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Clifford A. Chanler, State Bar No. 135534  
Christopher Tuttle, State Bar No. 264545  
THE CHANLER GROUP  
2560 Ninth Street  
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Berkeley, CA 94710-2565  
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E-mail: ctuttle@chanler.com

Attorneys for Plaintiff  
RUSSELL BRIMER

**ENDORSED  
FILED**  
Superior Court of California  
County of San Francisco

JUL 21 2016

CLERK OF THE COURT  
By: ROSIE NOGUERA  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,  
Plaintiff,  
v.  
DIGITAL GADGETS, LLC, *et al.*,  
Defendants.

Case No. CGC-15-546424

**[PROPOSED] JUDGMENT PURSUANT  
TO TERMS OF PROPOSITION 65  
SETTLEMENT AND CONSENT  
JUDGMENT**

Date: July 21, 2016  
Time: 9:30 a.m.  
Dept.: 302  
Judge: Hon. Harold E. Kahn

Reservation No. 05270721-13

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Plaintiff Russell Brimer, and Defendant Digital Gadgets, LLC, having agreed through their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form of a consent judgment, and following this Court's issuance of an order approving their Proposition 65 settlement and Consent Judgment on \_\_\_\_\_, and for good cause being shown,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health and Safety Code section 25249.7(f)(4) and Code of Civil Procedure section 664.6, judgment is hereby entered in accordance with the terms of the Consent Judgment attached hereto as Exhibit 1. By stipulation of the parties, the Court will retain jurisdiction to enforce the terms of the settlement under Code of Civil Procedure section 664.6.

**IT IS SO ORDERED.**

JUL 21 2016

Dated: \_\_\_\_\_

HAROLD KAHN

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

# **EXHIBIT 1**

1 Cliff Chanler, State Bar No. 135534  
2 Chris Tuttle, State Bar No. 264545  
3 THE CHANLER GROUP  
4 2560 Ninth Street  
5 Parker Plaza, Suite 214  
6 Berkeley, CA 94710  
7 Telephone: (510) 848-8880  
8 Facsimile: (510) 848-8118  
9  
10 Attorneys for Plaintiffs  
11 RUSSELL BRIMER

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN FRANCISCO  
10 UNLIMITED CIVIL JURISDICTION

12 RUSSELL BRIMER  
13 Plaintiffs,  
14 v.  
15 DIGITAL GADGETS, LLC; *et al.*,  
16 Defendants.

Case No. CGC-15-546424

**[PROPOSED] CONSENT JUDGMENT AS  
TO DEFENDANT DIGITAL GADGETS,  
LLC.**

(Health & Safety Code § 25249.6 *et seq.* and  
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Russell Brimer (“Brimer”)  
4 and defendant Digital Gadgets, LLC (“Digital Gadgets”), with Brimer and Digital Gadgets each  
5 referred to individually as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Brimer is a resident of the State of California who seeks to promote awareness of exposures  
8 to toxic chemicals, and to improve human health by reducing or eliminating harmful substances  
9 contained in consumer and commercial products.

10 **1.3 Defendant**

11 Digital Gadgets employs ten or more persons and is a person in the course of doing business  
12 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and  
13 Safety Code section 25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Brimer alleges that Digital Gadgets manufactures, imports, sells, and/or distributes for sale  
16 in California, tablet computer stands/supports that contain Lead without providing the health hazard  
17 warning required by Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical that is  
18 known to cause birth defects or other reproductive harm.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are tablet computer stands/supports  
21 containing Lead that are sold or distributed for sale in California by Digital Gadgets including, but  
22 not limited to, the *DG Accessory Collection iCozy Bean Bag, DGIPA3BB-RD, #182 810097325 7*  
23 *024, UPC #8 86004 02212 1* (collectively, “Products”).

24 **1.6 Notices of Violation**

25 On March 31, 2015, Brimer served Digital Gadgets and the requisite public enforcement  
26 agencies with a 60-Day Notice of Violation (“Notice”), alleging that Digital Gadgets violated  
27 Proposition 65 when it failed to warn its customers and consumers in California of the health  
28 hazards associated with exposures to Lead in the Products. To the best of the Parties’ knowledge,

1 no public enforcer has commenced and is diligently prosecuting an action to enforce the allegations  
2 set forth in the Notice.

3 **1.7 Complaint**

4 On June 17, 2015, Brimer commenced the instant action (“Complaint”), naming Digital  
5 Gadgets as a defendant for the alleged violations of Proposition 65 that are the subject of the  
6 Notice.

