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5
6 Attorneys for Plaintiff
RUSSELL BRIMER

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 IN AND FOR THE COUNTY OF MARIN

9 UNLIMITED CIVIL JURISDICTION

10
11 RUSSELL BRIMER,

12 Plaintiff,

13 v.

14 CONSOLIDATED SHOE COMPANY,
15 INCORPORATED and DOES 1-150,

16 Defendants.

Case No. CIV1101582

**CONSENT TO JUDGMENT AS TO
DEFENDANT CONSOLIDATED SHOE
COMPANY, INCORPORATED**

Trial Date: Not Yet Assigned
Action Filed: March 25, 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”), and Defendant Consolidated Shoe Company, Incorporated
5 (“Consolidated Shoe”). Brimer and Consolidated Shoe are collectively referred to as the
6 “Parties.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

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

15 **1.4 General Allegations**

16 Brimer alleges that Consolidated Shoe manufactured, distributed and/or sold, or caused to
17 be manufactured, distributed or sold in the State of California, Apostrophe Glory Orange footwear
18 composed of material containing lead, including, but not limited to, Item No. 13375, Product No.
19 IOR/7254 (#7 19424 08331 4), that exposed users to lead, without first providing a “clear and
20 reasonable warning” under Proposition 65. Lead is listed as a reproductive and developmental
21 toxicant pursuant to Proposition 65 and is referred to hereinafter as the “Listed Chemical.”

22 **1.5 Notice of Violation**

23 On November 12, 2010, Brimer served Defendant and various public enforcement
24 agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided public
25 enforcers and these entities with notice of alleged violations of Health & Safety Code § 25249.6
26 for failing to warn consumers of the presence of lead, a toxic chemical found in and on their
27 footwear products sold in California. On September 1, 2011, Brimer also served Defendant,
28 Tradewinds Importing, LLC, Sears, Roebuck and Co. and various public enforcement agencies

1 with a document entitled “Supplemental 60-Day Notice of Violation” (“Notice”) that provided
2 public enforcers and these entities with notice of alleged violations of Health & Safety Code §
3 25249.6 for failing to warn consumers of the presence of lead, a toxic chemical found in and on
4 their footwear products sold in California. To the best of the Parties’ knowledge, no public
5 enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

6 **1.6 Complaint**

7 On March 25, 2011, Brimer, acting, in the interest of the general public in California, filed
8 a Complaint in the Marin County Superior Court, alleging violations by Defendant of Health &
9 Safety Code § 25249.6 based, *inter alia*, on the alleged exposures to lead contained in the
10 referenced shoe products (the “Action”).

11 **1.7 No Admission**

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

26 **1.8 Consent to Jurisdiction**

27 For purposes of this Consent To Judgment only, the Parties stipulate that this Court has
28 jurisdiction over Brimer and Consolidated Shoe as to the allegations contained in the Complaint.

1 that venue is proper in Marin County, and that this Court has jurisdiction to enter and enforce the
2 provisions of this Consent To Judgment. As an express part of this Agreement, pursuant to
3 C.C.P. §664.6 the Court in which this action was filed shall retain jurisdiction over the parties to
4 enforce the settlement until performance in full of the terms of the settlement.

5 **2. DEFINITIONS**

6 2.1 The term “Complaint” shall mean the March 25, 2011 Complaint entitled *Russell*
7 *Brimer v. Consolidated Shoe Company, Inc.*, CIV 1101582.

8 2.2 The term “Covered Products” means any Apostrophe Glory Orange footwear
9 product composed of material containing lead, including, but not limited to, Item No. 13375,
10 Product No. IOR/7254 (#7 19424 08331 4), manufactured or caused to be manufactured for
11 distribution or sale into California or distributed, caused to be distributed, sold or caused to be
12 sold into California by Defendant.

13 2.3 The term “Effective Date” shall mean November 15, 2011. If this Consent To
14 Judgment is not fully executed by the Effective Date, then the Consent To Judgment is null and
15 void.

