

1 FRANCIS O. SCARPULLA (41059)
CRAIG C. CORBITT (83251)
2 CHRISTOPHER T. MICHELETTI (136446)
JANE YI (257893)
3 ZELLE HOFMANN VOELBEL & MASON LLP
44 Montgomery Street, Suite 3400
4 San Francisco, CA 94104
Telephone: (415) 693-0700
5 Facsimile: (415) 693-0770
fscarpulla@zelle.com
6 ccorbitt@zelle.com

7 *Lead and Liaison Counsel for*
Indirect Purchaser Class

8 (Additional Counsel listed on signature page)
9

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **OAKLAND DIVISION**

13 IN RE STATIC RANDOM ACCESS
14 MEMORY (SRAM) ANTITRUST
LITIGATION

Case No. 4:07-md-1819 CW
MDL No. 1819

**FIFTH CONSOLIDATED AMENDED CLASS
ACTION COMPLAINT FOR VIOLATIONS OF
FEDERAL AND STATE ANTITRUST LAWS,
STATE CONSUMER PROTECTION LAWS
AND STATE COMMON LAW OF UNJUST
ENRICHMENT**

15
16 This Document Relates to:
17 ALL INDIRECT PURCHASER ACTIONS
18

JURY TRIAL DEMANDED

19
20
21 **PREAMBLE**

22 Pursuant to the Court’s February 14, 2008 Order, the Third Consolidated Amended
23 Complaint amended and included claims the Court dismissed but gave Indirect-Purchaser Plaintiffs
24 leave to amend. Indirect-Purchaser Plaintiffs did not replead any claims dismissed without leave to
25 amend. However, by failing to replead these claims, Indirect-Purchaser Plaintiffs do not waive their
26 right to appeal this Court’s dismissal with prejudice of those claims.

27 Plaintiffs, by their attorneys, bring this civil action for damages and injunctive relief on
28 behalf of themselves and all others similarly situated against the Defendants named herein, and

1 demanding a trial by jury, complain and allege as follows:

2 **JURISDICTION AND VENUE**

3 1. This complaint is filed under Section 16 of the Clayton Act, 15 U.S.C. §26, to obtain
4 injunctive relief for violations of Section 1 of the Sherman Act, 15 U.S.C. §1, to recover damages
5 or restitution under state antitrust and consumer protection laws, and to recover the costs of suit,
6 including reasonable attorneys' fees, for the injuries that Plaintiffs and all others similarly situated
7 sustained as a result of the Defendants' violations of those laws.

8 2. The Court has jurisdiction over the federal claim under 28 U.S.C. §§1331 and 1337.
9 The Court has jurisdiction over the state law claims under 28 U.S.C. §1367 because those claims
10 are so related to the federal claim that they form part of the same case or controversy. The Court
11 also has jurisdiction over the state law claims under 28 U.S.C. §1332 because the amount in
12 controversy for the Class exceeds \$5,000,000, and there are members of the Class who are citizens
13 of a different state than the Defendants.

14 3. Venue is proper in this District under 15 U.S.C. §22 and 28 U.S.C. §1391 because
15 Defendants reside, transact business, or are found within this District, and a substantial part of the
16 events giving rise to the claims arose in this District.

17 4. The activities of the Defendants and their co-conspirators, as described herein, were
18 within the flow of, were intended to, and did have a substantial effect on the foreign and interstate
19 commerce of the United States. Defendants' conspiracy further substantially affected commerce in
20 California, and accordingly, Defendants and their co-conspirators have purportedly availed
21 themselves of California's laws.

22 **DEFINITIONS**

23 5. As used herein, the term "Static Random Access Memory" ("SRAM") includes all
24 types of static random access memory sold during the Class Period. SRAM is a type of memory
25 that is faster and more reliable than dynamic random access memory ("DRAM"). The term
26 "static" is derived from the fact that SRAM does not need to be refreshed like DRAM. While
27 DRAM supports access times of about 60 nanoseconds, SRAM can give access times of 10
28 nanoseconds. In addition, its cycle time is much shorter than that of DRAM because it does not

1 need to pause between accesses.

2 6. As used herein, the term “computer” refers to both desktop and mobile computers
3 (primarily laptop computers), workstations and servers.

4 7. As used herein, the term “Class Period” means the time period November 1, 1996
5 through at least December 31, 2006.

6 **THE PARTIES**

7 **A. The Plaintiffs.**

8 8. Plaintiff Javier Oyola Alemany is a resident of Puerto Rico who indirectly purchased
9 SRAM manufactured and/or sold by one or more of the Defendants or their co-conspirators during
10 the Class Period, for end use and not for resale, and was injured as a result of Defendants’ illegal
11 conduct.

12 9. Plaintiff James Allen is a resident of Massachusetts who indirectly purchased SRAM
13 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
14 and not for resale, and was injured as a result of Defendants’ illegal conduct. Pursuant to Mass.
15 Gen. L. 93A, §9, Plaintiff mailed a written demand for relief to Defendants at least 30 days prior to
16 filing his initial complaint. No Defendant responded with a reasonable tender of settlement.

17 10. Plaintiff Justus Austin III is a resident of Michigan who indirectly purchased SRAM
18 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
19 and not for resale, and was injured as a result of Defendants’ illegal conduct.

20 11. Plaintiff Renae Awakuni is a resident of Hawaii who indirectly purchased SRAM
21 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
22 and not for resale and primarily for personal, household, or family purposes, and was injured as a
23 result of Defendants’ illegal conduct. Pursuant to Hawaii Rev. Stat. §480-13.3, Plaintiff filed her
24 initial Complaint under seal and served a copy on Hawaii’s Attorney General within seven days.
25 Following expiration of the statutory review period, the Hawaii Attorney General informed the
26 United States District Court for the District of Hawaii that it would not proceed with the action or
27 file its own action involving the same or similar claims as set forth in Plaintiff’s initial Complaint.

28 12. Plaintiff Michael Francis Ayers is a resident of Massachusetts who indirectly

1 purchased SRAM from one or more of the Defendants or their co-conspirators during the Class
2 Period, for end use and not for resale, and was injured as a result of Defendants' illegal conduct.

3 13. Plaintiff Kenneth Bagwell is a resident of Michigan who indirectly purchased SRAM
4 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
5 and not for resale, and was injured as a result of Defendants' illegal conduct.

6 14. Plaintiff Michael Baranic is a resident of California who indirectly purchased SRAM
7 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
8 and not for resale, and was injured as a result of Defendants' illegal conduct.

9 15. Plaintiff James W. Barnes is a resident of California who indirectly purchased SRAM
10 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
11 and not for resale, and was injured as a result of Defendants' illegal conduct.

12 16. Plaintiff Ronnie Barnes is a resident of Florida who indirectly purchased SRAM from
13 one or more of the Defendants or their co-conspirators during the Class Period, for end use and not
14 for resale, and was injured as a result of Defendants' illegal conduct.

15 17. Plaintiff Robert C. Bedore, Jr. is a resident of Maine who indirectly purchased SRAM
16 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
17 and not for resale and primarily for personal, family, or household purposes, and was injured as a
18 result of Defendants' illegal conduct.

19 18. Plaintiff Joshua A. Belke is a resident of Wisconsin who indirectly purchased SRAM
20 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
21 and not for resale, and was injured as a result of Defendants' illegal conduct.

22 19. Plaintiff Todd Berg is a California resident who indirectly purchased SRAM from one
23 or more of the Defendants or their co-conspirators during the Class Period, for end use and not for
24 resale, and was injured as a result of Defendants' illegal conduct.

25 20. Plaintiff Ron Birdsong, individually, and on behalf of Birdsong Air Conditioning and
26 Heating Services, is a resident of Tennessee who indirectly purchased SRAM from one or more of
27 the Defendants or their co-conspirators during the Class Period, for end use and not for resale, and
28 was injured as a result of Defendants' illegal conduct.

1 21. Plaintiff Terry Bisel is a resident of California who indirectly purchased SRAM from
2 one or more of the Defendants or their co-conspirators during the Class Period, for end use and not
3 for resale, and was injured as a result of Defendants' illegal conduct.

4 22. Plaintiff Rebecca Bly is a resident of the District of Columbia who indirectly
5 purchased SRAM from one or more of the Defendants or their co-conspirators during the Class
6 Period, for end use and not for resale and primarily for personal, family, or household use, and was
7 injured as a result of Defendants' illegal conduct.

8 23. Plaintiff Michael Brooks is a resident of California who indirectly purchased SRAM
9 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
10 and not for resale, and was injured as a result of Defendants' illegal conduct.

11 24. Plaintiff Carlos R. Carrillo is a resident of Puerto Rico who indirectly purchased
12 SRAM from one or more of the Defendants or their co-conspirators during the Class Period, for
13 end use and not for resale, and was injured as a result of Defendants' illegal conduct.

14 25. Plaintiff Ward Cater is a resident of North Dakota who indirectly purchased SRAM
15 from one or more of the Defendants or their co-conspirators during the Class Period, for the end
16 use and not for resale, and was injured as a result of Defendants' illegal conduct.

