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10 Attorneys for Defendants  
BEST DATA PRODUCTS, INC.;  
11 DIAMOND MULTIMEDIA  
12  
13

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

18 MICHAEL DIPIRRO,

19 Plaintiff,

20 v.

21 BEST DATA PRODUCTS, INC.; DIAMOND  
22 MULTIMEDIA; and DOES 1 through 150,  
inclusive,

23 Defendants.  
24  
25  
26  
27  
28

Case No. RG-07-354944

[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 Best Data Products, Inc.  
5     and Diamond Multimedia (“Best Data” and “Diamond” respectively, or, collectively, “defendants”),  
6     with DiPirro and defendants together being referred to as the “Parties.”

7             **1.2     Plaintiff**

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

11            **1.3     Defendants**

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

15            **1.4     General Allegations**

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

21            **1.5     Product Description**

22            The products that are covered by this Consent Judgment are defined as follows: (a) modem  
23    cards with solder containing lead and components, and (b) products into which modem cards that  
24    contain lead solder are integrated, including, but not limited to computer systems and their

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25  
26            <sup>1</sup> 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 subcomponents (such as desktop computer CPUs, laptop computers, servers, hard drives , and port  
2 replicators). Examples of forms of solder include, but are not limited to, solder, solder balls, solder  
3 spheres, solder paste, wave solder, solder joints, die bumps, and flip-chip bumps. All such modem  
4 cards with lead-containing solder, and components and products into which such modem cards that  
5 contain lead solder are integrated, are referred to herein as “Products.” Products that contain modem  
6 cards that are integrated into a another product, such as a computer system or subcomponent thereof,  
7 prior to the sale or acquisition of the Product into which the modem card is integrated, are referred to  
8 herein as “integrated products.” Products that are modem cards sold individually and not as a  
9 component integrated into another Product, such as a computer system or component thereof, are  
10 referred to herein as “non-integrated products.”

#### 11 **1.6 Notices of Violation**

12 On June 26, 2007, DiPirro served defendants and all public enforcers entitled to receive it  
13 pursuant to Health & Safety Code § 25249.7(d), with a document entitled “60-Day Notice of  
14 Violation” (“Notice”). This Notice provided defendants and such public enforcers with notice that  
15 Plaintiff intended to file and prosecute a lawsuit at the expiration of the 60-day notice period alleging  
16 that defendants were in violation of California Health & Safety Code § 25249.6 for failing to warn  
17 consumers, workers and others that the Products that defendants sold exposed users in California to  
18 the Listed Chemical. Within fifteen (15) days following his execution of this Consent Judgment,  
19 DiPirro will have served defendants and the required public enforcement agencies with documents  
20 entitled “Supplemental Notice of Violation” (“Supplemental Notice”) expressly alleging that  
21 defendants are in violation of Health & Safety Code § 25249.6 with respect to exposures to the Listed  
22 Chemical arising from various sound cards and graphics cards (in addition to modem cards),  
23 including sound cards, graphics cards and TV tuners sold as non-integrated products and sound cards  
24 and graphics cards sold in integrated products. Upon issuance of the Supplemental Notice, the  
25 definition of “Products” in Section 1.5 above, shall be expanded to include the sound cards, graphics  
26 cards and TV tuners provided therein. Each defendant shall use its best efforts to provide DiPirro  
27 with information necessary for him to issue them a Supplemental Notice and support a Certificate of  
28 Merit related thereto.

