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12 SUPER MICRO COMPUTER, INC.

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

18 RUSSELL BRIMER,

19 Plaintiff,

20 v.

21 SUPER MICRO COMPUTER, INC.; and
22 DOES 1 through 150, inclusive,

23 Defendants.

Case No. RG-06-303467

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

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Russell Brimer (Brimer or
4 plaintiff) and defendant Super Micro Computer, Inc., (defendant or Super Micro), with Brimer and
5 Super Micro referred to as the "parties."

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

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

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are defined as follows:
21 motherboards with lead-containing solder, such as the *Supermicro MBD-P3TSSE Motherboard*
22 (*# 6 72042 88115 4*), and components utilized with motherboards that contain lead solder.
23 Examples of forms of solder include, but are not limited to, solder, solder balls, solder spheres,
24 solder paste, wave solder, solder joints, die bumps, and flip-chip bumps. All such motherboards
25 with lead-containing solder, and components utilized with such motherboards that contain lead
26 solder, shall be referred to hereinafter as "products." Products that are integrated into a desktop
27 computer system as a component thereof, prior to the sale or acquisition of the computer system,
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1 shall be referred to hereinafter as "integrated products." Products that are sold individually and
2 not as a component integrated into a computer system shall be referred to hereinafter as
3 "non-integrated products."

4 **1.6 Notices of Violation**

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

10 **1.7 Complaint**

11 On December 18, 2006, Brimer, who is acting in the interest of the general public in
12 California, filed a complaint (Complaint or Action) in the Superior Court in and for the County of
13 Alameda against Super Micro Computer, Inc., and Does 1 through 150, *Brimer v. Super Micro*
14 *Computer, Inc.; and DOES 1 through 150, inclusive, Alameda Superior Court Case No.*
15 *RG-06-303467*, alleging violations of California Health & Safety Code §25249.6, based on the
16 alleged exposures to the listed chemical contained in the products defendant sold.

17 **1.8 No Admission**

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

26 **1.9 Consent to Jurisdiction**

27 For purposes of this Consent Judgment only, the parties stipulate that this Court has
28

1 jurisdiction over defendant as to the allegations contained in the Complaint, that venue is proper in
2 the County of Alameda and that this Court has jurisdiction to enter and enforce the provisions of
3 this Consent Judgment.

4 **1.10 Effective Date**

5 For purposes of this Consent Judgment, the term "effective date" shall mean June 30, 2007.

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

7 **2.1 Product Warnings**

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

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

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

23 **(a) Sales of Non-Integrated Products**

24 **(i) Product Labeling.** From the effective date, except as provided by
25 Paragraph 2.2, defendant will affix a warning on packaging, labeling, or directly on each
26 non-integrated product sold by defendant in California, that states:
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1 **WARNING:** Some solder materials used in this product
2 may contain lead, a chemical known to the
3 State of California to cause birth defects and
 other reproductive harm.

4 **(b) Sales to Known Integrators**

5 Where defendant sells products to individuals or entities it knows to be in the business of
6 integrating its products into computer systems for resale ("integrator(s)"), until such time as the
7 product meets the RoHs 6 of 6 standard pertaining to lead, defendant shall notify the integrator
8 that the product's solder contains lead, and that the integrator should comply with the warning
9 requirements of Proposition 65 prior to the resale of the integrated product. Defendant shall
10 maintain a record that defendant provided each integrator with the above-mentioned written
11 instructions and shall make said record concerning a particular integrator available for Brimer's
12 inspections upon request, but only if the following conditions have been met: a) Brimer or his
13 counsel have independently identified the integrator as having sold a product that has integrated
14 defendant's product; b) Brimer or his counsel have a good faith belief that the integrator has failed
15 to comply with the warning requirements of Proposition 65; and c) the integrator has verified in
16 writing that it obtained the products in question from defendant or that, in the alternative, Brimer
17 can independently verify that the serial number and/or identifying mark on the products in
18 question evidence that those products were obtained from defendant.

