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12 NEC CORPORATION OF AMERICA

13  
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 COUNTY OF ALAMEDA

16  
17 MICHAEL DIPIRRO,

18 Plaintiff,

19 v.

20 NEC CORPORATION OF AMERICA; and  
21 DOES 1 through 150, inclusive,

22 Defendants.

Case No. RG07351039

**SETTLEMENT AGREEMENT  
AND [PROPOSED] CONSENT  
JUDGMENT**

1     **1.     INTRODUCTION**

2             **1.1     Parties**

3             This Settlement Agreement and [Proposed] Consent Judgment (also referred to herein as  
4     “Consent Judgment” or “Agreement”) is entered into by and between plaintiff, Michael DiPirro  
5     (“Plaintiff” or “DiPirro”), and defendant NEC Corporation of America (“Defendant”), with DiPirro  
6     and Defendant 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     Defendant**

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

15            **1.4     General Allegations**

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

21            **1.5     Product Description**

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

23    (a) motherboards, main boards and various other circuit boards (collectively referred to herein for  
24    simplicity as “motherboards”) with lead-containing solder and components, and (b) products into

25  
26            

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

#### 12 **1.6 Notices of Violation**

13 On August 2, 2007, DiPirro served Defendant and all public enforcers entitled to receive it  
14 pursuant to Health & Safety Code § 25249.7(d), with a document entitled "60-Day Notice of  
15 Violation" ("Notice") that provided Defendant and such public enforcers with notice that Plaintiff  
16 intended to file and prosecute a lawsuit at the expiration of the 60-day notice period alleging that  
17 Defendant was in violation of California Health & Safety Code § 25249.6 for failing to warn  
18 consumers, workers and others that the Products that Defendant sold exposed users in California to  
19 the Listed Chemical. Within fifteen (15) days following his execution of this Consent Judgment,  
20 DiPirro will have served Defendant and the required public enforcement agencies with documents  
21 entitled "Supplemental Notice of Violation" ("Supplemental Notice") expressly alleging that  
22 Defendant is in violation of Health & Safety Code § 25249.6 with respect to exposures to the Listed  
23 Chemical arising from various circuit boards (in addition to motherboards), including circuit boards  
24 sold as non-integrated products and circuit boards sold in integrated products. Defendant shall use its  
25 best efforts to provide DiPirro with information necessary for him to issue a Supplemental Notice and  
26 support a Certificate of Merit related thereto.

1           **1.7 Complaint**

2           On October 15, 2007, in the absence of public prosecutor action, DiPirro, who is acting in the  
3 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 Defendant, and Does 1 through 150,  
5 *DiPirro v. NEC Corporation of America*, and DOES 1 through 150, inclusive, Alameda County  
6 Superior Court Case No. RG07351039, alleging violations of California Health & Safety Code  
7 § 25249.6, based on the alleged exposures to the Listed Chemical contained in the Products  
8 Defendant sold. The Complaint shall be deemed amended by this Consent Judgment to include the  
9 allegations in the Supplemental Notice on the sixty-sixth (66<sup>th</sup>) day following the issuance of the  
10 Supplemental Notice if an authorized public prosecutor has not, prior to that date, filed a Proposition  
11 65 enforcement action as to the Listed Chemical in the additional Products addressed in the  
12 Supplemental Notice; the definitions of Products under this Consent Judgment shall also not be  
13 deemed to include the additional Products addressed in the Supplemental Notice until that time.

14           **1.8 No Admission**

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

23           **1.9 Consent to Jurisdiction**

24           For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
25 jurisdiction over Defendant as to the allegations contained in the Complaint, that venue is proper in  
26 the County of Alameda and that this Court has jurisdiction to enter and enforce the provisions of this  
27 Consent Judgment.  
28

1           **1.10 Effective Date**

2           For purposes of this Settlement Agreement, the term “Effective Date” shall mean May 12,  
3 2008.

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

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

11           **2.1    Product Warnings**

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

19           Sections 2.1(a), 2.1(b)(i), 2.1(b)(ii) and 2.1(b)(iii) below describe Defendant’s options for  
20 satisfying its warning obligations with respect to the preceding paragraph (where applicable)  
21 depending, in part, on the manner of sale.

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

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

26                       WARNING: The solder used in this product contains lead, a chemical  
27                                       known to the State of California to cause birth defects and  
28                                       other reproductive harm. Please wash hands after

1 handling internal components and circuit boards and  
2 avoid inhalation of fumes if heating the solder.<sup>2</sup>

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

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

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

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

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

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

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

27 <sup>3</sup> If Defendant elects to provide warnings in the mail order catalog, then the warnings must be included  
28 in all catalogs offering to sell one or more Products submitted for printing after the Effective Date.

boards and avoid inhalation of fumes if heating the solder.

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

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

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

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

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

**(iii) Package Insert or Label Warning.** For all Products sold by catalog or via the Internet or by telephone, a warning may be provided with the Product when it is shipped directly to an individual or business in California by either: (a) affixing the following warning language to the packaging, labeling, or directly to a specific Product; (b) inserting a warning card

1 measuring at least 4" x 6" in the shipping carton which contains the following warning language; or  
2 (c) placing the following warning statement on a written price quotation or the packing slip or  
3 customer invoice on the line directly below the description of the Product on the price quotation,  
4 packing slip or customer invoice:

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

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

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

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

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

## 24           **2.2 Exceptions To Warning Requirements**

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

- 26           (i)     Subject to implementation of Section 2.5 below, any Product (a) manufactured before  
27                   the Effective Date, or (b) which is offered as a part for any such Product;
- 28           (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, such as Products which are  
                  not expected to be serviced by employees or users other than those with specialized



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

### 6 **2.3 Reformulation Products**

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

### 12 **2.4 Reformulation Commitment**

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

20  
21  
22 \_\_\_\_\_  
23 <sup>4</sup> Consistent with the European Union's Reduction of Hazardous Substances regulations ("RoHS"),  
24 the lead by weight standard set forth above shall not apply to specialty solders used in motherboards, including  
25 specialty solders used with glass and ceramic microcomponents, lead in high melting temperature type solders,  
26 solders used in pin connector systems or to form connections between the pins and the package of  
27 microprocessors, solders used to complete a viable electrical connection between a semiconductor die and  
28 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  
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           **2.5    Public Information Commitment**

2           In a good faith effort to inform consumers about the risk of exposure to lead in Defendant’s  
3 Products manufactured before the Effective Date and which are not otherwise exempted pursuant to  
4 Section 2.2 above, Defendant hereby commits to provide, within ninety (90) days following the  
5 Effective Date, the following on a web page addressing environmental/regulatory issues on the  
6 Defendant’s website for a period of three years:

7                       Certain motherboards, mainboards, circuit boards and accessories sold  
8                       in California contain lead solder. Lead is a chemical known to the  
9                       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.

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

15          **3.        MONETARY PAYMENTS**

16               **3.1    Penalties Pursuant to Health & Safety Code § 25249.7(b)**

17               Pursuant to Health & Safety Code § 25249.7(b), Defendant shall pay the following civil  
18 penalties: \$2,000.<sup>5</sup>

19               All payments made pursuant to this Section 3.1 shall be payable to “HIRST &  
20 CHANLER LLP in Trust For Michael DiPirro” and shall be delivered to Plaintiff’s counsel at the  
21 following address on or before June 13, 2008:

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

26               <sup>5</sup> The \$2000 statutory penalty amount to be paid by Defendant represents the net of a gross  
27 \$12,000 civil penalty amount, reduced by \$10,000 due to Defendant’s voluntary cooperation with  
28 DiPirro in resolving this matter and its commitment to sell only reformulated (or otherwise  
exempted) branded Products in California pursuant to Section 2.4 above.

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. Defendant 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    Specifically, Defendant shall reimburse DiPirro and his counsel \$19,500 for fees and costs incurred  
16    as a result of investigating, bringing this matter to Defendant's attention, litigating, and negotiating a  
17    settlement in the public interest. The payments required pursuant to this paragraph shall be made  
18    payable to HIRST & CHANLER LLP and shall be delivered on or before June 13, 2008, 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           **4.1       Additional Attorney Fees and Costs in Seeking Judicial Approval.** Pursuant to  
26    Cal. Code Civ. Pro. §§1021 and 1021.5, the Parties agree that Defendant will reimburse Plaintiff's  
27    counsel for their reasonable fees and costs incurred in seeking judicial approval of this agreement in  
28    the trial court in an amount not to exceed \$8,500. Such additional fees and costs, exclusive of fees

1 and costs that may be incurred in the event of an appeal, include, but, are not limited to, fees and  
2 costs to be incurred by Plaintiff's counsel in association with: drafting and filing of a declaration  
3 related to the motion to approve this Consent Judgment, fulfilling the reporting requirements  
4 referenced in Health & Safety Code §25249.7(f), corresponding with opposing counsel and appearing  
5 before the Court with respect to the Consent Judgment approval process. The payment required  
6 pursuant to this paragraph shall be made payable to HIRST & CHANLER LLP following the entry of  
7 the Consent Judgment and shall be delivered to the following address within 30 days of the  
8 submission of a fee and cost statement (or written confirmation of that the \$8,500 cap set forth above  
9 has been exceeded) to Defendant by Plaintiff's counsel:

10 HIRST & CHANLER LLP  
11 Attn: Proposition 65 Controller  
12 2560 Ninth Street  
13 Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

14 **5. RELEASE OF ALL CLAIMS**

15 **5.1 Release of Defendant and Downstream Customers**

16 In further consideration of the promises and agreements herein contained, and for the  
17 payments to be made pursuant to Sections 3, and 4, DiPirro, on behalf of himself, his past and current  
18 agents, attorneys, successors, and/or assignees, and not acting in a representative capacity on behalf  
19 of the general public, hereby waives all rights to institute or participate in, directly or indirectly, any  
20 form of legal action and releases all claims, including, without limitation, all actions, and causes of  
21 action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties,  
22 losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees)  
23 of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "claims"),  
24 against Defendant and each of its downstream distributors, wholesalers, licensors, licensees,  
25 auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies,  
26 corporate affiliates, subsidiaries, successors and assigns, and their respective officers, directors,  
27 attorneys, representatives, shareholders, agents, and employees, sister and parent entities, and, with  
28 respect to Products sold in the NEC brand name, or for which Defendant or its subsidiaries are

1 original equipment manufacturers (collectively “releasees”). This release is limited to those claims  
2 that arise under Proposition 65, as such claims relate to alleged failure to warn about exposures to the  
3 Listed Chemical contained in the Products.

4 The Parties further understand and agree that, except as provided for above (e.g. Defendant’s  
5 parent and corporate affiliates), this release shall not extend upstream to any entities that  
6 manufactured the Products or any component parts thereof, or any distributors or suppliers who sold  
7 the Products or any component parts thereof to Defendant. The foregoing is not, however, intended  
8 to limit any release set forth in, or direct or indirect effect of, prior settlements or judgments Plaintiff  
9 or other enforcers of Proposition 65 have entered into with such upstream entities in terms of their  
10 application to any claims that have been or which may in the future be alleged against Defendant with  
11 respect to the Listed Chemical in any Products sold by such upstream entities to Defendant. This  
12 Agreement also does not release any downstream party (including integrators and retailers) that either  
13 caused exposure to the Listed Chemical from Products not supplied by Defendant or, as to the future,  
14 alters a Product purchased from Defendant in such a way as to cause it to violate the Reformulation  
15 Standards or fails to transmit the requisite warnings provided by Defendant in the manner set forth in  
16 Section 2.1 of in this Agreement.

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

1           **5.2    Defendant's Release of DiPirro**

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

7           **6.    COURT APPROVAL**

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

13          **7.    SEVERABILITY**

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

17          **8.    ATTORNEYS' FEES**

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

21          **9.    GOVERNING LAW**

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

1 **10. NOTICES**

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

6 To DiPirro:

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

12 To Defendant:

13 Jeremy Kashian  
14 Assistant General Counsel  
15 NEC Corporation of America  
16 2890 Scott Boulevard  
17 Santa Clara, CA 95050

18 With email copies to: RFalk@mofo.com; Jeremy.Kashian@necam.com

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

21 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

28 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

DiPirro and Defendant agree to mutually employ their best efforts to support the entry of this  
Agreement as a Consent Judgment and obtain approval of it by the Court in a timely manner. The  
Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed motion is required

1 to obtain judicial approval of this Agreement. Accordingly, the Parties agree to file a Motion to  
2 Approve the Agreement (the "Motion"), which, except for a declaration in support of a finding by the  
3 Court that the amount of attorneys fees and cost reimbursement provided for hereunder is reasonable  
4 (for which Plaintiff's counsel shall solely be responsible), shall be prepared by Defendant's counsel  
5 and reviewed by Plaintiff's counsel prior to filing with the Court. Except as set forth in subsection  
6 3.3 above, Defendant shall have no additional responsibility to Plaintiff's counsel pursuant to Code of  
7 Civil Procedure § 1021.5 or otherwise with regard to reimbursement of any fees and costs incurred  
8 with respect to the preparation and filing of the Motion or with regard to Plaintiff's counsel appearing  
9 for a hearing thereon.

10 **14. MODIFICATION**

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



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HIRST CHANLER

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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>5/12/08</u></p> <p>By: <u><i>Michael DiPirro</i></u> Plaintiff, MICHAEL DIPIRRO</p>	<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: <u>5/21/08</u></p> <p>By: <u><i>Michael</i></u> Defendant, NEC CORPORATION OF AMERICA</p>
<p style="text-align: center;"><b>APPROVED AS TO FORM:</b></p> <p>Date: _____</p> <p>HIRST &amp; CHANLER LLP</p> <p>By: <u><i>David R. Bush</i></u> David R. Bush Attorneys for Plaintiff MICHAEL DIPIRRO</p>	<p style="text-align: center;"><b>APPROVED AS TO FORM:</b></p> <p>Date: <u>5/12/08</u></p> <p>MORRISON &amp; FOERSTER LLP</p> <p>By: <u><i>Robert L. Falk</i></u> Robert L. Falk Attorney for Defendant NEC CORPORATION OF AMERICA</p>

IT IS SO ORDERED.

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