1           **1.7 Complaint**

2           On November 6, 2007, in the absence of public prosecutor action, DiPirro, who is acting in  
3 the interest of the general public in California, filed a complaint (“Complaint” or “Action”) in the  
4 Superior Court in and for the County of Alameda against defendants, and Does 1 through 150,  
5 *DiPirro v. Best Data Products, Inc.; et al.*, Alameda County Superior Court Case No. RG07354944,  
6 alleging violations of California Health & Safety Code § 25249.6, based on the alleged exposures to  
7 the Listed Chemical contained in the Products defendants sold. The Complaint shall be deemed  
8 amended by this Consent Judgment to include the sound card and graphics card products in the  
9 Supplemental Notice on the sixty-sixth (66<sup>th</sup>) day following the issuance of the Supplemental Notice  
10 if an authorized public prosecutor has not, prior to that date, filed a Proposition 65 enforcement  
11 action as to the Listed Chemical in the additional Products addressed in the Supplemental Notice.

12           **1.8 No Admission**

13           Defendants deny the material factual and legal allegations contained in DiPirro’s Notice and  
14 Complaint and maintain that all products that they sold and/or distributed for sale or use in California  
15 have been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed  
16 as an admission by defendants of any fact, finding, issue of law, or violation of law, nor shall  
17 compliance with this Consent Judgment constitute or be construed as an admission by defendants of  
18 any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by  
19 defendants. However, this Paragraph shall not diminish or otherwise affect defendants’ obligations,  
20 responsibilities and duties under this Consent Judgment.

21           **1.9 Consent to Jurisdiction**

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

26           **1.10 Effective Date**

27           For purposes of this Settlement Agreement, the term “Effective Date” shall mean May 15,  
28 2008.

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

2               After June 15, 2008, defendants shall not sell, ship, or offer to be shipped for sale, in  
3 California, Products that are: (a) non-integrated products containing the Listed Chemical, or  
4 (b) Products that are integrated products sold in defendant’s own brand name that contain the Listed  
5 Chemical in the non-integrated product placed within them, unless such Products are sold or shipped  
6 with the clear and reasonable warning set out in this Section 2.1, comply with the “Reformulation  
7 Standards” set forth in Section 2.3, or are otherwise exempted pursuant to Section 2.2.

8               **2.1       Product Warnings**

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

16               Sections 2.1(a) and 2.1(b) below describe defendants’ options for satisfying its warning  
17 obligations with respect to the preceding paragraph (where applicable) depending, in part, on the  
18 manner of sale.

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

20               From June 15, 2008, when required under this Consent Judgment, a warning may be given by  
21 affixing the following language to the packaging or label of, or directly on, each Product sold in, or  
22 otherwise provided in the course of service occurring in, California that states:

23                       **WARNING:** The solder used in this product contains lead, a chemical  
24                               known to the State of California to cause birth defects and  
25                               other reproductive harm. Please wash hands after  
26                               handling internal components and circuit boards and  
27                               avoid inhalation of fumes if heating the solder.<sup>2</sup>

28               

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29               <sup>2</sup> For integrated products, a defendant may add the words “the motherboard of” or “the circuit boards  
30 in” immediately prior to “this product” in the above warning or any of the warning formulations that follow  
31 below.

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

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

7 (i) **Mail Order Catalog Warning.** Any warning provided in a mail order  
8 catalog must be in the same type size or larger as the Product description text within the catalog.<sup>3</sup>  
9 The following warning shall be provided on the same page and in the same location as the display  
10 and/or description of the Product:

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

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

20 WARNING: The solder used in certain products identified with this  
21 symbol ▲ and offered for sale in this catalog contain  
22 lead, a chemical known to the State of California to cause  
23 birth defects and other reproductive harm. Please wash  
24 hands after handling internal components and circuit  
25 boards and avoid inhalation of fumes if heating the  
26 solder.

27 The designated symbol must appear on the same page and in close proximity to the display and/or  
28 description of the Product. On each page where the designated symbol appears, the defendant must

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<sup>3</sup> 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 provide a header or footer directing the consumer to the warning language and definition of the  
2 designated symbol.

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

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  
  handling internal components and circuit boards and  
  avoid inhalation of fumes if heating the solder.

