**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF MISSOURI**
**EASTERN DIVISION**

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| HOBBY LOBBY STORES, INC., | ) | |
| | ) | |
| Petitioner, | ) | |
| | ) | |
| v. | ) | Case No. 4:18-cv-01496-JCH |
| | ) | |
| JACQUELINE BACHMAN, | ) | |
| | ) | |
| Respondent. | ) | |

**PETITIONER'S MEMORANDUM OF LAW**
**IN SUPPORT OF PETITION TO COMPEL ARBITRATION**

Petitioner Hobby Lobby Stores, Inc. ("Hobby Lobby") submits the following Memorandum of Law in Support of its Petition to Compel Arbitration:

## I. INTRODUCTION

Defendant Jacqueline Bachman ("Bachman") is a former employee of Hobby Lobby who entered into a Mutual Arbitration Agreement ("MAA") with Hobby Lobby. Under the MAA, the Parties agreed to submit certain employment-related claims to final and binding arbitration in lieu of filing a suit in court. By entering into the MAA, the Parties expressly waived the right to a jury trial and the right to pursue any claim on a class, collective, or joint basis. Despite this agreement, Bachman filed suit in Missouri state court (along with another employee), alleging Hobby Lobby and an individual manager subjected her to unlawful employment practices in violation of Missouri common law and the Missouri Human Rights Act. Because Bachman seeks to renege on the binding and enforceable arbitration agreement, Hobby Lobby filed a Petition to Compel Arbitration (Doc. 001) asking this Court to enforce the MAA and to compel Bachman to arbitrate. Hobby Lobby submits this legal memorandum in support of its request to compel arbitration.

## II. FACTUAL BACKGROUND

Hobby Lobby maintains an arbitration agreement, also called a Mutual Arbitration

Agreement ("MAA"), applicable to its applicants and employees. All of Hobby Lobby's employees are required to enter into the MAA as a condition of employment.

In June 2016, Bachman completed an application for employment with Hobby Lobby and physically signed the MAA, which is included in the application. *See* Exhibit A. Upon beginning employment with Hobby Lobby on July 25, 2016, Bachman again signed a MAA during the new employee onboarding process. *See* Exhibit B. With each signature, Bachman acknowledged she had read the agreements and consented to all terms and conditions, including an agreement to resolve any future employment-related dispute through arbitration, *not* in court. Bachman's employment later ended in June 2017.

The MAA signed by Bachman and Hobby Lobby provides:

- **"[Y]ou and the Company agree binding arbitration is the sole and exclusive means to resolve all disputes that may arise out of, or be related to, your employment with the Company …. You and the Company each specifically waive and relinquish the respective right to sue each other in a court of law**, and this waiver shall be equally binding on any person who represents or seeks to represent you or the Company in a lawsuit against the other …." *See* Exhibit B at ¶ 1 (emphasis added).
- "[T]his Agreement to arbitrate applies to any dispute, demand, claim, complaint, controversy, cause of action, or suit (as applicable, a "Dispute") arising under or involving any federal, state, or local law, statute, regulation, code, ordinance, rule, common law, or public policy … that in any way … relates to your … employment with the Company, compensation, or termination of employment with the Company." *Id.* at ¶ 2.
- Covered Disputes include claims for "sexual harassment, harassment and/or discrimination based on any class protected by law, retaliation, … and/or any other employment-related Disputes based in tort, contract, or any other nature or theory[.]" *Id.* at n. 3.
- "[Y]ou and the Company agree the arbitrator – not a court or agency – shall have exclusive authority to resolve any disputes or issues relating to the formation, interpretation, applicability, implementation, and enforceability of this Agreement." *Id.* at ¶ 7.
- "This Agreement is made in consideration for … the mutual agreement to arbitrate as provided in this Agreement." *Id.* at ¶ 15.

- "To the maximum extent permitted by Law and except as otherwise set forth in this Agreement, the arbitrator selected by the parties shall administer the arbitration according to the Employment Arbitration Rules (or successor rules) of the [American Arbitration Association]." *Id.* at ¶ 6.

- "Knowledge and Consent. BY THEIR SIGNATURES BELOW, SUBJECT TO THE PROVISIONS ABOVE, BOTH PARTIES ACKNOWLEDGE THEY HAVE READ THIS AGREEMENT, ARE GIVING UP ANY RIGHT THEY MAY HAVE AT ANY POINT TO SUE THE OTHER IN COURT, ARE WAIVING ANY RIGHT TO A JURY TRIAL, AND ARE KNOWINGLY AND VOLUNTARILY CONSENTING TO ALL TERMS AND CONDITIONS SET FORTH ..." *Id.* at ¶ 18.

Summarized, under the MAA, **employment-related disputes** (specifically including, but not limited to, claims like those brought by Bachman here) **must be resolved through binding arbitration**. *Id.* The Parties agreed they did not waive any substantive legal rights under applicable law; rather, they merely agreed to change the forum for resolving claims or disputes, such that their disputes would be presented to an arbitrator instead of a court. *Id.* The Parties are mutually required to submit all covered disputes to arbitration. *Id.*

Despite this clear agreement, on June 19, 2018, Bachman filed suit in Missouri state court alleging MHRA discrimination, harassment, and retaliation claims and Missouri common law claims relative to her employment with Hobby Lobby. *See* Doc. 001-2. The claims fall squarely within the MAA and the Court should enter an order compelling Bachman to arbitration.

