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 Attorneys for Plaintiff  
 5 JAMIE TE'O

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 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 9 FOR THE COUNTY OF ALAMEDA  
 10 UNLIMITED CIVIL JURISDICTION

11 JAMIE TE'O,  
 12 Plaintiff,  
 13  
 14 v.  
 15 CLT COMPUTERS, INC.; and DOES 1  
 through 150, inclusive,  
 16 Defendants.

Case No. RG-08-08365816  
 ASSIGNED FOR ALL PURPOSES TO  
 JUDGE Richard Keller  
 DEPARTMENT 510  
 STIPULATION AND [PROPOSED]  
 ORDER RE: CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Plaintiff Jamie Te'o ("Te'o" or  
4 "Plaintiff") and Defendant CLT Computers, Inc. (CLT" or "Defendant"), with Te'o and CLT  
5 referred to as the "Parties."

6 **1.2 Plaintiff**

7 Te'o is an individual residing in the State of California who seeks to promote awareness of  
8 exposure to toxic chemicals and improve human health by reducing or eliminating hazardous  
9 substances contained in consumer products.

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Plaintiff alleges that Defendant has manufactured, distributed, and/or sold sound cards with  
16 solder containing lead in the State of California without the requisite health hazard warnings. Lead  
17 is a substance known to cause birth defects and other reproductive harm and is listed pursuant to  
18 Proposition 65. Lead shall be referred to hereinafter as the "Listed Chemical."

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are defined as follows: sound  
21 cards with solder containing lead, such as the *Sabrent SBT-SP6C PCI Sound Card, Part Number*  
22 *AA41270 (#1 88218 00068 2)*. Examples of forms of solder include, but are not limited to, solder,  
23 solder balls, solder spheres, solder paste, wave solder, solder joints, die bumps, and flip-chip  
24 bumps. All such sound cards with solder containing lead shall be referred to hereinafter as  
25 "Products." Products that are integrated into a desktop computer system as a component thereof,  
26 prior to the sale or acquisition of the computer system, shall be referred to hereinafter as  
27 "Integrated Products." Products that are sold individually and not as a component integrated into a  
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1 computer system shall be referred to hereinafter as "Non-integrated Products."

2 **1.6 Notice of Violation**

3 On October 19, 2007, Te'o served Defendant and various public enforcement agencies with  
4 a document entitled "60-Day Notice of Violation" ("Notice") that provided Defendant and such  
5 public enforcers with notice of alleged violations of California Health & Safety Code §25249.6 for  
6 failing to warn consumers, workers and others that the Products that Defendant sold exposed users  
7 in California to the Listed Chemical. To the best of the Parties' knowledge, no public enforcer has  
8 diligently prosecuted the allegations set forth in the Notice.

9 **1.7 Complaint**

10 On January 14, 2008, Te'o, acting in the interest of the general public in California, filed a  
11 complaint ("Complaint" or "Action") in the Superior Court in and for the County of Alameda  
12 against CLT Computers, Inc. and Does 1 through 150, *Te'o v. CLT Computers, Inc.; and DOES 1*  
13 *through 150, inclusive, Alameda Superior Court Case No. RG-08-365816*, alleging violations of  
14 California Health & Safety Code §25249.6, based on the alleged exposures to the listed chemical  
15 contained in the Products sold by Defendant.

16 **1.8 No Admission**

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

25 **1.9 Consent to Jurisdiction**

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

3 **1.10 Effective Date**

4 For purposes of this Consent Judgment, the term "Effective Date" shall mean October 1,  
5 2009.

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

7 **2.1 Reformulation Commitments and Schedule**

8 Except as otherwise provided for in this Agreement, as of the Effective Date, CLT shall  
9 only manufacture and/or distribute Products for sale to California consumers that are Lead Free, as  
10 set forth below. For purposes of this Consent Judgment, "Lead Free" Products shall mean  
11 Products containing less than or equal to one-tenth of one percent (0.1%) lead by weight in each  
12 solder material, including all forms of solder as identified in Section 1.5, unless that material is  
13 embedded in a manner that a consumer or worker ordinarily would not come into contact with the  
14 lead under any reasonably anticipated use.<sup>1</sup>

15 Further, Defendant represents that, as a direct result of the Notice issued on October 19,  
16 2007, it began to immediately implement a process for the reformulation of the Products. In  
17 addition, as a result of the Notice, the company discontinued the sale of *Sabrent SBT-SP6C PCI*  
18 *Sound Card, Part Number AA41270 (#1 88218 00068 2).*

19 **2.2 Public Information Commitment**

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

23 **WARNING:** Certain desktop sound cards sold in California  
24 prior to October 1, 2009, contain lead solder.  
25 Lead is a chemical known to the State of  
26 California to cause cancer and birth defects and  
27 other reproductive harm.

