



1       **1.     INTRODUCTION**

2               **1.1     The Parties**

3               This Consent To Judgment is entered into by and between plaintiff Russell Brimer  
4       (“Brimer” or “Plaintiff”) and defendant ACCO Brands Corporation (“ACCO” or “Defendant”),  
5       with Brimer and ACCO collectively referred to as the “Parties.” Additional Opt-In Settling  
6       Defendants, as defined in Section 2.6, may become parties to this Consent To Judgment through  
7       the opt-in procedure set forth in Section 8 below. ACCO and Opt-In Settling Defendants shall  
8       collectively be referred to herein as “Settling Defendants.”

9               **1.2     Plaintiff**

10              Brimer is an individual residing in the State of California who seeks to promote awareness  
11      of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous  
12      substances contained in consumer products.

13              **1.3     Defendant**

14              ACCO employs ten or more persons, is a person in the course of doing business for  
15      purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &  
16      Safety Code §§ 25249.6 *et seq.* (“Proposition 65”) and distributes or offers certain office,  
17      stationery and/or related supplies for sale in the State of California, or has done so in the past.

18              **1.4     General Allegations**

19              Brimer alleges that ACCO manufactures, distributes, and/or sells in the State of California  
20      certain office, stationery, and/or school supply products that expose users to lead, butyl benzyl  
21      phthalate (BBP), di(2-ethylhexyl)phthalate (DEHP), and/or di-n-butyl phthalate (DBP), without  
22      first providing a “clear and reasonable warning” under Proposition 65; each such allegation  
23      ACCO denies. Lead, BBP, DEHP, and DBP are listed as reproductive and developmental  
24      toxicants pursuant to Proposition 65. ACCO represents that, as of the date it executes this  
25      Consent To Judgment, no public enforcer is diligently prosecuting an action related to lead, BBP,  
26      DEHP, and/or DBP in its office, stationery, and/or school supply products.

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1           **1.5 Notices of Violation and ACCO's Responses**

2           1.5.1 On December 23, 2008, Brimer served ACCO and various public  
3 enforcement agencies with a document entitled "60-Day Notice of Violation" ("December 23,  
4 2008 Notice") that provided the recipients with notice of alleged violations of Health & Safety  
5 Code § 25249.6 for failing to warn individuals in California of exposures to lead contained in  
6 vinyl coated paperclips sold by ACCO. No public enforcer has commenced or diligently  
7 prosecuted the allegations set forth in the December 23, 2008 Notice. ACCO represents that, as  
8 of February 2009, it ceased shipping vinyl coated paper clips for sale in California, and has  
9 replaced the coating with nylon.

10           1.5.2 On August 5, 2010, Brimer served ACCO and various public enforcement  
11 agencies with a document entitled "60-Day Notice of Violation" ("August 5, 2010 Notice") that  
12 provided the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for  
13 failing to warn individuals in California of exposures to lead contained in zippered document  
14 folders sold by ACCO. No public enforcer has commenced or diligently prosecuted the  
15 allegations set forth in the August 5, 2010 Notice.

16           1.5.3 On September 1, 2010, Brimer served ACCO and various public  
17 enforcement agencies with a document entitled "Supplemental 60-Day Notice of Violation"  
18 ("September 1, 2010 Notice") that provided the recipients with notice of alleged violations of  
19 Health & Safety Code § 25249.6 for failing to warn individuals in California of exposures to lead  
20 contained in zippered document folders and file storage/organizer boxes sold by ACCO. No  
21 public enforcer has commenced or diligently prosecuted the allegations set forth in the September  
22 1, 2010 Notice. ACCO represents that, in September 2010, it ceased shipping the specific  
23 zippered document folders and file storage/organizer boxes identified in the August 5, 2010 and  
24 September 1, 2010 notices for sale in California, and arranged for its customers in California to  
25 return such products to ACCO.

26           1.5.4 On September 27, 2010, Brimer served ACCO and various public  
27 enforcement agencies with another document entitled "60-Day Notice of Violation" ("September

1 27, 2010 Notice”) that provided the recipients with notice of alleged violations of Health &  
2 Safety Code § 25249.6 for failing to warn individuals in California of exposures to DEHP  
3 contained in identification card cases, business card holders, protective cases for laptops, and  
4 schedule organizers with soft covers sold by ACCO. No public enforcer has commenced or  
5 diligently prosecuted the allegations set forth in the September 27, 2010 Notice.

6 1.5.5 On July 26, 2011, Brimer served ACCO and various public enforcement  
7 agencies with a document entitled “Supplemental 60-Day Notice of Violation” (“July 26, 2011  
8 Notice”) that provided the recipients with notice of alleged violations of Health & Safety Code §  
9 25249.6 for failing to warn individuals in California of exposures to lead contained in art supply  
10 cases/wallets/stands, binder clips, laser pointers, and portable and desktop organizers and  
11 schedulers. No public enforcer has commenced or diligently prosecuted the allegations set forth  
12 in the July 26, 2011 Notice.

13 1.5.6 On July 29, 2011, Brimer served ACCO and various public enforcement  
14 agencies with a document entitled “Supplemental 60-Day Notice of Violation” (“July 29, 2011  
15 Lead Notice”) that provided the recipients with notice of alleged violations of Health & Safety  
16 Code § 25249.6 for failing to warn individuals in California of exposures to lead contained in  
17 Pencil cups and Shoulder straps for bags. No public enforcer has commenced or diligently  
18 prosecuted the allegations set forth in the July 29, 2011 Lead Notice.

19 1.5.7 On July 29, 2011, Brimer served ACCO and various public enforcement  
20 agencies with a document entitled “Supplemental 60-Day Notice of Violation” (“July 29, 2011  
21 DEHP Notice”) that provided the recipients with notice of alleged violations of Health & Safety  
22 Code § 25249.6 for failing to warn individuals in California of exposures to DEHP contained in  
23 art supply cases/wallets/stands, binders, marker pouches, and portable and desktop organizers and  
24 schedulers. No public enforcer has commenced or diligently prosecuted the allegations set forth  
25 in the July 29, 2011 DEHP Notice.

26 1.5.8 On August 9, 2011, Brimer served ACCO and various public enforcement  
27 agencies with a document entitled “60-Day Notice of Violation” (“August 9, 2011 Notice”) that

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1 provided the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for  
2 failing to warn individuals in California of exposures to DEHP contained in erasers, vinyl neck  
3 chain accessories, cables, and headphones. No public enforcer has commenced or diligently  
4 prosecuted the allegations set forth in the August 9, 2011 Notice.

5 1.5.9 On or about August 29, 2011, Brimer will have served ACCO and various  
6 public enforcement agencies with a second Supplemental Notice that provided public enforcers  
7 and ACCO with notice of alleged violations of Health & Safety Code § 25249.6 for failing to  
8 warn individuals in California of exposures to lead, DEHP, BBP, and DBP contained in Covered  
9 Products, as defined in Section 2.4, manufactured, distributed and/or sold by ACCO  
10 (“Supplemental Notice”). No public enforcer has commenced or diligently prosecuted the  
11 allegations set forth in the Supplemental Notice. The December 23, 2008, August 5, 2010 Notice,  
12 September 1, 2010, September 27, 2010 Notice, July 26, 2011 Notice, July 29, 2011 Lead Notice,  
13 July 29, 2011 DEHP Notice, August 9, 2011 Notice, and the Supplemental Notice shall  
14 hereinafter be referred to collectively as the “Notices.”

15 1.5.10 ACCO represents that, beginning in 2010, and in response, among other  
16 things, to the Notices, it implemented a program of (i) requesting that each supplier of products  
17 that ACCO distributed for sale in California, including the Covered Products, as defined in  
18 Section 2.4 below, meet specifications for lead, DEHP, BBP, and DBP in such Covered Products  
19 in order to reduce any potential exposure below the maximum allowable dose level (“MADL”)  
20 under Proposition 65, and (ii) labeling certain products with Proposition 65 warnings where  
21 reformulation is not feasible.

22 1.5.11 Brimer represents that in the course of receiving written discovery  
23 responses and confidential documents from ACCO, in response to multiple rounds of discovery  
24 requests propounded by Brimer to ACCO in this action, Brimer was able to verify the nature and  
25 extent of ACCO’s good faith actions, through multiple departments within ACCO, to ensure that  
26 its products complied with, and continued to comply with Proposition 65 and the federal  
27 Consumer Product Safety Improvement Act.

