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20 NORDSTROM, INC.

21 SUPERIOR COURT OF THE STATE OF CALIFORNIA
22 FOR THE CITY AND COUNTY OF SAN FRANCISCO
23 UNLIMITED CIVIL JURISDICTION

24 RUSSELL BRIMER,
25 Plaintiff,

26 v.

27 NORDSTROM, INC.; and DOES 1 through 150,
28 inclusive,
29 Defendants.

No. CGC-06-451464

**STIPULATION AND [PROPOSED]
ORDER RE: CONSENT JUDGMENT**

1 **1. INTRODUCTION**

2 **1.1 Russell Brimer and Nordstrom, Inc.**

3 This Consent Judgment is entered into by and between plaintiff Russell Brimer (hereinafter
4 “Brimer” or “Plaintiff”) and defendant Nordstrom, Inc., (hereinafter “Nordstrom” or “Defendant”),
5 with Brimer and Nordstrom collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Nordstrom employs ten or more persons and is a person in the course of doing business for
12 purposes of Proposition 65.

13 **1.4 General Allegations**

14 Brimer alleges that Nordstrom has distributed and/or sold in the State of California certain
15 candle holders with colored artwork, designs, and/or markings on the exterior surface that contain
16 lead. Lead is listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986,
17 California Health & Safety Code §§25249.6 *et seq.* (“Proposition 65”), as a chemical known to the
18 State of California to cause birth defects and other reproductive harm. Lead shall be referred to
19 herein as the “Listed Chemical.”

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as follows: candle
22 holders with colored artwork, designs, and/or markings containing lead on the exterior surface
23 including, but not limited to, *Skeem Stripe Candle Currant Berry (sku #4 29258 23629 8)*. All
24 such candle holders with colored artwork, designs, and/or markings on the exterior surface shall be
25 referred to herein as the “Products.”

26 **1.6 Notice of Violation**

27 On or about November 23, 2005, Brimer served Nordstrom and various public enforcement
28 agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided

1 Nordstrom and such public enforcers with notice that alleged that Nordstrom was in violation of
2 California Health & Safety Code §25249.6 for failing to warn consumers and customers that the
3 Products that Nordstrom sold exposed users in California to the Listed Chemical.

4 **1.7 Complaint**

5 On April 19, 2006, Brimer, who is acting in the interest of the general public in California,
6 filed a complaint (hereinafter referred to as the “Complaint” or the “Action”) in the Superior Court
7 in and for the City and County of San Francisco against Nordstrom, Inc. and Does 1 through 150,
8 (*Brimer v. Nordstrom, Inc. et al.*, Case No. CGC 06-451464) alleging violations of Health & Safety
9 Code §25249.6 based on the alleged exposures to the Listed Chemical contained in the Products
10 sold by Nordstrom.

11 **1.8 No Admission**

12 Nordstrom denies the material factual and legal allegations contained in Brimer’s Notice
13 and Complaint and maintains that all products that it has sold and distributed in California,
14 including the Products, have been and are in compliance with all laws. Nothing in this Consent
15 Judgment shall be construed as an admission by Nordstrom of any fact, finding, issue of law, or
16 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
17 admission by Nordstrom of any fact, finding, conclusion, issue of law or violation of law, such
18 being specifically denied by Nordstrom. However, this Section shall not diminish or otherwise
19 affect the obligations, responsibilities and duties of Nordstrom under this Consent Judgment.

20 **1.9 Consent to Jurisdiction**

21 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
22 jurisdiction over Nordstrom as to the allegations contained in the Complaint, that venue is proper
23 in the County of San Francisco and that this Court has jurisdiction to enter and enforce the
24 provisions of this Consent Judgment.

25 **1.10 Effective Date**

26 For purposes of this Consent Judgment, the term “Effective Date” shall mean October 20,
27 2006.

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

2 **2.1** After the Effective Date, Nordstrom shall not sell, ship or offer to be shipped for
3 sale in California Products containing the Listed Chemical unless such Products are sold or shipped
4 with the clear and reasonable warnings set out in Section 2.2 or comply with the Reformulation
5 Standards set forth in Section 2.3.

6 Any warning issued for Products pursuant to this Section 2.2 below shall be prominently
7 placed with such conspicuousness as compared with other words, statements, designs, or devices as
8 to render it likely to be read and understood by an ordinary individual under customary conditions
9 before purchase or, for Products shipped directly to an individual in California, before use.

10 **2.2 Product Warnings**

11 **2.2.1** Clear and Reasonable Warnings. This Section describes Nordstrom’s
12 options for satisfying the warning obligations required by Section 2.1, depending, in part, on the
13 manner of sale:

14 **(a) Retail Store Sales**

15 **(i) Product Labeling.** From the Effective Date, a warning will
16 be affixed to the packaging, labeling or directly on the Product by Nordstrom or its agent, that
17 states:

18 **WARNING:** The colored artwork, designs and/or
19 markings used on this product contain
20 lead, a chemical known to the State of
 California to cause birth defects and other
 reproductive harm.

21 Notwithstanding the foregoing, if a Product shipped to Nordstrom bears a warning on the
22 packaging, labeling or directly on the Product that is identical or substantially similar¹ to the
23 warning required above, then Nordstrom will have fulfilled its warning obligations under Section
24 2.2 with respect to the sale of such Product.

25 **(ii) Point-of-Sale Warnings.** Nordstrom may perform its
26 warning obligations by insuring to the greatest extent possible that signs are posted at its retail

27 _____
28 ¹ “Substantially similar” shall mean the warning identifies “lead” as the toxin; the exterior colored artwork as the source of the lead; and birth defects and reproductive harm as the health hazard.

1 outlets in the State of California where the Products are sold. Point-of-sale warnings shall be
2 provided through one or more signs posted in close proximity to the point of display of the
3 Products that state:

4 **WARNING:** The colored artwork, designs and/or
5 markings used on this product contain
6 lead, a chemical known to the State of
California to cause birth defects and other
reproductive harm.

7 A point-of-sale warning shall be provided in a manner such that the consumer understands
8 to which specific Products the warning applies.

9 **(b) Mail Order Catalog and Internet Sales.** Defendant shall satisfy its
10 warning obligations for Products that are sold by mail order catalog or from the Internet to
11 California residents, by providing a warning: (a) in the mail order catalog and/or on the website;
12 or (b) with the Product when it is shipped to an address in California. Warnings given in the mail
13 order catalog or on the website shall identify the specific Product to which the warning applies as
14 further specified in Sections 2.2.1(b)(i), (ii) and/or (iii) as applicable:

15 **(i) Mail Order Catalog.** Any warning provided in a mail order
16 catalog must be in the same type size or larger as the product description text within the catalog.
17 One of the following warnings shall be provided on the same page and in the same location as the
18 display and/or description of the Product:

19 **WARNING:** The colored artwork, designs and/or
20 markings used on this product contain lead, a
21 chemical known to the State of California to
cause birth defects and other reproductive
harm.

22 **WARNING:** This product contains lead, a chemical
23 known to the State of California to cause
birth defects and other reproductive harm.

24 Where it is impracticable to provide the warning on the same page and in the same location
25 as the display and/or description of the Product, Nordstrom may utilize a designated symbol to
26 cross reference the applicable warning (“Designated Symbol”) and shall provide one of the
27 following warnings on the inside of the front cover of the catalog or on the same page as any order
28 form for the Product(s):

1 **WARNING:** The colored artwork, designs and/or
2 markings used on certain products identified
3 with this symbol contain lead, a chemical
 known to the State of California to cause
 birth defects and other reproductive harm:
 ▼.

4 **WARNING:** The products identified with this symbol
5 contain lead, a chemical known to the State
6 of California to cause birth defects and other
 reproductive harm: ▼.

7 The Designated Symbol (shown on Exhibit A attached hereto) must appear on the same
8 page and in close proximity to the display and/or description of the Product. On each page where
9 the Designated Symbol appears, Nordstrom must provide a header or footer directing the consumer
10 to the warning language and definition of the Designated Symbol.

11 If Defendant elects to provide warnings in the mail order catalog, then the warnings must be
12 included in all catalogs offering to sell one or more Products to consumers in California and printed
13 60 days after the Effective Date.

14 (ii) **Internet Web Sites and Pages.** A warning may be given in
15 conjunction with the sale of the Product via the Internet, provided it appears either: (a) on the same
16 web page on which the Product is displayed; (b) on the same web page as the order form for the
17 Product; (c) on the same page as the price for any Product; or (d) on one or more web pages
18 displayed to a purchaser during the checkout and/or order confirmation process. One of the
19 following warning statements shall be used and shall appear in any of the above instances adjacent
20 to or immediately following the display, description, or price of the Product for which it is given in
21 the same type size or larger as the product description text:

22 **WARNING:** The colored artwork, designs and/or
23 markings used on this product contain lead, a
24 chemical known to the State of California to
25 cause birth defects and other reproductive
26 harm.

