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6
7

FILED
San Francisco County Superior Court

NOV 27 2012

CLERK OF THE COURT
BY: [Signature]
Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN FRANCISCO
10 UNLIMITED CIVIL JURISDICTION

11 RUSSELL BRIMER,

12 Plaintiff,

13 v.

14 CARRINI, INC. and DOES 1-150, inclusive,

15 Defendants.
16

Case No. CGC-11-511659

~~PROPOSED~~ JUDGMENT UPON
PROPOSITION 65 CONSENT TO
JUDGMENT

Action Filed : June 13, 2011

Trial Date: December 17, 2012

1 In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendant CARRINI, INC.,
2 having agreed through their respective counsel that a judgment be entered pursuant to the terms of
3 the Consent To Judgment entered into by the parties in resolution of this Proposition 65 action, and
4 following the issuance of an order approving the Parties' Consent to Judgment on this day, IT IS
5 HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Health & Safety Code §
6 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered in accordance with the
7 terms of the Consent To Judgment attached hereto as Exhibit A. By stipulation of the parties, the
8 Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.
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10 IT IS SO ORDERED.

11
12 Dated: November 26 2012

13 
14 _____
15 Judge Of The Superior Court
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Exh. A

1 THE CHANLER GROUP
2 CLIFFORD A. CHANLER, State Bar No. 135534
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4 Parker Plaza, Suite 214
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8 Attorneys for Plaintiff
9 RUSSELL BRIMER

10 FULBRIGHT & JAWORSKI L.L.P.
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17 Attorneys for Defendant
18 CARRINI, INC.

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA

20 COUNTY OF SAN FRANCISCO

21 UNLIMITED CIVIL JURISDICTION

22 RUSSELL BRIMER,

23 Plaintiff,

24 v.

25 CARRINI, INC. and DOES 1-150, inclusive,

26 Defendants.

Case No. CGC-11-511659

**CONSENT TO JUDGMENT AS
TO DEFENDANT CARRINI, INC.**

1 **1. INTRODUCTION**

2 **1.1 Russell Brimer and Carrini, Inc.**

3 This Consent To Judgment is entered into by and between plaintiff Russell Brimer
4 (“Brimer”) or “Plaintiff”) and defendant Carrini, Inc. (“Carrini” or “Defendant”), with Brimer and
5 Carrini collectively 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
8 of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous
9 substances contained in consumer and commercial products.

10 **1.3 Carrini, Inc.**

11 Carrini employs ten or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
13 Safety Code §25249.5 et seq. (“Proposition 65”).

14 **1.4 General Allegations.**

15 Brimer alleges that Carrini has manufactured, imported, distributed and/or sold footwear
16 containing lead for use in the State of California without the requisite health hazard warnings.
17 Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to cause
18 birth defects and other reproductive harm.

19 **1.5 Notice of Violation.**

20 On October 29, 2010, Brimer served Carrini and various public enforcement agencies
21 with a document entitled “60-Day Notice of Violation,” that alleged that Carrini violated
22 Proposition 65 by failing to warn consumers that footwear including, but not limited to, *Carrini*
23 *Sandals, Green, Style No. 52-158 (#8 04833 03596 9)*, exposed users in California to lead.

24 **1.6 Complaint.**

25 On June 13, 2011, Brimer, acting in the interest of the general public in California, filed a
26 Complaint in the instant action (“Complaint”) naming Carrini, Inc. as a defendant and alleging
27 violations of Health & Safety Code §§ 25249.6, *et seq.* based on, *inter alia*, alleged occupational
28 and consumer exposures to the Listed Chemical contained in the Covered Products sold in

