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Laralei Paras, State Bar No. 203319
Josh Voorhees, State Bar No. 241436
THE CHANLER GROUP
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Parker Plaza, Suite 214
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Attorneys for Plaintiff
RUSSELL BRIMER

ENDORSED
FILED
ALAMEDA COUNTY

JUN 30 2014

CLERK OF THE SUPERIOR COURT
By YOLANDA ESTRADA Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,

Plaintiff,

v.

HOBBY LOBBY STORES, INC.; and DOES
1-150, inclusive,

Defendants.

Lead Case No. RG13685838

(Consolidated with Case No. RG13672016)

**[PROPOSED] JUDGMENT
PURSUANT TO TERMS OF
PROPOSITION 65 SETTLEMENT
AND CONSENT JUDGMENT**

Date: June 30, 2014
Time: 2:30 p.m.
Dept. 17
Judge: Hon. George C. Hernandez, Jr.

Reservation No. 1512268

1 Plaintiff, Russell Brimer, and defendant, Hobby Lobby Stores, Inc., having agreed
2 through their respective counsel that Judgment be entered pursuant to the terms of their
3 settlement agreement in the form of a Consent Judgment, and following this Court's issuance of
4 an Order approving this Proposition 65 settlement and Consent Judgment,

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health and
6 Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered in
7 accordance with the terms of the Consent Judgment attached hereto as **Exhibit 1**. By stipulation
8 of the parties, the Court will retain jurisdiction to enforce the settlement under Code of Civil
9 Procedure § 664.6.

10 **IT IS SO ORDERED.**

11
12 Dated: JUN 30 2014

GEORGE C. HERNANDEZ, JR.

JUDGE OF THE SUPERIOR COURT

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EXHIBIT 1

1 Laralei S. Paras, State Bar No. 203319
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9 Attorneys for Plaintiff
10 RUSSELL BRIMER

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ALAMEDA - UNLIMITED CIVIL JURISDICTION

13 RUSSELL BRIMER,
14 Plaintiff,
15 v.
16 HOBBY LOBBY STORES, INC.; et al.
17 Defendants.

Case No. RG 13-685838

Assigned for All Purposes to
Judge George C. Hernandez, Jr.,
Department 25

**[PROPOSED] CONSENT JUDGMENT AS
TO HOBBY LOBBY STORES, INC.**

(Health & Safety Code § 25249.6 et seq.)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Russell Brimer (“Brimer”)
4 and Hobby Lobby Stores, Inc. (“Hobby Lobby”), with Brimer and Hobby Lobby collectively
5 referred to as the “Parties.”

6 **1.2 Russell Brimer**

7 Brimer is an individual residing in the State of California who seeks to promote awareness of
8 exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous
9 substances contained in consumer and commercial products.

10 **1.3 Hobby Lobby**

11 Hobby Lobby employs ten or more persons and is a person in the course of doing business
12 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
13 Safety Code § 25249.6, *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 1.4.1 Brimer alleges that Hobby Lobby manufactured, imported, sold and/or
16 distributed for sale in the State of California, ottomans with foam padding containing tris(1,3-
17 dichloro-2-propyl) phosphate (“TDCPP”) without the requisite Proposition 65 health hazard
18 warnings. Pursuant to Proposition 65, on October 28, 2011, California identified and listed TDCPP
19 as a chemical known to cause cancer. TDCPP became subject to the “clear and reasonable warning”
20 requirements of Proposition 65 one year later on October 28, 2012. Cal. Code Regs., tit. 27,
21 § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b). Brimer alleges that TDCPP escapes
22 from foam padding, leading to human exposures.

23 1.4.2 Brimer alleges that Hobby Lobby manufactured, imported, sold and/or
24 distributed for sale in the State of California, vinyl/PVC scrapbook albums and storage bins
25 containing di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 warnings.
26 DEHP is on the Proposition 65 list as known to the State of California to cause birth defects and
27 other reproductive harm. Brimer alleges that DEHP escapes from vinyl/PVC, leading to human
28 exposures.

1 **1.5 Product Description**

2 The categories of products that are covered by this Consent Judgment as to the Hobby Lobby
3 (collectively, the “Products”) are:

- 4 (a) Upholstered ottomans with foam padding or material (“Ottomans”);
- 5 (b) Vinyl/PVC¹ Scrapbook Albums (“Albums”); and
- 6 (c) Vinyl/PVC Storage Boxes/Bins (“Storage Bins”).

7 **1.6 Notices of Violation**

8 On December 20, 2012, Brimer served Hobby Lobby and requisite public enforcement
9 agencies with a document entitled “60-Day Notice of Violation” (“December 20, 2012 Notice”) that
10 provided the recipients with notice of alleged violations of Proposition 65 based on the alleged
11 failure to warn customers, consumers and users in the State of California that the Albums expose
12 users to DEHP.

13 On March 18, 2013, Brimer served Hobby Lobby and requisite public enforcement agencies
14 with a “60-Day Notice of Violation” (“March 18, 2013 Notice”) that provided the recipients with
15 notice of alleged violations of Proposition 65 based on the alleged failure to warn customers,
16 consumers and users in the State of California that the Ottomans expose users to TDCPP. No public
17 enforcer has commenced or is diligently prosecuting the allegations set forth in the March 18, 2013
18 Notice.

19 On June 10, 2013 Brimer served Hobby Lobby and requisite public enforcement agencies
20 with a “60-Day Notice of Violation” (“June 10, 2013 Notice”) that provided the recipients with
21 notice of alleged violations of Proposition 65 based on the alleged failure to warn customers,
22 consumers and users in the State of California that the Storage Bins expose users to DEHP. No
23 public enforcer has commenced or is diligently prosecuting the allegations set forth in the June 10,
24 2013 Notice.

25
26
27 _____
28 ¹The term “vinyl” is being used interchangeably with the term “PVC” for purposes of this
Consent Judgment.

1 The December 20, 2012 Notice, March 18, 2013 Notice, and June 10, 2013 Notice are
2 collectively referred to herein as the "Notices." No public enforcer has diligently prosecuted the
3 allegations set forth in the Notices.

4 **1.7 Complaint**

5 On March 19, 2013, Brimer filed a Complaint in the Superior Court in and for the County of
6 Alameda against Hobby Lobby and Does 1 through 150, *Russell Brimer v. Hobby Lobby Stores, Inc.,*
7 *et al.*, Case No. RG 13-672016, alleging violations of Proposition 65, based in part on the alleged
8 unwarned exposures to DEHP contained in Albums. On August 21, 2013, Brimer filed a First
9 Amended Complaint in this matter, alleging violations of Proposition 65, based in part on the alleged
10 unwarned exposures to DEHP contained in Albums and Storage Bins.

11 On July 1, 2013, Brimer filed a Complaint in the Superior Court in and for the County of
12 Alameda against Hobby Lobby and Does 1 through 150, *Russell Brimer v. Hobby Lobby Stores, Inc.,*
13 *et al.*, Case No. RG 13-685838, alleging violations of Proposition 65, based in part on the alleged
14 unwarned exposures to TDCPP contained in Ottomans.

15 To facilitate the administration of justice, *Russell Brimer v. Hobby Lobby Stores, Inc., et al.*,
16 Case No. RG 13-672016 shall be deemed to have been consolidated with *Russell Brimer v. Hobby*
17 *Lobby Stores, Inc., et al.*, Case No. RG 13-685838 upon entry of this Consent Judgment by the
18 Court, *nunc pro tunc*, so that Judgment pursuant to the terms of this Consent Judgment shall apply to
19 the allegations and operative pleadings in both matters.

20 **1.8 No Admission**

21 Hobby Lobby denies the material factual and legal allegations contained in Brimer's Notices
22 and complaints and maintains that all products that it has manufactured, imported, distributed, and/or
23 sold in the State of California, including the Products, have been and are in compliance with all laws.
24 Nothing in this Consent Judgment shall be construed as an admission by Hobby Lobby of any fact,
25 finding, conclusion, issue of law, or violation of law, nor shall compliance with this Consent
26 Judgment constitute or be construed as an admission by Hobby Lobby of any fact, finding,
27 conclusion, issue of law, or violation of law. However, this Section shall not diminish or otherwise
28 affect Hobby Lobby's obligations, responsibilities, and duties under this Consent Judgment.

1 **1.9 Consent to Jurisdiction**

2 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
3 jurisdiction over Hobby Lobby as to the allegations contained in the complaints referenced in
4 Section 1.7, that venue is proper in the County of Alameda, and that this Court has jurisdiction to
5 enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65 and California
6 Code of Civil Procedure § 664.6.

7 **2. DEFINITIONS**

8 **2.1 Detectable**

9 “Detectable” shall mean containing more than 25 parts per million (“ppm”) (the equivalent of
10 .0025%) of TDCPP or tris(2-chloroethyl) phosphate (“TCEP”) in any material, component, or
11 constituent of a subject product.

12 **2.2 Effective Date**

13 “Effective Date” shall mean December 31, 2013.

14 **2.3 Reformulation Standard**

15 The “Reformulation Standard” shall mean:

16 (a) For Ottomans, containing no more than 25 ppm for each of TDCPP and TCEP
17 when analyzed by a laboratory accredited by the State of California, a federal agency, American
18 Association for Lab Accreditation (A2LA), ANSI-ASQ National Accreditation Board (ANAB) –
19 ACLASS brand (an ANAB company), International Accreditation Service, Inc. (IAS), Laboratory
20 Accreditation Bureau (L-A-B), Perry Johnson Laboratory Accreditation, Inc. (PJLA), International
21 Laboratory Accreditation Cooperation (ILAC), or similar nationally recognized accrediting
22 organization now or in the future (such laboratory referred hereinafter as an “Accredited Lab”)
23 pursuant to EPA testing methodologies 3545 and 8270C, or equivalent methodologies utilized by
24 federal or state agencies to determine the presence, and measure the quantity, of TDCPP and/or
25 TCEP in a solid substance.

