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9 RUSSELL BRIMER

FILED

DEC 06 2011

KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: S. Diener, Deputy



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

13 RUSSELL BRIMER,

14 Plaintiff,

15 v.

16 TIGER ACCESSORY GROUP LLC and
17 DOES 1-150,

18 Defendants.

Case No. CIV1101388

**[PROPOSED] JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AGREEMENT**

Action Filed : March 16, 2011

1 In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendant TIGER
2 ACCESSORY GROUP LLC, having agreed through their respective counsel that a judgment be
3 entered pursuant to the terms of the Consent To Judgment entered into by the parties in resolution of
4 this Proposition 65 action, and following the issuance of an order approving the Parties' Consent to
5 Judgment on this day, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to
6 Health & Safety Code § 25249:7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby
7 entered in accordance with the terms of the Consent To Judgment attached hereto as Exhibit A. By
8 stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under Code of Civil
9 Procedure § 664.6.
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11 **IT IS SO ORDERED.**

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13 Dated: 12/6/11

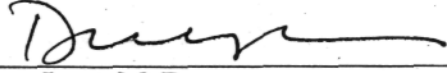
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15 _____
16 Hon. Lynn M. Duryee
17 Judge Of The Superior Court
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EXHIBIT A

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Clifford A. Chanler, State Bar No. 135534
Gregory M. Sheffer, State Bar No. 173124
THE CHANLER GROUP
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Attorneys for Plaintiff
RUSSELL BRIMER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF MARIN
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,

Plaintiff,

v.

TIGER ACCESSORY GROUP LLC and DOES
1-150,

Defendants.

Case No. CIV1101388

**CONSENT TO JUDGMENT AS TO
DEFENDANT TIGER ACCESSORY GROUP
LLC**

Trial Date: Not Yet Assigned
Action Filed: March 16, 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 Tiger Accessory Group LLC (“Tiger Accessory”) with Brimer
5 and Tiger Accessory 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 Tiger Accessory employs 10 or more persons and is a person in the course of doing
12 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California
13 Health & Safety Code §§ 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Brimer alleges that Tiger Accessory manufactured, distributed and/or sold, in the State
16 of California the Detailer’s Choice MicroFiber Exterior Car Duster, Item No. 8318, Product No.
17 0 73319 08318 7, composed of materials that exposed users to lead, without first providing
18 “clear and reasonable warning” under Proposition 65. Lead is listed as a reproductive and
19 developmental toxicant pursuant to Proposition 65 and is referred to hereinafter as the “Listed
20 Chemical.”

21 **1.5 Notice of Violation**

22 On October 15, 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 duster products sold in California. To the best of the Parties’ knowledge, no public enforcer has
27 commenced and is diligently prosecuting the allegations set forth in the Notice.

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1.6 Complaint

On March 16, 2011, Brimer, acting, in the interest of the general public in California, filed a Complaint in the Marin 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 duster products (the "Action").

1.7 No Admission

This Consent To Judgment resolves claims that are denied and disputed by Tiger Accessory. The Parties enter into this Consent To 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 To 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 To 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 Tiger Accessory's obligations, responsibilities, and duties under this Consent To Judgment.

1.8 Consent to Jurisdiction

For purposes of this Consent To Judgment only, the Parties stipulate that this Court has jurisdiction over Tiger Accessory as to the allegations contained in the Complaint, that venue is proper in Marin County, and that this Court has jurisdiction to enter and enforce the provisions of this Consent To 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 16, 2011 Complaint.

3 2.2 The term "Covered Products" means any Detailer's Choice MicroFiber Exterior
4 Car Duster, Item No. 8318, Product No. 0 73319 08318 7, manufactured with materials
5 containing lead.

6 2.3 The term "Effective Date" shall mean October 1, 2011.

7 2.4 The term "Lead Free" Covered Products shall mean Covered Products containing
8 materials or other components that may be handled, touched or mouthed by a consumer, and
9 which components yield less than 1.0 microgram of lead when using a wipe test pursuant to
10 NIOSH Test Method 9100, and yield less than 300 parts per million ("ppm") lead when analyzed
11 pursuant to EPA testing methodologies 3050B and 6010B, or equivalent methodologies utilized
12 by federal or state agencies for the purpose of determining lead content in a solid substance.

