

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Parties

This Settlement Agreement is entered into by and between Peter Englander (“Englander”) and Do it Best Corp. (“Do it Best”), with Englander and Do it Best each individually referred to as a “Party” and collectively as the “Parties.” Englander is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. Do it Best employs ten or more individuals and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code § 25249.6 *et seq.* (“Proposition 65”).

#### 1.2 General Allegations

Englander alleges that Do it Best manufactures, sells, and distributes for sale in California, gloves with vinyl/PVC components containing di(2-ethylhexyl)phthalate (“DEHP”) and that it does so without first providing the health hazard warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm.

#### 1.3 Product Description

The products covered by this Settlement Agreement are defined as, and expressly limited to, Channellock brand gloves with vinyl/PVC components containing DEHP that are manufactured, sold or distributed for sale in California by Do it Best, including, but not limited to, the *Channellock Heavy Duty High Dexterity Gloves, #760546, VR21103, UPC #0 09326 71899 6* (the “Products”).

#### 1.4 Notice of Violation

On March 23, 2016, Englander served Do it Best, the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Do it Best violated Proposition 65 when it failed to warn its customers and consumers in California of the health risks associated with exposures to DEHP from the Products. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

### **1.5 No Admission**

Do it Best denies the material, factual, and legal allegations in the Notice and maintains that all of the products it sold and/or distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Do it Best of any fact, finding, conclusion, issue of law or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Do it Best of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Do it Best. This Section shall not, however, diminish or otherwise affect Do it Best's obligations, responsibilities and duties under this Settlement Agreement.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean September 15, 2016.

## **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

### **2.1 Reformulated Products**

Commencing on the Effective Date, and continuing thereafter, Do it Best agrees to only manufacture for sale, purchase for sale, import for sale, or distribute for sale in or into California: (a) "Reformulated Products," or (b) Products that are sold with a clear and reasonable health hazard warning, pursuant to Section 2.2 below. For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products containing no more than 1,000 parts per million (0.1%) DEHP in each accessible component (i.e., any component that may be touched or handled during a reasonably foreseeable use) when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance.

### **2.2 Clear and Reasonable Warnings**

Do it Best agrees that, as of September 15, 2016 and continuing thereafter, all Products it sells and/or distributes for sale in California which do not qualify as Reformulated Products will bear a clear and reasonable warning pursuant to this Section.

### **2.2.1 General Warning Requirements**

Do it Best agrees that 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 before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

### **2.2.2 Product Warnings**

For purposes of this Settlement Agreement, a clear and reasonable warning for the Products shall consist of a warning affixed to the packaging, label, tag, or directly to each Product sold in California by Do it Best that contains one of the following statements:

**WARNING:** This product contains DEHP, a chemical known to the State of California to cause 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.

For Products that Do it Best reasonably believes contain one or more additional Proposition 65-listed chemical(s), it may use the following warning statement:

**WARNING:** This product contains chemicals known to the state of California to cause cancer and birth defects or other reproductive harm.

## **2.3 Grace Period for Existing Inventory of Products**

Do it Best represents that, prior to entering this Settlement Agreement, it implemented a health hazard warning for the Products, which may include warning language other than that set forth in Section 2.2 above. Thus, the injunctive requirements of this Section 2 shall not apply to Products that are already in the stream of commerce as of the Effective Date, which Products are subject to the releases provided in Section 4.1.

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Civil Penalty Payment**

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Do it Best agrees to pay \$7,500 in civil penalties. Within ten days of the Effective Date, Do it Best shall make its civil penalty payment in a check made payable to "Peter Englander, Client Trust Account." The penalty payment will be allocated in accordance with California Health and Safety Code §§ 25249.12(c)(1) & (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty amount retained by Englander. Englander's counsel shall be responsible for delivering OEHHA's portion of the penalty payment made under this Settlement Agreement.

#### **3.2 Attorneys' Fees and Costs**

The parties acknowledge that Englander and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of this Settlement Agreement had been settled. Shortly after the other settlement terms had been finalized, the Parties reached an accord on the compensation due to Englander and his counsel under general contract principles and the private attorney general doctrine, codified at Code of Civil Procedure § 1021.5, for all work performed in this matter. Under these legal principles, within ten days of the Effective Date, Do it Best agrees to pay \$25,000 to Englander and his counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Do it Best's management and negotiating a settlement. Do it Best's payment shall be delivered in the form of a check payable to "The Chanler Group."

#### **3.3 Payment Address**

All payments required by this Settlement Agreement shall be delivered to:

The Chanler Group  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

#### **4. CLAIMS COVERED AND RELEASED**

##### **4.1 Englander's Release of Do it Best**

This Settlement Agreement is a full, final, and binding resolution between Englander, on his own behalf and not on behalf of the public, and Do it Best of any violation of Proposition 65 that was or could have been asserted by Englander, on his own behalf, on behalf of his past and current agents, representatives, attorneys, successors and assignees, against Do it Best, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Do it Best directly or indirectly distributes or sells the Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees ("Releasees"), based on the failure to warn about exposures to DEHP in Products manufactured, sold or distributed for sale in California by Do it Best before the Effective Date, as alleged in the Notice. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 by Do it Best and Releasees with regard to the alleged or actual failure to warn about exposures to DEHP from Products manufactured, sold or distributed for sale in California after the Effective Date.

The Parties further agree and understand that the releases provided under this Settlement Agreement shall not extend upstream to any entity that manufactured the Products, or supplied the Products to Do it Best, except to the extent that such entity's Products are/were sold or distributed for sale in California by Do it Best and/or its members. The Parties acknowledge and agree that the releases provided under this Settlement Agreement do extend to any such entity for those Products actually sold or distributed for sale in California by Do it Best.

In further consideration of the promises and agreements herein contained, Englander on his own behalf and not on behalf of the public, on behalf of his past and current agents, representatives, attorneys, successors and assignees hereby waives any and all rights he may have to institute or participate in, directly or indirectly, any form of legal action and releases all claims against Do it Best and Releasees including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses including, but not exclusively, investigation fees, expert fees and attorneys' fees arising under Proposition 65 with

respect to the alleged or actual failure to warn about exposures to DEHP in Products manufactured, distributed, sold or offered for sale by Do it Best, before the Effective Date.

The releases provided by Englander under this Settlement Agreement are provided solely on Englander's behalf and are not releases on behalf of the public.

#### **4.2 Do it Best's Release of Englander**

Do it Best, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against Englander and his attorneys and other representatives, for any and all actions taken or statements made by Englander and his attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

#### **5. SEVERABILITY**

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

#### **6. GOVERNING LAW**

The terms of 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 or otherwise rendered inapplicable by reason of law generally, or as to the Products, then Do it Best may provide written notice to Englander of any asserted change in the law and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

#### **7. NOTICE**

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:



For Do it Best:

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

with a copy to:

Levi Heath, Esq.  
Barnes & Thornburg LLP  
2029 Century Park E #300  
Los Angeles, CA 90067

For Englander:

Proposition 65 Coordinator  
The Chanler Group  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

Any Party may, from time to time, specify in writing to the other a change of address to which all notices and other communications shall be sent.

**8. COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

Englander and his attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

**10. MODIFICATION**

This Settlement Agreement may be modified only by written agreement of the Parties.

**11. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

Date: 9/21/2016

By: 

PETER ENGLANDER

**AGREED TO:**

Date: 9/13/16

By: 

Steve Markley  
Vice President of Merchandising  
DO IT BEST CORP.