

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

4
5 Attorneys for Plaintiff
MICHAEL DIPIRRO

6 Brian M. Ledger, State Bar No. 156942
GORDON & REES LLP
7 101 W. Broadway, Suite 2000
San Diego, CA 92101
8 Telephone: (619) 696-6700
Facsimile: (619) 696-7124

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10 Attorneys for Defendant
NEWEGG, INC.

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION

15
16 MICHAEL DIPIRRO,
17 Plaintiff,
18 v.
19 NEWEGG, INC.; and DOES 1 through 150,
inclusive,
20 Defendants.

Case No. RG 07-334986

ASSIGNED FOR ALL PURPOSES TO
JUDGE Richard Keller
DEPARTMENT 607

**[PROPOSED] CONSENT
JUDGMENT**

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Settlement Agreement and [Proposed] Consent Judgment (also referred to herein as
4 “Consent Judgment” or “Agreement”) is entered into by and between Plaintiff, Michael DiPirro
5 (“Plaintiff” or “DiPirro”), and Defendant Newegg Inc. (“Newegg” or “Defendant”), with DiPirro and
6 Newegg collectively referred to as the “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 distributed and/or sold motherboards with solder
17 containing lead in the State of California without providing the requisite warnings for lead exposure
18 required by Proposition 65. Lead is a substance listed pursuant to Proposition 65 as known to the
19 State of California to cause birth defects and other reproductive harm.¹ Lead is referred to herein as
20 the “Listed Chemical.”

21 **1.5 Product Description**

22 The products covered by this Consent Judgment are defined as motherboards with solder
23 containing lead, such as the *Albatron KI51PV-754 Socket 754 NVIDIA GeForce 6150 Mini ITX AMD*
24 *Motherboard, Item #N82E16813170012, #KI51PV754 0.8; iGoLogic Intel 8252GM Mini ITX*

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 µg/day) that is significantly higher than the level it has
28 identified for lead as a reproductive toxicant under Proposition 65 (.5 µg/day), such that Parties are in
agreement that only Proposition 65’s requirements regarding reproductive toxicity are potentially
relevant here.

1 *Motherboard, Item # N82E16813202001, Model # MB113368G (#8 41418 01010 2); and Jetway*
2 *Magic Twin Motherboard, Model No. P400MTWIN* and components utilized with motherboards that
3 contain lead solder. Examples of forms of solder include, but are not limited to, solder, solder balls,
4 solder spheres, solder paste, wave solder, solder joints, die bumps, and flip-chip bumps. All such
5 motherboards with lead-containing solder are referred to herein as “Products.”

6 **1.6 Notice of Violation**

7 On April 30, 2007, DiPirro served Defendant, and all public enforcers entitled to receive it
8 pursuant to Health and Safety Code section 25249.7(d), with a document entitled “60–Day Notice of
9 Violation” (“Notice”), which provided Defendant and public enforcers with notice that Plaintiff
10 intended to file and prosecute a lawsuit at the expiration of the 60–day notice period alleging that
11 Defendant was in violation of California Health and Safety Code section 25249.6 for failing to warn
12 consumers, workers, and others that the Products that Defendant sold exposed users in California to
13 the Listed Chemical.

14 **1.7 Complaint**

15 On July 11, 2007, in the absence of public prosecutor action, DiPirro, who is acting in the
16 interest of the general public in California, filed a Complaint (“Complaint” or “Action”) in the
17 Superior Court in and for the County of Alameda against Newegg, Inc. and DOES 1 through 150,
18 *DiPirro v. Newegg, Inc.*, Alameda County Superior Court Case No. RG 07-334986, alleging
19 violations of California Health and Safety Code section 25249.6, based on the alleged exposures to
20 the Listed Chemical contained in the Products Defendant sold.

21 **1.8 No Admission**

22 Defendant denies the material factual and legal allegations contained in DiPirro’s Notice and
23 Complaint and maintain that all products it has sold and/or distributed for sale or use in California
24 have been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed
25 as an admission by Defendant of any fact, finding, issue of law, or violation of law, nor shall
26 compliance with this Consent Judgment constitute or be construed as an admission by Defendant of
27 any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by
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1 Defendant. However, this Paragraph shall not diminish or otherwise affect Defendant's obligations,
2 responsibilities, and duties under this Consent Judgment.

