

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Michael DiPirro (“DiPirro” or “plaintiff”) and ASUS Computer International, (“ASUS” or “defendant”), with DiPirro and ASUS referred to as the “parties.”

1.2 DiPirro

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

1.3 ASUS

ASUS employs ten or more persons and is a person in the course of doing business in relation to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et seq.* (Proposition 65).

1.4 General Allegations

DiPirro alleges that ASUS has manufactured, distributed, and/or sold motherboards with solder containing lead in the State of California without the requisite health hazard warnings. Lead is a substance known to cause birth defects and other reproductive harm and is listed pursuant to Proposition 65. Lead shall be referred to hereinafter as the “listed chemical.”

1.5 Product Description

The Products that are covered by this Settlement Agreement are defined as computer motherboards with lead-containing solder, including but are not limited to solder, solder balls, solder spheres, solder paste, wave solder, solder joints, die bumps, and flip-chip bumps. All such

motherboards with lead-containing solder, and components utilized with such motherboards that contain lead solder, shall be referred to hereinafter as "Products" and include but are not limited to those Products identified in Exhibit A, attached hereto.

1.6 Notices of Violation

On January 12, 2007, DiPirro served ASUS and various public enforcement agencies with a document titled "60-Day Notice of Violation" (Notice) that provided ASUS and such public enforcers with notice that alleged that ASUS was in violation of California Health & Safety Code §25249.6 for failing to warn consumers, workers and others that the Products that ASUS sold exposed users in California to the listed chemical.

1.7 No Admission

ASUS denies the material factual and legal allegations contained in DiPirro's Notice and maintains that all Products that it has sold and distributed in California have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by ASUS of any fact, finding, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by ASUS of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by ASUS. However, this Section shall not diminish or otherwise affect ASUS's obligations, responsibilities and duties under this Settlement Agreement.

1.8 Effective Date

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

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

2.1 **Compliance with Reformulation Standard**

After the Effective Date, all Products sold, shipped, or offered for sale in California shall comply with the Reformulation Standard set forth in Section 2.2 unless such Products are exempt from the Reformulation Standard pursuant to Section 2.3(a).

2.2 **Reformulation Standard**

Reformulated Products are defined as follows: any Product containing less than or equal to one-tenth of one percent (0.1%) lead by weight in each solder material, including all forms of solder as identified in Section 1.5, unless that material is embedded in a manner that a consumer or worker ordinarily would not come into contact with the lead under any reasonably anticipated use.¹

2.3 **Products in Inventory**

(a) **Exemption.** The Reformulation Standard set forth in Section 2.2 shall not apply to any Products manufactured before the Effective Date (“Products in Inventory”), subject to Sections 2.3(b) and 2.4.

(b) **Package Insert or Label Warning.** If a Product in Inventory that does not comply with the Reformulation Standard set forth in Section 2.2 is shipped directly to an individual in California, a warning shall be provided with the Product by either: (i) affixing the following warning statement to the packaging, labeling, or directly to the Product; (ii) inserting a warning card measuring at least 4” x 6” in the shipping carton which contains the following warning statement; or (iii) placing the following warning statement on the packing slip or

¹ For purposes of this Settlement Agreement, 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.

customer invoice on the line directly below the description of the Product on the packing slip or customer invoice:

WARNING: The materials used in this product contain lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

Please wash hands after handling and avoid inhalation of fumes if heating the solder on the product.

2.4 Public Information Commitment

Subject to the exception for Products in Inventory before the Effective Date of this agreement set forth in Section 2.3(a), Products sold by ASUS after July 15, 2008 will comply with the Reformation Standard set forth in Section 2.2, above. In a good faith effort to inform the public about the risk of exposure to lead in Products sold before July 15, 2008, ASUS hereby commits to provide the following warning on its main products web page for a period of one year:

WARNING: Certain desktop motherboards sold in California prior to July 15, 2008, contain lead solder. Lead is a chemical known to the State of California to cause birth defects and other reproductive harm.