26 (b) For Albums and Storage Bins, containing no more than 0.1 percent (1,000
27 parts per million) DEHP, butyl benzyl phthalate (“BBP”) or Di-n-butyl phthalate (“DBP”) in each
28 accessible component when analyzed by an Accredited Lab pursuant to U.S. Environmental

1 Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by
2 federal or state agencies for the purpose of determining DEHP, BBP and/or DBP content in a solid
3 substance.

4 **2.4 “Reformulated Products” shall mean:**

5 (a) Ottomans containing no Detectable amount of TDCPP or TCEP; and

6 (b) Albums, Storage Bins and vinyl components, containing no more than 0.1
7 percent (1,000 parts per million) DEHP, BBP, DBP in each accessible component when analyzed
8 by an Accredited Lab pursuant to U.S. Environmental Protection Agency testing methodologies
9 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of
10 determining DEHP content in a solid substance.

11 **3. INJUNCTIVE RELIEF: REFORMULATION**

12 **3.1 Reformulation Commitment**

13 3.1.1 Commencing on March 31, 2014, Hobby Lobby shall not manufacture or
14 import for distribution or sale to customers in California, or cause to be manufactured or imported
15 for distribution or sale to customers in California, any Ottomans that are not Reformulated Products.

16 3.1.2 Commencing on June 30, 2014, Hobby Lobby shall not manufacture or import
17 for distribution or sale to customers in California, or cause to be manufactured or imported for
18 distribution or sale to customers in California, any Albums or Storage Bins that are not Reformulated
19 Products.

20 3.1.3 Notwithstanding Section 3.1.2²⁴² above, Hobby Lobby may purchase, import,
21 manufacture, sell, or ship for sale in California Albums and Storage Bins that are not Reformulated
22 Products provided that the following strict compliance guidelines have been followed: (i) Hobby
23 Lobby contracted with each and every supplier of Albums, Storage Bins, and accessible vinyl
24 components of Albums and/or Storage Bins, to provide only accessible vinyl components compliant
25 with the Reformulation Standard; (ii) prior to distribution in the State of California or sale to a
26 customer in California, Hobby Lobby contracted with an Accredited Lab to analyze randomly
27 selected Albums and Storage Bins of each design at initial manufacturing and then at least once
28 annually thereafter of finished Albums and Storage Bins to determine the DEHP, DBP and BBP

1 content in the accessible vinyl components pursuant to U.S. Environmental Protection Agency
2 testing methodologies 3580A and 8270C or equivalent method thereof utilized by federal or state
3 agencies; and (iii) Hobby Lobby complied with the warning requirements set forth in Section 3.4
4 below. Within 60 days of a written request, Hobby Lobby shall produce to Brimer records
5 demonstrating its adherence to the strict compliance guidelines set forth hereinabove. This
6 obligation to produce records upon request to Brimer demonstrating compliance with the guidelines
7 set forth above shall terminate 18 months from the Effective Date.

8 **3.2 Vendor Notification/Certification**

9 On or before the Effective Date, Hobby Lobby shall provide written notice to all of its then-
10 current vendors of the Products that will be sold or offered for sale in California, or to customers in
11 California, instructing each such vendor to use reasonable efforts to provide only Reformulated
12 Products for potential sale in California. In addressing the obligation set forth in the preceding
13 sentence, Hobby Lobby shall not employ statements that will encourage a vendor to delay
14 compliance with the Reformulation Standard. Hobby Lobby shall subsequently obtain written
15 certifications, no later than April 1, 2014, from such vendors, and any newly engaged vendors, that
16 Products manufactured by such vendors are in compliance with the applicable Reformulation
17 Standards. Certifications shall be held by Hobby Lobby for at least two years after their receipt and
18 shall be made available to Brimer upon request.

19 **3.3 Current Inventory**

20 Any Ottomans in, or manufactured and en route to, Hobby Lobby's inventory as of or after
21 December 31, 2013, that do not qualify as Reformulated Products and that Hobby Lobby has reason
22 to believe may be sold or distributed for sale in California, shall contain a clear and reasonable
23 warning as set forth in Section 3.4 below unless Section 3.5 applies.

24 **3.4 Product Warnings**

25 Any warning provided under Sections 3.1.3 and 3.3 above shall be affixed to the packaging,
26 labeling, or directly on each Product. Each warning shall be prominently placed with such
27 conspicuousness as compared with other words, statements, designs, or devices as to render it likely
28 to be read and understood by an ordinary individual under customary conditions before purchase.

1 Each warning shall be provided in a manner such that the consumer or user understands to which
2 specific Product the warning applies, so as to minimize the risk of consumer confusion.

