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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 LDI, LTD., LLC, ED TUCKER DISTRIBUTOR,  
15 INC. and DOES 1-150,

16 Defendants.

Case No. CIV 1300077

**CONSENT TO JUDGMENT AS  
TO DEFENDANTS LDI, LTD., LLC, ED  
TUCKER DISTRIBUTOR, INC.**

Action Filed: January 9, 2013  
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 Defendants LDI Ltd., LLC and Ed Tucker Distributor, Inc. (collectively  
5 “LDI” or “Defendants”) with Brimer and LDI 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 LDI Ltd., LLC and Ed Tucker Distributor, Inc. each employs 10 or more persons and each is  
12 a person in the course of doing business for purposes of the Safe Drinking Water and Toxic  
13 Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Brimer alleges that LDI manufactured, distributed and/or sold, in the State of California,  
16 certain types of vinyl-coated motorcycle locks made with vinyl/PVC materials containing Lead,  
17 including, but not limited to, Bully Locks, that exposed users to Lead without first providing “clear  
18 and reasonable warning” under Proposition 65. Lead is listed as a reproductive and developmental  
19 toxicant pursuant to Proposition 65 and is referred to hereinafter as the “Listed Chemical.”

20 **1.5 Notice of Violation**

21 On August 1, 2012, Brimer served Defendants and various public enforcement agencies with  
22 a document entitled “60-Day Notice of Violation” (“Notice”) that provided public enforcers and  
23 Defendants with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn  
24 consumers of the presence of Lead, a toxic chemical found in and on the vinyl/PVC materials of  
25 Defendants’ motorcycle lock products sold in California. Defendants received the 60-Day Notice of  
26 Violation. Each Defendant represents that, as of the date it executes this Consent To Judgment, it is  
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1 not aware of any public enforcer that is diligently prosecuting a Proposition 65 enforcement action  
2 related to Lead in its products, as identified in the 60-Day Notice.

3 **1.6 Complaint**

4 On January 9, 2013, Brimer, acting, in the interest of the general public in California, filed a  
5 Complaint in the Superior Court of the State of California for the County of Marin, alleging  
6 violations by Defendants of Health & Safety Code § 25249.6 based, *inter alia*, on the alleged  
7 exposures to Lead contained in the referenced products (the “Action”).

8 **1.7 No Admission**

9 This Consent To Judgment resolves claims that are denied and disputed by LDI. The Parties  
10 enter into this Consent To Judgment pursuant to a full and final settlement of any and all claims  
11 between the Parties for the purpose of avoiding prolonged litigation. Each 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 Defendants 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 Defendants of any fact,  
19 finding, conclusion, issue of law, or violation of law, such being specifically denied by Defendants.  
20 However, notwithstanding the foregoing, this section shall not diminish or otherwise affect LDI’s  
21 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 LDI as to the allegations contained in the Complaint, that venue is proper in the  
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  
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1 the Court in which this action was filed shall retain jurisdiction over the parties to enforce the  
2 settlement until performance in full of the terms of the settlement.

3 **2. DEFINITIONS**

4 2.1 The term "Complaint" shall mean the January 9, 2013, Complaint.

5 2.2 The term "Covered Products" means any motorcycle locks made with any  
6 Accessible Component containing Lead, including, but not limited to, Bully Locks Part #13-2210.

7 2.3 "Accessible Component" means any vinyl component or vinyl material of a Covered  
8 Product that could be touched by a person during reasonably foreseeable use

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

16 2.5 The term "LEAD Free Standard" shall mean the above-referenced standard recited  
17 in Section 2.4 that will cause a Covered Product to qualify as LEAD Free.

18 2.6 "Manufacture", "manufactured" and "manufactures" have the meaning defined in  
19 Section 3(a)(10) of the Consumer Product Safety Act ("CPSA") [15 U.S.C. § 2052(a)(10)], as amended  
20 from time to time.

21 **3. INJUNCTIVE RELIEF**

22 **3.1 Reformulation Commitment.**

23 **3.1.1** No later than March 31, 2013, Defendant shall provide the LEAD Free  
24 Standard, to its then-current Vendors of any Covered Products and shall instruct each Vendor to  
25 use reasonable efforts to provide Covered Products that comply with the LEAD Free Standard  
26 expeditiously. In addressing the obligation set forth in the preceding sentence, Defendant shall not  
27 employ statements that will encourage a Vendor to delay compliance with the LEAD Free  
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1 Standard. Upon request, Defendant shall provide Plaintiff with copies of such Vendor notification  
2 and Plaintiff shall regard such copies as confidential business information.

3 **3.1.2** As of September 1, 2013, Defendants shall not manufacture, cause to be  
4 manufactured, purchase or otherwise obtain any Covered Product for sale in California, or for sale  
5 to any retailer that Defendant reasonably understands maintains retail outlets in California, that is  
6 not LEAD Free.

7 **3.2 Previously Obtained or Distributed Covered Products.**

8 **3.2.1 Product Warnings**

9 Commencing on March 31, 2013, and until September 1, 2013, Defendants shall not  
10 distribute, cause to be distributed, sell or cause to be sold in or into California, or distribute, cause  
11 to be distributed, sell or cause to be sold to any retailer that Defendant reasonably understand  
12 maintains retail outlets in California, any Covered Product unless such Covered Product is  
13 confirmed to be LEAD Free under Section 2.4 or is sold or shipped by Defendants with one of the  
14 clear and reasonable warnings set forth hereafter.

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

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

21 (i) **Product Labeling.** LDI may affix a warning to the packaging,  
22 labeling, or directly on any Covered Product sold to or at a retail outlet in California, or sold to any  
23 retailer that Defendants reasonably understand maintains retail outlets in California, that states:

24 **WARNING:** This product contains Lead, a chemical known to the State of  
California to cause birth defects and other reproductive harm.

25 (ii) **Point-of-Sale Warnings.** Alternatively, LDI may provide warning  
26 signs in the form below to retailers or retail outlets in California, which retailers or stores it is  
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1 If Defendants elect to provide warnings in any mail order catalog, then the warnings must  
2 be included in all catalogs offering to sell one or more Covered Products printed after the Effective  
3 Date.

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

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

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

17 **WARNING:** Products identified on this page with the following symbol ▼ contain  
18 Lead, a chemical known to the State of California to cause birth  
defects and other reproductive harm.

19 **3.2.2** Commencing on September 1, 2013, LDI shall discontinue all California sales of any  
20 Covered Products that are not LEAD Free, regardless of compliance with Section 3.2.1.

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

22 In settlement of all the claims referred to in this Consent To Judgment, Defendants shall be  
23 jointly and severally responsible for making a total of \$12,000.00 in civil penalties in accordance  
24 with this section. Each penalty payment will be allocated in accordance with California Health &  
25 Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of  
26 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty  
27 remitted to Russell Brimer as follows:

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**4.1 Initial Civil Penalty**

Defendants shall pay an initial civil penalty in the amount of \$8,000.00 on or before April 15, 2013. Defendants shall issue two separate checks to: (a) "OEHHA" in the amount of \$6,000.00 and (b) "The Chanler Group in Trust for Russell Brimer" in the amount of \$2,000.00. All penalty payments shall be delivered to the addresses listed in Section 4.3 below.

**4.2 Final Civil Penalty**

Defendants shall pay a final civil penalty of \$4,000.00 on or before July 1, 2013. The final civil penalty shall be waived in its entirety, however, if, no later than July 1, 2013, an officer of each Defendant provides Brimer with written certification that, as of the date of such certification and continuing into the future, each Defendant has met the reformulation standard specified in Section 2.4 and 3.1.2. Brimer must receive any such certification on or before July 1, 2013. The certification in lieu of a final civil penalty payment provided by this Section is a material term, and time is of the essence. Absent waiver of the final penalty, Defendants shall issue two separate checks for its final civil penalty payments to: (a) "OEHHA" in the amount of \$3,000.00; and (b) "The Chanler Group in Trust for Russell Brimer" in the amount of \$1,000.00.

