12. **MODIFICATION**

This Settlement Agreement may be modified only by a written agreement of the Parties.

13. **AUTHORIZATION**

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

AGREED TO:

AGREED TO:

Date: 5/22/15

Date: \_\_\_\_\_

By:   
Michael DiPirro

By: \_\_\_\_\_  
\_\_\_\_\_, President  
The Love Shack Cooperative, Inc.

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**AGREED TO:**

**AGREED TO:**

Date: \_\_\_\_\_

Date: 05/27/2015

By: \_\_\_\_\_  
Michael DiPirro

By: *JAMES E. BOWER*  
~~JAMES E. BOWER~~ Resident  
The Love Shack Cooperative, Inc.