

**SETTLEMENT AGREEMENT BETWEEN ISABEL RUGGERI, DO IT BEST CORP.,
AND DO IT BEST COMMERCE COMPANY, LLC**

1. RECITALS

1.1 The Parties

This Settlement Agreement (“Agreement”) is entered into by and between Isabel Ruggeri (“Ruggeri”), on the one hand, and Do It Best Corp. and Do It Best Commerce Company, LLC (collectively, “the DIB Entities”), on the other hand. Ruggeri and the DIB Entities shall hereinafter collectively be referred to as the “Parties.”

Ruggeri is a citizen of the State of California with an interest in protecting the environment, improving human health and the health of ecosystems, and supporting environmentally sound practices, which includes promoting awareness of exposure to toxic chemicals and reducing exposure to hazardous substances found in consumer products. DIB Entities collectively employ ten (10) or more employees and Do it Best Corp. is a person in the course of doing business as the term is defined in California Health & Safety Code section 25249.6 et seq. (“Proposition 65”).

1.2 Allegations

Ruggeri alleges that the DIB Entities manufactured, distributed, supplied, and/or sold tape measures, including but not limited to 12’ Rubber Grip Tape Measure (SKU 317428; 0-09326-32072-4) (hereinafter, the “Products”) in the State of California causing users in California to be exposed to hazardous levels of lead without providing “clear and reasonable warnings”, in violation of Proposition 65. Lead is potentially subject to Proposition 65 warning requirements because it is listed as known to the State of California to cause cancer and birth defects and reproductive harm.

On June 5, 2014, a sixty-day notice of violation (“60-Day Notice”), along with a Certificate of Merit, was provided by Ruggeri pursuant to Health and Safety Code Section 25249.7(d) to the DIB Entities and various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the lead in the Products.

1.3 No Admissions

The DIB Entities deny all allegations in Ruggeri's 60-Day Notice and maintain that the Products have been, and are, in compliance with all laws, and that the DIB Entities have not violated Proposition 65. The settlement reached by the Parties and this Agreement shall not be construed as an admission of liability by the DIB Entities but to the contrary as a compromise of claims that are expressly contested and denied. However, nothing in this section shall affect the Parties' obligations, duties, and responsibilities under this Agreement.

1.4 Compromise

The Parties enter into this Agreement in order to resolve the controversy described above in a manner consistent with prior Proposition 65 settlements and consent judgments dealing with lead in similar products that were entered on behalf of the public interest and to avoid prolonged and costly litigation between them.

1.5 Effective Date

The "Effective Date" shall be the date upon which a complete and fully executed copy of the Agreement is delivered to each Party's counsel.

2. INJUNCTIVE RELIEF

2.1 Reformulation Products: After January 15, 2015, the DIB Entities shall not distribute, supply and/or sell for use or sale in California any Products that contain more than 100 parts per million ("ppm") of lead in their handgrips and/or accessible surfaces (when analyzed pursuant to Environmental Protection Agency testing methodologies 3050B or equivalent) unless Proposition 65 warnings are provided in accordance with Sections 2.2(a) and 2.2(b).

2.2 Proposition 65 Warnings

(a) Retail Store Sales. Products that are distributed and sold by the DIB Entities and sold in retail stores located in California and do not satisfy the Section 2.1 lead standard are compliant with Proposition 65 if warnings are either provided: (1) on the product label or packaging in accordance with Section 2.2(a)(i) or (2) in the stores in which the Products

are sold in accordance with Section 2.2(a)(ii).

(i) **Product Labeling.** Warnings that are affixed to the packaging, labeling, or directly on each Product sold in retail outlets in California, shall state:

WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

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 of purchase or use.

(ii) **Point-of-Sale Warnings.** Alternatively, the DIB Entities may provide warning signs to their customers in California with instructions to post the warnings in close proximity to the point of display of the Products, with point of sale warnings to state:

WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

Where more than one Product is sold in proximity to other like items or to those that do not require a warning (*e.g.*, Products that comply with the Section 2.1 lead standard), the following statement shall be used:¹

WARNING: The following products contain a chemical known to the State of California to cause cancer and birth defects or other reproductive harm;

[list products for which warning is required]

Each warning sign shall not be covered or obscured, shall be affixed in a sufficiently conspicuous manner reasonably calculated to be seen by the ordinary consumer of the product

¹ For purposes of the Settlement Agreement, "sold in proximity" shall mean that the Product and another similar product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

requiring a warning, and shall be at least 5 1/2" by 8 1/2" in size on white card stock, at least 14 point font in black print.

