

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Parties

This Settlement Agreement is entered into by and between Peter Englander (“Englander”) and United Exchange Corporation (“UEC”), with Englander and UEC collectively referred to as the “Parties.” Englander is an individual residing in the California who seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products and commercial products. UEC employs ten or more persons 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 & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

#### 1.2 General Allegations

Englander has alleged that UEC has manufactured, distributed, and/or sold in the State of California bandages containing di(2-ethylhexyl)phthalate (“DEHP”) and di-n-butyl phthalate (“DBP”) without the requisite Proposition 65 warnings. DEHP and DBP are listed pursuant to Proposition 65 as chemicals known to the State of California to cause birth defects and other reproductive harm, and are collectively referred to herein as the “Listed Chemicals.”

#### 1.3 Product Description

The “Products” covered by this Settlement Agreement are defined as bandages containing DEHP and DBP, manufactured, imported, distributed, sold and/or offered for sale by UEC, directly or through others, to consumers in California including, but not limited to:

1. *Coralite Bandage with Non-Stick Pad Family Pack (#7 80707 90102 1);*
2. *Coralite Regular Adhesive Bandage 50ct;*
3. *Coralite Mixed Bandage 70ct;*
4. *Coralite Mixed Bandage 70ct –Display;*
5. *Coralite Mixed Bandage 100ct;*
6. *Coralite Anti-Bacterial Adhesive Bandage 30ct;*
7. *Family Care Mixed 100ct Deluxe Bandage 100ct;*

8. *Coralite Kid's Animal Kingdom Bandage 50ct;*
9. *Coralite Kid's Animal Kingdom Bandage 50ct-Display;*
10. *Coralite Waer Protection Bandages 30ct;*
11. *Coralite Adhesive Large Sheer Bandage 10ct;* and
12. *Quality Choice Bandages, QC 95436 (#6 35515 95436 6).*

**1.4 Notice of Violation**

On or about February 28, 2012, Englander served UEC and various public enforcement agencies with a document entitled “60-Day Notice of Violation” along with the requisite Certificate of Merit (“Notice”), that provided the recipients with notice of Englander’s allegation that UEC was in violation of Proposition 65 for failing to warn its customers and consumers in California that the Products expose users to the Listed Chemicals. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

**1.5 No Admission**

UEC denies the material factual and legal allegations contained in the Notice and maintains that all of the products it has manufactured, imported, distributed, and/or sold 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 UEC of any fact, finding, conclusion of law, issue of law or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by UEC of any fact, finding, conclusion of law, issue of law or violation of law, such being specifically denied by UEC. This section shall not, however, diminish or otherwise affect UEC’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 17 2012.

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## 2. INJUNCTIVE RELIEF

### 2.1 Product Warnings

Commencing on the Effective Date, UEC shall only sell, ship or offer for sale in California Products that are: (1) sold or shipped with one of the clear and reasonable warnings set forth in subsections 2.1(a) and (b); or (2) exempt pursuant to Section 2.2 as Reformulated Products as defined in Section 2.3.

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(s) the warning applies, so as to minimize the risk of consumer confusion.

#### (a) **Retail Store Sales.**

(i) **Product Labeling.** UEC may affix a warning to the packaging, labeling or directly on any Products that are not Reformulated Products sold in retail outlets in California that states:

**WARNING:** This product contains DEHP and DBP, phthalate chemicals known to the State of California to cause birth defects and other reproductive harm.

(ii) **Point-of-Sale Warnings.** Alternatively, UEC may provide warning signs in the form below to its retailers in California with instructions to post the signs in close proximity to the point of display of any such Products for the benefit of its retailers' customers.

**WARNING:** This product contains DEHP and DBP, phthalate chemicals known to the State of California to cause birth defects and other reproductive harm.

Where any such Products are sold in proximity to other like items or to those that do not require a warning (*e.g.*, Reformulated Products as defined in Section 2.3), the following statement must be used:

**WARNING:** The following product(s) contain DEHP and DBP, phthalate chemicals known to the State of California to cause birth defects and other reproductive harm:

[list product(s) for which warning is required]

(b) **Mail Order Catalog and Internet Sales.** In the event that UEC sells any Products that are not Reformulated Products via mail order catalog or the Internet to customers located in California after the Effective Date, UEC shall provide a warning for such Products sold via mail order catalog or the Internet to California residents pursuant to section 2.1(a)(i) above, in the mail order catalog or on the website. Warnings given in the mail order catalog or on the website shall identify the specific Product(s) to which the warning applies as further specified in Sections 2.1(b)(i) and (ii).

(i) **Mail Order Catalog Warning.** Any warning provided in a mail order catalog must be in the same type size or larger than the Product(s) description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Product(s):

**WARNING:** This product contains DEHP and DBP, phthalate chemicals known to the State of California to cause birth defects and other reproductive harm.

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product(s), UEC may utilize a designated symbol to cross reference the applicable warning and shall define the term “designated symbol” with the following language on the inside of the front or back cover of the catalog or on the same page as any order form for the Product(s):

**WARNING:** Certain products identified with this symbol ▼<sup>1</sup> and offered for sale in this catalog contain DEHP and DBP, phthalate chemicals known to the State of California to cause birth defects and other reproductive harm.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Product(s). On each page where the designated symbol

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<sup>1</sup>The symbol “▼” is to appear in the color red.

appears, UEC must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

(ii) **Internet Website Warning.** A warning may be given in conjunction with the sale of the Products via the Internet, provided it is displayed to a purchaser during the checkout process and appears either: (a) on the same web page on which a Product is displayed; (b) on the same web page as the order form for a Product; or (c) on the same page as the price for any Product(s).

## **2.2 Exceptions to Warning Requirements**

The warning requirements set forth in Section 2.1 shall not apply to Reformulated Products (as defined in Section 2.3 below).

## **2.3 Reformulation Standards**

As of the Effective Date, UEC shall use its best efforts to manufacture, produce, assemble, import, distribute, ship, sell or offer for sale in California only Reformulated Products. For purposes of this Section, “best efforts” includes, without limitation, complying with the vendor notification requirements contained in Section 2.4. Reformulated Products shall mean Products that contain no more than 1,000 parts per million, each, of DEHP and DBP when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C. By entering into this Settlement Agreement, the Parties do not intend to expand or restrict any obligations or responsibilities that may be imposed upon UEC by laws other than Proposition 65, nor do the Parties intend this Settlement Agreement to affect any defenses available to UEC under laws other than Proposition 65.

## **2.4 Vendor Notification Requirement**

To the extent it has not already done so, no more than thirty (30) days after the Effective Date, UEC shall provide the reformulation standards specified in section 2.3 for Reformulated Products to any and all of its vendors of Products that will be sold or offered for sale to California consumers, and shall instruct each vendor to use its best efforts to provide only Reformulated Products, as defined in Section 2.3.

### 3. MONETARY PAYMENTS

#### 3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)

UEC shall pay \$40,000 under this section, as follows:

**3.1.1 Initial Civil Penalty.** UEC shall pay an initial civil penalty of \$10,000 on the date provided in Section 3.3.1.1. The civil penalties shall be apportioned in accordance with California Health & Safety Code § 25192, with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Englander, as provided by California Health & Safety Code § 25249.12(d).

**3.1.2 Final Civil Penalty.** UEC shall pay a final civil penalty of \$25,000 on the dates provided in Section 3.3.1.2. The final civil penalty shall be waived in its entirety, however, if an Officer of UEC provides Englander with written certification that, as of the Effective Date and continuing into the future, UEC has met the reformulation standard specified in Section 2.3 above such that all Products manufactured, produced, assembled, imported, distributed, shipped, sold or offered for sale in California are Reformulated Products, as defined in Section 2.3 above. Englander must receive any such certification on or before April 1, 2013, and time is of the essence. The civil penalties shall be apportioned in accordance with California Health & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the penalty remitted to Englander, as provided by California Health & Safety Code § 25249.12(d).

**3.1.3 Payment in Lieu of Civil Penalty.** UEC shall pay the sum of \$5,000 to Silent Spring Institute ("Silent Spring"), a not-for-profit institution, in lieu of further civil fines pursuant to California Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3202(b). Silent Spring will use such funds to continue its work identifying the links between exposure to environmental chemicals including DEHP, DBP and other phthalates such as butyl benzyl phthalate ("BBP") and reproductive and developmental harm, as well as educating the public about such potential exposures. Silent Spring will conduct exposure- and

risk-based prioritization of chemicals listed under Proposition 65, or chemicals OEHHA has identified as candidates for listing, in order to identify exposures of potential public health significance. Silent Spring may also use a portion of such funds to monitor compliance with the reformulation requirements of this and other similar settlement agreements addressing Proposition 65-listed chemical exposures, as well as to conduct additional exposure measurements that evaluate the levels of chemical exposures to users of products that contain DEHP, DBP and BBP.

### **3.2 Reimbursement of Englander's Fees and Costs**

The Parties reached an accord on the compensation due to Englander and his counsel under the private attorney general doctrine and principles of contract law after Englander and his counsel offered to adjudicate fees as an ancillary matter. Under these legal principles, UEC shall reimburse Englander's counsel for fees and costs incurred as a result of investigating, bringing this matter to its attention, and negotiating a settlement. UEC shall pay Englander and his counsel \$44,800 for all attorneys' fees, expert and investigation fees, and related costs, including the fees and costs associated with negotiating, drafting, and implementing the provisions of this Settlement Agreement.

### **3.3 Payment Procedures**

#### **3.3.1 Payment Timing.**

**3.3.1.1 Initial Payments.** The initial civil penalty payment required by Section 3.1.1, the payment in lieu of civil penalties required by 3.1.3, and the payment required by Section 3.2 shall be delivered on or before September 24, 2012 to The Chanler Group in three checks, made payable as follows:

- (a) one check to "The Chanler Group in Trust for OEHHA" in the amount of \$7,500;
- (b) a second check to "The Chanler Group in Trust for Peter Englander" in the amount of \$2,500;

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(c) a third check to “The Chanler Group in Trust for Silent Spring Institute” in the amount of \$5,000; and

(d) a fourth check to “The Chanler Group” in the amount of \$44,800.

**3.3.1.2 Final Payments.** If the final civil penalty of \$25,000

referenced in Section 3.1.2 above is not waived, payments shall be delivered on or before April 15, 2013 to The Chanler Group in two checks, made payable as follows:

(a) one check to “The Chanler Group in Trust for OEHHA” in the amount of \$18,750; and

(b) a second check to “The Chanler Group in Trust for Peter Englander ” in the amount of \$6,250.

**3.3.2 Issuance of 1099 Forms.** After the settlement funds have been transmitted to Englander’s counsel, UEC shall issue separate 1099 forms, as follows:

(a) one 1099 form to the “Office of Environmental Health Hazard Assessment,” P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount paid pursuant to Section 3.3.1.1(a) and, if applicable, Section 3.3.1.2(a) above;

(b) a second 1099 form to “Peter Englander” in the amount paid pursuant to Section 3.3.1.1(b) above and, if applicable, Section 3.3.1.2(b) above, whose address and tax identification number shall be furnished upon request;

(c) a third 1099 form to “Silent Spring Institute,” 29 Crafts Street, Newton, Massachusetts 02458, whose information shall be provided by email or other means within five (5) calendar days of final execution of this agreement, in the amount paid pursuant to Section 3.3.1.1(c) above; and

(d) a fourth 1099 to The Chanler Group (EIN: 94-3171522) in the amount paid pursuant to Section 3.3.1.1(d) above.

**3.3.3 Payment Address.** All payments and tax documents required by this

Section shall be delivered to Englander’s counsel at the following address:

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

**4. RELEASE OF ALL CLAIMS**

**4.1 Englander’s Release of UEC**

In consideration of the promises and agreements herein contained, Englander on behalf of himself, his 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 that he may have against UEC and each entity to whom UEC directly or indirectly distributes or sells the Products including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees (“Releasees”) including, without limitation, all actions, causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses, including, but not limited to, investigation fees, expert fees and attorneys’ fees (but exclusive of fees and costs on appeal, if any) arising under Proposition 65 with respect to the Listed Chemicals in the Products manufactured, distributed, sold and/or offered for sale by UEC before the Effective Date.

Englander also, in his individual capacity only, and *not* in a representative capacity, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of Englander of any nature, character or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to the Listed Chemicals in the Products manufactured, distributed or sold by UEC prior to the Effective Date.

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#### **4.2 UEC's Release of Englander**

UEC waives any and all claims against Englander, his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Englander and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 with respect to the Products.

#### **5. POST EXECUTION CONVERSION TO CONSENT JUDGMENT**

Within twelve months of the execution of this Settlement Agreement, UEC may send Englander a written request to draft and file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment, and to seek court approval of this Settlement Agreement in the form of a consent judgment pursuant to Health & Safety Code § 25249.7, or as may be otherwise allowed by law. If requested, Englander agrees to reasonably cooperate with UEC and the Parties shall use their best efforts to obtain approval of the settlement by a superior court in California and an entry of judgment in accordance with the terms set forth herein. Pursuant to Code of Civil Procedure §§ 1021 and 1021.5, UEC will reimburse Englander and his counsel for the reasonable fees and costs incurred in drafting and filing the complaint, converting this Settlement Agreement into a proposed consent judgment and seeking judicial approval of the settlement, in an amount not to exceed \$12,500, exclusive of fees and costs that may be incurred on appeal. Within ten days after its receipt of monthly invoices from Englander for work performed under this Section, UEC will remit payment to The Chanler Group, at the address set forth in Section 3.3.3.

#### **6. SEVERABILITY**

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

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**7. 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 is otherwise rendered inapplicable by reason of law generally, or as to the Products DEHP and/or DBP, then UEC shall provide written notice to Englander of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

**8. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be sent by: (i) personal delivery; (ii) first-class, registered or certified mail, return receipt requested; or (iii) overnight courier on any party by the other party at the following addresses:

For UEC:

Eugene Choi, President  
United Exchange Corp.  
17211 Valley View Avenue  
Cerritos, CA 90703

with a copy to:

John P. Lee, Esq.  
Kim Shapiro Park & Lee, APLC  
3435 Wilshire Boulevard, Suite 2050  
Los Angeles, California 90010

For Englander:

Proposition 65 Coordinator  
The Chanler Group  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

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

**9. 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.

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

Englander agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

**11. MODIFICATION**

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

**12. AUTHORIZATION**

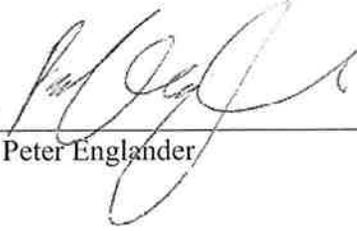
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: September 17, 2012

Date: \_\_\_\_\_

By:   
Peter Englander

By: \_\_\_\_\_  
Eugene Choi, President  
United Exchange Corporation

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

Englander agrees to comply with the reporting form requirements referenced in Health & Safety Code § 25249.7(f).

**11. MODIFICATION**

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

**12. 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:**

**AGREED TO:**

Date: \_\_\_\_\_

Date: Sept. 19, 2012

By: \_\_\_\_\_  
Peter Englander

By: Eugene Choi  
Eugene Choi, President  
United Exchange Corporation