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CP TECHNOLOGIES

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

14

COUNTY OF ALAMEDA

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16

JAMIE TE'O,

Case No. RG 07360984

17

Plaintiff,

18

v.

ASSIGNED FOR ALL PURPOSES TO
JUDGE Winifred Y. Smith
DEPARTMENT 23

19

CP TECHNOLOGIES; and DOES 1 through 150,
20 inclusive,

**[PROPOSED] CONSENT
JUDGMENT**

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Defendants.

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1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment (also referred to herein as “Agreement”) is entered into by and
4 between plaintiff, Jamie Te’o (“Plaintiff” or “Te’o”), and defendant CP Technologies (“CP” or
5 “Defendant”), with Te’o and Defendant together being referred to as the “Parties.”

6 **1.2 Plaintiff**

7 Te’o is an individual residing in San Francisco County in the State of California who seeks to
8 promote awareness of exposure to toxic chemicals and improve human health by reducing or
9 eliminating hazardous substances contained in various consumer and commercial 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 & Safety
13 Code §§ 25249.6 et seq. (“Proposition 65”).

14 **1.4 General Allegations**

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

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as follows: (a) controller
22 cards with lead-containing solder, including Hi-Speed USB 2.0 PCI Card CP-U2P-05; (b) external
23 hard drives, including, CP-U2H-3H, CP-U2S-3G, and CP-UL-300; (c) card readers, including CP-
24 UC-103 and CP-UC-108; (d) cables, adapters, and hubs, including CP-UH-135, CP-UH-707, CP-
25 UP-05, and CP-US-03 (referred to herein collectively as “Products”). Examples of forms of solder
26 include, but are not limited to, solder, solder balls, solder spheres, solder paste, wave solder, solder
27 joints, die bumps, and flip-chip bumps. All of the Products are sold by CP individually and, with the
28 exception of integrated circuits, are not sold by CP as a component integrated into another Product.

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1.6 Notices of Violation

On August 30, 2007, Te'o served CP and all public enforcers entitled to receive it pursuant to Health & Safety Code § 25249.7(d), with a document entitled "60-Day Notice of Violation" ("Notice") that provided Defendant and such public enforcers with notice that Plaintiff intended to file and prosecute a lawsuit at the expiration of the 60-day notice period alleging that CP was in violation of California Health & Safety Code § 25249.6 for failing to warn consumers, workers and others that controller cards that CP sold exposed users in California to the Listed Chemical.

Within fifteen (15) days following his execution of this Consent Judgment, Te'o will have served CP and the required public enforcement agencies with documents entitled "Supplemental Notice of Violation" ("Supplemental Notice") expressly alleging that CP is in violation of Health & Safety Code § 25249.6 with respect to exposures to the Listed Chemical arising from various external hard drives, card readers, cables, adapters, and hubs. CP shall use its best efforts to provide Te'o with information necessary for him to issue it a Supplemental Notice and support a Certificate of Merit related thereto.

1.7 Complaint

On December 12, 2007, in the absence of public prosecutor action, Te'o, who is acting in the interest of the general public in California, filed a complaint ("Complaint" or "Action") in the Superior Court in and for the County of Alameda against CP, and Does 1 through 150, *Te'o v. CP Technologies; and DOES 1 through 150, inclusive*, Alameda County Superior Court Case No. RG 07360984, alleging violations of California Health & Safety Code §25249.6, based on the alleged exposures to the Listed Chemical contained in the Products CP sold or distributed. The Complaint shall be deemed amended by this Consent Judgment to include the allegations in the Supplemental Notice on the sixty-sixth (66th) day following the issuance of the Supplemental Notice if an authorized public prosecutor has not, prior to that date, filed a Proposition 65 enforcement action as to the Listed Chemical in the additional Products addressed in the Supplemental Notice; the definitions of Products under this Consent Judgment shall also not be deemed to include the additional Products addressed in the Supplemental Notice until that time.

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1.8 No Admission

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

1.9 Consent to Jurisdiction

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

1.10 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean July 30, 2008.

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

After the Effective Date, Defendant shall not sell, ship, or offer to be shipped for sale, in California, Products containing the Listed Chemical, unless such Products are sold or shipped with the clear and reasonable warning set out in this Section 2.1, comply with the "Reformulation Standards" set forth in Section 2.3, or are otherwise exempt pursuant to Section 2.2.

2.1 Product Warnings

(a) Any warning issued for Products pursuant to this Section 2.1 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. Any warning issued pursuant to this Section 2.1 shall be

1 provided in a manner such that the consumer or user understands to which specific Product the
2 warning applies, so as to minimize if not eliminate the chance that an over warning situation will
3 arise.

4 **(b) Package Insert or Label Warning.** Where required under this Consent
5 Judgment, CP may satisfy its Proposition 65 warning obligations for Products that are sold by
6 telephone, direct sale or sales to distributors who are California residents or businesses by providing a
7 warning with the product when it is shipped to an address in California. For the sales of all such
8 Products, a warning may be provided with the Product when it is shipped directly to an individual or
9 business in California by either: (i) affixing the following warning language to the packaging,
10 labeling, or directly to a specific Product; (ii) inserting a warning card measuring at least 4" x 6" in
11 the shipping carton which contains the following warning language; or (ii) placing the following
12 warning statement on a written price quotation or the packing slip or customer invoice on the line
13 directly below the description of the Product on the price quotation, packing slip or customer invoice:

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

17 Alternatively, CP may place the following language on the price quotation, order acknowledgment,
18 packing slip or invoice and specifically identify the Product in lettering of the same size or larger as
19 the description of the Product:

20 **WARNING:** The solder used in the following product(s) contain lead ,
21 a chemical known to the State of California to cause
22 cancer, birth defects or other reproductive harm. Please
wash hands after handling and avoid inhalation of fumes
if directly heating the solder.

23 *[list products for which warning is given].*

24 **(c) Sales to Known Integrators**

25 Where defendant sells products to individuals or entities within the State of California that it
26 knows to be in the business of integrating its products into computer systems for resale
27 ("integrators"), defendant shall notify the integrator that the product's solder contains lead, and that
28 the integrator should comply with the warning requirements of Proposition 65 prior to the resale of

1 the integrated product. Defendant shall maintain a record that defendant provided each integrator
2 within the State of California with the above-mentioned written instructions and shall make said
3 record concerning a particular integrator available for Te'o's inspections upon request, but only if the
4 following conditions have been met: i) Te'o or his counsel have independently identified the
5 integrator as having sold a product that has integrated defendant's product; ii) Te'o or his counsel
6 have a good faith belief that the integrator has failed to comply with the warning requirements of
7 Proposition 65; and iii) the integrator has verified in writing that it obtained the products in question
8 from defendant or that, in the alternative, Te'o can independently verify that the serial number and/or
9 identifying mark on the products in question evidence that those products were obtained from
10 defendant.

11 **2.2 Exceptions To Warning Requirements**

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

- 13 (i) Any Product ordered by CP before July 30, 2008;
- 14 (ii) Reformulated Products (as defined in Section 2.3 below); or
- 15 (iii) Any Product in which the only possible point of exposure to the Listed Chemical is
16 embedded in a manner that a consumer or worker would not come into contact with
17 the Listed Chemical under any reasonably anticipated use, such as Products which are
18 not expected to be serviced by employees or users other than those with specialized
19 information technology and related occupational health and safety training, including
20 servers, storage or storage and array systems, port replicators, and network
21 infrastructure equipment for switching, signaling and transmission as well as network
22 management for telecommunications that serve a business's internal non-consumer
23 market.

24 **2.3 Reformulated Products**

25 "Reformulated Products" are defined as follows: any Product containing less than or equal to
26 one-tenth of one percent (0.1%) lead by weight in each solder material, including all forms of solder
27 as identified in Section 1.5, unless that material is embedded in a manner that a consumer or worker
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1 ordinarily would not come into contact with the lead under any reasonably anticipated use;¹ and any
2 Product that otherwise complies with the European Union’s Reduction of Hazardous Substances
3 Directive (“RoHS Directive”) and is not otherwise exempt from the RoHS Directive. The warnings
4 required pursuant to Section 2.1 above shall not be required for Reformulated Products.

5 **2.4 Reformulation Commitment**

6 CP hereby commits that all Products that it offers for sale in California after the Effective
7 Date shall qualify as Reformulated Products pursuant to Section 2.3 or be exempt from the warning
8 requirements of Section 2.1 pursuant to Section 2.2, or shall be accompanied by a warning in
9 compliance with Section 2.1. Further, as of the Effective Date, CP commits to use its commercially
10 reasonable efforts to reformulate all other products so that they qualify as Reformulated Products
11 pursuant to Section 2.3, except for (i) products exempted pursuant to Section 2.2(i) or (iii) above, or
12 (ii) products purchased by customers who specifically require products containing lead, as to which
13 products warnings will be issued pursuant to Section 2.1.

14 **3. MONETARY PAYMENTS**

15 **3.1 Penalties Pursuant to Health & Safety Code § 25249.7(b)**

16 Pursuant to Health & Safety Code § 25249.7(b), the total civil penalty assessed shall be
17 \$12,000 which shall be apportioned and paid as follows:

- 18 (a) Defendant shall receive a credit of \$6,000 against this amount in light of its
19 prompt cooperation with Te’o in resolving this matter and its commitment to
20 sell reformulated (or otherwise exempted) Products in California pursuant to
21 Section 2.4 above;

22 _____
23 ¹ 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 a Product, 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 processors,
27 solders used to complete a viable electrical connection between a semiconductor die and carrier within an
28 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 Product 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 Product in question.

1 (b) Defendant shall pay \$6,000 in civil penalties by sending payment via certified mail to
2 the address provided below within 10 days of August 15, 2008; and all payments made pursuant to
3 this Section 3.1 shall be apportioned in accordance with California Health & Safety Code §25192,
4 with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard
5 Assessment and the remaining 25% of these penalty monies remitted to Te'o as provided by
6 California Health & Safety Code §25249.12(d). Defendant shall issue two separate checks for the
7 penalty payment: (a) one check made payable to Hirst & Chanler LLP in Trust for the State of
8 California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of \$4,500,
9 representing 75% of the total penalty and (b) one check to Hirst & Chanler LLP in Trust for
10 (plaintiff) in the amount of \$1,500, representing 25% of the total penalty. Two separate 1099s shall
11 be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010,
12 Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$4,500. The second 1099 shall be
13 issued to Te'o in the amount of \$1,500, whose address and tax identification number shall be
14 furnished, upon request, five calendar days before payment is due.

15 **4. REIMBURSEMENT OF FEES AND COSTS**

16 The Parties acknowledge that Te'o and his counsel offered to resolve this dispute without
17 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
18 issue to be resolved after the material terms of the agreement had been settled. Defendant then
19 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
20 finalized. The parties reached an accord on the compensation due to Te'o and his counsel under the
21 private attorney general doctrine and principles of contract law. Under these legal principles CP
22 shall reimburse Te'o's counsel for fees and costs, incurred as a result of investigating, bringing this
23 matter to Defendant's attention, litigating, and negotiating a settlement in the public interest and
24 seeking the Court's approval of the settlement agreement. Defendant shall pay Te'o and his counsel
25 \$29,000 for all attorneys' fees, expert and investigation fees, litigation and related costs. The
26 payment shall be made payable to HIRST & CHANLER LLP and shall be delivered to Plaintiff's
27 counsel within 10 days of August 15, 2008, at the following address:
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1 HIRST & CHANLER LLP
2 Attn: Proposition 65 Controller
3 2560 Ninth Street
4 Parker Plaza, Suite 214
5 Berkeley, CA 94710-2565

6 CP shall issue a separate 1099 for fees and cost paid in the amount of \$29,000 to Hirst & Chanler
7 LLP, 455 Capitol Mall, Suite 605, Sacramento, CA 95814 (EIN: 20-3929984).

8 **5. RELEASE OF ALL CLAIMS**

9 **5.1 Release of Defendant and Downstream Customers**

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

25 The Parties further understand and agree that, except as provided for above, this release shall
26 not extend upstream to any entities that manufactured the Products or any component parts thereof, or
27 any distributors or suppliers who sold the Products or any component parts thereof to Defendant. The
28 foregoing is not, however, intended to limit any release set forth in, or direct or indirect effect of,

1 prior settlements or judgments Plaintiff or other enforcers of Proposition 65 have entered into with
2 such upstream entities in terms of their application to any claims that have been or which may in the
3 future be alleged against any Defendant with respect to the Listed Chemical in any Products sold by
4 such upstream entities to Defendant. This Agreement also does not release any downstream party
5 (including integrators and retailers) that either caused exposure to the Listed Chemical from Products
6 not supplied by Defendant or, as to the future, alters a Product purchased from Defendant in such a
7 way as to cause it to violate the Reformulation Standards or fails to transmit the requisite warnings
8 provided by Defendant in the manner set forth in Section 2.1 of in this Agreement.

9 This Consent Judgment is also a full, final and binding resolution between Plaintiff, acting on
10 behalf of the public interest pursuant to California Health & Safety Code § 25249.7(d), and CP and
11 its releasees, on the other hand, of any violation of Proposition 65 and of all claims made or which
12 could have been made in the Notice, *Supplemental Notice*, and/or Complaint based on the facts
13 asserted therein for CP's alleged failure to provide warnings for exposure to the Listed Chemical in
14 the Products (as defined in Paragraph 1.5 above). Compliance by CP with the terms of this Consent
15 Judgment resolves any issue, now and in the future, concerning compliance by CP and its releasees,
16 with the requirements of Proposition 65 as to warnings for exposure to the Listed Chemical in the
17 Products (as defined in Paragraph 1.5 above).

18 **5.2 Defendant's Release of Te'o**

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

23 **6. COURT APPROVAL**

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

1 **7. SEVERABILITY**

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

5 **8. ATTORNEYS' FEES**

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

9 **9. GOVERNING LAW**

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

15 **10. NOTICES**

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

20 To Te'o:

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

26 To CP:

27 Adrian Collins
28 CP Technologies
 17110 Armstrong Avenue
 Irvine, CA 92614

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

3 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

10 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

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

20 **14. MODIFICATION**

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

26 **15. AUTHORIZATION**

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

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<p style="text-align: center;">AGREED TO:</p> <p>Date: <u>8/14/08</u></p> <p>By: <u><i>Jamie Te'o</i></u> Plaintiff, JAMIE TE'O</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: <u>8/18/08</u></p> <p>By: <u><i>[Signature]</i></u> Defendant, CP TECHNOLOGIES</p>
<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: <u>8/14/08</u></p> <p style="text-align: center;">HIRST & CHANLER LLP</p> <p>By: <u><i>[Signature]</i></u> Daniel M. Bernstein Attorneys for Plaintiff JAMIE TE'O</p>	<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: <u>8/19/08</u></p> <p style="text-align: center;">SNELL & WILMER L.L.P.</p> <p>By: <u><i>[Signature]</i></u> Sean M. Sherlock Attorneys for Defendant CP TECHNOLOGIES</p>

IT IS SO ORDERED.

Date: _____ JUDGE OF THE SUPERIOR COURT