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19 DELL, INC. GATEWAY, INC. AND GENICA
20 CORPORATION

21 SUPERIOR COURT OF THE STATE OF CALIFORNIA
22 COUNTY OF ALAMEDA

23 MICHAEL DIPIRRO,

24 Plaintiff,

25 v.

26 DELL, INC. GATEWAY, INC. AND GENICA
27 CORPORATION; and DOES 1 through 150,
28 inclusive,

Defendants.

Case No. RG07334992

**[PROPOSED] CONSENT
JUDGMENT**

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment (also referred to herein as “Agreement”) is entered into by and
4 between plaintiff, Michael DiPirro (“Plaintiff” or “DiPirro”), and defendants Dell, Inc., Gateway, Inc.
5 Genica Corporation, and Hewlett Packard Company (“Dell,” “Gateway,” “Genica” and “HP”
6 respectively, or, collectively, “Defendants”), with DiPirro and Defendants together being referred to
7 as the “Parties.”

8 **1.2 Plaintiff**

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

12 **1.3 Defendants**

13 Each Defendant employs ten or more persons and are persons in the course of doing business
14 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
15 Safety Code §§ 25249.6 et seq. (“Proposition 65”).

16 **1.4 General Allegations**

17 Plaintiff alleges that Defendants have manufactured, distributed, and/or sold motherboards
18 with solder containing lead in the State of California without providing the requisite warnings for
19 lead exposure required by Proposition 65. Lead is a substance listed pursuant to Proposition 65 as
20 known to the State of California to cause birth defects and other reproductive harm.¹ Lead is referred
21 to herein as the “Listed Chemical.”

22 **1.5 Product Description**

23 The products that are covered by this Consent Judgment are defined as follows:

24 (a) motherboards, main boards and various other circuit boards (collectively referred to herein for
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 ug/day) that is significantly higher than the level it has identified
28 for lead as a reproductive toxicant under Proposition 65 (.5 ug/day), such that Parties are in agreement that
 only Proposition 65’s requirements regarding reproductive toxicity are potentially relevant here.

1 simplicity as “motherboards”) with lead-containing solder and components, and (b) products into
2 which motherboards that contain lead solder are integrated, including, but not limited to computer
3 systems and their subcomponents (such as desktop computer CPUs, laptop computers, servers, hard
4 drives , and port replicators). Examples of forms of solder include, but are not limited to, solder,
5 solder balls, solder spheres, solder paste, wave solder, solder joints, die bumps, and flip-chip bumps.
6 All such motherboards with lead-containing solder, and components and products into which such
7 motherboards that contain lead solder are integrated, are referred to herein as “Products.”² Products
8 that contain motherboards that are integrated into a another product, such as a computer system or
9 subcomponent thereof, prior to the sale or acquisition of the Product into which the motherboard is
10 integrated, are referred to herein as “integrated products.” Products that are motherboards sold
11 individually and not as a component integrated into another Product, such as a computer system or
12 component thereof, are referred to herein as “non-integrated products.”

13 **1.6 Noticés of Violation**

14 On April 30, 2007, DiPirro served Defendants and all public enforcers entitled to receive it
15 pursuant to Health & Safety Code § 25249.7(d), with a document entitled “60-Day Notice of
16 Violation” (“Notice”) that provided Defendants and such public enforcers with notice that Plaintiff
17 intended to file and prosecute a lawsuit at the expiration of the 60-day notice period alleging that
18 Defendants were in violation of California Health & Safety Code § 25249.6 for failing to warn
19 consumers, workers and others that the Products that Defendants sold exposed users in California to
20 the Listed Chemical. Within fifteen (15) days following his execution of this Consent Judgment,
21 DiPirro will have served Defendants and the required public enforcement agencies with documents
22 entitled “Supplemental Notice of Violation” (“Supplemental Notice”) expressly alleging that
23 Defendants are in violation of Health & Safety Code § 25249.6 with respect to exposures to the
24 Listed Chemical arising from various circuit boards (in addition to motherboards), including circuit

25 _____
26 ² Compaq Computer Corporation no longer exists as a separate entity although HP has maintained and
27 continues to use the Compaq brand. HP's Compaq-branded Products (as that term is defined herein) are also
28 covered by this Consent Judgment.

1 boards sold as non-integrated products and circuit boards sold in integrated products. Each
2 Defendant shall use its best efforts to provide DiPirro with information necessary for him to issue
3 them a Supplemental Notice and support a Certificate of Merit related thereto.