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

Immediately following the above warning, ASUS shall provide a hyperlink titled "List of Motherboards Containing Lead Solder" which will link to a web page that ASUS shall create and maintain for a period of one year. On that page, ASUS shall provide the following warning:

WARNING: The following desktop motherboards sold in California prior to July 15, 2008, contain lead solder. Lead is a chemical known to the State of California to cause birth defects and other reproductive harm.

Please wash hands after handling these motherboards that utilize lead solder and avoid inhalation of fumes if heating the solder on these products.

Immediately following that warning, ASUS shall list all Products that contain lead solder which ASUS sold in California before July 15, 2008. ASUS shall identify each Product by model number.

3. MONETARY PAYMENTS

3.1 Payments Pursuant to Health & Safety Code §25249.7(b)

Pursuant to Health & Safety Code §25249.7(b), the total payments assessed shall be \$25,000, which shall be apportioned as follows:

(a) ASUS shall receive a credit of \$7,500 in light of its prompt cooperation with DiPirro in resolving this matter and its commitment to sell only reformulated Products in California;

(b) ASUS shall pay \$5,000 on or before July 1, 2008;

(c) ASUS shall pay \$7,500 on or before July 31, 2008. This payment will be waived provided that ASUS complies with the public information commitment on or before July 15, 2008, as set forth in Section 2.4 and submits a compliant web link to DiPirro for his review; and

(d) ASUS shall pay the remaining \$5,000 on or before July 31, 2008. This payment will be waived provided that ASUS submits a report to DiPirro on or before July 15, 2008 confirming the Products compliance with the Reformulation Standard set forth in Section 2.2 (subject to the exception set forth in Section 2.3(a)) and the Package Insert or Label Warning requirement set forth in Section 2.3(b).

All payments made pursuant to this Section shall be payable to the "HIRST & CHANLER LLP in Trust For Michael DiPirro" and shall be delivered to DiPirro's counsel at the following address:

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

3.2 Apportionment of Penalties Received

All payments received pursuant to Health & Safety Code §25249.7(b) shall be apportioned by DiPirro in accordance with Health & Safety Code §25192, with 75% of these funds remitted by DiPirro to the State of California's Office of Environmental Health Hazard Assessment and the remaining 25% of these penalty monies retained by DiPirro as provided by Health & Safety Code §25249.12(d). DiPirro shall bear all responsibility for apportioning and paying to the State of California the appropriate payments made in accordance with this Section.

4. REIMBURSEMENT OF FEES AND COSTS

The parties acknowledge that DiPirro 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. ASUS 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 DiPirro and his counsel under the private attorney general doctrine codified at California Code of Civil Procedure §1021.5 for all work performed. Under the private attorney general doctrine, ASUS shall reimburse DiPirro and his counsel for fees and costs incurred as a result of investigating, bringing this matter to ASUS's attention, litigating, and negotiating a settlement in the public interest. ASUS shall pay DiPirro and his counsel \$23,000 for all attorneys' fees, expert and

investigation fees, litigation and related costs. The payment shall be made payable to HIRST & CHANLER LLP and shall be delivered on or before July 1, 2008 at the following address:

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

5. RELEASE OF ALL CLAIMS

5.1 Release of ASUS and Downstream Customers

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4, DiPirro, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions, and causes of 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) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "claims"), against ASUS and each of its downstream wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, sister and parent entities, and original equipment manufacturers and distributors (collectively "releasees"). This release is limited to those claims that arise under Proposition 65, as such claims relate to any alleged failure to warn about exposures to the listed chemical contained in the Products.

The parties further understand and agree that this release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or

suppliers who sold the Products or any component parts thereof to ASUS. This settlement does not release any downstream party (including integrators and retailers) that either caused exposure to lead from components not supplied by ASUS or, as to the future, alters the Product purchased from ASUS in such a way as to cause it to violate the Reformulation Standard.

5.2 ASUS's Release of DiPirro

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

6. SEVERABILITY

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

7. ATTORNEYS' FEES

In the event that a dispute arises under this agreement, the prevailing party shall be entitled to his reasonable attorneys' fees and costs pursuant to CCP §1021.5.

8. GOVERNING LAW

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

9. **NOTICES**

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

To ASUS:

Kathleen H. Goodhart
COOLEY GODWARD KRONISH LLP
101 California Street, 5th Floor
San Francisco, CA 94111-5800

To DiPirro:

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

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

10. **COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

12. **MODIFICATION**

This Settlement Agreement may be modified only by written agreement of the parties.

13. AUTHORIZATION

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

AGREED TO:

Date: 6/16/08

By: 
MICHAEL DIPIRRO

AGREED TO:

Date: _____

By: _____
ASUS COMPUTER INTERNATIONAL

APPROVED AS TO FORM:

Date: _____
HIRST & CHANLER LLP

By: _____
Christopher M. Martin
Attorneys for MICHAEL DIPIRRO

APPROVED AS TO FORM:

Date: _____
COOLEY GODWARD KRONISH LLP

By: _____
Kathleen H. Goodhart
Attorneys for ASUS COMPUTER
INTERNATIONAL

10.

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

AGREED TO:

AGREED TO:

Date: _____

Date: _____

By: _____
MICHAEL DIPIRRO

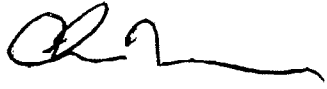
By: _____
ASUS COMPUTER INTERNATIONAL

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: 6/16/08
HIRST & CHANLER LLP

Date: _____
COOLEY GODWARD KRONISH LLP

By: 
Christopher M. Martin
Attorneys for MICHAEL DIPIRRO

By: _____
Kathleen H. Goodhart
Attorneys for ASUS COMPUTER
INTERNATIONAL

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MICHAEL DIPIRRO

AGREED TO:

Date: _____

By:  _____
ASUS COMPUTER INTERNATIONAL

APPROVED AS TO FORM:

Date: _____
HIRST & CHANLER LLP

By: _____
Christopher M. Martin
Attorneys for MICHAEL DIPIRRO

APPROVED AS TO FORM:

Date: 6/17/08 _____
COOLEY GODWARD KRONISH LLP


By:  _____
Kathleen H. Goodhart
Attorneys for ASUS COMPUTER
INTERNATIONAL

Exhibit A

The Products that are covered by this Settlement Agreement include, but are not limited to:

MODEL #	ASUS Part#	UPC code
P5E3 PREMIUM/WIFI-AP	90-MIB3L0-G0AAY00Z	610839159000
P5E3 DELUXE/WIFI-AP	90-MBB706-G0AAY00Z	610839156306
RAMPAGE FORMULA	90-MIB3S0-G0AAY00Z	610839159178
MAXIMUS EXTREME	90-MBB7Q0-G0AAY00Z	610839156955
Striker II EXTREME	90-MIB2T0-G0AAY00Z	610839160181
Striker II Formula	90-MBB890-G0AAY00Z	610839158539
Striker II NSE	90-MIB2Z0-G0AAY00Z	
P5E	90-MBB7X0-G0AAY00Z	610839156740
P5E-VM DO	90-MBB7E0-G0AAY00Z	610839156023
P5K PREMIUM/WIFI-AP	90-MBB761-G0AAY00Z	610839153886
P5K DELUXE/WIFI-AP	90-MBB6F5-G0AAY00Z	610839152049
P5K-E	90-MBB6U5-G0AAY00Z	610839156870
P5K EPU	90-MBB67A-G0AAY00Z	610839160570
P5K SE EPU	90-MBB6Q5-G0AAY00Z	610839160600
P5K-VM	90-MBB6N0-G0AAY00Z	610839152858
P5KPL-CM	90-MIB470-G0AAY00Z	610839160020
P5E-VM HDMI	90-MBB7H0-G0AAY00Z	610839156290
P5N-MX	90-MBB7V0-G0AAY00Z	610839156894
P5N-MX/Bulk	90-MBB7V1-G0UBY00Z	610839159666
P5N-T Deluxe	90-MBB880-G0AAY00Z	610839158263
P5N-D	90-MIB3B0-G0AAY00Z	610839159123
P5N-EM HDMI	90-MBB840-G0AAY00Z	610839156900
P5B-VM SE<GREEN>	90-MBB4RY-G0AAY00Z	610839149766
P5L-MX <GREEN>	90-MBB540-G0AAYZ 90-MBB540-G0EAYZ	610839142477
P5GC-VM/TPM <GREEN>	90-MBB6L0-G0AAY00Z	610839153640

MODEL #	ASUS Part#	UPC code
P5GC-VM <GREEN>	90-MBB6L0-G0AAY00Z	610839153640
P5GC-MX FSB1333<GREEN>	90-MBB60K-G0AAY0GZ 90-MBB60K-G0AAY0KZ	610839155651
P5GC-MX FSB1333<GREEN>/Bulk	90-MBB60K-G0UBY0KZ	610839155668
P5SD2-VM	90-MBB7B0-G0AAY0KZ	610839154845
P5K WS	90-MBB6M0-G0AAY00Z	610839152223
P5K64 WS	90-MBB6G0-G0AAY00Z	610839152261
P5NT WS	90-MBB5L0-G0AAY00Z	610839149230
P5E3 WS PRO	90-MBB7K0-G0AAY00Z	610839154869
P5E WS PRO	90-MBB7R0-G0AAY00Z	610839155682
M3A32-MVP DLX	90-MIB215-G0AAY00Z	610839158133
M3A78-EMH HDMI	90-MIB3P0-G0AAY00Z	610839159871
M3A	90-MIB2Q0-G0AAY0GZ	610839156696
M3N-HT DLX/Mempipe	90-MIB3H1-G0AAY00Z	610839159710
M3N-HD		
M3N78-VM		
CROSSHAIR II FORMULA	90-MIB3V0-G0AAY10Z	610839160044
M2N-SLI Deluxe <GREEN>	90-MIB030-G0AAYZ 90-MIB030-G0EAYZ 90-MIB030-G0UAYZ	610839137589
M2N-E <GREEN>	90-MIB0K0-G0UAYZ	610839140343
M2N-VM DVI <GREEN>	90-MIB270-G0AAY00Z	610839154852
M2N-SLI <GREEN>	90-MIB320-G0AAY0GZ	610839156498
M2A-VM <GREEN>	90-MIB1M5-G0AAY0KZ	610839149438
M2A-VM <GREEN> Bulk 10 PCs Pack	90-MIB1M5-G0AAY0KZ	610839149438
M2N-MX SE PLUS<GREEN>	90-MIB2I0-G0AAY00Z	610839156986
M2R32-MVP<GREEN>	90-MIB0H0-G0UAYZ	610839141074
MAXIMUS FORMULA	90-MBB7M5-G0AAY00Z	610839156382
M3A32-MVP DLX/WiFi	90-MIB211-G0AAY00Z	610839157433

MODEL #	ASUS Part#	UPC code
M2-Crosshair <GREEN>	90-MIB050-G0AAYZ 90-MIB050-G0UAY	610839137718
M2N32-SLI DELUXE/WIFI-AP<GREEN>	90-MIB041-G0AAYZ	610839139712
M2A-VM HDMI <GREEN>	90-MIB1M0-G0AAY0KZ	610839149643
P5K3 DELUXE/WIFI-AP	90-MBB6DA-G0AAY00Z	610839152001
P5K-E/WIFI-AP	90-MBB6U0-G0AAY00Z	610839152582
P5KC	90-MBB660-G0AAY00Z	610839152278
P5K-V	90-MBB650-G0AAY00Z	610839152209
P5K	90-MBB670-G0AAY00Z	610839151714
P5K SE	90-MBB6Q0-G0AAY00Z 90-MBB6Q0-G0EAY00Z	610839152827
P5KPL-VM	90-MBB790-G0AAY00Z	610839154296
P5N-E SLI <GREEN>	90-MBB5G0-G0AAY00Z 90-MBB5G0-G0EAY00Z	610839146710
P5B <GREEN>	90-MBB4E5-G0AAYKZ 90-MBB4E5-G0AAYZ 90-MBB4E5-G0UAYZ	610839139774
P5B SE <GREEN>	90-MBB6V0-G0AAY00Z	610839154968
P5B-MX	90-MBB4T5-G0AAYZ	610839140558

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