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9 RUSSELL BRIMER

10 SUPERIOR COURT OF CALIFORNIA  
11 FOR THE COUNTY OF ALAMEDA  
12 UNLIMITED CIVIL JURISDICTION

13 RUSSELL BRIMER,

14 Plaintiff,

15 vs.

16 GENESCO INC.; and DOES 1-150, inclusive,

17 Defendants.  
18

Case No. RG10541824

**[PROPOSED] CONSENT JUDGMENT**

1     **1. INTRODUCTION**

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

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

6             **1.2 Plaintiff**

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

10            **1.3 Defendant**

11            Genesco 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 § 25249.6, *et seq.* (“Proposition 65”).

14            **1.4 General Allegations**

15            Brimer alleges that Defendant has distributed and/or sold certain handbags containing lead  
16   in the State of California without the requisite health hazard warnings. Lead is known to cause  
17   birth defects and other reproductive harm and is listed by its chemical nomenclatures pursuant to  
18   Proposition 65. Lead listed by the State of California under Proposition 65 shall be referred to  
19   hereinafter as the “Listed Chemical.”

20            **1.5 Product Description**

21            The products that are covered by this Consent Judgment are handbags containing lead  
22   including, but not limited to, the *Zipper Bag Red, Style #61661 (#4 08000 41009 4)*, which  
23   Genesco manufactured, distributed, and/or sold in the State of California. These handbags  
24   containing lead are referred to hereinafter as the “Products.”

25            **1.6 Notice of Violation**

26            On May 7, 2010, Brimer served Defendant and the Office of the California Attorney  
27   General, all California counties’ District Attorneys and all City Attorneys of California cities with  
28   populations exceeding 750,000 (collectively, “Public Enforcers”) with a 60-Day Notice of

1 Violation (“Notice”) that alleged violations of Proposition 65 in connection with the sale of the  
2 Products containing the Listed Chemical. To the best of the Parties’ knowledge, no Public  
3 Enforcer has prosecuted any of the allegations set forth in the Notices.

4 **1.7 Complaint**

5 On October 15, 2010, Brimer filed a complaint (“Complaint” or “Action”) in the Superior  
6 Court for the County of Alameda against Defendant alleging violations of Proposition 65 based on  
7 Defendant’s failure to give clear and reasonable warnings before allegedly causing exposures to the  
8 Listed Chemical contained in the Products.

9 **1.8 No Admission**

10 Defendant denies the material factual and legal allegations contained in the Notice and  
11 Complaint and maintains that all Products that it has sold and distributed in California have been  
12 and are in compliance with all laws, including, without limitation, Proposition 65. Nothing in this  
13 Consent Judgment shall be construed as an admission by Defendant of any fact, finding, issue of  
14 law, or violation of law, nor shall compliance with this Consent Judgment constitute or be  
15 construed as an admission by Defendant of any fact, finding, conclusion, issue of law, or violation  
16 of law, such being specifically denied by Defendant. However, this Section shall not diminish or  
17 otherwise affect Defendant’s obligations, responsibilities, and duties under this Consent Judgment.

18 **1.9 Consent to Jurisdiction**

19 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
20 jurisdiction over Defendant as to the allegations contained in the Complaint, that venue is proper in  
21 the County of Alameda and that this Court has jurisdiction to enter and enforce the provisions of  
22 this Consent Judgment as a full and binding resolution of all claims which were or could have been  
23 raised in the Complaint against Defendant based on the facts alleged therein and in the Notice.

24 **1.10 Effective Date**

25 For purposes of this Consent Judgment, the term “Effective Date” shall mean April 15,  
26 2011.

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1     **2.     INJUNCTIVE RELIEF**

2             **2.1     Reformulation Commitment**

3             As of the Effective Date, Genesco shall not ship, sell or offer to be shipped for sale in  
4     California any Products unless each accessible component that may be handled or touched during  
5     reasonably foreseeable use or misuse contains less than 200 parts per million of lead when analyzed  
6     pursuant to Environmental Protection Agency ("EPA") testing methodologies 3050B and 6010B  
7     for lead, or equivalent methods as may be allowed under Proposition 65.

