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Reuben Yeroushalmi, State Bar No. 193981
Daniel D. Cho, State Bar No. 105409
Ben Yeroushalmi, State Bar No. 232540
YEROUSHALMI & ASSOCIATES
3700 Wilshire Blvd., Suite 480
Los Angeles, CA 90010
Telephone: (213) 382-3183
Facsimile: (213) 382-3430
Attorneys for Plaintiff
CONSUMER ADVOCACY GROUP, INC.

REC'D
NOV 20 2009
FILING WINDOW
FILED
LOS ANGELES SUPERIOR COURT
JAN 28 2010
JOHN A. CLARKE, CLERK
BY E.C. VILLA, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

CONSUMER ADVOCACY GROUP, INC., in)
the public interest,)

Plaintiff,)

v.)

UNITED EXCHANGE CORP. a CALIFORNIA)
CORPORATION, and DOES 1 - 50,)

Defendants.)

Case No. BC403123
~~PROPOSED~~ CONSENT JUDGMENT
Health & Safety Code §25249.5 et seq.

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ORIGINAL

1 **1. INTRODUCTION**

2 1.1 On December 3, 2008, plaintiff the Consumer Advocacy Group, Inc.
3 (“CAG”), a non-profit corporation, filed a complaint in Los Angeles County Superior Court,
4 entitled *Consumer Advocacy Group v. United Exchange Corp.* (the “Action”), for civil
5 penalties and injunctive relief pursuant to the provisions of Cal. Health & Safety Code
6 §25249.5 *et seq.* (“Proposition 65”). CAG’s Complaint named United Exchange, Inc.
7 (“United Exchange”) and unnamed “Does” as defendants.

8 1.2 United Exchange is a corporation that employs 10 or more persons. United Exchange
9 sells or has sold to California consumers, or has otherwise made available for distribution in
10 the State of California, various consumer products including but not limited to “Halsa ® Hair
11 Color, a Permanent Cream Hairdye,” (containing “Diaminotoluene (mixed)); Nue Pore
12 products such as Hairdye cream products known as “Nu-Pore® Hair Color, a Permanent
13 Cream Hairdye” (containing Diaminotoluene (mixed)), and Hair straightening products
14 known as “Nu-Pore® Straight & Simple Hair Straightening Treatment” (containing Bromate);
15 “Men’s Select 5 Minute Hair Color,” which are Hair coloring dye products (containing
16 Diaminotoluene (mixed)); and “Select Lash,” which are Eyelash glue products (containing
17 chemical ingredient known as “acrylonitrile”) hereinafter collectively referred to as “covered
18 products.” This Consent Judgment requires complete reformulation of the covered Products.

19 1.3 On or about June 27, 2007, On or about June 11, 2008, and On or about
20 April 14, 2009 CAG served United Exchange and the appropriate public enforcement
21 agencies with different notices alleging that United Exchange was in violation of Proposition
22 65. CAG’s notices and the Complaint in this Action allege that United Exchange exposes
23 people who handle the Products to different carcinogenic chemicals, Diaminotoluene (mixed),
24 Bromate and acrylonitrile (hereinafter referred to as “listed chemicals”) without providing
25 clear and reasonable warnings, in violation of Health & Safety Code §25249.6.

26 1.4 For purposes of this Consent Judgment only, the parties stipulate that
27 this Court has jurisdiction over the allegations of violations contained in CAG’s Complaint
28 and personal jurisdiction over United Exchange as to the acts alleged in CAG’s Complaint,

1 that venue is proper in the County of Los Angeles, and that this Court has jurisdiction to enter
2 this Consent Judgment as a full and final resolution of all claims which were or could have
3 been raised in the Complaint based on the facts alleged therein.

4 1.5 The parties enter into this Consent Judgment pursuant to a settlement of
5 certain disputed claims as alleged in the Complaint for the purpose of avoiding prolonged and
6 costly litigation.

7 1.6 Nothing in this Consent Judgment shall be construed as an admission
8 by the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall
9 compliance with the Consent Judgment constitute or be construed as an admission by the
10 Parties of any fact, conclusion of law, issue of law, or violation of law.

11 1.7 Nothing in this Consent Judgment shall prejudice, waive or impair any
12 right, remedy, argument or defense the Parties may have in this or any other or future legal
13 proceeding.