3 3.4.1 Product Labeling

4 A warning provided pursuant to this Consent Judgment shall state, as appropriate:

5 **WARNING:** This product contains TDCPP, a flame
6 retardant chemical known to the State
of California to cause cancer.

7 or

8 **WARNING:** This product contains DEHP, a
9 phthalate chemical known to the State
10 of California to cause birth defects and
other reproductive harm.

11 or

12 **WARNING:** This product contains DEHP, a
13 phthalate chemical known to the
State of California to cause birth
14 defects and other reproductive harm,
and TDCPP, a flame retardant
chemical known to the State of
California to cause cancer.²

15 Attached as Exhibit B are template warnings developed by Brimer that are deemed to be clear and
16 reasonable for purposes of this Consent Judgment.³ Provided that the other requirements set forth in
17 this Section are addressed, including as to the required warning statement and method of
18 transmission as set forth above, Hobby Lobby remains free not to utilize the template warnings.

19 _____
20 ² The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be
21 used if Hobby Lobby had begun to use it, prior to the Effective Date. If Hobby Lobby seeks to use
22 alternative warning language, other than the language specified above or the safe harbor warning
23 specified in 27 CCR § 25603.2, or seeks to use an alternate method of transmission of the warning,
24 it must obtain the Court's approval of its proposed alternative and provide all Parties and the Office
of the Attorney General for the State of California with timely notice and the opportunity to
comment or object before the Court acts on the request. The Parties agree that the following
warning language shall not be deemed to meet the requirements of 27 CCR § 25601, et seq. and
shall not be used pursuant to this Consent Judgment: (a) "cancer or birth defects or other
reproductive harm"; and (b) "cancer, birth defects or other reproductive harm."

25 ³ The characteristics of the template warnings are as follows: (a) a yellow hang tag
26 measuring 3" x 5", with no less than 12 point font, with the warning language printed on each side
of the hang tag, which shall be affixed directly to the product; (b) a yellow warning sign measuring
27 8.5" x. 11", with no less that 32 point font, with the warning language printed on each side, which
shall be affixed directly to the product; and (c) for products sold at retail in a box or packaging, a
28 yellow warning sticker measuring 3" x 3", with no less than 12 point font, which shall be affixed
directly to the product packaging.

1 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment
2 (“OEHHA”), 25% of the penalty remitted to “The Chanler Group in Trust for Russell Brimer.” Each
3 penalty payment shall be delivered to the addresses listed in Section 4.4 below. Hobby Lobby shall
4 be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing
5 under this Section that are not received within two business days of the due date.

6 4.1.1 Initial Civil Penalty. On or before the Effective Date, Hobby Lobby shall
7 make an initial civil penalty payment in the amount identified on Exhibit A.

8 4.1.2 Second Civil Penalty. On or before February 15, 2014, Hobby Lobby shall
9 make a second civil penalty payment in the amount identified on Exhibit A. The amount of the
10 second penalty may be reduced according to any penalty waiver for which Hobby Lobby is eligible
11 under Section 4.1.4(i) below.

12 4.1.3 Third Civil Penalty. On or before November 30, 2014, Hobby Lobby shall
13 make a third civil penalty payment in the amount identified on Exhibit A. The amount of the third
14 penalty may be reduced according to any penalty waiver for which Hobby Lobby is eligible under
15 Sections 4.1.4(ii), 4.1.4(iii) and 4.1.4(iv), below.

16 4.1.4 Reductions to Civil Penalty Payment Amounts. Hobby Lobby may reduce the
17 amount of the second and/or third civil penalty payments identified on Exhibit A by providing
18 Brimer with certification of certain efforts undertaken to reformulate its Products or limit the
19 ongoing sale of non-reformulated Products in California. The options to provide a written
20 certification in lieu of making a portion of the civil penalty payment constitute material terms of this
21 Consent Judgment, and with regard to such terms, time is of the essence.

22 4.1.4(i) **Partial Penalty Waiver for Accelerated Reformulation of**
23 **Ottomans Sold or Offered for Sale in California.**

24 As shown on Exhibit A, a portion of the second civil penalty shall be waived, to the extent
25 that it has agreed that, as of December 31, 2013, and continuing into the future, it shall only
26 manufacture or import for distribution or sale to consumers in California or cause to be
27 manufactured or imported for distribution or sale to consumers in California, Ottomans that are
28 Reformulated Products. An officer or other authorized representative of Hobby Lobby that has

1 exercised this election shall provide Brimer with a written certification confirming compliance with
2 such conditions, which certification must be received by Brimer's counsel on or before December
3 31, 2013.

