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**ENDORSED
FILED
ALAMEDA COUNTY**

AUG 19 2008

**CLERK OF THE SUPERIOR COURT
By Esther Coleman, Deputy**

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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF ALAMEDA
9 UNLIMITED CIVIL JURISDICTION

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12 MICHAEL DIPIRRO,

13 Plaintiff,

14 v.

15 AMERICAN MEGATRENDS, INC.; and
16 DOES 1 through 150, inclusive,

17 Defendants.

RG08401378

Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

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 controller cards 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 controller cards 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 controller cards 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 controller cards with solder containing lead
24 including, but not limited to, *AMI Express 200 Series 466 SCSI RAID Controller Card*,
25 *#EXPRESS-200*, which contain excessive levels of the LISTED CHEMICAL. All such controller
26 cards containing the LISTED 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 County of San Francisco in the
14 State of California who is dedicated to protecting the health of California citizens through the
15 elimination or reduction of toxic exposures from consumer products, and brings this action in the
16 public interest pursuant to California Health & Safety Code §25249.7.

17 11. Defendant AMERICAN MEGATRENDS, INC. (AMERICAN MEGATRENDS) is
18 a person doing business within the meaning of California Health & Safety Code §25249.11.

19 12. AMERICAN MEGATRENDS manufactures, distributes and/or offers the
20 PRODUCTS for sale or use in the State of California or implies by its conduct that it
21 manufactures, distributes and/or 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 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
3 AMERICAN MEGATRENDS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further
4 alleges and believes that such violations will continue to occur into the future.

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

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

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

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

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

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

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

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

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

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

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

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

20 **PRAYER FOR RELIEF**

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

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

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

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

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

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6 Dated: August 15, 2008

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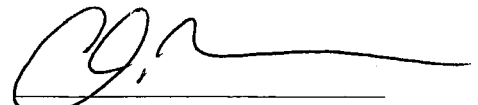
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Respectfully Submitted,

HIRST & CHANLER LLP



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Attorneys for Plaintiff
MICHAEL DIPIRRO