14 1.8 This Consent Judgment is the product of negotiation and compromise
15 and is accepted by the Parties, for purposes of settling, compromising and resolving issues
16 disputed in this action, including future compliance by United Exchange with Section 2 of this
17 Consent Judgment and shall not be used for any other purpose, or in any other matter.

18 **2. INJUNCTIVE RELIEF**

19 2.1 Within 60 days of entry of this Consent Judgment by the Court (the
20 "Compliance Date"), United Exchange shall reformulate the covered products
21 so that they would no longer contain the listed chemicals.

22 **3. SETTLEMENT PAYMENT**

23 3.1 Within 15 days of the approval of the Consent Judgment by the Court,
24 United Exchange shall pay total of sixty-three thousand five hundred dollars (\$63,500) to
25 CAG at the offices of Yeroushalmi & Associates. The payment shall be apportioned as
26 follows:

27 3.1.1 Monetary Payment in Lieu of Penalty: \$4,000 dollars shall be
28 paid to CAG in lieu of any penalty pursuant to Health and Safety Code

1 § 25249.7(b). CAG shall use such funds to continue its work protecting people
2 from exposures to toxic chemicals, including those listed under Proposition 65;
3 protecting the environment; improving human health; and supporting
4 environmentally sound practices. Payment shall be made to “Consumer
5 Advocacy Group, Inc.”

6 3.1.2 Attorneys’ Fees and Costs: 59,500 dollars of such payment shall
7 be used to reimburse CAG and its attorneys for their reasonable investigation
8 fees and costs, attorneys’ fees, and any other costs incurred as a result of
9 investigating, bringing this matter to United Exchange’ attention, litigating and
10 negotiating a settlement in the public interest. Payment shall be made to
11 “Yeroushalmi & Associates.”

12 **4. MODIFICATION OF CONSENT JUDGMENT**

13 4.1 This written Consent Judgment may be modified by written agreement
14 of CAG and United Exchange upon stipulation and Order of the Court, or after noticed
15 motion, and upon entry of a consent judgment by the Court thereon, or upon motion of CAG
16 or United Exchange as provided by law and upon entry of a modified consent judgment by the
17 Court.

18 **5. ENFORCEMENT OF CONSENT JUDGMENT**

19 5.1 Either party may, by motion or application for an order to show cause
20 before the Superior Court of the County of Los Angeles, consistent with the terms and
21 conditions set forth in paragraphs 9.2 and 9.3 of this Consent Judgment, enforce the terms and
22 conditions contained in this Consent Judgment. The prevailing party shall be entitled to its
23 reasonable attorneys’ fees and costs associated with such motion or application.

24 **6. APPLICATION OF CONSENT JUDGMENT**

25 6.1 This Consent Judgment shall apply to and be binding upon the parties
26 hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of
27 them.

28 **7. CLAIMS COVERED AND RELEASED**

1 7.1 This Consent Judgment is a full, final and binding resolution between
2 CAG and United Exchange of any violation of Proposition 65 that could have been asserted
3 against United Exchange in the Complaint based on United Exchange' failure to warn about
4 exposure to listed chemicals contained in the Products prior to the date of entry of this
5 judgment. Compliance with the terms of this Consent Judgment shall constitute compliance
6 with Proposition 65 with respect to exposures to lead by United Exchange, Inc., or by any
7 retail or distributor customer of United Exchange, Inc., with respect to Products purchased
8 from United Exchange. This release does not limit or effect the obligations of any party
9 created under this Consent Judgment.

10 8. SEVERABILITY

11 8.1 In the event that any of the provisions of this Consent Judgment are
12 held by a court to be unenforceable, the validity of the enforceable provisions shall not be
13 adversely affected.

14 9. NOTICE AND CURE

15 9.1 No action to enforce this Consent Judgment may be commenced, and
16 *(1) Diaminotoluene (mixed); (2) Bromate; (3) Acrylonitrile*
no notice of violation related to ~~lead~~ may be served or filed against United Exchange by CAG,
17 unless the party seeking enforcement or alleging violation notifies the other party of the
18 specific acts alleged to breach this Consent Judgment at least 90 days before serving or filing
19 any motion, action, or Notice of Violation. Any notice to United Exchange must contain (a)
20 the name of the product, (b) specific dates when the product was sold in California without
21 the warning specified in Section 2, and (c) any evidence or other support for the allegations in
22 the notice.

