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San Jose, CA 95126
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Attorneys for Defendant
ELITEGROUP COMPUTER SYSTEMS, INC.

ENDORSED
FILED
ALAMEDA COUNTY

JAN 30 2009

CLERK OF THE SUPERIOR COURT
By LINDNELL WILLIAMS
Deputy

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

MICHAEL DIPIRRO,
Plaintiff,
v.
ELITEGROUP COMPUTER SYSTEMS,
INC.; and DOES 1 through 150, inclusive,
Defendants.

Case No.
~~PROPOSED~~ CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment (also referred to herein as “Agreement”) is entered into by and
4 between Plaintiff, Michael DiPirro (“Plaintiff” or “DiPirro”), and Defendant Elitegroup Computer
5 Systems, Inc., (“Defendant” or “Elitegroup”), with DiPirro and Elitegroup referred to as the
6 “Parties.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

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

15 **1.4 General Allegations**

16 Plaintiff alleges that Defendant has manufactured, distributed, and/or sold products with
17 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 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as follows:
22 motherboards with lead-containing solder, such as the *PC Chips M848A V5.0 Motherboard (# 8*
23 *81038 00071 8)*, and components utilized with motherboards that contain lead solder; notebook
24 computers with lead-containing solder, such as the *Model nos. G610, G410, 332, 600L, N259Ei*;
25 desktop computers with lead-containing solder, such as the *Model nos.: GQ6140, GQ5130*; and
26 video cards with lead-containing solder, Examples of forms of solder include, but are not limited
27 to, solder, solder balls, solder spheres, solder paste, wave solder, solder joints, die bumps, and flip-
28 chip bumps. All such motherboards, notebook computers, desktop computers, and video cards

1 with lead-containing solder, and components utilized with such motherboards that contain lead
2 solder, shall be referred to hereinafter as "products." Products that are integrated into a desktop
3 computer system as a component thereof, prior to the sale or acquisition of the computer system,
4 shall be referred to hereinafter as "integrated products." Products that are sold individually and not
5 as a component integrated into a computer system shall be referred to hereinafter as "non-
6 integrated products."

7 **1.6 Notice of Violation**

8 On June 15, 2007, DiPirro served Defendant and various public enforcement agencies with
9 a document entitled "60-Day Notice of Violation" (Notice) that provided Defendant and such
10 public enforcers with notice that alleged that Defendant was in violation of California Health &
11 Safety Code §25249.6 for failing to warn consumers, workers and others that the motherboards
12 that Defendant sold exposed users in California to the listed chemical. Within fifteen (15) days
13 following his execution of this Consent Judgment, DiPirro will have served Elitegroup and the
14 required public enforcement agencies with documents entitled "Supplemental Notice of Violation"
15 ("Supplemental Notice") expressly alleging that Elitegroup is in violation of Health & Safety Code
16 § 25249.6 with respect to exposures to the Listed Chemical arising from various notebook
17 computers, desktop computers, and video cards. Elitegroup shall use its best efforts to provide
18 DiPirro with information necessary for him to issue it a Supplement Notice and support of a
19 Certificate of Merit related thereto.

20 **1.7 Complaint**

21 Within thirty (30) days following his execution of this Consent Judgment and in the
22 absence of public prosecutor action, DiPirro, who is acting in the interest of the general public in
23 California, will have filed a complaint ("Complaint" or "Action") in the Superior Court in and for
24 the County of Alameda against Elitegroup Computer Systems, Inc., and Does 1 through 150,
25 alleging violations of California Health & Safety Code §25249.6, based on the alleged exposures
26 to the listed chemical contained in the products Defendant sold. The Complaint shall be deemed
27 amended by this Consent Judgement to include the allegations in the Supplemental Notice on the
28

1 sixty-sixth (66th) day following the issuance of the Supplemental Notice if an authorized public
2 prosecutor has not, prior to that date, filed a Proposition 65 enforcement action as to the Listed
3 Chemical in the additional Products addressed in the Supplemental Notice; also, the definitions of
4 Products under this Consent Judgment shall not be deemed to include the additional Products
5 addressed in the Supplemental Notice until that time.