17 26. Plaintiff Scott L. Clarke is a resident of Maine who indirectly purchased SRAM from
18 one or more of the Defendants or their co-conspirators during the Class Period, for end use and not
19 for resale and primarily for personal, family, or household purposes, and was injured as a result of
20 Defendants' illegal conduct.

21 27. Plaintiff Culinary Workers Union Local 226 is a resident of Nevada that indirectly
22 purchased SRAM from one or more Defendants or their co-conspirators during the Class Period,
23 for end use and not for resale, and was injured as a result of Defendants' illegal conduct.

24 28. Plaintiff Dona Culver is a resident of the District of Columbia who indirectly
25 purchased SRAM from one or more Defendants or their co-conspirators during the Class Period,
26 primarily for personal, family or household purposes, and was injured as a result of Defendants'
27 illegal conduct.

28

1 29. Plaintiff Christopher C. Crawford is a resident of South Dakota who indirectly
2 purchased SRAM from one or more of the Defendants or their co-conspirators during the Class
3 Period, for end use and not for resale, and was injured as a result of Defendants' illegal conduct.

4 30. Plaintiff Romney Darkins is a resident of California who indirectly purchased SRAM
5 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
6 and not for resale, and was injured as a result of Defendants' illegal conduct.

7 31. Plaintiff Ryan Edwards is a resident of Florida who indirectly purchased SRAM from
8 one or more of the Defendants or their co-conspirators during the Class Period, for end use and not
9 for resale, and was injured as a result of Defendants' illegal conduct.

10 32. Plaintiff Judd Eliasoph is a resident of California who indirectly purchased SRAM
11 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
12 and not for resale, and was injured as a result of Defendants' illegal conduct.

13 33. Plaintiff Fairmont Orthopedics & Sports Medicine, P.A. is a Minnesota company that
14 indirectly purchased SRAM from one or more of the Defendants or their co-conspirators during the
15 Class Period, for end use and not for resale, and was injured as a result of Defendants' illegal
16 conduct.

17 34. Plaintiff Cristi Ferguson is a resident of Kansas who indirectly purchased SRAM
18 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
19 and not for resale and primarily for personal, family, household, business or agricultural purposes,
20 and was injured as a result of Defendants' illegal conduct.

21 35. Plaintiff Patricia Fitzsimmons is a resident of Minnesota who indirectly purchased
22 SRAM from one or more of the Defendants or their co-conspirators during the Class Period, for
23 end use and not for resale, and was injured as a result of Defendants' illegal conduct.

24 36. Plaintiff Alicia Foley is a resident of Massachusetts who indirectly purchased SRAM
25 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
26 and not for resale, and was injured as a result of Defendants' illegal conduct. Pursuant to Mass.
27 Gen. L. 93A, §9, Plaintiff mailed a written demand for relief to Defendants at least 30 days prior to
28 filing her initial complaint. No Defendant responded with a reasonable tender of settlement.

1 37. Plaintiff Craig Friedson is a resident of the District of Columbia who indirectly
2 purchased SRAM in Maryland from one or more of the Defendants or their co-conspirators during
3 the Class Period, for end use and not for resale and primarily for personal, household, or family
4 use, and was injured as a result of Defendants' illegal conduct.

5 38. Plaintiff Scott Friedson is a resident of Arizona who indirectly purchased SRAM
6 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
7 and not for resale, and was injured as a result of Defendants' illegal conduct.

8 39. Plaintiff Frank Gertzen is a resident of Pennsylvania who indirectly purchased SRAM
9 from one or more of the Defendants or their co-conspirators during the Class Period, primarily for
10 personal, family or household purposes, and was injured as a result of Defendants' illegal conduct.

11 40. Plaintiff Chris Giauque is a resident of Utah who indirectly purchased SRAM from
12 one or more of the Defendants or their co-conspirators during the Class Period, for end use and not
13 for resale, and was injured as a result of Defendants' illegal conduct.

14 41. Plaintiff Jacob Greenwell is a resident of California who indirectly purchased SRAM
15 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
16 and not for resale, and was injured as a result of Defendants' illegal conduct.

17 42. Plaintiff Janet Hall is a resident of Alaska who indirectly purchased SRAM from one
18 or more of the Defendants and their co-conspirators during the Class Period, for end use and not for
19 resale, and was injured as a result of Defendants' illegal conduct.

20 43. Plaintiffs Thomas and Donna Hark are residents of West Virginia who indirectly
21 purchased SRAM from one or more of the Defendants or their co-conspirators during the Class
22 Period, for end use and not for resale, and were injured as a result of Defendants' illegal conduct.