1 California without the clear and reasonable warning required by Proposition 65.

2 1.7 **No Admission.** The Parties enter into this Consent To Judgment as a full and final
3 settlement of all claims that were raised in the Complaint or that could have been raised in the
4 Complaint, arising out of the facts or conduct alleged therein. By execution of this Consent To
5 Judgment and agreeing to comply with its terms, Carrini does not admit any facts or conclusions
6 of law, including, but not limited to, any facts or conclusions of law suggesting or demonstrating
7 any violations of Proposition 65 or any other statutory, common law or equitable requirements
8 relating to lead in Covered Products. Nothing in this Consent To Judgment shall be construed as
9 an admission by Carrini of any fact, conclusion of law, issue of law or violation of law, nor shall
10 compliance with the Consent To Judgment constitute or be construed as an admission by Carrini
11 of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Consent To
12 Judgment shall prejudice, waive or impair any right, remedy, argument or defense Carrini may
13 have in this or any other or future legal proceedings. This Consent To Judgment is the product of
14 negotiation and compromise and is accepted by Carrini for purposes of settling, compromising,
15 and resolving issues disputed in this action. However, this section shall not diminish or otherwise
16 affect the obligations, responsibilities and duties of Carrini under this Consent To Judgment.

17 1.8 **Consent to Jurisdiction.** For purposes of this Consent To Judgment only, Carrini
18 stipulates that this Court has jurisdiction over Carrini as to the allegations contained in the
19 Complaint, that venue is proper in the County of Alameda and that this Court has jurisdiction to
20 enter and enforce the provisions of this Consent To Judgment.

21 **2. DEFINITIONS.**

22 2.1 “Covered Product[s]” means footwear.

23 2.2 “Effective Date” means the date this Consent To Judgment is approved by the
24 court.

25 2.3 “Lead Limits” means the maximum concentration of lead and lead composites
26 (“Lead”) by weight specified in Section 3.2.

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1 2.4 “Manufactured” and “Manufactures” have the meaning defined in Section 3(a)(10)
2 of the Consumer Product Safety Act (“CPSA”) [15 U.S.C. § 2052(a)(10)],¹ as amended from time
3 to time.

4 2.5 “Non-Suspect Materials” means natural materials other than leather that have been
5 determined not to exceed lead limits for children’s products by the final rule of the Consumer
6 Product Safety Commission set forth at 16 CFR § 1500.91(d) and (e), as it exists on the Effective
7 Date.

8 2.6 “Paint or other Surface Coatings” has the meaning defined in 16 CFR 1303.2(b)²,
9 as amended from time to time.

10 2.7 “Vendor” means a person or entity that Manufactures, imports, distributes, or
11 supplies a product to Carrini.

12 **3. INJUNCTIVE RELIEF: REFORMULATION**

13 3.1 **Specification Compliance Date.** To the extent it has not already done so, no later
14 than the Effective Date, Carrini shall provide the Lead Limits to its Vendors of Covered Products
15 that will be sold or offered for sale to California consumers and shall instruct each Vendor to use
16 reasonable efforts to provide Covered Products that comply with the Lead Limits on a nationwide
17 basis. This Section 3.1 is not applicable with respect to Non-Suspect Materials.

18 3.2 **Lead Limits.**

19 As of thirty (30) days after the Effective Date, Carrini shall not issue a purchase order or
20 cause to be Manufactured, any Covered Product that will be sold or offered for sale to California
21 consumers that exceeds the following Lead Limits:
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24 ¹ As of the Effective Date, the term “Manufactured” and “Manufactures” means to manufacture,
25 produce, or assemble.

26 ² As of the Effective Date, “Paint or other Surface Coatings” means a fluid, semi-fluid, or other
27 material, with or without a suspension of finely divided coloring matter, which changes to a solid
28 film when a thin layer is applied to a metal, wood, stone, paper, leather, cloth, plastic, or other
surface. This term does not include printing inks or those materials which actually become a part
of the substrate, such as the pigment in a plastic article, or those materials which are actually
bonded to the substrate, such as by electroplating or ceramic glazing.

