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11 Attorneys for Defendant
12 TYAN COMPUTER CORPORATION

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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF ALAMEDA
17 UNLIMITED CIVIL JURISDICTION
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20 RUSSELL BRIMER,

21 Plaintiff,

22 v.

23 TYAN COMPUTER CORPORATION; and
24 DOES 1 through 150, inclusive,

25 Defendants.
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Case No. RG-06-302764

**STIPULATION AND [PROPOSED]
ORDER RE: CONSENT JUDGMENT**

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1. INTRODUCTION

1.1 Parties

This Consent Judgment is entered into by and between plaintiff Russell Brimer (Brimer or plaintiff) and defendant Tyan Computer Corporation, (defendant or TYAN), with Brimer and TYAN referred to as the "parties."

1.2 Plaintiff

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

1.3 Defendant

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

1.4 General Allegations

Plaintiff alleges that defendant has manufactured, distributed, and/or sold motherboards with solder containing lead in the State of California without the requisite health hazard warnings. Lead is a substance known to cause birth defects and other reproductive harm and is listed pursuant to Proposition 65. Lead shall be referred to hereinafter as the "listed chemical."

1.5 Product Description

The products that are covered by this Consent Judgment are defined as follows: motherboards with lead-containing solder, such as the *TYAN S3098G2N Tomcat i845GV Motherboard (#6 35872 00925 9)*, and components utilized with motherboards that contain lead solder. Examples of forms of solder include, but are not limited to, solder, solder balls, solder spheres, solder paste, wave solder, solder joints, die bumps, and flip-chip bumps. All such motherboards with lead-containing solder, and components utilized with such motherboards that contain lead solder, shall be referred to hereinafter as "products." Products that are integrated into a desktop computer system as a component thereof, prior to the sale or acquisition of the computer system, shall be referred to hereinafter as

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2 “integrated products.” Products that are sold individually and not as a component integrated into a computer system
3 shall be referred to hereinafter as “non-integrated products.”

4 **1.6 Notices of Violation**

5 On October 13, 2006, Brimer served defendant and various public enforcement agencies with a document
6 entitled "60-Day Notice of Violation" (Notice) that provided defendant and such public enforcers with notice that
7 alleged that defendant was in violation of California Health & Safety Code §25249.6 for failing to warn consumers,
8 workers and others that the products that defendant sold exposed users in California to the listed chemical.

9 **1.7 Complaint**

10 On December 18, 2006, Brimer, who is acting in the interest of the general public in California, filed a
11 complaint (Complaint or Action) in the Superior Court in and for the County of Alameda against TYAN COMPUTER
12 CORPORATION, and Does 1 through 150, *Brimer v. TYAN COMPUTER CORPORATION; and DOES 1 through*
13 *150, inclusive, Alameda Superior Court Case No. RG-06-302764*, alleging violations of California Health & Safety
14 Code §25249.6, based on the alleged exposures to the listed chemical contained in the products defendant sold.

15 **1.8 No Admission**

16 Defendant denies the material factual and legal allegations contained in Brimer's Notice and Complaint,
17 denies any and all liability under Proposition 65, and maintains that all products that it has sold and distributed in
18 California have been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an
19 admission by defendant of any fact, finding, issue of law, or violation of law, nor shall compliance with this Consent
20 Judgment constitute or be construed as an admission by defendant of any fact, finding, conclusion, issue of law, or
21 violation of law, such being specifically denied by defendant. However, this Section shall not diminish or otherwise
22 affect defendant's obligations, responsibilities and duties under this Consent Judgment.

23 **1.9 Consent to Jurisdiction**

24 For purposes of this Consent Judgment only, the parties stipulate that this Court has jurisdiction over
25 defendant as to the allegations contained in the Complaint, that venue is proper in the County of Alameda and that this
26 Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

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1.10 Effective Date

For purposes of this Consent Judgment, the term "effective date" shall mean October 15, 2007.

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

2.1 Product Warnings

After the effective date, defendant shall not sell, ship, or offer to be shipped for sale in California products containing the listed chemical unless such products are sold or shipped with the clear and reasonable warning set out in this Section 2.1, comply with the reformulation standards set forth in Section 2.3 or are otherwise exempt pursuant to Section 2.2.