19 **(c) Manual Warnings**

20 On or before June 30, 2007, defendant shall include the following warning in twelve point
21 font or greater on the inside front cover of its product user manuals shipped with any
22 non-reformulated product and available for viewing on its website, if so provided, and where
23 defendant otherwise warns or informs its customers of the content of its products:

24 **WARNING:** Handling of lead solder materials used
25 in this product may expose you to lead, a
26 chemical known to the State of California to
27 cause birth defects and other reproductive harm.
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1 **2.2 Exceptions To Warning Requirements**

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

- 3 (i) Any product received in inventory before the effective date, subject to
4 Section 2.5;
- 5 (ii) Reformulated products (as defined in Section 2.3 below); or
- 6 (iii) Any product in which the listed chemical is embedded in a manner that a
7 consumer or worker would not come into contact with the listed chemical
8 under any reasonably anticipated use.

9 **2.3 Reformulation Standards**

10 Reformulated products are defined as follows: any product containing less than or equal to
11 one-tenth of one percent (0.1%) lead by weight in each solder material, including all forms of
12 solder as identified in Section 1.5, unless that material is embedded in a manner that a consumer
13 or worker ordinarily would not come into contact with the lead under any reasonably anticipated
14 use. The warnings required pursuant to Section 2.1 above shall not be required for reformulated
15 products.

16 **2.4 Reformulation Commitment**

17 Defendant hereby commits that all desktop motherboard models designed after September
18 1, 2007, for sale in California shall qualify as reformulated products or be exempt from the
19 warning requirements of Section 2.1 pursuant to Section 2.2.

20 **2.5 Public Information Commitment**

21 In a good faith effort to inform the public about the risk of exposure to lead in defendant's
22 products, defendant hereby commits to list the names and model numbers of the unreformulated
23 motherboards that contain lead on its website, and place the following warning in an appropriate
24 location on its proprietary website, for a period of three years:

25 **WARNING:** Handling of lead solder materials used in this
26 product may expose you to lead, a chemical
27 known to the State of California to cause birth
28 defects and other reproductive harm.

1 For purposes of this consent judgment, an "appropriate location on its proprietary website" shall
2 be on a proprietary web page where the products are advertised, displayed and/or described to
3 consumers and which is accessible to consumers from the defendant's website home page.

4 **3. MONETARY PAYMENTS**

5 **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

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

- 8 (a) Defendant shall receive a credit of \$14,500 in light of its prompt
9 cooperation with Brimer in resolving this matter and its commitment to
10 provide warnings as stated in Paragraph 2.1, and design only reformulated
11 desktop motherboard models for sale in California after September 1, 2007;
- 12 (b) Defendant shall pay \$8,000 in civil penalties on or before June 30, 2007;
- 13 (c) Defendant shall pay \$12,500 in civil penalties on or before June 30, 2007.
14 This payment will be waived provided that defendant complies with the
15 public information commitment on or before June 30, 2007, as set forth in
16 Section 2.5 and submits a compliant web link to Brimer for his review; and
- 17 (d) Defendant shall pay the remaining \$15,000 in civil penalties on or before
18 January 15, 2008. This payment will be waived provided that defendant
19 submits a report to Brimer on or before December 1, 2007, which either sets
20 forth, in sufficient detail, its efforts to remove lead from its motherboards
21 not intended for use in desktop computers, or the reasons that lead
22 continues to be used in non-desktop motherboards

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

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

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

14 The parties acknowledge that Brimer and his counsel offered to resolve this dispute
15 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
16 this fee issue to be resolved after the material terms of the agreement had been settled. Defendant
17 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms
18 had been finalized. The parties then reached an accord on the compensation due to Brimer and his
19 counsel under the private attorney general doctrine codified at California Code of Civil Procedure
20 §1021.5 for all work performed through the Court's approval of this agreement. Under the private
21 attorney general doctrine, defendant shall reimburse Brimer and his counsel for fees and costs
22 incurred as a result of investigating, bringing this matter to defendant's attention, litigating, and
23 negotiating a settlement in the public interest and seeking the Court's approval of the settlement
24 agreement. Defendant shall pay Brimer and his counsel \$30,500 for all attorneys' fees, expert and
25 investigation fees, litigation and related costs. The payment shall be made payable to HIRST &
26 CHANLER LLP and shall be delivered on or before June 30, 2007, at the following address:
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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, Brimer, on behalf of himself, his past and
10 current agents, representatives, attorneys, successors, and/or assignees, and on behalf of and in the
11 interest of the general public, hereby waives all rights to institute or participate in, directly or
12 indirectly, any form of legal action and releases all claims, including, without limitation, all
13 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,
14 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert
15 fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or
16 contingent (collectively "claims"), against defendant and each of its downstream wholesalers,
17 licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers,
18 users, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors,
19 attorneys, representatives, shareholders, agents, and employees, sister and parent entities, and
20 original equipment manufacturers and distributors named (collectively "releasees"). This release
21 is limited to those claims that arise under Proposition 65, as such claims relate to defendant's
22 alleged failure to warn about exposures to the listed chemical contained in the products, including
23 all motherboards manufactured or sold by defendant, whether sold alone or integrated into a
24 computer system, and shall not extend upstream to any entities that manufactured the products or
25 any component parts thereof, or any distributors or suppliers who sold the products or any
26 component parts thereof to defendant.

27 This settlement does not release any downstream party (including integrators and retailers)
28 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

1 reformulation standards.

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

3 Defendant waives any and all claims against Brimer, 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 Brimer 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 any litigation arises between the parties over the interpretation or
21 enforcement of this agreement, the prevailing party shall be entitled to reasonable attorneys' fees
22 and court costs.

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 Brimer of any asserted change in the law, and shall have
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1 no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
2 products are so affected.

3 **10. NOTICES**

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

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9 To Defendant:
Phillip F. Shinn
10 THORNTON, TAYLOR, BECKER & SHINN
731 Sansome Street, Suite 300
11 San Francisco, CA 94111

12 To Brimer:
Proposition 65 Coordinator
13 HIRST & CHANLER LLP
2560 Ninth Street
14 Parker Plaza, Suite 214
Berkeley, CA 94710-2565
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16 Any party, from time to time, may specify in writing to the other party a change of address
17 to which all notices and other communications shall be sent.

18 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

25 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

26 Brimer and defendant agree to mutually employ their best efforts to support the entry of
27 this Agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court
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1 in a timely manner. The parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a
2 noticed motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the
3 parties agree to file a Motion to Approve the Agreement (motion). Defendant shall have no
4 additional responsibility to plaintiff's counsel pursuant to Code of Civil Procedure §1021.5 or
5 otherwise with regard to reimbursement of any fees and costs incurred with respect to the
6 preparation and filing of the motion or with regard to plaintiff's counsel appearing for a hearing
7 thereon.

8 **14. MODIFICATION**

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

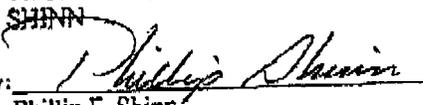
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15. AUTHORIZATION

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 align="center">AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Plaintiff, RUSSELL BRIMER</p>	<p align="center">AGREED TO:</p> <p>Date: <u>6/12/07</u></p> <p><u>Howard Hideshima</u></p> <p>By:  Defendant, SUPER MICRO COMPUTER, INC.</p>
<p 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 align="center">APPROVED AS TO FORM:</p> <p>Date: <u>6/13/07</u></p> <p><u>THORNTON, TAYLOR, BECKER & SHINN</u></p> <p>By:  Phillip F. Shinn Attorneys for Defendant SUPER MICRO COMPUTER, INC.</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>6-18-07</u></p> <p>By: <u></u> Plaintiff, RUSSELL BRIMER</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Defendant, SUPER MICRO COMPUTER, 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 RUSSELL BRIMER</p>	<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: _____ THORNTON, TAYLOR, BECKER & SHINN</p> <p>By: _____ Phillip F. Shinn Attorneys for Defendant SUPER MICRO COMPUTER, INC.</p>

IT IS SO ORDERED.

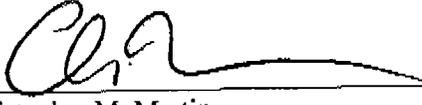
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JUDGE OF THE SUPERIOR COURT

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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, SUPER MICRO COMPUTER, INC.
APPROVED AS TO FORM:	APPROVED AS TO FORM:
Date: <u>6/28/07</u> HIRST & CHANLER LLP	Date: _____ THORNTON, TAYLOR, BECKER & SHINN
By:  Christopher M. Martin Attorneys for Plaintiff RUSSELL BRIMER	By: _____ Phillip F. Shinn Attorneys for Defendant SUPER MICRO COMPUTER, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT