

1 David R. Bush, State Bar No. 154511
2 Christopher M. Martin, State Bar No. 186021
3 HIRST & CHANLER, LLP
4 2674 Main Street, Suite D, #139
5 Ventura, CA 93003
6 Telephone: (805) 649-9128
7 Facsimile: (805) 830-1133

8 Attorneys for Plaintiff
9 MICHAEL DiPIRRO

ENDORSED
FILED
ALAMEDA COUNTY

OCT 15 2007

CLERK OF THE SUPERIOR COURT
By C. PITTS Deputy

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

RG07351039

13 MICHAEL DiPIRRO,

14 Plaintiff,

15 v.

16 NEC CORPORATION OF AMERICA; and
17 DOES 1 through 150, inclusive,

18 Defendants.

Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

BY FAX

1 **NATURE OF THE ACTION**

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

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

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

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

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

25 6. Defendants manufacture and sell motherboards with lead solder including, but
26 not limited to, *NEC 181915 EB Anchorage Motherboard 158-056696-0*, which contain
27 excessive levels of the LISTED CHEMICAL. All such motherboards containing the LISTED
28 CHEMICAL shall hereinafter be referred to as the “PRODUCTS.”

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

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

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

14 PARTIES

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

19 11. Defendant NEC CORPORATION OF AMERICA ("NEC") is a person doing
20 business within the meaning of California Health & Safety Code §25249.11.

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

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

26 14. MANUFACTURER DEFENDANTS engage in the process of research, testing,
27 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
28 engage in the process of research, testing, designing, assembling, fabricating and/or

1 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

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

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

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

10 18. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the
11 State of California.

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

17 20. NEC, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and
18 RETAIL DEFENDANTS shall, where appropriate, collectively be referred to hereinafter as
19 "DEFENDANTS."

20 **VENUE AND JURISDICTION**

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

26 22. The California Superior Court has jurisdiction over this action pursuant to
27 California Constitution Article VI, §10, which grants the Superior Court "original jurisdiction in
28 all causes except those given by statute to other trial courts." The statute under which this

1 action is brought does not specify any other basis of subject matter jurisdiction.

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

9 **FIRST CAUSE OF ACTION**

10 (Violation of Proposition 65)

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

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

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

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

27 28. DEFENDANTS have engaged in the manufacture, distribution and/or offering of
28 the PRODUCTS for sale or use in violation of California Health & Safety Code §25249.6 and

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

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

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

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

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

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

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

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

28

1 distributing or offering the PRODUCTS for sale or use in California, without providing "clear
 2 and reasonable warnings" as defined by 22 CCR §12601, as to the harms associated with
 3 exposures to the LISTED CHEMICAL;

4 3. That the Court grants plaintiff his reasonable attorneys' fees and costs of suit;
 5 and

7 4. That the Court grants such other and further relief as may be just and proper.

10 Dated: October 12, 2007

Respectfully Submitted,
 HIRST & CHANLER LLP



David R. Bush
 Attorney for Plaintiff
 MICHAEL DIPIRRO

BY FAX

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