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

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

(a) Sales of Non-Integrated Products

Defendant at the present time does not sell products directly to retail outlets; however, defendant individually packages each product sold through its distributors and agrees to provide warnings as follows:

(i) Product Labeling. From the effective date, a warning will be affixed to

packaging, labeling, or directly on each non-integrated product sold in retail outlets by defendant or its agents, that states:

WARNING: The solder used in this product contains lead, a chemical known to the State of California to cause cancer and birth defects and other reproductive harm.

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(ii) **Point-of-Sale Warnings.** Alternatively, defendant may perform its warning obligations by directing that signs are posted at retail outlets in the State of California where the non-integrated products are sold. In order to avail itself of the point-of-sale option, defendant shall provide a written notice in the first quarter of each calendar year or at the time of the first sale in a calendar year to each retailer or distributor to whom defendant sells or transfers 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. Defendant shall include a copy of the warning signs and posting instructions with such notice. Further, defendant shall maintain a written record of the written notices provided herein, and shall make those records available to Brimer upon written request. 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 solder used in this product contains lead, a chemical known to the State of California to cause cancer and birth defects and other reproductive harm.

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

TYAN does not at the present sell products by mail order or via the Internet and has no plans to do so. However, in the event that TYAN at some future date does sell non-integrated products by mail order catalog or from the Internet to California residents it agrees 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 Sections 2.1(b)(1) and/or (ii) as applicable:

(i) **Mail Order Catalog Warning.** 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 solder used in this product may contain lead, a chemical known to the State of California to cause cancer and birth defects and other reproductive harm.

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, defendant may utilize the designated symbol attached hereto as

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Exhibit A to cross reference the applicable 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 solder used in certain products identified with this symbol ▼ and offered for sale in this catalog may contain lead, a chemical known to the State of California to cause cancer and birth defects and other reproductive harm.

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

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 non-integrated products printed after October 31, 2007.

(ii) Internet Website Warning. 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 solder used in certain products identified with this symbol ▼ and offered for sale on this Web site may contain lead, a chemical known to the State of California to cause cancer and birth defects and other reproductive harm.

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 may use solder containing lead, a chemical known to the State of California to cause cancer and birth defects and other reproductive harm: ▼

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(c) Sales to Known Integrators

Defendant does not at the present sell products to individuals or entities it knows to be in the business of integrating its products into computer systems for resale (“integrator(s)”). In the future, should defendant sell non-integrated products to known integrators, defendant shall provide the integrator with written instructions in the first quarter of each calendar year that inform such integrators of the requirements of Proposition 65 and instruct such integrators to attach appropriate sticker warnings, as required by Proposition 65, to any item which contains a TYAN product containing lead solder as an integrated component, prior to the resale of the integrated product. Further, defendant shall maintain a written record of the written instructions provided herein, and shall make those records available to Brimer upon written request

(d) Manual Warnings

On or before October 15, 2007, defendant shall include the following warning in twelve point font or greater on the inside front cover of its product user manuals shipped with any non-reformulated product and available for viewing on its website, if so provided, and where defendant otherwise warns or informs its customers of the content of its products:

WARNING: The solder used in this product may contain lead, a chemical known to the State of California to cause cancer and birth defects and other reproductive harm.

2.2 Exceptions to Warning Requirements

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

- (i) Any product received in inventory before the effective date, subject to Section 2.5;
- (ii) Reformulated products (as defined in Section 2.3 below); or
- (iii) Any product in which 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.

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2.3 Reformulation Standards

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.¹The warnings required pursuant to Section 2.1 above shall not be required for reformulated products.

2.4 Reformulation Commitment

Defendant hereby commits that a minimum of 80% of all products that it offers for sale in California after November 1, 2007, shall qualify as reformulated products or be exempt from the warning requirements of Section 2.1 pursuant to Section 2.2. Defendant commits to use commercially reasonable efforts to convert all products to reformulated products as soon as possible and, in any event, no later than December 31, 2009.