**4.3 Payment Procedures**

**4.3.1 Issuance of Payments.** Payments shall be delivered as follows:

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

For United States Postal Service Delivery:  
  
Mike Gyrics



1 Fiscal Operations Branch Chief  
2 Office of Environmental Health Hazard Assessment  
3 P.O. Box 4010  
4 Sacramento, CA 95812-4010

5 For Non-United States Postal Service Delivery:

6 Mike Gyrics  
7 Fiscal Operations Branch Chief  
8 Office of Environmental Health Hazard Assessment  
9 1001 I Street  
10 Sacramento, CA 95814

11 With a copy of the checks payable to OEHHA mailed to The Chanler  
12 Group at the address set forth above in 4.3.1(a), as proof of payment to  
13 OEHHA.

14 **4.3.2 Issuance of 1099 Forms.** After each penalty payment, Defendants shall issue  
15 separate 1099 forms for each payment to Russell Brimer, whose address and tax identification  
16 number shall be furnished upon request after this Consent To Judgment has been fully executed by  
17 the Parties, and OEHHA at the addresses listed in Section 4.3.1 above.

18 **4.3.3 Interest On Late Payment.** Any failure by Defendants to deliver any of the  
19 above-referenced fee and cost reimbursement payment to The Chanler Group within five business  
20 days of the date of the due date shall result in imposition of a 10% simple interest per annum  
21 assessment on the undelivered payment(s) until delivery.

22 **4.3.4 Augmentation of Penalty Payments**

23 For purposes of the penalty assessment under this Consent To Judgment, plaintiff is relying  
24 entirely upon defendant and its counsel for accurate, good faith reporting to plaintiff of the nature  
25 and amounts of relevant sales activity. If within nine (9) months of the Effective Date, plaintiff  
26 discovers and presents to Defendant evidence that the Noticed Product has been distributed by  
27 either of Defendants in sales volumes materially different than those identified by Defendant prior  
28 to execution of this Agreement, then Defendants shall be jointly and severally liable for an  
additional penalty amount of \$10,000. Defendants shall also be jointly and severally liable for any  
reasonable, additional attorney fees expended by plaintiff in discovering such additional retailers or  
sales. Plaintiff agrees to provide Defendants with a written demand for all such additional

1 penalties and attorney fees under this Section. After service of such demand, Defendants shall have  
2 thirty (30) days to meet and confer regarding the demand and submit such payment to plaintiff in  
3 accordance with the method of payment of penalties and fees identified in Sections 4.5. Should this  
4 thirty (30) day period pass without any such resolution between the Parties and payment of such  
5 additional penalties and fees, plaintiff shall be entitled to file a formal legal claim for damages for  
6 breach of this contract and the prevailing party in a breach of contract action shall be entitled to all  
7 reasonable attorney fees and costs relating to that action.

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

9 The parties acknowledge that Brimer and his counsel offered to resolve this dispute without  
10 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
11 issue to be resolved after the material terms of the agreement had been settled. Brimer and LDI  
12 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had  
13 been finalized. The parties then attempted to (and did) reach an accord on the compensation due to  
14 Brimer and his counsel under general contract principles and the private attorney general doctrine  
15 codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual  
16 execution of this agreement. Defendants shall be jointly and severally responsible for paying  
17 \$37,500.00 for fees and costs incurred as a result of investigating, bringing this matter to  
18 Defendants' attention, negotiating a settlement in the public interest, obtaining the Court's  
19 approval of this Consent to Judgment and entry of Judgment as well as all associated reporting and  
20 administrative requirements. Defendants shall issue a separate 1099 for fees and costs (EIN: 94-  
21 3171522), shall make the check payable to "The Chanler Group" and shall deliver payment on or  
22 before April 15, 2013, to the address listed in Section 4.3.1 above.

23 Any failure by Defendants to deliver any of the above-referenced fee and cost  
24 reimbursement payment to The Chanler Group within five business days of the date of the due  
25 date shall result in imposition of a 10% simple interest per annum assessment on the undelivered  
26 payment(s) until delivery.

1 **6. CLAIMS COVERED AND RELEASE**

2 **6.1 Brimer's Releases of Defendants**

3 This Consent To Judgment is a full, final, and binding resolution between Brimer, on behalf  
4 of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and  
5 in the interest of the general public, and Defendants and their owners, subsidiaries, sister  
6 companies, shareholders, directors, officers, employees, attorneys, successors, licensors and assigns  
7 ("Defendant Releasees"), and all downstream entities to whom Defendants directly or indirectly  
8 distribute or sell Covered Products, including but not limited to distributors, wholesalers,  
9 customers, retailers, franchisees, cooperative members, licensors and licensees ("Downstream  
10 Defendant Releasees") of any violation of Proposition 65 that has been or could have been asserted  
11 against Defendant Releasees and Downstream Defendant Releasees regarding the alleged failure to  
12 warn about the alleged exposure to the Listed Chemical arising in connection with Covered  
13 Products manufactured, sourced, distributed, shipped and/or sold by Defendant Releasees or  
14 Downstream Defendant Releasees prior to March 15, 2013. Defendants' compliance with this  
15 Consent To Judgment shall constitute compliance with Proposition 65 with respect to the Listed  
16 Chemical in the Covered Products after the Effective Date.

17 **6.1.1** Brimer on behalf of himself, his past and current agents, representatives,  
18 attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives  
19 with respect to Covered Products all rights to institute or participate in, directly or indirectly, any  
20 form of legal action and releases all claims, including, without limitation, all actions, and causes of  
21 action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties,  
22 losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees)  
23 of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "claims"),  
24 against Defendant Releasees and Downstream Defendant Releasees that arise under Proposition 65  
25 or any other statutory or common law claims that were or could have been asserted in the public  
26 interest, as such claims relate to Defendant Releasees' and Downstream Defendant Releasees'  
27 alleged failure to warn about exposures to the Listed Chemical contained in the Covered Products.

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

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

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

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

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

1 The Parties further understand and agree that this Section 6.1 release shall not extend  
2 upstream to any entities, other than Defendants, that manufactured the Covered Products or any  
3 component parts thereof, or any distributors or suppliers who sold the Covered Products or any  
4 component parts thereof to Defendants.

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

8 **6.1.3** Upon court approval of the Consent To Judgment, the Parties waive their  
9 respective rights to a hearing or trial on the allegations of the Complaint.

10 **6.2 Defendants' Release of Brimer**

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

16 **6.2.2** Each of Defendants also provides a general release herein which shall be  
17 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,  
18 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of  
19 Defendants of any nature, character or kind, known or unknown, suspected or unsuspected, arising  
20 out of the subject matter of the Action. Defendants acknowledge that each is familiar with Section  
21 1542 of the California Civil Code, which provides as follows:

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

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

5 **7. SEVERABILITY**

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

10 **8. COURT APPROVAL**

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

17 The Consent to Judgment shall become null and void if, for any reason, it is not approved  
18 and entered by the Court within one year after it has been fully executed by all Parties. If the  
19 Consent to Judgment becomes null and void after any payment of monies under this agreement to  
20 The Chanler Group in trust, such monies shall be returned to paying defendant by payment of such  
21 monies to its counsel, in trust for paying defendant.

22 If this Consent To Judgment is not entered by the Court, and the Parties have exhausted  
23 their meet and confer efforts pursuant to this Section, upon fifteen (15) days written notice, the law  
24 firm holding Defendants' funds in trust shall refund to Defendant any and all payments made into  
25 its trust account by Defendants.

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1 **9. GOVERNING LAW**

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

4 **10. NOTICES**

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

7 For LDI Ltd., LLC, to:

8 J. A. Lacy, President  
9 LDI Ltd., LLC  
10 54 Monument Circle, Suite 800  
Indianapolis, IN 46204

11 For Ed Tucker Distributor, Inc., to:

12 Steven Johnson, President  
13 Ed Tucker Distributor, Inc.  
14 4900 Alliance Gateway Freeway  
Fort Worth, TX 76177

15 With copy to their counsel at

16  
17 Garrett L. Jansma, Esq.  
18 Latham & Watkins LLP  
650 Town Center Drive, 20th Floor  
Costa Mesa, CA 92626-1925

19 For Brimer to:

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

23 Any Party may modify the person and address to whom the notice is to be sent by sending each  
24 other Party notice by certified mail and/or other verifiable form of written communication.  
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1 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

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

4 **12. MODIFICATION**

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

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

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

17 **14. ENTIRE AGREEMENT**

18 This Consent To Judgment contains the sole and entire agreement and understanding of the  
19 Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
20 negotiations, commitments, and understandings related hereto. No representations, oral or  
21 otherwise, express or implied, other than those contained herein have been made by any Party  
22 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed  
23 to exist or to bind any of the Parties. No supplementation, modification, waiver, or termination of  
24 this Consent To Judgment shall be binding unless executed in writing by the Party to be bound. No  
25 waiver of any of the provisions of this Consent To Judgment shall be deemed or shall constitute a  
26 waiver of any of the other provisions whether or not similar, nor shall such waiver constitute a  
27 continuing waiver



1 **15. ATTORNEY’S FEES**

2 15.1 Should Brimer prevail on any motion, application for order to show cause or other  
3 proceeding to enforce a violation of this Consent To Judgment, Brimer shall be entitled to his  
4 reasonable attorney fees and costs incurred as a result of such motion, order or application,  
5 consistent with C.C.P. § 1021.5. Should Defendant prevail on any motion, application for order to  
6 show cause or other proceeding to enforce a violation of this Consent To Judgment, Defendant may  
7 be entitled to its reasonable attorney fees and costs incurred as a result of such motion, order or  
8 application upon a finding that Brimer’s prosecution of the motion or application lacked substantial  
9 justification. For purposes of this Consent To Judgment, the term substantial justification shall  
10 carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016,  
11 *et seq.*

12 15.2 Except as specifically provided in the above paragraph and in Section 4.3, each Party  
13 shall bear its own costs and attorney’s fees in connection with this action.

14 15.3 Nothing in this Section shall preclude a Party from seeking an award of sanctions  
15 pursuant to law.

16 **16. NEUTRAL CONSTRUCTION**

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

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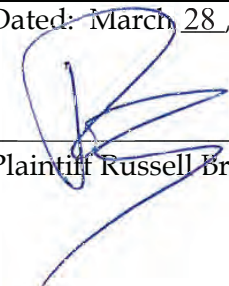
1 **17. COUNTERPARTS, FACSIMILE SIGNATURES**

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

5 **18. AUTHORIZATION**

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

9 **IT IS SO AGREED**

<p>11 Dated: <u>March 28</u>, 2013</p>  <p>12 _____</p> <p>13 Plaintiff Russell Brimer</p>	<p>11 Dated: March __, 2013</p> <p>12 _____</p> <p>13 J. A. Lacy, President LDI Ltd., LLC</p>
	<p>15 Dated: March __, 2013</p> <p>16 _____</p> <p>17 Daniel Courtney, President Ed Tucker Distributor, Inc.</p>

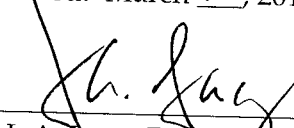
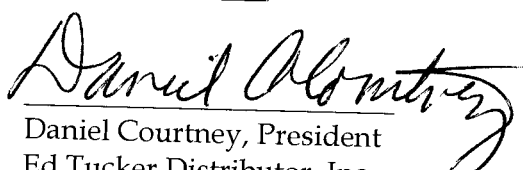
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8 terms and conditions of this Consent To Judgment.

9 **IT IS SO AGREED**

<p>11 Dated: March __, 2013</p> <p>12</p> <p>13 _____ Plaintiff Russell Brimer</p>	<p>11 Dated: March <u>18</u>, 2013</p> <p>12</p> <p>13  _____ J. A. Lacy, President LDI Ltd., LLC</p>
<p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p>	<p>15 Dated: March <u>20</u>, 2013</p> <p>16</p> <p>17  _____ Daniel Courtney, President Ed Tucker Distributor, Inc.</p>