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6 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 GRESHAM, JOSEPH & REITAN SALES, INC.
15 and DOES 1-150,

16 Defendants.

Case No. CIV 1205317

**CONSENT TO JUDGMENT AS
TO DEFENDANT GRESHAM, JOSEPH &
REITAN SALES, INC.**

Action Filed: November 30, 2012
Trial Date: Not Assigned

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 Gresham, Joseph & Reitan, Inc. (“Gresham” or
5 “Defendant”) with Brimer and Gresham 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 awareness
8 of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous
9 substances contained in consumer products.

10 **1.3 Defendant**

11 For purposes of this Consent To Judgment only, Brimer alleges and Gresham does not
12 dispute that it employs 10 or more persons and is a person in the course of doing business for
13 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety
14 Code §§ 25249.6 *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 Brimer alleges that Gresham manufactured, distributed and/or sold, in the State of
17 California, certain types of baskets made with vinyl/PVC materials containing Lead, including, but
18 not limited to, Organizing Essentials Baskets (Item #243-3720), that exposed users to Lead without
19 first providing “clear and reasonable warning” under Proposition 65. Lead is listed as a
20 reproductive and developmental toxicant pursuant to Proposition 65 and is referred to hereinafter
21 as the “Listed Chemical.”

22 **1.5 Notice of Violation**

23 On August 1, 2012, Brimer served Defendant and various public enforcement agencies with
24 a document entitled “60-Day Notice of Violation” (“Notice”) that provided public enforcers and
25 Defendant with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn
26 consumers of the presence of Lead, a toxic chemical found in and on the vinyl/PVC materials of
27 Defendants’ basket products sold in California. Defendant received the 60-Day Notice of Violation.
28 To the best of the Parties’ knowledge, as of the date they execute this Consent Judgment, no public

1 enforcer is diligently prosecuting a Proposition 65 enforcement action related to the allegations
2 identified in the 60-Day Notice.

3 **1.6 Complaint**

4 On November 30, 2012, Brimer, acting in the public interest, filed a Complaint in the
5 Superior Court of the State of California for the County of Marin, alleging violations by Defendant
6 of Health & Safety Code § 25249.6 based on the alleged exposures to Lead contained in the products
7 referenced in the 60-Day Notice (the “Action”).

8 **1.7 No Admission**

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

22 **1.8 Consent to Jurisdiction**

23 For purposes of this Consent To Judgment only, the Parties stipulate that this Court has
24 jurisdiction over Gresham as to the allegations contained in the Complaint, that venue is proper in
25 County of Marin, and that this Court has jurisdiction to enter and enforce the provisions of this
26 Consent To Judgment. As an express part of this Consent To Judgment, pursuant to C.C.P. §664.6
27 the Court in which this action was filed shall retain jurisdiction over the parties to enforce the
28 settlement until performance in full of the terms of the settlement.

1 **2. DEFINITIONS**

2 2.1 The term "Complaint" shall mean the November 30, 2012, Complaint.

3 2.2 The term "Covered Products" means any baskets with Accessible Components
4 containing Lead, including, but not limited to, Organizing Essentials Baskets Item #243-3720, Item
5 #243-3738, Item #1163-5059, Item #961-0460 and Item #1090-1247.

6 2.3 "Accessible Component" means any leather, synthetic leather or poly vinyl chloride
7 ("PVC"), vinyl or other soft plastic component or material of a Covered Product that could be
8 touched by a person during reasonably foreseeable use of an undamaged Covered Product.

9 2.4 The term "Lead Free" Covered Products shall mean Covered Products containing
10 Accessible Components, materials or other components that may be handled, touched or mouthed
11 by a consumer, and which components each yield less than 1.0 microgram of lead when using a
12 wipe test pursuant to NIOSH Test Method 9100 and each yield less than 100 parts per million
13 ("ppm") lead when each such component material is analyzed pursuant to EPA testing
14 methodologies 3050B and 6010B, or equivalent methodologies utilized by federal or state agencies
15 for the purpose of determining lead content in a solid substance and suitable for the material being
16 tested.

17 2.5 The term "Lead Free Standard" shall mean the above-referenced standard recited in
18 Section 2.4 that will cause a Covered Product to qualify as Lead Free.

19 2.6 "Manufacture", "manufactured" and "manufactures" have the meaning defined in
20 Section 3(a)(10) of the Consumer Product Safety Act ("CPSA") [15 U.S.C. § 2052(a)(10)].