13 **3. INJUNCTIVE RELIEF**

14 **3.1 Formulation Commitment**

15 3.1.1 As of the Effective Date, Defendant shall not order, cause to be ordered,
16 manufacture or cause to be manufactured any Covered Product for distribution to or sale in
17 California that is not Lead Free, and Defendant shall also not distribute, cause to be distributed,
18 sell or cause to be sold, in California, any Covered Product that is not Lead Free, unless a clear
19 and reasonable warning is attached to each such Covered Product as described under Section
20 3.2.2.

21 3.1.2 As of the Effective Date, Defendant shall not sell, ship or otherwise distribute any
22 Covered Product or cause to be sold, shipped or otherwise distributed, any Covered Product
23 that is not Lead Free, to any entity that Defendant has reason to know either will sell the
24 Covered Product in California or has retail stores in California unless such product incorporates
25 a warning as described in Section 3.2.2.

26 3.1.3 For every Covered Product Defendant claims is Lead Free, Defendant shall
27 maintain a copy of any testing of such product demonstrating compliance with this section for
28 two years after the date of such testing performed to comply with this section.

1 **3.2 Previously Obtained or Distributed Covered Products.**

2 **3.2.1 Customer Notification**

3 Within twenty (20) days of the Effective Date, Tiger Accessory shall issue an express,
4 written letter (electronic or otherwise) notice to (1) each California retail store or establishment to
5 which it sold or supplied any Covered Products within one year prior to the Effective Date, (2)
6 any California store or establishment from which defendant sold any Covered Products and (3)
7 any other store or establishment that Defendant is reasonably is aware of having sold any
8 Covered Product in California within one year prior to the Effective Date, that identifies the
9 Covered Product (by brand and trade name, SKU, ISB and any other identifying name or
10 number utilized by defendant in the sale of the Covered Product), advises the recipient that each
11 such identified Covered Product “contains LEAD, a chemical known to the State of California to
12 cause birth defects and other reproductive harm”, and requests such recipient to either label the
13 Covered Product with the product label identified in Section 3.2.2(a)(i) or to return the Covered
14 Product to either such defendant at that defendant’s sole expense. Tiger Accessory shall
15 maintain records of all compliance correspondence or other communication generated pursuant
16 to this Section for two (2) years from the Effective Date and shall produce copies of such records
17 upon written request by Brimer.

18 **3.2.2 Product Warnings**

19 Commencing on the Effective Date, Tiger Accessory shall not sell, ship, or offer to be sold
20 or shipped for sale in California any Covered Products that require a warning under Section 3.1
21 unless such Covered Products are sold or shipped with one of the clear and reasonable warnings
22 set forth hereafter. The warning language set forth hereafter is the minimum form and content
23 of the required warning language and Defendant may include other accurate information so
24 long as it does not render the warning required herein to become unclear or unreasonable.

25 For any distribution or sale of Covered Products by Tiger Accessory that is reasonably
26 understood to not be directly to an end user of such Covered Products, Defendant shall include a
27 warning that states:
28

1 **WARNING:** This product contains chemicals known to the
2 State of California to cause birth defects or
 other reproductive harm.

3 Defendant shall either affix such warning to the packaging, labeling, or directly on any Covered
4 Products with such conspicuousness as compared with other words, statements, designs, or
5 devices as to render it likely to be read and understood by an ordinary individual under
6 customary conditions *before* purchase or use or Defendant shall include in any shipment of
7 Covered Products a quantity of product hang tags or self-adhesive stickers, containing this
8 warning language, in an amount equal to 120% of the units of Covered Product in the shipment.

9 For any distribution or sale of Covered Products by Tiger Accessory that is reasonably
10 understood to be to an end user of such Covered Products, Defendant shall include a warning as
11 set forth hereafter. Each warning shall be prominently placed on or attached to the Covered
12 Product with such conspicuousness as compared with other words, statements, designs, or
13 devices as to render it likely to be read and understood by an ordinary individual under
14 customary conditions *before* purchase or use. Each warning shall be provided in a manner such
15 that the consumer or user understands to which *specific* Covered Product the warning applies, so
16 as to minimize the risk of consumer confusion.

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

18 (i) **Product Labeling.** Tiger Accessory may affix a warning to the
19 packaging, labeling, or directly on any Covered Products sold or intended for sale at a retail
20 outlet in California that states:

21 **WARNING:** This product contain chemicals known to the
22 State of California to cause birth defects or
 other reproductive harm.

23 (ii) **Point-of-Sale Warnings.** Alternatively, Tiger Accessory may
24 provide warning signs in the form below to retail outlets selling the Covered Product in
25 California, or to such stores they are reasonably aware of having inventory or orders of the
26 Covered Products, with instructions to post the signs *in immediate proximity* to the point of
27 display of any and all such Covered Products for the benefit of its customers.
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WARNING: This product contain chemicals known to the State of California to cause birth defects or other reproductive harm.

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

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

WARNING: This product contain chemicals known to the State of California to cause cancer, birth defects or other reproductive harm.

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

WARNING: Certain products identified with this symbol ▼ and offered for sale in this catalog contain chemicals known to the State of California to cause birth defects and other reproductive harm.

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

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

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

12 **WARNING:** This product contain chemicals known to the
13 State of California to cause birth defects or
14 other reproductive harm.

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

19 **WARNING:** Products identified on this page with the
20 following symbol ▼ contain chemicals
21 known to the State of California to cause
22 birth defects and other reproductive harm.

23 3.2.3 Tiger Accessory shall maintain records of all compliance correspondence,
24 inventory reports or other communication generated pursuant to Section 3.2.2 for three (3) years
25 from the Effective Date and shall produce copies of such records upon written request by Brimer.

26 4. MONETARY PAYMENTS

27 4.1 Payments Pursuant to Health & Safety Code § 25249.7(b)

28 Subject to the potential offsets described in Section 4.2 below, Defendant shall pay a total
of \$15,000.00 in civil penalties to be apportioned in accordance with California Health & Safety

1 Code §25192, with 75% of these funds (\$11,250.00) remitted to the State of California's Office of
2 Environmental Health Hazard Assessment and the remaining 25% (\$3,750.00) of these penalty
3 monies remitted to Brimer as provided by California Health & Safety Code §25249.12(d).

4 Defendant shall issue two separate checks for the penalty payment: (a) one check made
5 payable to The Chanler Group in Trust for the State of California's Office of Environmental
6 Health Hazard Assessment ("The Chanler Group in Trust for OEHHA") for 75% of the total
7 penalty required and (b) one check to "The Chanler Group in Trust for Russell Brimer" for the
8 remaining 25% of the total penalty required. Two separate 1099s shall be issued for the above
9 payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN:
10 68-0284486). The second 1099 shall be issued to Brimer, whose address and tax identification
11 number shall be furnished, upon request, at least five calendar days before payment is due. The
12 payments shall be delivered on or before thirty (30) days after the Effective Date, at the following
13 address:

14 The Chanler Group
15 Attn: Proposition 65 Controller
16 2560 Ninth Street
17 Parker Plaza, Suite 214
18 Berkeley, CA 94710-2565

17 **4.2 Reduction in Penalty Payments**

18 Tiger Accessory may reduce the total penalty payment due pursuant to section 4.1 above
19 by satisfying the following penalty offset options (in which event the division of remaining total
20 penalties due shall be proportioned between OEHHA and Brimer in the same ratio as set forth in
21 section 4.1 above):

22 (a) Tiger Accessory may realize a \$3,500.00 reduction in the total penalty amount due
23 under section 4.1 above if that party agrees, by express, written confirmation to counsel for
24 plaintiff, that, no later than thirty (30) days after the Effective Date, the term "in California" in
25 section 3.2.2 above shall be deemed to have been replaced by the term "within the United
26 States."

27 (b) Tiger Accessory may realize a \$3,500.00 reduction in the total penalty amount due
28 under section 4.1 above if that party agrees, by express, written confirmation to counsel for

1 plaintiff, no later than thirty (30) days after the Effective Date, that the definition of the term
2 "Lead Free" in section 2.4 above shall be deemed to have been replaced by the following
3 definition: The term "Lead Free" Covered Products shall mean Covered Products containing
4 components that may be handled, touched or mouthed by a consumer, and which components
5 yield less than 1.0 microgram of lead when using a wipe test pursuant to NIOSH Test Method
6 9100, and yield less than 100 parts per million ("ppm") lead when analyzed pursuant to EPA
7 testing methodologies 3050B and 6010B, or equivalent methodologies utilized by federal or state
8 agencies for the purpose of determining lead content in a solid substance.

