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11 ACCO BRANDS CORPORATION

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE CITY AND COUNTY OF SAN FRANCISCO
14 UNLIMITED CIVIL JURISDICTION
15

16 RUSSELL BRIMER,)
17 Plaintiff,)
18 v.)
19 ACCO BRANDS CORPORATION, et al.,)
20 Defendants.)
21)
22)

Lead Case No. CGC-09-485784
(Consolidated with CGC-10-505323)
Assigned for All Purposes to the
Honorable Richard A. Kramer
**[PROPOSED] CONSENT TO
JUDGMENT**

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 "Settling
5 Defendant"), with Brimer and ACCO collectively referred to as the "Parties."

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Settling Defendant employs ten or more persons, is a person in the course of doing
12 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California
13 Health & Safety Code §§ 25249.6 *et seq.* ("Proposition 65") and distributes or offers certain
14 office, stationery and/or related supplies for sale in the State of California.

15 **1.4 General Allegations**

16 Brimer alleges that Settling Defendant manufactures, distributes, and/or sells in the State
17 of California certain office, stationery, and/or school supply products that expose users to lead,
18 butyl benzyl phthalate ("BBP"), di(2-ethylhexyl)phthalate ("DEHP"), and/or di-n-butyl phthalate
19 ("DBP"), without first providing a "clear and reasonable warning" under Proposition 65; each
20 such allegation the Settling Defendant denies. Lead, BBP, DEHP, and DBP are listed as
21 reproductive and developmental toxicants pursuant to Proposition 65, and are collectively
22 referred to herein as "listed chemicals."

23 **1.5 Notices of Violation and ACCO's Responses**

24 1.5.1 On December 23, 2008, Brimer served ACCO and various public
25 enforcement agencies with a document entitled "60-Day Notice of Violation" ("December 23,
26 2008 Notice") that provided the recipients with notice of alleged violations of Health & Safety
27 Code § 25249.6 for failing to warn individuals in California of exposures to lead contained in

1 vinyl coated paperclips sold by ACCO. No public enforcer has commenced or diligently
2 prosecuted the allegations set forth in the December 23, 2008 Notice. ACCO represents that, as
3 of February 2009, it ceased shipping vinyl coated paper clips for sale in California, and has
4 replaced the coating with nylon.

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

11 1.5.3 On September 1, 2010, Brimer served ACCO and various public
12 enforcement agencies with a document entitled "Supplemental 60-Day Notice of Violation"
13 ("September 1, 2010 Notice") that provided the recipients with notice of alleged violations of
14 Health & Safety Code § 25249.6 for failing to warn individuals in California of exposures to lead
15 contained in zippered document folders and file storage/organizer boxes sold by ACCO. No
16 public enforcer has commenced or diligently prosecuted the allegations set forth in the September
17 1, 2010 Notice. ACCO represents that, in September 2010, it ceased shipping the specific
18 zippered document folders and file storage/organizer boxes identified in the August 5, 2010 and
19 September 1, 2010 notices for sale in California, and arranged for its customers in California to
20 return such products to ACCO.

21 1.5.4 On September 27, 2010, Brimer served ACCO and various public
22 enforcement agencies with another document entitled "60-Day Notice of Violation" ("September
23 27, 2010 Notice") that provided the recipients with notice of alleged violations of Health &
24 Safety Code § 25249.6 for failing to warn individuals in California of exposures to DEHP
25 contained in identification card cases, business card holders, protective cases for laptops, and
26 schedule organizers with soft covers sold by ACCO. No public enforcer has commenced or
27 diligently prosecuted the allegations set forth in the September 27, 2010 Notice.

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1 1.5.5 On July 26, 2011, Brimer served ACCO and various public enforcement
2 agencies with a document entitled "Supplemental 60-Day Notice of Violation" ("July 26, 2011
3 Notice") that provided the recipients with notice of alleged violations of Health & Safety Code §
4 25249.6 for failing to warn individuals in California of exposures to lead contained in art supply
5 cases/wallets/stands, binder clips, laser pointers, and portable and desktop organizers and
6 schedulers. No public enforcer has commenced or diligently prosecuted the allegations set forth
7 in the July 26, 2011 Notice.