21 2.7 "Vendor" or "Vendors" shall mean those up-stream entities from which Gresham
22 receives Covered Products that Gresham intends to sell or offer for sale in California.

23 2.8 "Effective Date" shall mean April 15, 2013.

24 **3. INJUNCTIVE RELIEF**

25 **3.1 Formulation Commitment**

26 **3.1.1** No later than April 15, 2013, Defendant shall provide the Lead Free Standard, to its
27 then-current Vendors of Covered Products that Defendant intends to sell or offer for sale in
28 California or sell or offer for sale to a retailer that Defendant reasonably understands maintains

1 retails outlets in California, and shall instruct each Vendor to use reasonable efforts to provide
2 Covered Products that comply with such Lead Free Standard expeditiously. In addressing the
3 obligation set forth in the preceding sentence, Defendant shall not employ statements that will
4 encourage a Vendor to delay compliance with the Lead Free Standard. Upon request, Defendant
5 shall provide Plaintiff with copies of such Vendor notification and Plaintiff shall regard such copies
6 as confidential business information.

7 **3.1.2** After May 1, 2013, Defendant shall not distribute, cause to be distributed, sell or
8 cause to be sold, in California or for distribution to or sale to any retailer that Defendant reasonably
9 understands to maintain retail outlets in California, any Covered Product that is not Lead Free.

10 **3.1.3 Previously Obtained or Distributed Covered Products; Product Warnings.**

11 Defendant certifies that prior formulations of Covered Products that may not or do not meet
12 the Lead Free standard have been removed from all California stores reasonably within the direct
13 chain of supply from Defendant. Defendant further certifies that no other inventory of Covered
14 Products that do not meet the Lead Free Standard will be distributed to California after April 15,
15 2013. Based upon this certification, no interim warning provisions for non-reformulated Covered
16 Products is necessary.

17 **4. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(B)**

18 In settlement of all the claims referred to in this Consent to Judgment, Gresham shall pay a
19 total of \$12,000.00 in civil penalties in accordance with this Section. Each penalty payment will be
20 allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the
21 funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHHA”) and the remaining 25% of the penalty remitted to Brimer, as follows:

22 **4.1 Initial Civil Penalty**

23 Gresham shall pay an initial civil penalty in the amount of \$8,000.00 on or before April 20,
24 2013. Gresham shall issue two separate checks to: (a) “OEHHHA” in the amount of \$6,000.00 and (b)
25 “The Chanler Group in Trust for Russell Brimer” in the amount of \$2,000.00. All penalty payments
26 shall be delivered to the addresses listed in Section 4.4 below.

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1 **4.2 Final Civil Penalty**

2 Gresham shall pay a final civil penalty of \$4,000.00 on or before May 20, 2013. The final civil
3 penalty shall be waived in its entirety, however, if, no later than May 1, 2013, an officer of Gresham
4 provides Brimer with written certification that, as of the date of such certification and continuing
5 into the future, Gresham has met and will meet the Lead Free reformulation standard specified in
6 Section 2.4 above, such that all Products manufactured, imported, distributed, sold and offered for
7 sale in California by Gresham after May 1, 2013, are reformulated, Lead Free Products. Brimer
8 must receive any such certification on or before April 15, 2013. The certification in lieu of a final
9 civil penalty payment provided by this Section is a material term, and time is of the essence.
10 Absent waiver of this final penalty, Gresham shall, following the payment procedures in Section
11 4.4, issue two separate checks for its final civil penalty payments to: (a) "OEHHA" in the amount of
12 \$3,000.00; and (b) "The Chanler Group in Trust for Russell Brimer" in the amount of \$1,000.00.

13 **4.3 Augmentation of Penalty Payments**

14 For purposes of the penalty assessment under this Consent To Judgment, plaintiff is relying
15 entirely upon defendant and its counsel for accurate, good faith reporting to plaintiff of the nature
16 and amounts of relevant sales activity. If within nine (9) months of the Effective Date, plaintiff
17 discovers and presents to Defendant evidence that the Noticed Product has been distributed by
18 Gresham in sales volumes materially different than those identified by Defendant prior to execution
19 of this Agreement, then Defendant shall be liable for an additional penalty amount of \$10,000.
20 Defendant shall also be liable for any reasonable, additional attorney fees expended by plaintiff in
21 discovering such additional retailers or sales. Plaintiff agrees to provide Defendant with a written
22 demand for all such additional penalties and attorney fees under this Section. After service of such
23 demand, defendant shall have thirty (30) days to meet and confer regarding the demand and
24 submit such payment to plaintiff in accordance with the method of payment of penalties identified
25 in Sections 4.4. Should this thirty (30) day period pass without any such resolution between the
26 parties and payment of such additional penalties and fees, plaintiff shall be entitled to file a formal
27 legal claim for damages for breach of this contract and the prevailing party in a breach of contract
28 action shall be entitled to all reasonable attorney fees and costs relating to that action.

