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19  
20 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
21 FOR THE COUNTY OF ALAMEDA COUNTY  
22 UNLIMITED CIVIL JURISDICTION  
23

24 RUSSELL BRIMER )

Case No. HG-06-290896

25 Plaintiff, )

26 v. )

27 G.B.T. INC.; GIGA-BYTE TECHNOLOGY )  
28 CO., LTD.; and DOES 1 through 150, )  
inclusive, )

**STIPULATION AND [PROPOSED]  
ORDER RE: CONSENT JUDGMENT**

Defendants. )  
\_\_\_\_\_)

1           **1. INTRODUCTION**

2           **1.1 Russell Brimer, G.B.T. Inc., and Giga-Byte Technology Co., Ltd.**

3           This Consent Judgment is entered into by and between plaintiff Russell Brimer (Brimer or  
4 plaintiff) and defendants G.B.T. Inc. and Giga-Byte Technology Co., Ltd. (collectively defendants  
5 or Giga-Byte in the singular), with Brimer and Giga-Byte referred to as the "parties."

6           **1.2 Plaintiff**

7           Brimer is an individual residing in Alameda County in the State of California who seeks  
8 to promote awareness of exposure to toxic chemicals and improve human health by reducing or  
9 eliminating hazardous substances contained in consumer products.

10           **1.3 Defendants**

11           Defendants employ ten or more persons and are each a person in the course of doing  
12 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California  
13 Health & Safety Code §§ 25249.5 *et seq.* (Proposition 65).

14           **1.4 General Allegations**

15           Plaintiff alleges that Giga-Byte has manufactured, distributed, and/or sold motherboards  
16 with solder containing lead in the State of California without the requisite health hazard warnings.  
17 Lead is a substance known to cause birth defects and other reproductive harm and is listed pursuant  
18 to Proposition 65. Lead shall be referred to hereinafter as the "listed chemical."  
19  
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21           **1.5 Product Description**

22           The products that are covered by this Consent Judgment are defined as follows: all  
23 motherboards with lead-containing solder, such as the *K8 Triton Series PCI-Express/Dual Channel*  
24 *DDR 400 Motherboard, Model Name: GA-K8NF-9 (#8 18313 00239 6)*, and components utilized  
25 with motherboards that contain lead solder. Examples of forms of solder include, but are not  
26 limited to, solder, solder balls, solder spheres, solder paste, wave solder, solder joints, die bumps,  
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28

1 and flip-chip bumps. All such motherboards with lead-containing solder, and components utilized  
2 with such motherboards that contain lead solder, shall be referred to hereinafter as “products” and  
3 are limited by the product names and numbers listed on Exhibit A hereto. Products that are  
4 integrated into a computer system as a component thereof, prior to the sale or acquisition of the  
5 computer system, shall be referred to hereinafter as “integrated products.” Products that are sold  
6 individually and not as a component integrated into a computer system shall be referred to  
7 hereinafter as “non-integrated products.”

9 **1.6 Notices of Violation**

10 On July 14, 2006, Brimer served Giga-Byte and various public enforcement agencies with a  
11 document entitled "60-Day Notice of Violation" (Notice) that provided Giga-Byte and such public  
12 enforcers with notice that alleged that Giga-Byte was in violation of California Health & Safety  
13 Code §25249.6 for failing to warn consumers, workers and others that the products that Giga-Byte  
14 sold exposed users in California to the listed chemical.

16 **1.7 Complaint**

17 On September 26, 2006, Brimer, who is acting in the interest of the general public in  
18 California, filed a complaint (Complaint or Action) in the Superior Court in and for the County of  
19 Alameda against G.B.T. Inc., Giga-Byte Technology Co., Ltd., and Does 1 through 150, *Brimer v.*  
20 *G.B.T. Inc.; Giga-Byte Technology Co., Ltd.; and DOES 1 through 150, inclusive, Alameda*  
21 *Superior Court Case No. HG-06-290896*, alleging violations of Health & Safety Code §25249.6,  
22 based on the alleged exposures to the listed chemical contained in the products Giga-Byte sold.

