

SETTLEMENT AGREEMENT  
BETWEEN  
CONSUMER ADVOCACY GROUP, INC.  
AND  
DO IT BEST CORP.

Consumer Advocacy Group, Inc. (“CAG”) and Do it Best Corp. (“DIB” or “Defendant”) with CAG and DIB collectively referred to as the “Parties”, enter into this agreement (“Settlement Agreement”) for the purpose of avoiding costly litigation and to settle CAG’s allegations that Defendant violated Proposition 65 (as defined below). The effective date of this Settlement Agreement shall be the date upon which it is fully executed by all Parties (the “Effective Date”).

**1. Introduction**

1.1 CAG is a California-based entity that seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer and industrial products.

1.2 The Covered Products referred to in this Settlement Agreement are limited to the three wrenches and pliers with black vinyl polymer grips that were specifically identified in the Notice referenced in Section 1.6 herein: (a) Do it ® 8” adjustable wrench; (b) Do it ® 6” needle nose plier and (c) Do it ® 6” diagonal plier. The Covered Products are limited to those sold or distributed by DIB only.

1.3 CAG alleges that the Covered Products contain Di (2-ethylhexyl) phthalate (“DEHP”), also known as Diethyl Hexyl Phthalate; that the Covered Products expose consumers to amounts of DEHP that require warnings under the California Safe Drinking Water and Toxic Enforcement Act (*Cal. Health & Safety Code* § 25249.6, *et seq.* (“Proposition 65”)); and that such warnings were not given. Defendant denies CAG’s allegations.

1.4 On January 1, 1988, the Governor of California added DEHP to the list of chemicals known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP to the list of chemicals known to the State to cause developmental male reproductive toxicity. These additions took place more than twenty (20) months before CAG served its “Sixty-Day Notices of Intent To Sue For Violations Of The Safe Drinking Water And Toxic Enforcement Act of 1986” which is further described below.

1.5 DEHP is referred to hereafter as the “Listed Chemical”.

1.6 On or about March 9, 2015, CAG served the Defendant and certain relevant public enforcement agencies with a document entitled “Sixty-Day Notice Of Intent To Sue For Violations Of The Safe Drinking Water And Toxic Enforcement Act of 1986” regarding wrenches and pliers with vinyl grips containing the Listed Chemical, with said Notice alleging that the Defendant violated Proposition 65 by failing to warn California consumers that use of the Covered Products would expose persons to the Listed Chemical.

1.7 The Parties enter into this Settlement Agreement to settle disputed claims between the Parties as set forth below concerning the Parties' and the Covered Products' compliance with Proposition 65 (the "Dispute").

1.8 By execution of this Settlement Agreement, the Parties do not admit any facts or conclusions of law, including, but not limited to, any facts or conclusions of law regarding any violation of Proposition 65, or any other statutory, regulatory, common law, or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Settlement Agreement, nor compliance with its terms, shall constitute or be construed, considered, offered, or admitted as evidence of an admission or evidence of fault, wrongdoing, or liability by the Defendant, the Downstream Releasees (as defined in Section 2.0), their officers, directors, employees, or parents, subsidiaries or affiliated corporations, in any administrative or judicial proceeding or litigation in any court, agency, or forum. Except for the allegations settled and compromised, nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense that CAG or Defendant may have against one another in any other pending legal proceeding as to allegations unrelated to the Dispute or claims released herein.

1.9 By execution of this Settlement Agreement, the Parties and their attorneys agree they shall not communicate or direct another to communicate with anyone associated with any media or publication entities concerning the terms and conditions of this Settlement Agreement. This provision is not intended to prevent

disclosures that may be necessary to effectuate its terms, including, but not limited to, Section 6.0 of this Settlement Agreement requiring CAG to report the Settlement Agreement to the Attorney General's Office or by Defendant as required by the rules or regulations of any governmental entity or agency, including, but not limited to, the Securities & Exchange Commission or by any securities exchange.

