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11 Attorneys for Defendant  
12 AOPEN AMERICA INCORPORATED

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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
16 FOR THE COUNTY OF ALAMEDA COUNTY  
17 UNLIMITED CIVIL JURISDICTION  
18

19  
20 MICHAEL DIPIRRO,  
21 Plaintiff,  
22  
23 v.  
24 AOpen AMERICA INCORPORATED; and  
DOES 1 through 150, inclusive,  
25 Defendants.

Case No.  
**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 Michael DiPirro ("DiPirro")  
4             or "plaintiff") and defendant AOpen America Incorporated ("AOpen"), with DiPirro and AOpen  
5             referred to as the "parties."  
6

7             **1.2 Plaintiff**

8             DiPirro is an individual residing in San Francisco County in the State of California who  
9             seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing  
10            or eliminating hazardous substances contained in consumer products.  
11

12            **1.3 Defendant**

13            Defendant employs ten or more persons and is a person in the course of doing business for  
14            purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &  
15            Safety Code §§ 25249.6 *et seq.* ("Proposition 65").  
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17            **1.4 General Allegations**

18            Plaintiff alleges that defendant has manufactured, distributed, and/or sold motherboards  
19            with solder containing lead in the State of California without the requisite health hazard warnings.  
20            Lead is a substance known to cause birth defects and other reproductive harm and is listed  
21            pursuant to Proposition 65. Lead shall be referred to hereinafter as the "listed chemical."  
22

23            **1.5 Product Description**

24            The products that are covered by this Consent Judgment are defined as follows:  
25            motherboards with lead-containing solder, such as the *AOpen i855GME-m-LFS Motherboard*,  
26            *Model No. 91.8EM10.15Z (# 7 50519 15228 7)*, and components utilized with motherboards that  
27            contain lead solder. Examples of forms of solder include, but are not limited to, solder, solder  
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1 balls, solder spheres, solder paste, wave solder, solder joints, die bumps, and flip-chip bumps. All  
2 such motherboards with lead-containing solder, and components utilized with such motherboards  
3 that contain lead solder, shall be referred to hereinafter as "products." Products that are integrated  
4 into a desktop computer system as a component thereof, prior to the sale or acquisition of the  
5 computer system, shall be referred to hereinafter as "integrated products." Products that are sold  
6 individually and not as a component integrated into a computer system shall be referred to  
7 hereinafter as "non-integrated products."  
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10 **1.6 Notices of Violation**

11 On April 30, 2007, DiPirro served defendant and various public enforcement agencies with  
12 a document entitled "60-Day Notice of Violation" ("Notice") that provided defendant and such  
13 public enforcers with notice that alleged that defendant was in violation of California Health &  
14 Safety Code §25249.6 for failing to warn consumers, workers and others that the products that  
15 defendant sold exposed users in California to the listed chemical. Within fifteen (15) days  
16 following his execution of this Consent Judgment, DiPirro will have served AOpen and the  
17 required public enforcement agencies with documents entitled "Supplemental Notice of Violation"  
18 (Supplemental Notice"), expressly alleging that AOpen is in violation of Health & Safety Code  
19 §25249.6 with respect to exposures to the Listed Chemical arising from various [products].  
20 AOpen shall use its best efforts to provide DiPirro with information necessary for him to issue it a  
21 Supplemental Notice and support a Certificate of Merit related thereto.  
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24 **1.7 Complaint**

25 Contemporaneous with the filing of this Consent Judgment, DiPirro, who is acting in the  
26 interest of the general public in California, will file a complaint ("Complaint or Action") in the  
27 Superior Court in and for the County of Alameda against AOpen and DOES 1 through 150,  
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1 alleging violations of California Health & Safety Code §25249.6, based on the alleged exposures  
2 to the listed chemical contained in the products defendant sold.

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4 **1.8 No Admission**

5 Defendant denies the material factual and legal allegations contained in DiPirro's Notice  
6 and maintains that all products that it has sold and distributed in California have been and are in  
7 compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission  
8 by defendant of any fact, finding, issue of law, or violation of law, nor shall compliance with this  
9 Consent Judgment constitute or be construed as an admission by defendant of any fact, finding,  
10 conclusion, issue of law, or violation of law, such being specifically denied by defendant.

11  
12 However, this Section shall not diminish or otherwise affect defendant's obligations,  
13 responsibilities and duties under this Consent Judgment.

