



1 Clifford A. Chanler, State Bar No. 135534
 2 D. Joshua Voorhees, State Bar No. 241436
 3 Christopher M. Martin, State Bar No. 186021
 4 HIRST & CHANLER LLP
 5 2560 Ninth Street
 6 Parker Plaza, Suite 214
 7 Berkeley, CA 94710-2565
 8 Telephone: (510) 848-8880
 9 Facsimile: (510) 848-8118

FILED
ALAMEDA COUNTY

OCT 04 2007

CLERK OF THE SUPERIOR COURT
 By *[Signature]* Deputy

6 Attorneys for Plaintiff
 7 RUSSELL BRIMER

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

13 RUSSELL BRIMER,
 14 Plaintiff,
 15 v.

16 VIA TECHNOLOGIES, INC.; and DOES 1
 17 through 150, inclusive,
 18 Defendants.

Case No. RG-06-302792

ASSIGNED FOR ALL PURPOSES TO
 JUDGE Rommi MacLaren
 DEPARTMENT 301

~~PROPOSED~~ JUDGMENT
 PURSUANT TO TERMS OF
 SETTLEMENT AGREEMENT

Date: October 4, 2007
 Time: 9:00 A.M.
 Dept.: 301
 Judge: Hon. Rommi MacLaren

Reservation # 737134

23
 24 In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendant VIA
 25 TECHNOLOGIES, INC., have agreed through their respective counsel that judgment be entered
 26 pursuant to the terms of the Settlement Agreement entered into by the parties, and have issued an
 27 Order Approving Proposition 65 Settlement Agreement on April 26, 2007.
 28

[Handwritten initials]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Code of Civil Procedure section 664.5, judgment is entered in accordance with the terms of the ~~Order~~ *Approving* Proposition 65 Settlement Agreement between the parties. *attached hereto as Exhibit A.*
IT IS SO ORDERED.

Dated: 10/4/07

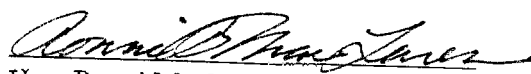

Hon. Ronni MacLaren
JUDGE OF THE SUPERIOR COURT

Exhibit A

1 Clifford A. Chanler, State Bar No. 135534
2 D. Joshua Voorhees, State Bar No. 241436
3 Christopher M. Martin, State Bar No. 186021
4 HIRST & CHANLER LLP
5 2560 Ninth Street
6 Parker Plaza, Suite 214
7 Berkeley, CA 94710-2565
8 Telephone: (510) 848-8880
9 Facsimile: (510) 848-8118

10 Attorneys for Plaintiff
11 RUSSELL BRIMER

12 Rodney G. Strickland Jr., State Bar No. 161934
13 WILSON SONSINI GOODRICH & ROSATI
14 650 Page Mill Rd
15 Palo Alto, CA 94304-1050
16 Telephone: (650) 493-9300
17 Facsimile: (650) 493-6811

18 Attorneys for Defendant
19 VIA TECHNOLOGIES, INC.

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA
21 FOR THE COUNTY OF ALAMEDA
22 UNLIMITED CIVIL JURISDICTION
23

24 RUSSELL BRIMER,

25 Plaintiff,

26 v.

27 VIA TECHNOLOGIES, INC.; and DOES 1
28 through 150, inclusive,

Defendants.

Case No. RG-06-302792

~~STIPULATION AND [PROPOSED]~~
~~ORDER~~ RE: SETTLEMENT
AGREEMENT

RBM

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Settlement Agreement is entered into by and between plaintiff, Russell Brimer, and
4 defendant VIA Technologies, Inc. ("VIA"), with Brimer and VIA referred to as the "parties."

5 **1.2 Plaintiff**

6 Brimer is an individual residing in Alameda County in the State of California who seeks to
7 promote awareness of exposure to toxic chemicals and improve human health by reducing or
8 eliminating hazardous substances contained in consumer products.
9

10 **1.3 Defendant**

11 VIA employs ten or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
13 Safety Code §§ 25249.6 *et seq.* (Proposition 65).
14

15 **1.4 General Allegations**

16 Plaintiff alleges that defendant has manufactured, distributed, and/or sold motherboards
17 with solder containing lead in the State of California without the requisite health hazard warnings.
18 Lead is a substance known to cause birth defects and other reproductive harm and is listed
19 pursuant to Proposition 65. Lead shall be referred to hereinafter as the "listed chemical."
20

21 **1.5 Product Description**

22 The products that are covered by this Settlement Agreement are defined as follows:
23 motherboards with lead-containing solder, such as the *VIA EPIA Mini-ITX Motherboard, Model*
24 *No. EPIA-800 (# 8 25529 00314 7)*, and components utilized with motherboards that contain lead
25 solder. Examples of forms of solder include, but are not limited to, solder, solder balls, solder
26 spheres, solder paste, wave solder, solder joints, die bumps, and flip-chip bumps. All such
27
28