28 <sup>1</sup> For purposes of this Consent Judgment, the lead by weight standard shall not apply to ingredient components of solder, such as glass and ceramic additives, but shall apply to the final solder materials used in the Products.

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Please wash hands after handling those sound cards that utilize lead solder and avoid inhalation of fumes if heating the solder on the product.

**3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE §25249.7(b)**

In settlement of all the claims referred to in this Consent Judgment, Defendant shall pay \$2,000 in civil penalties to be apportioned in accordance with California Health & Safety Code §25192, with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Jamie Te'o as provided by California Health & Safety Code §25249.12(d). Defendant shall issue two separate checks for the penalty payment: (a) one check made payable to "Hirst & Chanler LLP in Trust for OEHHA" in the amount of \$1,500, representing 75% of the total penalty; and (b) one check to "Hirst & Chanler LLP in Trust for Jamie Te'o" in the amount of \$500, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486); and (b) Jamie Te'o, whose information shall be provided five calendar days before the payment is due.

Payment shall be delivered to Plaintiff's counsel on or before October 31, 2009, at the following address:

Hirst & Chanler LLP  
Attn: Proposition 65 Controller  
2560 Ninth Street, Suite 214  
Berkeley, CA 94710

**4. REIMBURSEMENT OF FEES AND COSTS**

**4.1 Attorney Fees and Costs**

The Parties acknowledge that Te'o and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Defendant then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties then reached an accord on the compensation due to Te'o and his counsel under the private attorney general doctrine codified at California Code of Civil Procedure §1021.5 and under principles of contract law for all work performed through this Consent Judgment.

1 Under the private attorney general doctrine and principles of contract law, Defendant shall  
 2 reimburse Te'o and his counsel for fees and costs incurred as a result of investigating, bringing this  
 3 matter to defendant's attention, litigating, and negotiating a settlement in the public interest.  
 4 Defendant shall reimburse Te'o and his counsel \$17,000 in twenty-four equal monthly installments  
 5 of \$708.33 for all attorneys' fees, expert and investigation fees, litigation and related costs. The  
 6 payments shall be made payable to HIRST & CHANLER LLP and shall be delivered on or before  
 7 the sixteenth (16<sup>th</sup>) day of each month beginning in November, 2009, at the following address:

8 Hirst & Chanler LLP  
 9 Attn: Proposition 65 Controller  
 2560 Ninth Street, Suite 214  
 10 Berkeley, CA 94710

11 Defendant shall issue a separate 1099 for fees and costs (EIN: 20-3929984) and shall make the  
 12 check payable to "Hirst & Chanler LLP".

13 **5. RELEASE OF ALL CLAIMS**

14 **5.1 Release of Defendant and Downstream Customers**

15 In further consideration of the promises and agreements herein contained, and for the  
 16 payments to be made pursuant to Sections 3 and 4, Te'o, on behalf of himself, his past and current  
 17 agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general  
 18 public, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal  
 19 action and releases all claims, including, without limitation, all actions, and causes of action, in  
 20 law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or  
 21 expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) of any  
 22 nature whatsoever, whether known or unknown, fixed or contingent (collectively "claims"), against  
 23 Defendant and each of its downstream wholesalers, licensors, licensees, auctioneers, retailers,  
 24 franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates,  
 25 subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders,  
 26 agents, and employees, sister and parent entities, and original equipment manufacturers and  
 27 distributors (collectively "releasees"). This release is limited to those claims that arise under  
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1 Proposition 65, as such claims relate to Defendant's alleged failure to warn about exposures to the  
2 listed chemical contained in the Products.

3 The Parties further understand and agree that this release shall not extend upstream to any  
4 entities that manufactured the Products or any component parts thereof, or any distributors or  
5 suppliers who sold the Products or any component parts thereof to Defendant. This settlement  
6 does not release any downstream party (including integrators and retailers) that either caused  
7 exposure to lead from components not supplied by Defendant or, as to the future, alters the Product  
8 purchased from Defendant in such a way as to cause it to violate the reformulation standards.

9 Te'o, in his individual capacity and *not* in his representative capacity, releases any and all  
10 general claims that he may presently have against Defendant beyond those claims covered in this  
11 subsection. Te'o further waives any and all rights and benefits which he now has, or in the future  
12 may have, conferred upon by virtue of the provisions of Section 1542 of the California Civil Code,  
13 which provides as follows:

14 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
15 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO  
16 EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE  
17 RELEASE, WHICH IF KNOWN BY HIM MUST HAVE  
18 MATERIALLY AFFECTED HIS SETTLEMENT WITH THE  
19 DEBTOR.

20 It is expressly agreed and understood that the general release by Te'o, in his individual  
21 capacity only, of Defendant is a material consideration of Defendant's willingness and decision to  
22 enter into this Consent Judgment.

23 **5.2 Defendant's Release of Te'o**

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

1 **6. COURT APPROVAL**

2 This Consent Judgment is not effective until it is approved and entered by the Court and  
3 shall be null and void if, for any reason, it is not approved and entered by the Court within one  
4 year after it has been fully executed by all Parties. If the Court does not approve the Consent  
5 Judgment, the Parties shall meet and confer as to (and jointly agree on) whether to modify the  
6 language or appeal the ruling. If the Parties do not jointly agree on a course of action to take, then  
7 the case shall proceed in its normal course on the Court's calendar. In the event that this Consent  
8 Judgment is entered by the Court and subsequently overturned by any appellate court or the  
9 Motion to Approve is not ultimately granted, any monies that have been provided to Plaintiff or his  
10 counsel pursuant to Section 3 and/or Section 4 above, shall be refunded within fifteen (15) days of  
11 the appellate decision becoming final. If the Court's approval is ultimately overturned by an  
12 appellate court, the Parties shall meet and confer as to (and jointly agree on) whether to modify the  
13 terms of the Consent Judgment. If the Parties do not jointly agree on a course of action to take,  
14 then the case shall proceed in its normal course on the trial court's calendar.

15 **7. SEVERABILITY**

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

19 **8. ATTORNEYS' FEES**

20 In the event that, after Court approval: (1) Defendant or any third party seeks modification  
21 of this Consent Judgment pursuant to Section 14 below; or (2) Te'o takes reasonable and necessary  
22 steps to enforce the terms of this Consent Judgment, Te'o shall be entitled to his reasonable  
23 attorneys' fees and costs pursuant to CCP §1021.5.

24 **9. GOVERNING LAW**

25 The terms of this Consent Judgment shall be governed by the laws of the State of  
26 California and apply within the State of California. In the event that Proposition 65 is repealed or  
27 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then  
28 Defendant may provide written notice to Te'o of any asserted change in the law, and shall have no



1 further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the  
2 Products are so affected.

3 **10. NOTICES**

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

8 To Defendant:

9 [Defendant's Attorney]

10 To Te'o:

11 Proposition 65 Coordinator  
12 HIRST & CHANLER llp  
13 2560 Ninth Street  
14 Parker Plaza, Suite 214  
15 Berkeley, CA 94710-2565

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

18 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

23 Te'o and his attorneys agree to comply with the reporting form requirements referenced in  
24 Health & Safety Code §25249.7(f).

25 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

26 Te'o and Defendant agree to mutually employ their best efforts to support the entry of this  
27 Agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a  
28 timely manner. The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a  
Motion to Approve the Agreement ("noticed motion") is required to obtain judicial approval of  
this Consent Judgment which Te'o shall draft and file, and Defendant shall join. If any third party

1 objection is filed to the noticed motion, Te'o and Defendant shall work together to file a joint reply  
2 and appear at any hearing before the Court. This provision is a material component of the Consent  
3 Judgment and shall be treated as such in the event of a breach.

4 **14. MODIFICATION**

5 This Consent Judgment may be modified only: (1) by written agreement of the Parties and  
6 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion  
7 of any Party and entry of a modified Consent Judgment by the Court. The Attorney General shall  
8 be served with notice of any proposed modification to this Consent Judgment at least fifteen (15)  
9 days in advance of its consideration by the Court.

10 **15. AUTHORIZATION**

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

<p>15 <b>AGREED TO:</b></p> <p>16 Date: <u>10-13-2009</u></p> <p>17</p> <p>18 By: <u>Jamie Te'o</u> Plaintiff, Jamie Te'o</p>	<p>15 <b>AGREED TO:</b></p> <p>16 Date: _____</p> <p>17</p> <p>18 By: _____ Defendant, CLT Computers, Inc.</p>


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<p>15 <b>AGREED TO:</b></p> <p>16 Date: _____</p> <p>17</p> <p>18 By: _____</p> <p>19 Plaintiff, Jamie Te'o</p>	<p>15 <b>AGREED TO:</b></p> <p>16 Date: <u>10/9/2009</u></p> <p>17</p> <p>18 By: </p> <p>19 Defendant, CLT Computers, Inc.</p>
<p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>