9 **4.3 Augmentation of Penalty Payments**

10 For purposes of the penalty assessment under this Consent To Judgment, plaintiff is
11 relying entirely upon defendant and its counsel for accurate, good faith reporting to plaintiff of
12 the nature and amounts of relevant sales activity. If within twelve (12) months of the Effective
13 Date, plaintiff discovers and presents to Defendant evidence that the Covered Products have
14 been distributed by Tiger Accessory in sales volumes materially different than those identified
15 by Defendant prior to execution of this Agreement, then Defendant shall be liable for an
16 additional penalty amount of \$150 per quantity of Covered Product sold prior to execution of
17 this Agreement but not identified by Defendant to plaintiff. Defendant shall also be liable for
18 any reasonable, additional attorney fees expended by plaintiff in discovering such additional
19 retailers or sales. Plaintiff agrees to provide Defendant with a written demand for all such
20 additional penalties and attorney fees under this Section. After service of such demand,
21 defendant shall have thirty (30) days to agree to the amount fees and penalties owing by
22 Defendant and submit such payment to plaintiff in accordance with the method of payment of
23 penalties and fees identified in Sections 4.1 and 4.4. Should this thirty (30) day period pass
24 without any such resolution between the parties and payment of such additional penalties and
25 fees, plaintiff shall be entitled to file a formal legal claim for damages for breach of this contract
26 and shall be entitled to all reasonable attorney fees and costs relating to such claim.

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4.4 Penalty Payment Terms

Payment of the amount due pursuant to sections 4.1 and 4.2 shall be delivered to Brimer's counsel on or before thirty (30) days after the Effective Date, at the following address:

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

5. REIMBURSEMENT OF FEES AND COSTS

5.1 Attorney Fees and Costs

5.1.1 The Parties reached an accord on the compensation due to Brimer and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure (CCP) §1021.5, for all work performed through the mutual execution of this agreement and approval of the Consent Judgment by the trial court, excluding any fees on appeal. Tiger Accessory shall pay Brimer and his counsel a total of \$37,000.00 as compromise reimbursement of a portion of the fees and costs incurred by Brimer and his counsel as a result of investigating, bringing this matter to Tiger Accessory's attention, litigating, negotiating and proposing the entry of a consent to judgment in the public interest. It is expressly understood that the sum of \$37,000.00 shall include compensation for Brimer and his counsel as reimbursement for a portion of the additional attorney fees and costs that Brimer's counsel will expend in drafting, filing and appearing for hearing(s) on a motion for Court approval of this Consent To Judgment and for all statutory reporting and other activities reasonably necessary to secure conclusion of the statutory and legal procedures in the case.

5.1.2 Payment of the amount due pursuant to section 5.1.1 shall be delivered to Brimer's counsel on or before thirty (30) days after the Effective Date, at the following address:

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

1 **15. ATTORNEY'S FEES**

2 15.1 A Party who unsuccessfully brings or contests an action arising out of this
3 Consent To Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees
4 and costs unless the unsuccessful Party has acted with substantial justification. For purposes of
5 this Consent To Judgment, the term substantial justification shall carry the same meaning as
6 used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, *et seq.*

7 15.2 Except as specifically provided in the above paragraph and in Section 5.1, each
8 Party shall bear its own costs and attorney's fees in connection with this action.

9 15.3 Nothing in this Section 15 shall preclude a Party from seeking an award of
10 sanctions pursuant to law.

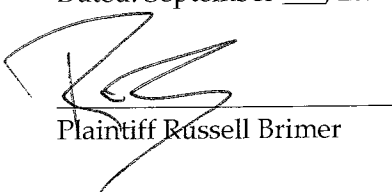
11 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

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 documents.

15 **17. 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: September 12, 2011</p> <p>21 </p> <p>22 Plaintiff Russell Brimer</p>	<p>23 Dated: September __, 2011</p> <p>24 _____</p> <p>25 Greg Purse, Chief Financial Officer</p> <p>26 Tiger Accessory Group LLC</p>
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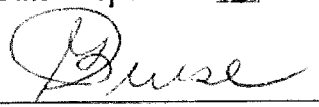
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17 Judgment on behalf of their respective Parties and have read, understood, and agree to all of the
18 terms and conditions of this Consent To Judgment.

19 **IT IS SO AGREED**

20 Dated: September __, 2011 21 _____ 22 Plaintiff Russell Brimer 23 24	Dated: September 13, 2011  25 _____ 26 Greg Purse, Chief Financial Officer 27 Tiger Accessory Group LLC 28
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