

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Clifford A. Chanler, State Bar No. 135534
Gregory M. Sheffer, State Bar No. 173124
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565
Telephone: (510) 848-8880
Facsimile: (510) 848-8118

Attorneys for Plaintiff
RUSSELL BRIMER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,

Plaintiff,

v.

WINDSOR FASHIONS, INC. and DOES 1-150,

Defendants.

Case No. CGC-11-511371

**CONSENT TO JUDGMENT AS TO
DEFENDANT WINDSOR FASHIONS, INC.**

Action Filed: June 1, 2011
Trial Date: Not Assigned

1 **1. INTRODUCTION**

2 **1.1 The Parties**

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

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Windsor Fashions employs 10 or more persons and is a person in the course of doing
12 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California
13 Health & Safety Code §§ 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Brimer alleges that Windsor Fashions manufactured, distributed and/or sold, in the State
16 of California, certain types of belts composed of material containing lead, including, but not
17 limited to, Windsor Woven Linked Belt, Brown, JR-05451, #07301-0245, Product #: 4 07301 00584
18 8, that exposed users to lead, without first providing “clear and reasonable warning” under
19 Proposition 65. Lead is listed as a reproductive and developmental toxicant pursuant to
20 Proposition 65 and is referred to hereinafter as the “Listed Chemical.”

21 **1.5 Notice of Violation**

22 On November 12, 2010, Brimer served Defendant and various public enforcement
23 agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided public
24 enforcers and these entities with notice of alleged violations of Health & Safety Code § 25249.6
25 for failing to warn consumers of the presence of lead, a toxic chemical found in and on their
26 tape measure products sold in California. To the best of the Parties’ knowledge, no public
27 enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

28 ///

1 **1.6 Complaint**

2 On June 1, 2011, Brimer, acting, in the interest of the general public in California, filed a
3 Complaint in the Superior Court of the State of California for the County of San Francisco,
4 alleging violations by Defendant of Health & Safety Code § 25249.6 based, *inter alia*, on the
5 alleged exposures to lead contained in the referenced belt products (the “Action”).

6 **1.7 No Admission**

7 This Consent To Judgment resolves claims that are denied and disputed by Windsor
8 Fashions. The Parties enter into this Consent To Judgment pursuant to a full and final settlement
9 of any and all claims between the Parties for the purpose of avoiding prolonged litigation.
10 Defendant denies the material factual and legal allegations contained in the Notice and Action,
11 maintains that it did not knowingly or intentionally expose California consumers to lead through
12 the reasonably foreseeable use of the Covered Products and otherwise contends that all Covered
13 Products it has manufactured, distributed and/or sold in California have been and are in
14 compliance with all applicable laws. Nothing in this Consent To Judgment shall be construed as
15 an admission by Defendant of any fact, finding, issue of law, or violation of law; nor shall
16 compliance with this Consent To Judgment constitute or be construed as an admission by the
17 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
18 specifically denied by Defendant. However, notwithstanding the foregoing, this section shall not
19 diminish or otherwise affect Windsor Fashion’s obligations, responsibilities, and duties under
20 this Consent To Judgment.

21 **1.8 Consent to Jurisdiction**

22 For purposes of this Consent To Judgment only, the Parties stipulate that this Court has
23 jurisdiction over Windsor Fashion as to the allegations contained in the Complaint, that venue is
24 proper in County of San Francisco, and that this Court has jurisdiction to enter and enforce the
25 provisions of this Consent Judgment. As an express part of this Agreement, pursuant to C.C.P.
26 §664.6 the Court in which this action was filed shall retain jurisdiction over the parties to enforce
27 the settlement until performance in full of the terms of the settlement.

28 ///

1 **2. DEFINITIONS**

2 2.1 The term "Complaint" shall mean the June 1, 2011, Complaint.

3 2.2 The term "Covered Products" means any belts composed of material containing
4 lead, including, but not limited to, the Windsor Woven Linked Belt, Brown, JR-05451, #07301-
5 0245, Product #: 4 07301 00584 8.

6 2.3 The term "Effective Date" shall mean January 27, 2012.

7 2.4 The term "Lead Free" Covered Products shall mean Covered Products containing
8 materials or other components that may be handled, touched or mouthed by a consumer, and
9 which components yield less than 1.0 microgram of lead when using a wipe test pursuant to
10 NIOSH Test Method 9100, and yield less than 100 parts per million ("ppm") lead when analyzed
11 pursuant to EPA testing methodologies 3050B and 6010B, or equivalent methodologies utilized
12 by federal or state agencies for the purpose of determining lead content in a solid substance.