2.5 Public Information Commitment

In a good faith effort to inform the public about the possible risk of exposure to lead in defendant's products, defendant hereby commits to provide the following warning on its main products web page for a period of three years:

WARNING: Certain motherboards sold in California may contain lead solder. Lead is a chemical known to the State of California to cause cancer and birth defects and other reproductive harm.

Immediately following the above warning, defendant shall provide a hyperlink titled "List of Motherboards That May Contain Lead Solder" which will link to a web page that defendant shall create and maintain for a period of three years. On that page, defendant shall provide the following warning:

WARNING: The following motherboards sold in California may contain lead solder. Lead is a chemical known to the State of California to cause cancer and birth defects and other reproductive harm.

¹ For 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.

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2 Immediately following that warning, defendant shall list all products that may contain lead solder that defendant sold
3 in California, updated periodically with a parenthetical designation of the last date any such product containing lead
4 solder was sold. Defendant shall identify each product by name and model number.

5 **3. MONETARY PAYMENTS**

6 **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

7 Pursuant to Health & Safety Code §25249.7(b), the total civil penalty assessed shall be
8 \$50,000, which shall be apportioned as follows:

- 9 (a) Defendant shall receive a credit of \$14,500 in light of its prompt cooperation with Brimer
10 in resolving this matter and its commitment to sell only reformulated products in California;
- 11 (b) Defendant shall pay \$8,000 in civil penalties on or before November 15, 2007;
- 12 (c) Defendant shall pay \$12,500 in civil penalties on or before February 1, 2008. This
13 payment will be waived provided that defendant complies with the public information
14 commitment on or before January 1, 2008, as set forth in Section 2.5 and submits a
15 compliant web link to Brimer for his review; and
- 16 (d) Defendant shall pay the remaining \$15,000 in civil penalties on or before February 1, 2008.
17 This payment will be waived provided that defendant submits a report to Brimer on or
18 before January 1, 2008, which sets forth, in sufficient detail, its efforts to remove lead from
19 its motherboards not intended for use in desktop computers.

20 All payments made pursuant to this Section 3.1 shall be payable to the "HIRST & CHANLER LLP in Trust
21 For Russell Brimer" and shall be delivered to plaintiff's counsel at the following address:

22 HIRST & CHANLER LLP
23 Attn: Proposition 65 Controller
24 2560 Ninth Street
25 Parker Plaza, Suite 214
26 Berkeley, CA 94710-2565

27 **3.2 Apportionment of Penalties Received**

28 All penalty monies received shall be apportioned by Brimer in accordance with Health & Safety Code
§25192, with 75% of these funds remitted by Brimer to the State of California's Office of Environmental Health
Hazard Assessment and the remaining 25% of these penalty monies retained by Brimer as provided by Health &

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2 Safety Code §25249.12(d). Brimer shall bear all responsibility for apportioning and paying to the State of California
3 the appropriate civil penalties paid in accordance with this Section.

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

5 The parties acknowledge that Brimer and his counsel offered to resolve this dispute without reaching terms on
6 the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material
7 terms of the agreement had been settled. Defendant then expressed a desire to resolve the fee and cost issue shortly
8 after the other settlement terms had been finalized. The parties then reached an accord on the compensation due to
9 Brimer and his counsel under the private attorney general doctrine codified at California Code of Civil Procedure
10 §1021.5 for all work performed through the Court's approval of this agreement. Under the private attorney general
11 doctrine, defendant shall reimburse Brimer and his counsel for fees and costs incurred as a result of investigating,
12 bringing this matter to defendant's attention, litigating, and negotiating a settlement in the public interest and seeking
13 the Court's approval of the settlement agreement. Defendant shall pay Brimer and his counsel \$25,000 for all
14 attorneys' fees, expert and investigation fees, litigation and related costs. The payment shall be made payable to
15 HIRST & CHANLER LLP and shall be delivered on or before November 15, 2007, at the following address:

16 HIRST & CHANLER LLP
17 Attn: Proposition 65 Controller
18 2560 Ninth Street
19 Parker Plaza, Suite 214
20 Berkeley, CA 94710-2565

21 **5. RELEASE OF ALL CLAIMS**

22 **5.1 Release of Defendant and Downstream Customers**

23 In further consideration of the promises and agreements herein contained, and for the payments to be made
24 pursuant to Sections 3 and 4, Brimer, on behalf of himself, his past and current agents, representatives, attorneys,
25 successors, and/or assignees, and in the interest of the general public, hereby waives all rights to institute or participate
26 in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions, and
27 causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or
28 expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever,
whether known or unknown, fixed or contingent (collectively "claims"), against defendant and each of its downstream
wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users,

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parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, sister and parent entities, and original equipment manufacturers and distributors (collectively "releasees"). This release is limited to those claims that arise under Proposition 65, as such claims relate to defendant's alleged failure to warn about exposures to the listed chemical contained in the products.

