

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

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

1.0 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 Defendant has previously distributed and/or sold, at various times, the Covered Products. The Covered Products referred to in this Agreement are limited to the three exemplar products that were specifically identified in the Sixty-Day Notices referenced in Section 1.7: (1) 14 Pc. Hook Set; Home and Garage Organizers; Medium Duty; 222011; Manufactured in China for Do It Best Corp.; UPC #: 0 09326 20888 6 and its individual pieces (“Hook Set”); (2) Do it™ 7/32 x 50’ Plastic Clothesline, “Low Stretch, Long Life, #7,”610259”; “Working Load

Limit 25 lbs. 11.25 kg” Red cardboard tube packaging with clear plastic wrap; doitbest.com; UOC 0 0932660150 2; and (3) Do it 5/32 x 50’ Plastic Clothesline, “Low Stretch, Long Life, #5,” 615234”, “Working Load Limit 18 lbs. 8.1 kg” Red cardboard tube packaging with clear plastic wrap; doitbest.com UPC 0 0932660155 7 (items (2) and (3) collectively referred to as “Clothesline”). The Covered Products are limited to those sold by Defendant.

1.3 CAG alleges that the Hook Set products identified in Section 1.2 contain Di (2-ethylhexyl) phthalate, also known as Diethyl Hexyl Pthalate and Bis (2-ethylhexyl) phthalate (“DEHP”); that the Clothesline products identified in Section 1.2 contain DEHP and Di-n-Butyl Phthalate (“DBP”) and that Defendant did not provide required warnings in compliance with the California Safe Drinking Water and Toxic Enforcement Act (*Cal. Health & Safety Code* § 25249.5, *et seq.* (“Proposition 65”)).

1.4 On January 1, 1988, the Governor of California added DEHP to the list of chemicals known to the State to cause cancer; on October 24, 2003, the Governor of California 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 are further described in Section 1.7 and 1.8.

1.5 On December 2, 2005, the Governor of California added DBP to the list of chemicals known to the State to cause developmental reproductive toxicity. These additions took place more than twenty (20) months before CAG served its “Sixty-

Settlement Agreement Between Consumer Advocacy Group, Inc. and Do It Best Corp.

Day Notices of Intent To Sue For Violations Of The Safe Drinking Water And Toxic Enforcement Act of 1986” which are further described in Section 1.8.

1.6 DEHP and DBP are referred to as the “Listed Chemicals”.

1.7 On or about March 14, 2016, CAG served Do it Best Corp., Anawalt Lumber Co., Inc., and certain relevant public enforcement agencies with documents entitled “Sixty-Day Notice Of Intent To Sue For Violations Of The Safe Drinking Water and Toxic Enforcement Act of 1986” regarding the Covered Products containing DEHP.

1.8 On or about and April 20, 2016, CAG served Do it Best Corp., Anawalt Lumber Co., Inc., Anawalt Lumber Co., Anawalt Lumber & Materials Co., Brooklyn Hardware, and certain relevant public enforcement agencies with documents entitled “Sixty-Day Notice Of Intent To Sue For Violations Of The Safe Drinking Water and Toxic Enforcement Act of 1986” regarding the Covered Products containing the Listed Chemicals.

1.9 The Sixty-Day Notices identified in Section 1.7 and 1.8 (referred to as the “Notices”) alleged that Defendant and the other noticed parties violated Proposition 65 by failing to warn consumers in California that use of the Covered Products exposes persons to one or more of the Listed Chemicals.

1.10 The Parties enter into this 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”).

1.11 By execution of this Agreement, the Parties do not admit any facts or conclusions of law, including, but not limited to, any facts or conclusions of law

Settlement Agreement Between Consumer Advocacy Group, Inc. and Do It Best Corp.

regarding any violation of Proposition 65, or any other statutory, regulatory, common law, or equitable doctrine. Nothing in this 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 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 Defendant, 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 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.

2.0 Release

This Agreement is a full, final, and binding resolution between CAG, acting in its individual capacity, on the one hand, and (a) Defendant and its owners, parents, subsidiaries, divisions, subdivisions, partners, affiliates, sister and related companies and members and each of their respective employees, shareholders, officers, directors, attorneys, predecessors, 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, distributors, wholesalers, customers, retailers, franchisees, cooperatives,

cooperative members, licensees, 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 any of the Covered products or who directly or indirectly provide, distribute, drop-ship, bill through or sell the Covered Products, including but not limited to, Do it Best Corp., an Indiana corporation, and its affiliates, subsidiaries, cooperative members, Members of Do it Best Corp. and Anawalt Lumber, Co. (collectively referred to as "Downstream Releasees"), on the other hand, of any 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 Downstream Releasees regarding exposing persons to the Listed Chemicals and the failure to warn about exposure to the Listed Chemicals arising only in connection with the Covered Products distributed or sold by Defendant before the Effective Date, even if sold by Downstream Releasees after the Effective Date. The Covered Products are limited to those sold by Defendant.

The Parties agree that Defendant's compliance with this Agreement shall constitute compliance with Proposition 65 with respect to the Listed Chemicals in the Covered Products for both Releasees and Downstream Releasees for any Covered Products distributed and/or sold by Releasees and Downstream Releasees after the Effective Date.

CAG, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives and releases with respect to the Covered Products all rights to institute or participate in, directly or indirectly, any form of legal

Settlement Agreement Between Consumer Advocacy Group, Inc. and Do It Best Corp.