6 **1.8 No Admission**

7 Elitegroup denies the material factual, and legal allegations contained in DiPirro's Notice
8 and Complaint and maintains that all products that it has sold and distributed in California have
9 been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as
10 an admission by Defendant of any fact, finding, issue of law, or violation of law, nor shall
11 compliance with this Consent Judgment constitute or be construed as an admission by Defendant
12 of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by
13 Defendant. However, this Paragraph shall not diminish or otherwise affect Defendant's
14 obligations, responsibilities and duties under this Consent Judgment.

15 **1.9 Consent to Jurisdiction**

16 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
17 jurisdiction over Defendant as to the allegations contained in the Complaint, that venue is proper
18 in the County of Alameda and that this Court has jurisdiction to enter and enforce the provisions of
19 this Consent Judgment.

20 **1.10 Effective Date**

21 For purposes of this Consent Judgment, the term "effective date" shall mean October 10,
22 2008.

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

24 **2.1 Product Warnings**

25 After the effective date, Defendant shall not sell, ship, or offer to be shipped for sale in
26 California products containing the listed chemical unless such products are sold or shipped with
27 the clear and reasonable warning set out in this Section 2.1, comply with the reformulation
28

1 standards set forth in Section 2.3 or are otherwise exempt pursuant to Section 2.2.

2 Any warning issued for products pursuant to this Section 2.1 shall be prominently placed
3 with such conspicuousness as compared with other words, statements, designs, or devices as to
4 render it likely to be read and understood by an ordinary individual under customary conditions
5 before purchase or, for products shipped directly to an individual in California or used in the
6 workplace, before use. Any warning issued pursuant to this Section 2.1 shall be provided in a
7 manner such that the consumer or user understands to which *specific* product the warning applies,
8 so as to minimize, if not eliminate, the chance that an overwarning situation will arise.

9 Sections 2.1(a)-(c) describe Defendant's options for satisfying its warning obligations
10 depending, in part, on the manner of sale. The warning requirement of Section 2.1(d) shall apply
11 regardless of the manner of sale. The following warnings will be applicable when the product is
12 sold either to consumers or in a business-to-business transaction:

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

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

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

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

21 (ii) **Point-of-Sale Warnings.** Defendant may perform its warning
22 obligations by ensuring that signs are posted at retail outlets in the State of California where the
23 non-integrated products are sold. In order to avail itself of the point-of-sale option, Defendant
24 shall provide a written notice (via certified mail in the first quarter of each calendar year) to each
25 retailer or distributor to whom Defendant sells or transfers the non-integrated products directly,
26 which informs such retailers or distributors that point-of-sale warnings are required at each retail
27 location in the State of California. Defendant shall include a copy of the warning signs and
28

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

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

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

12 Where more than one Product is sold in proximately to other like items or to those
13 that do not require a warning, the following statement must be used:¹

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

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

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

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

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

25 **(i) Mail Order Catalog Warning.** Any warning provided in a mail
26 _____

27 ¹ For purposed of this Consent Judgment, "sold in proximity" shall mean that the covered product and another
28 like item are offered for sale closed 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 order catalog must be in the same type size or larger as the non-integrated product description text
2 within the catalog. The following warning shall be provided on the same page and in the same
3 location as the display and/or description of the non-integrated product:

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

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

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

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

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

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

27 If Defendant elects to provide warnings in the mail order catalog, then the warnings must
28 be included in all catalogs offering to sell one or more non-integrated products printed after The
effective date.