## III. ARGUMENTS & AUTHORITIES

### A. Agreements to Arbitrate are Valid, Enforceable, and Favored by Courts

It is well settled that the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 *et seq.*, applies to agreements to settle disputes in both state and federal courts. *See Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001); *McIntosh v. Tenet Health Sys. Hosps., Inc./Lutheran Med. Ctr.*, 48 S.W.3d 85, 88 (Mo. Ct. App. 2001). Congress enacted the FAA to reverse judicial hostility to arbitration agreements and "place arbitration agreements upon the same footing as other contracts." *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 24 (1991); *Dean Witter Reynolds, Inc. v. Byrd*, 470

U.S. 213, 219-22 (1985). Section 2 of the FAA makes agreements to arbitrate "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." *AT&T Mobility, LLC v. Concepcion*, 563 U.S. 333, 336 (2011) (quoting 9 U.S.C. § 2). The FAA reflects an emphatic federal policy favoring arbitration and the enforcement of arbitration agreements according to their terms. *Gilmer*, 500 U.S. at 26; *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 625-26, 631 (1985); 9 U.S.C. §§ 2-4. Indeed, the Supreme Court recently reiterated the validity of employment arbitration agreements. *Epic Systs. Corp. v. Lewis*, 138 S.Ct. 1612 (2018). The FAA applies to arbitration agreements in any contract affecting interstate commerce. *Circuit City Stores, Inc.*, 532 U.S. at 119.[1]

The Supreme Court has held mandatory arbitration agreements between employers and employees required as a condition of employment are enforceable under the FAA. *Circuit City Stores*, 532 U.S. at 123. In *Circuit City Stores*, the Supreme Court considered whether the arbitration component of Circuit City's "Associate Issue Resolution Program" was enforceable under the FAA. *Id.* The Court concluded enforcement was appropriate, and then recognized the benefits of arbitrating employment disputes:

> [F]or parties to employment contracts… there are real benefits to the enforcement of arbitration provisions. We have been clear in rejecting the supposition that the advantages of the arbitration process somehow disappear when transferred to the employment context. Arbitration agreements allow parties to avoid the costs of litigation, a benefit that may be of particular importance in employment litigation…

*Id.* at 122-123 (citations omitted); *see also Gilmer*, 500 U.S. at 26-31 (agreements to arbitrate in the employment context are valid); *Morrow v. Hallmark Cards, Inc.*, 273 S.W.3d 15, 22 (Mo. Ct. App. 2008) ("There is nothing that would preclude the possibility of an employer and its employees

[1] There is no dispute the FAA applies to the MAA, given the MAA explicitly states it "is governed by the Federal Arbitration Act" and there can be no dispute it relates to interstate commerce. *See* Exhibit B at ¶ 13; 9 U.S.C. § 2 (FAA governs arbitration contracts involving interstate commerce).

from entering into an enforceable agreement to arbitrate claims, including statutory claims.").

In *Moses H. Cone Memorial Hospital v. Mercury Construction Corporation*, the Supreme Court held "[the FAA] establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability." 460 U.S. 1, 24-25 (1983). In Missouri, too, an agreement to submit a present or future workplace dispute to arbitration is valid and enforceable, provided the agreement is otherwise legally enforceable. *McIntosh*, 48 S.W.3d at 89; *Morrow*, 273 S.W. 3d at 22-24.

Section 3 of the FAA provides the appropriate remedy to enforce a valid arbitration provision is to stay any legal proceedings pending resolution of such claims in arbitration. *See* 9 U.S.C. § 3 ("If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing ..., the court ... shall on application of one of the parties stay the trial of the action until such arbitration has been had ….). In deciding whether to compel arbitration and stay a lawsuit pending arbitration, two threshold issues must be decided : (1) whether a valid arbitration agreement exists between the parties; and (2) whether the dispute falls within the scope of the arbitration agreement. *Kagan v. Master Home Products Ltd.*, 193 S.W.3d 401, 405 (Mo. Ct. App. 2006) (citation omitted); *Gannon v. Circuit City Stores, Inc.*, 262 F.3d 677, 679 (8th Cir. 2001); *see also United Steelworkers of Am. v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582-83 (1960) (motion to compel arbitration "should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute").

### B. The Court Must Allow an Arbitrator to Determine Whether the MAA is Valid and Enforceable

As an initial matter, any dispute over whether the MAA is valid or enforceable must be

determined by an arbitrator, not by this Court. This is because the MAA contains a "delegation clause" providing that "the arbitrator – not a court or agency – shall have exclusive authority to resolve any disputes or issues relating to the formation, interpretation, applicability, implementation, and enforceability of [the agreement]." Exhibit B at ¶ 7. The Supreme Court has held that under the FAA, courts must enforce delegation provisions like the one in the MAA here, and cannot consider and rule on these issues themselves. *Rent-A-Center West, Inc. v. Jackson*, 561 U.S. 63, 71-72 (2010) ("parties can agree to arbitrate 'gateway' questions of 'arbitrability,' such as whether the parties have agreed to arbitrate"). The only role for this Court is to determine whether the Parties delegated threshold issues to the arbitrator. *Id.* at 70.

Whether a valid or enforceable arbitration agreement exists here is for an arbitrator to decide because the Parties unmistakably delegated authority to determine such issues to an arbitrator, as evidenced by the plain terms of the Agreement above, as well as the Parties' explicit incorporation of the Employment Arbitration Rules of the American Arbitration Association (the "AAA Employment Arbitration Rules"). *See Green v. SuperShuttle Int'l, Inc.*, 653 F.3d 766, 769 (8th Cir. 2011); *State ex rel. Pinkerton v. Fahnestock*, 531 S.W.3d 26, 48 (Mo. 2017). The MAA provides "the arbitrator selected by the parties shall administer the arbitration according to the Employment Arbitration Rules" of the AAA. Exhibit B at ¶ 6. Rule 6.a of the AAA Employment Arbitration Rules then provides: "The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement." *See* https://www.adr.org/sites/default/files/Employment%20Rules.pdf. As explained in *Green*, by incorporating the AAA Rules, the Parties agreed to allow an arbitrator to determine threshold questions of arbitrability and an arbitrator (not the court) must decide if the parties' disputes were subject to arbitration. *Green*, 653 F.3d at 770; *see also Pinkerton*, 531

S.W.3d at 48 (reaching same conclusion); *see also Latenser v. Tarmac Int'l Inc.*, 2018 WL 1384497, at *3 (Mo. Ct. App. Mar. 20, 2018) (incorporation of AAA rules into arbitration agreement delegated authority to adjudicate threshold issues to arbitrator). If Bachman raises any challenge regarding a threshold issue, the Court must compel the Parties to arbitration to allow such issues to be properly decided by the arbitrator, not this Court.

### C. Even if the Court Declines to Allow the Arbitrator to Determine If the MAA is Valid and Enforceable, This Court Should Find a Valid and Enforceable Agreement to Arbitrate Exists

Even if the Court determines that threshold validity or enforceability issues do not go to the arbitrator, the Court should itself find a valid agreement to arbitrate exists. Ordinary contract principles govern whether parties have agreed to arbitrate a dispute, so courts look to state contract law to determine if a valid arbitration agreement exists. *Patterson v. Tenet Healthcare, Inc.*, 113 F.3d 832, 834 (8th Cir. 1997); *State ex rel. Vincent v. Schneider*, 194 S.W.3d 853, 856 (Mo. 2006). In Missouri, the essential elements of a valid contract are offer, acceptance, and bargained-for consideration. *Johnson v. McDonnell Douglas Corp.*, 745 S.W.2d 661, 662 (Mo. 1988). Each essential element of a valid contract exists here.

#### 1. There was an offer and an acceptance to form a valid contract.

Valid offer and acceptance are present here. To be valid, an offer must be sufficiently definite in its terms and must be communicated to the offeree. *Prop. Assessment Review, Inc. v. Greater Mo. Builders, Inc.*, 260 S.W.3d 841 (Mo. Ct. App. 2008). Where the terms of a mandatory arbitration program are clear and unambiguous, a court will look to the language of the contract alone to determine the parties' intent. *Dunn Indus. Group, Inc. v. City of Sugar Creek*, 112 S.W.3d 421, 428-29 (Mo. 2003) (enforcing mandatory arbitration where language of the agreement was "clear" and "unambiguous") (citing *Patterson*, 113 F.3d at 833-35 (enforcing arbitration agreement where agreement's language was "clear and unambiguous")).

In completing her application for employment and in the onboarding process, Bachman was presented with and given a chance to review the MAA. Through the MAA, Hobby Lobby offered to resolve covered workplace disputes through arbitration, under the specific terms of the MAA. Hobby Lobby's offer was definite in form and clearly and unambiguously communicated to Bachman; it constituted a valid offer. *See Agri Process Innovations, Inc. v. Envirotrol, Inc.*, 338 S.W.2d 381, 390 (Mo Ct. App. 2011) (citations omitted) ("offer" requires manifestation of willingness to enter into a bargain). After reviewing the terms of the MAA, Bachman physically signed the MAA in June 2016 and July 2016. *See* Exhibits A-B. Bachman had actual notice of the MAA's terms, as evidenced by her signatures, and her signatures (and her decision to continue in employment with Hobby Lobby) evidence "acceptance" of Hobby Lobby's offer. *Id.*; *Walker v. Rogers*, 182 S.W.3d 761, 768-769 (Mo. Ct. App. 2006) ("acceptance" of offer is "a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer").

**2. There was sufficient consideration to form a valid contract.**

The final element required to form a valid contract, consideration, is also present here. Consideration exists when the parties have exchanged mutually binding promises that impose some legal duty or liability on each promisor. *See, e.g., Morrow*, 273 S.W.3d at 25 (consideration satisfied by mutual promises to do or refrain from doing something); *Frye v. Speedway Chevrolet Cadillac*, 321 S.W.3d 429, 438 (Mo. Ct. App. 2010) ("if a contract contains mutual promises, such that a legal duty or liability is imposed on each party as a promisor to the other party as a promisee, the contract is a bilateral contract supported by sufficient consideration"); *State ex rel. Hewitt v. Kerr*, 461 S.W.3d 798, 808-809 (Mo. 2015) (employment arbitration agreement was supported by adequate consideration where both employer and employee were bound); *Ellington v. Napleton's Mid-Rivers Motors*, 2018 WL 4701475, at *4 (Mo. Ct. App. Oct. 2, 2018) (employment arbitration agreement was supported by adequate consideration where both parties agreed future disputes

would be subject to binding arbitration). Consideration is satisfied here because Bachman mutually agreed with Hobby Lobby to waive their respective rights to the courts by submitting employment-related claims to arbitration. Exhibit B. The MAA unambiguously states it applies to Hobby Lobby *and* Bachman, making arbitration the required and exclusive forum for resolving employment-related disputes, regardless of which party asserts a claim against the other. *Id.*

Similarly, language throughout the MAA consistently imposes mutual and identical obligations on the Parties. *Id.* The MAA is essentially a "traditional bilateral pre-dispute arbitration contract with each party promising to submit to arbitration any claims that might arise out of the employment relationship." *Morrow*, 273 S.W.3d at 23-24 (contrasting such traditional bi-lateral agreements, which are enforceable, with ones in which the employer has not bound itself to arbitrate, which will not be enforceable absent other consideration). Bachman acknowledged she had reviewed and knowingly consented to the MAA's terms. Exhibit B. Hobby Lobby also agreed to be bound to the MAA's terms. *Id.* The mutuality of these provisions and obligations is the type of consideration recognized by Missouri federal and state courts as establishing enforceability. *See Ranson v. Securitas Sec. Servs. USA, Inc.*, 2018 WL 4593707, *4 (E.D. Mo. Sept. 25, 2018) (finding sufficient consideration to enforce employment-arbitration agreement where parties exchanged mutual promises to arbitrate); *Thomas v. Dillard's*, 2010 WL 2522742, *3 (E.D. Mo. June 16, 2010) (same); *McIntosh*, 48 S.W. 3d at 89 (where employee signed arbitration clause agreeing with company to submit to arbitration, mutual agreement was enforceable); *State ex rel. Hewitt*, 461 S.W.3d at 808-09 (employment arbitration agreement was supported by adequate consideration where both employee and organization were bound to arbitration). Further, besides the mutually binding promises to arbitrate, consideration is evidenced by Hobby Lobby's promise to pay "all costs unique to arbitration" (*e.g.*, arbitration fees and expenses). Exhibit B at ¶ 10.

All requirements for a valid, enforceable contract under Missouri law are present. Bachman's claims should be compelled to arbitration.

**D. Bachman's Claims Fall Within the Scope of the MAA**

Not only is it indisputable Bachman accepted the MAA and is bound by its terms, but it is also indisputable the MAA covers her Missouri Human Rights Act and Missouri common law claims. Specifically, Bachman asserts eleven separate claims relative to her employment with Hobby Lobby, including: harassment (Counts 1, 9); discrimination (Count 2); retaliation (Count 7); violation of the MHRA (Count 8); assault and battery (Counts 3, 10), intentional and negligent infliction of emotional distress (Counts 4, 11), negligent hiring and supervision (Count 5), and negligent failure to provide security (Count 6). *See* Doc. 001-2. All claims constitute employment-related disputes and fall squarely within the MAA, which covers "any dispute, demand, claim, complaint, controversy, cause of action, or suit arising under or involving any federal, state, or local law, statute, regulation, code, ordinance, rule, common law, or public policy … that in any way … relates to your … employment with the Company [or] or termination of employment with the Company." Exhibit B at ¶ 2. The MAA specifically identifies claims for assault, battery, negligence, intentional torts, personal injury, pain and suffering, emotional distress, sex harassment, harassment and/or discrimination, retaliation, or any other tort claim as types of claims encompassed by the agreement. *Id.* at n.3.

The Supreme Court has held that arbitration should be ordered "unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute." *AT&T Tech., Inc. v. Comms. Workers of Am.*, 475 U.S. 643, 650 (1986) (citation omitted). The MAA here encompasses Bachman's claims. No other interpretation is possible.

**E. Bachman Will Have the Same Substantive Rights and Remedies in Arbitration**

Notably, the Parties will have the same substantive rights and remedies in arbitration they

would have had in this Court. The MAA specifically provides: "the arbitrator shall apply, and shall not deviate from, as applicable, the substantive Law of the state in which the claim(s) arose and/or federal Law" and "shall not have the authority to order any remedy a court is not authorized to order." Exhibit B at ¶ 7. Also, Bachman can engage in pre-arbitration discovery. *Id.* The MAA deprives no party of any substantive right or remedy they would otherwise have in this Court. Rather, the Parties have merely changed the forum in which to resolve their disputes. *Mitsubishi Motors Corp.*, 473 U.S. at 628 ("By agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial, forum."). The MAA is substantively conscionable and should be enforced. Again, Bachman's claims should be compelled to arbitration.

## IV. CONCLUSION

Hobby Lobby is not trying to force Bachman to arbitrate disputes she did not already agree to arbitrate. First, because the MAA includes a clear and unmistakable delegation provision, any dispute on validity or enforceability must be decided by an arbitrator, not this Court. Second, even if this Court determined validity or enforceability, the MAA meets all elements to form a valid and binding contract under Missouri law, and Bachman's claims fall squarely within its scope. Hobby Lobby respectfully asks the Court to enter the relief requested in its Petition to Compel Arbitration, including compelling Bachman to submit to arbitration all claims regarding her employment with Hobby Lobby, staying all proceedings in and enjoining Bachman from further pursuing her state court action, staying all proceedings here pending arbitration, awarding Hobby Lobby its attorneys' fees, costs, and expenses in bringing this action, and granting any further relief the Court finds appropriate.

Respectfully submitted,

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

*/s/ René L. Duckworth*

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Attorney for Petitioner

CERTIFICATE OF SERVICE

I certify on December 13, 2018, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system which sent notification of such filing to all counsel of record.

*/s/ René L. Duckworth*
Attorney for Petitioner

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If you wish to be considered for employment, you must read and sign this Mutual Arbitration Agreement. You are required to sign and return this Mutual Arbitration Agreement as part of, and in consideration for, applying for a position with the Company.

Arbitration is mutually beneficial to both the Company and you. Arbitration provides: a speedier and less complicated process than litigation; a less costly process with the arbitrator's administrative costs and fees borne solely by the Company; and an experienced decision maker. Every effort has been made to ensure that you have access to a copy of the applicable arbitration rules and procedures as adopted by the American Arbitration Association. You may request the applicable arbitration rules and procedures as adopted by the American Arbitration Association from the Company's Human Resources Department by calling (877) 303-4547; or you may review the complete set of up-to-date rules, forms, procedures, and guides available from the American Arbitration Association on the website at www.adr.org. Please review these rules and procedures carefully.

1. Agreement to Arbitrate. Except as provided below, in this Mutual Arbitration Agreement (the "Agreement"), you and the Company agree binding arbitration is the sole and exclusive means to resolve all disputes that may arise out of, or be related to, your applications for employment with the Company and/or if hired, your employment with the Company. You and the Company each specifically waive and relinquish the respective right to sue each other in a court of law, and this waiver shall be equally binding on any person who represents or seeks to represent you or the Company in a lawsuit against the other in a court of law.

2. Covered Laws and Disputes. Subject to limitations set forth in Sections 3 and 8 below, this Agreement to arbitrate applies to any dispute, demand, claim, complaint, controversy, cause of action, or suit (as applicable, a "Dispute") arising under or involving any federal, state, or local law, statute, regulation, code, ordinance, rule, common law, or public policy (as applicable, a "Law"), that in any way or to any extent governs, regulates, or relates to your (i) application for employment; (ii) employment with the Company; (iii) compensation; or (iv) termination of employment with the Company.

3. Excluded Disputes. This Agreement shall not apply to Disputes (i) involving benefits under unemployment compensation Laws; (ii) involving benefits under workers' compensation Laws; (iii) arising under the National Labor Relations Act and brought before the National Labor Relations Board; (iv) involving enforcement of this Agreement, the compelling of arbitration, or enforcing or vacating an arbitrator's award under this Agreement; or (v) otherwise expressly required by Law to be decided in a specific forum or tribunal in which arbitration is prohibited.

4. No Waiver of Substantive Rights. By agreeing to arbitrate all Disputes, you and the Company understand neither is giving up any substantive right under the Law (including the right to file charges or petitions with federal, state, or local government agencies such as the Equal Employment Opportunity Commission, a Fair Employment Practice Agency, or National Labor Relations Board). Rather, you and the Company mutually agree to submit all Disputes contemplated in this Agreement to binding arbitration instead of a court. Further, you acknowledge this Agreement is not intended to, and does not, interfere with your rights to collectively bargain, to engage in protected, concerted activity, or to exercise other rights protected under the National Labor Relations Act. You and the Company, however, knowingly and voluntarily (i) waive the right to file, or participate or obtain relief in, a court action of any nature seeking money damages or injunctive relief against you or the Company, except as otherwise provided for in this Agreement; and (ii) waive the right to seek or recover money damages of any type pursuant to any administrative action and instead may seek such relief only through arbitration under this Agreement.

5. Initiation of Arbitration and Time Limitations. The claiming party must initiate the arbitration by serving the claim on the other party's Registered Agent or by filing an arbitration demand through the American Arbitration Association ("AAA"). Unless otherwise mandated by Law, the party initiating the Dispute shall bring all Disputes within one (1) year of the day on which the aggrieved party knew, or through reasonable diligence should have known, of the facts giving rise to the Dispute.

6. Arbitrator Selection, Rules, and Location. Within thirty (30) days of receipt of a notice of arbitration, the parties shall select a mutually agreeable arbitrator experienced with employment law and licensed to practice law in the state in which you applied for employment, and/or if hired, are or were employed. To the maximum extent permitted by Law and except as otherwise set forth in this Agreement, the arbitrator selected by the parties shall administer the arbitration according to the Employment Arbitration Rules (or successor rules) of the AAA and Federal Rule of Civil Procedure 68 ("Offer of Judgment"). If the AAA's rules are inconsistent with this Agreement, the terms of this Agreement shall control. If the parties are unable to agree on an arbitrator, the party requesting arbitration shall submit the matter to the AAA, and an arbitrator shall be selected pursuant to the AAA's rules. The parties shall have the right to file dispositive motions and post-hearing briefs. The location for the binding arbitration shall be the county in which you last applied for employment, are employed, or were employed with the Company.

7. Arbitrator Authority. Except as otherwise provided in Section 8, you and the Company agree the arbitrator – not a court or agency – shall have exclusive authority to resolve any disputes or issues relating to the formation, interpretation, applicability, implementation, and enforceability of this Agreement. The arbitrator's authority and jurisdiction shall be limited to determining the matter in dispute consistent with controlling Law and this Agreement. Except as otherwise provided in this Agreement, the arbitrator shall apply, and shall not deviate from, as applicable, the substantive Law of the state in which the claim(s) arose and/or federal Law. The arbitrator shall not have the authority to hear disputes not recognized by existing Law and shall dismiss such disputes upon motion by either party in accordance with the summary judgment standards of the applicable jurisdiction. Similarly, the arbitrator shall not have the authority to order any remedy a court is not authorized to order. The arbitrator shall render a written award setting forth the arbitrator's findings of fact and conclusions of law.

8. Excluded Parties. This Agreement prohibits a party or the arbitrator from consolidating the Disputes of others into one proceeding, to the maximum extent permitted by Law. An arbitrator shall hear only individual Disputes and is prohibited from arbitrating a class, collective, representative, group, or joint action or awarding relief to a group of individuals in one proceeding, to the maximum extent permitted by Law. Any question or dispute concerning the scope or validity of this Section shall be decided by a court of competent jurisdiction and not the arbitrator. Should a court determine the prohibition on class, collective, representative, group, or joint actions in this Section is invalid for any reason, the parties hereby waive any right to arbitration of a class, collective, representative, group, or joint action and instead agree and stipulate that such Disputes will be heard only by a judge and not an arbitrator or jury. Additionally, the parties agree if a party brings a Dispute that includes both Disputes subject to arbitration under this Agreement and Disputes that by Law are not subject to arbitration, all Disputes that by Law are not subject to arbitration shall be stayed until the Disputes subject to arbitration under this Agreement are fully arbitrated. The parties further agree that in such a situation, the arbitrator's decision on the Disputes subject to arbitration, including any determinations as to disputed factual or legal issues, shall be entitled to full force and effect in any separate lawsuit on Disputes that by Law are not subject to arbitration.

9. Early Resolution. Prior to submitting a Dispute to arbitration, the aggrieved party shall first attempt to resolve the Dispute by notifying the other party in writing of the Dispute. If the other party does not respond to and resolve the Dispute within ten (10) days of receipt of the written notification, the aggrieved party then may proceed to arbitration.

10. Arbitration Costs and Attorney Fees. The Company shall pay all costs unique to arbitration (as compared to the costs of adjudicating the same Disputes before a court), including the regular and customary arbitration fees and expenses. However, if you are the party initiating the Dispute, you shall be responsible for contributing an amount equal to the filing fee to initiate the Dispute in the court of general jurisdiction in the state in which you applied, or if hired, are or were last employed by the Company. Except as provided in Federal Rule of Civil Procedure 68, each party shall pay its own attorneys' fees and any costs not unique to the arbitration (i.e., costs each party would incur if the Disputes were litigated in a court such as costs to subpoena witnesses and/or documents, take depositions and purchase deposition transcripts, copy documents, etc.). Any dispute as to whether a cost is unique to arbitration shall be resolved by the arbitrator. The arbitrator may award reasonable fees and costs or any portion thereof to the prevailing party to the same extent a court would be entitled to do so, in accordance with applicable Law.

11. Breach. Should any party institute an action in a court of law or equity against the other party with respect to a Dispute required to be arbitrated under this Agreement, the responding party shall be entitled to recover from the initiating party all costs, expenses, and attorney's fees incurred to enforce this Agreement and compel arbitration, and all other damages resulting from or incurred as a result of such court action.

12. Finality and Enforcement. You and the Company agree the decision of the arbitrator shall be final and binding. Judgment on any award rendered by an arbitrator may be entered and enforced in any court with competent jurisdiction.

13. Federal Arbitration Act. You acknowledge and agree the Company (i) is engaged in transactions involving interstate commerce; (ii) this Agreement evidences a transaction involving commerce; and (iii) this Agreement is subject to the Federal Arbitration Act.

14. No Employment Contract. This Agreement is not, and shall not be construed to create, a contract of employment, express or implied. This Agreement shall not alter your at-will employment.

15. Consideration. This Agreement is made in consideration for the acceptance by the Company of your application for employment, and if the Company hires you, in consideration for employing you and continuing to employ you, for the benefits and compensation provided by the Company to you, and for the mutual agreement to arbitrate as provided in this Agreement.

16. Condition of Employment. Every individual who applies for employment with, and/or works for, the Company must have signed and returned to the hiring representative or Company supervisor this Agreement to be eligible for prospective or continued employment with the Company.

17. Miscellaneous. This Agreement constitutes the entire mutual agreement to arbitrate between you and the Company and supersedes any and all prior or contemporaneous oral or written agreements or understandings regarding the arbitration of Disputes. Oral representations or agreements, made before or after your application or employment, regarding dispute resolution, the length of your employment, and the reasons for termination of your employment, shall not alter this Agreement. This Agreement shall remain in effect even after the termination of your employment with the Company. If any provision of this Agreement is deemed invalid or unenforceable, such provision shall be modified automatically to the minimum extent necessary to render the Agreement valid and enforceable. If a provision conflicts with a mandatory provision of applicable Law, the conflicting provision shall be severed automatically and the remainder of the Agreement construed to incorporate the mandatory provision. In the event of such automatic severance and modification with respect to a particular provision, the remainder of this Agreement shall not be affected. Similarly, should a court or arbitrator determine arbitration pursuant to this Agreement is unavailable for any reason, the parties waive any right to a jury and instead agree and stipulate the Disputes at issue will be heard only by a judge. This Agreement shall be construed as a whole, according to its fair meaning, and not for or against any party.

18. Withdrawal. This Agreement affects your legal rights; therefore, you may wish to seek legal advice before signing the Agreement. You may withdraw your consent to this Agreement within three (3) days from the date on which you sign below by notifying the Company in writing (including the address of the place of which you applied for employment) that you are withdrawing your application for employment. The withdrawal must be sent to: 7707 S.W. 44th St., OKC, OK 73179. By notifying the Company in this manner, you will not be bound to this Agreement and will no longer be eligible for employment with the Company. If you fail to withdraw in accordance with the terms above, you will be required to arbitrate, as explained in this Agreement, any and all employment-related claims you have against the Company whether or not you become employed by the Company.

19. Knowledge and Consent. BY THEIR SIGNATURES BELOW, SUBJECT TO THE PROVISIONS ABOVE, BOTH PARTIES ACKNOWLEDGE THEY HAVE READ THIS AGREEMENT, ARE GIVING UP ANY RIGHT THEY MIGHT HAVE AT ANY POINT TO SUE THE OTHER IN COURT, ARE WAIVING ANY RIGHT TO A JURY TRIAL, AND ARE KNOWINGLY AND VOLUNTARILY CONSENTING TO ALL TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT.

Jacqueline Bachman — 6-29-16

Employee Name — Date

Jacque Bachman

Employee Signature

By Company

Peter M. Dobelbower, Vice President

"Company" shall mean the company to which you submitted your application for employment, or if hired, for which you work or worked, specifically Hobby Lobby Stores, Inc., Mardel, Inc., or any affiliate, successor, or assign.

2 Including but not limited to Title VII of the Civil Rights Act of 1964, the Civil Rights Acts of 1866 and 1991, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Family and Medical Leave Act, the Fair Labor Standards Act, the Equal Pay Act, the Fair Credit Reporting Act, the Employee Retirement Income Security Act, and/or similar state and local laws, all as amended.

3 Covered Disputes include, but are not be limited to, those involving hiring or not hiring, wrongful termination, wages, compensation, work hours, invasion of privacy, false imprisonment, assault, battery, malicious prosecution, defamation, negligence, intentional torts, personal injury, pain and suffering, emotional distress, loss of consortium, breach of fiduciary duty, sexual harassment, harassment and/or discrimination based on any class protected by law, retaliation, interference and/or opposition of discrimination or harassment, and/or any other employment related Disputes based in tort, contract, or any other nature or theory whatsoever.

# MUTUAL ARBITRATION AGREEMENT

1. Agreement to Arbitrate. Except as provided below, in this Mutual Arbitration Agreement (the "Agreement"), you and the Company[1] agree binding arbitration is the sole and exclusive means to resolve all disputes that may arise out of, or be related to, your employment with the Company and/or applications for employment with the Company. You and the Company each specifically waive and relinquish the respective right to sue each other in a court of law, and this waiver shall be equally binding on any person who represents or seeks to represent you or the Company in a lawsuit against the other in a court of law.

2. Covered Laws and Disputes. Subject to limitations set forth in Sections 3 and 8 below, this Agreement to arbitrate applies to any dispute, demand, claim, complaint, controversy, cause of action, or suit (as applicable, a "Dispute") arising under or involving any federal, state, or local law, statute, regulation, code, ordinance, rule, common law, or public policy (as applicable, a "Law"),[2] that in any way or to any extent governs, regulates, or relates to your (i) application for employment; (ii) employment with the Company; (iii) compensation; or (iv) termination of employment with the Company.[3]

3. Excluded Disputes. This Agreement shall not apply to Disputes (i) involving benefits under unemployment compensation Laws; (ii) involving benefits under workers' compensation Laws; (iii) arising under the National Labor Relations Act and brought before the National Labor Relations Board; (iv) involving enforcement of this Agreement, the compelling of arbitration, or enforcing or vacating an arbitrator's award under this Agreement; or (v) otherwise expressly required by Law to be decided in a specific forum or tribunal in which arbitration is prohibited.

4. No Waiver of Substantive Rights. By agreeing to arbitrate all Disputes, you and the Company understand neither is giving up any substantive right under the Law (including the right to file charges or petitions with federal, state, or local government agencies such as the Equal Employment Opportunity Commission, a Fair Employment Practice Agency, or National Labor Relations Board). Rather, you and the Company mutually agree to submit all Disputes contemplated in this Agreement to binding arbitration instead of a court. Further, you acknowledge this Agreement is not intended to, and does not, interfere with your rights to collectively bargain, to engage in protected, concerted activity, or to exercise other rights protected under the National Labor Relations Act. You and the Company, however, knowingly and voluntarily (i) waive the right to file, or participate or obtain relief in, a court action of any nature seeking money damages or injunctive relief against you or the Company, except as otherwise provided for in this Agreement; and (ii) waive the right to seek or recover money damages of any type pursuant to any administrative action and instead may seek such relief only through arbitration under this Agreement.

5. Initiation of Arbitration and Time Limitations. The claiming party must initiate the arbitration by serving the claim on the other party's Registered Agent or by filing an arbitration demand through the American Arbitration Association ("AAA"). Unless otherwise mandated by Law, the party initiating the Dispute shall bring all Disputes within one (1) year of the day on which the aggrieved party knew, or through reasonable diligence should have known, of the facts giving rise to the Dispute.

6. Arbitrator Selection, Rules, and Location. Within thirty (30) days of receipt of a notice of arbitration, the parties shall select a mutually agreeable arbitrator experienced with employment law and licensed to practice law in the state in which you applied for employment, and/or if hired, are or were employed. To the maximum extent permitted by Law and except as otherwise set forth in this Agreement, the arbitrator selected by the parties shall administer the arbitration according to the Employment Arbitration Rules (or successor rules) of the AAA and Federal Rule of Civil Procedure 68 ("Offer of Judgment"). If the AAA's rules are inconsistent with this Agreement, the terms of this Agreement shall control. If the parties are unable to agree on an arbitrator, the party requesting arbitration shall submit the matter to the AAA, and an arbitrator shall be selected pursuant to the AAA's rules. The parties shall have the right to file dispositive motions and post-hearing briefs. The location for the binding arbitration shall be the county in which you last applied for employment, are employed, or were employed with the Company.

7. Arbitrator Authority. Except as otherwise provided in Section 8, you and the Company agree the arbitrator – not a court or agency – shall have exclusive authority to resolve any disputes or issues relating to the formation, interpretation, applicability, implementation, and enforceability of this Agreement. The arbitrator's authority and jurisdiction shall be limited to determining the matter in dispute consistent with controlling Law and this Agreement. Except as otherwise provided in this Agreement, the arbitrator shall apply, and shall not deviate from, as applicable, the substantive Law of the state in which the claim(s) arose and/or federal Law. The arbitrator shall not have the authority to hear disputes not recognized by existing Law and shall dismiss such disputes upon motion by either party in accordance with the summary judgment standards of the applicable jurisdiction. Similarly, the arbitrator shall not have the authority to order any remedy a court is not authorized to order. The arbitrator shall render a written award setting forth the arbitrator's findings of fact and conclusions of law.

8. Excluded Parties. **This Agreement prohibits a party or the arbitrator from consolidating the Disputes of others into one proceeding, to the maximum extent permitted by Law. An arbitrator shall hear only individual Disputes and is prohibited from arbitrating a class, collective, representative, group, or joint action or awarding relief to a group of individuals in one proceeding, to the maximum extent permitted by Law.** Any question or dispute concerning the scope or validity of this Section shall be decided by a

[1] "**Company**" shall mean the company to which you submitted your application for employment, or if hired, for which you work or worked, specifically Hobby Lobby Stores, Inc., Mardel, Inc., or any affiliate, successor, or assign.

[2] Including but not limited to Title VII of the Civil Rights Act of 1964, the Civil Rights Acts of 1866 and 1991, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Family and Medical Leave Act, the Fair Labor Standards Act, the Equal Pay Act, the Fair Credit Reporting Act, the Employee Retirement Income Security Act, and/or similar state and local laws, all as amended.

[3] Covered Disputes include, but are not be limited to, those involving hiring or not hiring, wrongful termination, wages, compensation, work hours, invasion of privacy, false imprisonment, assault, battery, malicious prosecution, defamation, negligence, intentional torts, personal injury, pain and suffering, emotional distress, loss of consortium, breach of fiduciary duty, sexual harassment, harassment and/or discrimination based on any class protected by law, retaliation, interference and/or opposition of discrimination or harassment, and/or any other employment-related Disputes based in tort, contract, or any other nature or theory whatsoever.

court of competent jurisdiction and not the arbitrator. Should a court determine the prohibition on class, collective, representative, group, or joint actions in this Section is invalid for any reason, the parties hereby waive any right to arbitration of a class, collective, representative, group, or joint action and instead agree and stipulate that such Disputes will be heard only by a judge and not an arbitrator or jury. Additionally, the parties agree if a party brings a Dispute that includes both Disputes subject to arbitration under this Agreement and Disputes that by Law are not subject to arbitration, all Disputes that by Law are not subject to arbitration shall be stayed until the Disputes subject to arbitration under this Agreement are fully arbitrated. The parties further agree that in such a situation, the arbitrator's decision on the Disputes subject to arbitration, including any determinations as to disputed factual or legal issues, shall be entitled to full force and effect in any separate lawsuit on Disputes that by Law are not subject to arbitration.

9. Early Resolution. Prior to submitting a Dispute to arbitration, the aggrieved party shall first attempt to resolve the Dispute by notifying the other party in writing of the Dispute. If the other party does not respond to and resolve the Dispute within ten (10) days of receipt of the written notification, the aggrieved party then may proceed to arbitration.

10. Arbitration Costs and Attorney Fees. The Company shall pay all costs unique to arbitration (as compared to the costs of adjudicating the same Disputes before a court), including the regular and customary arbitration fees and expenses. However, if Employee is the party initiating the Dispute, Employee shall be responsible for contributing an amount equal to the filing fee to initiate the Dispute in the court of general jurisdiction in the state in which Employee is or was last employed by the Company. Except as provided in Federal Rule of Civil Procedure 68, each party shall pay its own attorneys' fees and any costs not unique to the arbitration (*i.e.*, costs each party would incur if the Disputes were litigated in a court such as costs to subpoena witnesses and/or documents, take depositions and purchase deposition transcripts, copy documents, etc.). Any dispute as to whether a cost is unique to arbitration shall be resolved by the arbitrator. The arbitrator may award reasonable fees and costs or any portion thereof to the prevailing party to the same extent a court would be entitled to do so, in accordance with applicable Law.

11. Breach. Should any party institute an action in a court of law or equity against the other party with respect to a Dispute required to be arbitrated under this Agreement, the responding party shall be entitled to recover from the initiating party all costs, expenses, and attorney's fees incurred to enforce this Agreement and compel arbitration, and all other damages resulting from or incurred as a result of such court action.

12. Finality and Enforcement. You and the Company agree the decision of the arbitrator shall be final and binding. Judgment on any award rendered by an arbitrator may be entered and enforced in any court with competent jurisdiction.

13. Federal Arbitration Act. You acknowledge and agree the Company (i) is engaged in transactions involving interstate commerce; (ii) this Agreement evidences a transaction involving commerce; and (iii) this Agreement is subject to the Federal Arbitration Act.

14. No Employment Contract. This Agreement is not, and shall not be construed to create, a contract of employment, express or implied. This Agreement shall not alter your at-will employment.

15. Consideration. This Agreement is made in consideration for the acceptance by the Company of your application for employment, and if the Company hires you, in consideration for employing you and continuing to employ you, for the benefits and compensation provided by the Company to you, and for the mutual agreement to arbitrate as provided in this Agreement.

16. Condition of Employment. Every individual who applies for employment with, and/or works for, the Company must have signed and returned to the hiring representative or Company supervisor this Agreement to be eligible for prospective or continued employment with the Company.

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Jacqueline J Bachman
Employee Name

07-25-2014
Date

Jacque Bachman
Employee Signature

By the Company

Peter M. Dobelbower, Vice President