24 **1.8 No Admission**

25 Defendants deny the material factual and legal allegations contained in Brimer's Notice and  
26 Complaint and maintain that all products that they have sold and distributed in California have  
27 been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as  
28

1 an admission by Giga-Byte of any fact, finding, issue of law, or violation of law, nor shall  
2 compliance with this Consent Judgment constitute or be construed as an admission by Giga-Byte  
3 of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by  
4 Giga-Byte. However, this Section shall not diminish or otherwise affect Giga-Byte's obligations,  
5 responsibilities, and duties under this Consent Judgment.  
6

7 **1.9 Consent to Jurisdiction**

8 For purposes of this Consent Judgment only, the parties stipulate that this Court has  
9 jurisdiction over Giga-Byte as to the allegations contained in the Complaint, that venue is proper in  
10 the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of  
11 this Consent Judgment.  
12

13 **1.10 Effective Date**

14 For purposes of this Consent Judgment, the term "effective date" shall mean January 1,  
15 2007.

16 **2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

17 **2.1 Product Warnings**

18 After the effective date, Giga-Byte shall not sell, ship, or offer to be shipped for sale in  
19 California products containing the listed chemical unless such products are sold or shipped with  
20 the clear and reasonable warning set out in this Section 2.1, comply with the reformulation  
21 standards set forth in Section 2.3 or are otherwise exempt pursuant to Section 2.2.  
22

23 Any warning issued for products pursuant to this Section 2.1 shall be prominently placed  
24 with such conspicuousness as compared with other words, statements, designs, or devices as to  
25 render it likely to be read and understood by an ordinary individual under customary conditions  
26 before purchase or, for products shipped directly to an individual in California or used in the  
27 workplace, before use. Any warning issued pursuant to this Section 2.1 shall be provided in a  
28

1 manner such that the consumer or user understands to which *specific* product the warning applies,  
2 so as to minimize if not eliminate the chance that an overwarning situation will arise.

3 Sections 2.1(a)-(c) describe Giga-Byte's options for satisfying its warning obligations  
4 depending, in part, on the manner of sale. The warning requirement of Section 2.1(d) shall apply  
5 regardless of the manner of sale. The following warnings will be applicable when the product is  
6 sold either to consumers or in a business-to-business transaction:  
7

8 **(a) Retail Store Sales of Non-Integrated Products**

9 **(i) Product Labeling.** From the effective date, Giga-Byte may perform  
10 its warning obligations by ensuring that a warning is affixed to packaging, labeling, or directly on  
11 each non-integrated product sold in retail outlets by Giga-Byte or its agents, that states:  
12

13 **WARNING:** The materials used in this product contain  
14 lead, a chemical known to the State of  
15 California to cause birth defects and other  
16 reproductive harm.

17 Please wash hands after handling and avoid  
18 inhalation of fumes if heating the solder on  
19 the product.

20 **(ii) Point-of-Sale Warnings.** Giga-Byte may perform its warning  
21 obligations by ensuring that signs are posted at retail outlets in the State of California where the  
22 non-integrated products are sold. In order to avail itself of the point-of-sale option, Giga-Byte  
23 shall provide a written notice (via certified mail in the first quarter of each calendar year) to each  
24 retailer or distributor to whom Giga-Byte sells or transfers the non-integrated products directly,  
25 which informs such retailers or distributors that point-of-sale warnings are required at each retail  
26 location in the State of California. Giga-Byte shall include a copy of the warning signs and posting  
27 instructions with such notice. Further, if it elects the point-of-sale warning option, Giga-Byte must  
28 receive and make available for Brimer's inspection, upon request, a written commitment: (a) from

1 each retailer to whom Giga-Byte sells non-integrated products directly that said retailer will post  
2 the warning signs; and (b) from each distributor to whom Giga-Byte sells non-integrated products  
3 directly that the distributor will transmit the point-of-sale warning notice and instructions to its  
4 direct customers. Point-of-sale warnings shall be provided through one or more signs posted in  
5 close proximity to the point of display of the non-integrated products that states:  
6

7 **WARNING:** The materials used in this product contain  
8 lead, a chemical known to the State of  
9 California to cause birth defects and other  
10 reproductive harm.