2. **Release**

This Settlement Agreement is a full, final, and binding resolution between CAG, acting in its individual capacity, on the one hand, and, on the other hand, (a) Defendant and its owners, parents, subsidiaries, divisions, subdivisions, partners, affiliates, sister and related companies, members, and each of their respective employees, shareholders, officers, directors, attorneys, predecessors and their successors, and assigns (collectively "Releasees") and (b) all entities to whom Releasees directly or indirectly provide, distribute, or sell the Covered Products, including but not limited to suppliers, customers, distributors, wholesalers, retailers, franchisees, cooperatives, cooperative members, licensees, and members/shareholders of the Defendant, or any other person in the course of doing business, and the successors and assigns of any of them, who may use, maintain, purchase, distribute or sell Covered Products, or who directly or indirectly provide, distribute, drop-ship, bill through, bill or sell Covered Products including, but not limited to, Do it Best Corp., an Indiana corporation and its affiliates, subsidiaries, and cooperative members, including, but not limited to, Tools-R-Us ("Downstream Defendant Releasees") for all claims for violations or

claimed violations of Proposition 65 or any statutory or common law claim that has been, could have been or may in the future be asserted against the Releasees and/or the Downstream Releasees regarding exposing persons to the Listed Chemical and the failure to warn about exposure to the Listed Chemical arising out of Covered Products manufactured, shipped, sold, and/or otherwise distributed prior to the Effective Date, even if sold by Downstream Releasees after the Effective Date. The Parties agree that Defendant's compliance with this Settlement Agreement shall constitute compliance with Proposition 65 with respect to the Listed Chemical in the Covered Products for both Releasees and Downstream Releasees for any Covered Products distributed and/or sold by Releasees or Downstream Releasees after the Effective Date.

CAG, on behalf of itself and its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives and releases with respect to the Covered Product all rights to institute or participate in, directly or indirectly, any form of legal action, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) (collectively "Claims"), against Releasees, including Do it Best Corp and Tools-R-Us, and/or Downstream Releasees that arise under Proposition 65 or any other statutory or common law claims that were or could have been asserted in respect of any Covered Product that was manufactured, shipped, sold and/or otherwise distributed prior to the Effective Date, including without limitation to the extent that such Claims relate to

Releasees' and/or Downstream Releasees' alleged exposure of persons to the Listed Chemical contained in the Covered Products or any failure by Releasees and Downstream Releasees to warn about exposures to the Listed Chemical contained in the Covered Products.

CAG acknowledges that it is familiar with Section 1542 of 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.

CAG, its past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of Civil Code § 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters. The release in this section shall have no force or effect until the full amount of payments set forth in Section 4.0 below are paid in full.

**3. Defendant's Duties – Prop 65 Compliance and Reformulation**

3.1 Except for those Covered Products discussed in Section 3.2, Defendant agrees that Covered Products manufactured after February 15, 2016 and that Defendant directly offers for sale in the state of California or directly distributes

for sale in the state of California will not have amounts of DEHP in their vinyl grips that exceed 0.1% (1,000 parts per million).

3.2 For Covered Products that DIB has in its inventory as of the Effective Date and that Defendant, either directly offers for sale to California consumers or directly distributes for sale in California, Defendant can comply with this Agreement by either: (1) reformulating the Covered Products to not have amounts of DEHP that exceed 0.1% (1,000 parts per million) or (2) by issuing warnings on the labeling of such Covered Products that state: “WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects, or other reproductive harm” or “WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects, or other reproductive harm”.

4. **Monetary Payments**

4.1 Defendant agrees to pay a total of thirty five thousand dollars (\$35,000) within ten (10) days of the Effective Date by separate checks apportioned as follows:

4.1.1 **Payment to CAG:** Four thousand Five hundred dollars (\$4,500.00) shall be paid to Consumer Advocacy Group, Inc. The check shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212. By the Effective Date, CAG shall provide Defendant with CAG’s Employer Identification Number.

4.1.2 **Attorneys' Fees and Costs:** Twenty-six thousand dollars (\$26,000) of such payment shall be paid to Yeroushalmi & Associates, as CAG’s attorneys,

for reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of investigating and bringing this matter to Defendant's attention. The check shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212. By the Effective Date, Yeroushalmi & Associates shall provide Defendant with its Employer Identification Number.

4.1.3 Penalty: Defendant shall issue two separate checks for a total amount of Four thousand Five hundred dollars (\$4,500.00) as penalties pursuant to Health & Safety Code § 25249.12: (a) one check made payable to the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of Three thousand Three hundred Seventy-five dollars (\$3,375), representing 75% of the total penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of One thousand One hundred Twenty-five dollars (\$1,125), representing 25% of the total penalty. Both checks shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212. Additionally, two separate 1099's shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$3,375. The second 1099 shall be issued in the amount of \$1,125 to CAG and delivered to: Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.