16 2.4 The term “Lead Free” Covered Products shall mean Covered Products containing
17 materials or other components that may be handled, touched or mouthed by a consumer, and
18 which components yield less than 1.0 microgram of lead when using a wipe test pursuant to
19 NIOSH Test Method 9100 or validated equivalent wipe test and yield less than 300 parts per
20 million (“ppm”) lead concentration when analyzed pursuant to EPA testing methodologies
21 3050B and 6010B, or equivalent validated methodologies utilized by federal or state agencies for
22 the purpose of determining lead content in a solid substance.

23 **3. INJUNCTIVE RELIEF**

24 **3.1 Formulation Commitment**

25 3.1.1 As of the Effective Date, Defendant shall not order, cause to be ordered,
26 manufacture or cause to be manufactured for distribution or sale in California or sell or cause to
27 be sold, ship or cause to be shipped, or otherwise distribute into California any Covered Product
28

1 that is not Lead Free unless such Covered Product incorporates a warning as described in
2 Section 3.2.2.

3
4 3.1.2 As of the Effective Date, Defendant shall not sell, ship or otherwise distribute any
5 Covered Product or caused to be sold, shipped, or otherwise distributed, any Covered Product
6 that is not Lead Free to any entity that Defendant has reason to know either will sell the Covered
7 Product in California or has retail stores in California unless such Covered Product incorporates
8 a warning pursuant to Section 3.2.2.

9
10 3.1.3 For every Covered Product ordered, caused to be ordered, manufactured or
11 caused to be manufactured, sold or caused to be sold, shipped or caused to be shipped, or
12 otherwise distributed to or for sale in California after the Effective Date, and for every Covered
13 Product sold, caused to be sold, shipped, caused to be shipped or otherwise distributed to any
14 entity that Defendant has reason to know either will sell the Covered Product in California or
15 has retail stores in California, which Covered Product Defendant claims is Lead Free, Defendant
16 shall maintain a copy of any testing of such products demonstrating compliance with this section
17 for two years after the date of such testing performed to comply with this section. Defendant
18 will provide copies of all such laboratory testing results to plaintiff upon reasonable request.

18 **3.2 Previously Obtained or Distributed Covered Products.**

19 **3.2.1 Customer Notification**

20 Within twenty (20) days of the Effective Date, Consolidated Shoe shall issue an express,
21 written letter (electronic or otherwise) notice to (1) each individual or establishment to which it
22 supplied any Covered Products within one year prior to the Effective Date and (2) any other
23 store or establishment, or its corporate retail parent, that the party is reasonably aware of having
24 sold any Covered Product in California within two years prior to the Effective Date, that
25 identifies the Covered Product (by brand and trade name, SKU, ISB and any other identifying
26 name or number utilized by defendant in the sale of the Covered Product), advises the recipient
27 that each such identified Covered Product “contains LEAD, a chemical known to the State of
28 California to cause birth defects and other reproductive harm”, and requests such recipient to

1 either label the Covered Product with the product label identified in Section 3.2.2(a)(i) or to
2 return the Covered Product to either such defendant at that defendant's sole expense.
3 Consolidated Shoe shall maintain records of all compliance correspondence or other
4 communication generated pursuant to this Section for two (2) years from the Effective Date and
5 shall produce copies of such records upon written request by Brimer.

6 3.2.2 Product Warnings

7 (a) When required under Sections 3.1.1 and 3.1.2 above, Consolidated Shoe shall provide
8 Proposition 65 warnings as follows:

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

13 Consolidated Shoe shall either (1) affix such warning to the packaging, labeling, or
14 directly on any Covered Products with such conspicuousness as compared with other words,
15 statements, designs, or devices as to render it likely to be read and understood by an ordinary
16 individual under customary conditions *before* purchase or use, (2) cause such warning to be
17 affixed to the packaging, labeling, or directly on any Covered Products with such
18 conspicuousness as compared with other words, statements, designs, or devices as to render it
19 likely to be read and understood by an ordinary individual under customary conditions *before*
20 purchase or use (and secure confirmation of the warning being affixed).