11 Please wash hands after handling and avoid  
12 inhalation of fumes if heating the solder on  
13 the product.

14 **(b) Mail Order Catalog and Internet Sales of Non-Integrated Products.**

15 Defendants shall satisfy their warning obligations for non-integrated products that  
16 defendants sell through their mail order catalog or from their websites on the Internet to California  
17 residents by providing a warning: (i) in the mail order catalog; (ii) on the website; and/or (iii) with  
18 the product when it is shipped to an address in California. Warnings given in defendants' mail  
19 order catalog or on the website shall identify the specific product to which the warning applies as  
20 further specified in Sections 2.1(b)(i), (ii), and/or (iii) as applicable:

21 **(i) Mail Order Catalog Warning.** Any warning provided in a mail  
22 order catalog must be in the same type size or larger as the non-integrated product description text  
23 within the catalog. The following warning shall be provided on the same page and in the same  
24 location as the display and/or description of the non-integrated product:

25 **WARNING:** The materials used in this product contain  
26 lead, a chemical known to the State of  
27 California to cause birth defects and other  
28 reproductive harm.

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Please wash hands after handling and avoid inhalation of fumes if heating the solder on the product.

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the non-integrated product, Giga-Byte may utilize a designated symbol to cross reference the applicable warning (designated symbol, attached hereto as Exhibit B) and shall define the term "designated symbol" with the following language on the inside of the front cover of the catalog or on the same page as any order form for the non-integrated product(s):

*approved by DT*

**WARNING:** The materials used in certain products identified with this symbol ▼ and offered for sale in this catalog contain lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

Please wash hands after handling and avoid inhalation of fumes if heating the solder on the product.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the non-integrated product. On each page where the designated symbol appears, Giga-Byte must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

If defendants elect to provide warnings in the mail order catalog, then the warnings must be included in all catalogs offering to sell one or more non-integrated products printed after January 1, 2007.

(ii) **Internet Website Warning.** A warning may be given in conjunction with the sale of the non-integrated product via the Internet, provided it appears either: (a) on the same web page on which the non-integrated product is displayed; (b) on the same web page as the order form for the non-integrated product; (c) on the same page as the price for any

1 non-integrated product; or (d) on one or more web pages displayed to a purchaser during the  
2 checkout process. The following warning statement shall be used and shall appear in any of the  
3 above instances adjacent to or immediately following the display, description, or price of the non-  
4 integrated product for which it is given in the same type size or larger as the product description  
5 text:  
6

7 **WARNING:** The materials used in this product contain  
8 lead, a chemical known to the State of  
9 California to cause birth defects and other  
reproductive harm.

10 Please wash hands after handling and avoid  
11 inhalation of fumes if heating the solder on  
the product.

12 Alternatively, the designated symbol may appear adjacent to or immediately following the  
13 display, description, or price of the non-integrated product for which a warning is being given,  
14 provided that the following warning statement also appears elsewhere on the same web page:  
15

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

19 Please wash hands after handling and avoid  
20 inhalation of fumes if heating the solder on  
the product.

21 (iii) **Package Insert or Label Warning.** For all products that defendants  
22 sell via their catalogs or via their websites on the Internet, a warning may be provided with the  
23 non-integrated product when it is shipped directly to an individual in California by either: (a)  
24 affixing the following warning language to the packaging, labeling, or directly to a specific non-  
25 integrated product; (b) inserting a warning card measuring at least 4" x 6" in the shipping carton  
26 which contains the following warning language; or (c) placing the following warning statement on  
27  
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1 the packing slip or customer invoice on the line directly below the description of the non-  
2 integrated product on the packing slip or customer invoice:

3                   **WARNING:** The materials used in this product contain  
4                   lead, a chemical known to the State of  
5                   California to cause birth defects and other  
6                   reproductive harm.

7                   Please wash hands after handling and avoid  
8                   inhalation of fumes if heating the solder on  
9                   the product.

10                   Alternatively, Giga-Byte may place the following language on the packing slip or invoice  
11 and specifically identify the non-integrated product in lettering of the same size or larger as the  
12 description of the product:

13                   **WARNING:** The materials used in the following  
14                   product(s) contain lead, a chemical known  
15                   to the State of California to cause birth  
16                   defects or other reproductive harm.

17                   Please wash hands after handling and avoid  
18                   inhalation of fumes if heating the solder on  
19                   the product.

20                   *[list products for which warning is given].*

21                   Giga-Byte shall, in conjunction with providing a warning pursuant to Section 2.1(b)(iii),  
22 also inform the consumer, in a conspicuous manner, that he or she may return the non-integrated  
23 product for a full refund (including shipping costs for both the receipt and the return of the  
24 product) within thirty (30) days of his or her receipt of the product.

