

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 E. ROBINSON Deputy

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

13 MICHAEL DiPIRRO,

14 Plaintiff,

15 v.

16 3COM CORPORATION; and DOES 1
17 through 150, inclusive,

18 Defendants.

Case No. RG07 350998

**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 network cards
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 network cards 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 network cards
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 computer network cards with lead solder
26 including, but not limited to, *3Com Token Ring 16 Mbps RJ-45 DB-9 PCI Bulk 3C359*, which
27 contain excessive levels of the LISTED CHEMICAL. All such network cards containing the
28 LISTED CHEMICAL shall hereinafter be referred to as the "PRODUCTS."

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2 7. Defendants' failure to warn consumers; sole proprietors, employees, and other
3 persons engaged in the small business field of computer service and repair whom the
4 Occupational Safety Health Act (OSH ACT) does not cover; and/or other individuals in the
5 State of California about their exposure to the LISTED CHEMICAL in conjunction with
6 defendants' sale of the PRODUCTS is a violation of Proposition 65 and subjects defendants to
7 enjoinder of such conduct as well as civil penalties for each such violation.
8

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

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

15 PARTIES

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

20 11. Defendant 3COM CORPORATION ("3COM") is a person doing business within
21 the meaning of California Health & Safety Code § 25249.11.

22 12. 3COM manufactures, distributes and/or offers the PRODUCTS for sale or use in
23 the State of California or implies by its conduct that it manufactures, distributes and/or offers
24 the PRODUCTS for sale or use in the State of California.

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

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

1 engage in the process of research, testing, designing, assembling, fabricating and/or
2 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

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

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

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

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

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

18 20. 3COM, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,
19 and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to hereinafter as
20 "DEFENDANTS."

21 **VENUE AND JURISDICTION**

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

27 22. The California Superior Court has jurisdiction over this action pursuant to
28 California Constitution Article VI, § 10, which grants the Superior Court "original jurisdiction

1 in all causes except those given by statute to other trial courts.” The statute under which this
2 action is brought does not specify any other basis of subject matter jurisdiction.

3 23. The California Superior Court has jurisdiction over DEFENDANTS based on
4 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
5 association that either is a citizen of the State of California, has sufficient minimum contacts in
6 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

10 **FIRST CAUSE OF ACTION**

11 (Violation of Proposition 65)

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

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

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

22 27. On August 2, 2007, a sixty-day notice of violation, together with the requisite
23 certificate of merit, was provided to 3COM and various public enforcement agencies stating that
24 as a result of 3COM’s sale of PRODUCTS, purchasers and users in the State of California were
25 being exposed to the LISTED CHEMICAL resulting from the reasonably foreseeable uses of
26 the PRODUCTS, without the individual purchasers and users first having been provided with a
27 “clear and reasonable warning” regarding such toxic exposures.
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1 28. DEFENDANTS have engaged in the manufacture, distribution and/or offering of
2 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and
3 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in
4 violation of California Health & Safety Code § 25249.6 has continued to occur beyond 3COM's
5 receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and believes that such
6 violations will continue to occur into the future.

7 29. After receipt of the claims asserted in the sixty-day notice of violation, the
8 appropriate public enforcement agencies have failed to commence and diligently prosecute a
9 cause of action against 3COM under Proposition 65.

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

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

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

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

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

25 35. DEFENDANTS, and each of them, intended that such exposures to the LISTED
26 CHEMICAL from the reasonably foreseeable use of the PRODUCTS would occur by their
27 deliberate, non accidental participation in the manufacture, distribution and/or offer for sale or
28

1 use of PRODUCTS to individuals in the State of California.

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

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

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

18 39. 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 40. Wherefore, plaintiff prays judgment against DEFENDANTS, and each of them,
22 as 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
27 each violation alleged herein;

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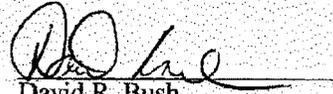
2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
preliminarily and permanently enjoins DEFENDANTS, and each of them, from manufacturing,
distributing or offering the PRODUCTS for sale or use in California, without providing "clear
and reasonable warnings" as defined by 22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

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

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

Dated: October 12, 2007

Respectfully Submitted,
HIRST & CHANLER LLP



David R. Bush
Attorney for Plaintiff
MICHAEL DIPIRRO

BY FAX