21 3.2.3 Consolidated Shoe shall maintain records of all compliance correspondence,
22 inventory reports or other communication generated pursuant to §3.2.1 and §3.2.2 for two (2)
23 years from the Effective Date and shall produce copies of such records upon written request by
24 Brimer.

25 (b) The requirements set forth in Sections 3.2.2(a) above are imposed pursuant to the
26 terms of this Consent To Judgment. The Parties recognize that these are not the exclusive
27 methods of providing a warning under Proposition 65 and its implementing regulations. The
28 parties agree that the warning language of Section 3.2.2(a) above is the minimum required
warning language required by this agreement. Defendant is free to include additional information

1 in the Proposition 65 warning so long as it is truthful and does not render the warning language
2 either unclear or unreasonable.

3 (c) If Defendant believes that Proposition 65 warnings for lead or lead compounds should
4 no longer be required for the Covered Products, Consolidated Shoe shall make a motion to this
5 Marin County Superior Court to be relieved from any further obligations pursuant to this Consent
6 To Judgment but shall not be so relieved absent express order by the Marin County Superior
7 Court.

8 **4. MONETARY PAYMENTS**

9 **4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

10 Defendant shall make a payment of \$4,400 to be apportioned in accordance with Health
11 & Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of these funds earmarked
12 for the State of California's Office of Environmental Health Hazard Assessment ("OEHHA")
13 and the remaining 25% of these penalty monies earmarked for Brimer.

14 **4.2 Reimbursement of Plaintiff's Fees and Costs**

15 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute
16 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
17 this fee issue to be resolved after the material terms of the agreement had been settled. Defendant
18 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms
19 had been finalized. The Parties then attempted to (and did) reach an accord on the compensation
20 due to Brimer and his counsel under general contract principles and the private attorney general
21 doctrine codified at California Code of Civil Procedure section 1021.5, for all work performed in
22 this matter, except fees that may be incurred on appeal. Under these legal principles, Defendant
23 shall pay the amount of \$55,000.00 for fees and costs incurred investigating, litigating and
24 enforcing this matter, including the fees and costs incurred (and yet to be incurred) negotiating,
25 drafting, and obtaining the Court's approval of this Consent Judgment in the public interest.

26 **4.3 Payment Procedures**

27 **4.3.1 Funds Held In Trust:** All payments required by Sections 4.1 and 4.2
28 shall delivered on or before November 30, 2011, to either The Chanler Group or the attorney of

1 record for the Defendant, and shall be held in trust pending the Court's approval of this Consent
2 Judgment.

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

- 4 (a) One check made payable to "The Chanler Group in Trust for
5 OEHHA" in the amount of \$3,300;
- 6 (b) One check made payable to "The Chanler Group in Trust for
7 Brimer" in the amount of \$1,100; and
- 8 (c) One check made payable to "The Chanler Group in Trust" in the
9 amount of \$55,000.00.

10 Payments delivered to Wilson, Turner Kosmo LLP shall be made payable, as
11 follows:

- 12 (a) One check made payable to "Wilson, Turner Kosmo LLP in Trust
13 for OEHHA" in the amount of \$3,300;
- 14 (b) One check made payable to "Wilson, Turner Kosmo LLP in Trust
15 for Brimer" in the amount of \$1,100; and
- 16 (c) One check made payable to "Wilson, Turner Kosmo LLP in Trust
17 for The Chanler Group" in the amount of \$55,000.00.

18 If Defendant elects to deliver payments to its attorney of record, the attorney of record
19 shall confirm, in writing within five days of deposit, that the funds have been deposited in a trust
20 account.

21 Within two days of the date of the hearing on which the Court approves the Consent
22 Judgment, the payments being held in trust by the attorney of record for the Defendant shall be
23 delivered to The Chanler Group in three separate checks payable, as follows:

- 24 (a) One check made payable to "The Chanler Group in Trust for
25 OEHHA" in the amount of \$3,300;
- 26 (b) One check to "The Chanler Group in Trust for Brimer" in the
27 amount of \$1,100; and
- 28 (c) One check to "The Chanler Group" in the amount of \$55,000.00.