ACCESSIBLE COMPONENT	LEAD LEVEL
Surface Coatings on Accessible Components	90 ppm
Leather Accessible Components (including composited Leather)	300 ppm
PVC Accessible Components	200 ppm
Metal and other Components (other than cubic zirconia, crystal, glass, or rhinestones)	300 ppm

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8 **4. ENFORCEMENT OF CONSENT TO JUDGMENT**

9 4.1 After the Effective Date, any Party may, after meeting and conferring, by motion
10 or application for an order to show cause before this Court, enforce the terms and conditions
11 contained in this Consent To Judgment. Enforcement of the terms and conditions of Section 3.2
12 of this Consent To Judgment shall be brought exclusively pursuant to Sections 4.2 through 4.4.

13 4.2 Within 30 days after the Effective Date, Carrini shall notify Brimer of any
14 information sufficient to allow Brimer to identify Covered Products supplied or offered for sale
15 by Carrini on or after that date (for example, by a unique brand name or product characteristic
16 system of assigned product number or other labeling). Information provided by Carrini to Brimer
17 under this Section 4.2, including the identity of parties to contracts between Carrini and third
18 parties, may be designated by Carrini as competitively sensitive, confidential business
19 information. If so designated by Carrini along with the identification information, such
20 information shall not be disclosed to any person by Brimer, outside of his attorneys, without the
21 written permission of Carrini. Any motions or pleadings or other Court filings that include
22 information designated by Carrini as competitively sensitive confidential business information
23 under this Section 4.2 shall be submitted to the Court in accordance with California Rules of
24 Court Rule 8.160 and Rule 2.550, et seq.

25 4.3 **Notice of Violation.** Brimer may seek to enforce the requirements of Section 3.2
26 by issuing a Notice of Violation pursuant to this Section 4.3.

27 4.3.1 **Service of Notice.** Brimer shall serve the Notice of Violation on Carrini
28 within 45 days of the date the alleged violation(s) was or were observed, provided,

1 however, that Brimer may have up to an additional 45 days to provide Carrini with the test
2 data required by Section 4.3.1(d) below if it has not yet obtained it from its laboratory.

3 **4.3.2 Supporting Documentation.** The Notice of Violation shall, at a minimum,
4 set forth for each Covered Product: (a) the date(s) the alleged violation(s) was observed,
5 (b) the location at which the Covered Product was offered for sale, (c) a description of the
6 Covered Product giving rise to the alleged violation, and of each Accessible Component
7 that is alleged not to comply with the Lead Limits and/or each Accessible Component that
8 is a Non-Suspect Material that is alleged to contain Lead in excess of 300 ppm, including
9 a picture of the Covered Product and all identifying information on tags and labels, and
10 (d) all test data obtained by Brimer regarding the Covered Product. Wipe, swipe, x-ray
11 fluorescence, and swab testing are not by themselves sufficient to support a Notice of
12 Violation, although any such testing may be used as additional support for a Notice.

13 **4.3.3 Multiple Notices.** If Carrini has received more than four Notices of
14 Violation in any 12-month period, at Brimer's option, Brimer may seek whatever fines,
15 costs, penalties, or remedies are provided by law for failure to comply with the Consent
16 To Judgment. For purposes of determining the number of Notices of Violation pursuant
17 to this Section 4.3.3, the following shall be excluded:

18 (a) Multiple notices identifying Covered Products Manufactured for or
19 sold to Carrini from the same Vendor; and

20 (b) A Notice of Violation that meets one or more of the provisions of
21 Section 4.4.3(b).

22 **4.4 Notice of Election.** Within 30 days of receiving a Notice of Violation pursuant to
23 Section 4.2, including the test data required pursuant to 4.3.1(d), Carrini shall provide written
24 notice to Brimer stating whether it elects to contest the allegations contained in the Notice of
25 Violation. Any such written notice from Carrini to Brimer under this Section shall be referred to
26 as a "Notice of Election". Failure to provide a Notice of Election shall be deemed an election not
27 to contest the Notice of Violation.