4 **1.7 Complaint**

5 On July 11, 2007, in the absence of public prosecutor action, DiPirro, who is acting in the
6 interest of the general public in California, filed a complaint (“Complaint” or “Action”) in the
7 Superior Court in and for the County of Alameda a against Defendants, and Does 1 through 150,
8 *DiPirro v. Gateway, Inc., et al.* and DOES 1 through 150, inclusive, Alameda County Superior Court
9 Case No. RG07334992, alleging violations of California Health & Safety Code § 25249.6, based on
10 the alleged exposures to the Listed Chemical contained in the Products Defendants sold.³ The
11 Complaint shall be deemed amended by this Consent Judgment to include the allegations in the
12 Supplemental Notice on the sixty-sixth (66th) day following the issuance of the Supplemental Notice
13 if an authorized public prosecutor has not, prior to that date, filed a Proposition 65 enforcement
14 action as to the Listed Chemical in the additional Products addressed in the Supplemental Notice; the
15 definitions of Products under this Consent Judgment shall also not be deemed to include the
16 additional Products addressed in the Supplemental Notice until that time.

17 **1.8 No Admission**

18 Defendants deny the material factual and legal allegations contained in DiPirro’s Notice and
19 Complaint and maintain that all products that they have sold in and/or distributed for sale or use in
20 California have been and are in compliance with all laws. Nothing in this Consent Judgment shall be
21 construed as an admission by Defendants of any fact, finding, issue of law, or violation of law, nor
22 shall compliance with this Consent Judgment constitute or be construed as an admission by
23

24 ³ Prior to the filing of a motion for approval of this Consent Judgment, HP will be added as a
25 defendant in the Action in place of one of the Doe defendants originally named by the Plaintiff.
26 Computergeeks.com was originally named as a separate defendant in the Complaint but is a subsidiary of
27 Genica Corporation. Pursuant to Section 5.1 below, Computergeeks.com’s alleged liabilities herein will be
28 resolved, as will the potential liabilities of Genica Corporation’s other subsidiary, Evertek Computer
Corporation, by virtue of Genica Corporation being a party to this Consent Judgment. Accordingly, within
fifteen (15) days following entry of this Consent Judgment by the Court, Plaintiff will file a Request for
Dismissal of Computergeeks.com from the Complaint.

1 Defendants of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
2 denied by Defendants. However, this Paragraph shall not diminish or otherwise affect Defendants'
3 obligations, responsibilities and duties under this Consent Judgment.

4 **1.9 Consent to Jurisdiction**

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

9 **1.10 Effective Date**

10 For purposes of this Settlement Agreement, the term "Effective Date" shall mean
11 December 31, 2007.

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

13 After the Effective Date, Defendants shall not sell, ship, or offer to be shipped for sale, in
14 California, Products that are: (a) non-integrated products containing the Listed Chemical, or
15 (b) Products that are integrated products sold in a Defendant's own brand name that contain the
16 Listed Chemical in the non-integrated product placed within them, unless such Products are sold or
17 shipped with the clear and reasonable warning set out in this Section 2.1, comply with the
18 "Reformulation Standards" set forth in Section 2.3, or are otherwise exempted pursuant to
19 Section 2.2.⁴

20 **2.1 Product Warnings**

21 Any warning issued for Products pursuant to this Section 2.1 shall be prominently placed with
22 such conspicuousness as compared with other words, statements, designs, or devices as to render it
23 likely to be read and understood by an ordinary individual under customary conditions before
24 purchase or, for Products shipped directly to an individual in California or used in the workplace in

25
26 ⁴ Immediately upon mutual execution of the Agreement, HP agrees to commence a compliance
27 program, as to non-branded, non-integrated motherboards, which shall include any investigation necessary to
28 frame and implement such a program. The program shall be fully implemented no later than nine months after
the Effective Date.

1 California, before use. Any warning issued pursuant to this Section 2.1 shall be provided in a manner
2 such that the consumer or user understands to which specific Product the warning applies, so as to
3 minimize if not eliminate the chance that an over warning situation will arise.

4 Sections 2.1(a), 2.1(b)(i), 2.1(b)(ii) and 2.1(b)(iii) below describe Defendants' options for
5 satisfying its warning obligations with respect to the preceding paragraph (where applicable)
6 depending, in part, on the manner of sale.

