



1 Christopher M. Martin, State Bar No. 186021
 2 HIRST & CHANLER LLP
 3 566 W. Adams, Suite 450
 4 Chicago, IL 60661
 5 Telephone: (312) 376-1801
 6 Facsimile: (312) 376-1804

FILED
 ALAMEDA COUNTY

MAR 10 2009

Attorneys for Plaintiff
 MICHAEL DIPIRRO

CLERK OF THE SUPERIOR COURT
 By *John Nelson* Deputy

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

MICHAEL DIPIRRO,

Plaintiff,

v.

BEST DATA PRODUCTS, INC.;
 DIAMOND MULTIMEDIA; and DOES 1
 through 150, inclusive,

Defendants.

CASE NO. RG-07-354944

ASSIGNED FOR ALL PURPOSES
 TO JUDGE PATRICK ZIKA
 DEPARTMENT 24

~~AMENDED PROPOSED~~ JUDGMENT *402*

Date: January 13, 2009
 Time 3:15 p.m.
 Dept: 24
 Judge: Hon. Patrick Zika

Reservation No.: R857763

[PROPOSED] JUDGMENT PURSUANT TO TERMS OF CONSENT JUDGMENT

1 In the above-entitled action, Plaintiff MICHAEL DIPIRRO and Defendant BEST DATA
2 PRODUCTS, INC., D/B/A DIAMOND MULTIMEDIA have agreed to settle Plaintiff's
3 allegations that Defendant manufactured, distributed, and/or sold modem cards with solder
4 containing lead in the State of California without providing the requisite warnings, an alleged
5 violation of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
6 Safety Code §§ 25249.6 *et seq.* (hereinafter "Proposition 65").

7 The products that are covered by this settlement are defined as follows: (a) modem cards
8 with solder containing lead and components, and (b) products into which modem cards that
9 contain lead solder are integrated, including, but not limited to computer systems and their
10 subcomponents (such as desktop computer CPUs, laptop computers, servers, hard drives, and
11 port replicators).

12 After June 15, 2008, Defendants shall not sell, ship, or offer to be shipped for sale, in
13 California, products that are: (a) non-integrated products containing the Listed Chemical, or
14 (b) products that are integrated products sold in Defendants' own brand name that contain the
15 Listed Chemical in the non-integrated product placed within them, unless such Products are sold
16 or shipped with the clear and reasonable warning set out in the settlement, comply with the
17 "Reformulation Standards" set forth in the settlement, or are otherwise exempted pursuant to the
18 settlement.

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

27
28

[PROPOSED] JUDGMENT PURSUANT TO TERMS OF CONSENT JUDGMENT

1 Defendants' options for satisfying their warning obligations are described depending, in
2 part, on the manner of sale. The following warnings will be applicable when the product is sold
3 in or otherwise provided in the course of service occurring in California that states:

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

8 Where required under the settlement, Defendants may satisfy their Proposition 65 warning
9 obligations for products that are sold by mail order catalog or from the Internet or
10 telephone/facsimile order to California residents or businesses by providing a warning: (i) in the
11 mail order catalog; (ii) on the website; and/or (iii) with the product when it is shipped to an
12 address in California.

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

- 14 (i) Subject to implementation of the settlement, any product (a) manufactured before
15 June 15, 2008, or (b) which is offered as a part for any such product;
16 (ii) Reformulated Products (as defined in the settlement); or
17 (iii) Any product in which the only possible point of exposure to the Listed Chemical is
18 embedded in a manner that a consumer or worker would not come into contact
19 with the Listed Chemical under any reasonably anticipated use, such as products
20 which are not expected to be serviced by employees or users other than those with
21 specialized information technology and related occupational health and safety
22 training, including servers, storage or storage and array systems, port replicators,
23 and network infrastructure equipment for switching, signaling and transmission as
24 well as network management for telecommunications that serve a business's
25 internal non-consumer market.

26 "Reformulated Products" are defined as follows: any product containing less than or
27 equal to one-tenth of one percent (0.1%) lead by weight in each solder material, including all
28

1 forms of solder as identified in the settlement, unless that material is embedded in a manner that a
2 consumer or worker ordinarily would not come into contact with the lead under any reasonably
3 anticipated use.

4 Defendants commit that all of their own branded products that they offer for sale in
5 California after June 15, 2008 shall qualify as Reformulated Products pursuant to the settlement
6 or be exempt from the warning requirements of the settlement. Further, as of May 31, 2008,
7 Defendants commit to use their commercially reasonable efforts to obtain non-integrated products
8 branded under other's names that they sell in California, if any, so that they also qualify as
9 Reformulated Products pursuant to the settlement or are otherwise exempt pursuant to the
10 settlement.

11 Additionally, in a good faith effort to inform consumers about the risk of exposure to lead
12 in Defendants' products manufactured before June 15, 2008 and which are not otherwise
13 exempted pursuant to the settlement, Defendants commit to provide the following on a web page
14 addressing environmental/regulatory issues on the Defendants' website for a period of three
15 years:

16 Certain motherboards, mainboards, circuit boards and accessories
17 sold in California contain lead solder. Lead is a chemical known to
18 the State of California to cause birth defects and other reproductive
19 harm. Please wash hands after handling such internal components
20 and avoid inhalation of fumes if heating solder.

21 Defendants further agree that, no later than ninety (90) days following the Effective Date,
22 they will also provide substantially similar notification to their contracted service providers who
23 may handle or otherwise come into contact with lead containing solder in non-integrated products
24 contained within branded integrated products manufactured for Defendants before the Effective
25 Date and which are not otherwise exempted pursuant to the settlement.

26 Defendants shall pay \$20,000 in civil penalties and receive a credit of \$17,000 against this
27 amount (leaving a net of \$3,000 to be paid as civil penalties) in light of their prompt cooperation
28 with DiPirro in resolving this matter and their commitment to sell only reformulated (or otherwise
exempted) branded Products in California pursuant to the settlement.

1 Additionally, Defendants shall pay DiPirro and his counsel \$28,000 for all attorneys' fees,
2 expert and investigation fees, litigation and related costs incurred as a result of investigating,
3 bringing this matter to that Defendants' attention, litigating, and negotiating a settlement in the
4 public interest and seeking the Court's approval of the settlement agreement.

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

8 IT IS SO ORDERED.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: 3/10/09



Hon. Patrick Zika
Judge of the Alameda County Superior Court