23 9.2 Within 30 days of receiving the notice described in Section 9.1, United
24 Exchange shall either (1) withdraw the product or (2) provide for the product the warning
25 described in Section 2 or (3) refute the information provided under Section 9.1. Should the
26 parties be unable to resolve the dispute, either party may seek relief under Section 5.

27 10. GOVERNING LAW

28 10.1 The terms of this Consent Judgment shall be governed by the laws of

1 the State of California.

2 **11. PROVISION OF NOTICE**

3 11.1 All notices required pursuant to this Consent Judgment and
4 correspondence shall be sent to the following:

5 For CAG:

6 Reuben Yeroushalmi
7 Yeroushalmi & Associates
8 3700 Wilshire Boulevard, Suite 480
9 Los Angeles, CA 90010

9 For United Exchange:

10 John P. Lee, Esq.
11 Law Offices of John P. Lee
12 3435 Wilshire Boulevard, Suite 2920
13 Los Angeles, CA 90010

13 **13. COURT APPROVAL**

14 13.1 If this Consent Judgment is not approved by the Court, it shall be of no
15 further force or effect.

16 13.2 CAG shall comply with Health and Safety Code section 25249.7(f) and
17 with Title 11 California Code of Regulations section 3003.

18 **14. EXECUTION AND COUNTERPARTS**

19 14.1 The stipulations to this Consent Judgment may be executed in
20 counterparts and by means of facsimile, which taken together shall be deemed to constitute
21 one document. A facsimile or pdf signature shall be as valid as the original.

22 **15. AUTHORIZATION**

23 15.1 Each signer of this Consent Judgment certifies that he or she is fully
24 authorized by the party he or she represents to stipulate to this Consent Judgment and to enter
25 into and execute the Consent Judgment on behalf of the party represented and legally bind
26 that party. The undersigned have read, understand and agree to all of the terms and conditions
27 of this Consent Judgment. Except as explicitly provided herein, each party is to bear its own
28 fees and costs.

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CONSUMER ADVOCACY GROUP, INC.

Lynn Marcus
Lynn Marcus
President

Dated: _____ 2009

UNITED EXCHANGE, INC.

Eugene Choi
Chief Executive Officer/ President

Dated: *July 20th* 2009

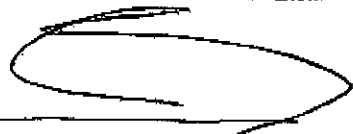
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1 I, John P. Lee, agree and approve as to form and content the following handwritten
 2 changes made to the [Propose] Consent Judgment on page 5, line 16:

- 3 • The word "lead" is changed to "(1) Diaminotoluene (mixed); (2) Bromate; (3)
 4 Acrylonitrile.

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 7 Dated November 18, 2009

LAW OFFICES OF JOHN P. LEE.

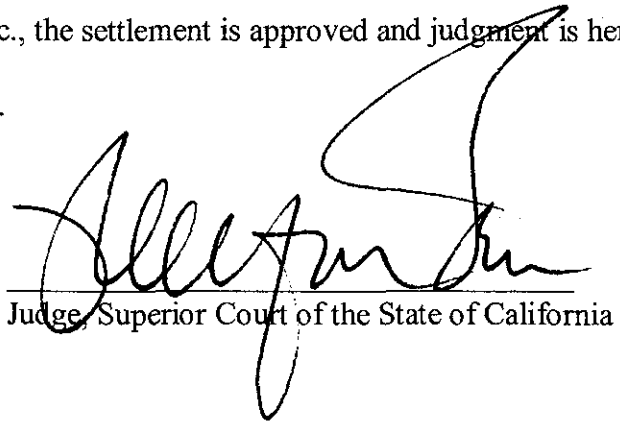
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 10 _____
 11 John P. Lee, Attorneys for
 12 Defendant United Exchange Corp.
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ORDER AND JUDGMENT

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Based upon the stipulated Consent Judgment between Consumer Advocacy Group, Inc. and United Exchange, Inc., the settlement is approved and judgment is hereby entered according to the terms herein.

Dated: 1-28-2010, 2009



Judge, Superior Court of the State of California