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Christopher M. Martin, State Bar No. 186021
HIRST & CHANLER LLP
566 W. Adams St., Suite 450
Chicago, Illinois 60661
Telephone: (312) 376-1801
Facsimile: (312) 376-1804

Attorneys for Plaintiff
MICHAEL DIPIRRO

FILED
ALAMEDA COUNTY

JAN 29 2009

CLERK OF THE SUPERIOR COURT
By Richard M. Conroy
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

UNLIMITED CIVIL JURISDICTION

MICHAEL DIPIRRO,
Plaintiff,

v.

SHUTTLE COMPUTER GROUP, INC.;
and DOES 1 through 150, inclusive,

Defendants.

CASE NO. RG-07-347282

ASSIGNED FOR ALL PURPOSES
TO JUDGE Richard Keller
DEPARTMENT 510

~~PROPOSED~~ JUDGMENT PURSUANT TO
TERMS OF CONSENT JUDGMENT

Date: January 28, 2009
Time: 2:30 p.m.

Reservation # R882520

~~PROPOSED~~ JUDGMENT PURSUANT TO TERMS OF CONSENT JUDGMENT

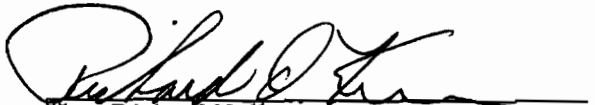
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In the above-entitled action, Plaintiff MICHAEL DIPIRRO and Defendant SHUTTLE
COMPUTER GROUP, INC. have agreed through their respective counsel that judgment be
entered pursuant to the terms of the ^{attached [Proposed]} Consent Judgment entered into by the parties on October 20,
2008. The Court approved the [Proposed] Consent Judgment in an order entered on 1/28/09.

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 of the ^{attached} ~~Stipulation~~
~~and [Proposed] Order Re:~~ Consent Judgment.

IT IS SO ORDERED.

Dated: 1-29-2009


Hon. Richard Keller
Judge of the Alameda County Superior Court

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9 Attorney for Defendant
SHUTTLE COMPUTER GROUP, INC.

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

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

Case No. RG-07-347282
ASSIGNED FOR ALL PURPOSES TO
JUDGE Richard Keller
DEPARTMENT 607
~~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, Shuttle Computer
5 Group, Inc., ("Defendant" or "Shuttle"), with DiPirro and Defendant together being referred to as the
6 "Parties."

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

12 Defendant 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 & Safety
14 Code §§ 25249.6 et seq. ("Proposition 65").

15 **1.4 General Allegations**

16 Plaintiff alleges that Defendant has manufactured, distributed, and/or sold motherboards with
17 solder containing lead in the State of California without providing the requisite warnings for lead
18 exposure required by Proposition 65. Lead is a substance listed pursuant to Proposition 65 and is
19 known to the State of California to cause birth defects and other reproductive harm.¹ Lead is referred
20 to herein as the "Listed Chemical."

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are defined as follows:
23 (a) motherboards with solder containing lead and components, and (b) products into which
24 motherboards that contain lead solder are integrated, including, but not limited to computer systems

25 _____
26 ¹ Lead is also listed as a Proposition 65 carcinogen; however, the State has adopted a safe harbor
27 exposure level for lead as a carcinogen (15 ug/day) that is significantly higher than the level it has identified
28 for lead as a reproductive toxicant under Proposition 65 (.5 ug/day), such that Parties are in agreement that
 only Proposition 65's requirements regarding reproductive toxicity are potentially relevant here.

1 and their subcomponents (such as desktop computer CPUs, laptop computers, servers, hard drives,
2 and port replicators). Examples of forms of solder include, but are not limited to, solder, solder balls,
3 solder spheres, solder paste, wave solder, solder joints, die bumps, and flip-chip bumps. All such
4 motherboards with solder containing lead, and components and products into which such
5 motherboards that contain lead solder are integrated, are referred to herein as "Products." Products
6 that contain motherboards that are integrated into a another product, such as a computer system or
7 subcomponent thereof, prior to the sale or acquisition of the Product into which the motherboard is
8 integrated, are referred to herein as "integrated products." Products that are motherboards sold
9 individually and not as a component integrated into another Product, such as a computer system or
10 component thereof, are referred to herein as "non-integrated products."