14 **1.9 Consent to Jurisdiction**

15 For purposes of this Consent Judgment only, the parties stipulate that this Court has  
16 jurisdiction over defendant as to the allegations contained in the Complaint, that venue is proper in  
17 the County of Alameda and that this Court has jurisdiction to enter and enforce the provisions of  
18 this Consent Judgment.  
19

20 **1.10 Effective Date**

21 For purposes of this Consent Judgment, the term "effective date" shall mean May 15, 2008.

22  
23 **2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

24 **2.1 Product Warnings**

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

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

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

14 (a) **Retail Store Sales of Non-Integrated Products**

15 (i) **Product Labeling.** From the effective date, a warning will be  
16 affixed to packaging, labeling, or directly on each non-integrated product sold in retail outlets by  
17 defendant or its agents, that states:

18 **WARNING:** The materials used in this product contain lead,  
19 a chemical known to the State of California to  
20 cause cancer and birth defects and other  
21 reproductive harm.

22 Please wash hands after handling and avoid  
23 inhalation of fumes if heating the solder on the  
24 product.



1 (ii) **Point-of-Sale Warnings.** Defendant may perform its warning  
2 obligations by ensuring that signs are posted at retail outlets in the State of California where the  
3 non-integrated products are sold. In order to avail itself of the point-of-sale option, defendant shall  
4 provide a written notice (via certified mail in the first quarter of each calendar year) to each retailer  
5 or distributor to whom defendant sells or transfers the non-integrated products directly, which  
6 informs such retailers or distributors that point-of-sale warnings are required at each retail location  
7 in the State of California. Defendant shall include a copy of the warning signs and posting  
8 instructions with such notice. Further, defendant must receive and make available for DiPirro's  
9 inspection, upon request, a written commitment: (a) from each retailer to whom defendant sells  
10 non-integrated products directly that said retailer will post the warning signs; and (b) from each  
11 distributor to whom defendant sells non-integrated products directly that the distributor will  
12 transmit the point-of-sale warning notice and instructions to their direct customers. Point-of-sale  
13 warnings shall be provided through one or more signs posted in close proximity to the point of  
14 display of the non-integrated products that states:

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18 **WARNING:** The materials used in this product contain lead, a  
19 chemical known to the State of California to  
20 cause cancer and birth defects and other  
21 reproductive harm.

22 Please wash hands after handling and avoid  
23 inhalation of fumes if heating the solder on the  
24 product.

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

26 Defendant shall satisfy its warning obligations for non-integrated products that are sold by  
27 mail order catalog or from the Internet to California residents by providing a warning: (i) in the  
28 mail order catalog; and/or (ii) on the website. Warnings given in the mail order catalog or on the

1 website shall identify the specific product to which the warning applies as further specified in  
2 Sections 2.1(b)(i), and/or (ii) as applicable:

3 (i) **Mail Order Catalog Warning.** Any warning provided in a mail  
4 order catalog must be in the same type size or larger as the non-integrated product description text  
5 within the catalog. The following warning shall be provided on the same page and in the same  
6 location as the display and/or description of the non-integrated product:  
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8 **WARNING:** The materials used in this product contain lead, a  
9 chemical known to the State of California to  
10 cause cancer and birth defects and other  
11 reproductive harm.

12 Please wash hands after handling and avoid  
13 inhalation of fumes if heating the solder on the  
14 product.

15 Where it is impracticable to provide the warning on the same page and in the same location  
16 as the display and/or description of the non-integrated product, defendant may utilize the  
17 designated symbol bellow to cross reference the example warning and shall define the term  
18 "designated symbol" with the following language on the inside of the front cover of the catalog or  
19 on the same page as any order form for the non-integrated product(s):

20 **WARNING:** The materials used in certain products identified  
21 with this symbol ▼ and offered for sale in this  
22 catalog contain lead, a chemical known to the  
23 State of California to cause cancer and birth  
24 defects and other reproductive harm.

25 Please wash hands after handling and avoid  
26 inhalation of fumes if heating the solder on the  
27 product.  
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1           The designated symbol must appear on the same page and in close proximity to the display  
2 and/or description of the non-integrated product. On each page where the designated symbol  
3 appears, defendant must provide a header or footer directing the consumer to the warning language  
4 and definition of the designated symbol.  
5

6           If defendant elects to provide warnings in the mail order catalog, then the warnings must be  
7 included in all catalogs offering to sell one or more non-integrated products printed after May 15,  
8 2008.