7 **(a) Retail Store and Service-Related Transactions.**

8 From the Effective Date, when required under this Consent Judgment, a warning may be
9 given by affixing the following language to the packaging or label of, or directly on, each Product
10 sold in, or otherwise provided in the course of service occurring in, California that states:

11 WARNING: The solder used in this product contains lead, a chemical
12 known to the State of California to cause birth defects and
13 other reproductive harm. Please wash hands after
14 handling internal components and circuit boards and
15 avoid inhalation of fumes if heating the solder.⁵

16 **(b) Mail Order Catalog and Internet Sales.**

17 Where required under this Consent Judgment, Defendants may satisfy their Proposition 65
18 warning obligations for Products that are sold by mail order catalog or from the Internet or
19 telephone/facsimile order to California residents or businesses by providing a warning: (i) in the
20 mail order catalog; (ii) on the website; and/or (iii) with the product when it is shipped to an address in
21 California as further specified in Sections 2.1(b)(i), (ii), and/or (iii), as applicable:

22 **(i) Mail Order Catalog Warning.** Any warning provided in a mail order
23 catalog must be in the same type size or larger as the Product description text within the catalog.⁶
24 The following warning shall be provided on the same page and in the same location as the display
25 and/or description of the Product:

26 ⁵ For integrated products, a Defendant may add the words "the motherboard of" or "the circuit boards
27 in" immediately prior to "this product" in the above warning or any of the warning formulations that follow
28 below.

⁶ If a 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 Products submitted for printing after the Effective Date.

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

6 Where it is impracticable to provide the warning on the same page and in the same location as
7 the display and/or description of the non-integrated product, a Defendant may utilize the designated
8 triangular symbol shown in the warning language immediately below to cross reference the example
9 warning and shall define the term “designated symbol” with the following language on the inside of
10 the front cover of the catalog or on the same page as any order form for the non-integrated product(s):

11 WARNING: The solder used in certain products identified with this
12 symbol ▲ and offered for sale in this catalog contain
13 lead, a chemical known to the State of California to cause
14 birth defects and other reproductive harm. Please wash
15 hands after handling internal components and circuit
16 boards and avoid inhalation of fumes if heating the
17 solder.

18 The designated symbol must appear on the same page and in close proximity to the display and/or
19 description of the Product. On each page where the designated symbol appears, the Defendant must
20 provide a header or footer directing the consumer to the warning language and definition of the
21 designated symbol.

22 (ii) **Internet Website Warning.** A warning may be given in conjunction
23 with the sale of a Product via the Internet, provided it appears either: (a) on the same web page on
24 which the Product is displayed with its features described and related details provided; (b) on the
25 same web page as the order form for the Product; (c) on the same page as the price for the Product; or
26 (d) on one or more web pages displayed to a purchaser during the checkout process. The following
27 warning statement shall be used and shall appear in any of the above instances adjacent to or
28 immediately following the display, description, or price of the Product for which it is given in the
29 same type size or larger as the product description text:

30 WARNING: The solder used in this product contains lead, a chemical
31 known to the State of California to cause birth defects and
32 other reproductive harm. Please wash hands after
33 handling internal components and circuit boards and
34 avoid inhalation of fumes if heating the solder.

1 Alternatively, the designated symbol may appear adjacent to or immediately following the
2 display, description, or price of the Product for which a warning is being given, provided that the
3 following warning statement also appears elsewhere on the same web page:

4 WARNING: Products identified on this page with the following
5 symbol use solder that contains lead, a chemical known to
6 the State of California to cause birth defects and other
7 reproductive harm: ▲. Please wash hands after handling
8 internal components and circuit boards and avoid
9 inhalation of fumes if heating the solder.

10 **(iii) Package Insert or Label Warning.** For all Products sold by catalog
11 or via the Internet or by telephone, a warning may be provided with the Product when it is shipped
12 directly to an individual or business in California by either: (a) affixing the following warning
13 language to the packaging, labeling, or directly to a specific Product; (b) inserting a warning card
14 measuring at least 4" x 6" in the shipping carton which contains the following warning language; or
15 (c) placing the following warning statement on a written price quotation or the packing slip or
16 customer invoice on the line directly below the description of the Product on the price quotation,
17 packing slip or customer invoice:

18 WARNING: The solder used in this product contains lead, a chemical
19 known to the State of California to cause birth defects and
20 other reproductive harm. Please wash hands after
21 handling internal components and circuit boards and
22 avoid inhalation of fumes if heating the solder.

23 Alternatively, a Defendant may place the following language on the price quotation, packing slip or
24 invoice and specifically identify the Product in lettering of the same size or larger as the description
25 of the Product:

26 WARNING: The solder used in the following product(s) contain lead,
27 a chemical known to the State of California to cause birth
28 defects or other reproductive harm. Please wash hands
after handling internal components and circuit boards and
avoid inhalation of fumes if heating the solder.

[delineate list products for which warning is given].

A Defendant shall, in either of these instances, in conjunction with providing the warning (except
where it has been provided by on a written price quotation issued prior to consummation of a sales
transaction), also inform the consumer, in a conspicuous manner, that he or she may return the

1 Product for a full refund (including shipping costs for both the receipt and the return of the product)
2 within fifteen (15) days of his or her receipt of the Product.

3 **2.2 Exceptions To Warning Requirements**

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

- 5 (i) Subject to implementation of Section 2.5 below, any Product (a) manufactured before
6 October 31, 2007, or (b) which is offered as a part for any such Product;
- 7 (ii) Reformulated Products (as defined in Section 2.3 below); or
- 8 (iii) Any Product in which the only possible point of exposure to the Listed Chemical is
9 embedded in a manner that a consumer or worker would not come into contact with
10 the Listed Chemical under any reasonably anticipated use, such as Products which are
11 not expected to be serviced by employees or users other than those with specialized
12 information technology and related occupational health and safety training, including
13 servers, storage or storage and array systems, port replicators, and network
14 infrastructure equipment for switching, signaling and transmission as well as network
15 management for telecommunications that serve a business's internal non-consumer
16 market.

17 **2.3 Reformulation Products**

18 "Reformulated Products" are defined as follows: any Product containing less than or equal to
19 one-tenth of one percent (0.1%) lead by weight in each solder material, including all forms of solder
20 as identified in Section 1.5, unless that material is embedded in a manner that a consumer or worker
21 ordinarily would not come into contact with the lead under any reasonably anticipated use.⁷ The
22 warnings required pursuant to Section 2.1 above shall not be required for Reformulated Products.

23 _____
24 ⁷ Consistent with the European Union's Reduction of Hazardous Substances regulations ("RoHS"),
25 the lead by weight standard set forth above shall not apply to specialty solders used in motherboards, including
26 specialty solders used with glass and ceramic microcomponents, lead in high melting temperature type solders,
27 solders used in pin connector systems or to form connections between the pins and the package of
28 microprocessors, solders used to complete a viable electrical connection between a semiconductor die and
carrier within an integrated circuit flip chip package, solders used for the soldering to machined through hole
discoidal and planar array ceramic multilayer capacitors, and/or solder used for transducers used in high-
powered loudspeakers, provided that such solders: (a) are embedded or otherwise used in a motherboard such
that a consumer or worker (other than specially trained service provider) would not come into contact with

(Footnote continues on next page.)

1 **2.4 Reformulation Commitment**

2 Each Defendant hereby commits that all of its own branded Products that it offers for sale in
3 California after the Effective Date shall qualify as Reformulated Products pursuant to Section 2.3 or
4 be exempt from the warning requirements of Section 2.1 pursuant to Section 2.2. Further, as of the
5 Effective Date, each Defendant commits to use its commercially reasonable efforts to obtain non-
6 integrated products branded under other’s names that it sells in California, if any, so that they also
7 qualify as Reformulated Products pursuant to Section 2.3 or are otherwise exempt pursuant to
8 Section 2.2 above.

9 **2.5 Public Information Commitment**

10 In a good faith effort to inform consumers about the risk of exposure to lead in Defendants’
11 Products manufactured before the Effective Date and which are not otherwise exempted pursuant to
12 Section 2.2 above, each Defendant hereby commits to provide the following on a web page
13 addressing environmental/regulatory issues on the Defendant’s website for a period of three years:

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

17 Each Defendant further agrees that, no later than ninety (90) days following the Effective Date, it will
18 also provide substantially similar notification to its contracted service providers who may handle or
19 otherwise come into contact with lead containing solder in non-integrated products contained within
20 branded integrated products manufactured for that Defendant before the Effective Date and which are
21 not otherwise exempted pursuant to Section 2.2 above.

22 **3. MONETARY PAYMENTS**

23 **3.1 Penalties Pursuant to Health & Safety Code § 25249.7(b)**

24 Pursuant to Health & Safety Code § 25249.7(b), the total civil penalty assessed shall be
25 \$350,000 which shall be apportioned and paid as follows:

26 _____
(Footnote continued from previous page.)

27 them under any reasonably anticipated use, or (b) constitute no more than five percent (5%) of the total
28 amount of all non-embedded solder used in the motherboard in question.

- 1 (a) Defendant HP shall pay \$100,000 in civil penalties and receive a credit of
2 \$62,500 against this amount (leaving a net of \$37,500 to be paid as civil
3 penalties) in light of its prompt cooperation with DiPirro in resolving this
4 matter and its commitment to sell only reformulated (or otherwise exempted)
5 branded Products in California pursuant to Section 2.4 above.
- 6 (b) Defendant Dell shall pay \$100,000 in civil penalties and receive a credit
7 against this amount of \$67,500 (leaving a net of \$32,500 to be paid as civil
8 penalties) in light of its prompt cooperation with DiPirro in resolving this
9 matter and its commitment to sell only reformulated (or otherwise exempted)
10 branded Products in California pursuant to Section 2.4 above.
- 11 (c) Defendant Gateway shall pay \$100,000 in civil penalties and receive a credit
12 against this of \$80,000 (leaving a net of \$20,000 to be paid as civil penalties)
13 in light of its prompt cooperation with DiPirro in resolving this matter and its
14 commitment to sell only reformulated (or otherwise exempted) branded
15 Products in California pursuant to Section 2.4 above.
- 16 (d) Defendant Genica shall pay \$50,000 in civil penalties and receive a credit
17 against this of \$40,000 (leaving a net of \$10,000 to be paid as civil penalties)
18 in light of its prompt cooperation with DiPirro in resolving this matter and its
19 commitment to sell only reformulated (or otherwise exempted) branded
20 Products in California pursuant to Section 2.4 above.