4 **4.1.4(ii) Partial Penalty Waiver for Extended Reformulation.**

5 As shown on Exhibit A, a portion of the third civil penalty shall be waived, to the extent that
6 Hobby Lobby has agreed that, as of March 31, 2014, and continuing into the future, it shall only
7 manufacture or import for distribution or sale in California or cause to be manufactured or imported
8 for distribution or sale in California, Ottomans that are Reformulated Products, which also do not
9 contain tris(2,3-dibromopropyl)phosphate ("TDBPP") in a detectable amount of more than 25 ppm
10 (the equivalent of .0025%) in any material, component, or constituent of a subject product, when
11 analyzed by an Accredited Lab pursuant to EPA testing methodologies 3545 and 8270C, or
12 equivalent methodologies utilized by federal or state agencies to determine the presence, and
13 measure the quantity of TDBPP in a solid substance. An officer or other authorized representative
14 of Hobby Lobby that has exercised this election shall provide Brimer with a written certification
15 confirming compliance with such conditions, which certification must be received by Brimer's
16 counsel on or before November 15, 2014.

17 **4.1.4(iii) Partial Penalty Waiver for Termination of Distribution to**
18 **California of Unreformulated Inventory.**

19 As shown on Exhibit A, a portion of the third civil penalty shall be waived, if an officer or
20 other authorized representative of Hobby Lobby provides Brimer with written certification, on or
21 before November 15, 2014, confirming that (a) as of the Effective Date, it has and will continue to
22 distribute, offer for sale, or sell in California, or to customers in California, only Ottomans described
23 as an exemplar in the March 18, 2013 Notice Hobby Lobby received from Plaintiff that are
24 Reformulated Products, and (b) as of July 1, 2014, it has and will continue to distribute, offer for
25 sale, or sell in California, or to customers in California, only Ottomans that are Reformulated
26 Products.

1 reformulation of its Products on a nationwide basis and not employ statements that will encourage a
2 vendor to limit its compliance with the Reformulation Standard to goods intended for sale to
3 consumers in California.

4 **4.3 Reimbursement of Fees and Costs**

5 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute without
6 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
7 reimbursement issue to be resolved after the material terms of the agreement had been settled.
8 Shortly after the other settlement terms had been finalized, Hobby Lobby expressed a desire to
9 resolve the fee and cost issue. Hobby Lobby then agreed to pay Brimer and his counsel under
10 general contract principles and the private attorney general doctrine codified at California Code of
11 Civil Procedure § 1021.5 for all work performed through the mutual execution of this agreement,
12 including the fees and costs incurred as a result of investigating, bringing this matter to Hobby
13 Lobby's attention, negotiating a settlement in the public interest, and seeking court approval of the
14 same. Hobby Lobby more specifically agreed, upon the Court's approval and entry of this Consent
15 Judgment, to pay Brimer's counsel the amount of fees and costs indicated on Exhibit A. Hobby
16 Lobby further agreed to tender and shall tender its full required payment under this Section to a trust
17 account at The Chanler Group (made payable "In Trust for The Chanler Group") within two
18 business days of the Effective Date. Such funds shall be released from the trust account upon the
19 Court's approval and entry of this Consent Judgment.

20 **4.4 Payment Procedures**

21 **4.4.1 Issuance of Payments.**

22 (a) All payments owed to Brimer and his counsel, pursuant to Sections 4.1
23 and 4.3 shall be delivered to the following payment address:

24 The Chanler Group
25 Attn: Proposition 65 Controller
26 2560 Ninth Street
27 Parker Plaza, Suite 214
28 Berkeley, CA 94710

1 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to
2 Section 4.1 shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at one of the
3 following addresses, as appropriate:

4 For United States Postal Service Delivery:

5 Mike Gyurics
6 Fiscal Operations Branch Chief
7 Office of Environmental Health Hazard Assessment
8 P.O. Box 4010
9 Sacramento, CA 95812-4010

8 For Non-United States Postal Service Delivery:

9 Mike Gyurics
10 Fiscal Operations Branch Chief
11 Office of Environmental Health Hazard Assessment
12 1001 I Street
13 Sacramento, CA 95814

12 4.4.2 Proof of Payment to OEHHA. A copy of each check payable to OEHHA
13 shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth in Section
14 4.4.1(a) above, as proof of payment to OEHHA.

15 4.4.3 Tax Documentation. Hobby Lobby shall issue a separate 1099 form for each
16 payment required by this Section to: (a) Russell Brimer, whose address and tax identification
17 number shall be furnished upon request after this Consent Judgment has been fully executed by the
18 Parties; (b) OEHHA, who shall be identified as "California Office of Environmental Health Hazard
19 Assessment" (EIN: 68-0284486) in the 1099 form, to be delivered directly to OEHHA, P.O. Box
20 4010, Sacramento, CA 95814, and (c) "The Chanler Group" (EIN: 94-3171522) to the address set
21 forth in Section 4.4.1(a) above.

22 **5. CLAIMS COVERED AND RELEASED**

23 **5.1 Brimer's Release of Proposition 65 Claims**

24 Brimer, acting on his own behalf and in the public interest, releases Hobby Lobby, its
25 parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents
26 employees, attorneys, and each entity to whom Hobby Lobby directly or indirectly distributes or
27 sells Products, including, but not limited, to downstream distributors, wholesalers, customers,
28 retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), from all

1 claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to
2 TDCPP in Ottomans and DEHP in Albums and Storage Bins, as set forth in the Notices.
3 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
4 with respect to exposures to the respective listed chemicals from the Products, as set forth in the
5 Notices. The Parties further understand and agree that this Section 5.1 release shall not extend
6 upstream to any entities, other than Hobby Lobby, that manufactured the Products or any component
7 parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof
8 to Hobby Lobby.

9 **5.2 Brimer's Individual Releases of Claims**

10 Brimer, in his individual capacity only and *not* in his representative capacity, provides a
11 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
12 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
13 liabilities, and demands of Brimer of any nature, character, or kind, whether known or unknown,
14 suspected or unsuspected, limited to and arising out of alleged or actual exposures to TDCPP, TCEP,
15 and/or TDBPP in Ottomans and DEHP, DBP and BBP in Albums and Storage Bins manufactured,
16 imported, distributed, or sold by Hobby Lobby prior to the Effective Date. The Parties further
17 understand and agree that this Section 5.2 release shall not extend upstream to any entities that
18 manufactured the Products, or any component parts thereof, or any distributors or suppliers who sold
19 the Products, or any component parts thereof to Hobby Lobby. Nothing in this Section affects
20 Brimer's rights to commence or prosecute an action under Proposition 65 against a Releasee that
21 does not involve Hobby Lobby's Products.

22 **5.3 Hobby Lobby's Release of Brimer**

23 Hobby Lobby, on behalf of itself, its past and current agents, representatives, attorneys,
24 successors, and assignees, hereby waives any and all claims against Brimer and his attorneys and
25 other representatives, for any and all actions taken or statements made (or those that could have been
26 taken or made) by Brimer and his attorneys and other representatives, whether in the course of
27 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
28 respect to the Products.

1 **6. COURT APPROVAL**

2 This Consent Judgment is not effective until it is approved and entered by the Court and shall
3 be null and void if, for any reason, it is not approved and entered by the Court within one year after
4 it has been fully executed by all Parties. If the Court does not approve the Consent Judgment, the
5 Parties shall meet and confer as to whether to modify the language or appeal the ruling. If the
6 Parties do not jointly agree on a course of action to take, then the case shall proceed in its normal
7 course on the Court's trial calendar. If the Court's approval is ultimately overturned by an appellate
8 court, the Parties shall meet and confer as to whether to modify the terms of this Consent Judgment.
9 If the Parties do not jointly agree on a course of action to take, then the case shall proceed in its
10 normal course on the Court's trial calendar. In the event that this Consent Judgment is entered by
11 the Court and subsequently overturned by any appellate court, any monies that have been provided
12 to OEHHA, Brimer or his counsel pursuant to Section 4, above, shall be refunded within 15 days of
13 the appellate decision becoming final. If the Court does not approve and enter the Consent
14 Judgment within one year of the Effective Date, any monies that have been provided to OEHHA or
15 held in trust for Brimer or his counsel pursuant to Section 4, above, shall be refunded to Hobby
16 Lobby within 15 days.

17 **7. GOVERNING LAW**

18 The terms of this Consent Judgment shall be governed by the laws of the State of California.
19 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by
20 reason of law generally, or if any of the provisions of this Consent Judgment are rendered
21 inapplicable or are no longer required as a result of any such repeal or preemption, or rendered
22 inapplicable by reason of law generally as to the Products, then Hobby Lobby may provide written
23 notice to Brimer of any asserted change in the law, and shall have no further obligations pursuant to
24 this Consent Judgment with respect to, and to the extent that, the Products are so affected. Nothing
25 in this Consent Judgment shall be interpreted to relieve Hobby Lobby from any obligation to comply
26 with any pertinent state or federal law or regulation.

1 **8. NOTICES**

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

6 To Hobby Lobby:

To Brimer:

7 At the address shown on Exhibit A

8 Proposition 65 Coordinator
9 The Chanler Group
10 2560 Ninth Street
11 Parker Plaza, Suite 214
12 Berkeley, CA 94710-2565

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

13 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

14 This Consent Judgment may be executed in counterparts and by facsimile or pdf signature,
15 each of which shall be deemed an original, and all of which, when taken together, shall constitute
16 one and the same document. A facsimile or pdf signature shall be as valid as the original.

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

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

20 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

21 Brimer and Hobby Lobby agree to support the entry of this agreement as a Consent Judgment
22 and obtain approval of the Consent Judgment by the Court in a timely manner. The Parties
23 acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion is
24 required to obtain judicial approval of this Consent Judgment, which Brimer shall draft and file. If
25 any third party objection to the noticed motion is filed, Brimer and Hobby Lobby shall work together
26 to file a reply and appear at any hearing before the Court. This provision is a material component of
27 the Consent Judgment and shall be treated as such in the event of a breach.

1 **12. MODIFICATION**

2 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
3 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion of
4 any party and entry of a modified Consent Judgment by the Court.

5 **13. AUTHORIZATION**


6 The undersigned are authorized to execute this Consent Judgment on behalf of their
7 respective Parties and have read, understood, and agree to all of the terms and conditions of this
8 Consent Judgment.

9 **AGREED TO:**

10 
11 _____
12 Plaintiff Russell Brimer

13 Date: December 20, 2013
14

AGREED TO:

15 
16 _____
17 Peter M. Dobelhower
18 Vice President - Legal
19 Hobby Lobby Stores, Inc. *Asst. V.P.*

20 Date: December 27, 2013
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EXHIBIT A

I. Name of Settling Defendant (Mandatory)

Hobby Lobby Stores, Inc.
7707 SW 44th Street
Oklahoma City, OK 73179

II. Hobby Lobby's Required Settlement Payments

A. Penalties:

\$20,000 initial payment due on or before the Effective Date;

\$14,000 second payment due on or before February 15, 2014, of which \$14,000 which may be waived pursuant to Section 4.1.4(i); and

\$26,000,000 third payment due on or before November 30, 2014, of which \$8,000 may be waived pursuant to Section 4.1.4(ii) \$6,000 may be waived pursuant to Section 4.1.4(iii) and \$12,000 which may be waived pursuant to Section 4.1.4(iv).

III. Payment to The Chanler Group for reimbursement of attorneys' fees and costs:

A. Fees and Costs for Hobby Lobby: \$40,000.

B. Additional Fees and Costs:

\$5,000 supplemental fee for each type of Products addressed under this Consent Judgment that contains a chemical other than a flame retardant, e.g. DEHP, for which Hobby Lobby received a Notice; and

\$20,000 supplemental fee for each additional separate action filed by Brimer before the Effective Date, that is released by the Consent Judgment.

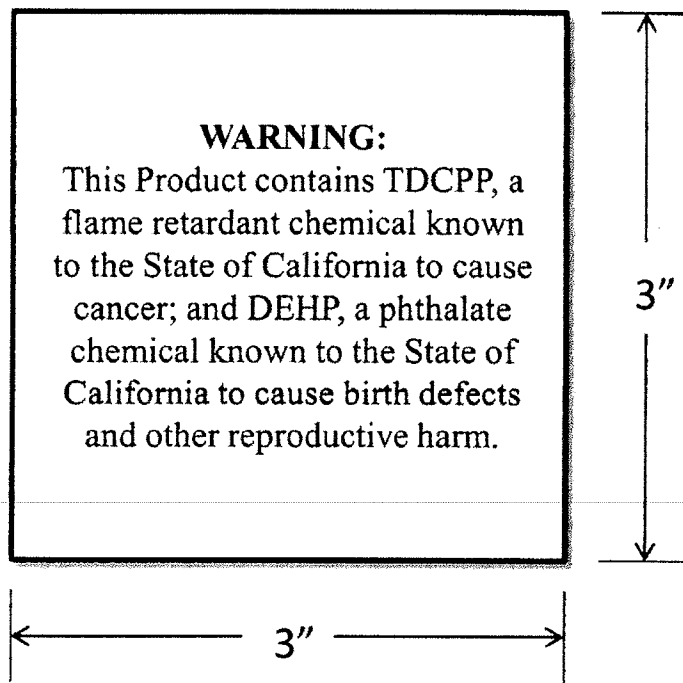
IV. Person(s) to receive notices on behalf of Hobby Lobby pursuant to Section 8:

Steve Green, President
Hobby Lobby Stores, Inc.
7707 SW 44th Street
Oklahoma City, OK 73179

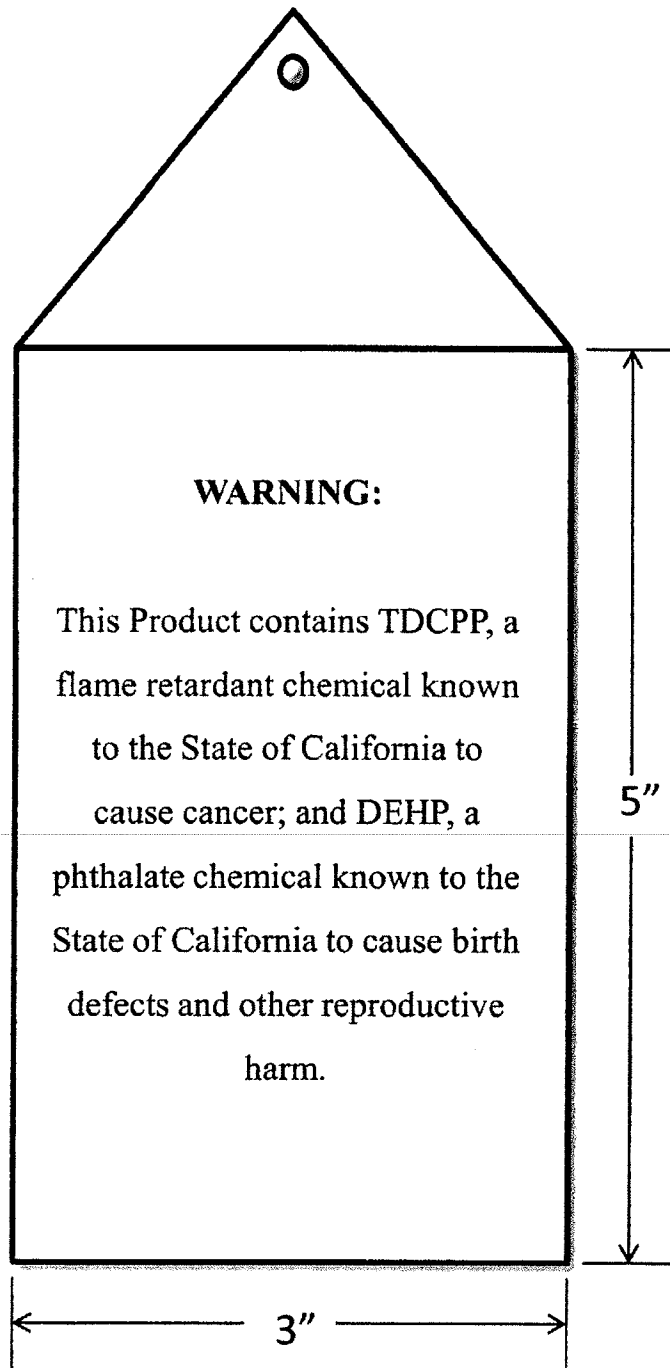
Melissa A. Jones
STOEL RIVES LLP
500 Capitol Mall, Suite 1600
Sacramento, CA 95814

EXHIBIT B

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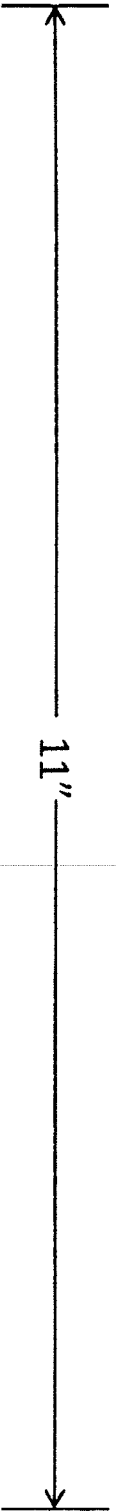
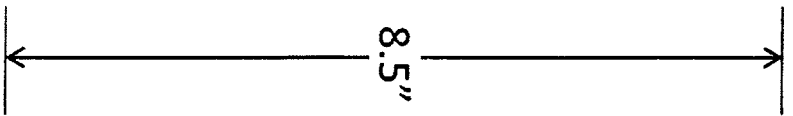
INSTRUCTIONS: Minimum 12 pt. font. "WARNING:" text must be bold.



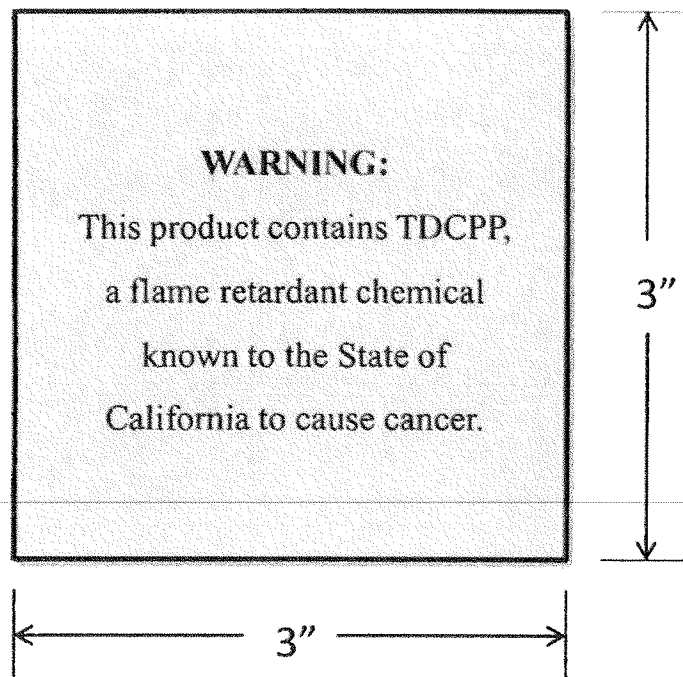
INSTRUCTIONS: Print warning on each side of hang tag.
Minimum 12 pt. font. "WARNING:" text must be bold.

WARNING:

This Product contains TDCPP, a flame retardant chemical known to the State of California to cause cancer; and DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.



INSTRUCTIONS: Minimum 32 pt. Font. "WARNING:" text must be bold and underlined.



INSTRUCTIONS: The background must be yellow, a minimum of 12 pt. font, "WARNING:" text must be bold.