28

1 **4.4.1 Contested Notices.** If the Notice of Violation is contested, the Notice of
2 Election shall include all then-available documentary evidence regarding the alleged
3 violation, including any test data. Within 30 days the parties shall meet and confer to
4 attempt to resolve their dispute. Should such attempts at meeting and conferring fail,
5 Brimer may file an enforcement motion or application pursuant to Section 4.1. If Carrini
6 withdraws its Notice of Election to contest the Notice of Violation before any motion
7 concerning the violations alleged in the Notice of Violation is filed pursuant to Section
8 4.1, Carrini shall pay a civil penalty in the amount of \$12,500 to be apportioned in
9 accordance with the provision of Section 5.1 hereunder, and shall comply with all of the
10 non-monetary provisions of Section 4.4.2. If, at any time prior to reaching an agreement
11 or obtaining a decision from the Court, Brimer or Carrini acquires additional test or other
12 data regarding the alleged violation, it shall promptly provide all such data or information
13 to the other Party.

14 **4.4.2 Non-Contested Notices.** If the Notice of Violation is not contested, Carrini
15 shall include in its Notice of Election a detailed description of corrective action that it has
16 undertaken or proposes to undertake to address the alleged violation. Any such correction
17 shall, at a minimum, provide reasonable assurance that the Covered Product will no longer
18 be offered by Carrini or its customers for sale in California. If there is a dispute over the
19 sufficiency of the proposed corrective action or its implementation, Brimer shall promptly
20 notify Carrini and the Parties shall meet and confer before seeking the intervention of the
21 Court to resolve the dispute. In addition to the corrective action, Carrini shall pay a civil
22 penalty in the amount of \$10,000 to be apportioned in accordance with the provision of
23 Section 5.1 hereunder unless one of the provisions of Section 4.4.3 applies.

24 **4.4.3 Limitations in Non-Contested Matters.**

25 (a) The monetary liability of Carrini if it elects not to contest a Notice
26 of Violation before any motion concerning the violation(s) at issue has been filed shall be
27 limited to the contributions required by this Section 4.4.3, if any.

28 (b) The civil penalty shall be:

1 (i) One thousand seven hundred fifty dollars (\$1,750) to be
2 apportioned in accordance with the provision of Section 5.1 hereunder, if Carrini,
3 prior to receiving and accepting for distribution or sale the Covered Product
4 identified in the Notice of Violation, obtained test results demonstrating that all of
5 the Accessible Components in the Covered Product identified in the Notice of
6 Violation complied with the applicable Lead Limits, and further provided that such
7 test results would be sufficient to support a Notice of Violation and that the testing
8 was performed within two years prior to the date of the sales transaction on which
9 the Notice of Violation is based. Carrini shall provide copies of such test results
10 and supporting documentation to Brimer with its Notice of Election; or

11 (ii) Not required or payable, if the Covered Product is otherwise
12 released from liability for alleged violations of Proposition 65 with respect to Lead
13 by the terms of a separate settlement agreement or Consent To Judgment entered
14 into under Health and Safety Code Section 25249.7 (“Qualified Settlement”);or

15 (iii) Not required or payable, if the Notice of Violation concerns
16 a Non-Suspect Material; provided, however, that the foregoing exemption shall not
17 apply if Carrini has received more than three Notices of Violation in an 18-month
18 period for the same Non-Suspect Material that was supplied by more than one
19 Vendor; or

20 (iv) Not required or payable, if the Notice of Violation identifies
21 the same Covered Product or Covered Products, differing only in size or color, that
22 already have been the subject of another Notice of Violation within the preceding
23 12 months.

24 **5. MONETARY PAYMENTS**

25 **5.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

26 Carrini shall make a payment of \$8,500 to be apportioned in accordance with Health &
27 Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of these funds earmarked
28 for the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”)

1 and the remaining 25% of these penalty monies earmarked for Brimer. This payment shall be
2 delivered to The Chanler Group no later than five (5) days after entry of judgment, and shall be
3 made payable, as follows:

4 5.1.1 One check made payable to "The Chanler Group in Trust for OEHHA" in
5 the amount of \$6,375.00;

6 5.1.2 One check made payable to "The Chanler Group in Trust for Brimer" in the
7 amount of \$2,125.00

8 **5.2 Reimbursement of Plaintiff's Fees and Costs**

9 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute
10 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
11 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
12 Carrini then expressed a desire to resolve the fee and cost issue shortly after the other settlement
13 terms had been finalized. The Parties then attempted to (and did) reach an accord on the
14 compensation due to Brimer and his counsel under general contract principles and the private
15 attorney general doctrine codified at California Code of Civil Procedure section 1021.5, for all
16 work performed in this matter, except fees that may be incurred on appeal. Under these legal
17 principles, Carrini shall pay the amount of \$38,500.00 for fees and costs incurred investigating,
18 litigating and enforcing this matter, including the fees and costs incurred (and yet to be incurred)
19 negotiating, drafting, and obtaining the Court's approval of this Consent Judgment in the public
20 interest.

21 This payment shall be delivered and made payable to The Chanler Group on the
22 following schedule, and if one or more of the payments required by this section is not made on
23 or before the required date, such payment amount shall accrue simple interest at a 10% annual
24 interest rate until paid:

25 5.2.1 One check in the amount of \$12,000.00 no later than 30 days after entry of
26 judgment in this matter;

27 5.2.2 One check in the amount of \$13,000.00 no later than 60 days after the entry
28 of Judgment in this matter; and

1 5.2.3 One check in the amount of \$13,500.00 no later than 90 days after the entry
2 of Judgment in this matter.

3 5.3 **Issuance of 1099 Forms.** After the Consent Judgment has been approved and the
4 settlement funds have been transmitted to plaintiff's counsel, Carrini shall issue three separate
5 1099 forms, as follows:

6 5.3.1 The first 1099 shall be issued to the Office of Environmental Health Hazard
7 Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of
8 \$6,375.00;

9 5.3.2 The second 1099 shall be issued to Brimer in the amount of \$2,125.00,
10 whose address and tax identification number shall be furnished upon request; and

11 5.3.3 The third 1099 shall be issued to The Chanler Group (EIN: 94-3171522) in
12 the amount of \$38,500.00.

13 5.4 **Payment Address:** All payments to the Chanler Group shall be delivered to the
14 following payment address:

15 The Chanler Group
16 Attn: Proposition 65 Controller
17 2560 Ninth Street
18 Parker Plaza, Suite 214
19 Berkeley, CA 94710

20 **6. CLAIMS COVERED AND RELEASE**

21 6.1 This Consent To Judgment is a full, final, and binding resolution between Brimer
22 and Carrini and its parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates,
23 and sister companies and their successors and assigns ("Defendant Releasees"), and their
24 downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members,
25 licensors, and licensees, and any other person or entity to whom they directly or indirectly
26 distribute or sell Covered Products, ("Downstream Defendant Releasees"), of any violation of
27 Proposition 65 that has been asserted by Brimer in the public interest, through a Proposition 65
28 60-Day Notice of Violation against Carrini, Defendant Releasees, and Downstream Defendant
Releasees regarding the failure to warn about exposure to lead in Covered Products. Defendant

1 Releasees' compliance with this Consent To Judgment shall constitute compliance with
2 Proposition 65 with respect to Lead in Covered Products after the Effective Date.

3 6.2 Brimer on behalf of himself, his past and current agents, representatives, attorneys,
4 successors, and/or assignees, and in the interest of the general public, hereby waives all rights to
5 institute or participate in, directly or indirectly, any form of legal action and releases all claims,
6 including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,
7 demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not
8 limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether
9 known or unknown, fixed or contingent (collectively "Claims"), against Carrini, Defendant
10 Releasees, and Downstream Defendant Releasees arising from any violation of Proposition 65
11 regarding the failure to warn about exposure to lead in Covered Products.

