

1 Laralei S. Paras, State Bar No. 203319
2 Daniel Bornstein, State Bar No. 181711
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

8 Clifford A. Chanler, State Bar No. 135534
9 CHANLER LAW GROUP
10 71 Elm Street, Suite 8
11 New Canaan, CT 06840
12 Tel: (203) 966-9911
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,

20 Plaintiff,

21 v.

22 CYBERGUYS, INC.; CYBERGUYS!; and
23 DOES 1 through 150,

24 Defendants.

25) No. CGC-04-435224
26)
27)
28)

29) **STIPULATION AND AGREEMENT**
30) **RE: ATTORNEYS' FEES AND COSTS**

1 This Stipulation and Agreement Re: Attorneys' Fees and Costs ("Agreement") is entered
2 into by and between plaintiff Russell Brimer ("Plaintiff"), a California citizen, on the one hand, and
3 defendant Cyberguys, Inc., d.b.a. X-Treme Geek, a corporation ("Cyberguys"), on the other hand
4 (collectively referred to herein as the "Parties"), as of September 21, 2005, (the "Effective Date")
5 with reference to the following:

6 **WHEREAS,**

7 A. Russell Brimer represents that he is an individual residing in Northern California,
8 who seeks to promote awareness of exposures to toxic chemicals and improve human health by
9 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"). Further
21 alleged in the Notice is that Cyberguys has manufactured, distributed and/or sold these computer
22 repair toolkits for use in California since at least July 30, 2003.

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

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1 E. In order to avoid the costs and expense of litigation, and in light of Cberguyes
2 reformulation commitment and the low volume of its sales of solder containing lead, without
3 admitting liability or wrongdoing by any Party, the Parties elected to resolve this case by settlement
4 on the terms set forth in the Stipulation and Order Re: Consent Judgment ("Consent Judgment")
5 approved by the Court on June 29, 2005 and this Agreement.
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9 **BASED ON THE FOREGOING AND THE MUTUAL PROMISES AND COVENANTS SET**
10 **FORTH BELOW, THE PARTIES AGREE AS FOLLOWS:**

11 1. **Reimbursement of Fees and Costs.** The Parties acknowledge that Russell Brimer
12 offered to resolve the dispute without reaching an agreement on the amount of attorneys' fees and
13 costs to be reimbursed to Russell Brimer, thereby leaving open this issue to be resolved after the
14 material terms of the settlement had been reached, and the agreement signed. Following the
15 execution of the Consent Judgment and entry of Judgment Pursuant to Terms of Consent
16 Judgment, plaintiff filed an application to the Court for an award of his expert, investigation and
17 attorneys' fees and costs under the private attorney general doctrine codified at Code of Civil
18 Procedure §1021.5. The Parties then attempted to (and did) reach an accord on the amount of
19 reimbursement for attorneys' fees and costs incurred by Russell Brimer and his counsel under the
20 private attorney general doctrine codified at Code of Civil Procedure §1021.5 for all work
21 performed in this case, except as set forth in paragraph 3 below.

22 In full settlement of the amounts sought in Plaintiff's application, under the private attorney
23 general doctrine codified at Code of Civil Procedure §1021.5, Cyberguys shall reimburse Russell
24 Brimer and his counsel in the amount of \$36,850 for all attorneys' fees, expert and investigation
25 fees, and litigation costs incurred (and including all those efforts through the Court's approval of
26 this agreement and reasonably to be performed in connection with the terms set forth in this
27 Agreement after the Effective Date). Cyberguys shall make this payment in two installments.
28 Cyberguys shall make the first installment of \$30,000 within twenty-four (24) hours of the Court's

1 approval of the Agreement, and the second installment of \$6,850 on or before December 20, 2005.

2 Payment shall be made payable to "Chanler Law Group" and delivered to the following address:

3 CHANLER LAW GROUP
4 71 Elm Street, Suite 8
5 New Canaan, CT 06840

6 Except as specifically provided in this Agreement, Cyberguys shall have no further obligation with
7 regard to reimbursement of plaintiff's attorneys' fees and costs incurred in connection with this
8 enforcement action.

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

11 3. **Attorneys' Fees.** In the event that a dispute arises with respect to the interpretation
12 or enforcement of this Agreement, the prevailing party in any action to interpret or enforce the
13 Consent Judgment or this Agreement shall be entitled to recover its costs and reasonable attorneys'
14 fees.

15 4. **Governing Law.** The terms of this Agreement shall be governed by the laws of the
16 State of California, without regard to its choice of law provisions.

17 5. **Compliance with Health & Safety Code § 25249.7(f).** Plaintiff agrees to comply
18 with the reporting form requirements referenced in Health & Safety Code § 25249.7(f). Pursuant to
19 regulations promulgated under that section, Plaintiff shall present this Agreement the California
20 Attorney General's Office within five (5) days after receiving all of the necessary signatures.


21 6. **Additional Post Execution Activities.** The Parties shall mutually employ their best
22 efforts to obtain approval of this Agreement by the Court in a timely manner. In the event that any
23 third party, including the Attorney General or any other public enforcer, objects or otherwise
24 comments to one or more provisions of this Agreement, Cyberguys agrees to undertake its best
25 efforts to satisfy such concerns or objections and support the terms of this Agreement.

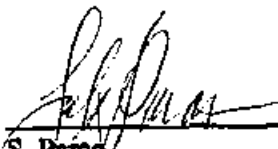
26 7. **Counterparts and Facsimile.** This Agreement may be executed in counterparts
27 and facsimile, each of which shall be deemed an original, and all of which, when taken together,
28 shall constitute one and the same document.

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8. Authorization. Each of the undersigned represents and warrants that he or she is authorized to execute this Agreement on behalf of the respective parties for which he or she is signing and have read, understood and agree to all of the terms and conditions of this Agreement.

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/////

AGREED TO:	AGREED TO:
Date: September <u>21</u> 2005	Date: September __, 2005
By: <u></u>	By: _____
Plaintiff Russell Brimer	Defendant Cyberguys, Inc., dba X-Treme

APPROVED AS TO FORM:	APPROVED AS TO FORM:
Date: September __, 2005	Date: September __, 2005
PARAS LAW GROUP	WILKE, FLEURY, HOFFELT, GOULD & BIRNEY, LLP
By: <u></u>	By: _____
Laralei S. Paras Attorneys for Plaintiff RUSSELL BRIMER	Paul Asterlin Attorneys for Defendant CYBERGUYS, INC.

1 8. **Authorization.** Each of the undersigned represents and warrants that he or she is
2 authorized to execute this Agreement on behalf of the respective parties for which he or she is
3 signing and have read, understood and agree to all of the terms and conditions of this Agreement.

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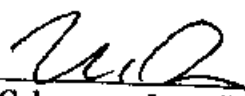
7 **AGREED TO:**

AGREED TO:

8 Date: September __, 2005

 Date: September 21, 2005

11 By: _____
 Plaintiff Russell Brimer

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

14 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:


15 Date: September __, 2005

 Date: September 21, 2005

16 PARAS LAW GROUP

 WILKE, FLEURY, HOFFELT, GOULD &
 BIRNEY LLP

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

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

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