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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF ALAMEDA  
10 UNLIMITED CIVIL JURISDICTION  
11

12  
13 RUSSELL BRIMER,

14 Plaintiff,

15 v.

16 TYAN COMPUTER CORPORATION; and  
17 DOES 1 through 150, inclusive,

18 Defendants.

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Case No. CG06302764

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff RUSSELL BRIMER,  
3 in the public interest of the citizens of the State of California, to enforce the People’s right to be  
4 informed of the presence of lead (a toxic chemical) found in certain motherboards manufactured  
5 and sold by defendants in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failures to warn  
7 California citizens about their exposure to lead present in or on certain motherboards that  
8 defendants manufacture, distribute and/or offer for sale to consumers throughout the State of  
9 California.

10 3. High levels of lead are commonly found in the solder in and on motherboards that  
11 defendants manufacture, distribute and/or offer for sale to consumers throughout the State of  
12 California.

13 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,  
14 California Health & Safety Code §25249.6 *et seq.* (hereinafter Proposition 65), “No person in the  
15 course of doing business shall knowingly and intentionally expose any individual to a chemical  
16 known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable  
17 warning to such individual...” (*Cal. Health & Safety Code §25249.6.*)

18 5. On February 27, 1987, California identified and listed lead as a chemical known to  
19 cause birth defects and other reproductive harm. Lead became subject to the warning requirement  
20 one year later and was therefore subject to the “clear and reasonable warning” requirements of  
21 Proposition 65, beginning on February 27, 1988. (*22 CCR §12000(c); Cal. Health & Safety Code*  
22 *§25249.8.*) Lead shall hereinafter be referred to as the “LISTED CHEMICAL.”

23 6. Defendants manufacture and sell motherboards with lead solder including, but not  
24 limited to, *Tyan S3098G2N Tomcat i845GV Motherboard (# 6 35872 00925 9)*, which contain  
25 excessive levels of the LISTED CHEMICAL. All such motherboards containing the LISTED  
26 CHEMICAL shall hereinafter be referred to as the “PRODUCTS.”

27 7. Defendants’ failure to warn consumers; sole proprietors, employees, and other  
28 persons engaged in the small business field of computer service and repair not covered by

1 California's Occupational Safety Health Act, California Labor Code §6300 *et seq.*, (OSH ACT);  
2 and/or other individuals in the State of California about their exposure to the LISTED CHEMICAL  
3 in conjunction with defendants' sale of the PRODUCTS is a violation of Proposition 65 and  
4 subjects defendants to enjoinder of such conduct as well as civil penalties for each such violation.

5 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive  
6 and permanent injunctive relief to compel defendants to provide purchasers or users of the  
7 PRODUCTS with the required warning regarding the health hazards of the LISTED CHEMICAL.  
8 (*Cal. Health & Safety Code §25249.7(a).*)

9 9. Plaintiff also seeks civil penalties against defendants for their violations of  
10 Proposition 65, as provided for by California Health & Safety Code §25249.7(b).

11 **PARTIES**

12 10. Plaintiff RUSSELL BRIMER is a citizen of the County of Alameda in the State of  
13 California who is dedicated to protecting the health of California citizens through the elimination  
14 or reduction of toxic exposures from consumer products, and brings this action in the public  
15 interest pursuant to California Health & Safety Code §25249.7.

16 11. Defendant TYAN COMPUTER CORPORATION (TYAN) is a person doing  
17 business within the meaning of California Health & Safety Code §25249.11.

18 12. TYAN manufactures, distributes and/or offers the PRODUCTS for sale or use in the  
19 State of California or implies by its conduct that it manufactures, distributes and/or offers the  
20 PRODUCTS for sale or use in the State of California.

21 13. Defendants DOES 1-50 (hereinafter MANUFACTURER DEFENDANTS) are each  
22 persons doing business within the meaning of California Health & Safety Code §25249.11.

23 14. MANUFACTURER DEFENDANTS engage in the process of research, testing,  
24 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they  
25 engage in the process of research, testing, designing, assembling, fabricating and/or manufacturing,  
26 one or more of the PRODUCTS for sale or use in the State of California.

27 15. Defendants DOES 51-100 (hereinafter DISTRIBUTOR DEFENDANTS) are each  
28 persons doing business within the meaning of California Health & Safety Code §25249.11.



1 State of California, or otherwise purposefully avails itself of the California market.  
2 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California  
3 courts consistent with traditional notions of fair play and substantial justice.

4 **FIRST CAUSE OF ACTION**

5 **(Violation of Proposition 65)**

6 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
7 Paragraphs 1 through 23, inclusive.

8 25. The citizens of the State of California have expressly stated in the Safe Drinking  
9 Water and Toxic Enforcement Act of 1986, California Health & Safety Code §25249.5, *et seq.*  
10 (Proposition 65) that they must be informed "about exposures to chemicals that cause cancer, birth  
11 defects and other reproductive harm." (*Cal. Health & Safety Code §25249.6.*)

12 26. Proposition 65 states, "No person in the course of doing business shall knowingly  
13 and intentionally expose any individual to a chemical known to the state to cause cancer or  
14 reproductive toxicity without first giving clear and reasonable warning to such individual..." (*Id.*)

15 27. On October 13, 2006, a sixty-day notice of violation, together with the requisite  
16 certificate of merit, was provided to TYAN and various public enforcement agencies stating that as  
17 a result of TYAN's sale of PRODUCTS, purchasers and users in the State of California were being  
18 exposed to the LISTED CHEMICAL resulting from the reasonably foreseeable uses of the  
19 PRODUCTS, without the individual purchasers and users first having been provided with a "clear  
20 and reasonable warning" regarding such toxic exposures.

21 28. DEFENDANTS have engaged in the manufacture, distribution and/or offering of  
22 the PRODUCTS for sale or use in violation of California Health & Safety Code §25249.6 and  
23 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in  
24 violation of California Health & Safety Code §25249.6 has continued to occur beyond TYAN's  
25 receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and believes that such  
26 violations will continue to occur into the future.

27 29. After receipt of the claims asserted in the sixty-day notice of violation, the  
28 appropriate public enforcement agencies have failed to commence and diligently prosecute a cause

1 of action against TYAN under Proposition 65.

2 30. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
3 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state  
4 limits.

5 31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
6 distributed, and/or offered for sale or use by DEFENDANTS in California contained the LISTED  
7 CHEMICAL.

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

11 33. The normal and reasonably foreseeable use of the PRODUCTS has caused and  
12 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined  
13 by 22 CCR §12601(b).

14 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
15 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact  
16 and/or ingestion.

17 35. DEFENDANTS, and each of them, intended that such exposures to the LISTED  
18 CHEMICAL from the reasonably foreseeable use of the PRODUCTS would occur by their  
19 deliberate, non-accidental participation in the manufacture, distribution and/or offer for sale or use  
20 of PRODUCTS to individuals in the State of California.

21 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
22 consumers; sole proprietors, employees, and other persons engaged in the small business field of  
23 computer service and repair whom the OSH ACT does not cover; and/or other individuals in the  
24 State of California who were or who could become exposed to the LISTED CHEMICAL through  
25 dermal contact and/or ingestion during the reasonably foreseeable use of the PRODUCTS.

26 37. Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
27 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal  
28 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold by

1 DEFENDANTS without "clear and reasonable warning," have suffered, and continue to suffer,  
2 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

3 38. As a consequence of the above-described acts, DEFENDANTS, and each of them,  
4 are liable for a maximum civil penalty of \$2,500 per day for each violation pursuant to California  
5 Health & Safety Code §25249.7(b).

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

9 40. Wherefore, plaintiff prays judgment against DEFENDANTS, and each of them, as  
10 set forth hereinafter.

11 **PRAYER FOR RELIEF**

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

13 1. That the Court, pursuant to California Health & Safety Code §25249.7(b), assess  
14 civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each  
15 violation alleged herein;

16 2. That the Court, pursuant to California Health & Safety Code §25249.7(a),  
17 preliminarily and permanently enjoin DEFENDANTS, and each of them, from manufacturing,  
18 distributing or offering the PRODUCTS for sale or use in California, without providing "clear and  
19 reasonable warnings" as defined by 22 CCR §12601, as to the harms associated with exposures to  
20 the LISTED CHEMICAL;

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

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

23  
24 Dated: December 18, 2006

Respectfully Submitted,  
HIRST & CHANLER, LLP

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27 D. Joshua Voorhees  
Attorneys for Plaintiff  
28 RUSSELL BRIMER