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ECOST.COM and PFSWEB, INC.

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
18 FOR THE COUNTY OF ALAMEDA

19 JAMIE TE'O,  
20  
21 Plaintiff,  
22 v.  
23 ECOST.COM, INC.; PFSWEB, INC.; and  
DOES 1 through 150, inclusive,  
24 Defendants.

Case No. RG 07360982

UNLIMITED JURISDICTION

**[PROPOSED] CONSENT  
JUDGMENT**

Dept: 17  
Judge: Hon. Steven A. Brick  
Action Filed: December 12, 2007  
Trial Date: Not Set

1 **I. INTRODUCTION**

2 **A. 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, Jamie Te’o  
5 (“Plaintiff” or “Te’o”), and Defendants eCost.com, Inc. and PFSweb, Inc. (“eCost, “PFSweb,” or,  
6 collectively “Defendants”), with Te’o and Defendants together being referred to as the “Parties.”

7 **B. Plaintiff**

8 Te’o is an individual residing in San Francisco County in the State of California who seeks to  
9 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 **C. Defendants**

12 Defendants employ ten or more persons and are persons 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 **D. General Allegations**

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

21 **E. Product Description**

22 The products covered by this Consent Judgment are defined as follows: (a) motherboards,  
23 main boards and various other circuit boards (collectively referred to herein for simplicity as  
24 “motherboards”) with lead-containing solder and components, and (b) Peripheral Component

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

1 Interconnect (“PCI”) cards including graphics cards, video cards, network cards, and other various  
2 devices that connect to a computer via a PCI interconnect or slot, where those cards and devices have  
3 lead-solder containing components. Examples of forms of solder include, but are not limited to,  
4 solder, solder balls, solder spheres, solder paste, wave solder, solder joints, die bumps, and flip-chip  
5 bumps. All such motherboards and PCI cards with lead-containing solder are referred to herein as  
6 “Products.”

7 **F. Notices of Violation**

8 On August 30, 2007, Te’o served Defendants, and all public enforcers entitled to receive it  
9 pursuant to Health and Safety Code section 25249.7(d), with a document entitled “60–Day Notice of  
10 Violation” (“Notice”), which provided Defendants and public enforcers with notice that Plaintiff  
11 intended to file and prosecute a lawsuit at the expiration of the 60–day notice period alleging that  
12 Defendants were in violation of California Health and Safety Code section 25249.6 for failing to  
13 warn consumers, workers, and others that the Products that Defendants sold exposed users in  
14 California to the Listed Chemical. Within fifteen (15) days following his execution of this Consent  
15 Judgment, Te’o will have served Defendants and the required public enforcement agencies with  
16 documents entitled “Supplemental Notice of Violation” (“Supplemental Notice”) expressly alleging  
17 that Defendants are in violation of Health and Safety Code section 25249.6 with respect to exposures  
18 to the Listed Chemical arising from various motherboards and PCI cards. Defendants shall use their  
19 best efforts to provide Te’o with information necessary for him to issue them a Supplemental Notice  
20 and support a Certificate of Merit related thereto.

21 **G. Complaint**

22 On December 12, 2007, in the absence of public prosecutor action, Te’o, who is acting in the  
23 interest of the general public in California, filed a complaint (“Complaint” or “Action”) in the  
24 Superior Court in and for the County of Alameda a against Defendants, and DOES 1 through 150,  
25 *Te’o v. eCost.com*, Alameda County Superior Court Case No. RG 07360982, alleging violations of  
26 California Health and Safety Code section 25249.6, based on the alleged exposures to the Listed  
27 Chemical contained in the Products Defendants sold. The Complaint shall be deemed amended by  
28 this Consent Judgment to include the allegations in the Supplemental Notice on the sixty-sixth day

1 following the issuance of the Supplemental Notice if an authorized public prosecutor has not, prior to  
2 that date, filed a Proposition 65 enforcement action as to the Listed Chemical in the additional  
3 Products addressed in the Supplemental Notice; the definitions of Products under this Consent  
4 Judgment shall also not be deemed to include the additional Products addressed in the Supplemental  
5 Notice until that time.

6 **H. No Admission**

7 Defendants deny the material factual and legal allegations contained in Te'o's Notice and  
8 Complaint and maintain that all products they have sold in and/or distributed for sale or use in  
9 California have been and are in compliance with all laws. Nothing in this Consent Judgment shall be  
10 construed as an admission by Defendants of any fact, finding, issue of law, or violation of law, nor  
11 shall compliance with this Consent Judgment constitute or be construed as an admission by  
12 Defendants of any fact, finding, conclusion, issue of law, or violation of law, such being specifically  
13 denied by Defendants. However, this Paragraph shall not diminish or otherwise affect Defendants'  
14 obligations, responsibilities, and duties under this Consent Judgment.

15 **I. Consent to Jurisdiction**

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

20 **J. Effective Date**

21 For purposes of this Settlement Agreement, the term "Effective Date" shall mean July 15,  
22 2008.

23 **II. INJUNCTIVE RELIEF: WARNINGS**

24 After the Effective Date, Defendants shall not sell or ship, in California, Products containing  
25 the Listed Chemical unless such Products are sold or shipped with the clear and reasonable warning  
26 set out in this Section II.A or are exempted pursuant to Section II.B.

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**A. Product Warnings**

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

Where required under this Consent Judgment, Defendants may satisfy their Proposition 65 warning obligations for Products sold to California residents or businesses by providing a warning on the website, provided the warning appears either: (a) on the same web page on which Products are displayed with features described and related details provided; (b) on the same web page as the order form for Products; (c) on the same page as the price for Products; 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: Products with exposed solder may contain 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.

**B. Exceptions To Warning Requirements**

The warning requirements set forth in Section II.A shall not apply to:

- (i) Products (a) manufactured before June 1, 2008 or (b) which are offered as a part for any such Products;
- (ii) Any Products 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 servers, storage or storage and array systems, port replicators, and network

1 infrastructure equipment for switching, signaling and transmission as well as network  
2 management for telecommunications that serve a business's internal non-consumer  
3 market.

4 (iii) Any Products for which Manufacturers provide a Proposition 65 warning label  
5 regarding the Listed Chemical.

6 **III. MONETARY PAYMENTS**

7 **A. Penalties Pursuant to Health & Safety Code § 25249.7(b)**

8 Pursuant to Health and Safety Code section 25249.7(b), the civil penalties shall be paid as  
9 follows:

10 (a) Defendants eCost and PFSweb shall collectively pay a total amount of \$1,000.<sup>2</sup>

11 All payments made pursuant to this Section III.A shall be payable to the "HIRST &  
12 CHANLER LLP in Trust For Jamie Te'o" and shall be delivered to Plaintiff's counsel at the following  
13 address on or before August 1, 2008:

14 HIRST & CHANLER LLP  
15 Attn: Proposition 65 Controller  
16 2560 Ninth Street  
17 Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

18 **B. Apportionment of Penalties Received**

19 All penalty monies received shall be apportioned by Te'o in accordance with Health & Safety  
20 Code section 25192, with 75% of these funds remitted by Te'o to the State of California's Office of  
21 Environmental Health Hazard Assessment and the remaining 25% of these penalty monies retained  
22 by Te'o as provided by Health & Safety Code section 25249.12(d). Te'o shall bear all responsibility  
23 for apportioning and paying to the State of California the appropriate civil penalties paid in  
24 accordance with this Section.

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26 \_\_\_\_\_  
27 <sup>2</sup> The statutory penalty amount to be paid by Defendants represents the net of a gross \$2,500 civil  
28 penalty amount, reduced by \$1,500 due to its voluntary cooperation with Te'o in resolving this matter  
and the fact that it only sold one unit of the product listed in the original 60-day Notice letter.

1 **IV. REIMBURSEMENT OF FEES AND COSTS**

2 The Parties acknowledge that Plaintiff and his counsel offered to resolve this dispute without  
3 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
4 issue to be resolved after the material terms of the agreement had been settled. Defendant then  
5 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been  
6 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to  
7 Plaintiff and his counsel under the private attorney general doctrine codified at Code of Civil  
8 Procedure section 1021.5 for all work performed through the Court's approval of this mutual  
9 agreement. Defendant shall reimburse Plaintiff and his counsel for fees and costs incurred as a result  
10 of investigating, bringing this matter to Defendant's attention, and litigating and negotiating a  
11 settlement in the public interest and seeking the Court's approval of the settlement agreement.  
12 Defendants shall pay Te'o and his counsel \$20,000 for all attorneys' fees, expert and investigation  
13 fees, litigation, and related costs. Defendant shall issue a separate 1099 for fees and costs (EIN: 20-  
14 3929984). The check shall be made payable to HIRST & CHANLER LLP and shall be delivered on  
15 or before August 1, 2008, at the following address:

16  
17 HIRST & CHANLER LLP  
18 Attn: Proposition 65 Controller  
19 455 Capitol Mall, Suite 605  
20 Sacramento, CA 95814

21 **V. RELEASE OF ALL CLAIMS**

22 **A. Release of Defendant and Downstream Customers**

23 In further consideration of the promises and agreements herein contained, and for the  
24 payments to be made pursuant to Sections III and IV, Te'o, on behalf of himself, his past and current  
25 agents, attorneys, successors, and/or assignees, and acting in a representative capacity on behalf of  
26 the general public, hereby waives all rights to institute or participate in, directly or indirectly, any  
27 form of legal action and releases all claims, including, without limitation, all actions, and causes of  
28 action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties,  
losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees)

1 of any nature whatsoever, whether known or unknown, fixed or contingent (collectively “claims”),  
2 against Defendants and each of their downstream customers, owners, purchasers, users, parent  
3 companies, corporate affiliates, subsidiaries, successors and assigns, and their respective officers,  
4 directors, attorneys, representatives, shareholders, agents, and employees, sister and parent entities,  
5 and, with respect to original equipment manufacturers and distributors. This release is limited to  
6 those claims that arise under Proposition 65, as such claims relate to Defendant’s alleged failure to  
7 warn about exposures to the Listed Chemical contained in the Products.

8 The Parties further understand and agree that, except as provided for above, this release shall  
9 not extend upstream to any entities that manufactured the Products or any component parts thereof, or  
10 any distributors or suppliers who sold the Products or any component parts thereof to Defendants.  
11 The foregoing is not, however, intended to limit any release set forth in, or direct or indirect effect of,  
12 prior settlements or judgments Plaintiff or other enforcers of Proposition 65 have entered into with  
13 such upstream entities in terms of their application to any claims that have been or which may in the  
14 future be alleged against any defendant with respect to the Listed Chemical in any Products sold by  
15 such upstream entities to such defendant. This Agreement also does not release any downstream  
16 party (including integrators and retailers) that either caused exposure to the Listed Chemical from  
17 Products not supplied by Defendants or, as to the future, fails to transmit the requisite warnings  
18 provided by Defendants in the manner set forth in Section II.A of in this Agreement.

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

1           **B. Defendants' Release of Te'o**

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

6           **VI. COURT APPROVAL**

7           This Agreement is not effective until it is approved and entered by the Court and shall be null  
8 and void if, for any reason, it is not approved and entered by the Court within one year after it has  
9 been fully executed by all Parties, in which event any monies that have been provided to Plaintiff or  
10 his counsel, pursuant to Section III and/or Section IV above, shall be refunded within fifteen (15)  
11 days after the earlier of Plaintiff (a) receiving written notice that the Court will not approve the  
12 settlement, or notice to that effect; or (b) receiving written notice from Defendants that the one-year  
13 period has expired.

14           **VII. SEVERABILITY**

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

18           **VIII. ATTORNEYS' FEES**

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

22           **IX. GOVERNING LAW**

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

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1 **X. 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 Te'o:

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

10 To eCost and PFSweb:

11 Morris Bienenfeld  
12 Wolff & Samson PC  
One Boland Drive  
West Orange, New Jersey 07052

13 And

14 Peter Hsiao  
15 MORRISON & FOERSTER LLP  
555 West Fifth Street, Suite 3500  
Los Angeles, California 90013-1024

16 And

17 Jessica Owley Lippmann  
18 MORRISON & FOERSTER LLP  
425 Market Street  
19 San Francisco, California 94105-2482

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

23 **XI. COUNTERPARTS; FACSIMILE SIGNATURES**

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

1 **XII. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

2 Te'o agrees to comply with the reporting form requirements referenced in Health and Safety  
3 Code section 25249.7(f).

4 **XIII. ADDITIONAL POST EXECUTION ACTIVITIES**

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

14 **XIV. MODIFICATION**

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

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1 **XV. 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</p> <p>5 <b>AGREED TO:</b></p> <p>6 Date: <u>7-16-08</u></p> <p>7</p> <p>8 By: <u>Jamie Te'o</u> 9 Plaintiff, JAMIE TE'O</p>	<p>5 <b>AGREED TO:</b></p> <p>6 Date: _____</p> <p>7</p> <p>8 By: _____ 9 Defendant, ECOST.COM, INC.</p>
<p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p>	<p>11 <b>AGREED TO:</b></p> <p>12 Date: <u>Jul 3 2008</u></p> <p>13</p> <p>14 By: <u>[Signature]</u> 15 Defendant, PFSWEB, INC.</p>
<p>16 <b>APPROVED AS TO FORM:</b></p> <p>17 Date: <u>7/15/08</u></p> <p>18 HIRST &amp; CHANLER LLP</p> <p>19</p> <p>20 By: <u>[Signature]</u> 21 DANIEL BORNSTEIN 22 Attorneys for Plaintiff 23 JAMIE TE'O</p>	<p>16 <b>APPROVED AS TO FORM:</b></p> <p>17 Date: <u>July 9, 2008</u></p> <p>18 MORRISON &amp; FOERSTER LLP</p> <p>19</p> <p>20 By: <u>[Signature]</u> 21 PETER HSIAO 22 Attorneys for Defendants 23 ECOST.COM, INC.; PFSWEB, INC.</p>

24 IT IS SO ORDERED.

25  
26  
27 Date: \_\_\_\_\_ JUDGE OF THE SUPERIOR COURT

1 **XV. 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: _____</p> <p>9 Plaintiff, JAMIE TE'O</p>	<p><b>AGREED TO:</b></p> <p>Date: _____</p> <p>By:  _____</p> <p>Defendant, ECOSY.COM, INC.</p>
<p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p>	<p><b>AGREED TO:</b></p> <p>Date: _____</p> <p>By: _____</p> <p>Defendant, PFSWEB, INC.</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: _____</p> <p>22 DANIEL BORNSTEIN Attorneys for Plaintiff JAMIE TE'O</p>	<p><b>APPROVED AS TO FORM:</b></p> <p>Date: <u>July 9, 2008</u></p> <p>MORRISON &amp; FOERSTER LLP</p> <p>By:  _____</p> <p>PETER HSIAO Attorneys for Defendants ECOST.COM, INC.; PFSWEB, INC.</p>

24 IT IS SO ORDERED.

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