11 **1.6 Notices of Violation**

12 On June 15, 2007, DiPirro served Defendant and all public enforcers entitled to receive it
13 pursuant to Health & Safety Code § 25249.7(d), with a document entitled "60-Day Notice of
14 Violation" ("Notice"). This Notice provided Defendant and such public enforcers with notice that
15 Plaintiff intended to file and prosecute a lawsuit at the expiration of the 60-day notice period alleging
16 that Defendant was in violation of California Health & Safety Code § 25249.6 for failing to warn
17 consumers, workers and others that the Products that Defendant sold exposed users in California to
18 the Listed Chemical.

19 **1.7 Complaint**

20 On September 20, 2007, in the absence of public prosecutor action, DiPirro, who is acting in
21 the interest of the general public in California, filed a complaint ("Complaint" or "Action") in the
22 Superior Court in and for the County of Alameda against Defendant and Does 1 through 150,
23 *DiPirro v. Shuttle Computer Group, Inc.; et al.*, Alameda County Superior Court Case
24 No. RG07347282, alleging violations of California Health & Safety Code § 25249.6, based on the
25 alleged exposures to the Listed Chemical contained in the Products Defendant sold.

26 **1.8 No Admission**

27 Defendant denies the material factual and legal allegations contained in DiPirro's Notice and
28 Complaint, and maintains that all Products that it sold and/or distributed for sale or use in California

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

7 **1.9 Consent to Jurisdiction**

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

12 **1.10 Effective Date**

13 For purposes of this Settlement Agreement, the term "Effective Date" shall mean October 31,
14 2008.

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

16 After the Effective Date, Defendant shall not sell, ship, or offer to be shipped for sale, in
17 California, Products that are: (a) non-integrated products containing the Listed Chemical, or
18 (b) Products that are integrated products sold in Defendant's own brand name that contain the Listed
19 Chemical in the non-integrated product placed within them, unless such Products are sold or shipped
20 with the clear and reasonable warning set out in this Section 2.1, comply with the "Reformulation
21 Standards" set forth in Section 2.3, or are otherwise exempted pursuant to Section 2.2.

22 **2.1 Product Warnings**

23 Any warning issued for Products pursuant to this Section 2.1 shall be prominently placed with
24 such conspicuousness as compared with other words, statements, designs, or devices as to render it
25 likely to be read and understood by an ordinary individual under customary conditions before
26 purchase or, for Products shipped directly to an individual in California or used in the workplace in
27 California, before use. Any warning issued pursuant to this Section 2.1 shall be provided in a manner
28

1 such that the consumer or user understands to which specific Product the warning applies, so as to
2 minimize if not eliminate the chance that an over warning situation will arise.

3 Sections 2.1(a) and 2.1(b) below describe Defendant's options for satisfying its warning
4 obligations with respect to the preceding paragraph (where applicable) depending, in part, on the
5 manner of sale.

6 (a) **Retail Store and Service-Related Transactions.**

7 From the Effective Date, when required under this Consent Judgment, a warning may be
8 given by affixing the following language to the packaging or label of, or directly on, each Product
9 sold in, or otherwise provided in the course of service occurring in, California that states:

10 WARNING: The solder used in this product contains lead, a chemical
11 known to the State of California to cause birth defects and
12 other reproductive harm. Please wash hands after
13 handling internal components and circuit boards and
14 avoid inhalation of fumes if heating the solder.²

15 (b) **Mail Order Catalog and Internet Sales.**

16 Where required under this Consent Judgment, Defendant may satisfy its Proposition 65
17 warning obligations for Products that are sold by mail order catalog or from the Internet or
18 telephone/facsimile order to California residents or businesses by providing a warning: (i) in the
19 mail order catalog; (ii) on the website; and/or (iii) with the product when it is shipped to an address in
20 California as further specified in Sections 2.1(b)(i), (ii), and/or (iii), as applicable:
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23
24

25 ² For integrated products, Defendant may add the words "the motherboard of" or "the circuit boards
26 in" immediately prior to "this product" in the above warning or any of the warning formulations that follow
27 below.
28

1 (i) **Mail Order Catalog Warning.** Any warning provided in a mail order
2 catalog must be in the same type size or larger as the Product description text within the catalog.³
3 The following warning shall be provided on the same page and in the same location as the display
4 and/or description of the Product:

5 WARNING: The solder used in this product contains lead, a chemical
6 known to the State of California to cause birth defects
7 and other reproductive harm. Please wash hands after
8 handling internal components and circuit boards and
9 avoid inhalation of fumes if heating the solder.

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

15 WARNING: The solder used in certain products identified with this
16 symbol ▲ and offered for sale in this catalog contain
17 lead, a chemical known to the State of California to cause
18 birth defects and other reproductive harm. Please wash
19 hands after handling internal components and circuit
20 boards and avoid inhalation of fumes if heating the
21 solder.

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

26 (ii) **Internet Website Warning.** A warning may be given in conjunction
27 with the sale of a Product via the Internet, provided it appears either: (a) on the same web page on
28 which the Product is displayed with its features described and related details provided; (b) on the
same web page as the order form for the Product; (c) on the same page as the price for the Product; or
(d) on one or more web pages displayed to a purchaser during the checkout process. The following

³ 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 Products submitted for printing after the Effective Date.

1 warning statement shall be used and shall appear in any of the above instances adjacent to or
2 immediately following the display, description, or price of the Product for which it is given in the
3 same type size or larger as the product description text:

4 **WARNING:** The solder used in this product contains lead, a chemical
5 known to the State of California to cause birth defects and
6 other reproductive harm. Please wash hands after
7 handling internal components and circuit boards and
8 avoid inhalation of fumes if heating the solder.

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

12 **WARNING:** Products identified on this page with the following
13 symbol use solder that contains lead, a chemical known to
14 the State of California to cause birth defects and other
15 reproductive harm: ▲. Please wash hands after handling
16 internal components and circuit boards and avoid
17 inhalation of fumes if heating the solder.

18 **(iii) Package Insert or Label Warning.** For all Products sold by catalog
19 or via the Internet or by telephone, a warning may be provided with the Product when it is shipped
20 directly to an individual or business in California by either: (a) affixing the following warning
21 language to the packaging, labeling, or directly to a specific Product; (b) inserting a warning card
22 measuring at least 4" x 6" in the shipping carton which contains the following warning language; or
23 (c) placing the following warning statement on a written price quotation or the packing slip or
24 customer invoice on the line directly below the description of the Product on the price quotation,
25 packing slip or customer invoice:

26 **WARNING:** The solder used in this product contains lead, a chemical
27 known to the State of California to cause birth defects and
28 other reproductive harm. Please wash hands after
 handling internal components and circuit boards and
 avoid inhalation of fumes if heating the solder.

1 Alternatively, Defendant may place the following language on the price quotation, packing slip or
2 invoice and specifically identify the Product in lettering of the same size or larger as the description
3 of the Product:

4 **WARNING:** The solder used in the following product(s) contain lead,
5 a chemical known to the State of California to cause birth
6 defects or other reproductive harm. Please wash hands
7 after handling internal components and circuit boards and
8 avoid inhalation of fumes if heating the solder.

9 *[delineate list products for which warning is given].*

10 Defendant shall, in either of these instances, in conjunction with providing the warning (except where
11 it has been provided by on a written price quotation issued prior to consummation of a sales
12 transaction), also inform the consumer, in a conspicuous manner, that he or she may return the
13 Product for a full refund (including shipping costs for both the receipt and the return of the product)
14 within fifteen (15) days of his or her receipt of the Product.

15 **2.2 Exceptions To Warning Requirements**

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

- 17 (i) Subject to implementation of Section 2.5 below, any Product (a) manufactured before
18 October 31, 2008, or (b) which is offered as a part for any such Product;
- 19 (ii) Reformulated Products (as defined in Section 2.3 below); or
- 20 (iii) Any Product in which the only possible point of exposure to the Listed Chemical is
21 embedded in a manner that a consumer or worker would not come into contact with
22 the Listed Chemical under any reasonably anticipated use, such as Products which are
23 not expected to be serviced by employees or users other than those with specialized
24 information technology and related occupational health and safety training, including
25 servers, storage or storage and array systems, port replicators, and network
26 infrastructure equipment for switching, signaling and transmission as well as network
27 management for telecommunications that serve a business's internal non-consumer
28 market.

1 **2.3 Reformulation Products**

2 “Reformulated Products” are defined as follows: any Product containing less than or equal to
3 one-tenth of one percent (0.1%) lead by weight in each solder material, including all forms of solder
4 as identified in Section 1.5, unless that material is embedded in a manner that a consumer or worker
5 ordinarily would not come into contact with the lead under any reasonably anticipated use.⁴ The
6 warnings required pursuant to Section 2.1 above shall not be required for Reformulated Products.

7 **2.4 Reformulation Commitment**

8 Defendant hereby commits that all of its own branded Products that it offers for sale in
9 California after October 31, 2008 shall qualify as Reformulated Products pursuant to Section 2.3 or
10 be exempt from the warning requirements of Section 2.1 pursuant to Section 2.2. Further, as of
11 October 31, 2008, Defendant commits to use its commercially reasonable efforts to obtain non-
12 integrated products branded under other’s names that it sells in California, if any, so that they also
13 qualify as Reformulated Products pursuant to Section 2.3 or are otherwise exempt pursuant to
14 Section 2.2 above.

15 **2.5 Public Information Commitment**

16 In a good faith effort to inform consumers about the risk of exposure to lead in Defendant’s
17 Products manufactured before October 31, 2008 and which are not otherwise exempted pursuant to
18 Section 2.2 above, Defendant hereby commits to provide the following on a web page addressing
19 environmental/regulatory issues on the Defendant’s website for a period of three years:

20 Certain motherboards, mainboards, circuit boards and accessories sold
21 in California contain lead solder. Lead is a chemical known to the
 State of California to cause birth defects and other reproductive harm.

22

23 ⁴ Consistent with the European Union’s Reduction of Hazardous Substances regulations (“RoHS”),
24 the lead by weight standard set forth above shall not apply to specialty solders used in motherboards, including
25 specialty solders used with glass and ceramic microcomponents, lead in high melting temperature type solders,
26 solders used in pin connector systems or to form connections between the pins and the package of
27 microprocessors, solders used to complete a viable electrical connection between a semiconductor die and
28 carrier within an integrated circuit flip chip package, solders used for the soldering to machined through hole
discoidal and planar array ceramic multilayer capacitors, and/or solder used for transducers used in high-
powered loudspeakers, provided that such solders: (a) are embedded or otherwise used in a motherboard such
that a consumer or worker (other than specially trained service provider) would not come into contact with
them under any reasonably anticipated use, or (b) constitute no more than five percent (5%) of the total
amount of all non-embedded solder used in the motherboard in question.

1 Please wash hands after handling such internal components and avoid
2 inhalation of fumes if heating solder.

3 Defendant further agrees that, no later than ninety (90) days following the Effective Date, it will also
4 provide substantially similar notification to its contracted service providers who may handle or
5 otherwise come into contact with lead containing solder in non-integrated products contained within
6 branded integrated products manufactured for that Defendant before the Effective Date and which are
7 not otherwise exempted pursuant to Section 2.2 above.

8 **3. MONETARY PAYMENTS**

9 **3.1 Penalties Pursuant to Health & Safety Code § 25249.7(b)**

10 Pursuant to Health & Safety Code § 25249.7(b), the total civil penalty assessed shall be
11 \$17,000 which shall be apportioned and paid as follows:

- 12 (a) Defendant shall receive a credit of \$ 10,000 in light of its prompt cooperation
13 with DiPirro in resolving this matter and its commitment to sell only
14 reformulated (or otherwise exempted) branded Products in California pursuant
15 to Section 2.4 above.
- 16 (b) Defendant shall pay \$2,000 in civil penalties on or before October 31, 2008;
17 and
- 18 (c) Defendant shall pay \$2,500 in civil penalties on or before November 31, 2008.
19 This payment will be waived provided that Defendant complies with the public
20 information commitment on or before October 31, 2008, as set forth in Section
21 2.5 and submit a compliant web link to DiPirro for this review.
- 22 (d) Defendant shall pay remaining \$2,500 in civil penalties on or before December
23 15, 2008. This payment will be waived provided that Defendant submits a
24 report to DiPirro on or before November 31, 2008, which sets forth, in
25 sufficient detail, its efforts to remove lead from its Products.

26 All payments made pursuant to this Section 3.1 shall be payable to the "HIRST &
27 CHANLER LLP in Trust For Michael DiPirro" and shall be delivered to Plaintiff's counsel at the
28 following address on or before October 31, 2008:

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

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

14 The Parties acknowledge that DiPirro and his counsel offered to resolve this dispute without
15 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
16 issue to be resolved after the material terms of the agreement had been settled. Defendant then
17 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
18 finalized. The Parties then reached an accord on the compensation due to DiPirro and his counsel
19 under the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5
20 for all work performed through the Court's approval of this agreement. Under the private attorney
21 general doctrine, Defendant shall reimburse DiPirro and his counsel for fees and costs incurred as a
22 result of investigating, bringing this matter to that Defendant's attention, litigating, and negotiating a
23 settlement in the public interest and seeking the Court's approval of the settlement agreement.
24 Defendant shall pay DiPirro and his counsel \$26,000 for all attorneys' fees, expert and investigation
25 fees, litigation and related costs. The payments required pursuant to paragraph 4 shall be made
26 payable to HIRST & CHANLER LLP and shall be delivered in one installment on or before October
27 31, 2008 in the amount of \$26,000. This payment shall be delivered to the following address:

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 **5. RELEASE OF ALL CLAIMS**

7 **5.1 Release of Defendant and Downstream Customers**

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

24 The Parties further understand and agree that, except as provided for above, this release shall
25 not extend upstream to any entities that manufactured the Products or any component parts thereof, or
26 any distributors or suppliers who sold the Products or any component parts thereof to Defendant. The
27 foregoing is not, however, intended to limit any release set forth in, or direct or indirect effect of,
28 prior settlements or judgments Plaintiff or other enforcers of Proposition 65 have entered into with
 such upstream entities in terms of their application to any claims that have been or which may in the

1 future be alleged against Defendant with respect to the Listed Chemical in any Products sold by such
2 upstream entities to Defendant. This Agreement also does not release any downstream party
3 (including integrators and retailers) that either caused exposure to the Listed Chemical from Products
4 not supplied by Defendant or, as to the future, alters a Product purchased from Defendant in such a
5 way as to cause it to violate the Reformulation Standards or fails to transmit the requisite warnings
6 provided by Defendant in the manner set forth in Section 2.1 of in this Agreement.

7 This Consent Judgment is also a full, final and binding resolution between Plaintiff, acting on
8 behalf of the public interest pursuant to California Health & Safety Code § 25249.7(d), on the one
9 hand, and Defendant and its releasees, on the other hand, of any violation of Proposition 65 and of all
10 claims made or which could have been made in the Notice, Supplemental Notice, and/or Complaint
11 based on the facts asserted therein for Defendant's alleged failure to provide warnings for exposure to
12 the Listed Chemical in motherboards (as defined in Paragraph 1.5 above) which are either non-
13 integrated products or are contained in integrated products. Compliance by Defendant with the terms
14 of this Consent Judgment resolves any issue, now and in the future, concerning compliance by
15 Defendant and its releasees, with the requirements of Proposition 65 as to warnings for exposure to
16 the Listed Chemical in motherboards (as defined in Paragraph 1.5 above) which are non-integrated
17 products or are contained in integrated products.

18 **5.2 Defendant's Release of DiPirro**

19 Defendant waives any and all claims against DiPirro, his attorneys, and other representatives
20 for any and all actions taken or statements made (or those that could have been taken or made) by
21 DiPirro and his attorneys and other representatives, whether in the course of investigating claims or
22 otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the
23 Products.

24 **6. COURT APPROVAL**

25 This Agreement is not effective until it is approved and entered by the Court and shall be null
26 and void if, for any reason, it is not approved and entered by the Court within one year after it has
27 been fully executed by all Parties, in which event any monies that have been provided to Plaintiff or
28

1 his counsel, pursuant to Section 3 and/or Section 4 above, shall be refunded within fifteen (15) days
2 after receiving written notice from Defendant that the one-year period has expired.

3 **7. SEVERABILITY**

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

7 **8. ATTORNEYS' FEES**

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

11 **9. GOVERNING LAW**

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

17 **10. NOTICES**

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

22 To DiPirro:

23 Proposition 65 Coordinator
24 HIRST & CHANLER LLP
25 2560 Ninth Street
26 Parker Plaza, Suite 214
27 Berkeley, CA 94710-2565

28 To Defendants:

Paul P. Cheng
301 N. Lake Avenue, Suite 800
Pasadena, CA 91101

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

3 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

10 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

11 DiPirro and Defendant agree to mutually employ their best efforts to support the entry of this
12 Agreement as a Consent Judgment and obtain approval of it by the Court in a timely manner. The
13 Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed motion is required
14 to obtain judicial approval of this Agreement. Accordingly, the Parties agree to file a Motion to
15 Approve the Agreement (the "motion"), which shall be prepared by Plaintiff's counsel and reviewed
16 by Defendant's counsel prior to filing with the Court. Defendant shall have no additional
17 responsibility to Plaintiff's counsel pursuant to Code of Civil Procedure § 1021.5 or otherwise with
18 regard to reimbursement of any fees and costs incurred with respect to the preparation and filing of
19 the motion or with regard to Plaintiff's counsel appearing for a hearing thereon.

20 **14. MODIFICATION**

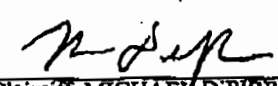
21 This Agreement may be modified only: (1) by written agreement of the Parties and upon
22 entry of a modified Settlement Agreement by the Court thereon; or (2) upon a successful motion of
23 any Party and entry of a modified Settlement Agreement by the Court. The Attorney General shall be
24 served with notice of any proposed modification to this Agreement at least fifteen (15) days in
25 advance of its consideration by the Court.

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15. AUTHORIZATION

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

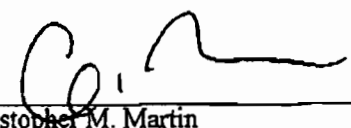
AGREED TO:	AGREED TO:
Date: <u>8/28/08</u>	Date: _____
By: <u></u> Plaintiff, MICHAEL DIPIRRO	By: _____ Defendant, SHUTTLE COMPUTER GROUP, INC
APPROVED AS TO FORM:	APPROVED AS TO FORM:
Date: _____ HIRST & CHANLER LLP	Date: _____ PAUL P. CHENG, ESQ.
By: _____ Christopher M. Martin Attorneys for Plaintiff MICHAEL DIPIRRO	By: _____ Paul P. Chang Attorney for Defendant SHUTTLE COMPUTER GROUP, INC.

IT IS SO ORDERED.

Date: _____ JUDGE OF THE SUPERIOR COURT

1 15. AUTHORIZATION

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



<p>4 AGREED TO:</p> <p>5</p> <p>6 Date: _____</p> <p>7</p> <p>8 By: _____ Plaintiff, MICHAEL DiPIRRO</p> <p>9</p>	<p>AGREED TO:</p> <p>6 Date: _____</p> <p>8 By: _____ Defendant, SHUTTLE COMPUTER GROUP, INC</p>
<p>11 APPROVED AS TO FORM:</p> <p>12</p> <p>13 Date: <u>10/20/08</u></p> <p>14 HIRST & CHANLER LLP</p> <p>15</p> <p>16 By:  Christopher M. Martin Attorneys for Plaintiff MICHAEL DiPIRRO</p> <p>17</p> <p>18</p>	<p>APPROVED AS TO FORM:</p> <p>12</p> <p>13 Date: _____</p> <p>14 PAUL P. CHENG, ESQ.</p> <p>15</p> <p>16 By: _____ Paul P. Cheng Attorney for Defendant SHUTTLE COMPUTER GROUP, INC.</p> <p>17</p> <p>18</p>

19
20 IT IS SO ORDERED.

21
22 Date: _____ JUDGE OF THE SUPERIOR COURT

15. AUTHORIZATION

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

<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: <u>10/9/08</u></p> <p>By:  Defendant, SHUTTLE COMPUTER GROUP, INC</p>
<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: _____</p> <p>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: <u>10/20/08</u></p> <p>PAUL P. CHENG, ESQ.</p> <p>By:  Paul P. Cheng Attorney for Defendant SHUTTLE COMPUTER GROUP, INC.</p>

IT IS SO ORDERED.

Date: 1-29-2009


JUDGE OF THE SUPERIOR COURT