

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 This settlement agreement (“Settlement” or “Agreement”) is entered into by and between plaintiff, Consumer Advocacy Group, Inc. (referred to as “CAG”) and Great Neck Saw Manufacturers, Inc. (referred to as “Great Neck”), with each a party and collectively referred to as the “Parties,” for the purpose of avoiding prolonged and costly litigation to settle CAG’s allegations that Great Neck violated Proposition 65.

1.2 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.

1.3 Great Neck is a New York domestic business corporation which employs ten or more persons. Great Neck manufactures, imports, distributes and sells automotive and hand tools.

1.3.1 Great Neck previously distributed or sold, at various times the following (collectively, “Covered Products”):

- Spark Plug Wire Tester with plastic components, including but not limited to ““OEM ®Tools for Professionals”; “Spark Plug Wire Tester”; Limited Lifetime Warranty”; “25045”; “OEM ® Company, Mineola, NY 11501 www.oem-tools.com” ; “Made in China”; UPC 0 76812 25045 2”.
- Crimping and Cutting Tool With Plastic Grip, including but not limited to “OEM”; “Tools for Professionals”; “Crimping and Cutting Tool”; “For insulated and non-insulated connectors and terminals”; “Lifetime Limited Warranty”; “For insulated and non-insulated connectors and terminals”; “076812251961”; “OEM® Company, Mineola, NY 11501”.

1.3.2 The Covered Products are limited to those that have been distributed or sold by Great Neck. For purposes of this Settlement, Great Neck is deemed a person in the course of doing business in California and is subject to the provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq. (“Proposition 65”).

1.4 **Listed Chemicals**

Phthalate chemicals are used in PVC formulations to make the resulting plastic soft and flexible. Six phthalates are listed under Proposition 65, including Bis(2-ethylhexyl) phthalate, also known as Di (2-ethylhexyl) phthalate, ("DEHP"). DEHP is listed under Proposition 65 as known to the State of California to cause cancer and birth defects or other reproductive harm.

1.5 **Notices of Violation.**

On August 10, 2018 and August 17, 2018, CAG served Great Neck and The Pep Boys-Manny, Moe & Jack of California, Inc. and Pep Boys-Manny, Moe & Jack, Inc. (collectively, "Pep Boys") and various public enforcement agencies with documents entitled "Sixty-Day Notice of Intent to Sue" ("Notices") that provided the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of exposures to DEHP contained in Covered Products sold by Great Neck and, in turn, by Pep Boys. No public enforcer has commenced or diligently prosecuted the allegations set forth in the Notice.

1.6 **No Admission**

This Settlement resolves claims that are denied and disputed. The Parties enter into this Agreement pursuant to a full and final settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation. Nothing in this Agreement shall be construed as an admission by the Parties of any material allegation asserted in the Notices (each and every allegation of which Great Neck denies), any fact, conclusion of law, issue of law or violation of law, including without limitation, any admission concerning any violation of Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine, or the meaning of the terms "knowingly," "intentionally," "expose" or "clear and reasonable warning" as used in Health and Safety Code section 25249.6. Nothing in this Agreement, nor compliance with its terms, shall constitute or be construed as an admission by the Parties or Pep Boys of any fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability by the Great Neck, its officers, directors, employees, or parent, subsidiary or affiliated corporations, or by Pep Boys and its officers, directors, employees, or parent, subsidiary or affiliated corporations; nor shall this Agreement be offered or admitted as evidence in any administrative or judicial proceeding or litigation in any court, agency,

or forum. Furthermore, nothing in this Agreement shall prejudice, waive or impair any right, remedy, argument, or defense the Parties or Pep Boys may have in any other or future legal proceeding, except as expressly provided in this Agreement.

1.7 “Effective Date” means the date that this Settlement has been executed by both of the Parties.

2. REFORMULATION AND INTERIM WARNINGS.

2.1 As of the Effective Date, Great Neck shall not manufacture, cause to be manufactured, import or otherwise acquire any Covered Products for potential distribution to or sale in California unless it is reformulated to contain less than 1,000 parts per million (ppm) or 0.1% of DEHP (“Reformulated Products”).

2.2 For any Covered Products already present in Great Neck’s inventory as of the Effective Date, Great Neck shall place a Proposition 65 compliant warning on the Covered Product as further set forth below. Any warning provided pursuant to this section shall be affixed to the packaging of, or directly on, the Covered Products, and 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. The warning shall state:

⚠ WARNING: This product can expose you to chemicals including di(2-ethylhexyl) phthalate (DEHP), which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

Or

⚠ WARNING: Cancer and Reproductive Harm—www.P65Warnings.ca.gov.

Either of the above warnings shall constitute compliance with Proposition 65 with respect to Listed Chemicals in the Covered Products for any Covered Products in existing inventory that had not been reformulated and which are distributed and/or sold by Great Neck and subsequently offered for sale by Releasees or Downstream Releasees in California after the Effective Date.

3. SETTLEMENT PAYMENT

3.1 **Payments:** Within ten (10) days of the Effective Date, Great Neck shall pay a total of \$73,000 in full and complete settlement of all monetary claims by CAG related to the Notices and alleged violations of Proposition 65 as set forth therein, as follows:

3.1.1 **Civil Penalty:** Great Neck shall issue separate checks totaling \$16,000 as penalties pursuant to Health & Safety Code § 25249.12:

(a) Great Neck will issue a check made payable to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of \$12,000 representing 75% of the total penalty and Great Neck will issue a check to CAG in the amount of \$4,000 representing 25% of the total penalty; and

(b) Great Neck shall issue separate 1099s for each of the above payments: Great Neck will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$12,000; Great Neck will also issue a 1099 in the amount of 4,000 to CAG c/o Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

3.1.2 **Reimbursement of Attorneys Fees and Costs:** Great Neck shall pay \$57,000 to "Yeroushalmi & Associates" as reimbursement for reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of investigating, bringing this matter to Great Neck's attention, litigating, and negotiating a settlement in the public interest. The check shall be made payable to "Yeroushalmi & Associates" and delivered to Reuben Yeroushalmi, Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

3.2 **Delivery of Payments:**

3.2.1 OEHHA's check shall be delivered directly to: Office of Environmental Health Hazard Assessment, Attn: Mike Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California 95812. Great Neck shall also provide written confirmation to CAG upon payment of OEHHA's portion of civil penalties.

3.2.2 All payments to CAG and Yeroushalmi & Associates shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

4. MATTERS COVERED BY THIS SETTLEMENT AGREEMENT

4.1 This Settlement is a full, final, and binding resolution between CAG, on behalf of itself, as well as on behalf of its past and current owners, parents, subsidiaries, affiliates, sister and related companies, employees, agents, representatives, shareholders, officers, directors, insurers, attorneys, predecessors, successors, and assigns (the “Releasing Parties”), on the one hand, and Great Neck and its owners, officers, directors, insurers, employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister and related companies, franchisees, licensees, agents, and their predecessors, successors and assigns (collectively, the “Released Settling Parties”), and any other person in the course of doing business, and the successors and assigns of any of them, who may or have used, maintained, distributed, sold or otherwise provided Covered Products, including but not limited to OEM and Pep Boys (collectively, the “Downstream Releasees”), on the other hand, for all claims for 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 Released Settling Parties and Downstream Releasees based on exposure to DEHP from the Covered Products as set forth in the Notices, through the Effective Date. Thereafter, for the purpose of this settlement only, relative to the Releasing Parties, Great Neck’s compliance with this Agreement shall constitute compliance with Proposition 65 with respect to exposure to DEHP from the Covered Products. Nothing in this Section affects CAG’s right to commence or prosecute an action under Proposition 65 against any person other than the Released Settling Parties or Downstream Releasees. (Great Neck, Released Settling Parties, and Downstream Releasees are herein referred to as “Released Parties”).

4.2 CAG on behalf of itself, its 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, 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) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively “Claims”), against the Released Parties arising from any violation of Proposition 65 or any other statutory or common law regarding the failure to warn about exposure to phthalate chemicals from the Covered Products as set forth in the Notices arising prior to the Effective Date.

4.3 CAG on behalf of itself only, also hereby waives any and all rights and benefits which it now has, or in the future may have, conferred upon it with respect to Claims arising from any violation of Proposition 65 or any other statutory or common law arising prior to the Effective Date regarding the Covered Products by virtue of the provisions of section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

CAG understands and acknowledges that the significance and consequence of this waiver of California Civil Code section 1542 is that even if CAG suffers future damages arising out of or resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any violation of Proposition 65 or any other statutory or common law arising prior to the Effective Date regarding the Covered Products, CAG will not be able to make any claim for those damages against Released Parties.

Furthermore, CAG acknowledges that it intends these consequences for any such Claims arising from any violation of Proposition 65 or any other statutory or common law regarding the Covered Products as may exist as of the date of this release but which CAG does not know exist, and which, if known, would materially affect its decision to enter into this Settlement, regardless of whether their lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

5. ENFORCEMENT

5.1 The terms of this Agreement shall be enforced exclusively by the Parties hereto pursuant to California law. A party may enforce any of the terms and conditions of this Settlement only after that party first provides 60 days' notice to the party allegedly failing to comply with the terms and conditions of this Settlement and attempts to resolve such Party's failure to comply in an open and good faith manner.

5.2 **Notice and Cure.** Prior to bringing any proceeding to enforce the terms of this Settlement, CAG shall provide a Notice of Violation (“NOV”) to Great Neck. The NOV shall include for each of the Covered Products: the date(s) the alleged violation(s) was observed and the location at which the Covered Products were offered for sale, and shall be accompanied by all test data obtained by CAG regarding the Covered Products, including an identification of the component(s) of the Covered Products that were tested.

5.2.1 Notwithstanding the above, CAG may bring an action to enforce any breach of the monetary settlement terms in Section 4.0, above, upon ten (10) business days of receipt of written notice by CAG to Great Neck of the alleged breach in accordance with the notification requirements set forth in Section 11.0, below.

5.2.2 **Non-Contested NOV.** CAG shall take no further action regarding the alleged violation if, within 60 days of receiving such NOV, Great Neck serves a Notice of Election (“NOE”) that indicates that, since receiving the NOV, Great Neck has taken corrective action by taking all steps necessary to bring the sale of the Covered Product into compliance under the terms of this Settlement.

5.2.2 **Contested NOV.** Great Neck may serve an NOE informing CAG of its election to contest the NOV within 30 days of receiving the NOV.

(a) In its election, Great Neck may request that the sample(s) of Covered Products tested by CAG be subject to confirmatory testing at an EPA-accredited laboratory.

(b) If the confirmatory testing establishes that the Covered Products do not contain phthalates in excess of the levels allowed in Section 2.1 above, CAG shall take no further action regarding the alleged violation. If the testing does not establish compliance with Section 2.1 above, Great Neck may withdraw its NOE to contest the violation and may serve a new NOE pursuant to Section 5.2.1.

(c) If Great Neck does not withdraw an NOE to contest the NOV, the Parties shall meet and confer for a period of no less than 30 days before CAG may seek an order enforcing the terms of this Agreement.

5.3 In any proceeding brought by either party to enforce this Agreement, the prevailing party shall be entitled to recover its attorney’s fees and costs.

6 MODIFICATION

6.1 This Agreement may be modified only upon written agreement of the Parties.

7. DUTIES LIMITED TO CALIFORNIA

7.1 This Settlement shall have no effect on Covered Products sold by Great Neck or Pep Boys outside the State of California.

8. ATTORNEY FEES

8.1 Except as specifically provided in Sections 3.1.3 and 5.3 above, each party shall bear its own costs and attorney fees.

9. GOVERNING LAW

9.1 The validity, construction and performance of this Agreement shall be governed by the laws of the State of California, without reference to any conflicts of law provisions of California law.

9.2 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Settlement are rendered inapplicable or are no longer required as a result of any such repeal or preemption, or rendered inapplicable by reason of law generally as to the Covered Products, then Great Neck may provide written notice to CAG of any asserted change in the law, and shall have no further obligations pursuant to this Settlement with respect to, and to the extent that, the Covered Products are so affected. Nothing in this Agreement shall be interpreted to relieve Great Neck from any obligation to comply with any pertinent state or federal law or regulation.

9.3 The Parties, including their counsel, have participated in the preparation of this Agreement and this Settlement is the result of the joint efforts of the Parties. This Agreement was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Agreement shall not be interpreted against any party as a result of the manner of the preparation of this Agreement. Each party to this Settlement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting party should not be employed in the interpretation of this Agreement and, in this regard, the Parties hereby waive California Civil Code § 1654.

10. EXECUTION AND COUNTERPARTS

10.1 This Agreement may be executed in counterparts and by means of portable document format (pdf), which taken together shall be deemed to constitute one document and have the same force and effect as original signatures.

11. NOTICES

11.1 Any notices under this Agreement shall be by personal delivery, overnight or two-day courier service, or Certified First Class Mail with Return Receipt Requested.

If to CAG:

Reuben Yeroushalmi
9100 Wilshire Boulevard, Suite 240W
Beverly Hills, CA 90212
(310) 623-1926

If to Great Neck :

Dan Jacoff
Great Neck Saw Manufacturers, Inc.
165 East 2nd Street
Mineola, NY 11501

With a copy to:

Robert L. Falk
MORRISON & FOERSTER LLP
425 Market St.
San Francisco, CA 94105-2482

12. AUTHORITY TO STIPULATE

12.1 Each signatory to this Settlement certifies that he or she is fully authorized by the party he or she represents to enter into this Agreement and to execute it on behalf of the party represented and legally to bind that party.

AGREED TO:

Date: 03/25, 2019

Signature Michael Marcus

Name: Michael Marcus

Title: Director

CONSUMER ADVOCACY GROUP,
INC.

AGREED TO:

Date: 3/20/19, 2019

Signature Daniel Jaffe

Name: Daniel Jaffe

Title: Pres

GREAT NECK SAW MANUFACTURERS, INC.