(b) **Internet Website Warning.** For Products that are offered for sale to Californians via the internet and that do not meet the standard described in Section 2.1, a warning shall be provided with the sale of the Product on the website, either: (1) on the same web page on which a Product is displayed; (2) on the same web page as the order form for a Product; (c) on the same page as the price for a Product prior to sales completion; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning shall be used and shall appear in any of the above instances, in the same type size or larger than the Product description text, in a sufficiently conspicuous manner reasonably calculated to be seen by the ordinary consumer:

WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

3. PAYMENTS

3.1 **Civil Penalty Pursuant To Proposition 65**

In settlement of all claims referred to in this Settlement Agreement, DIB Entities shall pay a total civil penalty of one thousand five hundred dollars (\$1,500.00) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$1,125.00) paid to State of California Office of Environmental Health Hazard Assessment, and the remaining 25% (\$375.00) paid to Ruggeri.

DIB Entities shall issue two (2) checks for the civil penalty: (1) a check or money order made payable to "Law Offices of Lucas T. Novak in Trust for Office of Environmental Health Hazard Assessment" in the amount of \$1,125.00; and (2) a check or money order made payable to "Law Offices of Lucas T. Novak in Trust for Isabel Ruggeri" in the amount of \$375.00. DIB Entities shall remit the payments within five (5) business days of the Effective Date, to:

Lucas T. Novak, Esq.
LAW OFFICES OF LUCAS T. NOVAK
8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

3.2 Reimbursement Of Ruggeri's Fees And Costs

DIB Entities shall reimburse Ruggeri's reasonable experts' and attorney's fees and costs incurred in prosecuting the instant action, for all work performed through execution of this Settlement. Accordingly, DIB Entities shall issue a check or money order made payable to "Law Offices of Lucas T. Novak" in the amount of seventeen thousand dollars (\$17,000.00). DIB Entities shall remit the payment within five (5) business days of the Effective Date, to:

Lucas T. Novak, Esq.
LAW OFFICES OF LUCAS T. NOVAK
8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

4. RELEASES

4.1 Ruggeri's Release Of DIB Entities

In consideration of the promises and monetary payments contained herein, Ruggeri, acting in her individual capacity, on behalf of her past and current agents, representatives, attorneys, successors, and/or assignees, hereby releases the DIB Entities, their parents, subsidiaries, affiliates under common ownership or control, shareholders, directors, members, officers, employees, attorneys, and successor and assigns, as well as their downstream retailers, downstream distributors, downstream wholesalers, and customers ("Releasees") from any alleged Proposition 65 violation claims asserted in Ruggeri's 60-Day Notice dated June 5, 2014 regarding the Products distributed, sold, and/or offered for sale by the DIB Entities in California before January 15, 2015. Releasees' compliance with this Agreement shall constitute compliance with Proposition 65 as regards to the Products and any lead therein.

4.2 DIB Entities' Release Of Ruggeri

DIB Entities, their parents, subsidiaries, affiliates under common ownership or control, shareholders, directors, members, officers, employees, attorneys, and successors and assigns, and

on behalf of their downstream retailers, downstream distributors, downstream wholesalers, and customers, by this Agreement, waive all rights to institute any form of legal action against Ruggeri, her past and current agents, representatives, attorneys, experts, successors, and/or assignees, for actions or statements made or undertaken, whether in the course of investigating claims or seeking enforcement of Proposition 65 against the DIB Entities in this matter.

4.3 Waiver Of Unknown Claims

Each of the Parties acknowledges that it is familiar with Section 1542 of California Civil Code which provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

Each of the Parties waives and relinquishes any right or benefit it has or may have under Section 1542 of California Civil Code or any similar provision under the statutory or non-statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights and benefits. The Parties acknowledge that each may subsequently discover facts in addition to, or different from, those that it believes to be true with respect to the claims released herein. The Parties agree that this Agreement and the releases contained herein shall be and remain effective in all respects notwithstanding the discovery of such additional or different facts.

