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ENDORSED
FILED
ALAMEDA COUNTY

DEC 12 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

13 JAMIE TE'O,
14 Plaintiff,
15 v.
16 JATON CORPORATION; and DOES 1
17 through 150, inclusive,
18 Defendants.

Case No. **RG07360979**
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

VIA FAX

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NATURE OF THE ACTION

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2 1. This Complaint is a representative action brought by plaintiff JAMIE TE'O, in
3 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 video cards manufactured,
5 distributed and/or 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 video 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 video cards that
12 defendants manufacture, distribute and/or offer for sale to consumers throughout the State of
13 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, distribute and/or sell video cards with lead solder
26 including, but not limited to, *Jaton GeForce MX4000 128MB PCI Video Card, Video-208PCU-*
27 *128Twin (#6 42404 20880 6)*, which contain excessive levels of the LISTED CHEMICAL. All
28 such video cards containing the LISTED CHEMICAL shall hereinafter be referred to as the

1 "PRODUCTS."

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' manufacture, distribution and/or sale of the PRODUCTS is a violation of
7 Proposition 65 and subjects defendants to enjoinder of such conduct as well as civil penalties
8 for each such violation.
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10 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary
11 injunctive and permanent injunctive relief to compel defendants to provide purchasers or users
12 of the PRODUCTS with the required warning regarding the health hazards of the LISTED
13 CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

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

16 PARTIES

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

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

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

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

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1 users first having been provided with a “clear and reasonable warning” regarding such toxic
2 exposures.

3 28. 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
7 JATONS’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 29. 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
11 cause of action against JATON under Proposition 65.

12 30. 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 31. DEFENDANTS knew or should have known that the PRODUCTS
16 manufactured, distributed, and/or offered for sale or use by DEFENDANTS in California
17 contained the LISTED CHEMICAL.

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

21 33. 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
23 defined by 22 CCR § 12601(b).

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

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

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

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

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

21 39. As a consequence of the above described acts, California Health & Safety Code
22 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
23 DEFENDANTS.

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

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PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

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

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: December 12, 2007

Respectfully Submitted,
HRST & CHANLER LLP


David R. Bush
Attorney for Plaintiff
JAMIE TE'O

VIA FAX