27 **WARNING:** This product contains lead, a chemical
28 known to the State of California to cause
 birth defects and other reproductive harm.

 Alternatively, the Designated Symbol may appear adjacent to or immediately following the
 display, description or price of the Product for which a warning is being given, provided that one of

1 the following warning statements also appears elsewhere on the same web page:

2 **WARNING:** The colored artwork, designs and/or
3 markings used on certain products identified
4 with this symbol contain lead, a chemical
5 known to the State of California to cause
6 birth defects and other reproductive harm:
7 ▼.

8 **WARNING:** The products identified with this symbol
9 contain lead, a chemical known to the State
10 of California to cause birth defects and other
11 reproductive harm: ▼.

12 **(iii) Package Insert or Label.** For all Products sold by catalog or
13 via the Internet, a warning may be provided with the Product when it is shipped directly to an
14 individual in California, by either: (a) affixing the following warning language to the packaging,
15 labeling or directly to a specific Product; (b) inserting a warning card measuring at least 4" x 6" in
16 the shipping carton which contains the following warning language; or (c) by placing one of the
17 following warning statements directly below the description of the product on the packing slip or
18 customer invoice:

19 **WARNING:** The colored artwork, designs and/or
20 markings used on this product contain lead,
21 a chemical known to the State of California
22 to cause birth defects and other
23 reproductive harm.

24 **WARNING:** This product contains lead, a chemical
25 known to the State of California to cause
26 birth defects and other reproductive harm.

27 Alternatively, Nordstrom may place one of the following warnings on the packing slip or
28 invoice and specifically identify the Product in lettering of the same size or larger as the description
29 of the Product:

30 **WARNING:** The colored artwork, designs and/or
31 markings used in the following product(s)
32 contain lead, a chemical known to the State
33 of California to cause birth defects or other
34 reproductive harm:
35 *[list products for which warning is given].*

36 **WARNING:** The following products contain lead, a
37 chemical known to the State of California to
38 cause birth defects and other reproductive
39 harm:
40 *[list products for which warning is given].*

1 The Defendant shall, in any of these instances, in addition to providing the warning, also
2 inform the consumer, in a commercially reasonable manner, that he or she may return the Product
3 for a full refund within thirty (30) days of his or her receipt of the Product.

4 2.2.2 Exceptions

5 The warning requirements set forth in Section 2.2.1 shall not apply to:

- 6 (i) Any Products shipped to a third party before the Effective Date; or
- 7 (ii) Reformulated Products (as defined in Section 2.3 below).

8 2.3 Reformulation Standards

9 The following Reformulated Products shall be deemed to comply with Proposition 65 and
10 be exempt from any Proposition 65 warning requirements under Sections 2.2:

11 2.3.1 Products with decorations that contain six one-hundredths of one percent
12 (0.06%) of lead or less as measured either before or after the material is fired onto (or otherwise
13 affixed to) the Product using a test method of sufficient sensitivity to establish a limit of
14 quantification of less than 600 parts per million ("ppm").²

15 3. MONETARY PAYMENTS

16 3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)

17 Pursuant to Health & Safety Code §25249.7(b), Nordstrom shall pay \$10,500 in civil
18 penalties within 15 days after the Effective Date. Said payment shall be made payable to the
19 "HIRST & CHANLER LLP in Trust For Russell Brimer" and shall be delivered to Plaintiff's
20 counsel at the following address:

21 HIRST & CHANLER LLP
22 Attn: Proposition 65 Controller
23 2560 Ninth Street
24 Parker Plaza, Suite 214
25 Berkeley, CA 94710-2565

26 In the event Defendant fails to provide the civil penalties, Plaintiff shall be entitled to
27 recover interest accrued at a rate of ten percent (10%) per annum on the principle amount.

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² If the decoration is tested after it is affixed to the Product, the percentage of the Listed Chemical by weight must relate only to the decorating material and must not include any quantity attributable to non-decorating material (e.g., the glass substrate).

1 **3.2 Apportionment of Penalties Received**

2 All penalty monies received shall be apportioned by Brimer in accordance with Health &
3 Safety Code §25192, with 75% of these funds remitted by Brimer to the State of California's
4 Office of Environmental Health Hazard Assessment and the remaining 25% of these penalty
5 monies retained by Brimer as provided by Health & Safety Code §25249.12(d). Brimer shall bear
6 all responsibility for apportioning and paying to the State of California the appropriate civil
7 penalties paid in accordance with this Section.