29 (ii) **Internet Website Warning.** A warning may be given in
30 conjunction with the sale of the non-integrated product via the Internet, provided it appears either:
31 (a) on the same web page on which the non-integrated product is displayed; (b) on the same web
32 page as the order form for the non-integrated product; (c) on the same page as the price for any

1 non-integrated product; or (d) on one or more web pages displayed to a purchaser during the
2 checkout process. The following warning statement shall be used and shall appear in any of the
3 above instances adjacent to or immediately following the display, description, or price of the non-
4 integrated product for which it is given in the same type size or larger as the product description
5 text:

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

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

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

14 **WARNING:** Products identified on this page with the
15 following symbol use materials that contain lead,
16 a chemical known to the State of California to
17 cause birth defects and other reproductive harm:
18 ▼

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

19 **(c) Sales to Known Integrators**

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 provide
22 the integrator with written instructions (via certified mail in the first quarter of each calendar year)
23 which instructs such integrators to attach sticker warnings, as specified in this Section, to any item
24 which contains a product as an integrated component, prior to the resale of the integrated product.
25 Defendant must receive and make available for DiPirro’s inspection, upon request, a written
26 commitment from each integrator to whom Defendant sells products directly that said integrator
27 will post the warning stickers consistent with the requirements of Proposition 65. Defendant shall
28 provide the integrators with stickers printed with the following warning to be attached to each item

1 containing an integrated product:

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

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

10 **(d) Manual Warnings**

11 On or before the effective date, Defendant shall include the following warning in
12 twelve point font or greater on the inside front cover of its product user manuals shipped with any
13 non-reformulated product and available for viewing on its website, if so provided, and where
14 Defendant otherwise warns or informs its customers of the content of its products:

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

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

22 **2.2 Exceptions To Warning Requirements**

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

- 24 (i) Any product manufactured and received in inventory before the effective
25 date, subject to Section 2.5;
- 26 (ii) Reformulated products (as defined in Section 2.3 below); or
- 27 (iii) Any product in which the only possible point of exposure to the listed
28 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

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

6 **2.4 Reformulation Commitment**

7 Defendant hereby commits that all desktop products that it offers for sale in California after
8 the effective date, shall qualify as reformulated products or be exempt from the warning
9 requirements of Section 2.1 pursuant to Section 2.2. Further, Defendant commits to use
10 commercially reasonable efforts to reformulate all products in addition to those used for desktop
11 computers (e.g., motherboards used for servers) to eliminate the presence of lead, except for those
12 instances outlined in Section 2.2(iii), on or before September 15, 2008.

13 **2.5 Public Information Commitment**

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

17 **WARNING:** Certain desktop motherboards sold in California
18 prior to October 15, 2008, contain lead solder.
19 Lead is a chemical known to the State of
20 California to cause birth defects and other
reproductive harm.

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

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

27 _____
28 ²For purposes of this Consent Judgment, 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 **WARNING:** The following desktop motherboards sold in
2 California prior to October 15, 2008, contain lead
3 solder. Lead is a chemical known to the State of
4 California to cause birth defects and other
reproductive harm.

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

7 Immediately following that warning, Defendant shall list all products that contain lead solder
8 which Defendant sold in California before the effective date Defendant shall identify each
9 product by name and model number.

10 **3. MONETARY PAYMENTS**

11 **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

12 Pursuant to Health & Safety Code §25249.7(b), the total civil penalty assessed shall be
13 \$30,000, which shall be apportioned as follows:

- 14 (a) Defendant shall receive a credit of \$15,000 in light of its prompt
15 cooperation with DiPirro in resolving this matter and its commitment to sell
16 only reformulated products in California;
- 17 (b) Defendant shall pay \$7,000.00 in civil penalties on or before the October
18 10, 2008;
- 19 (c) Defendant shall pay \$4,000 in civil penalties on or before November 15,
20 2008. This payment will be waived provided that Defendant complies with
21 the public information commitment on or before the effective date, as set
22 forth in Section 2.5 and submits a compliant web link to DiPirro for his
23 review; and
- 24 (d) Defendant shall pay the remaining \$4,000 in civil penalties on or before
25 December 31, 2008. This payment will be waived provided that Defendant
26 submits a report to DiPirro on or before November 31, 2008, which sets
27 forth, in sufficient detail, its efforts to remove lead from its motherboards
28 not intended for use in desktop computers.