12 6.3 Brimer also, in his individual capacity only and *not* in his representative capacity,
13 provides a general release herein which shall be effective as a full and final accord and
14 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,
15 damages, losses, claims, liabilities and demands of Brimer of any nature, character or kind,
16 known or unknown, suspected or unsuspected, arising out of the subject matter of the Complaint.
17 Brimer acknowledges that he is familiar with Section 1542 of the California Civil Code, which
18 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
21 FAVOR 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.

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

3 This release is expressly limited to those claims that arise under Proposition 65, as such
4 claims relate to Defendant's alleged failure to warn about exposures to or identification of the
5 Listed Chemical contained in the Covered Products, as such claims are identified in the
6 Proposition 65 60-Day Notice to Defendant and to the extent that any alleged violations occur
7 prior to thirty (30) days after the Effective Date. This Release does not release any person, party
8 or entity from any liability for any violation of Proposition 65 regarding the Covered Products
9 that occur more than thirty (30) days after the Effective Date.

10 The Parties further understand and agree that this release shall not extend upstream to any
11 entities, other than Defendant, that manufactured the Covered Products or any component parts
12 thereof, or any distributors or suppliers who sold the Covered Products or any component parts
13 thereof to Defendant.

14 6.4 Carrini waives any and all Claims against Brimer, his attorneys, and other
15 representatives for any and all actions taken or statements made (or those that could have been
16 taken or made) by Brimer and his attorneys and other representatives, whether in the course of
17 investigating claims or otherwise seeking enforcement of Proposition 65 against them in this
18 matter, and/or with respect to the Covered Products.

19 6.5 Carrini also provides a general release herein which shall be effective as a full and
20 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
21 attorneys' fees, damages, losses, claims, liabilities and demands of Carrini of any nature,
22 character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter
23 of the Action. Carrini acknowledges that it is familiar with Section 1542 of the California Civil
24 Code, which provides as follows:

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

1 Carrini expressly waives and relinquishes any and all rights and benefits which it may have
2 under, or which may be conferred on it by the provisions of Section 1542 of the California Civil
3 Code as well as under any other state or federal statute or common law principle of similar effect,
4 to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released
5 matters. In furtherance of such intention, the release hereby given shall be and remain in effect as
6 a full and complete release notwithstanding the discovery or existence of any such additional or
7 different claims or facts arising out of the released matters.

8 **7. COURT APPROVAL**

9 7.1 By this Consent To Judgment and upon its approval, the Parties waive their right
10 to trial on the merits, and waive rights to seek appellate review of any and all interim rulings,
11 including all pleading, procedural, and discovery orders.

12 7.2 The parties acknowledge that, pursuant to California Health & Safety Code §
13 25249.7, a noticed motion is required to obtain judicial approval of this Consent To Judgment,
14 which Brimer shall file, and Carrini shall join.

15 7.3 If this Consent To Judgment is not approved by the Court, (a) this Consent To
16 Judgment and any and all prior agreements between the Parties merged herein shall terminate and
17 become null and void, and the action shall revert to the status that existed prior to the execution
18 date of this Consent To Judgment; (b) no term of this Consent To Judgment or any draft thereof,
19 or of the negotiation, documentation, or other part or aspect of the Parties' settlement discussions,
20 shall have any effect, nor shall any such matter be admissible in evidence for any purpose in this
21 action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine
22 whether to modify the terms of the Consent To Judgment and to resubmit it for approval.

23 **8. ATTORNEYS' FEES**

24 8.1 Should Plaintiff prevail on any motion, application for an order to show cause or
25 other proceeding to enforce a violation of this Consent To Judgment, Plaintiff shall be entitled to
26 his reasonable attorneys' fees and costs incurred as a result of such motion or application. Should
27 Carrini prevail on any motion application for an order to show cause or other proceeding, Carrini
28 may be awarded its reasonable attorneys' fees and costs as a result of such motion or application

1 upon a finding by the court that Plaintiff's prosecution of the motion or application lacked
2 substantial justification. For purposes of this Consent To Judgment, the term substantial
3 justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of
4 Civil Procedure Section 2016, *et seq.*

5 8.2 Except as otherwise provided in this Consent To Judgment, each Party shall bear
6 its own attorneys' fees and costs.