5. **Authority to Enter Into Settlement Agreement**

5.1 CAG represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind CAG to this Settlement Agreement.

5.2 Defendant represents that its signatory to this Settlement Agreement have full authority to enter into and legally bind Defendant to this Settlement Agreement.

6. **Report of the Settlement Agreement to the Office of the Attorney General Of California**

CAG shall report this Settlement Agreement to the Attorney General's Office within five (5) days of the Parties' execution of this Settlement Agreement.

7. **Execution in Counterparts and Facsimile**

This Settlement Agreement may be executed in counterparts, which taken together shall be deemed to constitute the same document. A facsimile or portable document format (PDF) signature shall be as valid as the original.

8. **Modification of Settlement Agreement**

Any modification to this Settlement Agreement shall be in writing and signed by the Parties.

9. **Application of Settlement Agreement**

This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of, CAG and the Releasees and Downstream Releasees identified in Section 2 above.

**10. Enforcement of Settlement Agreement**

10.1 Any Party may file suit before the Superior Court of the County of Los Angeles, consistent with the terms and conditions set forth in paragraphs 10.2 and 10.3 of this Settlement Agreement, to enforce the terms and conditions contained in this Settlement Agreement. The prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

10.2 No action to enforce this Settlement Agreement may be commenced or maintained, and no notice of violation related to the Covered Product may be served or filed against Defendant by CAG, unless the Party seeking enforcement or alleging violation notifies the other Party of the specific acts alleged to breach this Settlement Agreement at least 90 days before serving or filing any action or Notices of Violation and the entity receiving the notice fails to comply with the requirements set forth in Section 10.3 below. Any notice to Defendant must contain (a) the name of the product, (b) specific dates when the product that did not satisfy the 1,000 ppm DEHP standard set forth in Section 3.1 above was sold in California, (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.

10.3 Within 30 days of receiving the notice described in Section 10.2, Defendant shall either (1) send the store or other place at which the product was available for sale to the public a letter directing that the offending product be immediately removed from inventory and returned to Defendant for full credit, including shipping costs, or (2) refute the information provided under Section

10.2. Should the Parties be unable to resolve the dispute, any party may seek relief under Section 10.1.

**11. Notification Requirements**

Any notice required or permitted hereunder shall be effective only if given in writing and delivered in person, certified or registered mail return receipt requested, or traceable overnight delivery service, to the following designees:

**For CAG:**

Reuben Yeroushalmi, Esq.  
YEROUSHALMI & ASSOCIATES  
9100 Wilshire Boulevard, Suite 240W  
Beverly Hills, CA 90212

**For Do it Best Corp.**

Gary Furst  
Vice President of Human Resources and General Counsel  
Do it Best Corp.  
6502 Nelson Road  
Fort Wayne, IN 46803

With a copy to counsel for Do it Best Corp.

John E. Dittoe  
Reed Smith LLP  
101 Second Street  
Suite 1800  
San Francisco, CA 94105-3659

Any Party may change its designee(s) for purposes of notification by providing written notice of such change pursuant to this section.

**12. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are held by a court to be unenforceable,

the validity of the enforceable provisions remaining shall not be adversely affected.

**13. GOVERNING LAW**

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, preempted or otherwise rendered inapplicable by reason of law generally, or as to the Listed Chemical and/or the Covered Products, then Defendant shall provide written notice to CAG of any asserted change in the law and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Covered Products are so affected.

**14. NO ASSIGNMENT**

CAG represents and warrants that it has not assigned or transferred or purported to transfer or assign to any person, firm or corporation any claim, liability, demand, obligation, action or cause of action herein released.

CONSUMER ADVOCACY GROUP, INC.

Dated: 12-29-15

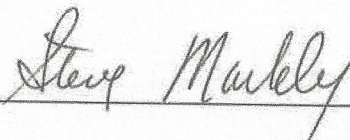
By: 

Printed Name: MICHEL ASSOON

Title: Executive director

DO IT BEST CORP.

Dated: 12/22/15

By: 

Printed Name: Steve Markley

Title: VP Merchandising