3 **1.9 Consent to Jurisdiction**

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

8 **1.10 Effective Date**

9 For purposes of this Settlement Agreement, the term "Effective Date" shall mean March 31,
10 2009.

11 **2. INJUNCTIVE RELIEF: WARNINGS**

12 After the Effective Date, Defendant shall not sell or ship, in California, Products containing
13 the Listed Chemical unless such Products are sold or shipped with the clear and reasonable warning
14 set out in this Section 2.1 or are exempted pursuant to Section 2.2.

15 **2.1 Product Warnings**

16 Any warning issued for Products pursuant to this section shall be prominently placed with
17 such conspicuousness as compared with other words, statements, designs, or devices as to render it
18 likely to be read and understood by an ordinary individual under customary conditions before
19 purchase or, for Products shipped directly to an individual in California or used in the workplace in
20 California, before use.

21 Where required under this Consent Judgment, Defendant may satisfy its Proposition 65
22 warning obligations for Products sold to California residents or businesses by providing a warning on
23 the website. A warning may be given in conjunction with the sale of a Product via the Internet,
24 provided the warning appears either: (a) on the same web page on which Products are displayed with
25 features described and related details provided; (b) on the same web page as the order form for
26 Products; (c) on the same page as the price for Products; or (d) on the main "motherboards" page
27 accessed from the Newegg.com homepage. The following warning statement shall be used and shall
28 appear in any of the above instances adjacent to or immediately following the display, description, or

1 price of the Product for which it is given in the same type size or larger as the product description
2 text:

3 WARNING: Products with exposed solder may contain lead, a
4 chemical known to the State of California to cause birth
5 defects and other reproductive harm. Please wash hands
6 after handling internal components and motherboards and
7 avoid inhalation of fumes if heating the solder.

6 **2.2 Exceptions To Warning Requirements**

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

- 8 (i) Products (a) received in inventory before the Effective Date or (b) which are offered
9 as a part for any such Products;
- 10 (ii) Any Products in which the only possible point of exposure to the Listed Chemical is
11 embedded in a manner that a consumer or worker would not come into contact with
12 the Listed Chemical under any reasonably anticipated use, such as Products which are
13 not expected to be serviced by employees or users other than those with specialized
14 information technology and related occupational health and safety training, including
15 servers, storage or storage and array systems, port replicators, and network
16 infrastructure equipment for switching, signaling and transmission as well as network
17 management for telecommunications that serve a business's internal non-consumer
18 market.
- 19 (iii) Any Products for which Manufacturers provide a Proposition 65 warning label
20 regarding the Listed Chemical.

21 **3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE §25249.7(b)**

22 In settlement of all the claims referred to in this Consent Judgment, Newegg shall pay \$2,000
23 in civil penalties to be apportioned in accordance with California Health & Safety Code §25192, with
24 75% of these funds remitted to the State of California's Office of Environmental Health Hazard
25 Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Michael DiPirro as
26 provided by California Health & Safety Code §25249.12(d). Newegg shall issue two separate checks
27 for the penalty payment: (a) one check made payable to "Hirst & Chanler LLP in Trust for OEHHA"
28 in the amount of \$1,500, representing 75% of the total penalty; and (b) one check to "Hirst & Chanler

1 LLP in Trust for Michael DiPirro” in the amount of \$500, representing 25% of the total penalty. Two
2 separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA,
3 95814 (EIN: 68-0284486); and (b) Michael DiPirro, whose information shall be provided five
4 calendar days before the payment is due.

5 Payment shall be delivered to DiPirro’s counsel on or before March 31, 2009, at the following
6 address:

7 Hirst & Chanler LLP
8 Attn: Proposition 65 Controller
9 Capitol Mall Complex
455 Capitol Mall, Suite 605
Sacramento, CA 95814

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

11 The Parties acknowledge that Plaintiff and his counsel offered to resolve this dispute without
12 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
13 issue to be resolved after the material terms of the agreement had been settled. Defendant then
14 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
15 finalized. The Parties then reached an accord on the compensation due to Plaintiff and his counsel
16 under the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 and
17 under principles of contract law for all work performed through the Court’s approval of this mutual
18 agreement. Defendant shall reimburse Plaintiff and his counsel for fees and costs incurred as a result
19 of investigating, bringing this matter to Defendant’s attention, and litigating and negotiating a
20 settlement in the public interest and seeking the Court’s approval of the settlement agreement.

21 Defendant shall pay DiPirro and his counsel \$28,000 for all attorneys’ fees, expert and investigation
22 fees, litigation, and related costs. Defendant shall issue a separate 1099 for fees and costs (EIN: 20-
23 3929984). The check shall be made payable to HIRST & CHANLER LLP and shall be delivered on
24 or before March 31, 2009 at the following address:

25 HIRST & CHANLER LLP
26 Attn: Proposition 65 Controller
27 455 Capitol Mall, Suite 605
28 Sacramento, CA 95814

1 **5. RELEASE OF ALL CLAIMS**

2 **5.1 Release of Defendant, Jet-Way Computer Corp., a California Corporation**
3 **(“Jet-Way”) and Downstream Customers**

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

21 The Parties further understand and agree that this release shall not extend upstream to any
22 entities that manufactured the Products or any component parts thereof, with the exception of Jet-
23 Way, or any distributors or suppliers who sold the Products or any component parts thereof to
24 Defendant. This settlement does not release any downstream party (including integrators and
25 retailers) that caused exposure to lead from components not supplied by Defendant.
26

27 DiPirro, in his individual capacity and *not* in his representative capacity, releases any and all
28 general claims that he may presently have against Defendant beyond those claims covered in this

1 subsection. DiPirro further waives any and all rights and benefits which he now has, or in the future
2 may have, conferred upon by virtue of the provisions of Section 1542 of the California Civil Code,
3 which provides as follows:

4 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
5 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
6 EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE
7 RELEASE, WHICH IF KNOWN BY HIM MUST HAVE
8 MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
9 DEBTOR.

10 It is expressly agreed and understood that the general release by DiPirro, in his individual
11 capacity only, of Defendant is a material consideration of Defendant's willingness and decision to
12 enter into this Consent Judgment.

13 **5.2 Defendant's Release of DiPirro**

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

19 **6. COURT APPROVAL**

20 This Consent Judgment is not effective until it is approved and entered by the Court and shall
21 be null and void if, for any reason, it is not approved and entered by the Court within one
22 year after it has been fully executed by all Parties. If the Court does not approve the Consent
23 Judgment, the Parties shall meet and confer as to (and jointly agree on) whether to modify the
24 language or appeal the ruling. If the Parties do not jointly agree on a course of action to take, then the
25 case shall proceed in its normal course on the Court's calendar. In the event that this Consent
26 Judgment is entered by the Court and subsequently overturned by any appellate court or the Motion
27 to Approve is not ultimately granted, any monies that have been provided to Plaintiff or his counsel
28

1 pursuant to Section 3 and/or Section 4 above, shall be refunded within fifteen (15) days of the
2 appellate decision becoming final. If the Court's approval is ultimately overturned by an appellate
3 court, the Parties shall meet and confer as to (and jointly agree on) whether to modify the terms of the
4 Consent Judgment. If the Parties do not jointly agree on a course of action to take, then the case shall
5 proceed in its normal course on the trial court's calendar.

6
7 **7. SEVERABILITY**

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

11 **8. ATTORNEYS' FEES**

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

16
17 **9. GOVERNING LAW**

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

23 **10. NOTICES**

24 Unless specified herein, all correspondence and notices required to be provided pursuant to
25 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
26 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the
27 other party at the following addresses:
28

1 To Defendant:

2 Brian M. Ledger
3 GORDON & REES LLP
4 101 W. Broadway, Suite 2000
5 San Diego, CA 92101

6 To DiPirro:

7 Proposition 65 Coordinator
8 HIRST & CHANLER LLP
9 2560 Ninth Street
10 Parker Plaza, Suite 214
11 Berkeley, CA 94710-2565

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

14 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

19 DiPirro and his attorneys agree to comply with the reporting form requirements referenced in
20 Health & Safety Code §25249.7(f).

21 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

22 DiPirro and Defendant agree to mutually employ their best efforts to support the entry of this
23 Agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a
24 timely manner. The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a
25 Motion to Approve the Agreement (“noticed motion”) is required to obtain judicial approval of this
26 Consent Judgment which DiPirro shall draft and file, and Defendant shall join. If any third party
27 objection is filed to the noticed motion, DiPirro and Defendant shall work together to file a joint reply
28

1 and appear at any hearing before the Court. This provision is a material component of the Consent
2 Judgment and shall be treated as such in the event of a breach.

3 **14. MODIFICATION**

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

2 The undersigned are authorized to execute this Consent Judgment on behalf of their respective
3 Parties and have read, understood, and agree to all of the terms and conditions of this Consent
4 Judgment.
5

<p>6 AGREED TO:</p> <p>7 Date: <u>3/12/09</u></p> <p>8</p> <p>9 By: <u></u></p> <p>10 Plaintiff, MICHAEL DIPIRRO</p>	<p>AGREED TO:</p> <p>Date: _____</p> <p>By: _____</p> <p>Defendant, NEWEGG, INC.</p>
<p>11</p> <p>12 APPROVED AS TO FORM:</p> <p>13</p> <p>14 Date: _____</p> <p>15 HIRST & CHANLER LLP</p> <p>16</p> <p>17 By: _____</p> <p>18 CHRISTOPHER M. MARTIN Attorneys for Plaintiff MICHAEL DIPIRRO</p>	<p>APPROVED AS TO FORM:</p> <p>Date: _____</p> <p>GORDON & REES LLP</p> <p>By: _____</p> <p>BRIAN M. LEDGER Attorneys for Defendant NEWEGG, INC.</p>

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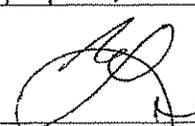
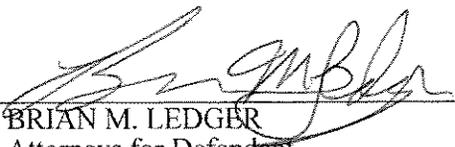
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4 Judgment.
5

<p>6 AGREED TO:</p> <p>7</p> <p>8 Date: _____</p> <p>9</p> <p>10 By: _____ Plaintiff, MICHAEL DIPIRRO</p>	<p>6 AGREED TO:</p> <p>7</p> <p>8 Date: _____</p> <p>9</p> <p>10 By: _____ Defendant, NEWEGG, INC.</p>
<p>11</p> <p>12 APPROVED AS TO FORM:</p> <p>13</p> <p>14 Date: <u>3/12/09</u></p> <p>15 HIRST & CHANLER LLP</p> <p>16</p> <p>17 By:  CHRISTOPHER M. MARTIN Attorneys for Plaintiff MICHAEL DIPIRRO</p>	<p>12 APPROVED AS TO FORM:</p> <p>13</p> <p>14 Date: _____</p> <p>15 GORDON & REES LLP</p> <p>16</p> <p>17 By: _____ BRIAN M. LEDGER Attorneys for Defendant NEWEGG, INC.</p>

1 **15. AUTHORIZATION**

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3 Parties and have read, understood, and agree to all of the terms and conditions of this Consent
4 Judgment.
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<p>6 AGREED TO:</p> <p>7 Date: _____</p> <p>8</p> <p>9 By: _____</p> <p>10 Plaintiff, MICHAEL DIPIRRO</p>	<p>6 AGREED TO:</p> <p>7 Date: <u>03/17/2009</u></p> <p>8</p> <p>9 </p> <p>10 By: _____</p> <p>11 Defendant, NEWEGG INC. <i>Hip Lee, Head of CEO Office</i></p>
<p>12 APPROVED AS TO FORM:</p> <p>13 Date: _____</p> <p>14 HIRST & CHANLER LLP</p> <p>15</p> <p>16 By: _____</p> <p>17 CHRISTOPHER M. MARTIN 18 Attorneys for Plaintiff MICHAEL DIPIRRO</p>	<p>12 APPROVED AS TO FORM:</p> <p>13 Date: <u>3/18/09</u></p> <p>14 GORDON & REES LLP</p> <p>15</p> <p>16 </p> <p>17 By: _____</p> <p>18 BRIAN M. LEDGER Attorneys for Defendant NEWEGG INC.</p>

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