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4.4 Payment Procedures

4.4.1. Issuance of Payments. Payments shall be delivered as follows:

(a) All payments owed to Brimer, pursuant to Sections 4.1 through 4.3, shall be delivered to the following payment address:

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

(b) All payments owed to OEHHHA (EIN: 68-0284486), pursuant to Sections 4.1 through 4.2, shall be delivered directly to OEHHHA (Memo line "Prop 65 Penalties") at the following addresses:

For United States Postal Service Delivery:

Mike Gyrics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyrics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

With a copy of the checks payable to OEHHHA mailed to The Chanler Group at the address set forth above in 4.4.1(a), as proof of payment to OEHHHA.

4.4.2 Issuance of 1099 Forms. After each penalty payment, Gresham shall issue separate 1099 forms for each payment to Brimer, whose address and tax identification number shall be furnished upon request after this Consent Judgment has been fully executed by the Parties, and OEHHHA at the addresses listed in Section 4.4.1 above.

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

2 The Parties acknowledge that Brimer and his counsel offered to resolve this dispute without
3 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
4 issue to be resolved after the material terms of the agreement had been settled. Brimer then
5 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
6 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to
7 Brimer and his counsel under general contract principles and the private attorney general doctrine
8 codified at California Code of Civil Procedure § 1021.5, for all work performed (and to be
9 performed) through the mutual execution of this agreement and obtaining court approval thereof
10 in accordance with law.

11 Gresham shall pay a total of \$38,500.00 for fees and costs incurred as a result of
12 investigating, bringing this matter to Gresham’s attention, negotiating a settlement in the public
13 interest and obtaining court approval of that settlement. Gresham shall pay \$4,000.00 of the
14 \$38,500.00 total on or before April 20, 2013. Gresham shall pay \$12,000.00 of the \$38,500.00 total on
15 or before May 20, 2013. Gresham shall pay \$11,500.00 of the \$38,500.00 total on or before June 20,
16 2013. Gresham shall pay the remaining \$11,000.00 of the \$38,500.00 total on or before July 20, 2013.
17 Gresham shall issue a separate 1099 for the total fees and costs payment (EIN: 94-3171522), shall
18 make all fee/cost reimbursement payments checks payable to “The Chanler Group” and shall
19 deliver each such payment to the address listed in Section 4.4.1 above. Any failure by Gresham to
20 pay any portion of the agreed fees and costs on or before the stated due date shall result in the
21 additional imposition of simple 10% per annum interest on such delayed payment until paid.

22 **6. CLAIMS COVERED AND RELEASE**

23 **6.1 Brimer’s Releases of Gresham**

24 This Consent To Judgment is a full, final, and binding resolution between Brimer, on behalf
25 of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and
26 in the interest of the general public, and Gresham and its attorneys, successors, licensors and
27 assigns (“Defendant Releasees”), and all entities to whom Gresham directly or indirectly distribute
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1 or sell Covered Products, including but not limited to distributors, wholesalers, customers, retailers,
2 franchisees, cooperative members, licensors and licensees (“Downstream Defendant Releasees”) of
3 any violation of Proposition 65 that has been or could have been asserted against Defendant
4 Releasees and Downstream Defendant Releasees regarding the failure to warn about exposure to
5 the Listed Chemical arising in connection with Covered Products manufactured, sourced,
6 distributed, or sold by Defendant Releasees prior to the Effective Date. Gresham’s compliance with
7 this Consent To Judgment shall constitute compliance with Proposition 65 with respect to the Listed
8 Chemical in the Covered Products after the Effective Date.
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10 **6.1.1** Brimer on behalf of himself, his past and current agents, representatives,
11 attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives
12 with respect to Covered Products all rights to institute or participate in, directly or indirectly, any
13 form of legal action and releases all claims, including, without limitation, all actions, and causes of
14 action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties,
15 losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys’ fees)
16 of any nature whatsoever, whether known or unknown, fixed or contingent (collectively “claims”),
17 against Defendant Releasees and Downstream Defendant Releasees that arise under Proposition 65
18 or any other statutory or common law claims that were or could have been asserted in the public
19 interest, as such claims relate to Defendant Releasees’ and Downstream Defendant Releasees’
20 alleged failure to warn about exposures to the Listed Chemical contained in the Covered Products.

21 **6.1.2** Brimer also, in his individual capacity only and *not* in his representative
22 capacity, 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, known
25 or unknown, suspected or unsuspected, arising out of the subject matter of the Complaint as to
26 Covered Products manufactured, distributed or sold by Defendant Releasees. Brimer
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1 acknowledges that he is familiar with Section 1542 of the California Civil Code, which provides as
2 follows:

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

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

15 This Section 6.1 release is expressly limited to those claims that arise under Proposition 65,
16 as such claims relate to Defendant's alleged failure to warn about exposures to or identification of
17 the Listed Chemical contained in the Covered Products and as such claims are identified in the
18 Proposition 65 60-Day Notice to Defendant.

19 Nothing in this Section affects Brimer's right to commence or prosecute an action under
20 Proposition 65 against any person other than Defendant Releasees and Downstream Defendant
21 Releasees.

22 The Parties further understand and agree that this Section 6.1 release shall not extend
23 upstream to any entities, other than Defendant, that manufactured the Covered Products or any
24 component parts thereof, or any distributors or suppliers who sold the Covered Products or any
25 component parts thereof to Defendant.

26 This Section 6.1 release is expressly limited to any alleged violations that occur prior to
27 thirty (30) days after the Effective Date and does not release any person, party or entity from any
28 liability for any violation of Proposition 65 regarding the Covered Products that occurs more than
thirty (30) days after the Effective Date.

1 **6.1.3** Upon court approval of the Consent To Judgment, and entry of Judgment
2 upon this Consent to Judgment by the Court, the Parties waive their respective rights to a hearing
3 or trial on the allegations of the Complaint.

4 **6.2 Gresham's Release of Brimer**

5 **6.2.1** Gresham waives any and all claims against Brimer, his attorneys, and other
6 representatives for any and all actions taken or statements made (or those that could have been
7 taken or made) by Brimer and his attorneys and other representatives, whether in the course of
8 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
9 and/or with respect to the Covered Products.

10 **6.2.2** Gresham also provides a general release herein which shall be effective as a
11 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
12 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Gresham of any
13 nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject
14 matter of the Action. Gresham acknowledges that it is familiar with Section 1542 of the California
15 Civil Code, which provides as follows:

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

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

27 **7. SEVERABILITY**

28 If, subsequent to court approval of this Consent To Judgment, any of the provisions of this
Consent To Judgment are held by a court to be unenforceable, the validity of the enforceable

1 provisions remaining shall not be adversely affected, unless the Court finds that any unenforceable
2 provision is not severable from the remainder of the Consent To Judgment.

3 **8. COURT APPROVAL**

4 This Consent To Judgment is effective upon execution but must also be approved by the
5 Court. If this Consent To Judgment is not approved by the Court in its entirety, the Parties shall
6 meet and confer to determine whether to modify the terms of the Consent To Judgment and to
7 resubmit it for approval. In meeting and conferring, the Parties agree to undertake any actions
8 reasonably necessary to amend and/or modify this Consent To Judgment in order to further the
9 mutual intention of the Parties in entering into this Consent To Judgment.

10 The Consent to Judgment shall become null and void if, for any reason, it is not approved
11 and a Judgment entered by the Court within one year after it has been fully executed by all Parties.
12 If the Consent to Judgment becomes null and void after any payment of monies under this
13 agreement to The Chanler Group in trust, such monies shall be returned to Gresham by payment of
14 such monies to its counsel, in trust for Gresham.

15 If this Consent To Judgment is not approved and Judgment entered by the Court, and the
16 Parties have exhausted their meet and confer efforts pursuant to this Section, upon fifteen (15) days
17 written notice, all payments made by defendant shall be refunded to defendant and the Action shall
18 return to *status quo ante* as if there had been no settlement, and nothing in this proposed Consent To
19 Judgment shall be relevant, admissible, discoverable or otherwise considered for the purpose of
20 proving Gresham's liability for plaintiff's claims.

