

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

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| ERIC SCHONNING, on behalf of himself and all others similarly situated, | X | |
| | : | CASE NO. RG 03109308 |
| | : | |
| Plaintiff, | : | <u>COMPLEX LITIGATION</u> |
| v. | : | |
| | : | NOTICE OF PENDENCY OF |
| ABIT COMPUTER (USA) CORPORATION, | : | CLASS ACTION, PROPOSED |
| and DOES 1-100, inclusive, | : | SETTLEMENT AND |
| | : | HEARING |
| Defendant. | : | |
| | X | |

TO: ALL PERSONS OR ENTITIES WITHIN THE UNITED STATES WHO PURCHASED ONE OF THE FOLLOWING ABIT MOTHERBOARD MODELS DURING THE PERIOD JANUARY 1, 1999 TO THE PRESENT: BE6, BE6II, BF6, BX-133, KA7, KA7-100, SE6, VH6, VH6II, VH6T, VP6, KT7-RAID, KT7A, KT7A-RAID, VL6, VT6X4, SA6R, AND BX133-RAID.

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF A CLASS ACTION INVOLVING THE FOLLOWING ABIT MOTHERBOARD MODELS: BE6, BE6II, BF6, BX-133, KA7, KA7-100, SE6, VH6, VH6II, VH6T, VP6, KT7-RAID, KT7A, KT7A-RAID, VL6, VT6X4, SA6R, AND BX133-RAID.

IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS, THIS NOTICE CONTAINS INFORMATION ABOUT YOUR RIGHTS UNDER THE PROPOSED SETTLEMENT.

This Notice (“Notice”) has been published pursuant to an Order of the Superior Court for Alameda County, California. The purpose of this Notice is to inform you of the proposed Settlement (“Settlement”) of this class action litigation and of a hearing to be held by the Court. This Notice describes the Settlement, any rights you may have in connection with the Settlement, the Fairness Hearing to be held by the Court, and what action you may take if you are a member of the Settlement Class.

Subject to certain restrictions and conditions set forth in the Settlement Agreement dated December 3, 2004 (the “Settlement Agreement”), the Settlement, among other things, provides Settlement Class Members who make valid and timely claims as set forth in the Settlement Agreement with the benefits described below.

The Settlement Class is defined as:

All persons or entities within the United States who purchased one of the following Abit Motherboard models during the period January 1, 1999 to the present: BE6, BE6II, BF6, BX133, KA7, KA7-100, SE6, VH6, VH6II, VH6T, VP6, KT7-RAID, KT7A, KT7A-RAID, VL6, VT6X4, SA6R, and BX133-RAID. The Settlement Class shall not include any persons or entities purchasing Abit Motherboards for resale purposes.

The factual statements in this Notice are based on information provided to the Court and are not findings of the Court on the merits of the claims or defenses asserted by the parties. This Notice is only intended to inform you of your rights relating to the Litigation and the Settlement.

I. THE LITIGATION

The above-captioned litigation (“the Litigation”) is pending before the California Superior Court for the County of Alameda (the “Court”). Representative Plaintiff, Eric Schonning, brought the Litigation on his behalf and on behalf of a Class of purchasers of the Abit Motherboards and the General Public. The Representative Plaintiff is represented by the attorneys listed in Section V below. The Representative Plaintiff alleges that Abit Computer (USA) Corporation (“Abit”) sold select models of its motherboards with

allegedly defective capacitors (as defined in the Settlement Class). In the Complaint, the Representative Plaintiff asserts claims for money damages and injunctive relief based upon a theory of breach of express warranty, violation of California's Consumer Legal Remedies Act (Civil Code § 1750 *et seq.*), and violation of California's Unfair Business Practices Act (Business & Professions Code §§ 17200 *et seq.* and 17500 *et seq.*). Abit has denied and continues to deny each and every claim and contention alleged in the Litigation. Abit has denied and continues to deny all charges of wrongdoing or liability against it arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Litigation. Abit has further asserted and continues to assert that, at all times, it has acted in compliance with any and all applicable laws.

Class Counsel conducted an investigation prior to and during the prosecution of the Litigation regarding the sale of Abit Motherboards with defective capacitors. This investigation has included, among other things, issuing requests for documents relating to the claims in this Litigation and reviewing Abit's responses, reviewing documents produced by Abit, and consulting with plaintiff's expert.

Class Counsel believes that the terms of the Settlement in the Settlement Agreement are fair, adequate, and in the best interests of the Settlement Class. Class Counsel reached this conclusion after investigating and considering, among other things, the strengths and weaknesses of Settlement Class Members' claims against Abit, the uncertainties inherent in this complex litigation, and the benefits provided by Abit immediately following the initiation of this lawsuit and pursuant to the Settlement Agreement. While vigorously denying any liability in this Action, Abit considers it desirable and in its best interests that this Action be dismissed on the terms set forth in the Settlement Agreement and the proposed Final Judgment in order to avoid further expense, inconvenience, distraction, and to avoid protracted litigation.

This Class Notice does not indicate any expression or opinion by the Court concerning the merits of the respective claims or defenses asserted in the Action. This Notice is sent merely to advise you of the proposed Settlement and of your rights in connection therewith.

II. SUMMARY OF PROPOSED SETTLEMENT TERMS

A Settlement has been reached in the Litigation between the Representative Plaintiff and Abit, as set forth in the Settlement Agreement, on file with the Court. Class Counsel believes that the Settlement is fair, just, reasonable, adequate, and in the best interest of the Settlement Class. The Court preliminarily approved the Settlement on December 8, 2004. This Notice provides only a summary of the terms of the Settlement Agreement. A copy of the Settlement Agreement may be obtained as set forth in Section VI of this Notice.

The Settlement provides the following benefit:

1. Relief to the Class. The Settlement provides that Abit will repair or replace the capacitors on the affected models at no cost to the purchaser. Purchasers will be instructed to send their motherboard(s) to Abit or its designated repair facilities and Abit will repair or replace the capacitors. All shipping costs will be paid by Abit. Abit will extend the warranty on the repairs and on the capacitors for a period of two years following the repair. For those members of the Class who have incurred direct out-of-pocket expenses in connection with the repair of a motherboard affected by a capacitor failure, Abit will reimburse such Class Members for the cost of repairs, parts, labor, and handling charges in connection with repairing affected capacitors, provided such costs are reasonable and verifiable.

2. Class Membership Proof Requirements. In order to receive the benefit of the Settlement, each Settlement Class Member must file a claim by visiting the Settlement website at www.abitsettlement.com. The website will provide instructions on filing a claim online. Class Members who file their claims online will also be required to mail in a signature page and proof of purchase of one of the Abit motherboards included in this Settlement. To request a Claim Form via mail, please mail your request to Abit Motherboard Class Action Settlement, P.O. Box 91145, Seattle, WA 98111-9245. To request a Claim Form via phone, please contact the toll-free number for this Settlement at 1-800-275-0174. After the Claim Form is returned, the purchaser will receive instructions on how to obtain the repairs. In order to be eligible for the relief provided for in the Settlement Agreement, Class Members must submit a completed Claim Form by February 15, 2006.

3. Releases by Settlement Class Members. Upon entry by the Court of the Judgment, each Settlement Class Member, and if appropriate, each of their respective Related Parties, shall be deemed to have fully, finally, and forever released, relinquished, and discharged any and all claims or causes of action which were or could have been alleged in the Complaint, including Unknown Claims (as defined in the Settlement Agreement) and claims for consequential damages (e.g., lost data) related thereto, that have been or could have been asserted against the Released Persons based upon or related to (1) the sale of Abit Motherboards with allegedly

defective capacitors; or (2) the facts, conduct, omissions, transactions, occurrences, or matters which were alleged in the Complaint filed in this Litigation. "Released Persons" means Abit and all Related Parties, including any person that has marketed, advertised, distributed, or sold an Abit Motherboard for the following models: BE6, BE6II, BF6, BX-133, KA7, KA7-100, SE6, VH6, VH6II, VH6T, VP6, KT7-RAID, KT7A, KT7A-RAID, VL6, VT6X4, SA6R, and BX133-RAID.

4. Attorneys' Fees and Costs. At the Hearing described below, Class Counsel will apply for an award of attorneys' fees, plus reimbursement of expenses that were advanced in connection with the Litigation. The Defendant has agreed to pay Class Counsel's reasonable attorneys' fees and costs up to a maximum of \$225,000. To date, Class Counsel has not received any payment for their services in conducting this Litigation on behalf of the Class Representative and the Settlement Class Members, nor has Class Counsel been reimbursed for their out-of-pocket expenses. The fee requested by Class Counsel would partially compensate them for their efforts in achieving relief for the benefit of the Settlement Class, for their risk in undertaking the representation on a contingency basis, and continued work on behalf of the Settlement Class during the life of the Settlement.

5. Incentive Awards. Plaintiffs will request from the Court an incentive award, not to exceed \$1000, for the Named Plaintiff for his time and effort in pursuing the claims on behalf of himself and on behalf of all Settlement Class Members and the General Public. This award will be paid from the funds to be paid to Class Counsel (Section 4, above).

6. Conditions of Settlement and Settlement Class Members Entitlement to Recovery. The Settlement is conditioned upon the occurrence of certain events. Those events include the Court's approval of the Settlement and entry of the Judgment. If, for any reason, any one of the conditions described in the Settlement Agreement is not met, the Settlement Agreement may be terminated, and if terminated, will become null and void, and the parties will be restored to their respective positions in the Litigation. In that event, Class Members will not receive any benefit provided by the Settlement. Furthermore, you should be aware that an appeal or an objection to the Settlement could significantly delay final Court approval and the relief contemplated in the Settlement Agreement.

III. RIGHTS AND OPTIONS OF SETTLEMENT CLASS MEMBERS

1. If you wish to participate in the Settlement and share in the benefits of the Settlement. If you are a member of the Settlement Class, you will be required to visit the Class Settlement website at www.abitsettlement.com following the Effective Date of the Settlement and provide the required information. If you have any questions about the Settlement or the Hearing, you may visit the Class Settlement website at www.abitsettlement.com.

2. If you do not wish to participate in the Settlement and share in the benefits of the Settlement. If you do not wish to be included in the Settlement Class and you do not wish to participate in the proposed Settlement or be bound by the Settlement terms, you must request to be excluded by May 1, 2005. To request exclusion you must write a letter to Class Counsel (listed in Section IV below) that states (1) the name of the Litigation (*Schonning v. Abit Computer (USA) Corporation et al., Civil Action No. RG 03109308*); (2) your name; (3) your address; and (4) your desire to be excluded from the proposed Settlement. The exclusion request must be personally signed by you on your behalf or on behalf of the entity you represent. In addition, a copy of the exclusion request must be sent to Abit's Counsel (listed in Section IV below).

NO REQUEST FOR EXCLUSION WILL BE CONSIDERED UNLESS ALL THE INFORMATION DESCRIBED IS INCLUDED AND THE REQUEST IS POSTMARKED ON OR BEFORE MAY 1, 2005.

If you validly request exclusion from the Settlement Class (a) you will be excluded from the Settlement Class; (b) you will not share in the benefits of the Settlement; (c) you will not be bound by any Judgment entered in the Litigation; and (d) you will not be precluded, by reason of your decision to request exclusion, from otherwise prosecuting an individual claim, if timely, against Abit or its Related Parties based on the matters complained of in the Litigation.

IV. SETTLEMENT HEARING AND RIGHT TO APPEAR

A final approval hearing (the "Hearing") will be held on June 1, 2005 at 11:00 a.m. before the Honorable Ronald M. Sabraw at the Superior Court of the State of California, County of Alameda, located at Rene C. Davidson Alameda County Courthouse, 1225 Fallon Street, Oakland, CA 94612, in Department 22. At that time, the Court will determine whether (1) the proposed Settlement is fair, just, reasonable, adequate, and in the best interests of the Settlement Class; (2) whether Class Counsel has adequately represented the Settlement Class; (3) whether the Settlement Class should be certified as a Class Action; (4) whether Class Counsel's request for fees and costs should be approved; and (5) whether the Litigation should be dismissed with prejudice. At the Hearing, the Court will also consider whether the Settlement Agreement has been made in good faith for purposes of California Code of Civil Procedure Section 877.6 and whether a bar as to all claims against Abit and its Related Parties by non-parties for indemnification or contribution, however denominated, should be imposed. The Court may adjourn or continue the Hearing without further notice to the Settlement Class.

Any member of the Settlement Class who has not timely requested exclusion from the Settlement Class may, but is not required to, appear at the Hearing, either in person or through his own attorney, to comment on or object to the matters referenced above. However, no such person shall be heard unless his or her comment or objection is made in writing and is filed, together with copies of all other papers and briefs presented in support of the comment or objection, with the Court no later than May 1, 2005 and served on both Class Counsel and Counsel for Abit on or before that same date at the following addresses:

Class Counsel:

Marc H. Edelson
HOFFMAN & EDELSON, LLC
45 West Court Street
Doylestown, PA 18901

Geoffrey C. Rushing
SAVERI & SAVERI, INC.
111 Pine Street, Suite 1700
San Francisco, CA 94111-5630

David Arbogast
SHELLER, LUDWIG & BADEY
1528 Walnut Street, 3rd Floor
Philadelphia, PA 19102

Abit's Counsel:

E. Patrick Ellisen
FOLEY & LARDNER LLP
One Maritime Plaza, Sixth Floor
San Francisco, CA 94111-3409

Such comments or objections must include (1) the name of the Litigation (*Schonning v. Abit Computer (USA) Corporation et al.*, Civil Action No. RG 03109308); (2) your name; (3) your address; (4) the serial number from your Abit Motherboard or legible copy of your Purchase Receipt; (5) your telephone number; and (6) your comment or objection to the proposed Settlement. Unless otherwise ordered by the Court, any Settlement Class Member who does not object to or oppose the Settlement in the manner provided shall be deemed to have waived all such objections.

If you move after receiving this Notice or if it was misaddressed, you should supply your correct address to Class Counsel.

V. CLASS COUNSEL

The Court has appointed the following attorney to serve as Class Lead Counsel:

Marc H. Edelson
HOFFMAN & EDELSON, LLC
45 West Court Street
Doylestown, PA 18901

VI. EXAMINATION OF PAPERS AND INQUIRIES

This Notice contains only a summary of the terms of the Settlement and does not provide a description of all the terms and conditions of the Settlement. For a more detailed statement of the matters involved in this Litigation, you may review the pleadings, the Settlement Agreement, and other papers filed in this Litigation, which may be inspected at the Office of the Clerk of the Superior Court of the State of California, County of Alameda, Rene C. Davidson Alameda County Courthouse, 1225 Fallon Street, Oakland, CA 94612.

Please do not call or write the Court or the Clerk of the Court as neither can answer any questions or provide legal advice regarding the Settlement or your rights therein.

DATED: December 8, 2004.

By Order of the Superior Court of California for the County of Alameda.