

COPY

By Fax

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Christopher Tuttle, State Bar No. 264545  
THE CHANLER GROUP  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565  
Telephone: (510) 848-8880  
Facsimile: (510) 848-8118

Attorneys for Plaintiff  
RUSSELL BRIMER

ENDORSED  
FILED  
San Francisco County Superior Court

JUN 17 2015

CLERK OF THE COURT

BY: DENNIS TOYAMA  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,

Plaintiff,

v.

DIGITAL GADGETS, LLC; BIG LOTS,  
INC.; BIG LOTS STORES, INC.; and DOES  
1-150, inclusive,

Defendants.

Case No. CGC-15-546424

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff RUSSELL  
3 BRIMER in the public interest of the citizens of the State of California to enforce the People’s  
4 right to be informed about exposures to lead, a toxic chemical that is found in tablet computer  
5 stands/supports sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to  
7 warn California citizens about the risks of exposures to lead present in and on the tablet  
8 computer stands/supports manufactured, distributed, and offered for sale or use to consumers  
9 throughout the State of California.

10 3. Detectable levels of lead are commonly found in and on the tablet computer  
11 stands/supports that defendants import, manufacture, distribute, ship, sell and offer for sale to  
12 consumers throughout the State of California.

13 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
14 Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of  
15 doing business shall knowingly and intentionally expose any individual to a chemical known to  
16 the state to cause cancer or reproductive toxicity without first giving clear and reasonable  
17 warning to such individual . . . .” Health & Safety Code § 25249.6.

18 5. On February 27, 1987, pursuant to Proposition 65, California identified and listed  
19 lead as a chemical known to cause birth defects or other reproductive harm. Lead became  
20 subject to the “clear and reasonable warning” requirements of the act one year later on February  
21 27, 1988. (Cal. Code Regs., Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &  
22 25249.10(b).) Lead is referred to hereinafter as the “LISTED CHEMICAL”.

23 6. Defendants manufacture, distribute, import, sell, and offer for sale without  
24 warning in California, tablet computer stands/supports containing the LISTED CHEMICAL,  
25 including, but not limited to, the *DG Accessory Collection iCozy Bean Bag, DGIPA3BB-RD,*  
26 *#182 810097325 7 024, UPC #8 86004 02212 1.* All such tablet computer stands/supports  
27  
28

1 containing the LISTED CHEMICAL are referred to collectively hereinafter as the  
2 “PRODUCTS”.

3 7. Defendants’ failure to warn workers, consumers and other individuals in  
4 California of the harms associated with exposures to the LISTED CHEMICAL in conjunction  
5 with defendants’ sales of the PRODUCTS containing the LISTED CHEMICAL are violations  
6 of Proposition 65, and subject defendants to enjoinder of such conduct, as well as civil  
7 penalties for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

8 8. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and  
9 permanent injunctive relief to compel defendants to provide purchasers or users of the  
10 PRODUCTS with the required warning regarding the health hazards associated with exposures  
11 to the LISTED CHEMICAL. Health & Safety Code § 25249.7(a).

12 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil  
13 penalties against defendants, and each of them, for each violation of Proposition 65.

14 **PARTIES**

15 10. Plaintiff RUSSELL BRIMER is a citizen of the State of California who is  
16 dedicated to protecting the health of California citizens through the elimination or reduction of  
17 harmful exposures to toxic chemicals from consumer products. He brings this action in the  
18 public interest pursuant to Health and Safety Code section 25249.7(d).

19 11. Defendant Digital Gadgets, LLC (“DIGITAL”) is a person in the course of doing  
20 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

21 12. DIGITAL manufactures, imports, distributes, sells, and/or offers the PRODUCTS  
22 for sale or use in the State of California, or it implies by its conduct that it manufactures, imports,  
23 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

24 13. Defendant Big Lots, Inc. (“BIG LOTS”) is a person in the course of doing  
25 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

26 14. BIG LOTS manufactures, imports, distributes, sells, and/or offers the  
27 PRODUCTS for sale or use in the State of California, or it implies by its conduct that it  
28

1 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
2 State of California.

3 15. Defendant Big Lots Stores, Inc. (“BIG LOTS STORES”) is a person in the course  
4 of doing business within the meaning of Health and Safety Code sections 25249.6 and  
5 25249.11.

6 16. BIG LOTS STORES manufactures, imports, distributes, sells, and/or offers the  
7 PRODUCTS for sale or use in the State of California, or it implies by its conduct that it  
8 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
9 State of California.