21 All payments made pursuant to this Section 3.1 shall be payable to the "HIRST & CHANLER LLP in
22 Trust For Michael DiPirro" and shall be delivered to Plaintiff's counsel at the following address on or
23 before October 31, 2007:

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

1 **3.2 Apportionment of Penalties Received**

2 All penalty monies received shall be apportioned by DiPirro in accordance with Health &
3 Safety Code § 25192, with 75% of these funds remitted by DiPirro to the State of California’s Office
4 of Environmental Health Hazard Assessment and the remaining 25% of these penalty monies retained
5 by DiPirro as provided by Health & Safety Code § 25249.12(d). DiPirro shall bear all responsibility
6 for apportioning and paying to the State of California the appropriate civil penalties paid in
7 accordance with this Section.

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

9 The Parties acknowledge that DiPirro and his counsel offered to resolve this dispute without
10 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
11 issue to be resolved after the material terms of the agreement had been settled. Defendants then
12 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
13 finalized. The Parties then reached an accord on the compensation due to DiPirro and his counsel
14 under the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5
15 for all work performed through the Court’s approval of this agreement. Under the private attorney
16 general doctrine, each Defendant shall reimburse DiPirro and his counsel for fees and costs incurred
17 as a result of investigating, bringing this matter to that Defendant’s attention, litigating, and
18 negotiating a settlement in the public interest and seeking the Court’s approval of the settlement
19 agreement. Defendants shall respectively pay DiPirro and his counsel the following specified
20 amounts for all attorneys’ fees, expert and investigation fees, litigation and related costs:

- 21 (a) HP: \$47,500
- 22 (b) Dell: \$47,500
- 23 (c) Gateway: \$40,000
- 24 (d) Genica: \$30,000

25 The payments required pursuant to subparagraphs 4(a)-(d) shall be made payable to HIRST &
26 CHANLER LLP and shall be delivered on or before October 31, 2007, at the 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 **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, DiPirro, on behalf of himself, his past and current
10 agents, attorneys, successors, and/or assignees, and not acting in a representative capacity on behalf
11 of the general public, hereby waives all rights to institute or participate in, directly or indirectly, any
12 form of legal action and releases all claims, including, without limitation, all actions, and causes of
13 action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties,
14 losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees)
15 of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "claims"),
16 against Defendants and each of their downstream wholesalers, licensors, licensees, auctioneers,
17 retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate
18 affiliates, subsidiaries, successors and assigns, and their respective officers, directors, attorneys,
19 representatives, shareholders, agents, and employees, sister and parent entities, and, with respect to
20 Products sold in Defendants' own brand names, original equipment manufacturers and distributors
21 (collectively "releasees").⁸ This release is limited to those claims that arise under Proposition 65, as
22 such claims relate to Defendant's alleged failure to warn about exposures to the Listed Chemical
23 contained in the Products.

24 The Parties further understand and agree that, except as provided for above, this release shall
25 not extend upstream to any entities that manufactured the Products or any component parts thereof, or

26 ⁸ At the time of execution of this Consent Judgment, a sale of Gateway is pending; the successors of
27 Gateway shall be considered releasees under this Consent Judgment with respect to Products previously sold
28 by Gateway or which, in the future and provided that they are otherwise in compliance with the terms set forth
in this Consent Judgment, continue to be, or are the successors of, Gateway's branded Product lines.

1 any distributors or suppliers who sold the Products or any component parts thereof to Defendants.
2 The foregoing is not, however, intended to limit any release set forth in, or direct or indirect effect of,
3 prior settlements or judgments Plaintiff or other enforcers of Proposition 65 have entered into with
4 such upstream entities in terms of their application to any claims that have been or which may in the
5 future be alleged against any Defendant with respect to the Listed Chemical in any Products sold by
6 such upstream entities to such Defendant. This Agreement also does not release any downstream
7 party (including integrators and retailers) that either caused exposure to the Listed Chemical from
8 Products not supplied by a Defendant or, as to the future, alters a Product purchased from a
9 Defendant in such a way as to cause it to violate the Reformulation Standards or fails to transmit the
10 requisite warnings provided by Defendant in the manner set forth in Section 2.1 of in this Agreement.