8 1.5.6 On July 29, 2011, Brimer served ACCO and various public enforcement
9 agencies with a document entitled "Supplemental 60-Day Notice of Violation" ("July 29, 2011
10 Lead Notice") that provided the recipients with notice of alleged violations of Health & Safety
11 Code § 25249.6 for failing to warn individuals in California of exposures to lead contained in
12 Pencil cups and Shoulder straps for bags. No public enforcer has commenced or diligently
13 prosecuted the allegations set forth in the July 29, 2011 Lead Notice.

14 1.5.7 On July 29, 2011, Brimer served ACCO and various public enforcement
15 agencies with a document entitled "Supplemental 60-Day Notice of Violation" ("July 29, 2011
16 DEHP Notice") that provided the recipients with notice of alleged violations of Health & Safety
17 Code § 25249.6 for failing to warn individuals in California of exposures to DEHP contained in
18 art supply cases/wallets/stands, binders, marker pouches, and portable and desktop organizers and
19 schedulers. No public enforcer has commenced or diligently prosecuted the allegations set forth
20 in the July 29, 2011 DEHP Notice.

21 1.5.8 On August 9, 2011, Brimer served ACCO and various public enforcement
22 agencies with a document entitled "60-Day Notice of Violation" ("August 9, 2011 Notice") that
23 provided the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for
24 failing to warn individuals in California of exposures to DEHP contained in erasers, vinyl neck
25 chain accessories, cables, and headphones. No public enforcer has commenced or diligently
26 prosecuted the allegations set forth in the August 9, 2011 Notice.

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

11 1.5.10 ACCO represents that, beginning in 2010, and in response, among other
12 things, to the Notices, it implemented a program of (i) requesting that each supplier of products
13 that ACCO distributed for sale in California, including the Covered Products, as defined in
14 Section 2.4 below, meet specifications for lead, DEHP, BBP, and DBP in such Covered Products
15 in order to reduce any potential exposure below the maximum allowable dose level (“MADL”)
16 under Proposition 65, and (ii) labeling certain products with Proposition 65 warnings where
17 reformulation is not feasible.

18 1.6 **Complaints**

19 1.6.1 On March 5, 2009, Plaintiff filed an action against various entities,
20 including ACCO, entitled *Brimer v. ACCO Brands Corp.*, Case No. CGC-09-485784, and
21 thereafter filed amended complaints, alleging Proposition 65 violations as to certain office,
22 stationery, school, and arts and crafts supply products including, at various times, paper fasteners,
23 measuring tapes and tape measures, craft wire, tape measures with hand straps, and stationery
24 packs/kits with vinyl components (“ACCO I”).

25 1.6.2 On November 10, 2010, Plaintiff filed the action entitled *Brimer v. ACCO*
26 *Brands Corp.*, Case No. CGC-10-505323, against various entities including ACCO, in San

27 ¹ As clarified in a January 18, 2012, letter from Clifford A. Chanler to Deputy Attorney General Harrison Pollack,
28 attached hereto as Exhibit B.

1 Francisco County Superior Court, alleging Proposition 65 violations as to certain office and
2 stationery supplies in the form of zippered document folders and file storage/organizer boxes,
3 sold in California (“ACCO II”).

4 1.6.3 On December 6, 2010, the Court designated ACCO II complex and
5 assigned it for all purposes to Department 304, to be heard concurrently with ACCO I.

6 1.6.4 Upon approval and entry of this Consent To Judgment by the Court,
7 ACCO I and ACCO II shall be deemed to have been consolidated by the Court for all purposes on
8 its own motion, the complaints amended to add allegations with respect to Covered Products as
9 defined in Section 2.4, and judgment shall be entered on all claims.

10 1.6.5 On June 20, 2011, Brimer and ACCO commenced trial of Phase I in
11 ACCO I. As of the execution of this Consent To Judgment by Brimer and ACCO, the Court had
12 not made any factual or legal findings as to whether ACCO vinyl paper clips expose users to lead
13 or whether any such exposure exceeded the MADL.