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

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

21                   **(iii) Package Insert or Label Warning.** For all Products sold by catalog or via  
22 the Internet or by telephone, a warning may be provided with the Product when it is shipped directly  
23 to an individual or business in California by either: (a) affixing the following warning language to  
24 the packaging, labeling, or directly to a specific Product; (b) inserting a warning card measuring at  
25 least 4" x 6" in the shipping carton which contains the following warning language; or (c) placing  
26 the following warning statement on a written price quotation or the packing slip or customer invoice  
27  
28

1 on the line directly below the description of the Product on the price quotation, packing slip or  
2 customer invoice:

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

9 Alternatively, a defendant may place the following language on the price quotation, packing slip or  
10 invoice and specifically identify the Product in lettering of the same size or larger as the description  
11 of the Product:

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

17                           *[delineate list products for which warning is given].*

18 A defendant shall, in either of these instances, in conjunction with providing the warning (except  
19 where it has been provided by on a written price quotation issued prior to consummation of a sales  
20 transaction), also inform the consumer, in a conspicuous manner, that he or she may return the  
21 Product for a full refund (including shipping costs for both the receipt and the return of the product)  
22 within fifteen (15) days of his or her receipt of the Product.

## 23           **2.2 Exceptions To Warning Requirements**

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

- 25           (i)     Subject to implementation of Section 2.5 below, any Product (a) manufactured before  
26                    June 15, 2008, or (b) which is offered as a part for any such Product;
- 27           (ii)    Reformulated Products (as defined in Section 2.3 below); or
- 28           (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, such as Products which are  
                  not expected to be serviced by employees or users other than those with specialized  
                  information technology and related occupational health and safety training, including



1 servers, storage or storage and array systems, port replicators, and network  
2 infrastructure equipment for switching, signaling and transmission as well as network  
3 management for telecommunications that serve a business's internal non-consumer  
4 market.

### 5 **2.3 Reformulation Products**

6 "Reformulated Products" are defined as follows: any Product containing less than or equal to  
7 one-tenth of one percent (0.1%) lead by weight in each solder material, including all forms of solder  
8 as identified in Section 1.5, unless that material is embedded in a manner that a consumer or worker  
9 ordinarily would not come into contact with the lead under any reasonably anticipated use.<sup>4</sup> The  
10 warnings required pursuant to Section 2.1 above shall not be required for Reformulated Products.

### 11 **2.4 Reformulation Commitment**

12 Each defendant hereby commits that all of its own branded Products that it offers for sale in  
13 California after June 15, 2008 shall qualify as Reformulated Products pursuant to Section 2.3 or be  
14 exempt from the warning requirements of Section 2.1 pursuant to Section 2.2. Further, as of May 31,  
15 2008, each defendant commits to use its commercially reasonable efforts to obtain non-integrated  
16 products branded under other's names that it sells in California, if any, so that they also qualify as  
17 Reformulated Products pursuant to Section 2.3 or are otherwise exempt pursuant to Section 2.2  
18 above.

### 19 **2.5 Public Information Commitment**

20 In a good faith effort to inform consumers about the risk of exposure to lead in defendants'  
21 Products manufactured before June 15, 2008 and which are not otherwise exempted pursuant to

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22 <sup>4</sup> Consistent with the European Union's Reduction of Hazardous Substances regulations ("RoHS"),  
23 the lead by weight standard set forth above shall not apply to specialty solders used in motherboards, including  
24 specialty solders used with glass and ceramic microcomponents, lead in high melting temperature type solders,  
25 solders used in pin connector systems or to form connections between the pins and the package of  
26 microprocessors, solders used to complete a viable electrical connection between a semiconductor die and  
27 carrier within an integrated circuit flip chip package, solders used for the soldering to machined through hole  
28 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  
them under any reasonably anticipated use, or (b) constitute no more than five percent (5%) of the total  
amount of all non-embedded solder used in the motherboard in question.

1 Section 2.2 above, each defendant hereby commits to provide the following on a web page addressing  
2 environmental/regulatory issues on the defendant's website for a period of three years:

3 Certain motherboards, mainboards, circuit boards and accessories sold  
4 in California contain lead solder. Lead is a chemical known to the  
5 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.

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

11 **3. MONETARY PAYMENTS**

12 **3.1 Penalties Pursuant to Health & Safety Code § 25249.7(b)**

13 Pursuant to Health & Safety Code § 25249.7(b), the total civil penalty assessed shall be  
14 \$20,000 which shall be apportioned and paid as follows:

- 15 (a) Defendant shall pay \$20,000 in civil penalties and receive a credit of \$17,000  
16 against this amount (leaving a net of \$3,000 to be paid as civil penalties) in  
17 light of its prompt cooperation with DiPirro in resolving this matter and its  
18 commitment to sell only reformulated (or otherwise exempted) branded  
19 Products in California pursuant to Section 2.4 above.

20 All payments made pursuant to this Section 3.1 shall be payable to the "HIRST &  
21 CHANLER LLP in Trust For Michael DiPirro" and shall be delivered to Plaintiff's counsel at the  
22 following address on or before May 15, 2008:

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

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 \$28,000 for all attorneys' fees,  
20    expert and investigation fees, litigation and related costs. The payments required pursuant to  
21    paragraph 4 shall be made payable to HIRST & CHANLER LLP and shall be delivered in three  
22    installments: the first installment shall be delivered on or before May 15, 2008 in the amount of  
23    \$9,333; the second installment shall be delivered on or before June 15, 2008 in the amount of \$9,333;  
24    and the third installment shall be delivered on or before July 15, 2008 in the amount of \$9,334. All  
25    installments shall be delivered to the following address:

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

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 current  
5 agents, attorneys, successors, and/or assignees, and not acting in a representative capacity on behalf  
6 of the general public, hereby waives all rights to institute or participate in, directly or indirectly, any  
7 form 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' fees)  
10 of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "claims"),  
11 against defendants and each of their downstream wholesalers, licensors, licensees, auctioneers,  
12 retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate  
13 affiliates, subsidiaries, successors and assigns, and their respective officers, directors, attorneys,  
14 representatives, shareholders, agents, and employees, sister and parent entities, and, with respect to  
15 Products sold in defendants' own brand names, original equipment manufacturers and distributors  
16 (collectively "releasees"). This release is limited to those claims that arise under Proposition 65, as  
17 such claims relate to defendant's alleged failure to warn about exposures to the Listed Chemical  
18 contained in the Products.

19               The Parties further understand and agree that, except as provided for above, this release shall  
20 not extend upstream to any entities that manufactured the Products or any component parts thereof, or  
21 any distributors or suppliers who sold the Products or any component parts thereof to defendants.  
22 The foregoing is not, however, intended to limit any release set forth in, or direct or indirect effect of,  
23 prior settlements or judgments plaintiff or other enforcers of Proposition 65 have entered into with  
24 such upstream entities in terms of their application to any claims that have been or which may in the  
25 future be alleged against any defendant with respect to the Listed Chemical in any Products sold by  
26 such upstream entities to such defendant. This Agreement also does not release any downstream  
27 party (including integrators and retailers) that either caused exposure to the Listed Chemical from  
28 Products not supplied by a defendant or, as to the future, alters a Product purchased from a defendant

1 in such a way as to cause it to violate the Reformulation Standards or fails to transmit the requisite  
2 warnings provided by defendant in the manner set forth in Section 2.1 of in this Agreement.

3 This Consent Judgment is also a full, final and binding resolution between plaintiff, acting on  
4 behalf of the public interest pursuant to California Health & Safety Code § 25249.7(d), on the one  
5 hand, and each of the defendants and their releasees, on the other hand, of any violation of  
6 Proposition 65 and of all claims made or which could have been made in the Notice, Supplemental  
7 Notice, and/or Complaint based on the facts asserted therein for defendants' alleged failure to provide  
8 warnings for exposure to the Listed Chemical in modem cards (as defined in Paragraph 1.5 above)  
9 which are either non-integrated products or are contained in integrated products. Compliance by a  
10 defendant with the terms of this Consent Judgment resolves any issue, now and in the future,  
11 concerning compliance by such defendant and its releasees, with the requirements of Proposition 65  
12 as to warnings for exposure to the Listed Chemical in modem cards (as defined in Paragraph 1.5  
13 above) which are non-integrated products or are contained in integrated products.

#### 14 **5.2 Defendants' Release of DiPirro**

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

#### 20 **6. COURT APPROVAL**

21 This Agreement is not effective until it is approved and entered by the Court and shall be null  
22 and void if, for any reason, it is not approved and entered by the Court within one year after it has  
23 been fully executed by all Parties, in which event any monies that have been provided to plaintiff or  
24 his counsel, pursuant to Section 3 and/or Section 4 above, shall be refunded within fifteen (15) days  
25 after receiving written notice from any defendant that the one-year period has expired.  
26  
27  
28

1     **7. SEVERABILITY**

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

5     **8. ATTORNEYS' FEES**

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

9     **9. GOVERNING LAW**

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

15    **10. NOTICES**

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

20            To DiPirro:

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

26            To Defendants:

27            Timothy D. Martin  
28            JEFFER MANGELS BUTLER  
              & MARMARO LLP  
              1900 Avenue of the Stars, 7<sup>th</sup> Floor  
              Los Angeles, CA 90067-4308

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

3 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

10 **13. ADDITIONAL POST EXECUTION ACTIVITIES**


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

20 **14. MODIFICATION**

21 This Agreement may be modified only: (1) by written agreement of the Parties and upon  
22 entry of a modified Settlement Agreement by the Court thereon; or (2) upon a successful motion of  
23 any Party and entry of a modified Settlement Agreement by the Court. The Attorney General shall be  
24 served with notice of any proposed modification to this Agreement at least fifteen (15) days in  
25 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 <b>AGREED TO:</b></p> <p>5</p> <p>6 Date: _____</p> <p>7</p> <p>8 By: _____ Plaintiff, MICHAEL DiPIRRO</p> <p>9</p>	<p><b>AGREED TO:</b></p> <p>6 Date: _____</p> <p>7</p> <p>8 By: _____ Defendant, BEST DATA PRODUCTS, INC.</p> <p>9</p>
<p>10 <b>AGREED TO:</b></p> <p>11</p> <p>12 Date: _____</p> <p>13</p> <p>14 By: _____ Defendant, DIAMOND MULTIMEDIA</p> <p>15</p>	
<p>16 <b>APPROVED AS TO FORM:</b></p> <p>17 Date: <u>5/8/08</u></p> <p>18 HIRST &amp; CHANLER LLP</p> <p>19</p> <p>20 By: </p> <p>21 Christopher M. Martin Attorneys for Plaintiff MICHAEL DiPIRRO</p> <p>22</p> <p>23</p>	<p><b>APPROVED AS TO FORM:</b></p> <p>17 Date: _____</p> <p>18 JEFFER MANGELS BUTLER &amp; MARMARO LLP</p> <p>19</p> <p>20 By: _____</p> <p>21 Timothy D. Martin Attorneys for Defendants BEST DATA PRODUCTS, INC.; DIAMOND MULTIMEDIA</p> <p>22</p> <p>23</p>

24  
25 IT IS SO ORDERED.

26  
27 Date: \_\_\_\_\_ JUDGE OF THE SUPERIOR COURT

28



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;"><b>AGREED TO:</b></p> <p>Date: <u>5/8/08</u></p> <p>By: <u><i>M. DiPirro</i></u> Plaintiff, MICHAEL D'PIRRO</p>	<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: _____</p> <p>By: _____ Defendant, BEST DATA PRODUCTS, INC.</p>
<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: _____</p> <p>By: _____ Defendant, DIAMOND MULTIMEDIA</p>	<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: _____</p> <p>By: _____</p>
<p style="text-align: center;"><b>APPROVED AS TO FORM:</b></p> <p>Date: _____</p> <p>HIRST &amp; CHANLER LLP</p> <p>By: _____ Christopher M. Martin Attorneys for Plaintiff MICHAEL D'PIRRO</p>	<p style="text-align: center;"><b>APPROVED AS TO FORM:</b></p> <p>Date: _____</p> <p>JEFFER MANGELS BUTLER &amp; MARMARO LLP</p> <p>By: _____ Timothy D. Martin Attorneys for Defendants BEST DATA PRODUCTS, INC.; DIAMOND MULTIMEDIA</p>

IT IS SO ORDERED.

Date: \_\_\_\_\_ JUDGE OF THE SUPERIOR 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 <b>AGREED TO:</b></p> <p>5</p> <p>6 Date: _____</p> <p>7</p> <p>8 By: _____ Plaintiff, MICHAEL DiPIRRO</p> <p>9</p>	<p><b>AGREED TO:</b></p> <p>Date: <u>MAY 9<sup>th</sup>, 2008</u></p> <p>By: <u>B. Zeon</u> Defendant, BEST DATA PRODUCTS, INC.</p>
<p>10 <b>AGREED TO:</b></p> <p>11</p> <p>12 Date: <u>MAY 9<sup>th</sup>, 2008</u></p> <p>13</p> <p>14 By: <u>B. Zeon</u> Defendant, DIAMOND MULTIMEDIA</p> <p>15</p>	
<p>16 <b>APPROVED AS TO FORM:</b></p> <p>17</p> <p>18 Date: _____</p> <p>19 HIRST &amp; CHANLER LLP</p> <p>20</p> <p>21 By: _____ Christopher M. Martin Attorneys for Plaintiff MICHAEL DiPIRRO</p> <p>22</p> <p>23</p>	<p><b>APPROVED AS TO FORM:</b></p> <p>Date: _____</p> <p>JEFFER MANGELS BUTLER &amp; MARMARO LLP</p> <p>By: _____ Timothy D. Martin Attorneys for Defendants BEST DATA PRODUCTS, INC.; DIAMOND MULTIMEDIA</p>

24  
25 IT IS SO ORDERED.

26  
27 Date: \_\_\_\_\_ JUDGE OF THE SUPERIOR 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 <b>AGREED TO:</b></p> <p>5</p> <p>6 Date: _____</p> <p>7</p> <p>8 By: _____ Plaintiff, MICHAEL DiPIRRO</p> <p>9</p>	<p><b>AGREED TO:</b></p> <p>Date: _____</p> <p>By: _____ Defendant, BEST DATA PRODUCTS, INC.</p>
<p>10 <b>AGREED TO:</b></p> <p>11</p> <p>12 Date: _____</p> <p>13</p> <p>14 By: _____ Defendant, DIAMOND MULTIMEDIA</p> <p>15</p>	
<p>16 <b>APPROVED AS TO FORM:</b></p> <p>17</p> <p>18 Date: _____</p> <p>19 HIRST &amp; CHANLER LLP</p> <p>20</p> <p>21 By: _____ Christopher M. Martin Attorneys for Plaintiff MICHAEL DiPIRRO</p> <p>22</p> <p>23</p>	<p><b>APPROVED AS TO FORM:</b></p> <p>Date: <u>5/12/08</u></p> <p>JEFFER MANGELS BUTLER &amp; MARMARO LLP</p> <p>By:  _____ Timothy D. Martin Attorneys for Defendants BEST DATA PRODUCTS, INC.; DIAMOND MULTIMEDIA</p>

24  
25  
26 IT IS SO ORDERED.

27  
28 Date: \_\_\_\_\_