

1 Daniel Bornstein, State Bar No. 181711
Stephen S. Sayad, State Bar No. 104866
2 Laralei S. Paras, State Bar No. 203319
PARAS LAW GROUP
3 655 Redwood Highway, Suite 216
Mill Valley, CA 94941
4 Tel: (415) 380-9222
Fax: (415) 380-9223

5 Clifford A. Chanler, State Bar No. 135534
6 CHANLER LAW GROUP
71 Elm Street, Suite 8
7 New Canaan, CT 06840
Tel: (203) 966-9911
8 Fax: (203) 801-5222

9 Attorneys for Plaintiffs
RUSSELL BRIMER
10

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE COUNTY OF SAN FRANCISCO
13 UNLIMITED CIVIL JURISDICTION
14
15

16 RUSSELL BRIMER)
17)
18 Plaintiff,)

19 v.)

20 CYBERGUYS, INC.; CYBERGUYS!; and)
21 DOES 1 through 150,)
22 Defendants.)

No. CGC-04-435224

**[PROPOSED] ORDER PURSUANT
TO TERMS OF STIPULATION
AND ORDER RE: CONSENT
JUDGMENT**

Date: June 29, 2005

Time: 9:30 am

Dept.: 302

Judge: Hon. Ronald E. Quidachay

ENDORSED
FILED
San Francisco County Superior Court

JUN 29 2005

GORDON PARK-LI, Clerk
BY: _____ Deputy Clerk

1 In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendant CYBERGUYS,
2 INC., ("Defendant"), having agreed through their respective counsel that judgment be entered
3 pursuant to the terms of the Consent Judgment entered into by the above-referenced parties and
4 attached hereto as **Exhibit A**; and after consideration of the papers submitted and the arguments
5 presented, the Court finds that the settlement agreement set out in the attached Consent Judgment
6 meets the criteria established by Senate Bill 471, in that:

- 7 1. The health hazard warning that is required by the Consent Judgment complies with
8 Health & Safety Code section 25249.7 (as amended by Senate Bill 471); and
9 2. The civil penalty amount to be paid pursuant to the parties' Consent Judgment is
10 reasonable,

11 IT IS HEREBY ORDERED that judgment be entered in this case, in accordance with the
12 terms of the Consent Judgment, attached hereto as **Exhibit A**.

13 IT IS SO ORDERED.

14 Dated: **JUN 29 2005**

RONALD E. QUIDACHAY

15 Hon. Ronald Evans Quidachy
16 JUDGE OF THE SUPERIOR COURT

EXHIBIT /A

1 Laralei S. Paras, State Bar No. 203319
2 Stephen S. Sayad, State Bar No. 10486
3 PARAS LAW GROUP
4 655 Redwood Hwy., Suite 216
5 Mill Valley, CA 94941
6 Tel: (415) 380-9222
7 Fax: (415) 380-9223

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13 Fax: (203) 801-5222

14 Attorneys for Plaintiff
15 RUSSELL BRIMER

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 IN AND FOR THE COUNTY OF SAN FRANCISCO
18 UNLIMITED CIVIL JURISDICTION

19 RUSSELL BRIMER,) No. CGC-04-435224
20)
21 Plaintiff) STIPULATION AND [PROPOSED]
22) ORDER RE: CONSENT JUDGMENT
23 v.)
24)
25 CYBERGUYS, INC.; CYBERGUYS! And)
26 DOES 1 through 150,)
27)
28 Defendants.)
_____)

1 This Stipulation And [Proposed] Order Re: Consent Judgment (“Agreement” or “Consent
2 Judgment”) is entered into by and between plaintiff Russell Brimer (“Plaintiff”), a California
3 citizen, on the one hand, and defendant Cyberguys, Inc., d.b.a. X-Treme Geek, a corporation
4 (“Cyberguys”), on the other hand (collectively referred to herein as the “Parties”), as of March 21,
5 2005, (the “Effective Date”) with reference to the following:

6 **WHEREAS,**

7 A. Russell Brimer represents that he is an individual residing in Alameda County,
8 California, who seeks to promote awareness of exposures to toxic chemicals and improve human
9 health by reducing or eliminating hazardous substances contained in consumer products.

10 B. Cyberguys represents that it is a company that currently offers for sale computer
11 repair toolkits. Cyberguys represents that it does not manufacture the computer repair toolkits or
12 the solder contained therein.

13 C. On or about July 30, 2004, Russell Brimer first served Cyberguys and certain public
14 enforcement agencies with a document entitled "60-Day Notice of Violation" (“Notice”) which
15 provided notice that Russell Brimer considered Cyberguys to be in violation of Proposition 65 for
16 allegedly failing to warn purchasers that certain products they manufacture, distribute and/or offer
17 for sale in California expose users to the listed chemical. Specifically, the Notice alleged that
18 Cyberguys manufactures, distributes and/or offers for retail sale in California computer repair
19 toolkits containing solder that contains one or more chemicals listed pursuant to California Health
20 & Safety Code §25249.5 *et seq.* (“Proposition 65”) including lead (the “Listed Chemical”).
21 Further alleged in the Notice is that Cyberguys has manufactured, distributed and/or sold these
22 computer repair toolkits for use in California since at least July 30, 2003. A list of the specific
23 Cyberguys products which contain the Listed Chemical in the solder component of the tool kits,
24 and which are covered by this Agreement, are set forth on Exhibit A (collectively referred to
25 herein as the “Products”).

26 D. On October 5, 2004, Russell Brimer filed a Complaint entitled *Russell Brimer v.*
27 *Cyberguys, Inc., et al.*, Case No. CGC-04-435224, in the San Francisco Superior Court against
28 Cyberguys, regarding the Proposition 65 claims described in the 60-Day Notice (“Action”).

1 E. In order to avoid the costs and expense of litigation, and without admitting liability
2 or wrongdoing by any Party, the Parties have elected to resolve this matter by settlement on the
3 terms set forth in this Agreement.

4
5 **BASED ON THE FOREGOING AND THE MUTUAL PROMISES AND COVENANTS SET
6 FORTH BELOW, THE PARTIES AGREE AS FOLLOWS:**

7 **1. Injunctive Relief:**

8 **(a) Product Warnings.** After the Effective Date, Cyberguys shall not offer for
9 sale in California any Products containing the Listed Chemical, unless such Products bear one of
10 the following warning statements:

11 **WARNING: The solder in this product contains a chemical
12 known to the State of California to cause birth
13 defects or other reproductive harm.**

14 or

15 **WARNING: This solder in this product contains a chemical
16 known to the State of California to cause birth
17 defects or other reproductive harm. Wash
18 hands after handling.**

19 or

20 **WARNING: The solder in this product contains (more than
21 0.2 percent by weight) Lead. Lead is a chemical
22 known to the State of California to cause birth
23 defects or other reproductive harm. The use of
24 this solder to make joints or fittings in any
25 private or public potable water supply system is
26 prohibited.**

27 The warning statement shall be placed in a reasonably prominent location and shall be
28 displayed with such conspicuousness, as compared with other words, statements, designs or
devices on either (a) the individual solder packaging, (b) the toolkit outer packaging, or (c) at the
website where the Products are offered for sale, at the discretion of Cyberguys, respectively, so as
to render it likely that the warning would be read and understood by an ordinary individual using
the solder. For purposes of complying with this paragraph, the above warning may be
communicated, among other ways, by the placement of adhesive stickers or warnings on the

1 current container and/or product packaging for the solder. For Products that require a warning
2 pursuant to this Consent Judgment and that are sold from the Internet to California residents, the
3 warning text, or a link to a page containing the warning text, shall be displayed either (a) on the
4 same page on which a Product is displayed, (b) on the same page as any order form for a Product,
5 (c) on the same page as the price for any Product, (d) on one or more pages displayed to a
6 purchaser over the Internet or via electronic mail during the checkout and order confirmation
7 process for sale of a Product, or (e) in any manner such that it is likely to be read and understood
8 by an ordinary individual under customary conditions of purchase of a Product, including the same
9 language as that appearing in Section 1. If a link is used, it shall state “Warning information for
10 California residents,” and shall be of a size equal to the size of other links on the page. The
11 warning shall identify the *specific* Products to which the warning applies so as to minimize, if not
12 eliminate, the chances that an overwarning situation will arise.

13 2. **Payment Pursuant To Health & Safety Code §25249.7(b).** Pursuant to Health &
14 Safety Code §25249.7(b), Cyberguys shall pay a civil penalty of \$16,000 in two installments; the
15 first payment of \$4,000 is due on or before April 1, 2005. The second payment of \$12,000 is due
16 on April 1, 2006; however, such payment shall be waived if Cyberguys certifies in writing by
17 March 15, 2006, that it has not sold any tool kits containing solder that contain lead as an intended
18 ingredient after August 30, 2005. The penalty payments are to be made payable to “Chanler Law
19 Group In Trust For Russell Brimer.” Penalty monies paid pursuant to this Paragraph shall be
20 apportioned by Russell Brimer and his counsel in accordance with Health & Safety Code Section
21 25192, such that 75% of these funds paid by Cyberguys will be remitted to the Office of
22 Environmental Health Hazard Assessment and the remaining 25% of these penalty monies retained
23 by Plaintiff as provided by Health & Safety Code § 25249.12(d).

24 3. **Reimbursement Of Fees And Costs.** The Parties acknowledge that
25 Russell Brimer offered to resolve the dispute without reaching an agreement on the amount of
26 attorney’s fees and costs to be reimbursed to Russell Brimer, thereby leaving open this issue to be
27 resolved after the material terms of the settlement had been reached, and the agreement signed.
28 The Parties then attempted to (but did not) reach an accord on the compensation due to Russell

1 Brimer and his counsel under the private attorney general doctrine codified at Code of Civil
2 Procedure § 1021.5 for all work performed through the Effective Date of the Agreement and
3 reasonably to be performed in connection with the terms set forth in this Agreement after the
4 Effective Date. The parties do agree, however, that Russell Brimer and his counsel are entitled to
5 their reasonable attorneys fees and costs under the prerequisites set forth by CCP §1021.5;
6 however, they disagree as to the amount of such fees. Accordingly, following the execution of
7 this Agreement, plaintiff shall make an application to the Court for an award of his expert,
8 investigation and attorneys fees and costs under the private attorney general doctrine codified at
9 Code of Civil Procedure §1021.5, Russell Brimer and his counsel agree to give Cyberguys at
10 least thirty-day notice of their CCP §1021.5 motion.

11 4. **Releases Of Cyberguys.** Russell Brimer, by this Agreement, on behalf of himself,
12 his agents, representatives, attorneys, assigns and the citizens of the State of California, waives and
13 releases all rights to institute or participate in, directly or indirectly, any form of legal action
14 against the Releasees (as defined below), and releases all claims, liabilities, obligations, losses,
15 costs, expenses, fines and damages, against Cyberguys, and their respective customers, directors,
16 officers, employees, lawyers, affiliates, successors and assigns, including but not limited to E-
17 Ffiliate, Inc. (collectively the “Releasees”), whether under Proposition 65 or the Business &
18 Profession Code §17200 et seq., arising out of or relating to the allegations asserted in the 60-Day
19 Notice, the Complaint and the Action, including without limitation the allegation that Cyberguys
20 failed to warn about exposure to lead contained in any of the Products.

21 5. **Release Of Russell Brimer.** Cyberguys waives all rights to institute any form of
22 legal action against Russell Brimer and his attorneys or representatives, for all actions or
23 statements made by Russell Brimer and his attorneys or representatives, in the course of seeking
24 enforcement of Proposition 65 against Cyberguys for the Products.

25 6. **No Admissions.** Nothing in this Agreement shall be construed as an admission by
26 Cyberguys of any fact, finding, issue of law or violation of law, nor shall compliance with this
27 Agreement constitute or be construed as an admission by Cyberguys of any fact, finding,
28

1 conclusion, issue of law or violation of law. However, this paragraph shall not diminish or
2 otherwise affect the obligations, responsibilities and duties of Cyberguys under this Agreement.

3 7. **Sales Data.** Cyberguys understands that the sales data that it respectively provided
4 to counsel for Russell Brimer was a material factor upon which Russell Brimer has relied to
5 determine the amount of civil penalties made pursuant to Health & Safety Code Section 25249.7(b)
6 in this Agreement. To the best of Cyberguys' knowledge, the sales data provided by Cyberguys to
7 counsel for Russell Brimer is a true and accurate reflection of any and all sales of the Products in
8 California during the relevant period.

9 8. **Severability.** In the event that any of the provisions of this Agreement are held by
10 a court to be unenforceable, the validity of the enforceable provisions shall not be adversely
11 affected.

12 9. **Attorney's Fees.** In the event that a dispute arises with respect to the interpretation
13 or enforcement of any provision(s) of this Stipulation and Consent Judgment, the prevailing party
14 in any action to interpret or enforce this Stipulation and Consent Judgment shall be entitled to
15 recover its costs and reasonable attorney's fees with the exception that the attorney's fees and costs
16 to be paid to Russell Brimer or his counsel with respect to the resolution of this Action shall be
17 governed by the principles set forth under CCP §1021.5.

18 10. **Governing Law.** The terms of this Stipulation and Consent Judgment shall be
19 governed by the laws of the State of California, without regard to its choice of law provisions.

20 11. **Notices.** If a notice is required under this Stipulation and Consent Judgment, it
21 shall be sent to the address or location set forth below and shall be delivered by mail or overnight
22 delivery. In addition to, but not in lieu of, such mail or overnight delivery, any notice may also be
23 delivered by electronic mail. All correspondence to Russell Brimer shall be sent to:

24 Laralei S. Paras
25 PARAS LAW GROUP
26 655 Redwood Highway, Suite 216
27 Mill Valley, CA 94941
28 Tel. 415/380-9222
Fax. 415-380-9223

Clifford A. Chanler
CHANLER LAW GROUP

1 71 Elm Street, Suite 8
2 New Canaan, CT 06840
3 Tel. 203/ 966-9911
4 Fax. 203/801-5222

5 All correspondence to Cyberguys shall be sent to:

6 Daniel L. Egan, Esq.
7 WILKE, FLEURY, HOFFELT, GOULD & BIRNEY, LLP
8 Twenty – Second Floor
9 400 Capitol Mall
10 Sacramento, CA 95814
11 Tel. 916/ 441-2430
12 Fax. 916/442-6664

13 12. **Compliance With Health & Safety Code § 25249.7(f).** Plaintiff agrees to comply
14 with the reporting form requirements referenced in Health & Safety Code § 25249.7(f). Pursuant
15 to regulations promulgated under that section, Plaintiff shall present this Consent Judgment to the
16 California Attorney General’s Office within five (5) days after receiving all of the necessary
17 signatures. A noticed motion to enter the Consent Judgment will then be served on the Attorney
18 General’s Office at least forty-five (45) days prior to the date a hearing is scheduled on such
19 motion in the Superior Court for the City and County of San Francisco.

20 13. **Additional Post Execution Activities.** The Parties shall mutually employ their
21 best efforts to support the entry of this Agreement as a Consent Judgment and obtain approval of
22 the Consent Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to
23 Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this
24 Consent Judgment. Accordingly, Plaintiff agrees to file a Motion to Approve the Agreement
25 (“Motion”), preferably as a joint motion if the parties can so agree. In an effort to achieve this
26 objective, counsel for Cyberguys agrees to transmit a draft of the moving papers to counsel for
27 Plaintiff within fourteen (14) days after the Effective Date and the parties will endeavor to file a
28 joint application to the Court; If the moving papers are not provided to Plaintiff in a timely manner,
or the parties cannot ultimately agree on the final papers to file, Plaintiff shall file the Motion to
Approve on his own. In the event that any third party, including the Attorney General or any other
public enforcer, objects or otherwise comments to one or more provisions of this Agreement,

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14. **Modification.** This Consent Judgment may be modified only by: (1) written agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of any Party as provided by law and upon entry of a modified Consent Judgment by the Court. The Attorney General shall be served with notice of any proposed modification to this Consent Judgment at least fifteen (15) days in advance of its consideration by the Court.

15. **Counterparts and Facsimile.** This Stipulation and Consent Judgment may be executed in counterparts and facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

16. **Authorization.** The undersigned represent and warrant that he or she is authorized to execute this Stipulation on behalf of the respective parties for which they are signing and have read, understood and agree to all of the terms and conditions of this Agreement.

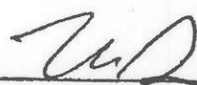
AGREED TO:

Date: March __, 2005

By: _____
Plaintiff Russell Brimer

AGREED TO:

Date: March 23, 2005

By:  _____
Defendant Cyberguys, Inc., dba X-Treme

APPROVED AS TO FORM:

Date: March __, 2005

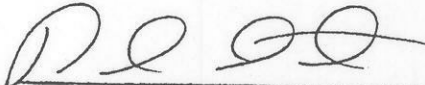
PARAS LAW GROUP

By: _____
Laralei S. Paras
Attorneys for Plaintiff
RUSSELL BRIMER

APPROVED AS TO FORM:

Date: March 23, 2005

WILKE, FLEURY, HOFFELT, GOULD & BIRNEY, LLP

By:  _____
Paul Asterlin
Attorneys for Defendant
CYBERGUYS, INC.

IT IS SO ORDERED.


1 14. **Modification.** This Consent Judgment may be modified only by: (1) written
2 agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon, or
3 (2) motion of any Party as provided by law and upon entry of a modified Consent Judgment by the
4 Court. The Attorney General shall be served with notice of any proposed modification to this
5 Consent Judgment at least fifteen (15) days in advance of its consideration by the Court.

6 15. **Counterparts and Facsimile.** This Stipulation and Consent Judgment may be
7 executed in counterparts and facsimile, each of which shall be deemed an original, and all of
8 which, when taken together, shall constitute one and the same document.

9 16. **Authorization.** The undersigned represent and warrant that he or she is authorized
10 to execute this Stipulation on behalf of the respective parties for which they are signing and have
11 read, understood and agree to all of the terms and conditions of this Agreement.

12
13 **AGREED TO:**

14 Date: March 23, 2005

15
16 By: 
17 Plaintiff Russell Brimer

13 **AGREED TO:**


14 Date: March __, 2005

15
16 By: _____
17 Defendant Cyberguys, Inc., dba X-Treme

18
19 **APPROVED AS TO FORM:**

20 Date: March 23, 2005

21 PARAS LAW GROUP

22 
23
24 By: Laralei S. Paras
25 Attorneys for Plaintiff
26 RUSSELL BRIMER

19 **APPROVED AS TO FORM:**

20 Date: March __, 2005

21 WILKE, FLEURY, HOFFELT, GOULD &
22 BIRNEY, LLP

23
24 By: _____
25 Paul Asterlin
26 Attorneys for Defendant
27 CYBERGUYS, INC.

28 **IT IS SO ORDERED.**

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Dated: _____

Judge of the Superior Court

EXHIBIT A

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1. Computer Tool Kit (#115-0110)
2. Computer Tool Kit (#115-0160)
3. Computer Tool Kit (#115-0162)

IMANAGE:152211.1

1 Daniel Bornstein, State Bar No. 181711
Stephen S. Sayad, State Bar No. 104866
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10 RUSSELL BRIMER

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GORDON PARK-LI, Clerk
BY: _____
Deputy Clerk

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
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16 RUSSELL BRIMER)

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20 CYBERGUYS, INC.; CYBERGUYS!; and)
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23 _____)

No. CGC-04-435224

~~PROPOSED~~ JUDGMENT
PURSUANT TO TERMS OF
STIPULATION AND ORDER RE:
CONSENT JUDGMENT

Date: June 29, 2005

Time: 9:30 am

Dept.: 302

Judge: Hon. Ronald E. Quidachay

1 In the above-entitled action, Plaintiff Russell Brimer and Defendant Cyberguys, Inc., having
2 agreed through their respective counsel that judgment be entered pursuant to the terms of the
3 Consent Judgment entered into by the parties, and after issuing an Order Approving Proposition 65
4 Settlement Agreement and Consent Judgment on June 29, 2005.

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Code of Civil
6 Procedure section 664.5, judgment is entered in accordance with the terms of the Order Approving
7 Proposition 65 Settlement Agreement and Consent Judgment, between the parties.

8 **IT IS SO ORDERED.**

9 Dated:

10 JUN 29 2005

11 **RONALD E. QUIDACHAY**

12 _____
13 Hon. Ronald Evans Quidachy
14 JUDGE OF THE SUPERIOR COURT