8 **4. REIMBURSEMENT OF FEES AND COSTS**

9 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute without
10 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
11 issue to be resolved after the material terms of the agreement had been settled. Nordstrom then
12 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
13 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to
14 Brimer and his counsel under the private attorney general doctrine codified at California Code of
15 Civil Procedure §1021.5 for all work performed through the Court's approval of this agreement.
16 Under the private attorney general doctrine, Nordstrom shall reimburse Brimer and his counsel for
17 fees and costs incurred as a result of investigating, bringing this matter to Nordstrom's attention,
18 litigating and negotiating a settlement in the public interest and seeking the Court's approval of the
19 settlement agreement. Nordstrom shall pay Brimer and his counsel \$26,500 for all attorneys' fees,
20 expert and investigation fees, litigation and related costs. The payment shall be made payable to
21 HIRST & CHANLER LLP and shall be delivered within 15 days after the Effective Date at the
22 following address:

23 HIRST & CHANLER LLP
24 Attn: Proposition 65 Controller
25 2560 Ninth Street
26 Parker Plaza, Suite 214
27 Berkeley, CA 94710-2565

28 In the event Defendant fails to provide the attorneys' fees and costs, Plaintiff shall be
entitled to recover interest accrued at a rate of ten percent (10%) per annum on the principle
amount.

1 **5. RELEASE OF ALL CLAIMS**

2 **5.1 Release of Nordstrom and Downstream Customers**

3 In further consideration of the promises and agreements herein contained, and for the
4 payments to be made pursuant to Sections 3 and 4, Brimer, on behalf of himself, his past and
5 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the
6 general public, hereby waives all rights to institute or participate in, directly or indirectly, any form
7 of legal action and releases all claims, including, without limitation, all actions, and causes of
8 action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties,
9 losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees)
10 of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"),
11 against Nordstrom and each of its downstream customers, purchasers, and users; owners, parent
12 companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys,
13 representatives, shareholders, agents, and employees, and sister and parent entities (collectively
14 "Releasees"). This release is limited to those claims that arise under Proposition 65 or any other
15 law, as such claims relate to Nordstrom's alleged failure to warn about exposures to or
16 identification of the Listed Chemical contained in the Products.

17 The Parties further understand and agree that this release shall not extend upstream to any
18 entities that manufactured the Products or any component parts thereof, or any distributors or
19 suppliers who sold the Products or any component parts thereof to Nordstrom.

20 **5.2 Nordstrom's Release of Brimer**

21 Nordstrom waives any and all claims against Brimer, his attorneys and other
22 representatives, for any and all actions taken or statements made (or those that could have been
23 taken or made) by Brimer and his attorneys and other representatives, whether in the course of
24 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
25 and/or with respect to the Products.

26 **6. COURT APPROVAL**

27 This Consent Judgment is not effective until it is approved and entered by the Court and
28 shall be null and void if, for any reason, it is not approved and entered by the Court within one

1 year after it has been fully executed by all Parties, in which event any monies that have been
2 provided to Plaintiff, or his counsel pursuant to Section 3 and/or Section 4 above, shall be
3 refunded within fifteen (15) days after receiving written notice from Nordstrom that the one-year
4 period has expired. In the event Plaintiff fails to provide the required refund, Defendant shall be
5 entitled to recover interest accrued at a rate of ten percent (10%) per annum on the principle
6 amount.

7 **7. SEVERABILITY**

8 If, subsequent to court approval of this Consent Judgment, any of the provisions of this
9 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
10 provisions remaining shall not be adversely affected.

11 **8. ATTORNEYS' FEES**

12 In the event that, after Court approval: (1) a dispute arises with respect to any provision of
13 this Consent Judgment; (2) Nordstrom or any third party seeks modification of this Consent
14 Judgment pursuant to Section 14 below; or (3) Brimer takes reasonable and necessary steps to
15 enforce the terms of this Consent Judgment, the prevailing party in any such dispute shall be
16 entitled to his or its reasonable attorneys' fees pursuant to CCP §1021.5.

17 **9. GOVERNING LAW**

18 The terms of this Consent Judgment shall be governed by the laws of the State of California
19 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
20 rendered inapplicable by reason of law generally, or as to the Products, then Nordstrom shall
21 provide written notice to Brimer of any asserted change in the law, and shall have no further
22 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products
23 are so affected.

24 **10. NOTICES**

25 Unless specified herein, all correspondence and notices required to be provided pursuant to
26 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
27 (registered or certified mail) return receipt requested; or (ii) overnight courier on any Party by the
28 other party at the following addresses:

1 To Nordstrom:

2 Corporate Secretary c/o Dave Mackie
3 NORDSTROM, INC.
4 1700 Seventh Avenue, Suite 700
5 Seattle, WA 98101-4407

6 To Brimer:

7 Proposition 65 Coordinator
8 HIRST & CHANLER LLP
9 2560 Ninth Street
10 Parker Plaza, Suite 214
11 Berkeley, CA 94710-2565

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

14 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

15 This Consent Judgment may be executed in counterparts and by facsimile, each of which
16 shall be deemed an original, and all of which, when taken together, shall constitute one and the
17 same document.

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

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

21 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

22 Brimer and Nordstrom agree to mutually employ their best efforts to support the entry of
23 this Agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court
24 in a timely manner. The Parties acknowledge that, pursuant to Health & Safety Code §25249.7, a
25 noticed motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the
26 Parties agree to file a Joint Motion to Approve the Agreement (“Joint Motion”), the first draft of
27 which Nordstrom’s counsel shall prepare, within a reasonable period of time after the Execution
28 Date (i.e., not to exceed thirty (30) days unless otherwise agreed to by the Parties’ counsel based on
unanticipated circumstances). Nordstrom shall have no additional responsibility to Plaintiff’s
counsel pursuant to Code of Civil Procedure §1021.5 or otherwise with regard to reimbursement of
any fees and costs incurred with respect to the preparation and filing of the Joint Motion and its

1 supporting declaration or with regard to Plaintiff's counsel appearing for a hearing thereon.

2 **14. MODIFICATION**

3 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
4 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
5 of any Party and entry of a modified Consent Judgment by the Court. The Attorney General shall
6 be served with notice of any proposed modification to this Consent Judgment at least fifteen (15)
7 days in advance of its consideration by the Court.

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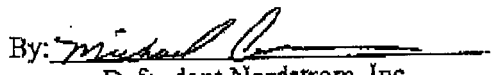
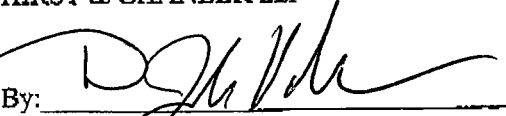
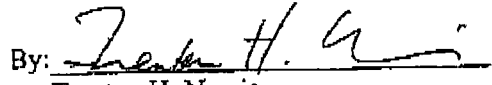
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15. AUTHORIZATION

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

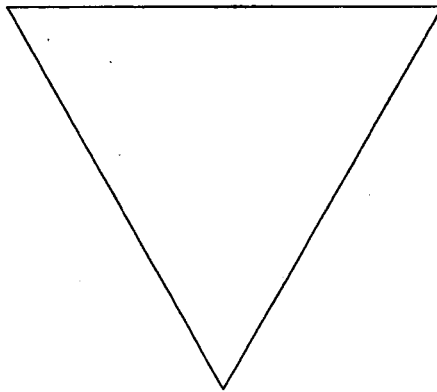
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|---|---|
| <p style="text-align: center;">AGREED TO:</p> <p>Date: <u>11-9-06</u></p> <p>By: <u></u> Plaintiff Russell Brimer</p> | <p style="text-align: center;">AGREED TO:</p> <p>Date: <u>10-26-2006</u></p> <p>By: <u></u> Defendant Nordstrom, Inc. MICHAEL CAMPBELL</p> |
| <p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: <u>11/9/06</u></p> <p>HIRST & CHANLER LLP</p> <p>By: <u></u> D. Joshua Voorhees Attorneys for Plaintiff RUSSELL BRIMER</p> | <p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: <u>10/26/06</u></p> <p>BINGHAM McCUTCHEN LLP</p> <p>By: <u></u> Trenton H. Norris Attorneys for Defendant NORDSTROM, INC.</p> |

IT IS SO ORDERED

Date: _____ JUDGE OF THE SUPERIOR COURT

Exhibit A

The Designated Symbol [Yellow Triangle] that Defendant will use to identify Products containing the Listed Chemical which are sold through its catalogs or on its website is:



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