5. ENFORCEMENT

5.1 At any time more than 30 days after the Effective Date, Ruggeri and her attorneys may provide the DIB Entities with a Notice alleging that the 12' Rubber Grip Tape Measure (SKU 317428; 0-09326-32072-4) (the “Exemplar”) being sold in California does not satisfy the standard set forth in Section 2.1 or does not satisfy the warning provisions under Section 2.2 (hereafter referred to as a “Noncompliant Exemplar”). Any such Notice shall identify, for each Noncompliant Exemplar: (1) the product’s name, description, SKU, UPC and any other

identifying information available to Ruggeri and her attorneys and (2) the location where such product was sold and (3) the date each such product was purchased. Ruggeri and her attorneys shall provide with the Notice copies of all available purchase receipts, product tags and labels and pictures of the Noncompliant Exemplar and any test results showing lead in amounts in excess of the reformulation standard set forth in Section 2.1.

5.2 Within fifteen business days of receiving such Notice, the DIB Entities shall provide notice to Ruggeri of its election to contest or not contest the Notice. If the DIB Entities elect not to contest the Notice, then it shall, within fifteen business days after providing its notice of election, either stop sales of the Noncompliant Exemplar in California or provide the Noncompliant Exemplar with a warning that complies with Section 2.2. If the DIB Entities comply with this Section, then it shall be deemed to be in compliance with this Settlement Agreement and no further action shall be taken by Ruggeri related to the Noncompliant Exemplar and the DIB Entities shall not be liable for any remedies associated with the Noncompliant Exemplar or Notice.

5.3 If the DIB Entities wish to contest the allegations in the Notice, it can provide Ruggeri any evidence that supports its position. If Ruggeri disagrees with the DIB Entities' position, Ruggeri shall, within 30 days notify the DIB Entities of such in writing and explain, in writing, to the DIB Entities the reasons for its disagreement. Thereafter, Ruggeri and the DIB Entities shall meet and confer to attempt to resolve their dispute on mutually acceptable terms. Ruggeri shall not file suit until and unless it has exhausted the "meet and confer" process and attempted to resolve the dispute in a reasonable and good faith manner.

6. SEVERABILITY

Should any part or provision of this Agreement for any reason be declared by a Court to be invalid, void or unenforceable, the remaining portions and provisions shall continue in full force and effect.

7. GOVERNING LAW

The terms of this Agreement shall be governed by the laws of the State of California.

8. NOTICES

All correspondence and notices required to be provided under this Agreement shall be in writing and delivered personally or sent by first class or certified mail addressed as follows:

<p>TO THE DIB ENTITIES:</p> <p>Gary C. Furst . General Counsel Do it Best Corp. 6502 Nelson Road Fort Wayne, IN 46803</p> <p>With a copy to:</p> <p>John E. Dittoe Reed Smith LLP 101 Second Street Suite 1800 San Francisco, CA 94105</p>	<p>TO RUGGERI:</p> <p>Lucas T. Novak, Esq. LAW OFFICES OF LUCAS T. NOVAK 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069</p>
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9. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute the same document. Execution and delivery of this Agreement by e-mail, facsimile, or other electronic means shall constitute legal and binding execution and delivery. Any photocopy of the executed Agreement shall have the same force and effect as the originals.

10. AUTHORIZATION

The undersigned are authorized to execute this Agreement on behalf of their respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions of this Agreement.. Each Party warrants to the other that it is free to enter into this Agreement and is not subject to any conflicting obligation which will or might prevent or interfere with the execution or performance of this Agreement by said Party.

AGREED TO:

Date: 11/6/14

By: Steve Markley, VP of Merchandising
Authorized Officer of Do It Best Corp.

AGREED TO:

Date: 11/6/14

By: Steve Markley
Do it Best Corp. sole member of Do It Best Commerce Company, LLC

AGREED TO:

Date: _____

By: _____
Isabel Ruggeri

AGREED TO:

Date: _____

By: _____
Authorized Officer of Do It Best Corp.

AGREED TO:

Date: _____

By: _____
Do it Best Corp. sole member of Do It Best Commerce Company, LLC

AGREED TO:

Date: November 6, 2014

By: Isabel Ruggeri
Isabel Ruggeri