13 **3. INJUNCTIVE RELIEF**

14 3.1 **Formulation Commitment**

15 3.1.1 As of the Effective Date, Defendant shall not order, cause to be ordered,
16 manufacture or cause to be manufactured any Covered Product for distribution to or sale in the
17 United States that is not Lead Free and Defendant shall also not distribute, cause to be
18 distributed, sell or cause to be sold, in the United States, any Covered Product that is not Lead
19 Free. For every Covered Product ordered, caused to be ordered, manufactured or caused to be
20 manufactured for distribution to or sale in the United States after the Effective Date, and for
21 every Covered Product distributed, caused to be distributed, sold or caused to be sold in the
22 United States by Defendant, Defendant shall maintain copies of all testing of such products
23 demonstrating compliance with this section.

24 3.2 **Previously Obtained or Distributed Covered Products.**

25 3.2.1 **Product Warnings**

26 Commencing on the Effective Date, and until such date three (3) months thereafter,
27 Windsor Fashions shall not sell, ship, or offer to be sold or shipped for sale in California any
28

1 Covered Products unless such Covered Products are Lead Free under Section 2.4 or are sold or
2 shipped with one of the clear and reasonable warnings set forth hereafter.

3 Each warning shall be prominently placed with such conspicuousness as compared with
4 other words, statements, designs, or devices as to render it likely to be read and understood by
5 an ordinary individual under customary conditions *before* purchase or use. Each warning shall
6 be provided in a manner such that the consumer or user understands to which *specific* Covered
7 Product the warning applies, so as to minimize the risk of consumer confusion.

8 (a) **Retail Store Sales.**

9 (i) **Product Labeling.** Windsor Fashions may affix a warning to the
10 packaging, labeling, or directly on any Covered Products sold at a retail outlet of either
11 Defendant in California that states:

12 **WARNING:** This product contains LEAD, a chemical
13 known to the State of California to cause birth
14 defects and other reproductive harm.

15 (ii) **Point-of-Sale Warnings.** Alternatively, Windsor Fashions may
16 provide warning signs in the form below to retail outlets in California, which stores it is
17 reasonably aware of having sold the Covered Products or having inventory or orders of the
18 Covered Products, with instructions to post the signs *in immediate proximity* to the point of
19 display of any and all such Covered Products for the benefit of its customers.

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

23 (b) **Mail Order Catalog and Internet Sales.** In the event that Windsor
24 Fashions sells any Covered Products via mail order catalog or the Internet to customers located
25 in California any such catalog or Internet site offering any Covered Product for sale shall include
26 a warning in the catalog or within the website, identifying the specific Covered Product to which
27 the warning applies, as specified in Sections 3.2.2(b)(i) and (ii).

28 (i) **Mail Order Catalog Warning.** Any warning provided in a mail
order catalog must be in the same type size or larger than the Covered Product description text

1 within the catalog. The following warning shall be provided on the same page and in the same
2 location as the display and/or description of the Covered Product:

3 **WARNING:** This product contains LEAD, a chemical
4 known to the State of California to cause birth
5 defects and other reproductive harm.

6 Where it is impracticable to provide the warning on the same page and in the same
7 location as the display and/or description of the Covered Product, Defendant may utilize a
8 designated symbol to cross reference the applicable warning and shall define the term
9 “designated symbol” with the following language on the inside of the front or back cover of the
10 catalog or on the same page as any order form for the Covered Product(s):

11 **WARNING:** Certain products identified with this
12 symbol ▼ and offered for sale in this
13 catalog contain LEAD, a chemical known
14 to the State of California to cause birth
15 defects and other reproductive harm.

16 The designated symbol must appear on the same page and in close proximity to the
17 display and/or description of the Covered Product. On each page where the designated symbol
18 appears, Windsor Fashions must provide a header or footer directing the consumer to the
19 warning language and definition of the designated symbol.

20 If Defendant elects to provide warnings in any mail order catalog, then the warnings
21 must be included in all catalogs offering to sell one or more Covered Products printed after the
22 Effective Date.