8     **3.     MONETARY PAYMENTS**

9             **3.1     Payments Pursuant to Health & Safety Code § 25249.7(b)**

10            In settlement of all the claims referred to in this Settlement Agreement against it, Genesco  
11     shall make payments and receive credits totaling \$7,000, in civil penalties, as follows

12            3.1.1     Genesco shall make an initial payment of \$4,000 to be apportioned in  
13     accordance with Health & Safety Code § 25249.12 (c)(1) and (d), with 75% of these funds remitted  
14     to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the  
15     remaining 25% of these penalty monies remitted to Brimer as provided by Health & Safety Code  
16     § 25249.12(d). Genesco shall issue two separate checks for the penalty payment: (a) one check  
17     made payable to "The Chanler Group in Trust for Office of Environmental Health Hazard  
18     Assessment" in the amount of \$3,000, representing 75% of the total penalty, and (b) one check to  
19     "The Chanler Group in Trust for Russell Brimer" in the amount of \$1,000, representing 25% of the  
20     total penalty. Two separate 1099s shall be issued for the above payments. The first 1099 shall be  
21     issued to Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA  
22     95814 (EIN: 68-0284486) in the amount of \$3,000. The second 1099 shall be issued to Brimer in  
23     the amount of \$1,000, whose address and tax identification number shall be furnished, upon request,  
24     at least five (5) calendar days before payment is due. The payments shall be delivered within ten  
25     (10) days of the Effective Date, at the address set forth in Section 3.4.

26            3.1.2     Genesco shall pay a second civil penalty of \$3,000, on or before October 15,  
27     2011, to be apportioned in accordance with Health & Safety Code § 25249.12 (c)(1) and (d) as  
28     described above, which penalty shall be waived in its entirety, if, by October 15, 2011, Genesco

1 certifies to Brimer that the Products contain no more than 100 ppm of lead when analyzed pursuant  
2 to Environmental Protection Agency testing methodologies 3050B or equivalent methods and do not  
3 exceed 1.0 micrograms (“ug”) of lead as applied to all coated portions of all surfaces of the Products  
4 performed as outlined in NIOSH Test Method No. 9100.

5  
6 3.1.3 All payments, unless waived, shall be delivered to the following address:

7 The Chanler Group  
8 Attn: Proposition 65 Controller  
9 2560 Ninth Street, Suite 214  
10 Berkeley, CA 94710

11  
12 **4. REIMBURSEMENT OF FEES AND COSTS**

13 **4.1 Attorney’s Fees and Costs**

14 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute without  
15 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
16 issue to be resolved after the material terms of the agreement had been settled. Genesco then  
17 expressed its preference to resolve the fee and cost issue shortly after the other settlement terms had  
18 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to  
19 Brimer and his counsel under general contract principles and the private attorney general doctrine  
20 codified at California Code of Civil Procedure (“CCP”) § 1021.5, for all work performed through  
21 the mutual execution of this agreement and entry of this Consent Judgment, except for fees on  
22 appeal. Under these legal principles, Genesco shall pay the amount of \$40,000 for fees and costs  
23 incurred as a result of investigating, bringing this matter to Genesco’s attention, and negotiating a  
24 settlement in the public interest. Genesco shall issue a separate 1099 for fees and costs (EIN: 94-  
25 3171522) and make the check payable to “The Chanler Group” which it shall deliver within ten  
26 (10) days of the Effective Date, to the following address:

27 THE CHANLER GROUP  
28 Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

1 **5. RELEASE OF ALL CLAIMS**

2 **5.1 Brimer's Release of Genesco**

3 In further consideration of the promises and agreements herein contained, and for the  
4 payments to be made pursuant to Sections 3 and 4 above, Brimer, on behalf of himself, his past and  
5 current agents, representatives, attorneys, including, without limitation, The Chanler Group,  
6 successors, and/or assignees, and in the interest of the general public, hereby waives all rights to  
7 institute or participate in, directly or indirectly, any form of legal action and releases all claims,  
8 including, without limitation, all actions and causes of action, in law or in equity, suits, liabilities,  
9 demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not  
10 limited to, investigation fees, expert fees, and attorney's fees) of any nature whatsoever, whether  
11 known or unknown, fixed or contingent (collectively "Claims"), that were brought or could have  
12 been brought against Genesco, its subsidiaries or affiliates, and each of its past and current  
13 downstream customers, distributors, wholesalers, suppliers, licensors, licensees, auctioneers,  
14 retailers, or any other person in the course of doing business, and the successors and assigns of any  
15 of them, who may use, maintain, manufacture, distribute, advertise, market or sell Products, and the  
16 officers, directors, managers, employees, members, shareholders, agents, insurers and  
17 representatives of each of them (collectively "Releasees") in this matter related to alleged exposure  
18 to the Listed Chemical from the Products. The Parties further understand and agree that this release  
19 shall not extend upstream to any third parties that manufactured the Products or any component  
20 parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof  
21 to Defendant.