1 motherboards with lead-containing solder, and components utilized with such motherboards that
2 contain lead solder, shall be referred to hereinafter as "products" and include but are not limited to
3 the product names and numbers listed on Exhibit A hereto. Products that are integrated into a
4 desktop computer system as a component thereof, prior to the sale or acquisition of the computer
5 system, shall be referred to hereinafter as "integrated products." Products that are sold
6 individually and not as a component integrated into a computer system shall be referred to
7 hereinafter as "non-integrated products."
8

9
10 **1.6 Notice of Violation**

11 On October 13, 2006, Brimer served defendant and various public enforcement agencies
12 with a document entitled "60-Day Notice of Violation" (Notice) that provided defendant and such
13 public enforcers with notice that alleged that defendant was in violation of California Health &
14 Safety Code §25249.6 for failing to warn consumers, workers and others that the products that
15 defendant sold exposed users in California to the listed chemical.
16

17 **1.7 Complaint**

18 On December 18, 2006, Brimer, who is acting in the interest of the general public in
19 California, filed a complaint (Complaint or Action) in the Superior Court in and for the County of
20 Alameda against VIA Technologies, Inc., and Does 1 through 150, *Brimer v. VIA Technologies,*
21 *Inc.; and DOES 1 through 150, inclusive, Alameda Superior Court Case No. RG-06-302792,*
22 alleging violations of California Health & Safety Code §25249.6, based on the alleged exposures
23 to the listed chemical contained in the products defendant sold.
24

25 **1.8 No Admission**

26 Defendant denies the material factual and legal allegations contained in Brimer's Notice
27 and Complaint and maintains that all products that it has sold and distributed in California have
28

1 been and are in compliance with all laws. Nothing in this Settlement Agreement shall be
2 construed as an admission by defendant of any fact, finding, issue of law, or violation of law, nor
3 shall compliance with this Settlement Agreement constitute or be construed as an admission by
4 defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
5 denied by defendant. However, this Section shall not diminish or otherwise affect defendant's
6 obligations, responsibilities and duties under this Settlement Agreement.
7

8 **1.9 Consent to Jurisdiction**

9 For purposes of this Settlement Agreement only, the parties stipulate that this Court has
10 jurisdiction over defendant as to the allegations contained in the Complaint, that venue is proper in
11 the County of Alameda and that this Court has jurisdiction to enter and enforce the provisions of
12 this Settlement Agreement.
13

14 **1.10 Effective Date**

15 For purposes of this Settlement Agreement, the term "effective date" shall mean April 30,
16 2007.
17

18 **2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

19 **2.1 Product Warnings**

20 After the effective date, defendant shall not sell, ship, or offer to be shipped for sale in
21 California products containing the listed chemical unless such products are sold or shipped with
22 the clear and reasonable warning set out in this Section 2.1, comply with the reformulation
23 standards set forth in Section 2.3 or are otherwise exempt pursuant to Section 2.2.
24

25 Any warning issued for products pursuant to this Section 2.1 shall be prominently placed
26 with such conspicuousness as compared with other words, statements, designs, or devices as to
27 render it likely to be read and understood by an ordinary individual under customary conditions
28

1 before purchase or, for products shipped directly to an individual in California or used in the
2 workplace in California, before use. Any warning issued pursuant to this Section 2.1 shall be
3 provided in a manner such that the consumer or user understands to which *specific* product the
4 warning applies, so as to minimize if not eliminate the chance that an overwarning situation will
5 arise.
6

7 Sections 2.1(a)-(c) describe defendant's options for satisfying its warning obligations
8 depending, in part, on the manner of sale. The warning requirement of Section 2.1(d) shall apply
9 regardless of the manner of sale. The following warnings will be applicable when the product is
10 sold either to consumers in California or in a business-to-business transaction in California. The
11 following warnings are not applicable to products that comply with the reformulation standards of
12 Section 2.3 or are otherwise exempt pursuant to Section 2.2.
13

14 (a) **Retail Store Sales of Non-Integrated Products**

15 (i) **Product Labeling.** From the effective date, a warning will be
16 affixed to packaging, labeling, or directly on each non-integrated product sold in retail outlets by
17 defendant or its agents, that states:
18

19 **WARNING:** The materials used in this product contain lead,
20 a chemical known to the State of California to
21 cause birth defects and other reproductive harm.

22 Please wash hands after handling and avoid
23 inhalation of fumes if heating the solder on the
24 product.

24 (ii) **Point-of-Sale Warnings.** Defendant may perform its warning
25 obligations by ensuring that signs are posted at retail outlets in the State of California where the
26 non-integrated products are sold. In order to avail itself of the point-of-sale option, defendant shall
27 provide a written notice (via certified mail in the first quarter of each calendar year) to each retailer
28

1 or distributor to whom defendant sells or transfers the non-integrated products directly, which
2 informs such retailers or distributors that point-of-sale warnings are required at each retail location
3 in the State of California. Defendant shall include a copy of the warning signs and posting
4 instructions with such notice. Further, defendant must receive and make available for Brimer's
5 inspection, upon request, a written commitment: (a) from each retailer to whom defendant sells
6 non-integrated products directly that said retailer will post the warning signs; and (b) from each
7 distributor to whom defendant sells non-integrated products directly that the distributor will
8 transmit the point-of-sale warning notice and instructions to their direct customers. Point-of-sale
9 warnings shall be provided through one or more signs posted in close proximity to the point of
10 display of the non-integrated products that states:

13 **WARNING:** The materials used in this product contain lead, a
14 chemical known to the State of California to
15 cause birth defects and other reproductive harm.

16 Please wash hands after handling and avoid
17 inhalation of fumes if heating the solder on the
18 product.

18 Where more than one product is sold in proximity to other like items or to those that
19 do not require a warning, the following statement must be used:¹

20 **WARNING:** The materials used in the following product(s)
21 contain lead, a chemical known to the State of
22 California to cause birth defects or other
23 reproductive harm.

24 Please wash hands after handling and avoid
25 inhalation of fumes if heating the solder on the
26 product.

26 *[list products for which warning is given].*

27 ¹ For purposes of this Settlement Agreement, "sold in proximity" shall mean that the covered product and
28 another like item are offered for sale close enough to each other so that the consumer, under the customary conditions,
could not reasonably determine which of the two items is subject to the warning sign.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(b) Mail Order Catalog and Internet Sales of Non-Integrated Products.

Defendant shall satisfy its warning obligations for non-integrated products that are sold by mail order catalog or from the Internet to California residents by providing a warning: (i) in the mail order catalog; (ii) on the website; and/or (iii) with the product when it is shipped to an address in California. Warnings given in the mail order catalog or on the website shall identify the specific product to which the warning applies as further specified in Sections 2.1(b)(i), (ii), and/or (iii) as applicable:

(i) Mail Order Catalog Warning. Any warning provided in a mail

order catalog must be in the same type size or larger as the non-integrated product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the non-integrated product:

WARNING: The materials used in this product contain lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

Please wash hands after handling and avoid inhalation of fumes if heating the solder on the product.

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the non-integrated product, defendant may utilize the designated symbol attached hereto as Exhibit B to cross reference the example warning and shall define the term "designated symbol" with the following language on the inside of the front cover of the catalog or on the same page as any order form for the non-integrated product(s):

///
///
///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WARNING: The materials used in certain products identified with this symbol ▼ and offered for sale in this catalog contain lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

Please wash hands after handling and avoid inhalation of fumes if heating the solder on the product.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the non-integrated product. On each page where the designated symbol appears, defendant must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

If defendant elects to provide warnings in the mail order catalog, then the warnings must be included in all catalogs offering to sell one or more non-integrated products printed after the Effective Date.

(ii) Internet Website Warning. A warning may be given in

conjunction with the sale of the non-integrated product via the Internet, provided it appears either: (a) on the same web page on which the non-integrated product is displayed; (b) on the same web page as the order form for the non-integrated product; (c) on the same page as the price for any non-integrated product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning statement shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the non-integrated product for which it is given in the same type size or larger as the product description

text:
///
///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WARNING: The materials used in this product contain lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

Please wash hands after handling and avoid inhalation of fumes if heating the solder on the product.

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description, or price of the non-integrated product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page:

WARNING: Products identified on this page with the following symbol use materials that contain lead, a chemical known to the State of California to cause birth defects and other reproductive harm:



Please wash hands after handling and avoid inhalation of fumes if heating the solder on the product.

(iii) Package Insert or Label Warning. For all products sold by catalog or via the Internet, a warning may be provided with the non-integrated product when it is shipped directly to an individual in California by either: (a) affixing the following warning language to the packaging, labeling, or directly to a specific non-integrated product; (b) inserting a warning card measuring at least 4" x 6" in the shipping carton which contains the following warning language; or (c) placing the following warning statement on the packing slip or customer invoice on the line directly below the description of the non-integrated product on the packing slip or customer invoice:

///

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WARNING: The materials used in this product contain lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

Please wash hands after handling and avoid inhalation of fumes if heating the solder on the product.

Alternatively, defendant may place the following language on the packing slip or invoice and specifically identify the non-integrated product in lettering of the same size or larger as the description of the product:

WARNING: The materials used in the following product(s) contain lead, a chemical known to the State of California to cause birth defects or other reproductive harm.

Please wash hands after handling and avoid inhalation of fumes if heating the solder on the product.

[list products for which warning is given].

Defendant shall, in any of these instances, in conjunction with providing the warning, also inform the consumer, in a conspicuous manner, that he or she may return the non-integrated product for a full refund (including shipping costs for both the receipt and the return of the product) within thirty (30) days of his or her receipt of the product.