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

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

9 **3.2 Apportionment of Penalties Received**

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

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

17 The parties acknowledge that DiPirro and his counsel offered to resolve this dispute
18 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
19 this fee issue to be resolved after the material terms of the agreement had been settled. Defendant
20 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
21 been finalized. The Parties then reached an accord on the compensation due to DiPirro and his
22 counsel under the private attorney general doctrine codified at California Code of Civil Procedure
23 §1021.5 for all work performed through the Court's approval of this agreement. Under the private
24 attorney general doctrine, Defendant shall reimburse DiPirro and his counsel for fees and costs
25 incurred as a result of investigating, bringing this matter to Defendant's attention, litigating, and
26 negotiating a settlement in the public interest and seeking the Court's approval of the Consent
27 Judgment. Defendant shall pay DiPirro and his counsel \$28,000.00 for all attorneys' fees, expert
28 and investigation fees, litigation and related costs. The payment shall be made payable to HIRST
& CHANLER LLP and shall be delivered on or before October 10, 2008, at the following address:

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

4 **5. RELEASE OF ALL CLAIMS**

5 **5.1 Release of Defendant and Downstream Customers**

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

22 The parties further understand and agree that this release shall not extend upstream to any
23 entities that manufactured the products or any component parts thereof, or any distributors or
24 suppliers not named in Exhibit B as related to/affiliated with Defendant who sold the products or
25 any component parts thereof to Defendant. This settlement does not release any downstream party
26 (including integrators and retailers) that either caused exposure to lead from components not
27 supplied by Defendant or, as to the future, alters the product purchased from Defendant in such a
28 way as to cause it to violate the reformulation standards or fails to transmit the requisite warnings

1 provided by Defendant in paragraph 2.1 set forth in this Consent Judgment.

2 **5.2 Defendant's Release of DiPirro**

3 Defendant waives any and all claims against DiPirro, his attorneys, and other
4 representatives for any and all actions taken or statements made (or those that could have been
5 taken or made) by DiPirro and his attorneys and other representatives, whether in the course of
6 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
7 and/or with respect to the products.

8 **6. COURT APPROVAL**

9 This Consent Judgment is not effective until it is approved and entered by the Court and
10 shall be null and void if, for any reason, it is not approved and entered by the Court within one
11 year after it has been fully executed by all parties, in which event any monies that have been
12 provided to Plaintiff or his counsel, pursuant to Section 3 and/or Section 4 above, shall be
13 refunded within fifteen (15) days after receiving written notice from Defendant that the one-year
14 period has expired.

15 **7. SEVERABILITY**

16 If, subsequent to court approval of this Consent Judgment, any of the provisions of this
17 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
18 provisions remaining shall not be adversely affected.

19 **8. ATTORNEYS' FEES**

20 In the event that a dispute arises with respect to any provision of this Consent Judgment,
21 the prevailing party shall, except as otherwise provided herein, be entitled to recover reasonable
22 costs and attorneys' fees incurred in connection with such dispute.

23 **9. GOVERNING LAW**

24 The terms of this Consent Judgment shall be governed by the laws of the State of
25 California and apply within the State of California. In the event that Proposition 65 is repealed or
26 is otherwise rendered inapplicable by reason of law generally, or as to the products, then
27 Defendant shall provide written notice to DiPirro of any asserted change in the law, and shall have
28 no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the

1 products are so affected.

2 **10. NOTICES**

3 Unless specified herein, all correspondence and notices required to be provided pursuant to
4 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
5 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the
6 other party at the following addresses:

7 To Defendant:

8 Shawn T. Leuthold
9 1671 The Alameda #303
10 San Jose, CA 95126

11 To DiPirro:

12 Proposition 65 Coordinator
13 HIRST & CHANLER LLP
14 2560 Ninth Street
15 Parker Plaza, Suite 214
16 Berkeley, CA 94710-2565

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

19 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

20 This Consent Judgment may be executed in counterparts and by facsimile, each of which
21 shall be deemed an original, and all of which, when taken together, shall constitute one and the
22 same document.