25                   **(c) Sales to Known Integrators**

26                   Where Giga-Byte sells products to individuals or entities they know to be in the business of  
27 integrating their products into computer systems for resale (integrator(s)), Giga-Byte shall provide  
28 the integrator with written instructions (via certified mail in the first quarter of each calendar year)  
which instructs such integrators to attach sticker warnings, as specified in this Section, to any item

1 which contains a product as an integrated component, prior to the resale of the integrated product.  
2 Giga-Byte must receive and make available for Brimer's inspection, upon request, a written  
3 commitment from each integrator to whom Giga-Byte sells products directly that said integrator  
4 will post the warning stickers consistent with the requirements of Proposition 65. Giga-Byte shall  
5 provide the integrators with stickers printed with the following warning to be attached to each item  
6 containing an integrated product:  
7

8 **WARNING:** The materials used in the motherboard  
9 utilized in this computer system contain  
10 lead, a chemical known to the State of  
11 California to cause birth defects and other  
12 reproductive harm.

13 Please wash hands after handling this  
14 motherboard and avoid inhalation of fumes  
15 if heating the solder on the motherboard.

16 **(d) Manual Warnings**

17 On or before January 1, 2007, Giga-Byte shall include the following warning in  
18 twelve point font or greater on the inside front cover of its product user manuals shipped with any  
19 non-reformulated product and available for viewing on its website, if so provided, and where Giga-  
20 Byte otherwise warns or informs its customers of the content of its products:

21 **WARNING:** The materials used in this product contain  
22 lead, a chemical known to the State of  
23 California to cause birth defects and other  
24 reproductive harm.

25 Please wash hands after handling and avoid  
26 inhalation of fumes if heating the solder on  
27 the product.

28 **2.2 Exceptions To Warning Requirements**

The warning requirements set forth in Section 2.1 shall not apply to:

- (i) Any products shipped to a third party before the effective date, subject to

1 Section 2.5;

2 (ii) Reformulated products (as defined in Section 2.3 below); or

3 (iii) Any product in which the only possible point of exposure to the listed  
4 chemical is embedded in a manner that a consumer or worker would not  
5 come into contact with the listed chemical under any reasonably anticipated  
6 use.  
7

8 **2.3 Reformulation Standards**

9 Reformulated products are defined as follows: any product containing less than or equal to  
10 one-tenth of one percent (0.1%) lead by weight in each solder material, including all forms of  
11 solder as identified in Section 1.5, unless that material is embedded in a manner that a consumer or  
12 worker ordinarily would not come into contact with the lead under any reasonably anticipated use.<sup>1</sup>  
13

14 The warnings required pursuant to Section 2.1 above shall not be required for reformulated  
15 products.

16 **2.4 Reformulation Commitment**

17 Giga-Byte hereby commits that all desktop products that it offers for sale in California after  
18 January 1, 2007, shall qualify as reformulated products or be exempt from the warning  
19 requirements of Section 2.1. Further, Giga-Byte commits to use commercially reasonable efforts  
20 to reformulate all products in addition to those used for desktop computers (*e.g.*, motherboards  
21 used for servers) to eliminate the presence of lead, except for those instances outlined in Section  
22 2.2(iii), on or before December 31, 2008.  
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26

27  
28 <sup>1</sup> For purposes of this consent judgment, the lead by weight standard shall not apply to ingredient components of solder, such as glass and ceramic additives, but shall apply to the final solder materials used in the products.

1                   **2.5    Public Information Commitment**

2                   In a good faith effort to inform the public about the risk of exposure to lead in Giga-Byte  
3 products sold before January 1, 2007, Giga-Byte hereby commits to provide the following warning  
4 on its motherboard products main web page for a period of three years:  
5

6                   **WARNING:** Certain Giga-Byte motherboards sold in  
7 California prior to January 1, 2007, contain  
8 lead solder. Lead is a chemical known to  
9 the State of California to cause birth defects  
10 and other reproductive harm.

11                                 Please wash hands after handling those  
12 motherboards that utilize lead solder and  
13 avoid inhalation of fumes if heating the  
14 solder on the product.

15                   Immediately following the above warning, Giga-Byte shall provide a hyperlink entitled “List of  
16 Motherboards Containing Lead Solder” which will link to a web page that Giga-Byte shall create  
17 and maintain for a period of three years. On that page, Giga-Byte shall provide the following  
18 warning:  
19

20                   **WARNING:** The following Giga-Byte motherboards  
21 sold in California prior to January 1, 2007,  
22 contain lead solder. Lead is a chemical  
23 known to the State of California to cause  
24 birth defects and other reproductive harm.