23 (ii) **Internet Website Warning.** A warning must be given in
24 conjunction with the sale of any Covered Products via the Internet, provided it appears either:
25 (a) on the same web page on which a Covered Product is displayed; (b) on the same web page as
26 the order form for a Covered Product; (c) on the same page as the price for any Covered Product;
27 or (d) on one or more web pages displayed to a purchaser during the checkout process. The
28 following warning statement shall be used and shall appear in any of the above instances
adjacent to or immediately following the display, description, or price of the Covered Product
for which it is given in the same type size or larger than the Covered Product description text:

1 **WARNING:** This product contains LEAD, a chemical
2 known to the State of California to cause birth
3 defects and other reproductive harm.

4 Alternatively, the designated symbol may appear adjacent to or immediately following
5 the display, description, or price of the Covered Product for which a warning is being given,
6 provided that the following warning statement also appears elsewhere on the same web page, as
7 follows:

8 **WARNING:** Products identified on this page with the
9 following symbol ▼ contain LEAD, a
10 chemical known to the State of California
11 to cause birth defects and other
12 reproductive harm.

13 3.2.2 Commencing three (3) months after the Effective Date, Windsor Fashions shall
14 discontinue all sales of any Covered Products that are not Lead Free in California, regardless of
15 compliance with Section 3.2.1.

16 3.2.3 No later than three (3) months after the Effective Date, Windsor Fashions shall
17 destroy, in a manner compliant with any environmental or other waste disposal regulations, all
18 Covered Products that are not Lead Free in the custody, control or possession of Defendant or
19 otherwise remaining in the possession of any retail store or internet distribution warehouse
20 controlled, owned or operated by Defendant.

21 3.2.4 Windsor Fashions shall maintain records of compliance correspondence,
22 inventory reports or other communication confirming compliance with §3.2.3 for three (3) years
23 from the Effective Date and shall produce copies of such records upon written request by Brimer.

24 **4. MONETARY PAYMENTS**

25 **4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

26 Windsor Fashion shall make a payment of \$4,000.00 to be apportioned in accordance
27 with Health & Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of these funds
28 earmarked for the State of California's Office of Environmental Health Hazard Assessment
 ("OEHHHA") and the remaining 25% of these penalty monies earmarked for Brimer.

1 **4.2 Augmentation of Penalty Payments**

2 For purposes of the penalty assessment under this Consent To Judgment, plaintiff is
3 relying entirely upon defendant and its counsel for accurate, good faith reporting to plaintiff of
4 the nature and amounts of relevant sales activity. If within nine (9) months of the Effective Date,
5 plaintiff discovers and presents to Defendant evidence that the Covered Products have been
6 distributed by Windsor Fashions in sales volumes materially different than those identified by
7 Defendant prior to execution of this Agreement, then Defendant shall be liable for an additional
8 penalty amount of \$150 per quantity of Covered Product sold prior to execution of this
9 Agreement but not identified by Defendant to plaintiff. Defendant shall also be liable for any
10 reasonable, additional attorney fees expended by plaintiff in discovering such additional
11 retailers or sales. Plaintiff agrees to provide Defendant with a written demand for all such
12 additional penalties and attorney fees under this Section. After service of such demand,
13 defendant shall have thirty (30) days to agree to the amount of fees and penalties owing by
14 Defendant and submit such payment to plaintiff in accordance with the method of payment of
15 penalties and fees identified in Sections 4.5. Should this thirty (30) day period pass without any
16 such resolution between the parties and payment of such additional penalties and fees, plaintiff
17 shall be entitled to file a formal legal claim for damages for breach of this contract and shall be
18 entitled to all reasonable attorney fees and costs relating to such claim.

19 **4.3 Reimbursement of Plaintiff's Fees and Costs**

20 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute
21 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
22 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
23 Windsor Fashion then expressed a desire to resolve the fee and cost issue shortly after the other
24 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on
25 the compensation due to Brimer and his counsel under general contract principles and the
26 private attorney general doctrine codified at California Code of Civil Procedure section 1021.5,
27 for all work performed in this matter, except fees that may be incurred on appeal. Under these
28 legal principles, Windsor Fashion shall pay the amount of \$34,750.00 for fees and costs incurred

1 investigating, litigating and enforcing this matter, including the fees and costs incurred (and yet
2 to be incurred) negotiating, drafting, and obtaining the Court's approval of this Consent
3 Judgment in the public interest.

4 **4.5 Payment Procedures**

5 **4.5.1 Funds Held In Trust:** All payments required by Sections 4.1 and 4.3 shall
6 delivered on or before March 2, 2012, to either The Chanler Group or the attorney of record for
7 Windsor Fashion, and shall be held in trust pending the Court's approval of this Consent
8 Judgment.

9 Payments delivered to The Chanler Group shall be made payable, as follows:

- 10 (a) One check made payable to "The Chanler Group in Trust for OEHHA" in
11 the amount of \$3,000 (or 75% of any contractually reduced penalty);
12 (b) One check made payable to "The Chanler Group in Trust for Brimer" in
13 the amount of \$1,000 (or 25% of any contractually reduced penalty); and
14 (c) One check made payable to "The Chanler Group in Trust" in the amount
15 of \$34,750.00.

16 Payments delivered to Manning & Kass, Ellrod, Ramirez, Trester, LLP shall be
17 made payable, as follows:

- 18 (a) One check made payable to "Manning & Kass, Ellrod, Ramirez, Trester,
19 LLP in Trust for OEHHA" in the amount of \$3,000 (or 75% of any contractually
20 reduced penalty);
21 (b) One check made payable to "Manning & Kass, Ellrod, Ramirez, Trester,
22 LLP in Trust for Brimer" in the amount of \$1,000 (or 25% of any contractually
23 reduced penalty); and
24 (c) One check made payable to "Manning & Kass, Ellrod, Ramirez, Trester,
25 LLP in Trust for The Chanler Group" in the amount of \$34,750.00.

26 If Windsor Fashion elects to deliver payments to its attorney of record, such
27 attorney of record shall: (a) confirm in writing within five days of receipt that the funds
28 have been deposited in a trust account; and (b) within two days of the date of the

1 hearing on which the Court approves the Consent Judgment, deliver the payment to The
2 Chanler Group in three separate checks, as follows:

- 3 (a) One check made payable to "The Chanler Group in Trust for OEHHA" in
4 the amount of \$3,000 (or 75% of any contractually reduced penalty);
5 (b) One check to "The Chanler Group in Trust for Brimer" in the amount of
6 \$1,000 (or 75% of any contractually reduced penalty); and
7 (c) One check to "The Chanler Group" in the amount of \$34,750.00.

8 Any failure by defendant to deliver the above-referenced payments to The Chanler
9 Group within two days of the date of the hearing on which the Court approves the
10 Consent To Judgment shall result in imposition of a 10% simple interest assessment on
11 the undelivered payment(s) until delivery.

12 **4.5.2 Issuance of 1099 Forms.** After the Consent Judgment has been approved
13 and the settlement funds have been transmitted to plaintiff's counsel, Windsor Fashion shall
14 issue three separate 1099 forms, as follows:

- 15 (a) The first 1099 shall be issued to the Office of Environmental Health
16 Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in
17 the amount of \$3,000 (or 75% of any contractually reduced penalty);
18 (b) The second 1099 shall be issued to Brimer in the amount of \$1,000 (or 25%
19 of any contractually reduced penalty), whose address and tax identification
20 number shall be furnished upon request; and
21 (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-3171522) in
22 the amount of \$34,750.00.

23 **4.5.3 Payment Address:** All payments to the Chanler Group shall be delivered
24 to the following payment address:

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

1 **5. CLAIMS COVERED AND RELEASE**

2 **5.1 Brimer's Releases of Windsor Fashions**

3 5.1.1 This Consent To Judgment is a full, final, and binding resolution between Brimer,
4 on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or
5 assignees, and in the interest of the general public, and Windsor Fashions and its attorneys,
6 successors, licensors and assigns ("Defendant Releasees"), and all entities to whom Windsor
7 Fashions directly or indirectly distribute or sell Covered Products, including but not limited to
8 distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees
9 ("Downstream Defendant Releasees") of any violation of Proposition 65 that has been or could
10 have been asserted against Defendant Releasees and Downstream Defendant Releasees
11 regarding the failure to warn about exposure to the Listed Chemical arising in connection with
12 Covered Products manufactured, sourced, distributed, or sold by Defendant Releasees prior to
13 the Effective Date. Windsor Fashions' compliance with this Consent To Judgment shall
14 constitute compliance with Proposition 65 with respect to the Listed Chemical in the Covered
15 Products after the Effective Date.

