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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 IN AND FOR THE COUNTY OF SAN FRANCISCO

9 UNLIMITED CIVIL JURISDICTION

10
11 RUSSELL BRIMER,

12 Plaintiff,

13 v.

14 BBC APPAREL GROUP LLC and DOES 1-150,
15 inclusive,

16 Defendants.

Case No. CGC-11-509211

**CONSENT TO JUDGMENT AS TO
DEFENDANT BBC APPAREL GROUP LLC**

Trial Date: Not Yet Assigned
Action Filed: March 15, 2011

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 BBC Apparel Group LLC (“BBC Apparel”) with Brimer and
5 BBC Apparel 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 BBC Apparel employs 10 or more persons and is a person in the course of doing business
12 for 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 BBC Apparel manufactured, distributed and/or sold, in the State of
16 California, certain types of fashion jackets composed of material containing lead, including, but
17 not limited to, J2 by JouJou Jacket, Willow, Style JRP-105-932, that exposed users to lead, without
18 first providing “clear and reasonable warning” under Proposition 65. Lead is listed as a
19 reproductive and developmental toxicant pursuant to Proposition 65 and is referred to
20 hereinafter as the “Listed Chemical.”

21 **1.5 Notice of Violation**

22 On October 29, 2010, Brimer served Defendant and various public enforcement agencies
23 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 fashion jacket 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.

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1.6 Complaint

On March 15, 2011, Brimer, acting, in the interest of the general public in California, filed a Complaint in the San Francisco County Superior Court, alleging violations by Defendant of Health & Safety Code § 25249.6 based, *inter alia*, on the alleged exposures to lead contained in the referenced jacket products (the “Action”).

1.7 No Admission

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

1.8 Consent to Jurisdiction

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

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1 **2. DEFINITIONS**

2 2.1 The term "Complaint" shall mean the March 15, 2011, Complaint.

3 2.2 The term "Covered Products" means any fashion jackets composed of material
4 containing lead, including, but not limited to, J2 by JouJou Jacket, Willow, Style JRP-105-932,
5 manufactured or caused to be manufactured for distribution or sale into California or
6 distributed, caused to be distributed, sold or caused to be sold into California by Defendant.

7 2.3 The term "Effective Date" shall mean September 1, 2011.

8 2.4 The term "Lead Free" Covered Products shall mean Covered Products containing
9 materials or other components that may be handled, touched or mouthed by a consumer, and
10 which components yield less than 1.0 microgram of lead when using a wipe test pursuant to
11 NIOSH Test Method 9100, and yield less than 300 parts per million ("ppm") lead when analyzed
12 pursuant to EPA testing methodologies 3050B and 6010B, or equivalent methodologies utilized
13 by federal or state agencies for the purpose of determining lead content in a solid substance.

14 **3. INJUNCTIVE RELIEF**

15 **3.1 Formulation Commitment**

16 3.1.1 As of the Effective Date, Defendant shall not order, cause to be ordered,
17 manufacture or cause to be manufactured any Covered Product for distribution to or sale in
18 California that is not Lead Free and Defendant shall also not distribute, cause to be distributed,
19 sell or cause to be sold, in California, any Covered Product that is not Lead Free.

20 3.1.2 For every Covered Product ordered, caused to be ordered, manufactured or
21 caused to be manufactured for distribution to or sale in California after the Effective Date, and
22 for every Covered Product distributed, caused to be distributed, sold or caused to be sold in
23 California by either Defendant, Defendant shall maintain a copy of any testing of such products
24 demonstrating compliance with this section for eighteen (18) months after the date of such
25 testing performed to comply with this section.

26 **3.2 Previously Obtained or Distributed Covered Products.**

27 **3.2.1 Customer Notification**

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1 Within twenty (20) days of the Effective Date, BBC Apparel shall issue an express, written
2 letter (electronic or otherwise) notice to each, individual, California retail store or establishment
3 to which it supplied, within one month prior to the Effective Date, any Covered Products that do
4 not meet the Lead Free standard of Section 2.4, that identifies the Covered Product (by brand
5 and trade name, SKU, ISB and any other identifying name or number utilized by defendant in
6 the sale of the Covered Product), advises the recipient that each such identified Covered Product
7 “contains LEAD, a chemical known to the State of California to cause birth defects and other
8 reproductive harm”, and requests such recipient to either label the Covered Product with the
9 product label identified in Section 3.2.2(a)(i) or to return the Covered Product to either such
10 defendant at that defendant’s sole expense. BBC Apparel shall maintain records of all
11 compliance correspondence or other communication generated pursuant to this Section for two
12 (2) years from the Effective Date and shall produce copies of such records upon written request
13 by Brimer.

14 **3.2.2 Product Warnings**

15 Commencing on the Effective Date, and until such date six (6) months thereafter, BBC
16 Apparel shall not sell, ship, or offer to be sold or shipped for sale in California any Covered
17 Products unless such Covered Products are Lead Free under Section 2.4 or are sold or shipped
18 with one of the clear and reasonable warnings set forth hereafter.

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

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

25 (i) **Product Labeling.** BBC Apparel may affix a warning to the
26 packaging, labeling, or directly on any Covered Products sold at a retail outlet of either
27 Defendant in California that states:
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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 (ii) **Point-of-Sale Warnings.** Alternatively, BBC Apparel may
5 provide warning signs in the form below to retail outlets in California, which stores they are
6 reasonably aware of having sold the Covered Products or having inventory or orders of the
7 Covered Products, with instructions to post the signs *in immediate proximity* to the point of
8 display of any and all such Covered Products for the benefit of its customers.

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

12 (b) **Mail Order Catalog and Internet Sales.** In the event that BBC Apparel
13 sells any Covered Products via mail order catalog or the Internet to customers located in
14 California any such catalog or Internet site offering any Covered Product for sale shall include a
15 warning in the catalog or within the website, identifying the specific Covered Product to which
16 the warning applies, as specified in Sections 3.2.2(b)(i) and (ii).

17 (i) **Mail Order Catalog Warning.** Any warning provided in a mail
18 order catalog must be in the same type size or larger than the Covered Product description text
19 within the catalog. The following warning shall be provided on the same page and in the same
20 location as the display and/or description of the Covered Product:

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

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

1 **WARNING:** Certain products identified with this
2 symbol ▼ and offered for sale in this
3 catalog contain LEAD, a chemical known
4 to the State of California to cause birth
5 defects and other reproductive harm.

6 The designated symbol must appear on the same page and in close proximity to the
7 display and/or description of the Covered Product. On each page where the designated symbol
8 appears, BBC Apparel must provide a header or footer directing the consumer to the warning
9 language and definition of the designated symbol.

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

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

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

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

28 **WARNING:** Products identified on this page with the
 following symbol ▼ contain LEAD, a
 chemical known to the State of California

1 to cause birth defects and other
2 reproductive harm.

3 3.2.3 Commencing six (6) months after the Effective Date, BBC Apparel shall
4 discontinue all sales of any Covered Products that are not Lead Free in California, regardless of
5 compliance with Section 3.2.2.

6 3.2.4 Commencing nine (9) months after the Effective Date, BBC Apparel shall destroy,
7 in a manner compliant with any environmental or other waste disposal regulations, all Covered
8 Products that are not Lead Free remaining in its possession, custody or control.

9 3.2.5 BBC Apparel shall maintain records of all compliance correspondence, inventory
10 reports or other communication generated pursuant to §3.2.3 and §3.2.4 for eighteen (18) months
11 from the Effective Date and shall produce copies of such records upon written request by Brimer.

12 **4. MONETARY PAYMENTS**

13 **4.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

14 Subject to the potential offsets described in Section 4.2 below, Defendant shall be pay a
15 total of \$14,000.00 in civil penalties to be apportioned in accordance with California Health &
16 Safety Code §25192, with 75% of these funds (\$10,500.00) remitted to the State of California's
17 Office of Environmental Health Hazard Assessment and the remaining 25% (\$3,500.00) of these
18 penalty monies remitted to Brimer as provided by California Health & Safety Code §25249.12(d).

19 Defendant shall issue two separate checks for the penalty payment: (a) one check made
20 payable to The Chanler Group in Trust for the State of California's Office of Environmental
21 Health Hazard Assessment ("The Chanler Group in Trust for OEHHA") for 75% of the total
22 penalty required and (b) one check to "The Chanler Group in Trust for Russell Brimer" for the
23 remaining 25% of the total penalty required. Two separate 1099s shall be issued for the above
24 payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN:
25 68-0284486). The second 1099 shall be issued to Brimer, whose address and tax identification
26 number shall be furnished, upon request, at least five calendar days before payment is due. The
27 payments shall be delivered on or before thirty (30) days after the Effective Date, at the following
28 address:

1 The Chanler Group
2 Attn: Proposition 65 Controller
3 2560 Ninth Street
4 Parker Plaza, Suite 214
5 Berkeley, CA 94710-2565

4 **4.2 Reduction in Penalty Payments**

5 BBC Apparel may reduce the total penalty payment due pursuant to section 4.1 above by
6 satisfying the following penalty offset options (in which event the division of remaining total
7 penalties due shall be proportioned between OEHHA and Brimer in the same ratio as set forth in
8 section 4.1 above):

9 (a) Defendant may realize a \$1,500.00 reduction in the total penalty amount due under
10 section 4.1 above if, no later than twenty (20) days of the Effective Date, BBC Apparel provides to
11 Plaintiff, care of his attorneys, a letter certification, signed by a director or officer, confirming that
12 as of the date of the letter certification, said party either has destroyed any Covered Products
13 that are not Lead Free in the custody, control or possession of Defendant or otherwise remaining
14 in the possession of any retail store or internet distribution warehouse controlled, owned or
15 operated by Defendant or that Defendant has no such remaining inventory of Covered Products
16 that are not Lead Free.

17 (b) Defendant may realize a \$2,500.00 reduction in the total penalty amount due under
18 section 4.1 above if that party agrees, by express, written confirmation to counsel for plaintiff,
19 that, no later than thirty (30) days after the Effective Date, the term "in California" in section 3.1
20 above shall be deemed to have been replaced by the term "within the United States."

21 (c) Defendant may realize a \$2,000.00 reduction in the total penalty amount due under
22 section 4.1 above if that party agrees, by express, written confirmation to counsel for plaintiff,
23 that, no later than thirty (30) days after the Effective Date, that the definition of the term "Lead
24 Free" in section 2.4 above shall be deemed to have been replaced by the following definition:
25 The term "Lead Free" Covered Products shall mean Covered Products containing components
26 that may be handled, touched or mouthed by a consumer, and which components yield less than
27 1.0 microgram of lead when using a wipe test pursuant to NIOSH Test Method 9100, and yield
28 less than 100 parts per million ("ppm") lead when analyzed pursuant to EPA testing

1 methodologies 3050B and 6010B, or equivalent methodologies utilized by federal or state
2 agencies for the purpose of determining lead content in a solid substance

3 **4.3 Augmentation of Penalty Payments**

4 For purposes of the penalty assessment under this Consent to Judgment, plaintiff is
5 relying entirely upon defendant and its counsel for accurate, good faith reporting to plaintiff of
6 the nature and amounts of relevant sales activity. If within nine (9) months of the Effective Date,
7 plaintiff discovers and presents to Defendant evidence that the Covered Products have been
8 distributed by BBC Apparel in sales volumes materially different than those identified by
9 Defendant prior to execution of this Agreement, then Defendant shall be liable for an additional
10 penalty amount of \$100 per quantity of Covered Product sold prior to execution of this
11 Agreement but not identified by Defendant to plaintiff. Defendant shall also be liable for any
12 reasonable, additional attorney fees expended by plaintiff in discovering such additional
13 retailers or sales. Plaintiff agrees to provide Defendant with a written demand for all such
14 additional penalties and attorney fees under this Section. After service of such demand,
15 defendant shall have thirty (30) days to agree to the amount fees and penalties owing by
16 Defendant and submit such payment to plaintiff in accordance with the method of payment of
17 penalties and fees identified in Sections 4.1 and 4.4. Should this thirty (30) day period pass
18 without any such resolution between the parties and payment of such additional penalties and
19 fees, plaintiff shall be entitled to file a formal legal claim for damages for breach of this contract
20 and shall be entitled to all reasonable attorney fees and costs relating to such claim.

21 **4.4 Penalty Payment Terms**

22 Payment of the amount due pursuant to sections 4.1 and 4.2 shall be delivered to Brimer's
23 counsel on or before the Effective Date, at the following address:

24 The Chanler Group
25 Attn: Proposition 65 Controller
26 2560 Ninth Street
27 Parker Plaza, Suite 214
28 Berkeley, CA 94710-2565

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2 **5. REIMBURSEMENT OF FEES AND COSTS**

3 **5.1 Attorney Fees and Costs**

4 5.1.1 The Parties reached an accord on the compensation due to Brimer and his
5 counsel under general contract principles and the private attorney general doctrine codified at
6 California Code of Civil Procedure (CCP) §1021.5, for all work performed through the mutual
7 execution of this agreement and approval of the Consent Judgment by the trial court, excluding
8 any fees on appeal. BBC Apparel shall pay Brimer and his counsel a total of \$37,235.00 as
9 compromise reimbursement of a portion of the fees and costs incurred by Brimer and his counsel
10 as a result of investigating, bringing this matter to BBC Apparel’s attention, litigating,
11 negotiating and proposing the entry of a consent judgment in the public interest. It is expressly
12 understood that the sum of \$37,235.00 shall include compensation for Brimer and his counsel as
13 reimbursement for a portion of the additional attorney fees and costs that Brimer’s counsel will
14 expend in drafting, filing and appearing for hearing(s) on a motion for Court approval of this
15 Consent to Judgment and for all statutory reporting and other activities reasonably necessary to
16 secure conclusion of the statutory and legal procedures in the case.

17 5.1.2 Payment of the amount due pursuant to section 5.1.1 shall be delivered to
18 Brimer’s counsel on or before the Effective Date, at the following address:

19 The Chanler Group
20 Attn: Proposition 65 Controller
21 2560 Ninth Street
22 Parker Plaza, Suite 214
23 Berkeley, CA 94710-2565

22 **6. CLAIMS COVERED AND RELEASE**

23 **6.1 Brimer’s Releases of BBC Apparel**

24 6.1.1 This Consent To Judgment is a full, final, and binding resolution between Brimer,
25 on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or
26 assignees, and in the interest of the general public, and BBC Apparel and its attorneys,
27 successors, licensors and assigns and Gotham Licensing Group LLC (“Defendant Releasees”),
28 and all entities to whom BBC Apparel directly or indirectly distribute or sell Covered Products,

1 including but not limited to distributors, wholesalers, customers, retailers, franchisees,
2 cooperative members, and licensees (“Downstream Defendant Releasees”) of any violation of
3 Proposition 65 that has been or could have been asserted against Defendant Releasees and
4 Downstream Defendant Releasees regarding the failure to warn about exposure to the Listed
5 Chemical arising in connection with Covered Products manufactured, sourced, distributed, or
6 sold by Defendant Releasees prior to the Effective Date. BBC Apparel’ compliance with this
7 Consent Judgment shall constitute compliance with Proposition 65 with respect to the Listed
8 Chemical in the Covered Products after the Effective Date.

9 6.1.2 Brimer on behalf of himself, his past and current agents, representatives,
10 attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives
11 with respect to Covered Products all rights to institute or participate in, directly or indirectly,
12 any form of legal action and releases all claims, including, without limitation, all actions, and
13 causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
14 penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and
15 attorneys’ fees) of any nature whatsoever, whether known or unknown, fixed or contingent
16 (collectively “claims”), against Defendant Releasees and Downstream Defendant Releasees that
17 arise under Proposition 65 or any other statutory or common law claims that were or could have
18 been asserted in the public interest, as such claims relate to Defendant Releasees’ and
19 Downstream Defendant Releasees’ alleged failure to warn about exposures to the Listed
20 Chemical contained in the Covered Products.

21 6.1.3 Brimer also, in his individual capacity only and *not* in his representative capacity,
22 provides a general release herein which shall be effective as a full and final accord and
23 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees,
24 damages, losses, claims, liabilities and demands of Brimer of any nature, character or kind,
25 known or unknown, suspected or unsuspected, arising out of the subject matter of the
26 Complaint as to Covered Products manufactured, distributed or sold by Defendant Releasees.
27 Brimer acknowledges that he is familiar with Section 1542 of the California Civil Code, which
28 provides as follows:

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A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER 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.

Brimer, in his individual capacity only and *not* in his representative capacity, expressly waives and relinquishes any and all rights and benefits which he may have under, or which may be conferred on him by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully 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 release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

This release is expressly limited to those claims that arise under Proposition 65, as such claims relate to Defendant's alleged failure to warn about exposures to or identification of the Listed Chemical contained in the Covered Products and as such claims are identified in the Proposition 65 60-Day Notice to Defendant and to the extent that any alleged violations occur prior to one month after the Effective Date. This Release does not release any person, party or entity from any liability for any violation of Proposition 65 regarding the Covered Products that occur after the Effective Date.

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

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

6.2 BBC Apparel's Release of Brimer

6.2.1 BBC Apparel waives any and all claims against Brimer, his attorneys, and other representatives for any and all actions taken or statements made (or those that could have been

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

4 6.2.2 BBC Apparel also provides a general release herein which shall be effective as a
5 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
6 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of BBC Apparel of any
7 nature, character or kind, known or unknown, suspected or unsuspected, arising out of the
8 subject matter of the Action. BBC Apparel acknowledges that it is familiar with Section 1542 of
9 the California Civil Code, which provides as follows:

10 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
11 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR
12 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.

13 BBC Apparel expressly waives and relinquishes any and all rights and benefits
14 that it may have under, or which may be conferred on it by the provisions of Section 1542
15 of the California Civil Code as well as under any other state or federal statute or common
16 law principle of similar effect, to the fullest extent that it may lawfully waive such rights
17 or benefits pertaining to the released matters. In furtherance of such intention, the release
18 hereby given shall be and remain in effect as a full and complete release notwithstanding
19 the discovery or existence of any such additional or different claims or facts arising out of
20 the released matters.

21 **7. SEVERABILITY**

22 If, subsequent to court approval of this Consent Judgment, any of the provisions of this
23 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
24 provisions remaining shall not be adversely affected, unless the Court finds that any
25 unenforceable provision is not severable from the remainder of the Consent Judgment.
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1 **8. COURT APPROVAL**

2 This Consent To Judgment is not effective until it is approved and entered by the Court
3 and shall be null and void if, for any reason, it is not approved and entered by the Court within
4 nine months after it has been fully executed by all Parties.

5 **9. GOVERNING LAW**

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

8 **10. NOTICES**

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

11 For BBC Apparel Group LLC to:

12 Mr. Robert Soffer, President
13 BBC Apparel Group LLC
14 1407 Broadway, Room 507
New York, NY, 10018

15 With copy to their counsel at

16 Dennis Raglin, Esq.
17 Sedgwick
18 One Market Plaza Steuart Tower
8th Floor
San Francisco, California 94105

19 For Brimer to:

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

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

25 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

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

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

5 **13. ADDITIONAL POST-EXECUTION ACTIVITIES**

6 The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed
7 motion is required to obtain judicial approval of this Consent To Judgment. In furtherance of
8 obtaining such approval, Brimer and BBC Apparel and their respective counsel agree to
9 mutually employ their best efforts to support the entry of this agreement as a Consent To
10 Judgment and obtain approval of the Consent To Judgment - sufficient to render a formal
11 judgment approving this agreement - by the Court in a timely manner. Any effort by plaintiff or
12 BBC Apparel to impede judicial approval of this Consent To Judgment shall subject such
13 impeding party to liability for attorney fees and costs incurred by plaintiff or his counsel in their
14 efforts to meet or oppose BBC Apparel's impeding conduct.

15 **14. ENTIRE AGREEMENT**

16 This Consent To Judgment contains the sole and entire agreement and understanding of
17 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
18 negotiations, commitments, and understandings related hereto. No representations, oral or
19 otherwise, express or implied, other than those contained herein have been made by any Party
20 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
21 deemed to exist or to bind any of the Parties.

22 **15. ATTORNEY'S FEES**

23 15.1 A Party who unsuccessfully brings or contests an action arising out of this
24 Consent To Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees
25 and costs unless the unsuccessful Party has acted with substantial justification. For purposes of
26 this Consent To Judgment, the term substantial justification shall carry the same meaning as
27 used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, et seq.

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1 15.2 Except as specifically provided in the above paragraph and in Section 5.1, each
2 Party shall bear its own costs and attorney's fees in connection with this action.

3 15.3 Nothing in this Section 15 shall preclude a Party from seeking an award of
4 sanctions pursuant to law.


5 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

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

9 **17. AUTHORIZATION**

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

13 **IT IS SO AGREED**

14 Dated: June ^{AUG} <u>1</u> , 2011 15  16 _____ 17 Plaintiff Russell Brimer	14 Dated: June __, 2011 15 16 _____ 17 Mr. Robert Soffer, President 18 BBC Apparel Group LLC
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1 15.2 Except as specifically provided in the above paragraph and in Section 5.1, each
2 Party shall bear its own costs and attorney's fees in connection with this action.

3 15.3 Nothing in this Section 15 shall preclude a Party from seeking an award of
4 sanctions pursuant to law.

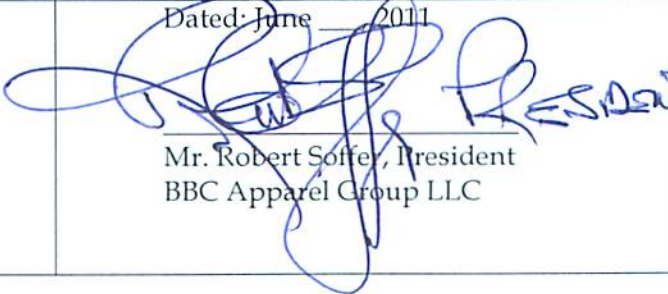
5 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

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

9 **17. AUTHORIZATION**

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

13 **IT IS SO AGREED**

<p>14 Dated: June __, 2011</p> <p>15</p> <p>16 _____</p> <p>17 Plaintiff Russell Brimer</p>	<p>14 Dated: June __, 2011</p> <p>15 </p> <p>16 _____</p> <p>17 Mr. Robert Soffey, President 18 BBC Apparel Group LLC</p>
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