

SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC, DO IT BEST CORP., DO IT BEST COMMERCE COMPANY, LLC AND RAY COLLINS ENTERPRISES, INC. DBA B&B DO IT CENTER

1. RECITALS

1.1 The Parties

This Settlement Agreement (“Agreement”) is entered into by and between APS&EE, LLC (“APS&EE”), on the one hand, and Do it Best Corp. (“DIB”), Do it Best Commerce Company, LLC (“DIB Commerce”) and Ray Collins Enterprises, Inc. dba B&B Do it Center (“B&B”). DIB and DIB Commerce shall collectively be known as “the DIB Entities”; the DIB Entities and B&B shall collectively be known as the “Companies”; and APS&EE and the Companies shall collectively be referred to as the “Parties.”

APS&EE is an organization based in 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. The Companies collectively employ ten (10) or more employees, with DIB and B&B each being persons 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

APS&EE alleges that the Companies manufactured, distributed, supplied, and/or sold Do-it-Best Smart Saver flashlights (including #801608-09326-80254-1), Do-it-Best Smart Saver hammers (including #348678; 0-09326-32732-7) and Malibu key rings (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 February 22, 2016, APS&EE served a sixty-day notice of violation (“60-Day Notice”), along with a Certificate of Merit, 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 lead allegedly in the Products.

On April 26, 2016, APS&EE served a supplemental sixty-day notice of violation (“Supplemental 60-Day Notice”), along with a Certificate of Merit, pursuant to Health and Safety Code Section 25249.7(d) to the Companies and various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to lead allegedly in the Products.

1.3 No Admissions

The Companies deny the material factual and legal allegations in APS&EE’s 60-Day Notice and Supplemental 60-Day Notice and maintain that the Products have been, and are, in compliance with all laws, and that the Companies have not violated Proposition 65. The settlement reached by the Parties and this Agreement and compliance with this Agreement shall not be construed as an admission of liability by the Companies of any fact, finding, conclusion, issue of law or violation of law, 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 in 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 December 1, 2016, the Companies 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 the Companies sell in California or distribute for sale in California after December 1, 2016 and that do not satisfy the Section 2.1 lead standard are compliant with Proposition 65 and this Agreement 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 at retail in California, shall state:

WARNING: This product contains a chemical [chemicals] 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: (a) the DIB Entities may provide warnings signs to their members/customers in California with instructions to post warnings in close proximity to the point of display of the Products, that state the warning below and (b) B&B may post a warning sign or signs in its stores in close proximity to the point of display of the Products that state:

WARNING: This product [these products] contains a chemical [chemicals] 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 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: (1) warnings in compliance with Section 2.2(a)(i) shall be affixed to the packaging, labeling, or directly on each Product or (2) warnings shall be provided with the sale of the Product on the website, either: (i) on the same web page on which a Product is displayed; (ii) on the same web page as the order form for a Product; (iii) on the same page as the price for a Product prior to sales completion; or (iv) on one or more web pages displayed to a purchaser during the checkout process. The Companies shall be responsible for all charges (e.g., restocking fee, shipping, handling, etc.) related to returns of Products by consumers who were not provided with a website warning as described herein. For website warnings, the following warning shall be used and shall appear 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 [chemicals] known to the State of California to cause

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.

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, the Companies shall pay a total civil penalty of two thousand dollars (\$2,000.00) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$1,500.00) for the State of California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% (\$500.00) for APS&EE.

The DIB Entities shall issue checks for the civil penalties as follows: (1) a check made payable to “OEHHA” totaling \$750.00; and (2) a check made payable to “Law Offices of Lucas T. Novak in Trust for APS&EE” in the amount of \$250.00. The 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

B&B shall issue checks for the civil penalties as follows: (1) a check made payable to “OEHHA” totaling \$750.00; and (2) a check or checks made payable to “Law Offices of Lucas T. Novak in Trust for APS&EE” in the amount of \$250.00. B&B 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 APS&EE’s Fees And Costs

The Companies shall reimburse APS&EE’s reasonable experts’ and attorney’s fees and costs incurred in prosecuting the instant action, for all work performed through execution of this Agreement. Accordingly, the DIB Entities shall issue a check made payable to the “Law Offices

of Lucas T. Novak” totaling eight thousand dollars (\$8,000.00) and B&B shall issue a check made payable to the “Law Offices of Lucas T. Novak” totaling eight thousand dollars (\$8,000.00). The Companies shall remit their 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

4. RELEASES

4.1 APS&EE’s Release of The Companies

In consideration of the promises and monetary payments contained herein, APS&EE, acting in its individual capacity, on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, hereby releases the Companies, 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 APS&EE’s 60-Day Notice dated February 22, 2016 and APS&EE’s Supplemental 60-Day Notice dated April 26, 2016 regarding the Products distributed, sold, and/or offered for sale by the Companies in California before December 1, 2016. Releasees’ compliance with this Agreement shall constitute compliance with Proposition 65 as regards to the Products and any lead therein.

4.2 The Companies Release Of APS&EE

The Companies, 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 APS&EE, its 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 Companies 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. 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.

6. GOVERNING LAW

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

7. MODIFICATION

This Agreement may be modified only by written agreement of the Parties or court order.

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>TO B&B</p> <p>Randy Collins B&B Do it Center 698 Mobil Ave Camarillo, CA 93010</p> <p>With a copy to:</p> <p>John E. Dittoe Law Office of John E. Dittoe 70 Hazel Lane Piedmont, CA 94611</p>	<p>TO APS&EE:</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.

AGREED TO:

Date: 9/14/16

By: Steve Markely
Authorized Officer of Do it Best Corp.

AGREED TO:

Date: 9/14/16

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

AGREED TO:

Date: _____

By: _____
Authorized Officer of Ray Collins Enterprises Inc. dba B&B Do it Center

AGREED TO:

Date: _____

By: _____
Authorized Officer of APS&EE

AGREED TO:

Date: _____

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

AGREED TO:

Date: 9/15/16 _____

By: Ray Collins
Authorized Officer of Ray Collins Enterprises Inc. dba B&B Do it Center

AGREED TO:

Date: _____

By: _____
Authorized Officer of APS&EE

AGREED TO:

Date: _____

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

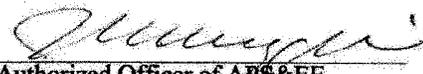
AGREED TO:

Date: _____

By: _____
Authorized Officer of Ray Collins Enterprises Inc. dba B&B Do it Center

AGREED TO:

Date: 9/2/16

By: 
Authorized Officer of APS&EE