7 8.3 Nothing in this Section 8 shall preclude a Party from seeking an award of
8 sanctions pursuant to law.

9 **9. GOVERNING LAW**

10 9.1 The terms of this Consent To Judgment shall be governed by the laws of the State
11 of California, and shall apply only to Covered Products offered for sale in the State of California.
12 In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law
13 generally, or as to the Products, then Carrini may provide written notice to Brimer of any asserted
14 change in the law, and shall have no further obligations pursuant to this Consent To Judgment
15 with respect to, and to the extent that, the Covered Products are so affected.

16 9.2 The Parties, including their counsel, have participated in the preparation of this
17 Consent To Judgment and this Consent To Judgment is the result of the joint efforts of the
18 Parties. This Consent To Judgment was subject to revision and modification by the Parties and
19 has been accepted and approved as to its final form by all Parties and their counsel. Accordingly,
20 any uncertainty or ambiguity existing in this Consent To Judgment shall not be interpreted against
21 any Party as a result of the manner of the preparation of this Consent To Judgment. Each Party to
22 this Consent To Judgment agrees that any statute or rule of construction providing that
23 ambiguities are to be resolved against the drafting Party should not be employed in the
24 interpretation of this Consent To Judgment and, in this regard, the Parties hereby waive California
25 Civil Code § 1654.

26 **10. NOTICES**

27 10.1 Unless specified herein, all correspondence and notices required to be provided
28 pursuant to this Consent To Judgment shall be in writing and personally delivered or sent by: (i)

1 first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any
2 Party by the other Party at the following addresses:

3 To Carrini:

4 Eli Chabot, President
5 Carrini, Inc.
6 145 Talmadge Road, Suite 12
7 Edison, NJ 08817

8 With a copy to:

9 Jeffrey B. Margulies, Esq.
10 Fulbright & Jaworski LLP
11 555 South Flower Street
12 Forty-First Floor
13 Los Angeles, California 90071
14 213-892-9286
15 213-892-9494 fax
16 jmargulies@fulbright.com

17 To Brimer:

18 Proposition 65 Coordinator
19 The Chanler Group
20 2560 Ninth Street
21 Parker Plaza, Suite 214
22 Berkeley, CA 94710-2565

23 10.2 Any Party, from time to time, may specify in writing to the other Party a change of
24 address to which all notices and other communications shall be sent.

25 11. MODIFICATION

26 11.1 **Modification.** This Consent To Judgment may be modified by written agreement
27 of the Parties and upon entry of a modified Consent To Judgment by the court, or by motion of
28 any Party and entry of a modified Consent To Judgment by the court.

11.2 **Subsequent Legislation.** If, subsequent to the Effective Date, legislation or
regulation is adopted that addresses the lead content of Covered Products sold in California, any
Party shall be entitled to request that the Court modify the reformulation standard of Section 3.1
of this Consent To Judgment for good cause shown.

11.3 **Notice; Meet and Confer.** Any Party seeking to modify this Consent To
Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a
motion to modify the Consent To Judgment.

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12. ENTIRE AGREEMENT

12.1 This Consent To Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. No supplementation, modification, waiver, or termination of this Consent To Judgment shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent To Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

13. RETENTION OF JURISDICTION



13.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent To Judgment and shall retain jurisdiction to enforce this Consent To Judgment, or any provision thereof, under C.C.P §664.6.

14. COUNTERPARTS; FACSIMILE SIGNATURES

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

15. AUTHORIZATION

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

AGREED TO:	AGREED TO:
Date: <u>8-10-12</u>	Date: <u>8/14/12</u>
By: <u></u>	By: <u></u>
Plaintiff RUSSELL BRIMER	Defendant CARRINI, INC.