16 5.1.2 Brimer on behalf of himself, his past and current agents, representatives,
17 attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives
18 with respect to Covered Products all rights to institute or participate in, directly or indirectly,
19 any form of legal action and releases all claims, including, without limitation, all actions, and
20 causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
21 penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and
22 attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent
23 (collectively "claims"), against Defendant Releasees and Downstream Defendant Releasees that
24 arise under Proposition 65 or any other statutory or common law claims that were or could have
25 been asserted in the public interest, as such claims relate to Defendant Releasees' and
26 Downstream Defendant Releasees' alleged failure to warn about exposures to the Listed
27 Chemical contained in the Covered Products.
28

1 5.1.3 Brimer also, in his individual capacity only and *not* in his representative capacity,
2 provides a general release herein which shall be effective as a full and final accord and
3 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,
4 damages, losses, claims, liabilities and demands of Brimer of any nature, character or kind,
5 known or unknown, suspected or unsuspected, arising out of the subject matter of the
6 Complaint as to Covered Products manufactured, distributed or sold by Defendant Releasees.
7 Brimer acknowledges that he is familiar with Section 1542 of the California Civil Code, which
8 provides as follows:

9 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
10 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR
11 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
 OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT
 WITH THE DEBTOR.

12 Brimer, in his individual capacity only and *not* in his representative capacity, expressly
13 waives and relinquishes any and all rights and benefits which he may have under, or which may
14 be conferred on him by the provisions of Section 1542 of the California Civil Code as well as
15 under any other state or federal statute or common law principle of similar effect, to the fullest
16 extent that he may lawfully waive such rights or benefits pertaining to the released matters. In
17 furtherance of such intention, the release hereby given shall be and remain in effect as a full and
18 complete release notwithstanding the discovery or existence of any such additional or different
19 claims or facts arising out of the released matters.

20 This Section 5.1 release is expressly limited to those claims that arise under Proposition
21 65, as such claims relate to Defendant's alleged failure to warn about exposures to or
22 identification of the Listed Chemical contained in the Covered Products and as such claims are
23 identified in the Proposition 65 60-Day Notice to Defendant.

24 This Section 5.1 release is expressly limited to any alleged violations that occur prior to
25 thirty (30) days after the Effective Date and does not release any person, party or entity from any
26 liability for any violation of Proposition 65 regarding the Covered Products that occur more than
27 thirty (30) days after the Effective Date.

28

1 The Parties further understand and agree that this Section 5.1 release shall not extend
2 upstream to any entities, other than Defendant, that manufactured the Covered Products or any
3 component parts thereof, or any distributors or suppliers who sold the Covered Products or any
4 component parts thereof to Defendant.

5 5.1.4 Upon court approval of the Consent To Judgment, the Parties waive their
6 respective rights to a hearing or trial on the allegations of the Complaint.

7 **5.2 Windsor Fashions' Release of Brimer**

8 5.2.1 Windsor Fashions waives any and all claims against Brimer, his attorneys, and
9 other representatives for any and all actions taken or statements made (or those that could have
10 been taken or made) by Brimer and his attorneys and other representatives, whether in the
11 course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in
12 this matter, and/or with respect to the Covered Products.

13 5.2.2 Windsor Fashions also provides a general release herein which shall be effective
14 as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations,
15 costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Windsor
16 Fashions of any nature, character or kind, known or unknown, suspected or unsuspected, arising
17 out of the subject matter of the Action. Windsor Fashions acknowledges that it is familiar with
18 Section 1542 of the California Civil Code, which provides as follows:

19 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
20 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR
21 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
22 OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT
23 WITH THE DEBTOR.

24 Windsor Fashions expressly waives and relinquishes any and all rights and
25 benefits that it may have under, or which may be conferred on it by the provisions of
26 Section 1542 of the California Civil Code as well as under any other state or federal
27 statute or common law principle of similar effect, to the fullest extent that it may lawfully
28 waive such rights or benefits pertaining to the released matters. In furtherance of such
intention, the release hereby given shall be and remain in effect as a full and complete

1 release notwithstanding the discovery or existence of any such additional or different
2 claims or facts arising out of the released matters.

3 **6. SEVERABILITY**

4 If, subsequent to court approval of this Consent To Judgment, any of the provisions of
5 this Consent To Judgment are held by a court to be unenforceable, the validity of the enforceable
6 provisions remaining shall not be adversely affected, unless the Court finds that any
7 unenforceable provision is not severable from the remainder of the Consent To Judgment.

8 **7. COURT APPROVAL**

9 This Consent To Judgment is effective upon execution but must also be approved by the
10 Court. The Consent to Judgment shall become null and void if, for any reason, it is not approved
11 and entered by the Court within nine months after it has been fully executed by all Parties. If the
12 Consent to Judgment becomes null and void after any payment of monies under this agreement
13 to The Chanler Group in trust, such monies shall be returned to defendant by payment of such
14 monies to its counsel, in trust for Windsor Fashions.