14 **1.7 No Admission**

15 This Consent To Judgment resolves allegations and claims that are denied and disputed by
16 the Settling Defendant. The Parties enter into this Consent To Judgment pursuant to a full and
17 final settlement of any and all claims between the Parties, as they relate to lead, DEHP, BBP and
18 DBP in Covered Products, as defined in Section 2.4 below. The Settling Defendant denies the
19 material factual and legal allegations contained in the Notices and Complaints and maintains that
20 all products it has distributed and/or sold in California have been and are in compliance with all
21 applicable laws. Nothing in this Consent To Judgment shall be construed as an admission by the
22 Settling Defendant of any fact, finding, issue of law, or violation of law; nor shall compliance
23 with this Consent To Judgment constitute or be construed as an admission by any party of any
24 fact, finding, conclusion, issue of law, or violation of law. However, notwithstanding the
25 foregoing, this section shall not diminish or otherwise affect the Settling Defendant’s obligations,
26 responsibilities, and duties under this Consent To Judgment.

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1.8 Consent to Jurisdiction

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

2. Definitions

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

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

2.3 “Lead Standard” means a maximum concentration of lead of 100 ppm in each Accessible Component.

2.4 “Covered Products” means the product categories in Exhibit A to this Consent To Judgment for use by or sale to individuals in California. The term Covered Products shall not include any Covered Products that are Fashion Accessories for which the Settling Defendant is already subject to injunctive relief in a consent judgment in *Held v. Aldo U.S., Inc. et al.*, San Francisco County Consolidated Case No. CGC-10-497729. The term Covered Products shall not include any products that are the subject of the Complaint in the matter of *Brimer v. Office Depot, Inc., et al.*, San Francisco County Superior Court Case No. CGC-10-496051, with the exception of ACCO Covered Products released herein.

2.5 “Effective Date” means the date on which a judgment based on this Consent To Judgment is entered by the Court as to the Settling Defendant.

1 2.6 “Manufactured,” “Manufactures,” and “Manufacturer” have the meaning defined
2 in Section 3(a)(10) of the Consumer Product Safety Act (“CPSA”) [15 U.S.C. § 2052(a)(10),
3 (11)], as amended from time to time.²

4 2.7 “Vendor” means a person or entity that Manufactures, imports, distributes, or
5 otherwise supplies a Covered Product to the Settling Defendant, and that is not itself the Settling
6 Defendant.

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

8 **3.1 Notification to Vendors of Covered Products.**

9 No later than 30 days after the Effective Date, the Settling Defendant shall provide the 3P
10 Standard and Lead Standard to its then-current Vendors of the Covered Products that will be sold
11 or offered for sale to California citizens if it has not already done so within the past 12 months
12 prior to the Effective Date.

13 **3.2 Lead in Covered Products.**

14 3.2.1 Commencing on December 15, 2011, or the Effective Date, whichever is
15 later, the Settling Defendant shall not purchase, import, sell, or ship for sale in California any
16 Covered Product identified in the complaints prior to the Effective Date that do not comply with
17 the Lead Standard. The deadline for meeting the Lead Standard shall not be extended.

18 3.2.2 Notwithstanding Section 3.2.1, the Settling Defendant may purchase,
19 import, manufacture, sell, or ship for sale in California a Covered Product that does not comply
20 with the Lead Standard under the following conditions: (i) the Covered Product, or Accessible
21 Component thereof, that complies with the Lead Standard is not reasonably commercially
22 available; (ii) the Covered Product is not primarily intended for use by individuals twelve years of
23 age or younger; (iii) the Settling Defendant complies with the warning requirements set forth in
24 Section 3.2.3 below; and (iv) the Settling Defendant makes the supplemental payment set forth in
25 Section 5.3 For purposes of this Section 3.2.2, reasonable commercial availability shall include

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27 ² 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).

or

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2 **WARNING:** This product contains one or more
3 chemicals known to the State of
4 California to cause birth defects and
5 other reproductive harm.

6 For Covered Products sold by the Settling Defendant by catalog or via the internet or by
7 telephone, the Settling Defendant shall advise the purchaser that he or she may return the Covered
8 Product for a full refund (including shipping costs for both the receipt and the return of the
9 product). The warning and information regarding return of the Covered Product required by this
10 Section 3.2.3 shall be sufficiently conspicuous as to be read and understood by a consumer under
11 normal conditions of purchase or use.

12 3.2.4 On or before the Effective Date, the Settling Defendant may elect to
13 modify the Lead Standard to a maximum concentration of lead of 300 ppm in each Accessible
14 Component of a Covered Product, excluding any Covered Product that is primarily intended for
15 use by individuals twelve years of age or younger. If the Settling Defendant elects to modify the
16 Lead Standard to 300 ppm, it shall make an additional payment of \$20,000. Plaintiff shall submit
17 an application to the court for a proper allocation of the \$20,000 between civil penalties and fees.

18 3.2.5 If the Settling Defendant elects to utilize the provisions of Section 3.2.3
19 and/or 3.2.4, it shall provide a compliance report to Plaintiff that details the reformulation and/or
20 warning programs associated with the Covered Products. The Settling Defendant shall cooperate
21 with Plaintiff in providing addition information with 30 days of Plaintiff's written request for
22 such additional information that is reasonably necessary for the purposes of this Section 3.2.5.

23 3.3 **DEHP, DBP, and BBP in Covered Products**

24 Commencing on December 15, 2011, or the Effective Date, whichever is later, the Settling
25 Defendant shall not purchase, import, sell, or ship for sale in California any Covered Product
26 identified in the complaints prior to the Effective Date, that do not comply with the 3P Standard.
27 The deadline for meeting the 3P Standard shall be extended to December 15, 2012, if the Settling
28 Defendant provides a written notification to Brimer and files a notice in this Court exercising
29 such an election, on or before December 15, 2011, or the Effective Date, whichever is later, and

1 makes the payment required by Section 5.2 By entering into this Consent To Judgment, the
2 Parties do not intend to alter, expand, or restrict any requirements applicable to lead, BBP, DBP,
3 and/or DEHP in Covered Products that may be imposed by laws other than Proposition 65, such
4 as the federal Consumer Product Safety Improvement Act of 2008 (“CPSIA”) and its
5 implementing regulations (as it or they may be amended from time to time), or defenses available
6 under such other laws.

7 **4. ENFORCEMENT**

8 4.1 A Party may, by motion or application for an order to show cause before this
9 Court, enforce the terms and conditions contained in this Consent To Judgment. A Party may file
10 such a motion or application, or bring a new enforcement action over a Covered Product for
11 alleged violations occurring after the Effective Date, against the Settling Defendant, Defendant
12 Releasee, or Downstream Defendant Releasee only after that Party first provides notice to the
13 Party allegedly failing to comply with the terms and conditions of this Consent To Judgment and
14 attempts to resolve such Party’s failure to comply in an open and good faith manner for a period
15 of no less than 30 days from the date that the alleged violator receives notice of the alleged
16 violation.

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

3 **5. MONETARY PAYMENTS**

4 **5.1 Initial Payments by Settling Defendant.**

5 5.1.1 Within five days of the Effective Date, the Settling Defendant shall pay a
6 settlement amount of \$50,000, as follows:

7 (a) \$14,000 of the \$50,000 is for a civil penalty pursuant to Health and
8 Safety Code Section 25249.7(b).³

9 (b) \$36,000 of the \$50,000 is for reimbursement of a portion of
10 Plaintiff's attorneys' fees and costs.

11 **5.2 Payments for Extending the Compliance Date.** If the Settling Defendant
12 exercises the election set forth in Section 3.3, it shall pay, at the time it provides notification of
13 such election, an additional \$14,000. Plaintiff shall submit an application to the court for a proper
14 allocation of the \$14,000 between civil penalties and fees.

15 **5.3 Payments for Retaining the Warning Option.** If the Settling Defendant elects to
16 retain the option to manufacture, import, distribute, sell or ship Covered Products in California
17 that do not meet the Lead Standard, provided a warning is affixed to such Covered Products
18 pursuant to the terms and conditions of Section 3.2.2, it shall pay a supplemental payment of
19 \$18,000. Plaintiff shall submit an application to the court for a proper allocation of the \$18,000
20 between civil penalties and fees.

21 **5.4 Payment Procedure and Division of Settlement Funds**

22 5.4.1 **Civil Penalties:** Civil Penalties shall be apportioned in accordance with
23 California Health & Safety Code § 25249.12(c) & (d), with 75% of these funds remitted to
24 OEHHA and the remaining 25% of the penalty remitted to Plaintiff. The Settling Defendant shall
25 issue two separate checks for the penalty payment: (a) one check made payable to "The Chanler
26 Group in Trust For OEHHA," in an amount representing 75% of the total penalty; and (b) one

27 ³ All statutory civil penalties shall be allocated, as follows: 75% shall be paid to the State of California's Office of
28 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% shall be paid to Plaintiff Brimer.

1 check to "The Chanler Group in Trust For Russell Brimer," in an amount representing the
2 remaining 25% of the total penalty. Two separate 1099s shall be issued for the above payments,
3 including those payments already made by Settling Defendants: (a) OEHHA, P.O. Box 4010,
4 Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Russell Brimer. The information required to
5 issue the 1099s for Plaintiff shall be provided five calendar days before the payment is due.

6 **5.4.2 Attorneys' Fees:** Attorneys' fees shall be paid by means of a check made
7 payable to "The Chanler Group."

8 **5.4.3 Payment Delivery:** All settlement payments required by this Consent To
9 Judgment shall be sent to the following address:

10 The Chanler Group
11 Attn: Proposition 65 Controller
12 2560 Ninth Street
13 Parker Plaza, Suite 214
14 Berkeley, CA 94710

15 **5.5 ACCO's Recoupment of Costs.**

16 **5.5.1** ACCO shall be entitled to recover a portion of attorney fees paid by
17 settling companies that resolve Proposition 65 claims brought by Brimer or other clients of The
18 Chanler Group related to the listed chemicals in Covered Products as reimbursement for out-of-
19 pocket litigation and settlement related costs it incurred in the course of litigating ACCO I and
20 ACCO II and in negotiating and resolving the claims addressed in this Consent To Judgment.
21 This provision shall apply to matters that are resolved in court (e.g., Consent To Judgments) or
22 out-of-court agreements that are reported pursuant to Health & Safety Code §25249.7 for one
23 year beyond the Effective Date, and that are based on 60-day notices issued by Brimer or other
24 clients of The Chanler Group on and after January 1, 2012. Subject to Section 5.5.2, for each
25 settling company making an attorney fee payment pursuant to such a settlement, ACCO shall
26 receive \$10,000.

27 **5.5.2** The Parties shall share settling companies' attorney fee payments in the
28 following order:

1 (a) Brimer shall remit payments to ACCO in the amount required by
2 Section 5.5.1(a) until ACCO has recouped \$17,200;

3 (b) Brimer shall then be entitled to collect up to \$150,000 in attorney
4 fees paid by settling companies without remitting any amounts to ACCO;

5 (c) Once Brimer has collected a total of \$150,000 in attorney fees paid
6 by settling companies, Brimer shall subsequently remit payments to ACCO in the
7 amounts required by Section 5.5.1, which payments including the initial \$17,200, shall not
8 exceed a total of \$150,000.

9 5.5.3 Brimer's counsel shall notify ACCO's counsel within five days of receipt
10 of attorney fee payments from each prospective settling company. Within five days after
11 providing notice, or upon such schedule as may be agreed to in writing by the Parties, Brimer
12 shall remit any amounts owing to ACCO pursuant to Section 5.5, and ACCO's counsel shall hold
13 all payments made by Brimer in trust pending judicial approval of the settlements from which the
14 payments were made if the matter is settled in Court; or, if after the matter is resolved through an
15 out-of-court agreement, ACCO's counsel may transmit the funds to ACCO immediately. Brimer
16 shall not be required to notify ACCO's counsel of receipt of attorney fees or make further
17 payments once Brimer has remitted the maximum recoupment under Section 5.5.2(c).

18 **6. CLAIMS COVERED AND RELEASE**

19 6.1 This Consent To Judgment is a full, final, and binding resolution between Brimer
20 and the Settling Defendant and its subsidiaries, affiliates, sister and related companies,
21 employees, shareholders, directors, insurers, attorneys, successors, assigns, licensees, and
22 licensors (collectively "Defendant Releasees"), and all entities to whom they directly or indirectly
23 distribute or sell Covered Products, including but not limited to distributors, wholesalers,
24 resellers, customers, retailers, franchisees, cooperative members that sold or distributed the
25 Covered Products ("Downstream Defendant Releasees") of violations of Proposition 65 regarding
26 the failure to warn about exposure to lead, BBP, DBP, and/or DEHP in Covered Products
27 manufactured, sourced, distributed, or sold by the Settling Defendant and Defendant Releasees

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1 prior to the Effective Date based on the Notices, but only as to those categories of Covered
2 Products that are designated on Exhibit A, and only for those chemicals (lead, DEHP, BBP,
3 and/or DBP) selected.

4 6.2 In further consideration of the promises and agreements herein contained, the
5 representations in Section 1, the injunctive relief commitments set forth in Section 3, and for the
6 payments to be made pursuant to Section 5, Brimer, on behalf of himself, his past and current
7 agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general
8 public, hereby waives all rights to institute or participate in, directly or indirectly, any form of
9 legal action and releases all claims, including, without limitation, all actions, and causes of action,
10 in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses,
11 or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) of
12 any nature whatsoever, fixed or contingent (collectively "Claims"), against the Settling
13 Defendant, its Defendant Releasees, and each of its Downstream Defendant Releasees. This
14 release is limited to those Claims that arise under Proposition 65 with respect to lead, BBP, DBP,
15 and/or DEHP in the Covered Products associated with the Settling Defendant, as such claims
16 relate to the alleged failure to warn under Health & Safety Code § 25249.6, to only those
17 categories of Covered Products in Exhibit A, and only for those chemicals (lead, DEHP, BBP,
18 and/or DBP) selected.

19 6.3 Plaintiff also, in his individual capacity *only* and *not* in his representative capacity,
20 provides a release herein which shall be effective as a full and final accord and satisfaction, as a
21 bar to all Claims, known or unknown, suspected or unsuspected, arising out of alleged or actual
22 exposure now and in the future to lead, DEHP, BBP, and/or DBP in Covered Products
23 manufactured, distributed or sold by ACCO, to ACCO, its Defendant Releasees, and, to the extent
24 supplied by ACCO, its Downstream Defendant Releasees.

25 6.4 Upon entry of this Consent To Judgment, Brimer shall file a dismissal without
26 prejudice of the claims made in ACCO I and ACCO II regarding products distributed or sold by
27 ACCO identified in the Notices and Complaints against all of ACCO's Downstream Defendant

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1 Releasees, including, but not limited, to 99 Cents Only Stores, Inc., Fry's Electronics, Inc.,
2 Michaels Stores, Inc., and Office Depot, Inc.

3 6.5 Settling Defendant waives any and all claims against Plaintiff, his attorneys, and
4 other representatives for any and all actions taken or statements made (or those that could have
5 been taken or made) by Plaintiff and his attorneys and other representatives, whether in the course
6 of investigating claims or otherwise seeking enforcement of Proposition 65 against them in this
7 matter with respect to the Claims resolved and released in Sections 6.1 through 6.3.

8 6.6 Upon entry of this Consent To Judgment, Brimer and the Settling Defendant waive
9 their rights to trial of the issues raised by the Notices and Complaints, and to enforcement or
10 appeal of any ruling or order issued by the Court in ACCO I or ACCO II prior to the Effective
11 Date.

12 6.7 Compliance with the terms of this Consent To Judgment by the Settling Defendant
13 constitutes compliance with Proposition 65 with respect to lead, DEHP, BBP, and DBP in that
14 Settling Defendant's Covered Products with respect to the Claims resolved and released in
15 Sections 6.1 through 6.3.

16 6.8 Nothing in this Section 6 affects Plaintiff's rights to commence or prosecute an
17 action under Proposition 65 against any person other than the Settling Defendant, Defendant
18 Releasee, or Downstream Defendant Releasee.

19 6.9 Nothing in this Section 6 affects Plaintiff's rights to commence or prosecute an
20 action under Proposition 65 against a Downstream Defendant Releasee that does not involve the
21 Settling Defendant's Covered Product.

