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ENDORSED  
FILED  
ALAMEDA COUNTY

SEP 26 2006

CLERK  
By M. Salcido DEPUTY CLERK OF COURT  
Deputy

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE COUNTY OF ALAMEDA  
14 UNLIMITED CIVIL JURISDICTION

15 RUSSELL BRIMER,

16 Plaintiff,

17 v.

18 G.B.T. INC.; GIGA-BYTE TECHNOLOGY  
19 CO., LTD.; and DOES 1 through 150,  
20 inclusive,

21 Defendants.

Case No. \_\_\_\_\_

**HG06290896**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

*(Cal. Health & Safety Code §25249.6 et seq.)*

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff RUSSELL BRIMER,  
3 in the public interest of the citizens of the State of California, to enforce the People’s right to be  
4 informed of the presence of lead (a toxic chemical) found in certain motherboards manufactured  
5 and sold by defendants in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failures to warn  
7 California citizens about their exposure to lead present in or on certain motherboards that  
8 defendants manufacture, distribute and/or offer for sale to consumers throughout the State of  
9 California.

10 3. High levels of lead are commonly found in the solder in and on motherboards that  
11 defendants manufacture, distribute and/or offer for sale to consumers throughout the State of  
12 California.

13 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,  
14 California Health & Safety Code §25249.6 *et seq.* (hereafter “Proposition 65”), “No person in the  
15 course of doing business shall knowingly and intentionally expose any individual to a chemical  
16 known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable  
17 warning to such individual....” (*Cal. Health & Safety Code* §25249.6.)

18 5. On February 27, 1987, California identified and listed lead as a chemical known to  
19 cause birth defects and other reproductive harm. Lead became subject to the warning requirement  
20 one year later and was therefore subject to the “clear and reasonable warning” requirements of  
21 Proposition 65, beginning on February 27, 1988. (*22 CCR §12000(c)*; *Cal. Health & Safety Code*  
22 *§25249.8.*) Lead shall hereafter be referred to as the “LISTED CHEMICAL.”

23 6. Defendants manufacture and sell motherboards with lead solder including, but not  
24 limited to, *K8 Triton Series PCI-Express/Dual Channel DDR 400 Motherboard, Model Name:*  
25 *GA-K8NF-9 (#8 18313 00239 6)*, which contain excessive levels of the LISTED CHEMICAL. All  
26 such motherboards containing the LISTED CHEMICAL shall hereafter be referred to as the  
27 “PRODUCTS.”

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1           30.     DEFENDANTS have engaged in the manufacture, distribution and/or offering of  
2 the PRODUCTS for sale or use in violation of California Health & Safety Code §25249.6 and  
3 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in  
4 violation of California Health & Safety Code §25249.6 has continued to occur beyond GBT's and  
5 GIGA-BYTE 's receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and  
6 believes that such violations will continue to occur into the future.

7           31.     After receipt of the claims asserted in the sixty-day notice of violation, the  
8 appropriate public enforcement agencies have failed to commence and diligently prosecute a cause  
9 of action against GBT or GIGA-BYTE under Proposition 65.

10          32.     The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
11 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state  
12 limits.

13          33.     DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
14 distributed, and/or offered for sale or use by DEFENDANTS in California contained the LISTED  
15 CHEMICAL.

16          34.     The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as to  
17 expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during the  
18 reasonably foreseeable use of the PRODUCTS.

19          35.     The normal and reasonably foreseeable use of the PRODUCTS has caused and  
20 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined  
21 by 22 CCR §12601(b).

22          36.     DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
23 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact  
24 and/or ingestion.

25          37.     DEFENDANTS, and each of them, intended that such exposures to the LISTED  
26 CHEMICAL from the reasonably foreseeable use of the PRODUCTS would occur by their  
27 deliberate, non-accidental participation in the manufacture, distribution and/or offer for sale or use  
28 of PRODUCTS to individuals in the State of California.



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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: September 26, 2006

Respectfully Submitted,  
HIRST & CHANLER, LLP



D. Joshua Voorhees  
Attorneys for Plaintiff  
RUSSELL BRIMER