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ENDORSED
FILED
ALAMEDA COUNTY

JUL - 2 2007

CLERK OF THE SUPERIOR COURT
By Jamie Adams Deputy

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

RG3333698

13 MICHAEL DIPIRRO,
14 Plaintiff,

15 v.

16 ALTHON MICRO, INC.; SAPPHIRE
17 TECHNOLOGY LIMITED; and DOES 1
18 through 150, inclusive,
19 Defendants.

Case No. _____

**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 MICHAEL DIPIRRO,
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, *Sapphire Pure Crossfire Advantage PC-A9RD480Adv Motherboard, #12010-00-50*,
25 which contain excessive levels of the LISTED CHEMICAL. All such motherboards containing the
26 LISTED CHEMICAL shall hereinafter be referred to as the “PRODUCTS.”

27 7. Defendants’ failure to warn consumers; sole proprietors, employees, and other
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1 persons engaged in the small business field of computer service and repair whom the Occupational
2 Safety Health Act (“OSH ACT”) does not cover; and/or other individuals in the State of California
3 about their exposure to the LISTED CHEMICAL in conjunction with defendants’ sale of the
4 PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder of such
5 conduct as well as civil penalties for each such violation.

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

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

12 **PARTIES**

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

17 11. Defendant ALTHON MICRO, INC. (“ALTHON”) is a person doing business
18 within the meaning of California Health & Safety Code §25249.11.

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

22 13. Defendant SAPPHIRE TECHNOLOGY LIMITED (“SAPPHIRE”) is a person
23 doing business within the meaning of California Health & Safety Code §25249.11.

24 14. SAPPHIRE manufactures, distributes and/or offers the PRODUCTS for sale or use
25 in the State of California or implies by its conduct that it manufactures, distributes and/or offers the
26 PRODUCTS for sale or use in the State of California.

27 15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each persons
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1 doing business within the meaning of California Health & Safety Code §25249.11.

2 16. MANUFACTURER DEFENDANTS engage in the process of research, testing,
3 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
4 engage in the process of research, testing, designing, assembling, fabricating and/or manufacturing,
5 one or more of the PRODUCTS for sale or use in the State of California.

6 17. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
7 doing business within the meaning of California Health & Safety Code §25249.11.

8 18. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
9 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in
10 the State of California.

11 19. Defendants DOES 101-150 (“RETAIL DEFENDANTS”) are each persons doing
12 business within the meaning of California Health & Safety Code §25249.11.

13 20. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State
14 of California.

15 21. At this time, the true names of Defendants DOES 1 through 150, inclusive, are
16 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to Code
17 of Civil Procedure §474. Plaintiff is informed and believes, and on that basis alleges, that each of
18 the fictitiously named defendants is responsible for the acts and occurrences herein alleged. When
19 ascertained, their true names shall be reflected in an amended complaint.

20 22. ALTHON, SAPPHIRE, MANUFACTURER DEFENDANTS, DISTRIBUTOR
21 DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to
22 hereinafter as “DEFENDANTS.”

23 VENUE AND JURISDICTION

24 23. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
25 Procedure §§394, 395, 395.5 because this Court is a court of competent jurisdiction, because one
26 or more instances of wrongful conduct occurred, and continues to occur, in the County of Alameda
27 and/or because DEFENDANTS conducted, and continue to conduct, business in this County with
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1 respect to the PRODUCTS.

2 24. The California Superior Court has jurisdiction over this action pursuant to
3 California Constitution Article VI, §10, which grants the Superior Court “original jurisdiction in all
4 causes except those given by statute to other trial courts.” The statute under which this action is
5 brought does not specify any other basis of subject matter jurisdiction.

6 25. The California Superior Court has jurisdiction over DEFENDANTS based on
7 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
8 association that either is a citizen of the State of California, has sufficient minimum contacts in the
9 State of California, or otherwise purposefully avails itself of the California market.
10 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by California
11 courts consistent with traditional notions of fair play and substantial justice.

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13 **FIRST CAUSE OF ACTION**

14 **(Violation of Proposition 65)**

15 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
16 Paragraphs 1 through 25, inclusive.

17 27. The citizens of the State of California have expressly stated in the Safe Drinking
18 Water and Toxic Enforcement Act of 1986, California Health & Safety Code §25249.5, *et seq.*
19 (“Proposition 65”) that they must be informed “about exposures to chemicals that cause cancer,
20 birth defects and other reproductive harm.” (*Cal. Health & Safety Code §25249.6.*)

21 28. Proposition 65 states, “No person in the course of doing business shall knowingly
22 and intentionally expose any individual to a chemical known to the state to cause cancer or
23 reproductive toxicity without first giving clear and reasonable warning to such individual...” (*Id.*)

24 29. On April 13, 2007, a sixty-day notice of violation, together with the requisite
25 certificate of merit, was provided to ALTHON, SAPPHIRE, and various public enforcement
26 agencies stating that as a result of ALTHON’s and SAPPHIRE’s sale of PRODUCTS, purchasers
27 and users in the State of California were being exposed to the LISTED CHEMICAL resulting from
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1 the reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users
2 first having been provided with a “clear and reasonable warning” regarding such toxic exposures.

3 30. DEFENDANTS have engaged in the manufacture, distribution and/or offering of
4 the PRODUCTS for sale or use in violation of California Health & Safety Code §25249.6 and
5 DEFENDANTS’ manufacture, distribution and/or offering of the PRODUCTS for sale or use in
6 violation of California Health & Safety Code §25249.6 has continued to occur beyond ALTHON’s
7 and SAPPHIRE’s receipt of plaintiff’s sixty-day notice of violation. Plaintiff further alleges and
8 believes that such violations will continue to occur into the future.

9 31. After receipt of the claims asserted in the sixty-day notice of violation, the
10 appropriate public enforcement agencies have failed to commence and diligently prosecute a cause
11 of action against ALTHON and SAPPHIRE under Proposition 65.

12 32. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
13 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state
14 limits.

15 33. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
16 distributed, and/or offered for sale or use by DEFENDANTS in California contained the LISTED
17 CHEMICAL.

18 34. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as to
19 expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during the
20 reasonably foreseeable use of the PRODUCTS.

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

24 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
25 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact
26 and/or ingestion.

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

4 38. DEFENDANTS failed to provide a “clear and reasonable warning” to those
5 consumers; sole proprietors, employees, and other persons engaged in the small business field of
6 computer service and repair whom the Occupational Safety Health Act (“OSH ACT”) does not
7 cover; and/or other individuals in the State of California who were or who could become exposed
8 to the LISTED CHEMICAL through dermal contact and/or ingestion during the reasonably
9 foreseeable use of the PRODUCTS.

10 39. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
11 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
12 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold by
13 DEFENDANTS without “clear and reasonable warning,” have suffered, and continue to suffer,
14 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

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

18 41. As a consequence of the above-described acts, California Health & Safety Code
19 §25249.7(a) also specifically authorizes the Court to grant injunctive relief against
20 DEFENDANTS.

21 42. Wherefore, plaintiff prays judgment against DEFENDANTS, and each of them, as
22 set forth hereinafter.

23 **PRAYER FOR RELIEF**

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

25 1. That the Court, pursuant to California Health & Safety Code §25249.7(b), assess
26 civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each
27 violation alleged herein;
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1 2. That the Court, pursuant to California Health & Safety Code §25249.7(a),
2 preliminarily and permanently enjoin DEFENDANTS, and each of them, from manufacturing,
3 distributing or offering the PRODUCTS for sale or use in California, without providing “clear and
4 reasonable warnings” as defined by 22 CCR §12601, as to the harms associated with exposures to
5 the LISTED CHEMICAL;

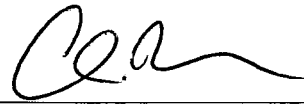
6 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

7 4. That the Court grant such other and further relief as may be just and proper.
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9 Dated: June 29, 2007

Respectfully Submitted,

HIRST & CHANLER, LLP



Christopher M. Martin

Attorney for Plaintiff
MICHAEL DIPIRRO

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