1           **1.6    Complaints**

2           1.6.1   On March 5, 2009, Plaintiff filed an action against various entities,  
3 including ACCO, entitled *Brimer v. ACCO Brands Corp.*, Case No. CGC-09-485784, and  
4 thereafter filed amended complaints, alleging Proposition 65 violations as to certain office,  
5 stationery, school, and arts and crafts supply products including, at various times, paper fasteners,  
6 measuring tapes and tape measures, craft wire, tape measures with hand straps, and stationery  
7 packs/kits with vinyl components (“ACCO I”).

8           1.6.2   On November 10, 2010, Plaintiff filed the action entitled *Brimer v. ACCO*  
9 *Brands Corp.*, Case No. CGC-10-505323, against various entities including ACCO, in San  
10 Francisco County Superior Court, alleging Proposition 65 violations as to certain office and  
11 stationery supplies in the form of zippered document folders and file storage/organizer boxes,  
12 sold in California (“ACCO II”).

13           1.6.3   On December 6, 2010, the Court designated ACCO II complex and  
14 assigned it for all purposes to Department 304, to be heard concurrently with ACCO I.

15           1.6.4   Upon approval and entry of this Consent To Judgment by the Court,  
16 ACCO I and ACCO II shall be deemed to have been consolidated by the Court for all purposes on  
17 its own motion and judgment shall be entered on all claims.

18           1.6.5   On June 20, 2011, Brimer and ACCO commenced trial of Phase I in  
19 ACCO I. As of the execution of this Consent To Judgment by Brimer and ACCO, the Court had  
20 not made any factual or legal findings as to whether ACCO vinyl paper clips expose users to lead  
21 or whether any such exposure exceeded the MADL.

22           **1.7    No Admission**

23           This Consent To Judgment resolves allegations and claims that are denied and disputed by  
24 ACCO. The Parties enter into this Consent To Judgment pursuant to a full and final settlement of  
25 any and all claims between the Parties, as they relate to lead, DEHP, BBP and DBP in Covered  
26 Products, as defined in Section 2.4 below. ACCO denies the material factual and legal  
27 allegations contained in the Notices and Complaints and maintains that all products it has

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1 distributed and/or sold in California have been and are in compliance with all applicable laws.  
2 Nothing in this Consent To Judgment shall be construed as an admission by a Settling Defendant  
3 of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent To  
4 Judgment constitute or be construed as an admission by any Settling Defendant of any fact,  
5 finding, conclusion, issue of law, or violation of law, such being specifically denied by Settling  
6 Defendants. However, notwithstanding the foregoing, this section shall not diminish or otherwise  
7 affect a Settling Defendant's obligations, responsibilities, and duties under this Consent To  
8 Judgment.

9 **1.8 Consent to Jurisdiction**

10 For purposes of this Consent To Judgment only, the Parties stipulate that this Court has  
11 jurisdiction over each Settling Defendant as to the allegations contained in the Complaint, that  
12 venue is proper in the City and County of San Francisco, and that this Court has, and will retain,  
13 jurisdiction to enter and enforce the provisions of this Consent To Judgment pursuant to Code of  
14 Civil Procedure § 664.6.

15 **1.9 Industry-Wide 3P and Lead Standards**

16 The Parties intend for this Consent To Judgment to set an industry-wide "3P Standard"  
17 and "Lead Standard" (as defined in Sections 2.2 and 2.3 below, respectively) in "Accessible  
18 Components" (as defined in Section 2.1 below) of Covered Products that manufacturers,  
19 importers, distributors, and retailers will implement following the time schedule set forth herein.

20 **2. Definitions**

21 2.1 "Accessible Component" means any component of a Covered Product that could  
22 be touched by a person during reasonably foreseeable use.

23 2.2 "3P Standard" means a maximum concentration of DEHP, BBP, and DBP, each,  
24 of 1,000 parts per million by weight ("ppm"), in each Accessible Component.

25 2.3 "Lead Standard" means a maximum concentration of lead of 100 ppm in each  
26 Accessible Component.

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1           2.4     “Covered Products” means the product categories in Exhibit A to this Consent to  
2 Judgment, and as selected by each Opt-In Settling Defendant in Exhibit A to its respective  
3 Stipulation for Entry of Judgment, that are Manufactured (as defined in Section 2.7 below),  
4 distributed, sold, or offered for sale by a Settling Defendant, for use by or sale to individuals in  
5 California. The term Covered Products shall not include any Covered Products that are Fashion  
6 Accessories for which a Settling Defendant is already subject to injunctive relief in a consent  
7 judgment in *Held v. Aldo U.S., Inc. et al.*, San Francisco County Consolidated Case No. CGC-10-  
8 497729 and/or *Center For Environmental Health v. Lulu NYC LLC*, Alameda County Case No.  
9 RG-09-459448, and consolidated matters. The term Covered Products shall not include any  
10 products that are the subject of the Complaint in the matter of *Brimer v. Office Depot, Inc., et al.*,  
11 San Francisco County Superior Court Case No. CGC-10-496051, with the exception of ACCO  
12 Covered Products released herein.

13           2.5     “Effective Date” means: (i) as to ACCO, the date on which a judgment based on  
14 this Consent To Judgment is entered by the Court; and (ii) as to each Opt-In Settling Defendant,  
15 the date on which this Consent To Judgment is entered and made effective as to the Opt-In  
16 Settling Defendant by the Court.

17           2.6     “Opt-In Settling Defendants” means the persons or entities that become parties to  
18 this Consent To Judgment pursuant to the procedure established in Section 8 below. Parents,  
19 subsidiaries, and affiliated entities that are under common ownership with an Opt-In Settling  
20 Defendant will be deemed to be Opt-In Settling Defendants under this Consent To Judgment only  
21 if they are specifically denominated with the listing of the Opt-In Settling Defendant’s name on  
22 its Exhibit A, and shall be subject to all of the injunctive terms set forth herein.

23           2.7     “Manufactured,” “Manufactures,” and “Manufacturer” have the meaning defined  
24 in Section 3(a)(10) of the Consumer Product Safety Act (“CPSA”) [15 U.S.C. § 2052(a)(10),  
25 (11)], as amended from time to time.<sup>1</sup>

26 \_\_\_\_\_  
27 <sup>1</sup> As of the date of this Consent To Judgment, the term “Manufactured” and “Manufactures” means to manufacture,  
28 produce, or assemble. 15 U.S.C. § 2052(a)(10). The term “Manufacturer” means “any person who manufactures or  
imports a consumer product.” 15 U.S.C. § 2052(a)(11).



1           2.8    “Private Label Covered Product” means a Covered Product that bears a private  
2 label where (i) the product (or its container) is labeled with the brand or trademark of an entity  
3 other than a manufacturer of the product, (ii) the entity with whose brand or trademark the  
4 product (or container) is labeled has authorized or caused the product to be so labeled, and (iii)  
5 the brand or trademark of a manufacturer of such product does not appear on such label.

6           2.9    “Private Labeler” means an owner or licensee of a brand or trademark on the label  
7 or other packaging of a product which bears a private label; provided, however, that a Settling  
8 Defendant is not a Private Labeler due solely to the fact that its name, brand or trademark is  
9 visible on a sign or on the price tag of a Covered Product that is not labeled with a third party’s  
10 brand or trademark.

11           2.10 “Vendor” means a person or entity that Manufactures, imports, distributes, or  
12 otherwise supplies a Covered Product to a Settling Defendant, and that is not itself a Settling  
13 Defendant.

14 **3.    INJUNCTIVE RELIEF — REFORMULATION AND WARNINGS**

15           3.1    **Notification to Vendors of Covered Products.**

16           No later than 30 days after the Effective Date, each Opt-In Settling Defendant, shall  
17 provide the 3P Standard and Lead Standard to its then-current Vendors of the Covered Products  
18 that will be sold or offered for sale to California citizens.

19           3.2    **Lead in Covered Products.**

20           3.2.1 Commencing on December 15, 2011, or the Effective Date, whichever is  
21 later, ACCO shall not purchase, import, sell, or ship for sale in California any products alleged in  
22 the operative complaints in ACCO I and ACCO II that do not comply with the Lead Standard,  
23 and an Opt-In Settling Defendant shall not purchase, import, manufacture, sell, or ship for sale in  
24 California any Covered Products manufactured on or after September 1, 2011, that do not comply  
25 with the Lead Standard. The deadline for meeting the Lead Standard shall not be extended.

26           3.2.2 Notwithstanding Section 3.2.1, an Opt-In Settling Defendant may  
27 purchase, import, manufacture, sell, or ship for sale in California a Covered Product that does not

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1 comply with the Lead Standard under the following conditions: (i) the Covered Product, or  
2 Accessible Component thereof, that complies with the Lead Standard is not reasonably  
3 commercially available; (ii) the Covered Product is not primarily intended for use by individuals  
4 twelve years of age or younger; (iii) the Settling Defendant complies with the warning  
5 requirements set forth in Section 3.4 below; and (iv) the Settling Defendant makes the  
6 supplemental payment set forth in Section 5.4. For purposes of this Section 3.2.2, reasonable  
7 commercial availability shall include consideration of the following factors: availability and  
8 supply of the Covered Product or Accessible Component that meets the Lead Standard; cost of  
9 the Covered Product or Accessible Component that meets the Lead Standard; performance  
10 characteristics of the Covered Product or Accessible Component that meets the Lead Standard,  
11 including but not limited to performance, safety, and stability. Within 30 days of a written  
12 request, the Settling Defendant shall produce to plaintiff records demonstrating that a Covered  
13 Product, or Accessible Component thereof, that complies with the Lead Standard is not  
14 reasonably commercially available. Each Settling Defendant shall cooperate with Plaintiff in  
15 providing additional information or representations necessary to demonstrate that a Covered  
16 Product, or Accessible Component thereof, that complies with the Lead Standard is not  
17 reasonably commercially available.

18           3.2.3 On or before the Effective Date, a Settling Defendant may elect to modify  
19 the Lead Standard to a maximum concentration of lead of 300 ppm in each Accessible  
20 Component of a Covered Product, excluding any Covered Product that is primarily intended for  
21 use by individuals twelve years of age or younger. Each Opt-In Settling Defendant electing to  
22 modify the Lead Standard to 300 ppm shall make an additional payment of \$20,000. Plaintiff  
23 shall submit an application to the court for a proper allocation of the \$20,000 between civil  
24 penalties and fees.

25           **3.3 DEHP, DBP, and BBP in Covered Products**

26           3.3.1 Commencing on December 15, 2011, or the Effective Date, whichever is  
27 later, ACCO shall not purchase, import, sell, or ship for sale in California any products alleged in

1 the operative complaints in ACCO I and ACCO II, that do not comply with the 3P Standard, and  
2 an Opt-In Settling Defendant shall not purchase, import, manufacture, sell, or ship for sale in  
3 California any Covered Product that does not comply with the 3P Standard. The deadline for  
4 meeting the 3P Standard shall be extended to December 15, 2012, with respect to a Settling  
5 Defendant if the Settling Defendant provides a written notification to Brimer and files a notice in  
6 this Court exercising such an election, on or before November 15, 2011, or the date on which it  
7 executes an Opt-In Stipulation pursuant to Section 8.2, whichever is later, and makes the payment  
8 required by Section 5.3 below.

9           3.3.2 Notwithstanding Section 3.3.1, an Opt-In Settling Defendant may  
10 purchase, import, manufacture, sell, or ship for sale in California a Covered Product that does not  
11 comply with the 3P Standard under the following conditions: (i) the Covered Product, or  
12 Accessible Component thereof, that complies with the 3P Standard, is not reasonably  
13 commercially available; (ii) the Covered Product is not primarily intended for use by individuals  
14 twelve years of age or younger; (iii) the Settling Defendant complies with the warning  
15 requirements set forth in Section 3.4 below; and (iv) the Settling Defendant makes the  
16 supplemental payment set forth in Section 5.4 For purposes of this Section 3.3.2 reasonable  
17 commercial availability shall include consideration of the following factors: availability and  
18 supply of the Covered Product or Accessible Component that meets the 3P Standard; cost of the  
19 Covered Product or Accessible Component that meets the 3P Standard; performance  
20 characteristics of the Covered Product or Accessible Component that meets the 3P Standard,  
21 including but not limited to performance, safety, and stability. Within 30 days of a written  
22 request, the Settling Defendant shall produce to plaintiff records demonstrating that a Covered  
23 Product, or Accessible Component thereof, that complies with the 3P Standard is not reasonably  
24 commercially available. Each Settling Defendant shall cooperate with Plaintiff in providing  
25 additional information or representations necessary to demonstrate that a Covered Product, or  
26 Accessible Component thereof, that complies with the 3P Standard is not reasonably  
27 commercially available.

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1           3.4   **Product Warnings.** Commencing on December 15, 2011, or the Effective Date,  
2 whichever is later, a Settling Defendant that manufactures, imports, distributes, sells or ships a  
3 Covered Product for sale in California that does not meet the 3P Standard and/or the Lead  
4 Standard, and only if the conditions of Sections 3.2.2 and/or 3.3.2 are met, shall provide a  
5 warning that is affixed to the packaging of, or if no packaging exists, directly on, such Covered  
6 Product that includes one of the statements in (a) or the statement in (b), as follows:

7           (a)   If the Covered Product contains lead:

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

11           If the Covered Product contains BBP, DBP, and/or DEHP:

12                   **WARNING:** This product contains one or more  
13                                   phthalates, chemicals known to the  
14                                   State of California to cause birth  
                                  defects and other reproductive harm.

15           If the Covered Product contains lead and BBP, DBP, and/or DEHP:

16                   **WARNING:** This product contains lead and one  
17                                   or more phthalates, chemicals known  
18                                   to the State of California to cause  
                                  birth defects and other reproductive  
                                  harm.

19                                   OR

20           (b)   If the Covered Product contains lead, BBP, DBP, and/or DEHP:

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

24           For Covered Products sold by the Settling Defendant by catalog or via the internet or by  
25 telephone, the Settling Defendant shall advise the purchaser that he or she may return the Covered  
26 Product for a full refund (including shipping costs for both the receipt and the return of the  
27 product). The warning and information regarding return of the Covered Product required by this

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1 Section 3.4 shall be sufficiently conspicuous as to be read and understood by a consumer under  
2 normal conditions of purchase or use.

3 3.5 By entering into this Consent To Judgment, the Parties do not intend to alter,  
4 expand, or restrict any requirements applicable to lead, BBP, DBP, and/or DEHP in Covered  
5 Products that may be imposed by laws other than Proposition 65, such as the federal Consumer  
6 Product Safety Improvement Act of 2008 (“CPSIA”) and its implementing regulations (as it or  
7 they may be amended from time to time), or defenses available under such other laws.

8 **4. ENFORCEMENT**

9 4.1 Any Party may, by motion or application for an order to show cause before this  
10 Court, enforce the terms and conditions contained in this Consent To Judgment. A Party may file  
11 such a motion or application or bring a new enforcement action over a Covered Product against a  
12 Settling Defendant, Defendant Releasee, or Downstream Defendant Releasee only after that Party  
13 first provides notice to the Party allegedly failing to comply with the terms and conditions of this  
14 Consent To Judgment and attempts to resolve such Party’s failure to comply in an open and good  
15 faith manner for a period of no less than 30 days.

16 4.2 Within 30 days after the Effective Date, each Opt-In Settling Defendant shall  
17 notify Plaintiff of a means sufficient to allow Plaintiff to identify Covered Products supplied or  
18 offered by that Settling Defendant on or after that date, for example, a unique brand name or  
19 characteristic system of product numbering or labeling. Information provided to Plaintiff  
20 pursuant to this Section 4.2, including but not limited to, the identities of parties to contracts  
21 among Settling Defendants or between Settling Defendants and third parties, may be designated  
22 by the Settling Defendant as competitively sensitive confidential business information and, if so  
23 designated, shall not be disclosed to any person, including but not limited to, any Settling  
24 Defendant, without the written permission of the Settling Defendant who provided the  
25 information. Any motions or pleadings or any other court filings that may reveal information  
26 designated as competitively sensitive confidential business information pursuant to this Section  
27 shall be submitted in accordance with California Rules of Court 8.160 and 2.550, *et seq.*

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1     **5.     MONETARY PAYMENTS**

2             **5.1     Payments by ACCO.**

3                     5.1.1   ACCO shall pay a settlement amount of \$50,000, as follows:

4                             (a)     \$20,000 of the \$50,000 is for a civil penalty pursuant to Health and  
5     Safety Code Section 25249.7(b).<sup>2</sup>

6                             (b)     \$30,000 of the \$50,000 is for reimbursement of a portion of  
7     Plaintiff's attorneys' fees and costs.

8                     5.1.2   ACCO shall pay the settlement amount within five days of the Effective  
9     Date.

10            **5.2     Payments by Opt-In Settling Defendants.**

11                     **5.2.1   Opt-In Settling Defendants That Have Received a 60-Day Notice of**  
12     **Violation.**

13                             (a)     If, prior to executing an Opt-In Stipulation pursuant to Section 8.2,  
14     an Opt-In Settling Defendant or one or more of its Defendant Releasees or Downstream  
15     Defendant Releasees (as defined in Section 6.1 below) has received a 60-Day Notice of  
16     Violation from Brimer or any other client of The Chanler Group alleging exposure to lead,  
17     DEHP, BBP, and/or DBP in a Covered Product supplied by the Opt-In Settling Defendant  
18     or its Defendant Releasees, the Opt-In Settling Defendant shall pay a base settlement  
19     amount of \$46,000. \$10,000 of the payment shall be for a civil penalty pursuant to Health  
20     and Safety Code Section 25249.7(b) and \$36,000 shall be for reimbursement of a portion  
21     of Plaintiff's attorneys' fees and costs.

22                             (b)     If an Opt-In Settling Defendant that is otherwise subject to Section  
23     5.2.1(a), identifies one category of Covered Products in Exhibit A to its Opt-In  
24     Stipulation, it shall pay a reduced base settlement amount of \$32,000. \$6,000 of the  
25     payment shall be for a civil penalty pursuant to Health and Safety Code Section  
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28     <sup>2</sup> All statutory civil penalties shall be allocated, as follows: 75% shall be paid to the State of California's Office of  
Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% shall be paid to Plaintiff Brimer.

1 25249.7(b) and \$26,000 shall be for reimbursement of a portion of Plaintiff's attorneys'  
2 fees and costs.

3 (c) **Opt-In Settling Defendants subject to an existing complaint.** If  
4 an Opt-In Settling Defendant or its Defendant Releasees or Downstream Defendant  
5 Releasees is a defendant in a complaint filed by Plaintiff Brimer or any other client of The  
6 Chanler Group and/or their counsel alleging a violation of Proposition 65 due to exposure  
7 to lead, DEHP, BBP, and/or DBP in a Covered Product identified by the Opt-In Settling  
8 Defendant and has not been dismissed from such complaint and the allegations of the  
9 complaint have not been otherwise resolved by prior accord and release at the time it  
10 executes its Opt-In Stipulation, the Opt-In Settling Defendant shall pay a supplemental  
11 charge in addition to the payment required in Section 5.2.1(a) or 5.2.1(b). The  
12 supplemental charge shall cover fees and expenses incurred by Plaintiff and/or his counsel  
13 for activities associated with the original filing of said existing complaint, on-going  
14 litigation, and/or activities associated with the subsequent dismissal of said complaint  
15 without prejudice. The supplemental charge shall be \$10,000 if the complaint has been on  
16 file for less than 60 days, \$20,000 if the complaint has been on file for 60 days or more  
17 but less than 180 days, and \$35,000 if the complaint has been on file for 180 days or more.

18 **5.2.2 Opt-In Settling Defendants That Have Not Received a 60-Day Notice**  
19 **of Violation.** If an Opt-In Settling Defendant and its Defendant Releasees or Downstream  
20 Defendant Releasees have not received a 60-Day Notice of Violation for lead, DEHP, BBP,  
21 and/or DBP in a Covered Product, the Opt-In Settling Defendant shall pay \$28,000, regardless of  
22 the number of categories of Covered Products designated by said Opt-In Settling Defendant.  
23 \$10,000 of the payment shall be for a civil penalty pursuant to Health and Safety Code Section  
24 25249.7(b) and \$18,000 shall be for reimbursement of a portion of Plaintiff's attorneys' fees and  
25 costs.

26 **5.2.3 Opt-In Settling Defendants with Opt-In Covered Product sales less**  
27 **than 200 units.** An Opt-In Settling Defendant with total Covered Product sales of less than 200

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1 individual consumer units sold in California during the Relevant Period (*de minimus* sales)  
2 verified pursuant to Section 8.2, shall pay \$16,000. \$2,000 of the payment shall be for a civil  
3 penalty pursuant to Health and Safety Code Section 25249.7(b) and \$14,000 shall be for  
4 reimbursement of a portion of Plaintiff's attorneys' fees and costs.

5 **5.3 Payments by Settling Defendants Extending the Compliance Date.** Each  
6 Settling Defendant that exercises the election set forth in Section 3.3.1 shall pay, at the time it  
7 provides notification of such election, an additional \$14,000. Plaintiff shall submit an application  
8 to the court for a proper allocation of the \$14,000 between civil penalties and fees.

9 **5.4 Payments by Opt-In Settling Defendants Retaining the Warning Option.**  
10 Each Opt-In Settling Defendant that elects to retain the option to manufacture, import, distribute,  
11 sell or ship Covered Products in California that do not meet the 3P Standard and/or Lead  
12 Standard, provided a warning is affixed to such Covered Products pursuant to the terms and  
13 conditions of Sections 3.2.2 and 3.3.2, shall pay a supplemental payment of \$18,000. Plaintiff  
14 shall submit an application to the court for a proper allocation of the \$18,000 between civil  
15 penalties and fees.

16 **5.5 Payment Instructions.** All settlement payments required by this Consent To  
17 Judgment shall be paid as follows:

18 **5.5.1 Civil Penalties:** Civil Penalties shall be apportioned in accordance with  
19 California Health & Safety Code § 25249.12(c) & (d), with 75% of these funds remitted to  
20 OEHHA and the remaining 25% of the penalty remitted to Plaintiff. Each Settling Defendant  
21 shall issue two separate checks for the penalty payment: (a) one check made payable to "The  
22 Chanler Group in Trust For OEHHA," in an amount representing 75% of the total penalty; and  
23 (b) one check to "The Chanler Group in Trust For Russell Brimer," in an amount representing the  
24 remaining 25% of the total penalty. Two separate 1099s shall be issued for the above payments,  
25 including those payments already made by Settling Defendants: (a) OEHHA, P.O. Box 4010,  
26 Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Russell Brimer. The information required to  
27 issue the 1099s for Plaintiff shall be provided five calendar days before the payment is due.

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1                   **5.5.2 Attorneys' Fees:** Attorneys' fees shall be paid by means of a check made  
2 payable to "The Chanler Group."

3                   **5.5.3 Payment Delivery:** All settlement payments required by this Consent To  
4 Judgment shall be sent to the following address:

5                   The Chanler Group  
6                   Attn: Proposition 65 Controller  
7                   Re: Lead/3P in Office and School Supplies  
8                   2560 Ninth Street  
9                   Parker Plaza, Suite 214  
10                  Berkeley, CA 94710

11                  **5.6 ACCO's Recoupment of Costs.**

12                  5.6.1 ACCO shall be entitled to recover a portion of Brimer's attorney fees paid  
13 by Opt-In Settling Defendants under Section 5.2 as reimbursement for out-of-pocket litigation  
14 and settlement related costs it incurred in the course of litigating ACCO I and ACCO II and in  
15 negotiating and resolving the claims addressed in this Consent To Judgment. Subject to Section  
16 5.6.3, the costs shall be apportioned as follows:

17                  (a) For each Opt-In Settling Defendant making a payment pursuant to  
18 Section 5.2.1(a) or 5.2.1(c), ACCO shall receive \$12,000.

19                  (b) For each Opt-In Settling Defendant making a payment pursuant to  
20 Section 5.2.1(b), ACCO shall receive \$8,600.

21                  (c) For each Opt-In Settling Defendant making a payment pursuant to  
22 Section 5.2.2, ACCO shall receive \$9,000.

23                  (d) For each Opt-In Settling Defendant making a payment pursuant to  
24 Section 5.2.3, ACCO shall receive (i) \$4,600, if the Opt-In Settling Defendant or one or  
25 more of its Defendant Releasees or Downstream Defendant Releasees has received a 60-  
26 Day Notice of Violation from Brimer or any other client of The Chanler Group alleging  
27 exposure to lead, DEHP, BBP, and/or DBP in a Covered Product supplied by the Opt-In  
28 Settling Defendant or its Defendant Releasees; or (ii) \$7,000 if the Opt-In Settling

1 Defendant or one or more of its Defendant Releasees or Downstream Defendant Releasees  
2 has not received such a 60-Day Notice of Violation.

3 5.6.2 The Parties shall share Opt-In Settling Defendant attorney fee payments in  
4 the following order:

5 (a) Brimer shall remit payments to ACCO in the amounts required by  
6 Section 5.6.1 until ACCO has recouped \$14,000;

7 (b) Brimer shall then be entitled to collect up to \$150,000 in attorney  
8 fees paid by Opt-In Settling Defendants without remitting any amounts to ACCO;

9 (c) Once Brimer has collected a total of \$150,000 in attorney fees paid  
10 by Opt-In Settling Defendants, Brimer shall subsequently remit payments to ACCO in the  
11 amounts required by Section 5.6.1, which payments, including the initial \$14,000, shall  
12 not exceed a total of \$150,000.

13 5.6.3 Brimer's counsel shall notify ACCO's counsel within five days of receipt  
14 of attorney fee payments from each prospective Opt-In Settling Defendant. Within five days after  
15 providing notice, or upon such schedule as may be agreed to in writing by the Parties, Brimer  
16 shall remit any amounts owing to ACCO pursuant to Section 5.6, and ACCO's counsel shall hold  
17 all payments made by Brimer in trust pending Court approval of the Opt-In Stipulations from  
18 which the payments were made, pursuant to Section 8.4. Brimer shall not be required to notify  
19 ACCO's counsel of receipt of attorney fees or make further payments once Brimer has remitted  
20 the maximum recoupment under Section 5.6.2(c).

21 **6. CLAIMS COVERED AND RELEASE**

22 6.1 This Consent To Judgment is a full, final, and binding resolution between Brimer  
23 and each Settling Defendant and its subsidiaries, affiliates, sister and related companies,  
24 employees, shareholders, directors, insurers, attorneys, successors, assigns, licensees, and  
25 licensors (collectively "Defendant Releasees"), and all entities to whom they directly or indirectly  
26 distribute or sell Covered Products, including but not limited to distributors, wholesalers,  
27 resellers, customers, retailers, franchisees, cooperative members that sold or distributed the

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1 Covered Products (“Downstream Defendant Releasees”) of any violation of Proposition 65 that  
2 has been or could have been asserted against Settling Defendants, Defendant Releasees and  
3 Downstream Defendant Releasees regarding the failure to warn about exposure to lead, BBP,  
4 DBP, and/or DEHP arising in connection with Covered Products manufactured, sourced,  
5 distributed, or sold by Defendant Releasees prior to the Effective Date, but only as to those  
6 categories of Covered Products that are designated for each Settling Defendant on its respective  
7 Exhibit A, and only for those chemicals (lead, DEHP, BBP, and/or DBP) selected.

8           6.2 In further consideration of the promises and agreements herein contained, the  
9 representations in Section 1, the injunctive relief commitments set forth in Section 3, and for the  
10 payments to be made pursuant to Section 5, Brimer, on behalf of himself, his past and current  
11 agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general  
12 public, hereby waives all rights to institute or participate in, directly or indirectly, any form of  
13 legal action and releases all claims, including, without limitation, all actions, and causes of action,  
14 in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses,  
15 or expenses (including, but not limited to, investigation fees, expert fees, and attorneys’ fees) of  
16 any nature whatsoever, fixed or contingent (collectively “Claims”), against Settling Defendants,  
17 each of their Defendant Releasees, and each of their Downstream Defendant Releasees. This  
18 release is limited to those Claims that arise under Proposition 65 with respect to lead, BBP, DBP,  
19 and/or DEHP in the Covered Products associated with the Settling Defendants, as such claims  
20 relate to the alleged failure to warn under Health & Safety Code § 25249.6, to only those  
21 categories of Covered Products in Exhibit A that are designated for each Opt-In Settling  
22 Defendant on its respective Exhibit A, and only for those chemicals (lead, DEHP, BBP, and/or  
23 DBP) selected.

24           6.3 Plaintiff also, in his individual capacity only and not in his representative capacity,  
25 provides a release herein which shall be effective as a full and final accord and satisfaction, as a  
26 bar to all Claims, known or unknown, suspected or unsuspected, arising out of alleged or actual  
27 exposure now and in the future to lead, DEHP, BBP, and/or DBP in Covered Products

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1 manufactured, distributed or sold by ACCO, to ACCO, its Defendant Releasees, and, to the extent  
2 supplied by ACCO, its Downstream Defendant Releasees.

3 6.4 Upon entry of this Consent To Judgment as to ACCO, Brimer shall file a dismissal  
4 without prejudice of the claims made in ACCO I and ACCO II regarding products distributed or  
5 sold by ACCO identified in the Notices and Complaints against all of ACCO's Downstream  
6 Defendant Releasees, including but not limited to 99 Cents Only Stores, Inc., Fry's Electronics,  
7 Inc., Lucky Supermarkets, Save Mart Supermarkets, Michaels Stores, Inc., and Office Depot, Inc.

8 6.5 Settling Defendants waive any and all claims against Plaintiff, his attorneys, and  
9 other representatives for any and all actions taken or statements made (or those that could have  
10 been taken or made) by Plaintiff and his attorneys and other representatives, whether in the course  
11 of investigating claims or otherwise seeking enforcement of Proposition 65 against them in this  
12 matter with respect to the Claims resolved and released in Sections 6.1 through 6.3.

13 6.6 Upon entry of this Consent To Judgment, Brimer and ACCO waive their rights to  
14 trial of the issues raised by the Notices and Complaints, and to enforcement or appeal of any  
15 ruling or order issued by the Court in ACCO I or ACCO II prior to the Effective Date.

16 6.7 Compliance with the terms of this Consent To Judgment by a Settling Defendant  
17 constitutes compliance with Proposition 65 with respect to lead, DEHP, BBP, and DBP in that  
18 Settling Defendant's Covered Products with respect to the Claims resolved and released in  
19 Sections 6.1 through 6.3.

20 6.8 Nothing in this Section 6 affects Plaintiff's rights to commence or prosecute an  
21 action under Proposition 65 against any person other than a Settling Defendant, Defendant  
22 Releasee, or Downstream Defendant Releasee.

23 6.9 Nothing in this Section 6 affects Plaintiff's rights to commence or prosecute an  
24 action under Proposition 65 against a Downstream Defendant Releasee that does not involve a  
25 Settling Defendant's Covered Product.

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1       **7.     NOTICES**

2             When any Party is entitled to receive any notice under this Consent To Judgment, the  
3 notice shall be sent by certified mail or electronic mail to the following:

4             For ACCO:  
5             General Counsel  
6             ACCO Brands Corporation  
7             300 Tower Parkway  
8             Lincolnshire, IL 60069

9             With a copy to:  
10            Jeffrey B. Margulies  
11            Fulbright & Jaworski LLP  
12            555 South Flower Street, 41st Floor  
13            Los Angeles, CA 90071  
14            E-mail: [jmargulies@fulbright.com](mailto:jmargulies@fulbright.com)

15            For Brimer:  
16            Proposition 65 Coordinator  
17            The Chanler Group  
18            2560 Ninth Street  
19            Parker Plaza, Suite 214  
20            Berkeley, CA 94710-2565

21            For Opt-In Settling Defendants whose Opt-In Stipulations have been approved and  
22 entered by the Court:

23            To the address appearing on Exhibit B to their Opt-In Stipulation.

24            Any Party may modify the person and address to whom the notice is to be sent by sending each  
25 other Party notice by certified mail and/or other verifiable form of written communication.

26        **8.     OPT-IN PROGRAM**

27            8.1     This Consent To Judgment is executed with the understanding that additional  
28 persons and entities who manufacture, distribute, sell, and/or offer for sale Covered Products in  
the State of California, or have done so in the past, may wish to subscribe to its terms. A person  
or entity wishing to become an Opt-In Settling Defendant shall, within 90 days of entry of this  
Consent To Judgment (the "Opt-In Period"): (a) complete and submit to Plaintiff's counsel, with

1 a copy to ACCO's counsel, the Stipulation for Entry of Judgment as provided in Section 8.2  
2 below, and (b) make the payments required under Sections 5.2 through 5.4.

3 **8.2 Opt-In Stipulations.** Each Opt-In Settling Defendant shall execute a "Stipulation  
4 for Entry of Judgment" in the general form appearing in Exhibit B hereto ("Opt-In Stipulation")  
5 identifying the categories of Covered Products that the Opt-In Settling Defendant has  
6 manufactured, imported, distributed, and/or offered for use or sale in California that it wishes to  
7 include as Covered Products under this Consent To Judgment.

8 **8.2.1** An Opt-In Settling Defendant that has not previously received a 60-Day  
9 Notice of Violation from Plaintiff concerning the type of Covered Products it designates in its  
10 Opt-In Stipulation shall certify to the following facts: (1) the Opt-In Settling Defendant has  
11 employed ten or more persons at any time within the Relevant Period;<sup>3</sup> (2) the Opt-In Settling  
12 Defendant manufactured, imported, distributed, and/or offered for use or sale in California one or  
13 more specifically Covered Products, identified on its Exhibit A, without a "clear and reasonable"  
14 Proposition 65 warning, as that term is defined under 27 California Code of Regulations § 25601,  
15 during the Relevant Period; (3) the Opt-In Settling Defendant knows or has reason to believe that  
16 one or more Covered Products contained, during the Relevant Period, Accessible Components  
17 containing lead, DEHP, BBP and/or DBP; and (4) the Opt-In Settling Defendant has not  
18 performed and shared with Plaintiff a risk or exposure assessment establishing that the Covered  
19 Products it offered for sale in California during the Relevant Period did not require Proposition 65  
20 warnings with respect to lead, DEHP, BBP and/or DBP. An Opt-In Settling Defendant shall also  
21 designate in its Opt-In Stipulation whether it exercises the election set forth in Section 3.3.1  
22 and/or retains the conditions of Sections 3.2.2 and 3.3.2.

23 **8.2.2** An Opt-In Settling Defendant that seeks the reduced payment for de  
24 *minimus* sales in Section 5.2.3 shall attach to its Opt-In Stipulation a document demonstrating  
25 individual consumer unit sales of the Covered Products by narrative description and, if available,  
26 the corresponding UPC code, together with the corresponding sales volumes for the Relevant

27 <sup>3</sup> "Relevant Period" is defined for purposes of this Consent To Judgment as the three-year period prior to the  
28 execution of the Opt-In Stipulation.

1 Period. The information in the document shall be verified under penalty of perjury by an  
2 appropriate custodian of records, an authorized officer, or other person with knowledge of the  
3 information contained in the document. If Plaintiff considers the document to be inadequate to  
4 establish the Opt-In Settling Defendant's right to the *de minimus* payment, Plaintiff and the  
5 Opt-In Settling Defendant shall meet and confer in a good faith attempt to resolve any such  
6 dispute before requesting the intervention of the Court.

7 8.3 Not later than ninety (90) days after Plaintiff receives a completed Opt-In  
8 Stipulation, any additional information or representations necessary to support a Notice, and the  
9 payment(s) required pursuant to Sections 5.2 through 5.4 above, Plaintiff shall, if he has not  
10 previously done so, send a 60-Day Notice pursuant to California Health & Safety Code  
11 § 25249.7(d) to the Opt-In Settling Defendant, to the Office of the California Attorney General, to  
12 every California district attorney, and to every California city attorney required to receive such a  
13 notice pursuant to Health & Safety Code § 25249.7, listing the Covered Products and listed  
14 chemicals identified by the Opt-In Settling Defendant on its Exhibit A.

15 8.4 No later than ninety (90) days after the expiration of the Opt-In Period, plaintiff  
16 shall file in this Court an application, pursuant to Code of Civil Procedure § 1005, for entry of  
17 any executed Opt-In Stipulation Plaintiff has received, unless the Court provides leave  
18 authorizing a later date. If the Court approves the application for entry of the Opt-In Stipulations,  
19 the Complaint shall be deemed to have been amended to specifically name each Opt-In Settling  
20 Defendant that executed the Opt-In Stipulations as a named defendant in this Action, to allege  
21 exposure to lead, DEHP, BBP, and/or DBP in the Covered Products identified by such Opt-In  
22 Settling Defendant in its Opt-In Stipulation, and each such Opt-In Settling Defendant shall be  
23 deemed to be a Settling Defendant under this Consent To Judgment and will likewise assume all  
24 applicable obligations and rights set forth under this Consent To Judgment. In the event that an  
25 authorized public prosecutor of Proposition 65 files a lawsuit against an Opt-In Settling  
26 Defendant with respect to lead, DEHP, BBP, and/or DBP in the Covered Products prior to  
27 running of the sixty (60) day period established by a Notice issued by Plaintiff pursuant to

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1 Section 8.3 above, Plaintiff shall refund the full payment submitted to them by such an Opt-In  
2 Settling Defendant and then have no further obligations to that Opt-In Settling Defendant under  
3 this Section 8.

4 8.5 At the time Plaintiff files the application for entry of the Opt-in Stipulations with  
5 the Court pursuant to Section 8.4 above, he shall prepare and file with the Court and serve on the  
6 Office of the California Attorney General, an application for approval of the attorneys' fees and  
7 cost reimbursement payments collected in conjunction with such Opt-In Stipulations, pursuant to  
8 Section 5.2 through 5.4 above, only if the amount collected exceeds the attorneys' fees and costs  
9 presented to the Court in any prior proceeding in this matter. Such application, if necessary, shall  
10 be supported by one or more declarations reporting the results of the Opt-In program provided for  
11 in this Section 8, including all expenses and attorneys' fees incurred by Plaintiff's counsel with  
12 respect to this consolidated action. In the event that the application indicates that total amount of  
13 expenses and attorneys' fees incurred by Plaintiff's counsel with respect to the Opt-In program,  
14 ACCO I, and ACCO II is less than the total amount of reimbursement provided pursuant to  
15 Section 5.2 above, Plaintiff shall apply to the Court for approval of a third-party recipient of the  
16 excess funds. Notwithstanding the foregoing, Plaintiff's counsel may offset any amount that  
17 would otherwise be disgorged pursuant to this Section with those attorneys' fees and costs  
18 incurred with respect to his investigation, litigation, and enforcement of this consolidated action  
19 and the fees and costs related to negotiating, drafting, and obtaining the Court's approval of this  
20 Consent To Judgment that exceed the payments made by the Settling Defendants.

21 **9. COURT APPROVAL**

22 9.1 The Parties acknowledge that, pursuant to California Health & Safety Code §  
23 25249.7, a noticed motion is required to obtain judicial approval of this Consent To Judgment,  
24 and shall file a joint motion for approval. ACCO shall prepare and provide to Brimer the initial  
25 draft joint motion, notice of motion, and declaration in support of the joint motion. If this  
26 Consent To Judgment is not approved by the Court in its entirety, the Parties shall meet and  
27 confer to determine whether to modify the terms of the Consent To Judgment and to resubmit it

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1 for approval. ACCO and its counsel agree to support Brimer's effort to obtain final entry of this  
2 Consent To Judgment by the trial court and to undertake any actions reasonably necessary to  
3 implement and/or modify this Consent To Judgment in order to further the mutual intention of the  
4 Parties in entering into this Consent To Judgment.

5 9.2 If this Consent To Judgment is not entered by the Court as to ACCO, or the  
6 application for Entry of Opt-In Stipulations is not approved by the Court as to any putative Opt-In  
7 Settling Defendant, it shall be of no force or effect as to ACCO or such putative Opt-In Settling  
8 Defendant and shall never be introduced into evidence or otherwise used in any proceeding for  
9 any purpose other than to determine the rights or obligations of a Party as a result of the fact that  
10 the Consent To Judgment or application for Entry of Opt-In Stipulations was not approved.

11 9.3 If the application for entry of the Opt-in Stipulations is not approved by the Court  
12 as to one or more putative Opt-In Settling Defendants, within 15 days after such order becomes  
13 final and the time to appeal has lapsed, ACCO shall return to plaintiff any Litigation and  
14 Settlement Related Costs paid under Section 5.6, and within 30 days thereafter plaintiff shall  
15 refund any payments made by such putative Opt-In Settling Defendants under Section 5.2.

16 **10. MODIFICATION**

17 This Consent To Judgment may be modified as to one or more Parties only: (1) by written  
18 agreement of the Parties and upon entry of a Stipulation and Order by the court thereon; or (2)  
19 upon a successful motion or application of any Party pursuant to Code of Civil Procedure § 1005  
20 or California Rule of Court, Rule 3.1200, which motion or application shall not be unreasonably  
21 opposed unless a material term affecting the opposing Party is as issue.

22 **11. OTHER TERMS**

23 11.1 The terms of this Consent To Judgment shall be governed by the laws of the State  
24 of California.

25 11.2 This Consent To Judgment shall apply to and be binding upon Plaintiff and  
26 Settling Defendants, and their respective divisions, subdivisions, and subsidiaries, and the  
27 successors or assigns of any of them.

1           11.3 This Consent To Judgment contains the sole and entire agreement and  
2 understanding of the Parties with respect to the entire subject matter set forth in this Consent To  
3 Judgment, and any and all prior discussions, negotiations, commitments, or understandings  
4 related thereto, if any, are deemed merged. There are no warranties, representations, or other  
5 agreements between the Parties except as expressly set forth in this Consent To Judgment. No  
6 representations, oral or otherwise, express or implied, other than those specifically referred to in  
7 this Consent To Judgment have been made by any Party. No other agreements not specifically  
8 contained or referenced in this Consent To Judgment, oral or otherwise, shall be deemed to exist  
9 or to bind any of the Parties. No supplementation, modification, waiver, or termination of this  
10 Consent To Judgment shall be binding unless executed in writing by the Party to be bound. No  
11 waiver of any of the provisions of this Consent To Judgment shall be deemed or shall constitute a  
12 waiver of any of the other provisions whether or not similar, nor shall such waiver constitute a  
13 continuing waiver.

14           11.4 Nothing in this Consent To Judgment shall release, or in any way affect any rights  
15 that any Settling Defendant might have against any other party, whether or not that party is a  
16 Settling Defendant.

17           11.5 The stipulations to this Consent To Judgment may be executed in counterparts and  
18 by means of facsimile or portable document format (.pdf), which taken together shall be deemed  
19 to constitute one document.

20           11.6 Each signatory to this Consent To Judgment certifies that he or she is fully  
21 authorized by the Party he or she represents to stipulate to this Consent To Judgment and to enter  
22 into and execute the Consent To Judgment on behalf of the Party represented and to legally bind  
23 that Party.

24           11.7 The Parties, including their counsel, have participated in the preparation of this  
25 Consent To Judgment and this Consent To Judgment is the result of the joint efforts of the  
26 Parties. This Consent To Judgment was subject to revision and modification by the Parties and  
27 has been accepted and approved as to its final form by all Parties and their counsel. Accordingly,

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1 any uncertainty or ambiguity existing in this Consent To Judgment shall not be interpreted against  
2 any Party as a result of the manner of the preparation of this Consent To Judgment. Each Party to  
3 this Consent To Judgment agrees that any statute or rule of construction providing that  
4 ambiguities are to be resolved against the drafting Party should not be employed in the  
5 interpretation of this Consent To Judgment and, in this regard, the Parties hereby waive California  
6 Civil Code Section 1654.

7 **12. ATTORNEYS' FEES**

8 12.1 Should Brimer prevail on any motion, application for an order to show cause or  
9 other proceeding to enforce a violation of this Consent To Judgment, he shall be entitled to his  
10 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should  
11 ACCO or an Opt-In Settling Defendant prevail on any motion, application for an order to show  
12 cause or other proceeding, it may be awarded its reasonable attorneys' fees and costs as a result of  
13 such motion or application upon a finding by the court that Brimer's prosecution of the motion or  
14 application lacked substantial justification. For purposes of this Consent To Judgment, the term  
15 substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986,  
16 Code of Civil Procedure Section 2016, *et seq.*

17 12.2 Except as provided in Sections 5 and 12.1 of this Consent To Judgment, or with  
18 regard to an appeal brought by a third party, each Party shall bear its own attorneys' fees and  
19 costs in connection with the Notices and Complaint through entry of final judgment.

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12.3 Nothing in this Section 12 shall preclude a Party from seeking an award of sanctions pursuant to law.


**IT IS SO STIPULATED:**

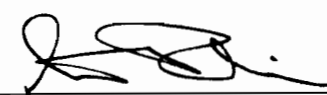
**AGREED TO:**

**AGREED TO:**

Date: 8-25-11

Date: August 25, 2011

By:   
Plaintiff Russell Brimer

By:   
Defendant ACCO Brands Corporation  
*Union Vice President,  
Secretary + General Counsel*

**EXHIBIT A TO THE CONSENT TO JUDGMENT**

1 EXHIBIT A

2 COVERED PRODUCTS FOR DEFENDANT ACCO BRANDS CORPORATION

3 The Covered Products applicable to ACCO, listed below, are limited to those containing  
4 lead, DEHP, DBP and/or BBP.

5 Art, Craft and Drafting Supply: Cases, portfolios, pouches, stands, wraps

6 Art, Craft and Drafting Supply: Wire, tools (including hand and electrically powered tools and  
7 tool components, e.g., hammers, pliers, drills, drill bits, saws)

8 Badges, Luggage and Identification Products: Holders, pouches, laminating sheet/film

9 Badges, Luggage and Identification Products: Lanyards, clips, cords, cables, chains, reels

10 Binding Machines

11 Calendars, Planners and Appointment Books: Portable, wall, desktop and self contained set/kit

12 Checkbook covers

13 Computer and Electronics Accessories: Battery packs

14 Computer and Electronics Accessories: backpacks, device sleeves, armbands, wristbands, and  
15 gloves

16 Computer and Electronics Accessories: Power adapters, charging docks, docking stations, surge  
17 protectors, and USB charging hubs

18 Computer and Electronics Accessories: power cables, USB cables, printer cables, serial cables,  
19 network cables, modem cables

20 Computer and Electronics Accessories: Input devices, gesture and voice recognition devices,  
21 presenters, styli, and pens

22 Computer and Electronics Accessories: Headphones, headsets

23 Computer and Electronics Accessories: Laser Pointers

24 Computer and Electronics Accessories: Locks

25 Computer and Electronics Accessories: Mice, keyboards, trackballs, trackpads, touchpads

26 Computer and Electronics Accessories: Mouse pads

27 Computer and Electronics Accessories: Remote controls for computers, tablets, smartphones,  
28 electronic accessories

Computer and Electronics Accessories: Speakers

Computer and Electronics Accessories: Security anchors, including zipper pulls, electronic tags,  
desk, wall, luggage, protective case, and cubicle anchors

Computer and Electronics Accessories: Stands, folios, footrests, monitor arms, monitor stands,  
keyboard stands, keyboard drawers and holders

Computer and Electronics Accessories: Storage covers, bags, cases, sleeves, straps

Document and Data Storage/Organization Products: Binders, folders, filers, albums/photo  
albums, notebooks, sorters and portfolios

Document and Data Storage/Organization Products: Connectable board products and components

Document and Data Storage/Organization Products: Index dividers, guides and tabs

- 1 Document and Data Storage/Organization Products: Sleeves, protectors, pouches
- 2 Desktop Products: Pencil cups
- 3 Ergonomic Products: Wrist rests
- 4 Ergonomic Products: Back rests
- 5 Fasteners, and wall hangers, including paper and binder clips; picture, storage, and cup hooks and wires; suction cups/devices
- 6 Presentation Products: Binding elements including spines and report covers
- 7 Presentation Products: Binders, report covers, folders, and portfolios
- 8 Laminators
- 9 Magnets, packaged individually and contained in a set/kit
- 10 Measuring tape and tape measures
- 11 Paper trimmers
- 12 Pencil Sharpeners
- 13 Punches
- 14 Rubber finger tips
- 15 Rulers, packaged individually and contained in a set/kit
- 16 Shredders
- 17 Staplers
- 18 Stationery packs/kits, accounting pads, record books
- 19 Suction cups
- 20 Tag wires
- 21 Trimmers
- 22 Writing Instruments: Erasers
- 23 Writing Instruments: Pens, pencils, markers, highlighters
- 24 Writing Instruments: Set/kit in self contained pouches/bags
- 25 Writing Instruments: Sharpeners

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**EXHIBIT B TO THE CONSENT TO JUDGMENT**



1 Clifford A. Chanler, State Bar No. 135534  
2 Laurence D. Haveson, State Bar No. 152631  
3 Josh Voorhees, State Bar No. 241436  
4 THE CHANLER GROUP  
5 2560 Ninth Street  
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7 Berkeley, CA 94710-2565  
8 Telephone: (510) 848-8880  
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6 Attorneys for Plaintiff  
7 RUSSELL BRIMER

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE CITY AND COUNTY OF SAN FRANCISCO  
11 UNLIMITED CIVIL JURISDICTION

13 RUSSELL BRIMER, )  
14 Plaintiff, )  
15 v. )  
16 ACCO BRANDS CORPORATION, et al., )  
17 Defendants. )  
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) Lead Case No. CGC-09-485784  
) (Consolidated With CGC-10-505323)  
) Assigned for all Purposes to the  
) Honorable Richard A. Kramer  
) **STIPULATION FOR ENTRY OF**  
) **JUDGMENT**

1           1.       The following constitutes the knowing and voluntary election and stipulation of  
2 the entity named below (“Company” or “Opt-In Settling Defendant”) to join as a Settling  
3 Defendant under the Consent To Judgment previously entered by the Court in the above-  
4 captioned consolidated actions, *Brimer v ACCO Brands Corporation, et al.*, San Francisco  
5 Superior Court Case Nos. CGC-09-485784 and CGC-10-505323, (the “Action”) and to be  
6 bound by the terms of that Consent To Judgment.

7           2.       The terms of the Consent To Judgment apply to the Opt-In Settling Defendant  
8 only as to those categories of office, stationery, and school supply products selected on Exhibit  
9 A, attached hereto.

10          3.       At any time during the three-year period prior to the filing of this Stipulation  
11 (“Relevant Period”), the Company has employed ten or more part-time or full-time persons and  
12 has manufactured, imported, distributed, or offered for use or sale in California one or more  
13 items in each of the categories of Covered Products selected on Exhibit A.

14          4.       One or more items within each category selected on Exhibit A contained, during  
15 the Relevant Period, Accessible Components as defined in the Consent To Judgment (section  
16 2.1) containing lead, DEHP, BBP, and/or DBP, as selected.

17          5.       The Company has not provided compliant Proposition 65 warnings in  
18 conjunction with the sale or use of the selected Covered Products in California during the  
19 Relevant Period.

20          6.       The Opt-In Settling Defendant has not performed a risk or exposure assessment  
21 establishing that the selected Covered Products it offered for sale in California during the  
22 Relevant Period did not require Proposition 65 warnings with respect to lead, DEHP, BBP,  
23 and/or DBP.

24          7.       In conjunction with the execution of this Stipulation, the Company has provided  
25 the payments required of it under the Consent To Judgment and shall make all future payments  
26 that may apply to the Company. The Company shall be bound by the injunctive relief  
27 provisions set forth in the Consent To Judgment as it relates to the Covered Products.

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1           8.       At least 65 days prior to this Stipulation becoming effective, Russell Brimer  
2 (“Brimer”) shall serve a 60-day notice letter alleging certain violations of Proposition 65 with  
3 respect to sales of the above-selected Covered Products and, provided it has been mailed to the  
4 Company at the address shown in Exhibit B, the Company agrees to be deemed to have  
5 accepted service of the 60-day notice letter. The Company shall cooperate with Plaintiff in  
6 providing additional information or representations necessary to enable Plaintiff to issue a 60-  
7 Day Notice and Certificate of Merit concerning lead, DEHP, BBP, and/or DBP in the Covered  
8 Products.

9           9.       The Company hereby stipulates to be deemed to have voluntarily accepted  
10 service of the summons and complaint in this Action upon the filing of this Stipulation and  
11 agrees to be subject to the jurisdiction of the Court for purposes of the Consent To Judgment.

12           10.      Future notices concerning this Stipulation and the Consent To Judgment shall be  
13 provided to the Company through its designated contact as shown in Exhibit B attached hereto.  
14 If the Company desires to change the individual and/or address designated to receive notice on  
15 its behalf, the Company shall provide written notice to plaintiff’s counsel via certified mail,  
16 return receipt requested or overnight courier at the address listed in Section 7 and to each  
17 Settling Defendant via email at the email addresses shown on their Exhibit B.

18           11.      The undersigned have read, and the person and/or entity named below  
19 knowingly and voluntarily agree to be bound by, all terms and conditions of this Stipulation  
20 and the Consent To Judgment as previously approved and entered by the San Francisco County  
21 Superior Court in this Action.

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EXHIBIT A

**I. SETTLING DEFENDANT**

**Name of Settling Defendant (and relevant associated entities under common ownership):**

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**II. COVERED PRODUCTS**

**Office; stationery; and/or school supply categories applicable to above. Select all categories and chemicals that apply (except for Retailers electing to limit Covered Products to specifically-identified products under Section III, below).**

Covered Product	Lead	DEHP	BBP	DBP
<input type="checkbox"/> Art, Craft and Drafting Supply: Cases, portfolios, pouches, stands, wraps				
<input type="checkbox"/> Art, Craft and Drafting Supply: Wire, tools (including hand and electrically powered tools and tool components, e.g., hammers, pliers, drills, drill bits, saws)				
<input type="checkbox"/> Badges, Luggage and Identification Products: Holders, pouches, laminating sheet/film				
<input type="checkbox"/> Badges, Luggage and Identification Products: Lanyards, clips, cords, cables, chains, reels				
<input type="checkbox"/> Binding Machines				
<input type="checkbox"/> Calendars, Planners and Appointment Books: Portable, wall, desktop and self contained set/kit				

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Covered Product	Lead	DEHP	BBP	DBP
<input type="checkbox"/> Checkbook covers				
<input type="checkbox"/> Computer and Electronics Accessories: Battery packs				
<input type="checkbox"/> Computer and Electronics Accessories: backpacks, device sleeves, armbands, wristbands, and gloves				
<input type="checkbox"/> Computer and Electronics Accessories: Power adapters, charging docks, docking stations, surge protectors, and USB charging hubs				
<input type="checkbox"/> Computer and Electronics Accessories: power cables, USB cables, printer cables, serial cables, network cables, modem cables				
<input type="checkbox"/> Computer and Electronics Accessories: Input devices, gesture and voice recognition devices, presenters, styli, and pens				
<input type="checkbox"/> Computer and Electronics Accessories: Headphones, headsets				
<input type="checkbox"/> Computer and Electronics Accessories: Laser Pointers				
<input type="checkbox"/> Computer and Electronics Accessories: Locks				
<input type="checkbox"/> Computer and Electronics Accessories: Mice, keyboards, trackballs, trackpads, touchpads				
<input type="checkbox"/> Computer and Electronics Accessories: Mouse pads				
<input type="checkbox"/> Computer and Electronics Accessories: Remote controls for computers, tablets, smartphones, electronic accessories				
<input type="checkbox"/> Computer and Electronics Accessories: Speakers				

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Covered Product	Lead	DEHP	BBP	DBP
<input type="checkbox"/> Computer and Electronics Accessories: Security anchors, including zipper pulls, electronic tags, desk, wall, luggage, protective case, and cubicle anchors				
<input type="checkbox"/> Computer and Electronics Accessories: Stands, folios, footrests, monitor arms, monitor stands, keyboard stands, keyboard drawers and holders				
<input type="checkbox"/> Computer and Electronics Accessories: Storage covers, bags, cases, sleeves, straps				
<input type="checkbox"/> Document and Data Storage/Organization Products: Binders, folders, filers, albums/photo albums, notebooks, sorters and portfolios				
<input type="checkbox"/> Document and Data Storage/Organization Products: Connectable board products and components				
<input type="checkbox"/> Document and Data Storage/Organization Products: Index dividers, guides and tabs				
<input type="checkbox"/> Document and Data Storage/Organization Products: Sleeves, protectors, pouches				
<input type="checkbox"/> Desktop Products: Pencil cups				
<input type="checkbox"/> Ergonomic Products: Wrist rests				
<input type="checkbox"/> Ergonomic Products: Back rests				
<input type="checkbox"/> Fasteners and wall hangers, including paper and binder clips; picture, storage, and cup hooks and wires; suction cups/devices				
<input type="checkbox"/> Presentation Products: Binding elements including spines and report covers				

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Covered Product	Lead	DEHP	BBP	DBP
<input type="checkbox"/> Presentation Products: Binders, report covers, folders, and portfolios				
<input type="checkbox"/> Laminators				
<input type="checkbox"/> Magnets, packaged individually and contained in a set/kit				
<input type="checkbox"/> Measuring tape and tape measures				
<input type="checkbox"/> Paper trimmers				
<input type="checkbox"/> Pencil Sharpeners				
<input type="checkbox"/> Punches				
<input type="checkbox"/> Rubber finger tips				
<input type="checkbox"/> Rulers, packaged individually and contained in a set/kit				
<input type="checkbox"/> Shredders				
<input type="checkbox"/> Staplers				
<input type="checkbox"/> Stationery packs/kits, accounting pads, record books				
<input type="checkbox"/> Suction cups				
<input type="checkbox"/> Tag wires				
<input type="checkbox"/> Trimmers				
<input type="checkbox"/> Writing Instruments: Erasers				
<input type="checkbox"/> Writing Instruments: Pens, pencils, markers, highlighters				
<input type="checkbox"/> Writing Instruments: Set/kit in self contained pouches/bags				
<input type="checkbox"/> Writing Instruments: Sharpeners				



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Covered Product	Lead	DEHP	BBP	DBP
<input type="checkbox"/> Other (specify below)				
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**III. RETAILER ELECTION**

For retailers, select all that apply:

- Covered Products shall include all products within each category selected by the Settling Defendant in Section II that are distributed or sold by the Settling Defendant and associated entities.
- Covered Products shall be limited to products sold or offered for retail sale (including internet and/or catalogue sales) as Private Label Covered Products by a Settling Defendant that is (i) the Private Labeler or (ii) a sister, parent, subsidiary, or affiliated entity within the same corporate family that is under common ownership of the Private Labeler of such product. (See Consent To Judgment §§ 2.8 and 2.9.)
- Covered Products shall be limited to the following specifically-identified products below. (Please identify items by name, item number, and SKU.)

Covered Product	Lead	DEHP	BBP	DBP
_____	_____	_____	_____	_____
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**IV. WARNING ELECTION**

- Settling Defendant hereby elects to provide warnings and to comply with all applicable sections, including Sections 3.2.2, 3.3.2, 3.4, and 5.4.

**V. 3P COMPLIANCE EXTENSION**

- Settling Defendant hereby elects to extend the 3P Compliance deadline to December 15, 2012, and shall comply with Sections 3.3.1, 5.3, and all other applicable sections.

EXHIBIT B

Person(s) to receive Notices Pursuant to Section 7 of the Consent To Judgment

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