(c) Sales to Known Integrators

Where defendant sells products to individuals or entities it knows to be in the business of integrating its products into computer systems for resale (“integrator(s)”), defendant shall provide the integrator with written instructions (via certified mail in the first quarter of each calendar year) which instructs such integrators to attach sticker warnings, as specified in this Section, to any item which contains a product as an integrated component, prior to the resale of the integrated product. Defendant must receive and make available for Brimer’s inspection, upon request, a written

1 commitment from each integrator to whom defendant sells products directly that said integrator
2 will post the warning stickers consistent with the requirements of Proposition 65. Defendant shall
3 provide the integrators with stickers printed with the following warning to be attached to each item
4 containing an integrated product:
5

6 **WARNING:** The materials used in the motherboard utilized
7 in this computer system contain lead, a
8 chemical known to the State of California to
9 cause birth defects and other reproductive
10 harm.

11 Please wash hands after handling this
12 motherboard and avoid inhalation of fumes if
13 heating the solder on the motherboard.

14 **(d) Manual Warnings**

15 On or before the Effective Date, defendant shall include the following warning in
16 twelve point font or greater on the inside front cover of its product user manuals shipped with any
17 non-reformulated product and available for viewing on its website, if so provided, and where
18 defendant otherwise warns or informs its customers of the content of its products:

19 **WARNING:** The materials used in this product contain
20 lead, a chemical known to the State of
21 California to cause birth defects and other
22 reproductive harm.

23 Please wash hands after handling and avoid
24 inhalation of fumes if heating the solder on
25 the product.

26 **2.2 Exceptions To Warning Requirements**

27 The warning requirements set forth in Section 2.1 shall not apply to:

- 28 (i) Any product manufactured and received in inventory before the effective
 date, subject to Section 2.5;
- (ii) Reformulated products (as defined in Section 2.3 below); or

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(iii) Any product in which the only possible point of exposure to the listed chemical is embedded in a manner that a consumer or worker would not come into contact with the listed chemical under any reasonably anticipated use.

2.3 Reformulation Standards

Reformulated products are defined as follows: any product containing less than or equal to one-tenth of one percent (0.1%) lead by weight in each solder material, including all forms of solder as identified in Section 1.5, unless that material is embedded in a manner that a consumer or worker ordinarily would not come into contact with the lead under any reasonably anticipated use.² The warnings required pursuant to Section 2.1 above shall not be required for reformulated products.

2.4 Reformulation Commitment

Defendant hereby commits that all desktop products that it offers for sale in California after the Effective Date shall qualify as reformulated products or be exempt from the warning requirements of Section 2.1 pursuant to Section 2.2. Further, defendant commits to use commercially reasonable efforts to reformulate all products in addition to those used for desktop computers (e.g., motherboards used for servers) to eliminate the presence of lead, except for those instances outlined in Section 2.2(iii), on or before December 31, 2007.

///
///
///

²For purposes of this Settlement Agreement, the lead by weight standard shall not apply to ingredient components of solder, such as glass and ceramic additives, but shall apply to the final solder materials used in the products.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2.5 Public Information Commitment

In a good faith effort to inform the public about the risk of exposure to lead in defendant's products sold before the Effective Date, defendant hereby commits to provide the following warning on its main products web page for a period of three years:

WARNING: Certain desktop motherboards, mainboards and accessories sold in California prior to March 30, 2007, contain lead solder. Lead is a chemical known to the State of California to cause birth defects and other reproductive harm.

Please wash hands after handling those motherboards that utilize lead solder and avoid inhalation of fumes if heating the solder on the product.

Immediately following the above warning, defendant shall provide a hyperlink titled "List of Motherboards Containing Lead Solder" which will link to a web page that defendant shall create and maintain for a period of three years. On that page, defendant shall provide the following warning:

WARNING: The following desktop motherboards, mainboards and accessories sold in California prior to March 30, 2007, contain lead solder. Lead is a chemical known to the State of California to cause birth defects and other reproductive harm.

Please wash hands after handling these motherboards that utilize lead solder and avoid inhalation of fumes if heating the solder on these products.

Immediately following that warning, defendant shall list all products that contain lead solder which defendant sold in California before the Effective Date, and defendant shall identify each product by name and model number.

1 **3. MONETARY PAYMENTS**

2 **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

3 Pursuant to Health & Safety Code §25249.7(b), the total civil penalty assessed shall be
4 \$75,000, which shall be apportioned as follows:

5 (a) Defendant shall receive a credit of \$18,750 in light of its prompt
6 cooperation with Brimer in resolving this matter and its commitment to sell
7 only reformulated products in California;

8 (b) Defendant shall pay \$15,000 in civil penalties on or before the April 30,
9 2007;

10 (c) Defendant shall pay \$18,750 in civil penalties on or before May 18, 2007.