7 **1.8 No Admission**

8 Digital Gadgets denies the material, factual, and legal allegations contained in the Notice  
9 and Complaint, and maintains that all of the products that it has sold or distributed for sale in  
10 California, including the Products, have been and are in compliance with all laws. Nothing in this  
11 Consent Judgment shall be construed as an admission by Digital Gadgets of any fact, finding,  
12 conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent  
13 Judgment constitute or be construed as an admission by Digital Gadgets of any fact, finding,  
14 conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish or  
15 otherwise affect Digital Gadgets’ obligations, responsibilities, and duties under this Consent  
16 Judgment.

17 **1.9 Jurisdiction**

18 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
19 jurisdiction over Digital Gadgets as to the allegations in the Complaint, that venue is proper in San  
20 Francisco County, and that the Court has jurisdiction to enter and enforce the provisions of this  
21 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

22 **1.10 Effective Date**

23 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that  
24 the Court grants the motion for approval of this Consent Judgment contemplated by Section 5.

25 **2. INJUNCTIVE SETTLEMENT TERMS**

26 **2.1 Commitment to Reformulate or Warn**

27 Commencing on the Effective Date, and continuing thereafter, Digital Gadgets shall only  
28 sell, purchase for sale, or distribute for sale in California, (a) Reformulated Products, (b) or

1 Products sold with a Clear and Reasonable Warning pursuant to Section 2.3

2 **2.2 Reformulated Products**

3 For purposes of this Consent Judgment, "Reformulated Products" are Products containing a  
4 maximum of 100 parts per million of Lead by weight in any accessible component (i.e., any  
5 component that can be touched or handled during a reasonably foreseeable use) when analyzed  
6 pursuant to Environmental Protection Agency testing methodologies 3050B and/or 6010B, and that  
7 yield a result of less than 1.0 micrograms of Lead when analyzed pursuant to the NIOSH 9100  
8 testing protocol.

9 **2.3 Clear and Reasonable Warnings**

10 Commencing on the Effective Date and continuing thereafter, for all Products that are not  
11 Reformulated Products (i.e. Products that contain more than 100 ppm Lead), Digital Gadgets agrees  
12 that it will only ship, sell, or offer such Products for sale in California with a clear and reasonable  
13 warning utilized pursuant to this Section. Digital Gadgets further agrees that the warning will be  
14 prominently placed with such conspicuousness as compared with other words, statements, designs,  
15 or devices as to render it likely to be read and understood by an ordinary individual under  
16 customary conditions before purchase or use. For purposes of this Consent Judgment, a clear and  
17 reasonable warning shall consist of a warning affixed to the packaging, label, tag, or directly to a  
18 Product sold in California containing one of the following statements:

19  
20 **WARNING:** This product contains Lead, a  
21 chemical known to the State of California  
22 to cause cancer and birth defects and other  
23 reproductive harm.

24 or

25 **WARNING:** This product contains a  
26 chemical known to the State of California to  
27 cause cancer and birth defects or other  
28 reproductive harm.

**2.3 Grace Period for Existing Inventory**

Digital Gadgets represents that it currently provides a warning for the Products that  
reads: "WARNING: This product contains a chemical known to the State of California to cause

1 cancer or birth defects or other reproductive harm.” Brimer agrees that Digital Gadgets may  
2 continue to sell Products bearing this warning for 180 days after the Effective Date, or until it has  
3 exhausted its supply of Products and/or warnings bearing this statement.

4 **3. MONETARY SETTLEMENT TERMS**

5 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

6 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the  
7 claims referred to in this Consent Judgment. Digital Gadgets shall pay \$10,000 in civil penalties in  
8 accordance with this Section. Each penalty payment will be allocated in accordance with California  
9 Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California  
10 Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the  
11 penalty remitted to Brimer. Brimer’s counsel shall be responsible for delivering OEHHA any  
12 penalty payment made under this Consent Judgment.

13 **3.1.1 Initial Civil Penalty.** Within two days of the Effective Date, Digital  
14 Gadgets shall make an initial civil penalty payment of \$3,000. Digital Gadgets shall provide its  
15 payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of  
16 \$2,250; and (b) “Russell Brimer, Client Trust Account” in the amount of \$750, to be delivered to  
17 the address provided in Section 3.4, below.

18 **3.1.2 Final Civil Penalty.** On December 31, 2016, Digital Gadgets shall make a  
19 final civil penalty payment of \$7,000. Pursuant to title 11 California Code of Regulations, section  
20 3203(c), Brimer agrees that the final civil penalty payment shall be waived in its entirety if, no later  
21 than December 1, 2016, an officer of Digital Gadgets provides Brimer with a signed declaration  
22 certifying that all of the Products it ships for sale or distributes for sale in California as of the date  
23 of its certification are Reformulated Products, and that Digital Gadgets will continue to offer only  
24 Reformulated Products in California in the future. Alternatively, Digital Gadgets may certify that is  
25 not presently offering the Products for sale in California but, that should it recommence sales in the  
26 future, it will only offer Reformulated Products. The option to provide a declaration in lieu of  
27 making the final civil penalty payment otherwise required by this Section is a material term, and  
28 time is of the essence.

1           **3.2 Reimbursement of Attorneys' Fees and Costs**

2           The Parties acknowledge that Brimer and his counsel offered to resolve this dispute without  
3 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue  
4 to be resolved after the material terms of the agreement had been settled. After finalizing the other  
5 settlement terms the Parties then negotiated a resolution of the compensation due to Brimer and his  
6 counsel under general contract principles and the private attorney general doctrine codified at  
7 California Code of Civil Procedure § 1021.5. For all work performed through the mutual  
8 execution of this agreement and the Court's approval of the same, but exclusive of fees and costs  
9 on appeal, if any, Digital Gadgets shall reimburse Brimer and his counsel \$30,000 to be delivered  
10 in three (3) installments according to the following schedule: (1) \$10,000 due on or before June 15,  
11 2016; (2) \$10,000 due on or before July 15, 2016; and (3) \$10,000 due on or before August 15,  
12 2016. Digital Gadgets' payments shall be in the form of a check payable to "The Chanler Group."  
13 The reimbursement covers all fees and costs incurred by Brimer investigating, bringing this matter  
14 to Digital Gadgets' attention, litigating, negotiating a settlement of the matter in the public interest,  
15 and obtaining court approval of the same.

16           **3.3 Payments Held In Trust**

17           With the exception of the final civil penalty payment required by Section 3.1.2, any  
18 payment that becomes due under this Consent Judgment prior to the Court's approval of the Parties'  
19 settlement shall be tendered on the date it is due, and held in trust by Digital Gadgets' counsel until,  
20 and disbursed to Brimer within two days after, the Effective Date. Digital Gadgets' counsel shall  
21 confirm receipt of each settlement payment received in writing to Brimer's counsel. Any payment  
22 that becomes due after the Effective Date, shall be delivered directly to Brimer's counsel at the  
23 address in Section 3.4.

24           **3.4 Payment Address**

25           All payments required by this Consent Judgment shall be delivered to:

26                           The Chanler Group  
27                           Attn: Proposition 65 Controller  
28                           2560 Ninth Street  
                              Parker Plaza, Suite 214  
                              Berkeley, CA 94710

1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Brimer's Release of Proposition 65 Claims**

3 Brimer, acting on his own behalf and in the public interest, releases Digital Gadgets and its  
4 parents, subsidiaries, affiliated entities under common ownership directors, officers, employees, and  
5 attorneys ("Releasees") and each entity to whom Digital Gadgets directly or indirectly distributes or  
6 sells the Products including, but not limited to, its downstream distributors, wholesalers, customers,  
7 retailers, including but not limited to Big Lots Inc. and Big Lots Stores, Inc., franchisers,  
8 cooperative members, licensors and licensees ("Downstream Releasees") for any violations arising  
9 under Proposition 65 for unwarned exposures to Lead from the Products manufactured, imported,  
10 distributed or sold by Digital Gadgets prior to the Effective Date, as set forth in the Notice.  
11 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 by  
12 Digital Gadgets with respect to exposures to Lead from Products manufactured, sold or distributed  
13 for sale by Digital Gadgets after the Effective Date.

14 **4.2 Brimer's Individual Release of Claims**

15 Brimer, in his individual capacity only and *not* in his representative capacity, also provides a  
16 release to Defendants, Releasees, and Downstream Releasees which shall be effective as a full and  
17 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,  
18 attorneys' fees, damages, losses, claims, liabilities and demands of Brimer of any nature, character  
19 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual  
20 exposures to Lead in Products manufactured, imported, distributed or sold by Digital Gadgets  
21 before the Effective Date.

22 **4.3 Digital Gadgets' Release of Brimer**

23 Digital Gadgets, on its own behalf and on behalf of its past and current agents,  
24 representatives, attorneys, successors and/or assignees, hereby waives any and all claims against  
25 Brimer and his attorneys and other representatives for any and all actions taken or statements made  
26 by Brimer and his attorneys and other representatives in the course of investigating claims, seeking  
27 to enforce Proposition 65 against it in this matter, or with respect to the Products.

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1 **5. COURT APPROVAL**

2 This Consent Judgment is not effective until it is approved and entered by the Court and  
3 shall be null and void if, for any reason, it is not approved and entered by the Court within one year  
4 after it has been fully executed by all Parties. Brimer and Digital Gadgets agree to support the entry  
5 of this agreement as a judgment, and to obtain the Court's approval of their settlement in a timely  
6 manner. The Parties acknowledge that, pursuant to California Health and Safety Code section  
7 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment, which  
8 motion Brimer shall draft and file and Digital Gadgets shall support, appearing at the hearing if so  
9 requested. If any third-party objection to the motion is filed, Brimer and Digital Gadgets agree to  
10 work together to file a reply and appear at any hearing. This provision is a material component of  
11 the Consent Judgment and shall be treated as such in the event of a breach.

12 **6. DISMISSAL OF BIG LOTS ENTITIES**

13 Within 10 days of the Effective Date, or Brimer's receipt of Digital Gadget's settlement  
14 funds, whichever is later, Brimer will file a request for dismissal as to defendants Big Lots, Inc. and  
15 Big Lots Stores, Inc.

16 **7. SEVERABILITY**

17 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment,  
18 any provision of this Consent Judgment is held by a court to be unenforceable, the validity of the  
19 remaining provisions shall not be adversely affected.

20 **8. GOVERNING LAW**

21 The terms of this Consent Judgment shall be governed by the laws of the State of California  
22 and apply within the State of California. In the event that Proposition 65 is repealed, pre-empted, or  
23 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Digital  
24 Gadgets may provide Brimer with written notice of any asserted change in the law, and shall have  
25 no further obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the  
26 Products are so affected.

27

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1 **9. NOTICE**

2 Unless specified herein, all correspondence and notice required by this Consent Judgment  
3 shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail,  
4 return receipt requested; or (iii) a recognized overnight courier to any Party by the other at the  
5 following addresses:

6

7 **For Digital Gadgets:**

8 Paul Goldenberg, President  
9 Digital Gadgets, LLC  
10 21 Englehard Drive  
11 Monroe Township, NJ 08831

12 **with a copy to:**

13 Ken Keller, Esq.  
14 Keller Sloan Roman Holland LLP  
15 555 Montgomery Street, 17<sup>th</sup> Floor  
16 San Francisco, CA 94111

17 **For Brimer:**

18 The Chanler Group  
19 Attn: Prop 65 Controller  
20 2650 Ninth Street  
21 Parker Plaza, Suite 214  
22 Berkeley, CA 94710

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

25 **10. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

26 This Consent Judgment may be executed in counterparts and by facsimile or portable  
27 document format (pdf) signature, each of which shall be deemed an original and, all of which, when  
28 taken together, shall constitute one and the same document.

29 **11. COMPLIANCE WITH REPORTING REQUIREMENTS**

30 Brimer and his counsel agree to comply with the reporting form requirements referenced in  
31 California Health and Safety Code section 25249.7(f).

1 **12. MODIFICATION**

2 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and  
3 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion or  
4 application of any party and the entry of a modified Consent Judgment by the Court thereon.

5 **13. AUTHORIZATION**

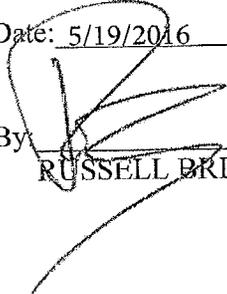
6 The undersigned are authorized to execute this Consent Judgment on behalf of their  
7 respective Parties and have read, understood, and agree to all of the terms and conditions of this  
8 Consent Judgment.

9  
10 **AGREED TO:**

**AGREED TO:**

11 Date: 5/19/2016

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

12  
13 By:  \_\_\_\_\_  
14 RUSSELL BRIMER

By: \_\_\_\_\_  
[ signature ]

\_\_\_\_\_

[ print name ]

15  
16 Its: \_\_\_\_\_  
[ title ]

DIGITAL GADGETS, LLC

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1 **12. MODIFICATION**

2 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and  
3 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion or  
4 application of any party and the entry of a modified Consent Judgment by the Court thereon.

5 **13. AUTHORIZATION**

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

9 **AGREED TO:**

10 Date: \_\_\_\_\_

11 By: \_\_\_\_\_  
12 RUSSELL BRIMER

**AGREED TO:**

13 Date: 5/26/2016

14 By:   
[ signature ]  
Charles Tebele  
[ print name ]

15 Its: President  
[ title ]

DIGITAL GADGETS, LLC

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