

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between plaintiff Peter Englander (“Englander”) and U Brands, LLC (“U Brands”), with Englander and U Brands 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 in consumer products. U Brands 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 section 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Englander alleges that U Brands sells, and distributes for sale in California, brass handles containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Englander alleges that U Brands failed to provide individuals exposed to lead from its brass handles with a warning regarding the health hazards associated with exposures to lead, as required by Proposition 65.

### 1.3 Product Description

For purposes of this Settlement Agreement “Product” is defined as the *Sugar Paper 7 Piece Wax Seal Set, #081 08 0558 R00, IDC-000279-01-065-0436, UPC #8 12296 02890 9*.

### 1.4 Notice of Violation

On August 1, 2017, Englander served U Brands, the California Attorney General, and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that U Brands violated Proposition 65 when it failed to warn its customers and consumers in California of the health risks associated with exposures to lead from the

consumers in California of the health risks associated with exposures to lead from the Product. No public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

### **1.5 No Admission**

U Brands denies the material, factual, and legal allegations in the Notice, and maintains that all of the products that it sold, and distributed for sale in California, including the Product, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by U Brands 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 U Brands of any fact, finding, conclusion, issue of law, or violation of law, the same being denied by U Brands. This Section shall not, however, diminish or otherwise affect U Brands' obligations, responsibilities, and duties under this Settlement Agreement.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean November 30, 2017.

## **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

### **2.1 Commitment to Provide Reformulated Products**

Commencing one month from the Effective Date and continuing thereafter, U Brands shall only purchase for sale or manufacture for sale in California "Reformulated Products" as defined by Section 2.2 or provide a warning as set forth in Section 2.3.


### **2.2 Reformulated Products Defined**

For purposes of this Settlement Agreement, Reformulated Products are defined as Products that (a) contain lead in concentrations of no more than 90 parts per million ("ppm") (0.09%) in any component of the hot sauce packaging analyzed pursuant to U.S. Environmental Protection Agency ("EPA") testing methodologies 3050B and 6010B; and (b) yield a result of no more than 1.0 micrograms of lead on any surface sampled and


analyzed pursuant to the NIOSH 9100 testing protocol. In addition to the testing methodologies provided above, the Parties may use equivalent methodologies utilized by state or federal agencies for the purpose of determining lead content in a solid substance to analyze a Product for the purpose of determining whether it qualifies as a Reformulated Product under this Settlement Agreement.

### **2.3 Product Warnings**

Commencing on the Effective Date, U Brands shall provide clear and reasonable warnings for all Products that do not qualify as Reformulated Products. Warnings shall comply with the regulatory safe harbor warnings found at 27 Cal. Code Regs. §§ 25602 and 25603 (effective August 30, 2018), regardless of the date of manufacture. U Brands shall not utilize any warning method or language unless set forth in §§ 25602 and 25603. Specifically, U Brands shall not use or implement alternative warnings that may be permitted under § 25601. By way of example, but not limitation, a clear and reasonable warnings allowed under the Settlement Agreement, shall consist of a warning affixed to or printed on the packaging, label, tag, or directly to a Product sold in California and containing the following statement:

 **WARNING:** This product can expose you to chemicals including lead, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

or

 **WARNING** Reproductive Harm – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

## **3. MONETARY SETTLEMENT TERMS**

### **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

In settlement of all the claims referred to in this Settlement Agreement, U Brands shall pay a total of \$3,500 in civil penalties in accordance with this Section. Each civil penalty payment will be allocated in accordance with Health and Safety Code §

25249.12(c)(1) & (d), with seventy-five percent (75%) of the penalty remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining twenty-five percent (25%) of the penalty retained by Englander.

U Brands shall deliver its payment on or before November 30, 2017 in two checks for the following amounts made payable to: (a) "OEHHA" in the amount of \$2,625; and (b) "Peter Englander, Client Trust Account" in the amount of \$875.

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

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 section 1021.5 for all work performed in this matter. U Brands agrees to pay \$19,500 for all fees and costs incurred investigating, bringing this matter to the attention of U Brands' management, and negotiating a settlement that provides a significant public benefit. U Brands' payment shall be delivered in a single check made payable to "The Chanler Group" on or before November 30, 2017.

### **3.3 Payment Address**

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

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

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

### **4.1 Englander's Release of U Brands**

This Settlement Agreement is a full, final, and binding resolution between Englander and U Brands, of any violation of Proposition 65 that was or could have been asserted by Englander, on his own behalf, or on behalf of his past and current agents, representatives, attorneys, successors, and assigns, against U Brands, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom U Brands directly or indirectly distributes or sells

Products, including, but not limited, to its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, and the manufacturers, importers and suppliers of the Products (“Releasees”), based on the failure to warn about exposures to lead in Products manufactured, sold or distributed for sale in California by U Brands before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, Englander on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and assignees, waives any and all rights that he may have to institute or participate in, directly or indirectly, any form of legal action, and releases all claims against U Brands, and Releasees including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, investigation fees, expert fees, and attorneys’ fees for claims arising under Proposition 65 with respect to the alleged or actual failure to warn about exposures to lead in Products manufactured, distributed, sold or offered for sale by U Brands, before the Effective Date, as alleged in the Notice.

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 in California.

#### **4.2 U Brands’ Release of Englander**

U Brands, 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, 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 U Brands 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 U Brands:

Mike Cerillo  
CEO  
U Brands, LLC  
27121 Calle Arroyo, Suite 2220  
San Juan Capistrano, CA 92675

With a copy to:

Jeffrey Margulies  
Norton Rose Fulbright US LLP  
555 South Flower Street, Forty-First Floor  
Los Angeles, California 90071  
jeff.margulies@nortonrosefulbright.com

For Englander:

The Chanler Group  
Attn: Prop 65 Coordinator  
2560 Ninth Street, 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 section 25249.7(f).

**10. MODIFICATION**

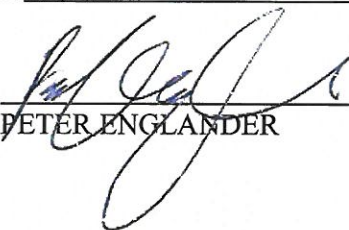
This Settlement Agreement may be modified only by written agreement of the Parties.

**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.

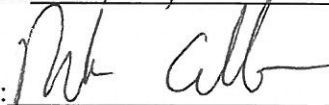
**AGREED TO:**

Date: 11/9/2017

By:   
PETER ENGLANDER

**AGREED TO:**

Date: 11/10/17

By:   
MIKE CERILLO, CEO  
U BRANDS, LLC