22 **7. NOTICES**

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

25 For ACCO:

26 General Counsel
27 ACCO Brands Corporation
28 300 Tower Parkway
 Lincolnshire, IL 60069

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With a copy to:

Jeffrey B. Margulies
Fulbright & Jaworski LLP
555 South Flower Street, 41st Floor
Los Angeles, CA 90071
E-mail: jmargulies@fulbright.com

For Brimer:

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

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

8. COURT APPROVAL

8.1 The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent To Judgment, and shall file a joint motion for approval. ACCO shall prepare and provide to Brimer the initial draft joint motion, notice of motion, and declaration in support of the joint motion. If this Consent To Judgment is not approved by the Court in its entirety, the Parties shall meet and confer to determine whether to modify the terms of the Consent To Judgment and to resubmit it for approval. ACCO and its counsel agree to support Brimer's effort to obtain final entry of this Consent To Judgment by the trial court and to undertake any actions reasonably necessary to implement and/or modify this Consent To Judgment in order to further the mutual intention of the Parties in entering into this Consent To Judgment.

8.2 If this Consent To Judgment is not entered by the Court, it shall be of no force or effect and shall never be introduced into evidence or otherwise used in any proceeding for any purpose other than to determine the rights or obligations of a Party as a result of the fact that the Consent To Judgment was not approved.

1 **9. MODIFICATION OR AMENDMENT**

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

7 **10. OTHER TERMS**

8 10.1 The terms of this Consent To Judgment shall be governed by the laws of the State
9 of California.

10 10.2 This Consent To Judgment shall apply to and be binding upon Plaintiff and
11 Settling Defendant, and their respective divisions, subdivisions, and subsidiaries, and the
12 successors or assigns of any of them.

13 10.3 Nothing in this Consent To Judgment shall release, or in any way affect any rights
14 that the Settling Defendant might have against any other party, whether or not that party is a
15 Settling Defendant.

16 10.4 The stipulations to this Consent To Judgment may be executed in counterparts and
17 by means of facsimile or portable document format (.pdf), which taken together shall be deemed
18 to constitute one document.

19 10.5 Each signatory to this Consent To Judgment certifies that he or she is fully
20 authorized by the Party he or she represents to stipulate to this Consent To Judgment and to enter
21 into and execute the Consent To Judgment on behalf of the Party represented and to legally bind
22 that Party.

23 10.6 The Parties, including their counsel, have participated in the preparation of this
24 Consent To Judgment and this Consent To Judgment is the result of the joint efforts of the
25 Parties. This Consent To Judgment was subject to revision and modification by the Parties and
26 has been accepted and approved as to its final form by all Parties and their counsel. Accordingly,
27 any uncertainty or ambiguity existing in this Consent To Judgment shall not be interpreted against

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

6 **11. ATTORNEYS' FEES**

7 11.1 Should Brimer prevail on any motion, application for an order to show cause or
8 other proceeding to enforce a violation of this Consent To Judgment, he shall be entitled to his
9 reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
10 ACCO prevail on any motion, application for an order to show cause or other proceeding, it may
11 be awarded its reasonable attorneys' fees and costs as a result of such motion or application upon
12 a finding by the court that Brimer's defense of the motion or application lacked substantial
13 justification. For purposes of this Consent To Judgment, the term substantial justification shall
14 carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure
15 Section 2016, *et seq.*

16 11.2 Except as provided in Sections 5 and 11.1 of this Consent To Judgment, or with
17 regard to an appeal brought by a third party, each Party shall bear its own attorneys' fees and
18 costs in connection with the Notices and Complaint through entry of final judgment.
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11.3 Nothing in this Section 11 shall preclude a Party from seeking an award of sanctions pursuant to law.