The parties further understand and agree that this release shall not extend upstream to any entities that manufactured the products or any component parts thereof, or any distributors or suppliers who sold the products or any component parts thereof to defendant. This settlement does not release any downstream party (including integrators and retailers) that either caused exposure to lead from components not supplied by defendant or, as to the future, alters the product purchased from defendant in such a way as to cause it to violate the reformulation standards or fails to transmit the requisite warnings provided by defendant in paragraph 2.1 set forth in this Consent Judgment.

5.2 Defendant's Release of Brimer

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

6. COURT APPROVAL

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

7. SEVERABILITY

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

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8. ATTORNEYS' FEES

In the event that, after Court approval: (1) Defendant or any third party seeks modification of this Consent Judgment pursuant to Section 14 below; or (2) Brimer takes reasonable and necessary steps to enforce the terms of this Consent Judgment, Brimer shall be entitled to his reasonable attorneys' fees and costs pursuant to CCP §1021.5.

9. GOVERNING LAW

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

10. NOTICES

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

To Defendant:

Joanne Carlson
BURRISS LAW FIRM, PC
Old Mill Office Center
201 San Antonio Circle, Suite 160
Mountain View, CA 94040

To Brimer:

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

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

11. COUNTERPARTS; FACSIMILE SIGNATURES

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

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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: _____</p> <p>By: _____ Plaintiff, RUSSELL BRIMER</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: <u>10/15/2007</u></p> <p>By: <u>Ryan Y</u> Defendant, TYAN COMPUTER CORPORATION</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 RUSSELL BRIMER</p>	<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: _____ BURRISS LAW FIRM, PC</p> <p>By: _____ Joanne Carlson Attorneys for Defendant TYAN COMPUTER CORPORATION</p>

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR 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.

AGREED TO:	AGREED TO:
Date: _____	Date: _____
By: _____ Plaintiff, RUSSELL BRIMER	By: _____ Defendant, TYAN COMPUTER CORPORATION
APPROVED AS TO FORM:	APPROVED AS TO FORM:
Date: _____ HIRST & CHANLER LLP	Date: <u>10/16/2007</u> BURRISS LAW FIRM, PC
By: _____ Christopher M. Martin Attorneys for Plaintiff RUSSELL BRIMER	By: <u>Joanne Carlson</u> Joanne Carlson Attorneys for Defendant TYAN COMPUTER CORPORATION

IT IS SO ORDERED.

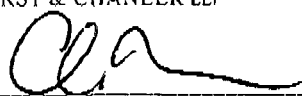
Date: _____

JUDGE OF THE SUPERIOR 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: _____</p> <p>By: _____ Plaintiff, RUSSELL BRIMER</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Defendant, TYAN COMPUTER CORPORATION</p>
<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: <u>10/17/07</u> HIRST & CHANLER LLP</p> <p>By:  Christopher M. Martin Attorneys for Plaintiff RUSSELL BRIMER</p>	<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: _____ BURRISS LAW FIRM, PC</p> <p>By: _____ Joanne Carlson Attorneys for Defendant TYAN COMPUTER CORPORATION</p>

IT IS SO ORDERED.


Date: _____

JUDGE OF THE SUPERIOR 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>10-18-07</u></p> <p>By:  Plaintiff, RUSSELL BRIMER</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Defendant, TYAN COMPUTER CORPORATION</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 RUSSELL BRIMER</p>	<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: _____ BURRISS LAW FIRM, PC</p> <p>By: _____ Joanne Carlson Attorneys for Defendant TYAN COMPUTER CORPORATION</p>

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT