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CLERK OF SUPERIOR COURT
COUNTY OF CONTRA COSTA
BY _____ CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA
UNLIMITED CIVIL JURISDICTION

C 0 7 - 0 1 7 6 4

MICHAEL DIPIRRO,

Plaintiff,

v.

CIRCUIT CITY STORES, INC.; and DOES 1
through 150, inclusive,

Defendants.

Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

BY FAX

PER LOCAL RULE 5 THIS
CASE IS ASSIGNED TO
DEPT 30

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.* (Proposition 65), "No person in the course of
15 doing business shall knowingly and intentionally expose any individual to a chemical known to the
16 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to
17 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, *ABIT Socket 754 Motherboard (NF8)*, *#BLL NF8 (#8 41020 00142 0)*, 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
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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 CIRCUIT CITY STORES, INC., (CIRCUIT CITY) is a person doing
18 business within the meaning of California Health & Safety Code §25249.11.

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

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

24 14. MANUFACTURER DEFENDANTS engage in the process of research, testing,
25 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
26 engage in the process of research, testing, designing, assembling, fabricating and/or manufacturing,
27 one or more of the PRODUCTS for sale or use in the State of California.
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1 15. Defendants DOES 51-100 (DISTRIBUTOR DEFENDANTS) are each persons
2 doing business within the meaning of California Health & Safety Code §25249.11.

3 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
4 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in
5 the State of California.

6 17. Defendants DOES 101-150 (RETAIL DEFENDANTS) are each persons doing
7 business within the meaning of California Health & Safety Code §25249.11.

8 18. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State
9 of California.

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

15 20. CIRCUIT CITY, MANUFACTURER DEFENDANTS, DISTRIBUTOR
16 DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to
17 hereinafter as “DEFENDANTS.”

18 **VENUE AND JURISDICTION**

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

24 22. The California Superior Court has jurisdiction over this action pursuant to
25 California Constitution Article VI, §10, which grants the Superior Court “original jurisdiction in all
26 causes except those given by statute to other trial courts.” The statute under which this action is
27 brought does not specify any other basis of subject matter jurisdiction.
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1 23. The California Superior Court has jurisdiction over DEFENDANTS based on
2 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
3 association that either are citizens of the State of California, have sufficient minimum contacts in
4 the State of California, or otherwise purposefully avail themselves of the California market.
5 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by California
6 courts consistent with traditional notions of fair play and substantial justice.

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8 **FIRST CAUSE OF ACTION**
9 **(Violation of Proposition 65)**

10 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
11 Paragraphs 1 through 25, inclusive.

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

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

19 27. On April 30, 2007, a sixty-day notice of violation, together with the requisite
20 certificate of merit, was provided to CIRCUIT CITY and various public enforcement agencies
21 stating that as a result of CIRCUIT CITY’s sale of PRODUCTS, purchasers and users in the State
22 of California were being exposed to the LISTED CHEMICAL resulting from the reasonably
23 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having been
24 provided with a “clear and reasonable warning” regarding such toxic exposures.

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

4 29. After receipt of the claims asserted in the sixty-day notice of violation, the
5 appropriate public enforcement agencies have failed to commence and diligently prosecute a cause
6 of action against CIRCUIT CITY under Proposition 65.

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

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

13 32. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as to
14 expose individuals to the LISTED CHEMICAL through dermal contact, ingestion, and/or
15 inhalation during the reasonably foreseeable use of the PRODUCTS.

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

19 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
20 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact,
21 ingestion, and/or inhalation.

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

26 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those
27 consumers; sole proprietors, employees, and other persons engaged in the small business field of
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1 computer service and repair whom the Occupational Safety Health Act (OSH ACT) does not
2 cover; and/or other individuals in the State of California who were or who could become exposed
3 to the LISTED CHEMICAL through dermal contact, ingestion, and/or inhalation during the
4 reasonably foreseeable use of the PRODUCTS.

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

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

14 39. As a consequence of the above-described acts, California Health & Safety Code
15 §25249.7(a) also specifically authorizes the Court to grant injunctive relief against
16 DEFENDANTS.

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

19 **PRAYER FOR RELIEF**

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

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

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

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

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

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5 Dated: August 14, 2007

Respectfully Submitted,

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HIRST & CHANLER LLP

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Christopher M. Martin
Attorneys for Plaintiff
MICHAEL DIPIRRO

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