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ALAMEDA COUNTY

JUL 11 2007

CLERK OF THE SUPERIOR COURT  
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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 FOR THE COUNTY OF ALAMEDA  
15 UNLIMITED CIVIL JURISDICTION  
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19 MICHAEL DIPIRRO,

20 Plaintiff,

21 v.

22 ZONES, INC.; and DOES 1 through 150,  
23 inclusive,

24 Defendants.  
25  
26  
27  
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Case No.

**RG07335020**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

**NATURE OF THE ACTION**

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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, *Legend QDI KinetiZ 7T Mainboard #P 01821339*, which contain excessive levels of the  
25 LISTED CHEMICAL. All such motherboards containing the LISTED CHEMICAL shall  
26 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 ZONES, INC., (ZONES) is a person doing business within the meaning  
18 of California Health & Safety Code §25249.11.

19 12. ZONES 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. 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 violation of California Health & Safety Code §25249.6 has continued to occur beyond ZONES’  
2 receipt of plaintiff’s sixty-day notice of violation. Plaintiff further alleges and believes that such  
3 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 ZONES 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;

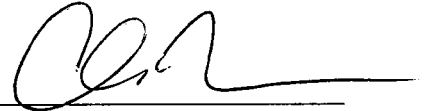
2 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

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

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5 Dated: July 10, 2007

Respectfully Submitted,

6 HIRST & CHANLER LLP

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9 Christopher M. Martin  
10 Attorneys for Plaintiff  
11 MICHAEL DIPIRRO