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

24 DiPirro agrees to comply with the reporting form requirements referenced in Health &
25 Safety Code §25249.7(f).

26 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

27 DiPirro and Defendant agree to mutually employ their best efforts to support the entry of
28 this Agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court
in a timely manner. The parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a
noticed motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the
parties agree to file a Motion to Approve the Agreement (motion). Defendant shall have no

1 additional responsibility to Plaintiff's counsel pursuant to Code of Civil Procedure §1021.5 or
2 otherwise with regard to reimbursement of any fees and costs incurred with respect to the
3 preparation and filing of the motion or with regard to Plaintiff's counsel appearing for a hearing
4 thereon.

5 **14. MODIFICATION**

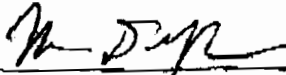
6 This Consent Judgment may be modified only: (1) by written agreement of the parties and
7 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
8 of any party and entry of a modified Consent Judgment by the Court. The Attorney General shall
9 be served with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

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15. AUTHORIZATION

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

<p style="text-align: center;">AGREED TO:</p> <p>Date: <u>8/28/08</u></p> <p>By: <u></u> Plaintiff, MICHAEL DIPIRRO</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Defendant, ELITEGROUP COMPUTER SYSTEMS, 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 MICHAEL DIPIRRO</p>	<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: _____</p> <p>By: _____ Shawn T. Leuthold. Attorneys for Defendant ELITEGROUP COMPUTER SYSTEMS, INC.</p>

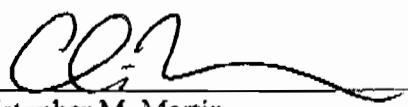
IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

1 **15. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective parties and have read, understood, and agree to all of the terms and conditions of this
4 Consent Judgment.

<p style="text-align: center;">AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Plaintiff, MICHAEL DIPIRRO</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Defendant, ELITEGROUP COMPUTER SYSTEMS, INC.</p>
<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: <u>10/6/08</u> HIRST & CHANLER LLP</p> <p>By:  Christopher M. Martin Attorneys for Plaintiff MICHAEL DIPIRRO</p>	<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: _____</p> <p>By: _____ Shawn T. Leuthold. Attorneys for Defendant ELITEGROUP COMPUTER SYSTEMS, INC.</p>

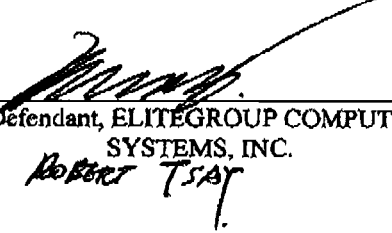
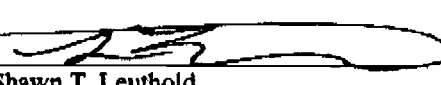
22 **IT IS SO ORDERED.**

23 Date: _____

24 _____
JUDGE OF THE SUPERIOR COURT


15. **AUTHORIZATION**

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

<p align="center">AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Plaintiff, MICHAEL DIPIRRO</p>	<p align="center">AGREED TO:</p> <p>Date: <u>10/16/2008</u></p> <p>By:  Defendant, ELITEGROUP COMPUTER SYSTEMS, INC. ROBERT TSAI</p>
<p align="center">APPROVED AS TO FORM:</p> <p>Date: _____ HIRST & CHANLER LLP</p> <p>By: _____ Christopher M. Martin Attorneys for Plaintiff MICHAEL DIPIRRO</p>	<p align="center">APPROVED AS TO FORM:</p> <p>Date: <u>10/16/2008</u></p> <p>By:  Shawn T. Leuthold. Attorneys for Defendant ELITEGROUP COMPUTER SYSTEMS, INC.</p>

IT IS SO ORDERED.

Date: Jan. 30, 2009


 DAVID B. HURLER
 JUDGE OF THE SUPERIOR COURT