1 **4.3.2 Issuance of 1099 Forms.** After the Consent Judgment has been approved
2 and the settlement funds have been transmitted to plaintiff's counsel, Defendant shall issue three
3 separate 1099 forms, as follows:

4 (a) The first 1099 shall be issued to the Office of Environmental Health
5 Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount
6 of \$3,300;

7 (b) The second 1099 shall be issued to Brimer in the amount of \$1,100, whose
8 address and tax identification number shall be furnished upon request; and

9 (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-3171522)
10 in the amount of \$55,000.00.

11 **4.3.3 Payment Address:** All payments to the Chanler Group shall be delivered
12 to the following payment address:

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

17 **5. CLAIMS COVERED AND RELEASE**

18 **5.1 Brimer's Releases of Consolidated Shoe**

19 5.1.1 This Consent To Judgment is a full, final, and binding resolution between Brimer,
20 on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or
21 assignees, and in the interest of the general public, and Consolidated Shoe, Tradewinds Importing,
22 LLC and each of their and their officers, directors, attorneys, shareholders, employees, successors,
23 assigns, franchisees, customers, parent companies, and subsidiaries (collectively "Defendant
24 Releasees"), and all entities to whom Consolidated Shoe directly or indirectly distributed or sold
25 Covered Products, including but not limited to, Sears Roebuck & Company and other distributors,
26 wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Downstream
27 Defendant Releasees"), of any violation of Proposition 65 that has been or could have been
28 asserted against Defendant Releasees and Downstream Defendant Releasees regarding the failure

1 to warn about exposure to the Listed Chemical arising in connection with Covered Products
2 manufactured, sourced, distributed, or sold by Defendant Releasees prior to the Effective Date.

3 Consolidated Shoe's compliance with this Consent To Judgment shall constitute
4 compliance with Proposition 65 with respect to the Listed Chemical in the Covered Products after
5 the Effective Date.

6 5.1.2 Brimer, on behalf of himself, his past and current agents, representatives,
7 attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives
8 with respect to Covered Products all rights to institute or participate in, directly or indirectly, any
9 form of legal action and releases all claims, including, without limitation, all actions, and causes
10 of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
11 penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and
12 attorneys' fees) of any nature whatsoever, fixed or contingent (collectively "claims"), against
13 Defendant Releasees and Downstream Defendant Releasees that arise under Proposition 65 or any
14 other statutory or common law claims that were or could have been asserted in the public interest,
15 as such claims relate to Defendant Releasees' and Downstream Defendant Releasees' alleged
16 failure to warn about exposures to the Listed Chemical contained in the Covered Products.

17 5.1.3 Brimer also, in his individual capacity only and *not* in his representative capacity,
18 provides a general release herein which shall be effective as a full and final accord and
19 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,
20 damages, losses, claims, liabilities and demands of Brimer of any nature, character or kind,
21 known or unknown, suspected or unsuspected, arising out of the subject matter of the Complaint
22 as to Covered Products manufactured, distributed or sold by Defendant Releasees and
23 Downstream Defendant Releasees. Brimer acknowledges that he is familiar with Section 1542 of
24 the California Civil 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 KNOWN
28 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
SETTLEMENT WITH THE DEBTOR

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

9 This release is expressly limited to those claims that arise under Proposition 65, as such
10 claims relate to Defendant's alleged failure to warn about exposures to or identification of the
11 Listed Chemical contained in the Covered Products and as such claims are identified in the
12 Proposition 65 60-Day Notice to Defendant and to the extent that any alleged violations occur no
13 later than thirty (30) days after the Effective Date. This Release does not release any person,
14 party or entity from any liability for any violation of Proposition 65 regarding the Covered
15 Products that occurs more than thirty (30) days after the Effective Date.

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

20 5.1.4 Upon court approval of the Consent To Judgment, the Parties waive their
21 respective rights to a hearing or trial on the allegations of the Complaint.

22 **5.2 Consolidated Shoe's Release of Brimer**

23 5.2.1 Consolidated Shoe waives any and all claims against Brimer, his attorneys, and
24 other representatives for any and all actions taken or statements made (or those that could have
25 been taken or made) by Brimer and his attorneys and other representatives, whether in the course
26 of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this
27 matter, and/or with respect to the Covered Products.
28

1 5.2.2 Consolidated Shoe also provides a general release herein which shall be effective
2 as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations,
3 costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Consolidated
4 Shoe of any nature, character or kind, known or unknown, suspected or unsuspected, arising out
5 of the subject matter of the Action. Consolidated Shoe acknowledges that it is familiar with
6 Section 1542 of the California Civil Code, which provides as follows:

7 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
8 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
9 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.

10 Consolidated Shoe on behalf of itself, its officers, directors, attorneys,
11 shareholders, employees, successors, assigns, franchisees, customers, parent companies,
12 and subsidiaries, past and current agents and/or representatives expressly waives and
13 relinquishes any and all rights and benefits that it may have under, or which may be
14 conferred on it 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
16 fullest extent that it may lawfully waive such rights or benefits pertaining to the released
17 matters. In furtherance of such intention, the release hereby given shall be and remain in
18 effect as a full and complete release notwithstanding the discovery or existence of any
19 such additional or different claims or facts arising out of the released matters.

20 **6. SEVERABILITY**

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

25 **7. COURT APPROVAL**

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

1 **8. GOVERNING LAW**

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

4 **9. NOTICES**

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

7 For Consolidated Shoe Company, Incorporated to:

8 William A. Carrington, President
9 Consolidated Shoe Company, Incorporated
10 22290 Timberlake Road
11 Lynchburg, VA 24502

12 With copy to their counsel at

13 Frederick W. Kosmo, Jr., Esq.
14 Wilson Turner Kosmo LLP
15 550 West C Street, Suite 1050
16 San Diego, CA 92101-3532

17 For Brimer to:

18 Proposition 65 Coordinator
19 The Chanler Group
20 2560 Ninth Street
21 Parker Plaza, Suite 214
22 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 **10. 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 To Judgment.

28 **11. MODIFICATION**

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

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

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

11 **13. ENTIRE AGREEMENT**

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

18 **14. ATTORNEY'S FEES**

19 14.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
20 To Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs
21 unless the unsuccessful Party has acted with substantial justification. For purposes of this
22 Consent To Judgment, the term substantial justification shall carry the same meaning as used in
23 the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, *et seq.*

24 14.2 Except as specifically provided in the above paragraph and in Section 5.1, each
25 Party shall bear its own costs and attorney's fees in connection with this action.

26 14.3 Nothing in this Section 15 shall preclude a Party from seeking an award of
27 sanctions pursuant to law.
28

1 **15. COUNTERPARTS, FACSIMILE SIGNATURES**

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

5 **16. AUTHORIZATION**

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

9 **IT IS SO AGREED**

<p>10 Dated: November 7, 2011</p> <p>11 </p> <p>12 _____ 13 Plaintiff Russell Brimer</p>	<p>Dated: November __, 2011</p> <p>_____</p> <p>William A. Carrington, President Consolidated Shoe Company, Incorporated</p>
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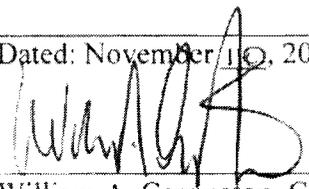
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4 together, shall constitute one and the same documents.

5 **16. AUTHORIZATION**

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

9 **IT IS SO AGREED**

<p>10 Dated: November __, 2011</p> <p>11</p> <p>12 _____</p> <p>13 Plaintiff Russell Brimer</p> <p>14</p>	<p>10 Dated: November 10, 2011</p> <p>11 </p> <p>12 _____</p> <p>13 William A. Carrington, CEO</p> <p>14 Consolidated Shoe Company,</p> <p>15 Incorporated</p>
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