9                               (ii)    **Internet Website Warning.** A warning may be given in  
10 conjunction with the sale of the non-integrated product via the Internet, provided it appears either:  
11 (a) on the same web page on which the non-integrated product is displayed; (b) on the same web  
12 page as the order form for the non-integrated product; (c) on the same page as the price for any  
13 non-integrated product; or (d) on one or more web pages displayed to a purchaser during the  
14 checkout process. The following warning statement shall be used and shall appear in any of the  
15 above instances adjacent to or immediately following the display, description, or price of the non-  
16 integrated product for which it is given in the same type size or larger as the product description  
17 text:  
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20                               **WARNING:**    The materials used in this product contain lead, a  
21 chemical known to the State of California to cause  
22 cancer and birth defects and other reproductive  
23 harm.

24   Please wash hands after handling and avoid  
25 inhalation of fumes if heating the solder on the  
26 product.  
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1           Alternatively, the designated symbol may appear adjacent to or immediately following the  
2 display, description, or price of the non-integrated product for which a warning is being given,  
3 provided that the following warning statement also appears elsewhere on the same web page:  
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6           **WARNING:**   Products identified on this page with the  
7                           following symbol use materials that contain lead,  
8                           a chemical known to the State of California to  
9                           cause cancer and birth defects and other  
10                          reproductive harm: ▼

11                           Please wash hands after handling and avoid  
12                           inhalation of fumes if heating the solder on the  
13                           product.

14           (c) **Sales to Known Integrators**

15           Where defendant sells products to individuals or entities it knows to be in the business of  
16 integrating its products into computer systems for resale ("integrator(s)"), defendant shall provide  
17 the integrator with written instructions (via certified mail in the first quarter of each calendar year)  
18 which instructs such integrators to attach sticker warnings, as specified in this Section, to any item  
19 which contains a product as an integrated component, prior to the resale of the integrated product.  
20 Defendant must receive and make available for DiPirro's inspection, upon request, a written  
21 commitment from each integrator to whom defendant sells products directly that said integrator  
22 will post the warning stickers consistent with the requirements of Proposition 65. Defendant shall  
23 provide the integrators with stickers printed with the following warning to be attached to each item  
24 containing an integrated product:  
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26           **WARNING:**   The materials used in the motherboard utilized  
27                           in this computer system contain lead, a  
28                           chemical known to the State of California to

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cause cancer and birth defects and other reproductive harm.

Please wash hands after handling this motherboard and avoid inhalation of fumes if heating the solder on the motherboard.

**(d) Manual Warnings**

On or before May 15, 2008, 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(s), if so provided, and where defendant otherwise warns or informs its customers of the content of its products:

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

Please wash hands after handling and avoid inhalation of fumes if heating the solder on the product.

**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 only possible point of exposure to 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.

1           **2.3 Reformulation Standards**

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  
4 solder as identified in Section 1.5, unless that material is embedded in a manner that a consumer or  
5 worker ordinarily would not come into contact with the lead under any reasonably anticipated use.<sup>1</sup>  
6 The warnings required pursuant to Section 2.1 above shall not be required for reformulated  
7 products.  
8

9           **2.4 Reformulation Commitment**

10           Defendant hereby commits that all desktop products that it offers for sale in California after  
11 August 1, 2008, shall qualify as reformulated products or be exempt from the warning  
12 requirements of Section 2.1 pursuant to Section 2.2. Further, defendant commits to use  
13 commercially reasonable efforts to reformulate all products in addition to those used for desktop  
14 computers (e.g., motherboards used for servers) to eliminate the presence of lead, except for those  
15 instances outlined in Section 2.2(iii), on or before December 31, 2008.  
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18           **2.5 Public Information Commitment**

19           In a good faith effort to inform the public about the risk of exposure to lead in defendant's  
20 products sold before May 15, 2008, defendant hereby commits to provide the following warning  
21 on its main products web page(s) for a period of three years:  
22

23           **WARNING:**    Certain desktop motherboards sold in California  
24                            prior to May 15, 2008, contain lead solder. Lead is  
25                            a chemical known to the State of California to  
26                            cause cancer and birth defects and other  
27                            reproductive harm.

28           <sup>1</sup>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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Please wash hands after handling those motherboards that utilize lead solder and avoid inhalation of fumes if heating the solder on the product.

Immediately following the above warning, defendant shall provide a hyperlink titled "List of Motherboards Containing 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 desktop motherboards sold in California prior to May 15, 2008, contain lead solder. Lead is a chemical known to the State of California to cause cancer and birth defects and other reproductive harm.

