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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 TIGER ACCESSORY GROUP LLC and DOES
1-150,

15 Defendants.
16

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 **1.6 Complaint**

2 On March 16, 2011, Brimer, acting, in the interest of the general public in California, filed
3 a Complaint in the Marin County Superior Court, alleging violations by Defendant of Health &
4 Safety Code § 25249.6 based, *inter alia*, on the alleged exposures to lead contained in the
5 referenced duster products (the "Action").

6 **1.7 No Admission**

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

21 **1.8 Consent to Jurisdiction**

22 For purposes of this Consent To Judgment only, the Parties stipulate that this Court has
23 jurisdiction over Tiger Accessory as to the allegations contained in the Complaint, that venue is
24 proper in Marin County, and that this Court has jurisdiction to enter and enforce the provisions
25 of this Consent To Judgment. As an express part of this Agreement, pursuant to C.C.P. §664.6
26 the Court in which this action was filed shall retain jurisdiction over the parties to enforce the
27 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
3 other reproductive harm.

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

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

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

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

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

25 (ii) **Point-of-Sale Warnings.** Alternatively, Tiger Accessory may
26 provide warning signs in the form below to retail outlets selling the Covered Product in
27 California, or to such stores they are reasonably aware of having inventory or orders of the
28 Covered Products, with instructions to post the signs *in immediate proximity* to the point of
 display of any and all such Covered Products for the benefit of its customers.

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

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

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

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

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

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

26 The designated symbol must appear on the same page and in close proximity to the
27 display and/or description of the Covered Product. On each page where the designated symbol
28 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 **6. CLAIMS COVERED AND RELEASE**

2 **6.1 Brimer's Releases of Tiger Accessory**

3 6.1.1 This Consent To Judgment is a full, final, and binding resolution between Brimer,
4 on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or
5 assignees, and in the interest of the general public, and Tiger Accessory and its attorneys,
6 successors, and assigns ("Defendant Releasees"), and all entities to whom Tiger Accessory
7 directly or indirectly distribute or sell Covered Products, including but not limited to
8 distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees
9 ("Downstream Defendant Releasees") of any violation of Proposition 65 that has been or could
10 have been asserted against Defendant Releasees and Downstream Defendant Releasees
11 regarding the failure to warn about exposure to the Listed Chemical arising in connection with
12 Covered Products manufactured, sourced, distributed, or sold by Defendant Releasees prior to
13 the Effective Date. Tiger Accessory's compliance with this Consent To Judgment shall constitute
14 compliance with Proposition 65 with respect to the Listed Chemical in the Covered Products
15 after the Effective Date.

16 6.1.2 Brimer on behalf of himself, his past and current agents, representatives,
17 attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives
18 with respect to Covered Products all rights to institute or participate in, directly or indirectly,
19 any form of legal action and releases all claims, including, without limitation, all actions, and
20 causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
21 penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and
22 attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent
23 (collectively "claims"), against Defendant Releasees and Downstream Defendant Releasees that
24 arise under Proposition 65 or any other statutory or common law claims that were or could have
25 been asserted in the public interest, as such claims relate to Defendant Releasees' and
26 Downstream Defendant Releasees' alleged failure to warn about exposures to the Listed
27 Chemical contained in the Covered Products.
28

1 6.1.3 Brimer also, in his individual capacity only and *not* in his representative capacity,
2 provides a general release herein which shall be effective as a full and final accord and
3 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,
4 damages, losses, claims, liabilities and demands of Brimer of any nature, character or kind,
5 known or unknown, suspected or unsuspected, arising out of the subject matter of the
6 Complaint as to Covered Products manufactured, distributed or sold by Defendant Releasees.
7 Brimer acknowledges that he is familiar with Section 1542 of the California Civil Code, which
8 provides as follows:

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

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

22 The releases described in Sections 6.1.1, 6.1.2, and 6.1.3 are expressly limited to those
23 claims that arise under Proposition 65, as such claims relate to Defendant's alleged failure to
24 warn about exposures to or identification of the Listed Chemical contained in the Covered
25 Products and as such claims are identified in the Proposition 65 60-Day Notice to Defendant and
26 to the extent that any alleged violations occur prior to one month after the Effective Date. The
27 releases described in Sections 6.1.1, 6.1.2, and 6.1.3 do not release any person, party or entity
28 from any liability for any violation of Proposition 65 regarding the Covered Products that occurs
more than thirty (30) days after the Effective Date.

1 The Parties further understand and agree that the releases described in Sections 6.1.1,
2 6.1.2, and 6.1.3 shall not extend upstream to any entities, other than Defendant, that
3 manufactured the Covered Products or any component parts thereof, or any distributors or
4 suppliers who sold the Covered Products or any component parts thereof to Defendant.

5 6.1.4 Upon court approval of the Consent To Judgment, the Parties waive their
6 respective rights to a hearing or trial on the allegations of the Complaint.

7 **6.2 Tiger Accessory's Release of Brimer**

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

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

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

24 Tiger Accessory expressly waives and relinquishes any and all rights and benefits
25 that it may have under, or which may be conferred on it by the provisions of Section 1542
26 of the California Civil Code as well as under any other state or federal statute or common
27 law principle of similar effect, to the fullest extent that it may lawfully waive such rights
28 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

1 the discovery or existence of any such additional or different claims or facts arising out of
2 the released matters.

3 **7. SEVERABILITY**

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

8 **8. COURT APPROVAL**

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

12 **9. GOVERNING LAW**

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

15 **10. NOTICES**

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

18 For Tiger Accessory Group LLC to:

19 George Ruhl, President
20 Tiger Accessory Group LLC.
21 6700 Wildlife Way
22 Long Grove, IL 60047

22 With copy to their counsel at

23 Elizabeth Cason, Esq.
24 Foley & Lardner LLP
25 402 West Broadway, Suite 2100
26 San Diego, CA 92101-3542

26 For Brimer to:

27 Proposition 65 Coordinator
28 The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214

1 Berkeley, CA 94710-2565

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

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

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

7 **12. MODIFICATION**

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

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

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

21 **14. ENTIRE AGREEMENT**

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

28

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**

20 Dated: September <u>12</u> , 2011 21  22 _____ 23 Plaintiff Russell Brimer 24	Dated: September __, 2011 _____ 25 Greg Purse, Chief Financial Officer 26 Tiger Accessory Group LLC 27 28
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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.

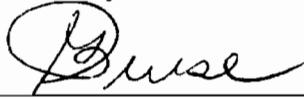
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<p>20 Dated: September __, 2011</p> <p>21</p> <p>22 _____ Plaintiff Russell Brimer</p>	<p>20 Dated: September 13, 2011</p> <p>21 </p> <p>22 _____ Greg Purse, Chief Financial Officer 23 Tiger Accessory Group LLC</p>
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