IT IS SO STIPULATED:

AGREED TO:

AGREED TO:

Date: 4-20-12

Date: _____

By:  _____
Plaintiff Russell Brimer

By: _____
Defendant ACCO Brands Corporation

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IT IS SO STIPULATED:

AGREED TO:

AGREED TO:

Date: _____

Date: May 3, 2012

By: _____
Plaintiff Russell Brimer

By: *Michael J. Lund*
Defendant ACCO Brands Corporation

EXHIBIT A

COVERED PRODUCTS FOR DEFENDANT ACCO BRANDS CORPORATION

The Covered Products applicable to ACCO, listed below, are limited to those containing lead, DEHP, DBP and/or BBP as to the checked boxes.

Covered Product	DEHP	DBP	BBP	Lead
1. Art, Craft and Drafting Supply cases, portfolios, pouches, stands, and wraps:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Identification Products				
I.D. Holders, tags, badges, and laminate:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
I.D. Lanyards, clips, cords, cables, chains, and reels:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Calendars, Planners and Appointment Books:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Computer and Electronics Accessories				
Battery packs:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bags/cases/sleeves for electronics:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Power cords, adapters, and charging docks:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Cables:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Headphones and headsets:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Laser pointers:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Mice, keyboards, trackballs, trackpads, touchpads, and mouse pads:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Speakers:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Locks and security anchors:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Storage covers, bags, cases, sleeves, and straps:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Document Storage/Organization/Presentation Products				
Binders, folders, filers, sorters and portfolios, albums/photo albums, notebooks, and checkbook covers:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Index dividers and guides tabs:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sleeves, protectors, and pouches:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Ergonomic Products				
Stands, folios, monitor arms, monitor stands, keyboard stands, and keyboard drawers and holders:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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Footrests, wrist rests, back rests, wrist bands, and gloves:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. Fasteners and hangers Paper and binder clips:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Picture, storage, and cup hooks and wires; suction cups/devices:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Writing Instruments Erasers, pens, pencils, markers, highlighters, sharpeners, and pencil cups:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Set/kit in self-contained pouches/bags:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

EXHIBIT B



THE CHANLER GROUP

71 ELM STREET, 2ND FLOOR | NEW CANAAN, CT 06840 | (203) 966-9911 | (203) 801-0107 FAX

January 18, 2012

Via Electronic Mail

Harrison Pollak
Deputy Attorney General
1515 Clay Street, 20th Floor
P.O. Box 70550
Oakland, CA 94612

Re: Russell Brimer v. ACCO Brands Corporation, et al.
Case No. CGC-09-485784; AG No. 2011-00773

Dear Harrison:

This letter clarifies, and in certain respects narrows, the scope of the August 29, 2011, 60-Day Notice of Violation ("Notice") issued by Russell Brimer to ACCO Brands and other parties.

I have attached a chart that lists the eight categories of products (and the corresponding subcategories) and the chemicals covered for each of them. An unchecked box in the chart indicates that the notice does not cover that particular chemical for the subcategory of products on that line.

If you have any further questions, please do not hesitate to contact me.

Very truly yours,

Clifford A. Chanler
Counsel for Russell Brimer

cc: Jeffrey Margulies (Counsel for ACCO)

Covered Product	DEHP	DBP	BBP	Lead
1. Art, Craft and Drafting Supply cases, portfolios, pouches, stands, and wraps:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. Identification Products				
I.D. Holders, tags, badges, and laminate:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
I.D. Lanyards, clips, cords, cables, chains, and reels:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Calendars, Planners and Appointment Books:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
4. Computer and Electronics Accessories				
Battery packs:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Bags/cases/sleeves for electronics:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Power cords, adapters, and charging docks:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
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Speakers:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Locks and security anchors:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Storage covers, bags, cases, sleeves, and straps:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
5. Document Storage/Organization/Presentation Products				
Binders, folders, filers, sorters and portfolios, albums/photo albums, notebooks, and checkbook covers:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Index dividers and guides tabs:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sleeves, protectors, and pouches:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. Ergonomic Products				
Stands, folios, monitor arms, monitor stands, keyboard stands, and keyboard drawers and holders:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Footrests, wrist rests, back rests, wrist bands, and gloves:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
7. Fasteners and hangers				
Paper and binder clips:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Picture, storage, and cup hooks and wires; suction cups/devices:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
8. Writing Instruments				
Erasers, pens, pencils, markers, highlighters, sharpeners, and pencil cups:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Set/kit in self-contained pouches/bags:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>