15 **8. GOVERNING LAW**

16 The terms of this Consent To Judgment shall be governed by the laws of the State of
17 California.

18 **9. NOTICES**

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

21 For Windsor Fashions to:

22 Leon Zakaria, President
23 Windsor Fashions, Inc.
24 4533 Pacific Boulevard
25 Vernon, CA 90058

26 With copy to their counsel at

27 Alex Caraveo, Esq.
28 Manning & Kass, Ellrod, Ramirez, Trester LLP
801 S. Figueroa St, 15th Floor
Los Angeles, California 90017

1 For Brimer to:

2 Proposition 65 Coordinator
3 The Chanler Group
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565

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

9 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

10 Brimer agrees to comply with the reporting form requirements referenced, in California
11 Health & Safety Code §25249.7(f) and to file a motion for approval of this Consent Judgment.

12 **11. MODIFICATION**

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

16 **12. ADDITIONAL POST-EXECUTION ACTIVITIES**

17 The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed
18 motion is required to obtain judicial approval of this Consent To Judgment. In furtherance of
19 obtaining such approval, Brimer and Windsor Fashions and their respective counsel agree to
20 mutually employ their best efforts to support the entry of this agreement as a Consent To
21 Judgment and obtain approval of the Consent To Judgment - sufficient to render a formal
22 judgment approving this agreement - by the Court in a timely manner. Any effort by plaintiff or
23 Windsor Fashions to impede judicial approval of this Consent To Judgment shall subject such
24 impeding party to liability for attorney fees and costs incurred by plaintiff or his counsel in their
25 efforts to meet or oppose Windsor Fashions' impeding conduct.

26 **13. ENTIRE AGREEMENT**

27 This Consent To Judgment contains the sole and entire agreement and understanding of
28 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
negotiations, commitments, and understandings related hereto. No representations, oral or
otherwise, express or implied, other than those contained herein have been made by any Party

1 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
2 deemed to exist or to bind any of the Parties.

3 **14. ATTORNEY'S FEES**

4 14.1 A Party who unsuccessfully brings or contests an action arising out of this
5 Consent To Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees
6 and costs unless the unsuccessful Party has acted with substantial justification. For purposes of
7 this Consent To Judgment, the term substantial justification shall carry the same meaning as
8 used in the Civil Discovery Act of 1986, Code of Civil Procedure § 2016, *et seq.*

9 14.2 Except as specifically provided in the above paragraph and in Section 5.1, each
10 Party shall bear its own costs and attorney's fees in connection with this action.

11 14.3 Nothing in this Section 15 shall preclude a Party from seeking an award of
12 sanctions pursuant to law.


13 **15. COUNTERPARTS, FACSIMILE SIGNATURES**

14 This Consent To Judgment may be executed in counterparts and by facsimile or portable
15 document format (PDF), each of which shall be deemed an original, and all of which, when taken
16 together, shall constitute one and the same document.

17 **16. AUTHORIZATION**

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

21 **IT IS SO AGREED**

22 Dated: January 22, 2012 23  24 _____ 25 Plaintiff Russell Brimer 26	Dated: January __, 2012 _____ 27 Mr. Leon Zakaria, President 28 Windsor Fashions, Inc.
---	---

1 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
2 deemed to exist or to bind any of the Parties.

3 **14. ATTORNEY'S FEES**

4 14.1 A Party who unsuccessfully brings or contests an action arising out of this
5 Consent To Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees
6 and costs unless the unsuccessful Party has acted with substantial justification. For purposes of
7 this Consent To Judgment, the term substantial justification shall carry the same meaning as
8 used in the Civil Discovery Act of 1986, Code of Civil Procedure § 2016, *et seq.*

9 14.2 Except as specifically provided in the above paragraph and in Section 5.1, each
10 Party shall bear its own costs and attorney's fees in connection with this action.

11 14.3 Nothing in this Section 15 shall preclude a Party from seeking an award of
12 sanctions pursuant to law.


13 **15. COUNTERPARTS, FACSIMILE SIGNATURES**

14 This Consent To Judgment may be executed in counterparts and by facsimile or portable
15 document format (PDF), each of which shall be deemed an original, and all of which, when taken
16 together, shall constitute one and the same document.

17 **16. AUTHORIZATION**

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

21 **IT IS SO AGREED**

22 Dated: January __, 2012 23 24 _____ 25 Plaintiff Russell Brimer	Dated: January <u>27</u> , 2012 26  27 Mr. Loon Zakaria, President 28 Windsor Fashions, Inc.
---	---