25                                 Please wash hands after handling these  
26 motherboards that utilize lead solder and  
27 avoid inhalation of fumes if heating the  
28 solder on these products.

                  Immediately following that warning, Giga-Byte shall list all products that contain lead solder  
                  which Giga-Byte sold in California for the past three years before January 1, 2007. Giga-Byte  
                  shall identify each product by name and model number.

1       **3.       MONETARY PAYMENTS**

2               **3.1       Penalties Pursuant to Health & Safety Code §25249.7(b)**

3               Pursuant to Health & Safety Code §25249.7(b), the total civil penalty assessed shall be  
4       \$50,000, which shall be apportioned as follows:

- 5                               (a)       Giga-Byte shall receive a credit of \$12,500 in light of its prompt cooperation  
6   with Brimer in resolving this matter and its commitment to sell only  
7   reformulated products in California;
- 8                               (b)       Giga-Byte shall pay \$10,000 in civil penalties on or before December 28,  
9   2006;
- 10                              (c)       Giga-Byte shall pay \$12,500 in civil penalties on or before January 15,  
11   2007. This \$12,500 payment will be waived provided that Giga-Byte  
12   complies with the public information commitment on or before January 1,  
13   2007, as set forth in Section 2.5 and submits a compliant web link to Brimer  
14   for his review; and
- 15                              (d)       Giga-Byte shall pay the remaining \$15,000 in civil penalties on or before  
16   January 15, 2008. This \$15,000 payment will be waived provided that Giga-  
17   Byte submits a report to Brimer on or before December 1, 2007, which sets  
18   forth, in sufficient detail, its efforts to remove lead from its motherboards  
19   not intended for use in desktop computers.  
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23               All payments made pursuant to this Section 3.1 shall be payable to the "HIRST &  
24       CHANLER LLP in Trust For Russell Brimer" and shall be delivered to plaintiff's counsel at the  
25       following address:  
26  
27  
28

1 HIRST & CHANLER LLP  
2 Attn: Proposition 65 Controller  
3 2560 Ninth Street  
4 Parker Plaza, Suite 214  
5 Berkeley, CA 94710-2565

6 **3.2 Apportionment of Penalties Received**

7 All penalty monies received shall be apportioned by Brimer in accordance with Health &  
8 Safety Code §25192, with 75% of these funds remitted by Brimer to the State of California's Office  
9 of Environmental Health Hazard Assessment and the remaining 25% of these penalty monies  
10 retained by Brimer as provided by Health & Safety Code §25249.12(d). Brimer shall bear all  
11 responsibility for apportioning and paying to the State of California the appropriate civil penalties  
12 paid in accordance with this Section.

13 **4. REIMBURSEMENT OF FEES AND COSTS**

14 The parties acknowledge that Brimer and his counsel offered to resolve this dispute without  
15 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
16 issue to be resolved after the material terms of the agreement had been settled. Giga-Byte then  
17 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been  
18 finalized. The parties then reached an accord on the compensation due to Brimer and his counsel  
19 under the private attorney general doctrine codified at California Code of Civil Procedure §1021.5  
20 for all work performed through the Court's approval of this agreement. Under the private attorney  
21 general doctrine, Giga-Byte shall reimburse Brimer and his counsel for fees and costs incurred as a  
22 result of investigating, bringing this matter to Giga-Byte's attention, litigating, and negotiating a  
23 settlement in the public interest and seeking the Court's approval of the settlement agreement.  
24 Giga-Byte shall pay Brimer and his counsel \$28,500 for all attorneys' fees, expert and investigation  
25 fees, litigation, and related costs. The payment shall be made payable to HIRST & CHANLER  
26 LLP and shall be delivered on or before December 28, 2006, at the following address:  
27  
28

1 HIRST & CHANLER LLP  
2 Attn: Proposition 65 Controller  
3 2560 Ninth Street  
4 Parker Plaza, Suite 214  
5 Berkeley, CA 94710-2565