11 This payment will be waived provided that defendant complies with the
12 public information commitment on or before the Effective Date, as set forth
13 in Section 2.5, and submits a compliant web link to Brimer for his review;
14 and

15 (d) Defendant shall pay the remaining \$22,500 in civil penalties on or before
16 January 15, 2008. This payment will be waived provided that defendant
17 submits a report to Brimer on or before December 1, 2007, which sets forth,
18 in sufficient detail, its efforts to remove lead from its motherboards not
19 intended for use in desktop computers.
20
21
22

23 All payments made pursuant to this Section 3.1 shall be payable to the "HIRST &
24 CHANLER LLP in Trust For Russell Brimer" and shall be delivered to plaintiff's counsel at the
25 following address:
26
27
28

1 HIRST & CHANLER LLP
2 Attn: Proposition 65 Controller
3 2560 Ninth Street
4 Parker Plaza, Suite 214
5 Berkeley, CA 94710-2565

6 **3.2 Apportionment of Penalties Received**

7 All penalty monies received shall be apportioned by Brimer in accordance with Health &
8 Safety Code §25192, with 75% of these funds remitted by Brimer to the State of California's
9 Office of Environmental Health Hazard Assessment and the remaining 25% of these penalty
10 monies retained by Brimer as provided by Health & Safety Code §25249.12(d). Brimer shall bear
11 all responsibility for apportioning and paying to the State of California the appropriate civil
12 penalties paid in accordance with this Section.

13 **4. REIMBURSEMENT OF FEES AND COSTS**

14 The parties acknowledge that Brimer and his counsel offered to resolve this dispute
15 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
16 this fee issue to be resolved after the material terms of the agreement had been settled. Defendant
17 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
18 been finalized. The parties then reached an accord on the compensation due to Brimer and his
19 counsel under the private attorney general doctrine codified at California Code of Civil Procedure
20 §1021.5 for all work performed through the Court's approval of this agreement. Under the private
21 attorney general doctrine, defendant shall reimburse Brimer and his counsel for fees and costs
22 incurred as a result of investigating, bringing this matter to defendant's attention, litigating, and
23 negotiating a settlement in the public interest and seeking the Court's approval of the settlement
24 agreement. Defendant shall pay Brimer and his counsel \$34,500 for all attorneys' fees, expert and
25
26
27
28

1 investigation fees, litigation and related costs. The payment shall be made payable to HIRST &
2 CHANLER LLP and shall be delivered on or before April 30, 2007, at the following address:

3 HIRST & CHANLER LLP
4 Attn: Proposition 65 Controller
5 2560 Ninth Street
6 Parker Plaza, Suite 214
Berkeley, CA 94710-2565

7 **5. RELEASE OF ALL CLAIMS**

8 **5.1 Release of Defendant and Downstream Customers**

9 In further consideration of the promises and agreements herein contained, and for the
10 payments to be made pursuant to Sections 3 and 4, Brimer, on behalf of himself, his past and
11 current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the
12 general public, hereby waives all rights to institute or participate in, directly or indirectly, any form
13 of legal action and releases all claims, including, without limitation, all actions, and causes of
14 action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties,
15 losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys'
16 fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively
17 "claims"), against defendant and each of its downstream wholesalers, licensors, licensees,
18 auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies,
19 corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives,
20 shareholders, agents, and employees, sister and parent entities, and original equipment
21 manufacturers and distributors including those named on Exhibit C attached hereto (collectively
22 "releasees"). This release is limited to those claims that arise under Proposition 65, as such claims
23 relate to defendant's alleged failure to warn about exposures to the listed chemical contained in the
24 products.
25
26
27
28

1 The parties further understand and agree that this release shall not extend upstream to any
2 entities that manufactured the products or any component parts thereof, or any distributors or
3 suppliers who sold the products or any component parts thereof to defendant. This settlement does
4 not release any downstream party (including integrators and retailers) that either caused exposure
5 to lead from components not supplied by defendant or, as to the future, alters the product
6 purchased from defendant in such a way as to cause it to violate the reformulation standards or
7 fails to transmit the requisite warnings provided by defendant in paragraph 2.1 set forth in this
8 Settlement Agreement.
9

10 **5.2 Defendant's Release of Brimer**

11 Defendant waives any and all claims against Brimer, his attorneys, and other
12 representatives for any and all actions taken or statements made (or those that could have been
13 taken or made) by Brimer and his attorneys and other representatives, whether in the course of
14 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
15 and/or with respect to the products.
16

17 **6. COURT APPROVAL**

18 This Settlement Agreement is not effective until it is approved and entered by the Court
19 and shall be null and void if, for any reason, it is not approved and entered by the Court within one
20 year after it has been fully executed by all parties, in which event any monies that have been
21 provided to plaintiff or his counsel, pursuant to Section 3 and/or Section 4 above, shall be
22 refunded within fifteen (15) days after receiving written notice from defendant that the one-year
23 period has expired.
24

25 ///

26 ///

1 **7. SEVERABILITY**

2 If, subsequent to court approval of this Settlement Agreement, any of the provisions of this
3 Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable
4 provisions remaining shall not be adversely affected.
5

6 **8. ATTORNEYS' FEES**

7 In the event that a dispute arises with respect to any provision of this Settlement
8 Agreement, the prevailing party shall, except as otherwise provided herein, be entitled to recover
9 reasonable costs and attorneys' fees incurred in connection with such dispute.
10

11 **9. GOVERNING LAW**

12 The terms of this Settlement Agreement shall be governed by the laws of the State of
13 California and apply within the State of California. In the event that Proposition 65 is repealed or
14 is otherwise rendered inapplicable by reason of law generally, or as to the products, then defendant
15 shall provide written notice to Brimer of any asserted change in the law, and shall have no further
16 obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the
17 products are so affected.
18

19 **10. NOTICES**

20 Unless specified herein, all correspondence and notices required to be provided pursuant to
21 this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class,
22 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the
23 other party at the following addresses:
24

25 ///

26 ///

27 ///

28

1 To Defendant:

2 Rodney G. Strickland Jr.
3 WILSON SONSINI GOODRICH & ROSATI
4 650 Page Mill Rd
5 Palo Alto, CA 94304-1050

6 To Brimer:

7 Proposition 65 Coordinator
8 HIRST & CHANLER LLP
9 2560 Ninth Street
10 Parker Plaza, Suite 214
11 Berkeley, CA 94710-2565

12 Any party, from time to time, may specify in writing to the other party a change of address
13 to which all notices and other communications shall be sent.

14 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

15 This Settlement Agreement may be executed in counterparts and by facsimile, each of
16 which shall be deemed an original, and all of which, when taken together, shall constitute one and
17 the same document.

18 **12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

19 Brimer agrees to comply with the reporting form requirements referenced in Health &
20 Safety Code §25249.7(f).

21 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

22 Brimer and defendant agree to mutually employ their best efforts to support the entry of
23 this Agreement as a Settlement Agreement and obtain approval of the Settlement Agreement by
24 the Court in a timely manner. The parties acknowledge that, pursuant to Health & Safety Code §
25 25249.7, a noticed motion is required to obtain judicial approval of this Settlement Agreement.
26 Accordingly, the parties agree to file a Motion to Approve the Agreement (the "motion"), which
27
28

1 shall be prepared by plaintiff's counsel and reviewed by defendant's counsel prior to filing with
2 the Court. Defendant shall have no additional responsibility to plaintiff's counsel pursuant to Code
3 of Civil Procedure §1021.5 or otherwise with regard to reimbursement of any fees and costs
4 incurred with respect to the preparation and filing of the motion or with regard to plaintiff's
5 counsel appearing for a hearing thereon.
6

7 **14. MODIFICATION**

8 This Settlement Agreement may be modified only: (1) by written agreement of the parties
9 and upon entry of a modified Settlement Agreement by the Court thereon; or (2) upon a successful
10 motion of any party and entry of a modified Settlement Agreement by the Court. The Attorney
11 General shall be served with notice of any proposed modification to this Settlement Agreement at
12 least fifteen (15) days in advance of its consideration by the Court.
13

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

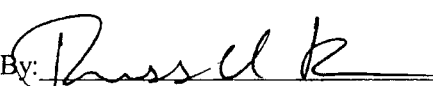
27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

15. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

<p style="text-align: center;">AGREED TO:</p> <p>Date: <u>4-26-07</u></p> <p>By: <u></u> Plaintiff, RUSSELL BRIMER</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Defendant, VIA TECHNOLOGIES, INC.</p>
<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: _____ HIRST & CHANLER LLP</p> <p>By: _____ Christopher M. Martin Attorneys for Plaintiff RUSSELL BRIMER</p>	<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: _____ WILSON SONSINI GOODRICH & ROSATI</p> <p>By: _____ Rodney G. Strickland Jr. Attorneys for Defendant VIA TECHNOLOGIES, INC.</p>

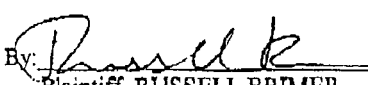
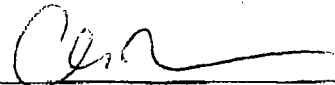
IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

15. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

<p style="text-align: center;">AGREED TO:</p> <p>Date: <u>4-24-07</u></p> <p>By: <u></u> Plaintiff, RUSSELL BRIMER</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Defendant, VIA TECHNOLOGIES, INC.</p>
<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: <u>4/25/07</u> HIRST & CHANLER LLP</p> <p>By: <u></u> Christopher M. Martin Attorneys for Plaintiff RUSSELL BRIMER</p>	<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: _____ WILSON SONSINI GOODRICH & ROSATI</p> <p>By: _____ Rodney G. Strickland Jr. Attorneys for Defendant VIA TECHNOLOGIES, INC.</p>

IT IS SO ORDERED.