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 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 to any Covered Products distributed or sold up to the Effective Date, to the extent that such claims relate to Releasees' and/or Downstream Releasees' alleged exposure of persons to one or more of the Listed Chemicals contained in the Covered Products or any failure by Releasees and Downstream Releasees to warn about exposures to the Listed Chemicals 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

Settlement Agreement Between Consumer Advocacy Group, Inc. and Do It Best Corp.

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.

3.0 Do it Best Corp.'s Duties – Proposition 65 Compliance and Reformulation

3.1 Do it Best Corp. agrees, promises, and represents that with the exception of the Covered Products listed in Section 3.2 below, all Covered Products that Defendant orders from its suppliers, on or after January 1, 2017, will be reformulated, and shall not contain amounts of DEHP or DBP that exceed 0.1% (1,000 parts per million) by weight, or Do it Best Corp. shall cease distribution or sale of any of the Covered Products into California.

3.2 Do it Best Corp. agrees, promises, and represents that Covered Products that it orders before December 31, 2016, and offers for sale or distribution in California, that have not been reformulated, will contain warnings that comply with Proposition 65. Defendant may comply with this Agreement and with Proposition 65 by having warnings on such Covered Products, directly on their packaging or labels affixed to the Covered Products. Such warnings shall be prominently placed with such conspicuousness as compared to other words, statements, or designs as to render them likely to be read and understood by the consumer prior to or at the time of the sale or purchase. The Parties agree that warnings on the product labeling shall 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.”

The applicable warning shall be provided to address whether one chemical, or two or more chemicals are present in the Covered Product(s).

4.0 Payments

4.1 Defendant agrees, to pay a total of Sixty-thousand dollars (\$60,000) within ten (10) days of the Effective Date by separate checks apportioned as follows:

4.2 Payment to CAG: Eleven-thousand dollars (\$11,000) shall be paid to Consumer Advocacy Group, Inc. The check shall be delivered to: Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212. By the Effective Date, CAG shall provide Defendant with CAG’s Employer Identification Number.

4.3 Attorneys' Fees and Costs: Forty-eight thousand dollars (\$48,000) 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 & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212. By the Effective Date, Yeroushalmi & Associates shall provide Defendant with its Employer Identification Number.

4.4 Penalty: Defendant shall issue two separate checks for a total amount of one one-thousand dollars (\$1,000) 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 seven-hundred and fifty dollars (\$750), representing 75% of the total penalty; and (b) one check to the Consumer Advocacy Group, Inc. in the amount of two-hundred fifty dollars (\$250), representing 25% of the total penalty. Both checks shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212. Additionally, two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95812 (EIN: 68-0284486) in the amount of \$750. The second 1099 shall be issued in the amount of \$250 to CAG and delivered to: Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

5.0 Authority to Enter Into This Agreement

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

5.2 Do it Best Corp., represents that its signatory to this Agreement has full authority to enter into and legally bind Do it Best Corp. to this Agreement.

6.0 Report of this Agreement to the Office of the Attorney General Of California

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

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7.0 Execution in Counterparts and Facsimile

7.1 This 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.

8.0 Entire Agreement

8.1 This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments, and understandings. No other agreements, oral or otherwise, exist to bind any of the Parties

9.0 Modification of Settlement Agreement

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

10.0 Application of Settlement Agreement

10.1 This 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.

11.0 Enforcement of Settlement Agreement

11.1 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 11.2 and 11.3 of this Agreement, to enforce the terms and conditions contained in this Agreement. The prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

11.2 No action to enforce this Agreement may be commenced or maintained, and no notice of violation related to the Covered Products may be served or filed against the Defendant, Releasees and/or Downstream Releasees by CAG, unless the Party seeking enforcement or alleging violation notifies the other Party of the specific acts alleged to breach this Agreement at least 90 days before serving or filing any action or Notice of Violation and the entity receiving the notice fails to comply with the requirements set forth in Section 11.3 below. Any notice to Defendant must contain: (a) a description of the Covered Product, (b) the specific date(s) upon which the Covered Product was discovered to be available for sale after the Effective Date in California without reformulation, (c) the store or other place at which the Covered Product was found to remain available for sale to consumers, and (d) other evidence or other support for the allegations in the notice.

11.3 Within 30 days of receiving the notice described in Section 11.2, Defendant shall either: (1) send all stores and other places at which the Covered 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 11.2 to CAG's satisfaction. Should the Parties be unable to resolve the dispute, any Party may seek relief under Section 11.1.

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12.0 Notification Requirements

12.1 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 & YEROUSHALMI
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, Indiana 46803

With a copy to counsel for Do it Best Corp.:

John E. Dittoe
Law Office of John E. Dittoe
70 Hazel Lane
Piedmont, CA 94611

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

13.0 SEVERABILITY

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

14.0 GOVERNING LAW

Settlement Agreement Between Consumer Advocacy Group, Inc. and Do It Best Corp.

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

CONSUMER ADVOCACY GROUP, INC.

Dated: 09/30/16

By: *Michael Marcus*

Printed Name: Michael Marcus

Title: Director

DO IT BEST CORP.

Dated: 9/30/16

By: *Stev Markley*

Printed Name: Stev Markley

Title: VP Merchandising

Settlement Agreement Between Consumer Advocacy Group, Inc. and Do It Best Corp.