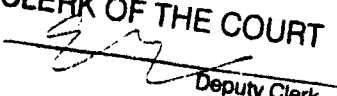


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Clifford A. Chanler, State Bar No. 135534  
Gregory M. Sheffer, State Bar No. 173124  
THE CHANLER GROUP  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565  
Telephone: (510) 848-8880  
Facsimile: (510) 848-8118

Attorneys for Plaintiff  
RUSSELL BRIMER

**FILED**  
San Francisco County Superior Court  
JUN 01 2012  
CLERK OF THE COURT  
BY:  Deputy Clerk

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  
*rk*  
~~PROPOSED~~ JUDGMENT ON  
PROPOSITION 65 SETTLEMENT  
Action Filed: June 1, 2011  
Trial Date: June 4, 2012

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

IT IS SO ORDERED.

Dated: 6.1.12

  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT  
**HAROLD KAHN**

# Exhibit A

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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

*Exhibit A*

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  
defects and other reproductive harm.

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

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

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

27 (i) **Mail Order Catalog Warning.** Any warning provided in a mail  
28 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  
                  to cause birth defects and other  
                  reproductive harm.

11                  3.2.2 Commencing three (3) months after the Effective Date, Windsor Fashions shall  
12 discontinue all sales of any Covered Products that are not Lead Free in California, regardless of  
13 compliance with Section 3.2.1.

14                  3.2.3 No later than three (3) months after the Effective Date, Windsor Fashions shall  
15 destroy, in a manner compliant with any environmental or other waste disposal regulations, all  
16 Covered Products that are not Lead Free in the custody, control or possession of Defendant or  
17 otherwise remaining in the possession of any retail store or internet distribution warehouse  
18 controlled, owned or operated by Defendant.

19                  3.2.4 Windsor Fashions shall maintain records of compliance correspondence,  
20 inventory reports or other communication confirming compliance with §3.2.3 for three (3) years  
21 from the Effective Date and shall produce copies of such records upon written request by Brimer.

22                  **4. MONETARY PAYMENTS**

23                  **4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

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

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  
OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT  
WITH THE DEBTOR.

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



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  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

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

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

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

10 **11. MODIFICATION**

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

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

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

24 **13. ENTIRE AGREEMENT**

25 This Consent To Judgment contains the sole and entire agreement and understanding of  
26 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
27 negotiations, commitments, and understandings related hereto. No representations, oral or  
28 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.

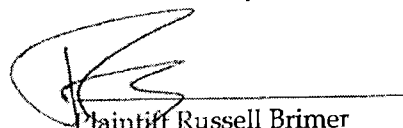
13 **15. COUNTERPARTS, FACSIMILE SIGNATURES**

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 Plaintiff Russell Brimer 25	22 Dated: January __, 2012 23 24 _____ 25 Mr. Leon Zakaria, President 26 Windsor Fashions, Inc.
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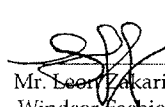
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19 Judgment on behalf of their respective Parties and have read, understood, and agree to all of the  
20 terms and conditions of this Consent To Judgment.

21 **IT IS SO AGREED**

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