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**ENDORSED
FILED
ALAMEDA COUNTY**

MAR 02 2009

CLERK OF THE SUPERIOR COURT
By A. Yvonne Bazzell, Deputy

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

MICHAEL DIPIRRO,

Plaintiff,

v.

ALTHON MICRO, INC.; SAPPHIRE
TECHNOLOGY LIMITED; and DOES 1
through 150, inclusive,

Defendants.

CASE NO. RG07333698

ASSIGNED FOR ALL PURPOSES
TO JUDGE WINIFRED Y. SMITH
DEPARTMENT 23

**AMENDED [JUDGMENT
PURSUANT TO THE TERMS OF CONSENT
JUDGMENT**

Date: January 16, 2009
Time: 9:30 a.m.
Dept: 23
Judge: Winifred Y. Smith

Reservation # R-884711

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1 In the above-entitled action, Plaintiff MICHAEL DIPIRRO and Defendants ALTHON
 2 MICRO, INC., and SAPPHIRE TECHNOLOGY LIMITED have agreed to settle Plaintiff's
 3 allegations that Defendants manufactured, distributed, and/or sold motherboards with solder
 4 containing lead in the State of California without the requisite health hazard warnings, an alleged
 5 violation of Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety
 6 Code §§ 25249.6 *et seq.* ("Proposition 65").

7 The products that are covered by the settlement are defined as follows: motherboards with
 8 solder (containing lead), such as the *Sapphire Pure Crossfire Advantage PC-A9RD480Adv*
 9 *Motherboard (#12010-00-50)*, and components utilized with motherboards that contain lead
 10 solder.

11 After August 31, 2008, Defendants shall not sell, ship, or offer to be shipped for sale in
 12 California products containing the listed chemical unless such products are sold or shipped with
 13 the clear and reasonable warning set out in the settlement, or are otherwise exempt pursuant to the
 14 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 this 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 Defendants' options for satisfying their warning obligations are described depending, in
 23 part, on the manner of sale. The following warnings will be applicable when the product is sold
 24 either to consumers or in a business-to-business transaction:

- 25 1. From August 31, 2008, a warning will be affixed to packaging, labeling, or
 26 directly on each non-integrated product sold in retail outlets by Defendants or their
 27 agents, that states:

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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.

Defendants may perform their warning obligations by ensuring that signs are posted at retail outlets in the State of California where the non-integrated products are sold. In order to avail themselves of the point-of-sale option, Defendants shall provide a written notice (via certified mail in the first quarter of each calendar year) to each retailer or distributor to whom Defendants sell or transfer the non-integrated products directly, which informs such retailers or distributors that point-of-sale warnings are required at each retail location in the State of California. Defendants shall include a copy of the warning signs and posting instructions with such notice. Further, Defendants must receive and make available for DiPirro's inspection, upon request, a written commitment: (a) from each retailer to whom Defendants sell non-integrated products directly that said retailer will post the warning signs; and (b) from each distributor to whom Defendants sell non-integrated products directly that the distributor will transmit the point-of-sale warning notice and instructions to its direct customers. Point-of-sale warnings shall be provided through one or more signs posted in close proximity to the point of display of the non-integrated products that states:

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 products.

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2. Defendants do not at the present sell products by mail order or via the Internet and have no plans to do so. However, in the event that Defendants at some future date do sell non-integrated products by mail order catalog or from the Internet to California residents, they agree to provide a warning: (i) in the mail order catalog; and/or (ii) on the website. 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 the settlement:

a. 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, Defendants may utilize the designated symbol included in the warning below, 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):

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

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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, Defendants must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

If Defendants elect 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 August 31, 2008.

b. 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:

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.

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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.

c. Where Defendants sell products to individuals or entities they know to be in the business of integrating their products into computer systems for resale ("integrator(s)"), Defendants 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. Defendants must receive and make available for DiPirro's inspection, upon request, a written commitment from each integrator to whom s sell products directly that said integrator will post the warning stickers consistent with the requirements of Proposition 65. Defendants shall provide the integrators with stickers printed with the following warning to be attached to each item containing an integrated product:

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

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

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

- (i) Any product shipped to California before August 31, 2008;
- (ii) Reformulated products (as defined in Section 2.3 below); or
- (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.

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.¹ The warnings required pursuant to the settlement shall not be required for reformulated products. This Reformulation Standard is consistent with compliance under the European Union's Restriction on Hazardous Substances (RoHS) Directive. Accordingly, any product in compliance with the RoHS Directive shall be considered by Plaintiff to satisfy the reformulation standard.

Pursuant to Health & Safety Code §25249.7(b), the total civil penalty assessed shall be \$15,000, which shall be apportioned as follows:

- (a) Defendants shall receive a credit of \$13,500 in light of their prompt cooperation with DiPirro in resolving this matter; and

¹For purposes of the settlement, 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.

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(b) Defendants shall pay \$1,500 in civil penalties on or before August 31, 2008.

All payments made pursuant to this Section 3.1 shall be payable to the "HIRST & CHANLER LLP in Trust For Michael DiPirro" and shall be delivered to Plaintiff's counsel at the following address:

HIRST & CHANLER LLP
Attn: Proposition 65 Controller
455 Capitol Mall
Capitol Mall Complex, Suite 605
Sacramento, CA 95814

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

The Parties acknowledge that DiPirro and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Defendants then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties then reached an accord on the compensation due to DiPirro and his counsel under the private attorney general doctrine codified at California Code of Civil Procedure §1021.5 for all work performed through the settlement. Under the private attorney general doctrine, Defendants shall reimburse DiPirro and his counsel for fees and costs incurred as a result of investigating, bringing this matter to Defendants' attention, litigating, and negotiating a settlement in the public interest. Defendants shall pay DiPirro and his counsel \$26,500 for all attorneys' fees, expert and investigation fees, litigation and related costs. The

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payment shall be made payable to HIRST & CHANLER LLP and shall be delivered on or before August 31, 2008, at the following address:

HIRST & CHANLER LLP
Attn: Proposition 65 Controller
455 Capitol Mall
Capitol Mall Complex, Suite 605
Sacramento, CA 95814

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

IT IS SO ORDERED.

Dated:

WINIFRED Y. SMITH
Hon. Winifred Y. Smith
Judge of the Alameda County Superior Court

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