21 **9. GOVERNING LAW**

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

24 **10. NOTICES**

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

27 For Gresham, to:

28 Greg Joseph, President

1 Gresham Joseph & Reitan Sales, Inc.
2 2250 Bush Drive, Suite 100
3 McKinney, TX 75070

4 With copy to their counsel at

5 Michael Kelsheimer, Esq.
6 Looper Reed & McGraw PC
7 1601 Elm Street, Suite 4600
8 Dallas, Texas 75201

9 For Brimer to:

10 Proposition 65 Coordinator
11 The Chanler Group
12 2560 Ninth Street
13 Parker Plaza, Suite 214
14 Berkeley, CA 94710-2565

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

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

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

20 **12. MODIFICATION**

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

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

25 The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion
26 is required to obtain judicial approval of this Consent To Judgment. In furtherance of obtaining
27 such approval, Brimer and Gresham and their respective counsel agree to mutually employ their
28 best efforts to support the entry of this agreement as a Consent To Judgment and obtain approval of
the Consent To Judgment - sufficient to render a formal judgment approving this agreement - by
the Court in a timely manner. Any effort by Brimer or Gresham to impede judicial approval of this
Consent To Judgment shall subject the impeding party to liability for attorney fees and costs

1 incurred by the other party regarding such conduct to the extent the Court deems such liability to
2 be appropriate.

3 **14. ENTIRE AGREEMENT**

4 This Consent To Judgment contains the sole and entire agreement and understanding of the
5 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
6 negotiations, commitments, and understandings related hereto. No representations, oral or
7 otherwise, express or implied, other than those contained herein have been made by any Party
8 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
9 to exist or to bind any of the Parties. No supplementation, modification, waiver, or termination of
10 this Consent To Judgment shall be binding unless executed in writing by the Party to be bound. No
11 waiver of any of the provisions of this Consent To Judgment shall be deemed or shall constitute a
12 waiver of any of the other provisions whether or not similar, nor shall such waiver constitute a
13 continuing waiver

14 **15. ATTORNEY'S FEES**

15 15.1 Should Brimer prevail on any motion, application for order to show cause or other
16 proceeding to enforce a violation of this Consent To Judgment, Brimer shall be entitled to his
17 reasonable attorney fees and costs incurred as a result of such motion, order or application,
18 consistent with C.C.P. § 1021.5. Should Defendant prevail on any motion, application for order to
19 show cause or other proceeding to enforce a violation of this Consent To Judgment, Defendant shall
20 be entitled to seek its reasonable attorney fees and costs incurred as a result of such motion, order
21 or application upon a finding that Brimer's prosecution of the motion or application lacked
22 substantial justification. For purposes of this Consent To Judgment , the term substantial
23 justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil
24 Procedure §§ 2016, *et seq.*

25 15.2 Except as specifically provided hereinabove, each Party shall bear its own costs and
26 attorney's fees in connection with this Action and the Notice.

27 15.3 Nothing in this Section shall preclude a Party from seeking an award of sanctions
28 pursuant to law.

1 **16. NEUTRAL CONSTRUCTION**

2 Both Parties and their counsel have participated in the preparation of this Consent To
3 Judgment and this Consent To Judgment is the result of the joint efforts of the Parties. This Consent
4 To Judgment was subject to revision and modification by the Parties and has been accepted and
5 approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
6 ambiguity existing in this Consent To Judgment shall not be interpreted against any Party as a
7 result of the manner of the preparation of this Consent To Judgment. Each Party to this Consent To
8 Judgment agrees that any statute or rule of construction providing that ambiguities are to be
9 resolved against the drafting Party should not be employed in the interpretation of this Consent To
10 Judgment and, in this regard, the Parties hereby waive California Civil Code Section 1654.

11 **17. COUNTERPARTS, FACSIMILE SIGNATURES**

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

15 **18. AUTHORIZATION**

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

19 **IT IS SO AGREED**

20 Dated: April 11, 2013 21  22 _____ 23 Plaintiff Russell Brimer 24	Dated: April __, 2013 _____ Greg Joseph, President Gresham, Joseph & Reitan Sales, Inc.
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1 16. NEUTRAL CONSTRUCTION

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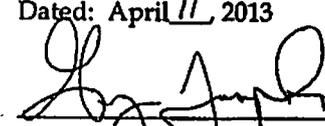
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14 together, shall constitute one and the same document.

15 18. AUTHORIZATION

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

19 IT IS SO AGREED

<p>20 Dated: April __, 2013</p> <p>21</p> <p>22 _____</p> <p>23 Plaintiff Russell Brimer</p> <p>24</p>	<p>20 Dated: April 11, 2013</p> <p>21 </p> <p>22 _____</p> <p>23 Greg Joseph, President</p> <p>24 Gresham, Joseph & Reitan Sales, Inc.</p>
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