10 17. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a  
11 person in the course of doing business within the meaning of Health and Safety Code sections  
12 25249.6 and 25249.11.

13 18. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,  
14 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,  
15 and manufacture one or more of the PRODUCTS offered for sale or use in the State of  
16 California.

17 19. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person  
18 in the course of doing business within the meaning of Health and Safety Code sections 25249.6  
19 and 25249.11.

20 20. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and  
21 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use  
22 in the State of California.

23 21. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in  
24 the course of doing business within the meaning of Health and Safety Code sections 25249.6  
25 and 25249.11.

26 22. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
27 State of California.

28



1 **FIRST CAUSE OF ACTION**

2 **(Violation of Proposition 65 - Against All Defendants)**

3 28. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
4 Paragraphs 1 through 27, inclusive.

5 29. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic  
6 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be  
7 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
8 harm.”

9 30. Proposition 65 states, “[n]o person in the course of doing business shall  
10 knowingly and intentionally expose any individual to a chemical known to the state to cause  
11 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
12 individual . . . .” Health & Safety Code § 25249.6.

13 31. On March 31, 2015, plaintiff’s sixty-day notice of violation, together with the  
14 requisite certificate of merit, was provided to DIGITAL, BIG LOTS, BIG LOTS STORES, and  
15 the requisite public enforcement agencies stating that, as a result of DEFENDANTS’ sales of  
16 the PRODUCTS containing the LISTED CHEMICAL, workers, consumers and other  
17 individuals in the State of California are being exposed to the LISTED CHEMICAL resulting  
18 from their reasonably foreseeable use of the PRODUCTS, without the individual purchasers and  
19 users first having received a “clear and reasonable warning” regarding such toxic exposures, as  
20 required by Proposition 65.

21 32. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,  
22 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section  
23 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of  
24 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and  
25 continuous in nature, and, unless enjoined, will continue to occur in the future.

26 33. After receiving plaintiff’s sixty-day notice of violation, the appropriate public  
27 enforcement agencies have failed to commence and diligently prosecute a cause of action  
28

1 against DEFENDANTS under Proposition 65.

2 34. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale  
3 or use in California by DEFENDANTS contain the LISTED CHEMICAL in such a way that the  
4 reasonably foreseeable uses of these products result in exposures that require a “clear and  
5 reasonable” warning under Proposition 65.

6 35. DEFENDANTS knew or should have known that the PRODUCTS they  
7 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED  
8 CHEMICAL.

9 36. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to  
10 expose individuals through dermal contact and/or ingestion during reasonably foreseeable use.

11 37. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
12 continues to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are  
13 defined by title 27 of the California Code of Regulations, section 25602(b).

14 38. DEFENDANTS have knowledge that the normal and reasonably foreseeable use  
15 of the PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact  
16 and/or ingestion.

17 39. DEFENDANTS intend for such exposures to the LISTED CHEMICAL from the  
18 reasonably foreseeable use of the PRODUCTS to occur by their deliberate, non-accidental  
19 participation in the manufacture, distribution, sale, and offering of the PRODUCTS for sale or  
20 use to individuals in the State of California.

21 40. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
22 workers, consumers and other individuals in California who have been, or will be, exposed to  
23 the LISTED CHEMICAL.

24 41. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
25 directly by California voters, consumers, and other individuals exposed to the LISTED  
26 CHEMICAL through dermal contact and/or ingestion, resulting from the reasonably foreseeable  
27 use of the PRODUCTS sold by DEFENDANTS without a “clear and reasonable warning,” have  
28

1 suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or  
2 adequate remedy at law.

3 42. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the  
4 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day  
5 for each violation.

6 43. As a consequence of the above-described acts, Health and Safety Code  
7 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
8 DEFENDANTS.

9 **PRAYER FOR RELIEF**

10 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

11 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess  
12 civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for  
13 each violation;

14 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),  
15 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
16 offering the PRODUCTS for sale or use in California without first providing a “clear and  
17 reasonable warning” as defined by title 27 of the California Code of Regulations, section 25601  
18 *et seq.*, as to the harms associated with exposures to the LISTED CHEMICAL;

19 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

20 4. That the Court grant such other and further relief as may be just and proper.

21 Dated: June 17, 2015

Respectfully Submitted,

THE CHANLER GROUP

22  
23  
24  
25 By: 

26 Christopher Tuttle  
27 Attorneys for Plaintiff  
28 RUSSELL BRIMER