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7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF ALAMEDA - UNLIMITED CIVIL JURISDICTION

10  
11 RUSSELL BRIMER,  
12 Plaintiff,  
13 v.  
14 HOBBY LOBBY STORES, INC.; et al.  
15 Defendants.

Case No. RG 13-685838

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

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

**(Health & Safety Code § 25249.6 et seq.)**

1 **1. INTRODUCTION**

2 **1.1 Parties**

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

6 **1.2 Russell Brimer**

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

10 **1.3 Hobby Lobby**

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

14 **1.4 General Allegations**

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

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

1           **1.5     Product Description**

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

- 4           (a)     Upholstered ottomans with foam padding or material (“Ottomans”);  
5           (b)     Vinyl/PVC<sup>1</sup> Scrapbook Albums (“Albums”); and  
6           (c)     Vinyl/PVC Storage Boxes/Bins (“Storage Bins”).

7           **1.6     Notices of Violation**

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

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

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

25  
26  
27 \_\_\_\_\_  
28 <sup>1</sup>The term “vinyl” is being used interchangeably with the term “PVC” for purposes of this  
Consent Judgment.

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

#### 4 1.7 Complaint

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

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

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

#### 20 1.8 No Admission

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

1           **1.9     Consent to Jurisdiction**

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

7           **2.     DEFINITIONS**

8           **2.1     Detectable**

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

12           **2.2     Effective Date**

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

14           **2.3     Reformulation Standard**

15           The “Reformulation Standard” shall mean:

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

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

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

4 **2.4 "Reformulated Products" shall mean:**

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

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

11 **3. INJUNCTIVE RELIEF: REFORMULATION**

12 **3.1 Reformulation Commitment**

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

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

20 3.1.3 Notwithstanding Section 3.1.2<sup>24</sup> above, Hobby Lobby may purchase, import,  
21 manufacture, sell, or ship for sale in California Albums and Storage Bins that are not Reformulated  
22 Products provided that the following strict compliance guidelines have been followed: (i) Hobby  
23 Lobby contracted with each and every supplier of Albums, Storage Bins, and accessible vinyl  
24 components of Albums and/or Storage Bins, to provide only accessible vinyl components compliant  
25 with the Reformulation Standard; (ii) prior to distribution in the State of California or sale to a  
26 customer in California, Hobby Lobby contracted with an Accredited Lab to analyze randomly  
27 selected Albums and Storage Bins of each design at initial manufacturing and then at least once  
28 annually thereafter of finished Albums and Storage Bins to determine the DEHP, DBP and BBP

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

### 8 3.2 Vendor Notification/Certification

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

### 19 3.3 Current Inventory

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

### 24 3.4 Product Warnings

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

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

### 3 3.4.1 Product Labeling

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

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

7 or

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

or

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

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

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

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



1                   **3.4.2 Point-of-Sale Warnings for Albums and Storage Bins.** Alternatively,  
2 Hobby Lobby may provide warning signs in the form below at a Hobby Lobby retail store or outlet  
3 in California, which sells Albums or Storage Bins or has inventory of Albums or Storage Bins, if  
4 such warning is posted in immediate proximity to the point of display of any and all such Albums  
5 and Storage Bins for the benefit of its customers.

6                                   **WARNING:** This product contains DEHP, a phthalate  
7 chemical known to the State of California  
8 to cause birth defects or other  
reproductive harm.<sup>4</sup>

9                   Where any such Products are sold in proximity to other like items or to those that do not  
10 require a warning (*e.g.*, Reformulated Products as defined in Section 2.3), the following statement  
11 must be used:

12                                   **WARNING:** The following product(s) contain DEHP, a  
13 phthalate chemical known to the State of  
California to cause birth defects or other  
14 reproductive harm.<sup>5</sup>

[list product(s) for which warning is required]

### 15                   **3.5 Alternatives to Interim Product Labeling**

16                   The obligations of Hobby Lobby under Sections 3.3 shall be relieved provided Hobby Lobby  
17 certifies on or before December 31, 2013 that, after June 30, 2014, it will only distribute or cause to  
18 be distributed for sale in California only Ottomans (*i.e.*, Ottomans beyond the Exemplar Products)  
19 meeting the Reformulation Standard. The certifications provided by this Section are material terms  
20 and time is of the essence.

## 21                   **4. MONETARY PAYMENTS**

### 22                   **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

23                   In settlement of all the claims referred to in this Consent Judgment, Hobby Lobby shall pay  
24 the civil penalties shown on Exhibit A in accordance with this Section. Each penalty payment will  
25 be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d), with  
26

27                   <sup>4</sup> Footnote 2, *supra*, applies in this context as well.

28                   <sup>5</sup> Footnote 2, *supra*, applies in this context as well.

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

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

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

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

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

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

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

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

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

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

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

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

1                                   **4.1.4(iv) Partial Penalty Waiver for Compliance with Section 3.1.3 for**  
2 **Albums and Storage Bins Offered for Sale in California.**

3           As shown on Exhibit A, a portion of the third civil penalty shall be waived, if an officer or  
4 other authorized representative of Hobby Lobby provides Brimer with written certification, on or  
5 before November 15, 2014, confirming, as of the date of June 30, 2014, and continuing into the  
6 future, that (a) Hobby Lobby contracted with each and every supplier of Albums, Storage Bins, and  
7 accessible vinyl components of Albums and/or Storage Bins, to provide only accessible vinyl  
8 components compliant with the Reformulation Standard; (b) prior to distribution in the State of  
9 California or to a customer in California, Hobby Lobby contracted with an Accredited Lab to  
10 analyze randomly selected Albums and Storage Bins of each design at initial manufacturing and then  
11 at least once annually thereafter of finished Albums and Storage Bins to determine the DEHP, DBP  
12 and BBP content in the accessible vinyl components pursuant to U.S. Environmental Protection  
13 Agency testing methodologies 3580A and 8270C or equivalent method thereof utilized by federal or  
14 state agencies; and (c) Hobby Lobby complied with the warning requirements set forth in Section 3.4  
15 below for any Album that is not a Reformulated Product.

16           **4.2 Representations**

17           Hobby Lobby represents that the sales data and other information concerning its size,  
18 knowledge of TDCPP and DEHP, and prior reformulation and/or warning efforts, it provided to  
19 Brimer was truthful to its knowledge and a material factor upon which Brimer has relied to  
20 determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in this  
21 Consent Judgment. If, within nine months of the Effective Date, Brimer discovers and presents to  
22 Hobby Lobby evidence demonstrating that the preceding representation and warranty was materially  
23 inaccurate, then Hobby Lobby shall have 30 days to meet and confer regarding the Brimer's  
24 contention. Should this 30 day period pass without any such resolution between the Brimer and  
25 Hobby Lobby, Brimer shall be entitled to file a formal legal claim including, but not limited to, a  
26 claim for damages for breach of contract.

27           Hobby Lobby further represents that in implementing the requirements set forth in Sections  
28 3.1 and 3.2 of this Consent Judgment, it will voluntarily employ commercial best efforts to achieve

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

#### 4           **4.3     Reimbursement of Fees and Costs**

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

#### 20           **4.4     Payment Procedures**

##### 21                   4.4.1    Issuance of Payments.

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

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

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

4 For United States Postal Service Delivery:

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

8 For Non-United States Postal Service Delivery:

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

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

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

22 **5. CLAIMS COVERED AND RELEASED**

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

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

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

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

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

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

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

1     **6. COURT APPROVAL**

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

17     **7. GOVERNING LAW**

18           The terms of this Consent Judgment shall be governed by the laws of the State of California.  
19 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by  
20 reason of law generally, or if any of the provisions of this Consent Judgment are rendered  
21 inapplicable or are no longer required as a result of any such repeal or preemption, or rendered  
22 inapplicable by reason of law generally as to the Products, then Hobby Lobby may provide written  
23 notice to Brimer of any asserted change in the law, and shall have no further obligations pursuant to  
24 this Consent Judgment with respect to, and to the extent that, the Products are so affected. Nothing  
25 in this Consent Judgment shall be interpreted to relieve Hobby Lobby from any obligation to comply  
26 with any pertinent state or federal law or regulation.  
27  
28



1 **8. NOTICES**

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

6 To Hobby Lobby:

To Brimer:

7 At the address shown on Exhibit A

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

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

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

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

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

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

20 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

21 Brimer and Hobby Lobby agree to support the entry of this agreement as a Consent Judgment  
22 and obtain approval of the Consent Judgment by the Court in a timely manner. The Parties  
23 acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion is  
24 required to obtain judicial approval of this Consent Judgment, which Brimer shall draft and file. If  
25 any third party objection to the noticed motion is filed, Brimer and Hobby Lobby shall work together  
26 to file a reply and appear at any hearing before the Court. This provision is a material component of  
27 the Consent Judgment and shall be treated as such in the event of a breach.  
28

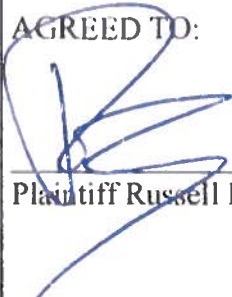
1 **12. MODIFICATION**

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

5 **13. AUTHORIZATION**

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


9 AGREED TO:

10 

11 \_\_\_\_\_  
12 Plaintiff Russell Brimer

13 Date: December 20, 2013

AGREED TO:

14   
15 \_\_\_\_\_  
16 Peter M. Dobelhower  
17 Vice President—Legal  
18 Hobby Lobby Stores, Inc. *John Graham*  
19 *Asst. V.P.*

20 Date: December 27, 2013

EXHIBIT A

I. Name of Settling Defendant (Mandatory)

Hobby Lobby Stores, Inc.  
7707 SW 44<sup>th</sup> Street  
Oklahoma City, OK 73179

II. Hobby Lobby's Required Settlement Payments

A. Penalties:

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

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

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

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

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

B. Additional Fees and Costs:

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

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

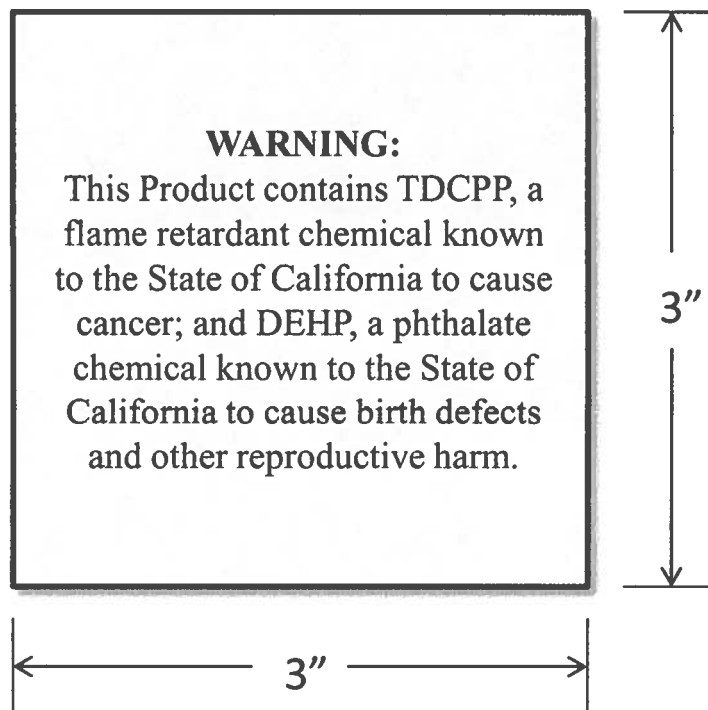
IV. Person(s) to receive notices on behalf of Hobby Lobby pursuant to Section 8:

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

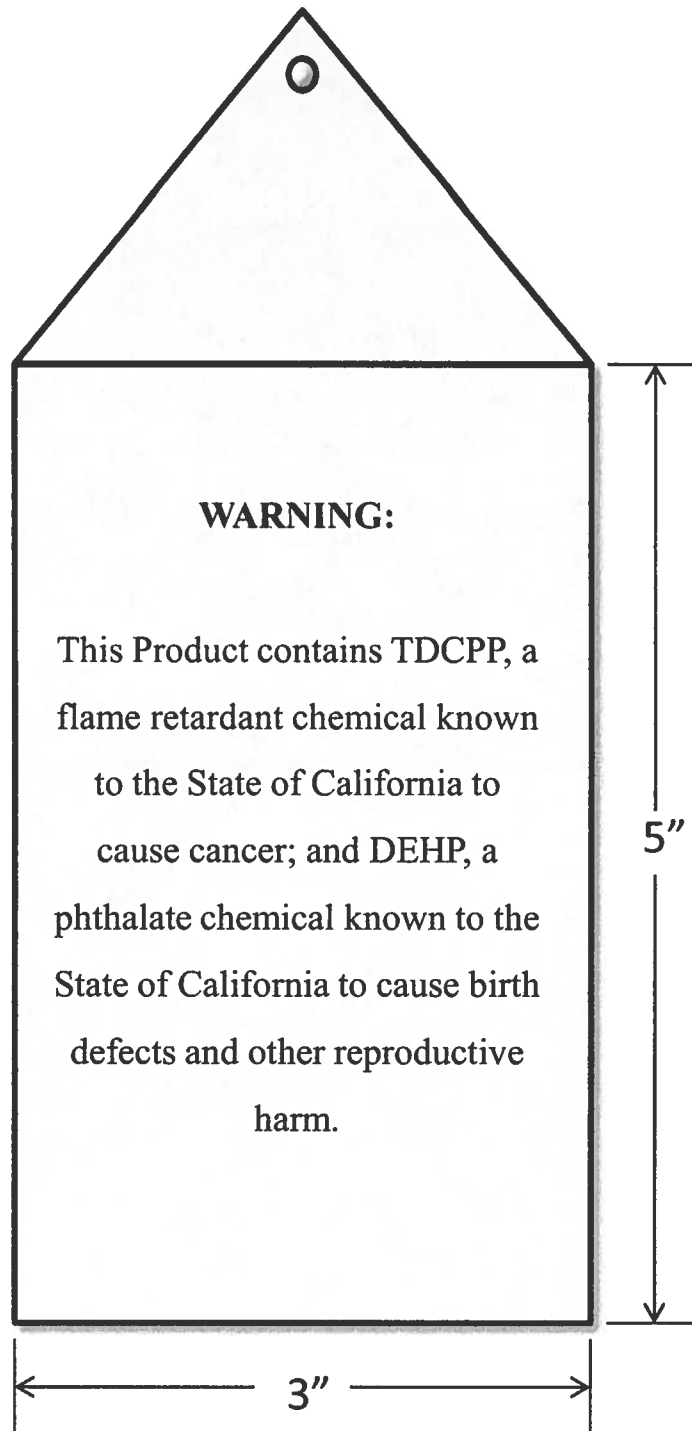
Melissa A. Jones  
STOEL RIVES LLP  
500 Capitol Mall, Suite 1600  
Sacramento, CA 95814

EXHIBIT B

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



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

# **WARNING:**

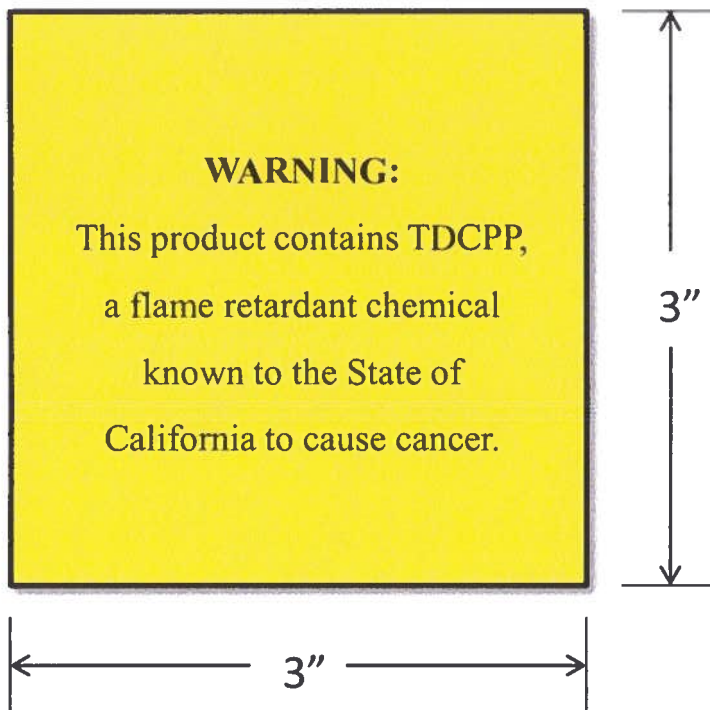
This Product contains TDCPP, a flame retardant chemical known to the State of California to cause cancer; and DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

8.5"

11"

**INSTRUCTIONS:**

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



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