6 **5. RELEASE OF ALL CLAIMS**

7 **5.1 Release of Giga-Byte and Downstream Customers**

8 In further consideration of the promises and agreements herein contained, and for the  
9 payments to be made pursuant to Sections 3 and 4, Brimer, on behalf of himself, his past and  
10 current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the  
11 general public, hereby waives all rights to institute or participate in, directly or indirectly, any form  
12 of legal action and releases all claims, including, without limitation, all actions, and causes of  
13 action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties,  
14 losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys'  
15 fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively  
16 "claims"), against Giga-Byte and each of its downstream wholesalers, licensors, licensees,  
17 auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies,  
18 corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives,  
19 shareholders, agents, and employees, sister and parent entities, and original equipment  
20 manufacturers and distributors (collectively "releasees"). This release is limited to those claims  
21 that arise under Proposition 65, as such claims relate to Giga-Byte's alleged failure to warn about  
22 exposures to the listed chemical contained in the products.  
23

24 The parties further understand and agree that this release shall not extend upstream to any  
25 entities that manufactured the products or any component parts thereof, or any distributors or  
26 suppliers who sold the products or any component parts thereof to Giga-Byte. This settlement  
27 does not release any downstream party (including integrators and retailers) that either caused  
28

*approved: [Signature]*

1 exposure to lead from components not supplied by Giga-Byte or, as to the future, alters the product  
2 purchased from Giga-Byte in such a way as to cause it to violate the reformulation standards or  
3 fails to transmit the requisite warnings provided by Giga-Byte in paragraph 2.1 set forth in this  
4 Consent Judgment.  
5

6 **5.2 Giga-Byte's Release of Brimer**

7 Giga-Byte waives any and all claims against Brimer, his attorneys, and other  
8 representatives, for any and all actions taken or statements made (or those that could have been  
9 taken or made) by Brimer and his attorneys and other representatives, whether in the course of  
10 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
11 and/or with respect to the products.  
12

13 **6. COURT APPROVAL**

14 This Consent Judgment is not effective until it is approved and entered by the Court and  
15 shall be null and void if, for any reason, it is not approved and entered by the Court within one  
16 year after it has been fully executed by all parties, in which event any monies that have been  
17 provided to plaintiff or his counsel, pursuant to Section 3 and/or Section 4 above, shall be refunded  
18 within fifteen (15) days after receiving written notice from Giga-Byte that the one-year period has  
19 expired.  
20

21 **7. SEVERABILITY**

22 If, subsequent to court approval of this Consent Judgment, any of the provisions of this  
23 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable  
24 provisions remaining shall not be adversely affected.  
25

26 **8. ATTORNEYS' FEES**

27 In the event that, after Court approval: (1) Giga-Byte or any third party seeks modification  
28 of this Consent Judgment pursuant to Section 14 below; or (2) Brimer takes reasonable and



1 necessary steps to enforce the terms of this Consent Judgment, Brimer shall be entitled to his  
2 reasonable attorneys' fees and costs pursuant to CCP §1021.5.

3 **9. GOVERNING LAW**

4 The terms of this Consent Judgment shall be governed by the laws of the State of California  
5 and apply within the State of California. In the event that Proposition 65 is repealed or is  
6 otherwise rendered inapplicable by reason of law generally, or as to the products, then Giga-Byte  
7 shall provide written notice to Brimer of any asserted change in the law, and shall have no further  
8 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the products  
9 are so affected.  
10

11 **10. NOTICES**

12 Unless specified herein, all correspondence and notices required to be provided pursuant to  
13 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,  
14 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the  
15 other party at the following addresses:  
16

17 To Giga-Byte:

18 Phillip F. Shinn, State Bar No. 112051  
19 THORNTON, TAYLOR, BECKER & SHINN  
20 731 Sansome Street, Suite 300  
21 San Francisco, CA 94111

22 To Brimer:

23 Proposition 65 Coordinator  
24 HIRST & CHANLER LLP  
25 2560 Ninth Street  
26 Parker Plaza, Suite 214  
27 Berkeley, CA 94710-2565

28 Any party, from time to time, may specify in writing to the other party a change of address  
to which all notices and other communications shall be sent.

1       **11. COUNTERPARTS; FACSIMILE SIGNATURES**

2               This Consent Judgment may be executed in counterparts and by facsimile, each of which  
3 shall be deemed an original, and all of which, when taken together, shall constitute one and the  
4 same document.  
5

6       **12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

7               Brimer agrees to comply with the reporting form requirements referenced in Health &  
8 Safety Code §25249.7(f).