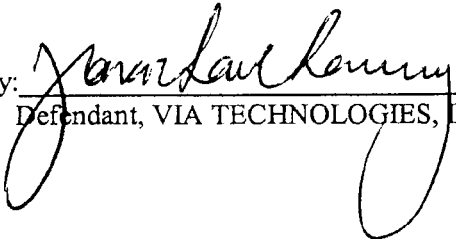
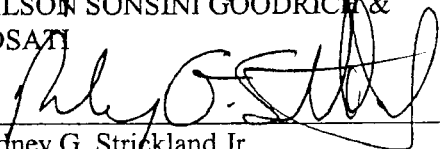
Date: _____

JUDGE OF THE SUPERIOR COURT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

15. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

<p style="text-align: center;">AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Plaintiff, RUSSELL BRIMER</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: <u>4/25/2007</u></p> <p>By:  Defendant, VIA TECHNOLOGIES, INC.</p>
<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: _____ HIRST & CHANLER LLP</p> <p>By: _____ Christopher M. Martin Attorneys for Plaintiff RUSSELL BRIMER</p>	<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: <u>April 26, 2007</u> WILSON SONSINI GOODRICH & ROSATI</p> <p>By:  Rodney G. Strickland Jr. Attorneys for Defendant VIA TECHNOLOGIES, INC.</p>

IT IS SO ORDERED.

Date: _____ JUDGE OF THE SUPERIOR COURT

Exhibit A

10-E050000021E0
10-E0500000A1E0
10-E0800000A1E0
10-E212PB00A1B0
10-E212PJ00A1B0
10-E21GL000A1B0
10-E2600000A1B0
10-E2600B0021B0
10-EB13PB00A1C0
10-EB80PB00A1C0
10-EC1GL000A1A0
10-EC1GL000A1B0
10-EC1GLB0021B0
10-EC600000A1B0
10-EC600B0021A0
10-EC600B0021B0
10-ED500000A1A0
10-ED60PA00A1A0
10-ED800000A1A0
10-ED800P00A1A0
10-EG1GNB05A1LA
10-EG1GNB05A1LB
10-EG50NB05A1LA
10-EG50NB05A1LB
10-EG80NB05A1LA
10-EG80NB05A1LB
10-EJ1GN00021A2
10-EM1GP000A1B0
10-EM1GPB0021B0
10-EM1GPB00A1B0
10-EM600N0021B0
10-EM600N00A1B0
10-EME60B0021B0
10-EN1GNB0121A1
10-EN1GNB01A1A1
10-EN1GNB05A1LA
10-EN1GNB05A1LB
10-EN50NB01A1A1
10-EN50NB05A1LA
10-EN50NB05A1LB
10-EN80NB05A1LA
10-EN80NB05A1LB
10-EP1GL000A1B0
10-EP1GLB0021B0
10-EP1GLB00A1B0

10-EP600000A1B0
10-EP600B0021B0
10-EP600B00A1B0
10-EPIA26101
10-EPIA80101
10-EPIAM1GXL101
10-EPIAM1GXLB201
10-EQ150Q00A2B0
10-ES12PB00A1B0
10-ES1GAB0021B0
10-ES1GAB00A1B0
10-ES80PB00A1B0
10-ET1GL000A1A0
10-ET1GLB0021A0
10-ET1GLB00A1A0
10-ET1GLI0021A0
10-ET600000A1A0
10-ET600B0021A0
10-ET600I0021A0
60-E01GKAWY21E0
60-E050000021E0
60-E0500000A1E0
60-E05AP000A1E0
60-E080000020E0
60-E0800000A1E0
60-E08AP000A1E0
60-E212PB00A1B0
60-E21APB0021B0
60-E21APB00A1
60-E21APB00A1B0
60-E21GPB0021B0
60-E21GPB00A1B0
60-E2600000A1B0
60-E2600B0021B0
60-E26APB00A1B0
60-EB13PB0021
60-EB13PB0021C0
60-EB80PB00A1C0
60-EC600B00A1B0
60-ED60PA00A1A0
60-ED6APA00A1A0
60-ED800P00A1A0
60-ED8APP00A1A0
60-EM1GPB0021B0
60-EM1GPB00A1B0
60-EM600N0021B0
60-EM600N00A1B0

60-EM6APB00A1B0
60-EP1GLB00A1B0
60-EP600B00A1B0
60-EP6APB00A1B0
60-ES12PB00A1B0
60-ES1GAB00A1B0

Exhibit B

The designated symbol that VIA will use to identify products containing the listed chemical which are sold through its catalogs or on its website is:

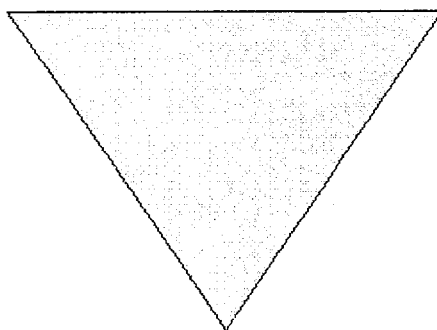


Exhibit C

Magnell Associate, Inc.
Advantech Technologies, Inc.
Allcompe Systems
AMAX ENGINEERING CORPORATION
AMERICAN PROIMAGE, INC
American Star Ent.
AMPRO Computers, Inc.
Amptron International, Inc.
Antec, Inc.
Antex Electronics, Corp.
Antex Electronics, Corp.
Apex Digital Inc.
Aprotech Corp.
Arden Computers Inc.
Area Electronics Systems, Inc.
Array Networks Inc
ATI Research Silicon Valley Inc.
Avatar Technology Inc.,
Avus Systems
Barracuda Networks, Inc.
BCM COM
Bell Microproducts
Best Logic LLC
Byte. Com
Cache Flow
Calcom International Inc.
CaptiveWorks Inc.
Cardinal Health
Casetronic-Do Not Use
Casetronic
CELETRON USA, INC.
CLT Computers Inc.
CNET/Computer Shopper
Colby Systems Corp
Computer Gaming World
Computerlink
Conexis
Conexant Systems, Inc.
Converging Systems, Inc.
CORSAIR MEMORY INC.
CrossMedia & Kiosk Magazines
CyberPower
Datel Systems Inc.
Digitron Electronics, Inc.

DISCover
Earth LCD
East West Source, Inc.
Ecast, Inc.
EliteGroup
EDN Magazine
E-Machines, Inc.
ENL AN IDP CORPORATION
Enlight Corporation
Enlight Corporation USA
EVEREX SYSTEMS, INC
Evolution Robotics
EWEEK
Excess Computer Resource
FAE Department-VIA Technologies
First International Computer
Firingsquad.com
Fry's Electronics, Inc.
GCT-allwell Technology, Inc.
General Procurement, Inc.
GeoSpatial Technologies, Inc.
Giga Research
G-L-O Computer Solutions
Google Inc.
GRB Entertainment
HiWay Computer
Hewlett Packard
Hynix Semiconductor America Inc.
iBlast
IDotPC International Inc.
IGoLogic Corp.
ILTS
Intergrated Design Solution
Internet-I-Shop
Iron Systems
Ispiri
Ituner Networks Corp.
IWS Sales
Jon Peddie Research
KEL Group Inc.
Jumpteck Aadastra (Kontron group)
Kontron America, inc.
Lasertech Compute Distributor, Inc.
Leadman Electronics USA INC.
Lindows.com
Linspire, Inc.

LMCD
LAN PLUS Corp.
Logisys Corp.
LOGITECH, INC.
Ma Laboratories Inc
M-Audio
Max Group
Maxspeed Corp.
Medialand System, Inc.
Microsoft Corp.
Microtel Computer Systems, Inc.
Mirra, Inc.
Morex Int'l Corp
Morgan Logic Inc.
Motorola Broadband Communication
Music Browser Inc.
Muse Research
Neon Technology Inc.
Net Helix Inc.
Nevco Technology, Inc.
NexTV
Ntn Orbit Inc.
NXTV, INC.
OCAddiction.Com
Omni Technics Inc.
OnWafer Technologies
OPUS Solutions, Inc.
ORICHALCUM
Ositis
OSTEL
Pacific Digital Corp.
PAI-USA
Panacer
PC Club
PC World
Polywell Computers Inc
Posiflex Business Machines Inc.
Prism Electronics
Prismiq
Private Label PC, Inc.
Proview Technology, Inc.
Quinn Pacific
Reach Technologies
Red Radio, Inc.
Right Connection Electronics, Inc.
Robo Dynamics Corp.
S3 GRAPHICS, INC.

Screen Phone Net Inc
SeePoint
Siliconrax Sliger
Silver Lake Electronics
Simple Devices
Skylight Systems, Inc.
Smart Media
Snap Appliance, Inc.
Solectron Corp.
Sony electronics Inc.
Storage Week
Stradients
Sunus Suntek
SYK International Inc.
Tangent Computer, Inc.
Technovare Systems, Inc.
TechTV
Theranos Inc.
Touchdown Industries
Touch Pro Business Systems
Tranax Technologies
I Tuner Networks Corporation
United Manufacturing Assembly, Inc.
United Datatech
United Manufacturing
Vernier Networks, Inc.
VIA Cyrix
ViaCLIX
VIA Technologies, Inc.
View Sonic
View Interactive Entertainment
VWEB
Win Vane Technology
Wirehed Magazine
Wintec Industries Inc.
Wintec Industries
Wuf Networks
WYSE TECHNOLOGY INC
Xenarc Technologies Corporation
ZyXEL Communications, Inc.