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FILED  
ALAMEDA COUNTY

MAR 19 2009  
CLERK OF THE SUPERIOR COURT  
By \_\_\_\_\_ Deputy

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

MICHAEL DIPIRRO,  
Plaintiff,  
v.  
UNIVERSAL ABIT USA  
CORPORATION; and DOES 1 through  
150, inclusive,  
Defendants.

CASE NO. RG-07-342197  
ASSIGNED FOR ALL PURPOSES  
TO JUDGE Lawrence John Appel  
DEPARTMENT 16

~~AMENDED [PROPOSED]~~ JUDGMENT  
Date: January 30, 2009  
Time: 9:00 a.m.  
Reservation No. R891089

[PROPOSED] JUDGMENT PURSUANT TO TERMS OF CONSENT JUDGMENT

1 In the above-entitled action, Plaintiff MICHAEL DIPIRRO (hereinafter "Plaintiff" or  
2 "DiPirro") and Defendant UNIVERSAL ABIT USA CORPORATION (hereinafter "Defendant")  
3 have agreed to settle Plaintiff's allegations that Defendant manufactured, distributed, and/or sold  
4 motherboards with lead-containing solder and components utilized with motherboards that  
5 contain lead solder in California without providing the requisite warnings, an alleged violation of  
6 the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code  
7 §§ 25249.6 *et seq.* (hereinafter "Proposition 65").

8 The products that are covered by this settlement are defined as follows: motherboards with  
9 lead-containing solder, such as the *ABIT NF8-V2 Motherboard (# 8 41020 00364 6)*, and  
10 components utilized with motherboards that contain lead solder (hereinafter "Products").

11 After December 19, 2008, Defendant shall not sell, ship, or offer to be shipped for sale in  
12 California Products containing the lead unless such Products are sold or shipped with the clear  
13 and reasonable warning set out in the settlement, comply with the reformulation standards set  
14 forth in the settlement or are otherwise exempt pursuant to the settlement.

15 Any warning issued for Products pursuant to the settlement shall be prominently placed  
16 with such conspicuousness as compared with other words, statements, designs, or devices as to  
17 render it likely to be read and understood by an ordinary individual under customary conditions  
18 before purchase or, for Products shipped directly to an individual in California or used in the  
19 workplace, before use. Any warning issued pursuant to the settlement shall be provided in a  
20 manner such that the consumer or user understands to which *specific* Product the warning applies,  
21 so as to minimize if not eliminate the chance that an overwarning situation will arise.

22 From December 19, 2008, a warning will be affixed to packaging, labeling, or directly on  
23 each non-integrated product sold in retail outlets by Defendant or its agents. Defendant may also  
24 perform its warning obligations by ensuring that signs are posted at retail outlets in the State of  
25 California where the non-integrated products are sold. In order to avail itself of the point-of-sale  
26 option, Defendant shall provide a written notice (via certified mail in the first quarter of each  
27 calendar year) to each retailer or distributor to whom Defendant sells or transfers the non-  
28 integrated products directly, which informs such retailers or distributors that point-of-sale

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

9 Defendant shall satisfy its warning obligations for non-integrated products that are sold by  
10 mail order catalog or from the Internet to California residents by providing a warning: (i) in the  
11 mail order catalog; and/or (ii) on the website. Any warning provided in a mail order catalog must  
12 be in the same type size or larger as the non-integrated product description text within the  
13 catalog. If Defendant elects to provide warnings in the mail order catalog, then the warnings  
14 must be included in all catalogs offering to sell one or more non-integrated products printed after  
15 December 19, 2008. A warning may be given in conjunction with the sale of the non-integrated  
16 product via the Internet, provided it appears either: (a) on the same web page on which the non-  
17 integrated product is displayed; (b) on the same web page as the order form for the non-integrated  
18 product; (c) on the same page as the price for any non-integrated product; or (d) on one or more  
19 web pages displayed to a purchaser during the checkout process.

20 Where Defendant sells Products to individuals or entities it knows to be in the business of  
21 integrating its Products into computer systems for resale ("integrator(s)"), Defendant shall  
22 provide the integrator with written instructions (via certified mail in the first quarter of each  
23 calendar year) which instructs such integrators to attach sticker warnings, as specified in this  
24 Section, to any item which contains a Product as an integrated component, prior to the resale of  
25 the integrated product. Defendant must receive and make available for DiPirro's inspection, upon  
26 request, a written commitment from each integrator to whom Defendant sells Products directly  
27 that said integrator will post the warning stickers consistent with the requirements of Proposition  
28 65.

1 On or before December 19, 2008, Defendant shall include a warning in twelve point font  
2 or greater on the inside front cover of its product user manuals shipped with any non-reformulated  
3 Product and available for viewing on its website(s), if so provided, and where Defendant  
4 otherwise warns or informs its customers of the content of its Products.

5 The warning requirements set forth in the settlement shall not apply to:

- 6 (i) Any Product received in inventory before the Effective Date (pursuant to  
7 the settlement);  
8 (ii) Reformulated Products (as defined in the settlement); or  
9 (iii) Any Product in which the only possible point of exposure to lead is  
10 embedded in a manner that a consumer or worker would not come into  
11 contact with the lead under any reasonably anticipated use.

12 Defendant commits that all desktop products that it offers for sale in California after  
13 December 19, 2008, shall qualify as reformulated Products or be exempt from the warning  
14 requirements of the settlement. Further, Defendant commits to use commercially reasonable  
15 efforts to reformulate all Products in addition to those used for desktop computers (*e.g.*,  
16 motherboards used for servers) to eliminate the presence of lead on or before December 31, 2008.  
17 Reformulated Products are defined as follows: any Product containing less than or equal to one-  
18 tenth of one percent (0.1%) lead by weight in each solder material, including all forms of solder  
19 identified in the settlement, unless that material is embedded in a manner that a consumer or  
20 worker ordinarily would not come into contact with the lead under any reasonably anticipated  
21 use.

22 Pursuant to Health & Safety Code §25249.7(b), the total civil penalty assessed shall be  
23 \$10,000. Defendant shall receive a credit of \$8,250 in light of its prompt cooperation with  
24 DiPirro in resolving this matter and its commitment to sell only reformulated Products in  
25 California. Defendant shall pay \$1,750.00 in civil penalties on or before December 19, 2008.

26 Defendant shall pay DiPirro and his counsel \$20,000.00 for all attorneys' fees, expert and  
27 investigation fees, litigation and related costs incurred as a result of investigating, bringing this  
28

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1 matter to Defendant's attention, litigating, and negotiating a settlement in the public interest and  
2 seeking the Court's approval of the settlement.

3 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Code of  
4 Civil Procedure section 664.6, judgment is entered in accordance with the terms outlined in the  
5 settlement agreement.

6 IT IS SO ORDERED.

7

8 Dated:



Hon. Lawrence John Appel  
Judge of the Alameda County Superior Court

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**MAR 19 2009**

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[PROPOSED] JUDGMENT PURSUANT TO TERMS OF CONSENT JUDGMENT

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ALAMEDA

Case Number : RG07342197

Case name: DIPIRRO VS UNIVERSAL ABIT USA

**JUDGMENT FILED ON MARCH 19, 2009**

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document, **JUDGMENT FILED ON MARCH 19, 2009** was mailed first class, postage prepaid, in a sealed envelope, addressed as shown at the bottom of this document, and that the mailing of the foregoing and execution of this certificate occurred at 1221 Oak Street, Oakland, California.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 20, 2009.



Executive Officer/Clerk of the Superior Court  
By Ana Liza Tumonong, Deputy Clerk

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