22 Compliance with the terms of this Consent Judgment resolves any issue, now and in the  
23 future, concerning compliance by Genesco and its Releasees with the requirements of Proposition  
24 65 with respect to alleged exposure to the Listed Chemical from the Products distributed or sold by  
25 Genesco.

26 **5.2 Genesco's Release of Brimer**

27 Genesco waives any and all claims against Brimer, his attorneys and other representatives,  
28 for any and all actions taken or statements made (or those that could have been taken or made) by

1 Brimer and his attorneys and other representatives, whether in the course of investigating Claims or  
2 otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the  
3 Products.

4 **6. COURT APPROVAL**

5 This Consent Judgment is not effective until it is approved and entered by the Court and  
6 shall be null and void if, for any reason, it is not approved and entered by the Court within one (1)  
7 year after it has been fully executed by all Parties, in which event any monies that have been  
8 provided to Brimer or his counsel pursuant to Section 3 and/or Section 4 above shall be refunded  
9 within fifteen (15) days after receiving written notice from Genesco that the one-year period has  
10 expired.

11 **7. SEVERABILITY**

12 If, subsequent to the execution of this Consent Judgment, any of the provisions of this  
13 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable  
14 provisions remaining shall not be adversely affected.

15 **8. GOVERNING LAW**

16 The terms of this Consent Judgment shall be governed by the laws of the State of California  
17 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or  
18 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Genesco  
19 may provide written notice to Brimer of any asserted change in the law, and shall have no further  
20 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products  
21 are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Genesco from any  
22 obligation to comply with any pertinent state or federal toxics control laws.

23 **9. NOTICES**

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

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1 For Genesco:

2 Roger G. Sisson, Senior Vice President and  
3 General Counsel  
4 Genesco Inc.  
5 1415 Murfreesboro Road  
6 Nashville, TN 37202

For Brimer:

Proposition 65 Coordinator  
THE CHANLER GROUP  
2560 Ninth Street, Suite 214  
Berkeley, CA 94710-2565

5 With a copy to:

6 Laura H. McKaskle, Esq.  
7 Morgan, Lewis & Bockius LLP  
8 300 South Grand Ave., 22nd Floor  
Los Angeles, CA 90071-3132

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

11 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

15 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

16 Brimer agrees to comply with the reporting form requirements referenced in California  
17 Health & Safety Code § 25249.7(f).

18 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

19 The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed  
20 motion is required to obtain judicial approval of this Consent Judgment. In furtherance of  
21 obtaining such approval, Brimer, Genesco and their respective counsel agree to mutually employ  
22 their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval  
23 of the Consent Judgment by the Court in a timely manner. For purposes of this section, best efforts  
24 shall include, at a minimum, cooperating on the drafting and filing of any papers in support of the  
25 required motion for judicial approval.

26 **13. MODIFICATION**

27 This Consent Judgment may be modified only: (1) by written agreement of the Parties and  
28 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion



1 of any party and entry of a modified consent judgment by the Court. The Attorney General shall be  
 2 served with notice of any proposed modification to this Consent Judgment at least fifteen (15) days  
 3 in advance of its consideration by the Court. Brimer shall be entitled to his reasonable fees and  
 4 costs incurred in the modification process under CCP § 1021.5 if Genesco seeks to modify the  
 5 terms of this Consent Judgment.

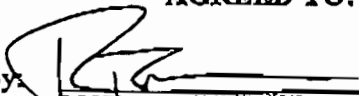
6 **14. AUTHORIZATION**

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

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**AGREED TO:**

**AGREED TO:**

By:   
 \_\_\_\_\_  
 RUSSELL BRIMER

By: \_\_\_\_\_  
 ROGER G. SISSON, SENIOR VICE  
 PRESIDENT AND GENERAL  
 COUNSEL  
 Genesco Inc.

Date: 4-14-11

Date: \_\_\_\_\_

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2 served with notice of any proposed modification to this Consent Judgment at least fifteen (15) days  
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9 this Consent Judgment.

11 **AGREED TO:**

12  
13 By: \_\_\_\_\_  
14 RUSSELL BRIMER

11 **AGREED TO:**

12  
13 By: *RG Sisson*  
14 ROGER G. SISSON, SENIOR VICE  
15 PRESIDENT AND GENERAL  
16 COUNSEL  
17 Genesco Inc.

16 Date: \_\_\_\_\_

16 Date: *April 15, 2011*

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