11 This Consent Judgment is also a full, final and binding resolution between Plaintiff, acting on
12 behalf of the public interest pursuant to California Health & Safety Code § 25249.7(d), on the one
13 hand, and each of the Defendants and their releasees, on the other hand, of any violation of
14 Proposition 65 and of all claims made or which could have been made in the Notice, Supplemental
15 Notice, and/or Complaint based on the facts asserted therein for Defendants' alleged failure to
16 provide warnings for exposure to the Listed Chemical in motherboards (as defined in Paragraph 1.5
17 above) which are either non-integrated products or are contained in integrated products. Compliance
18 by a Defendant with the terms of this Consent Judgment resolves any issue, now and in the future,
19 concerning compliance by such Defendant and its releasees, with the requirements of Proposition 65
20 as to warnings for exposure to the Listed Chemical in motherboards (as defined in Paragraph 1.5
21 above) which are non-integrated products or are contained in integrated products.

22 **5.2 Defendant's Release of DiPirro**

23 Defendants waive any and all claims against DiPirro, his attorneys, and other representatives
24 for any and all actions taken or statements made (or those that could have been taken or made) by
25 DiPirro and his attorneys and other representatives, whether in the course of investigating claims or
26 otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the
27 Products.
28

1 **6. COURT APPROVAL**

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

7 **7. SEVERABILITY**

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

11 **8. ATTORNEYS' FEES**

12 In the event that a dispute arises with respect to any provision of this Agreement, the
13 prevailing party shall, except as otherwise provided herein, be entitled to recover reasonable costs
14 and attorneys' fees incurred in connection with such dispute.

15 **9. GOVERNING LAW**

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

22 **10. NOTICES**

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

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

To Dell:
Brian Falbo
Product Group Counsel
Dell, Inc.
One Dell Way-RR1-33
Round Rock, TX 78682
Email: brian_falbo@dell.com

And an email copy to: rfalk@mofocom

To Gateway:
Eric Gilbert
Manager-Environmental Programs
Gateway, Inc.
7565 Irvine Center Drive
Irvine, CA 92618
Email: eric.gilbert@gateway.com

And an email copy to: rfalk@mofocom

To Genica:
Greg Hansen
General Counsel
Genica Corporation
1890 Ord Way
Oceanside, California 92056
Email: greg@genica.com

And an email copy to: rfalk@mofocom

To HP:
c/o Ann G. Grimaldi
McKenna Long & Aldridge LLP
101 California St., 41st Floor
San Francisco, CA 94111
Email: agrimaldi@mckennalong.com

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.

1 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

8 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

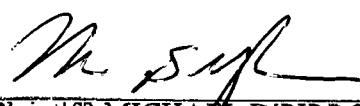
9 DiPirro and Defendants agree to mutually employ their best efforts to support the entry of this
10 Agreement as a Consent Judgment and obtain approval of it by the Court in a timely manner. The
11 Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed motion is required
12 to obtain judicial approval of this Agreement. Accordingly, the Parties agree to file a Motion to
13 Approve the Agreement (the “motion”), which shall be prepared by Plaintiff’s counsel and reviewed
14 by Defendants’ counsel prior to filing with the Court. Defendants shall have no additional
15 responsibility to Plaintiff’s counsel pursuant to Code of Civil Procedure § 1021.5 or otherwise with
16 regard to reimbursement of any fees and costs incurred with respect to the preparation and filing of
17 the motion or with regard to Plaintiff’s counsel appearing for a hearing thereon.

18 **14. MODIFICATION**

19 This Agreement may be modified only: (1) by written agreement of the Parties and upon
20 entry of a modified Settlement Agreement by the Court thereon; or (2) upon a successful motion of
21 any Party and entry of a modified Settlement Agreement by the Court. The Attorney General shall be
22 served with notice of any proposed modification to this Agreement at least fifteen (15) days in
23 advance of its consideration by the Court.


1 **15. AUTHORIZATION**

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

<p>4 AGREED TO:</p> <p>5 Date: <u>10/03/07</u></p> <p>6 By: <u></u></p> <p>7 Plaintiff, MICHAEL DiPIRRO</p>	<p>AGREED TO:</p> <p>Date: _____</p> <p>By: _____</p> <p>Defendant, DELL, INC.</p>
<p>10 AGREED TO:</p> <p>11 Date: _____</p> <p>12 By: _____</p> <p>13 Defendant, GATEWAY, INC.</p>	<p>AGREED TO:</p> <p>Date: _____</p> <p>By: _____</p> <p>Defendant, GENICA CORPORATION</p>
<p>16 AGREED TO:</p> <p>17 Date: _____</p> <p>18 By: _____</p> <p>19 Defendant, HEWLETT PACKARD COMPANY</p>	
<p>21 APPROVED AS TO FORM:</p> <p>22 Date: _____</p> <p>23 HIRST & CHANLER LLP</p> <p>24 By: _____</p> <p>25 Christopher M. Martin 26 Attorneys for Plaintiff 27 MICHAEL DiPIRRO</p>	<p>APPROVED AS TO FORM:</p> <p>Date: _____</p> <p>MORRISON & FOERSTER LLP</p> <p>By: _____</p> <p>Robert L. Falk Attorneys for Defendants DELL, INC., GATEWAY, INC. AND GENICA CORPORATION</p>

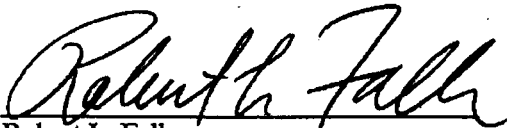
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3 and have read, understood, and agree to all of the terms and conditions of this Agreement.

<p>4 AGREED TO:</p> <p>5</p> <p>6 Date: _____</p> <p>7</p> <p>8 By: _____ Plaintiff, MICHAEL DiPIRRO</p> <p>9</p>	<p>AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Defendant, DELL, INC.</p>
<p>10 AGREED TO:</p> <p>11</p> <p>12 Date: _____</p> <p>13</p> <p>14 By: _____ Defendant, GATEWAY, INC.</p> <p>15</p>	<p>AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Defendant, GENICA CORPORATION</p>
<p>16 AGREED TO:</p> <p>17</p> <p>18 Date: _____</p> <p>19</p> <p>20 By: _____ Defendant, HEWLETT PACKARD COMPANY</p>	
<p>21 APPROVED AS TO FORM:</p> <p>22 Date: <u>10/3/07</u></p> <p>23 HIRST & CHANLER LLP</p> <p>24</p> <p>25 By: </p> <p>26 Christopher M. Martin Attorneys for Plaintiff MICHAEL DiPIRRO</p> <p>27</p> <p>28</p>	<p>APPROVED AS TO FORM:</p> <p>Date: _____</p> <p>MORRISON & FOERSTER LLP</p> <p>By: _____ Robert L. Falk Attorneys for Defendants DELL, INC., GATEWAY, INC. AND GENICA CORPORATION</p>


1 **15. AUTHORIZATION**

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3 and have read, understood, and agree to all of the terms and conditions of this Agreement.

<p>4 AGREED TO:</p> <p>5</p> <p>6 Date: _____</p> <p>7</p> <p>8 By: _____ Plaintiff, MICHAEL DiPIRRO</p> <p>9</p>	<p>AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Defendant, DELL, INC.</p>
<p>10 AGREED TO:</p> <p>11</p> <p>12 Date: _____</p> <p>13</p> <p>14 By: _____ Defendant, GATEWAY, INC.</p> <p>15</p>	<p>AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Defendant, GENICA CORPORATION</p>
<p>16 AGREED TO:</p> <p>17</p> <p>18 Date: _____</p> <p>19</p> <p>20 By: _____ Defendant, HEWLETT PACKARD COMPANY</p>	
<p>21 APPROVED AS TO FORM:</p> <p>22</p> <p>23 Date: _____ HIRST & CHANLER LLP</p> <p>24</p> <p>25 By: _____ Christopher M. Martin Attorneys for Plaintiff MICHAEL DiPIRRO</p> <p>26</p> <p>27</p> <p>28</p>	<p>APPROVED AS TO FORM:</p> <p>Date: <u>10/3/07</u></p> <p>MORRISON & FOERSTER LLP</p> <p>By:  Robert L. Falk Attorneys for Defendants DELL, INC., GATEWAY, INC. AND GENICA CORPORATION</p>

15. AUTHORIZATION

The undersigned are authorized to execute this Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Agreement.

<p style="text-align: center;">AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Plaintiff, MICHAEL DiPIRRO</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Defendant, DELL, INC.</p>
<p style="text-align: center;">AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Defendant, GATEWAY, INC.</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: <u>10/3/07</u></p> <p>By:  Defendant, GENICA CORPORATION</p>
<p style="text-align: center;">AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Defendant, HEWLETT PACKARD COMPANY</p>	
<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: _____</p> <p>HIRST & CHANLER LLP</p> <p>By: _____ Christopher M. Martin Attorneys for Plaintiff MICHAEL DiPIRRO</p>	<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: _____</p> <p>MORRISON & FOERSTER LLP</p> <p>By: _____ Robert L. Falk Attorneys for Defendants DELL, INC., GATEWAY, INC. AND GENICA CORPORATION</p>

1 **15. AUTHORIZATION**

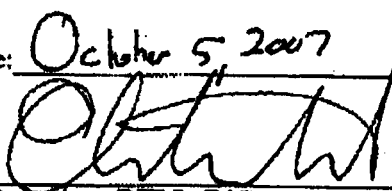
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<p>AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Plaintiff, MICHAEL DiPIRRO</p>	<p>AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Defendant, DELL, INC.</p>
<p>AGREED TO:</p> <p>Date: <u>10/5/07</u></p> <p>By: <u>Jay Elsas</u> Defendant, GATEWAY, INC.</p>	<p>AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Defendant, GENICA CORPORATION</p>
<p>AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Defendant, HEWLETT PACKARD COMPANY</p>	
<p>APPROVED AS TO FORM:</p> <p>Date: _____</p> <p>HIRST & CHANLER LLP</p> <p>By: _____ Christopher M. Martin Attorneys for Plaintiff MICHAEL DiPIRRO</p>	<p>APPROVED AS TO FORM:</p> <p>Date: _____</p> <p>MORRISON & FOERSTER LLP</p> <p>By: _____ Robert L. Falk Attorneys for Defendants DELL, INC., GATEWAY, INC. AND GENICA CORPORATION</p>

1 **15. AUTHORIZATION**

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

<p>4 AGREED TO:</p> <p>5 Date: _____</p> <p>6 By: _____</p> <p>7 Plaintiff, MICHAEL DiPIRRO</p>	<p>4 AGREED TO:</p> <p>5 Date: <u>October 5, 2007</u></p> <p>6 By: </p> <p>7 Defendant, DELL, INC.</p>
<p>10 AGREED TO:</p> <p>11 Date: _____</p> <p>12 By: _____</p> <p>13 Defendant, GATEWAY, INC.</p>	<p>10 AGREED TO:</p> <p>11 Date: _____</p> <p>12 By: _____</p> <p>13 Defendant, GENICA CORPORATION</p>
<p>16 AGREED TO:</p> <p>17 Date: _____</p> <p>18 By: _____</p> <p>19 Defendant, HEWLETT PACKARD COMPANY</p>	<p>16 AGREED TO:</p> <p>17 Date: _____</p> <p>18 By: _____</p>
<p>21 APPROVED AS TO FORM:</p> <p>22 Date: _____</p> <p>23 HIRST & CHANLER LLP</p> <p>24 By: _____</p> <p>25 Christopher M. Martin</p> <p>26 Attorneys for Plaintiff</p> <p>27 MICHAEL DiPIRRO</p>	<p>21 APPROVED AS TO FORM:</p> <p>22 Date: _____</p> <p>23 MORRISON & FOERSTER LLP</p> <p>24 By: _____</p> <p>25 Robert L. Falk</p> <p>26 Attorneys for Defendants</p> <p>27 DELL, INC., GATEWAY, INC. AND</p> <p>28 GENICA CORPORATION</p>

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<p>4 AGREED TO:</p> <p>5</p> <p>6 Date: _____</p> <p>7</p> <p>8 By: _____ Plaintiff, MICHAEL DiPIRRO</p> <p>9</p>	<p>AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Defendant, DELL, INC.</p>
<p>10 AGREED TO:</p> <p>11</p> <p>12 Date: _____</p> <p>13</p> <p>14 By: _____ Defendant, GATEWAY, INC.</p> <p>15</p>	<p>AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Defendant, GENICA CORPORATION</p>
<p>16 AGREED TO:</p> <p>17 Date: <u>October 15, 2007</u></p> <p>18</p> <p>19 By: <u>Karen P. Light</u> Defendant, HEWLETT PACKARD COMPANY</p> <p>20</p>	
<p>21 APPROVED AS TO FORM:</p> <p>22</p> <p>23 Date: _____</p> <p>HIRST & CHANLER LLP</p> <p>24</p> <p>25 By: _____</p> <p>26 Christopher M. Martin Attorneys for Plaintiff MICHAEL DiPIRRO</p> <p>27</p> <p>28</p>	<p>APPROVED AS TO FORM:</p> <p>Date: _____</p> <p>MORRISON & FOERSTER LLP</p> <p>By: _____</p> <p>Robert L. Falk Attorneys for Defendants DELL, INC., GATEWAY, INC. AND GENICA CORPORATION</p>

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	<p align="center">APPROVED AS TO FORM:</p> <p>Date: <u>Oct - 15, 2007</u></p> <p>By: <u>Ann D. Grimaldi</u> Ann Grimaldi McKENNA LONG & ALDRIDGE LLP Attorneys for Defendant HEWLETT PACKARD COMPANY</p>
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IT IS SO ORDERED.

Date: _____ JUDGE OF THE SUPERIOR COURT