Please wash hands after handling these motherboards that utilize lead solder and avoid inhalation of fumes if heating the solder on these products.

Immediately following that warning, defendant shall list all products that contain lead solder which defendant sold in California before May 15, 2008. Defendant shall identify each product by name and model number.

**3. MONETARY PAYMENTS**

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

Pursuant to Health & Safety Code §25249.7(b), the total civil penalty assessed shall be \$25,000, which shall be apportioned as follows:



1 (a) Defendant shall receive a credit of \$13,000 in light of its prompt  
2 cooperation with DiPirro in resolving this matter and their commitment to  
3 sell only reformulated products in California;

4 (b) Defendant shall pay \$4,000 in civil penalties on or before May 30, 2008;

5 (c) Defendant shall pay \$4,000 in civil penalties on or before June 15, 2008.

6 This payment will be waived provided that defendant complies with the  
7 public information commitment on or before May 15, 2008, as set forth in  
8 Section 2.5 and submits a compliant web link to DiPirro for his review; and

9 (d) Defendant shall pay the remaining \$4,000 in civil penalties on or before  
10 September 1, 2008. This payment will be waived provided that defendant  
11 submits a report to DiPirro on or before August 1, 2008, which sets forth, in  
12 sufficient detail, its effort to remove lead from its motherboards not  
13 intended for use in desktop computers.  
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16  
17 All payments made pursuant to this Section 3.1 shall be payable to the "HIRST &  
18 CHANLER LLP in Trust For Michael DiPirro" and shall be delivered to plaintiff's counsel at the  
19 following address:

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

25 **3.2 Apportionment of Penalties Received**

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

1 monies retained by DiPirro as provided by Health & Safety Code §25249.12(d). DiPirro shall bear  
2 all responsibility for apportioning and paying to the State of California the appropriate civil  
3 penalties paid in accordance with this Section.

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

6 The parties acknowledge that DiPirro and his counsel offered to resolve this dispute  
7 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
8 this fee issue to be resolved after the material terms of the agreement had been settled. Defendant  
9 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had  
10 been finalized. The parties then reached an accord on the compensation due to DiPirro and his  
11 counsel under the private attorney general doctrine codified at California Code of Civil Procedure  
12 §1021.5 and under principles of contract law for all work performed through this Consent  
13 Judgment. Under the private attorney general doctrine and principles of contract law, defendant  
14 shall reimburse DiPirro and his counsel for fees and costs incurred as a result of investigating,  
15 bringing this matter to defendant's attention, litigating, and negotiating a settlement in the public  
16 interest. Defendant shall pay DiPirro and his counsel \$30,000 for all attorneys' fees, expert and  
17 investigation fees, litigation and related costs. The payment shall be made payable to HIRST &  
18 CHANLER LLP and shall be delivered on or before May 30, 2008, at the following address:  
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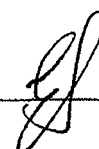
21 HIRST & CHANLER LLP  
22 Attn: Proposition 65 Controller  
23 2560 Ninth Street  
24 Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

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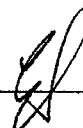


1     **5.     RELEASE OF ALL CLAIMS**

2             **5.1   Release of Defendant and Downstream Customers**

3             In further consideration of the promises and agreements herein contained, and for the  
4     payments to be made pursuant to Sections 3 and 4, DiPirro, on behalf of himself, his past and  
5     current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the  
6     general public, hereby waives all rights to institute or participate in, directly or indirectly, any form  
7     of legal action and releases all claims, including, without limitation, all actions, and causes of  
8     action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties,  
9     losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys'  
10    fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively  
11    "claims"), against defendant and each of its downstream wholesalers, licensors, licensees,  
12    auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies,  
13    corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives,  
14    shareholders, agents, and employees, sister and parent entities, and original equipment  
15    manufacturers and distributors (collectively "releasees"). This release is limited to those claims  
16    that arise under Proposition 65, as such claims relate to defendant's alleged failure to warn about  
17    exposures to the listed chemical contained in the products.  
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19             The parties further understand and agree that this release shall not extend upstream to any  
20    entities that manufactured the products or any component parts thereof, or any distributors or  
21    suppliers who sold the products or any component parts thereof to defendant. This settlement does  
22    not release any downstream party (including integrators and retailers) that either caused exposure  
23    to lead from components not supplied by defendant or, as to the future, alters the product  
24    purchased from defendant in such a way as to cause it to violate the reformulation standards or  
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1 fails to transmit the requisite warnings provided by defendant in paragraph 2.1 set forth in this  
2 Consent Judgment.

3  
4 **5.2 Defendant's Release of DiPirro**

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

10  
11 **6. COURT APPROVAL**

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

18  
19 **7. SEVERABILITY**

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

23  
24 **8. ATTORNEYS' FEES**

25 In the event that, after Court approval: (1) Defendant or any third party seeks modification  
26 of this Consent Judgment pursuant to Section 14 below; or (2) DiPirro takes reasonable and  
27



1 necessary steps to enforce the terms of this Consent Judgment, DiPirro shall be entitled to his  
2 reasonable attorneys' fees and costs pursuant to CCP §1021.5.

3  
4 **9. GOVERNING LAW**

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

11  
12 **10. NOTICES**

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

17  
18 To Defendant:

19 Edward P. Sangster  
20 K&L GATES  
21 55 2<sup>nd</sup> Street, Suite 1700  
San Francisco, CA 94105

22 To DiPirro:

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

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

3  
4 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

11  
12 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

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

25 This Consent Judgment may be modified only: (1) by written agreement of the parties and  
26 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion  
27 of any party and entry of a modified Consent Judgment by the Court. The Attorney General shall  
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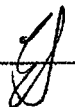


1 be served with notice of any proposed modification to this Consent Judgment at least fifteen (15)  
2 days in advance of its consideration by the Court.

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4 **15. AUTHORIZATION**

5 The undersigned are authorized to execute this Consent Judgment on behalf of their  
6 respective parties and have read, understood, and agree to all of the terms and conditions of this  
7 Consent Judgment.

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<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: _____</p> <p>By: _____  Plaintiff, MICHAEL DIPIRRO</p>	<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: _____</p> <p>By: _____  Defendant, AOPEN AMERICA  INCORPORATED</p>
<p style="text-align: center;"><b>APPROVED AS TO FORM:</b></p> <p>Date: <u>5/8/08</u>  HIRST &amp; CHANLER LLP</p> <p>By:   Christopher M. Martin  Attorneys for Plaintiff  MICHAEL DIPIRRO</p>	<p style="text-align: center;"><b>APPROVED AS TO FORM:</b></p> <p>Date: _____  K&amp;L GATES</p> <p>By: _____  Edward P. Sangster  Attorneys for Defendant  AOPEN AMERICA INCORPORATED</p>

**IT IS SO ORDERED.**

Date: \_\_\_\_\_

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JUDGE OF THE SUPERIOR COURT

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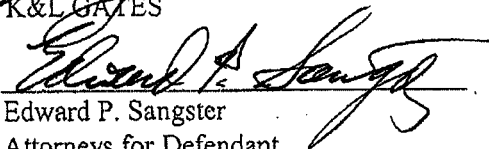
<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: <u>5/8/08</u></p> <p>By: <u></u> Plaintiff, MICHAEL DIPIRRO</p>	<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: _____</p> <p>By: _____ Defendant, AOPEN AMERICA INCORPORATED</p>
<p style="text-align: center;"><b>APPROVED AS TO FORM:</b></p> <p>Date: _____ HIRST &amp; CHANLER LLP</p> <p>By: _____ Christopher M. Martin Attorneys for Plaintiff MICHAEL DIPIRRO</p>	<p style="text-align: center;"><b>APPROVED AS TO FORM:</b></p> <p>Date: _____ K&amp;L GATES</p> <p>By: _____ Edward P. Sangster Attorneys for Defendant AOPEN AMERICA INCORPORATED</p>

**IT IS SO ORDERED.**

Date: \_\_\_\_\_

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JUDGE OF THE SUPERIOR COURT

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<b>AGREED TO:</b>	<b>AGREED TO:</b>
Date: _____	Date: _____
By: _____ Plaintiff, MICHAEL DIPIRRO	By:  Defendant, AOpen AMERICA INCORPORATED
<b>APPROVED AS TO FORM:</b>	<b>APPROVED AS TO FORM:</b>
Date: _____ HIRST & CHANLER LLP	Date: <u>May 13, 2008</u> K&L GATES
By: _____ Christopher M. Martin Attorneys for Plaintiff MICHAEL DIPIRRO	By:  Edward P. Sangster Attorneys for Defendant AOpen AMERICA INCORPORATED

IT IS SO ORDERED.

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