9       **13. ADDITIONAL POST EXECUTION ACTIVITIES**

10              Brimer and Giga-Byte agree to mutually employ their best efforts to support the entry of  
11 this Agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court  
12 in a timely manner. The parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a  
13 noticed motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the  
14 parties agree to file a Motion to Approve the Agreement ("motion"). Giga-Byte shall have no  
15 additional responsibility to plaintiff's counsel pursuant to Code of Civil Procedure §1021.5 or  
16 otherwise with regard to reimbursement of any fees and costs incurred with respect to the  
17 preparation and filing of the motion or with regard to plaintiff's counsel appearing for a hearing  
18 thereon.  
19

20       **14. MODIFICATION**

21              This Consent Judgment may be modified only: (1) by written agreement of the parties and  
22 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion  
23 of any party and entry of a modified Consent Judgment by the Court. The Attorney General shall  
24 be served with notice of any proposed modification to this Consent Judgment at least fifteen (15)  
25 days in advance of its consideration by the Court.  
26  
27  
28

FROM : GBT\_INC

FAX NO : 6268549340


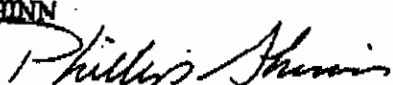
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**15. AUTHORIZATION**

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

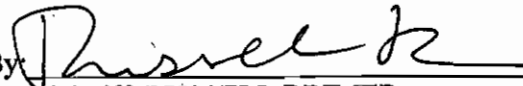
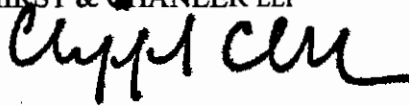
<p align="center"><b>AGREED TO:</b></p> <p>Date: _____</p> <p>By: _____ Plaintiff, RUSSELL BRIMER</p>	<p align="center"><b>AGREED TO:</b></p> <p>Date: <u>Dec. 07, 2006</u></p> <p>By:  Defendant, G.B.T. INC.</p>
<p align="center"><b>APPROVED AS TO FORM:</b></p> <p>Date: _____ HIRST &amp; CHANLER LLP</p> <p>By: _____ Clifford Chanler, Esq. Attorneys for Plaintiff RUSSELL BRIMER</p>	<p align="center"><b>APPROVED AS TO FORM:</b></p> <p>Date: <u>Dec 7, 2006</u> THORNTON, TAYLOR, BECKER &amp; SHINN</p> <p>By:  Phillip F. Shinn Attorneys for Defendants G.B.T. INC.; GIGA-BYTE TECHNOLOGY CO., LTD.</p>

**IT IS SO ORDERED.**

Date: \_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

1 **15. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their  
3 respective parties and have read, understood, and agree to all of the terms and conditions of this  
4 Consent Judgment.  
5

<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: <u>12-06-06</u></p> <p>By: <u></u> Plaintiff, RUSSELL BRIMER</p>	<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: _____</p> <p>By: _____ Defendant, G.B.T. INC.</p>
<p style="text-align: center;"><b>APPROVED AS TO FORM:</b></p> <p>Date: <u>DECEMBER 7, 2006</u> HIRST &amp; CHANLER LLP</p> <p>By: <u></u> Clifford Chanler, Esq. Attorneys for Plaintiff RUSSELL BRIMER</p>	<p>Date: _____</p> <p>By: _____ Defendant, GIGA-BYTE TECHNOLOGY CO., LTD.</p> <p style="text-align: center;"><b>APPROVED AS TO FORM:</b></p> <p>Date: _____ THORNTON, TAYLOR, BECKER &amp; SHINN</p> <p>By: _____ Phillip F. Shinn Attorneys for Defendants G.B.T. INC.; GIGA-BYTE TECHNOLOGY CO., LTD.</p>

24 **IT IS SO ORDERED.**

25 Date: \_\_\_\_\_

26 \_\_\_\_\_  
27 JUDGE OF THE SUPERIOR COURT  
28

### **Exhibit A**

The products that are covered by this Consent Judgement are motherboards with lead-containing solder and components utilized with motherboards that contain lead solder including, but not limited to:

1. *K8 Triton Series PCI-Express/Dual Channel DDR 400 Motherboard, Model Name: GA-K8NF-9 (#8 18313 00239 6)*

**Exhibit B**

The Designated Symbol [Yellow Triangle] that Defendants will use to identify Products containing the Listed Chemical which are sold through its catalogs or on its website is:

