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

12 JAMIE TE'O,  
13

14 Plaintiff,

15 v.

16 PC MALL, INC.; and DOES 1 through 150,  
inclusive,

17 Defendants.

Case No.

09 - 4537 37

**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 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 found in certain controller cards with lead solder sold by  
5 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 controller cards  
9 with lead solder that defendants offer for sale to consumers throughout the State of California.

10 3. High levels of lead are commonly found in the solder on controller cards  
11 defendants offer for sale to consumers throughout the State of California.

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

17 5. On February 27, 1987, California identified and listed lead as a chemical  
18 known to cause birth defects and other reproductive harm. Lead became subject to the  
19 warning requirement one year later and was therefore subject to the "clear and reasonable  
20 warning" requirements of Proposition 65, beginning on February 27, 1988. (27 CCR §  
21 27001; *Cal. Health & Safety Code* § 25249.8.) Lead shall hereinafter be referred to as the  
22 "LISTED CHEMICAL."

23 6. Defendants sell controller cards with lead solder including, but not limited to,  
24 *EZ Quest Firewire 800 PCI Card, #A59999 (#6 94307 59999 4)*, which contain excessive  
25 levels of the LISTED CHEMICAL. All such controller cards with lead solder containing the  
26 LISTED CHEMICAL shall hereinafter be referred to as the "PRODUCTS."

27 7. Defendants' failure to warn consumers; sole proprietors, employees, and other  
28 persons engaged in the small business field of computer service and repair whom the

1 Occupational Safety Health Act (“OSH ACT”) does not cover; and/or other individuals in the  
2 State of California about their exposure to the LISTED CHEMICAL in conjunction with  
3 defendants’ sale of the PRODUCTS is a violation of Proposition 65 and subjects defendants to  
4 enjoinder of such conduct as well as civil penalties for each such violation.

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

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

#### 11 PARTIES

12 10. Plaintiff JAMIE TE’O is a citizen in the State of California who is dedicated to  
13 protecting the health of California citizens through the elimination or reduction of toxic  
14 exposures from consumer products, and brings this action in the public interest pursuant to  
15 California Health & Safety Code § 25249.7.

16 11. Defendant PC MALL, INC. (“PC MALL”) is a person doing business within  
17 the meaning of California Health & Safety Code § 25249.11.

18 12. PC MALL offers the PRODUCTS for sale or use in the State of California or  
19 implies by its conduct that it offers the PRODUCTS for sale or use in the State of California.

20 13. Defendants DOES 1 through 50 (“MANUFACTURER DEFENDANTS”) are  
21 each persons doing business within the meaning of California Health & Safety Code §  
22 25249.11.

23 14. MANUFACTURER DEFENDANTS engage in the process of research,  
24 testing, designing, assembling, fabricating and/or manufacturing, or imply by their conduct  
25 that they engage in the process of research, testing, designing, assembling, fabricating and/or  
26 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.  
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1 jurisdiction in all causes except those given by statute to other trial courts.” The statute under  
2 which this 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  
5 or association that either is a citizen of the State of California, has sufficient minimum  
6 contacts in the State of California, or otherwise purposefully avails itself of the California  
7 market. DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction  
8 by California courts consistent with traditional notions of fair play and substantial justice.  
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11 **FIRST CAUSE OF ACTION**

12 (Violation of Proposition 65)

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

15 25. The citizens of the State of California have expressly stated in the Safe  
16 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §  
17 25249.5, *et seq.* (Proposition 65) that they must be informed “about exposures to chemicals  
18 that cause cancer, birth defects and other reproductive harm.” (*Cal. Health & Safety Code* §  
19 25249.6.)

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

24 27. On February 24, 2009, a sixty-day notice of violation, together with the  
25 requisite certificate of merit, was provided to PC MALL and various public enforcement  
26 agencies stating that as a result of PC MALL’s sale of PRODUCTS, purchasers and users in  
27 the State of California were being exposed to the LISTED CHEMICAL resulting from the  
28 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users

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

10 29. After receipt of the claims asserted in the sixty-day notice of violation, the  
11 appropriate public enforcement agencies have failed to commence and diligently prosecute a  
12 cause of action against PC MALL under Proposition 65.

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

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

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

22 33. The normal and reasonably foreseeable use of the PRODUCTS has caused and  
23 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is  
24 defined by 27 CCR § 25602(b).

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

28 35. DEFENDANTS, and each of them, intended that such exposures to the

1 LISTED CHEMICAL from the reasonably foreseeable use of the PRODUCTS would occur  
2 by their deliberate, non accidental participation in the manufacture, distribution and/or offer  
3 for sale or use of PRODUCTS to individuals in the State of California.

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

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

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

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

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

25 **PRAYER FOR RELIEF**

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

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

1 day for each violation alleged herein;

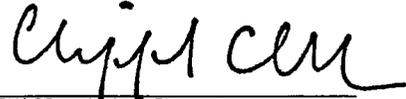
2           2.       That the Court, pursuant to California Health & Safety Code § 25249.7(a),  
3 preliminarily and permanently enjoins DEFENDANTS, and each of them, from  
4 manufacturing, distributing or offering the PRODUCTS for sale or use in California, without  
5 providing “clear and reasonable warnings” as defined by 27 CCR § 25601, as to the harms  
7 associated with exposures to the LISTED CHEMICAL;

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

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

11  
12 Dated: May 21, 2009

Respectfully Submitted,  
HIRST & CHANLER LLP



Clifford A. Chanler  
Attorney for Plaintiff  
JAMIE TE’O

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