23 44. Plaintiff Robert S. Harmon is a resident of Arkansas who indirectly purchased SRAM
24 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
25 and not for resale, and was injured as a result of Defendants' illegal conduct.

26 45. Plaintiff Joseph Hastings is a resident of Mississippi who indirectly purchased SRAM
27 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
28 and not for resale, and was injured as a result of Defendants' illegal conduct.

1 46. Plaintiff Heather Hawk is a resident of New Mexico who indirectly purchased SRAM
2 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
3 and not for resale, and was injured as a result of Defendants' illegal conduct.

4 47. Plaintiff Kenneth W. Hebert is a resident of Idaho who indirectly purchased SRAM
5 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
6 and not for resale, and was injured as a result of Defendants' illegal conduct.

7 48. Plaintiff Paul Hickman is a resident of Montana who indirectly purchased SRAM
8 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
9 and not for resale, and was injured as a result of Defendants' illegal conduct.

10 49. Plaintiff Penny Hochstein is a South Dakota resident who indirectly purchased
11 SRAM from one or more of the Defendants or their co-conspirators during the Class Period, for
12 end use and not for resale, and was injured as a result of Defendants' illegal conduct.

13 50. Plaintiff Curtis Hogue is a resident of North Carolina who indirectly purchased
14 SRAM from one or more of the Defendants or their co-conspirators during the Class Period, for
15 end use and not for resale, and was injured as a result of Defendants' illegal conduct.

16 51. Plaintiff Rhonda L. Jacobs is a resident of West Virginia who indirectly purchased
17 SRAM from one or more of the Defendants or their co-conspirators during the Class Period, for
18 end use and not for resale, and was injured as a result of Defendants' illegal conduct.

19 52. Plaintiff Karl Johnson is a resident of West Virginia who indirectly purchased SRAM
20 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
21 and not for resale, and was injured as a result of Defendants' illegal conduct.

22 53. Plaintiff Susan Juliffs is a resident of Iowa who indirectly purchased SRAM from one
23 or more of the Defendants or their co-conspirators during the Class Period, for end use and not for
24 resale, and was injured as a result of Defendants' illegal conduct.

25 54. Plaintiff Karol Juskiewicz is a resident of California who indirectly purchased SRAM
26 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
27 and not for resale, and was injured as a result of Defendants' illegal conduct.

28 55. Plaintiff Nicolas Kane is a resident of Wisconsin who indirectly purchased SRAM

1 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
2 and not for resale, and was injured as a result of Defendants' illegal conduct.

3 56. Plaintiff Michael Katz is a resident of California who indirectly purchased SRAM
4 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
5 and not for resale, and was injured as a result of Defendants' illegal conduct.

6 57. Plaintiff Allen Robert Kelley is a resident of Nevada who indirectly purchased SRAM
7 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
8 and not for resale, and was injured as a result of Defendants' illegal conduct.

9 58. Plaintiff Kevin Kicia is a resident of Rhode Island who indirectly purchased SRAM
10 from one or more of the Defendants or their co-conspirators during the Class Period, primarily for
11 personal, family or household purposes and was injured as a result of Defendants' illegal conduct.

12 59. Plaintiff Sean Koch is a resident of California who indirectly purchased SRAM from
13 one or more of the Defendants or their co-conspirators during the Class Period, for end use and not
14 for resale, and was injured as a result of Defendants' illegal conduct.

15 60. Plaintiff Henry Kornegay is a resident of Montana who indirectly purchased SRAM
16 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
17 and not for resale, and was injured as a result of Defendants' illegal conduct.

18 61. Plaintiff Ronald A. Kramer is a resident of Maine who indirectly purchased SRAM
19 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
20 and not for resale and primarily for personal, family, or household purposes, and was injured as a
21 result of Defendants' illegal conduct.

22 62. Plaintiff Mark Lambert is a resident of West Virginia who indirectly purchased
23 SRAM from one or more of the Defendants or their co-conspirators during the Class Period, for
24 end use and not for resale, and was injured as a result of Defendants' illegal conduct.

25 63. Plaintiff Paul Luttamus is a resident of West Virginia who indirectly purchased
26 SRAM from one or more of the Defendants or their co-conspirators during the Class Period, for
27 end use and not for resale, and was injured as a result of Defendants' illegal conduct.

28 64. Plaintiff Alfred Livingston is a resident of Mississippi who indirectly purchased

1 SRAM from one or more of the Defendants or their co-conspirators during the Class Period, for
2 end use and not for resale, and was injured as a result of Defendants' illegal conduct.

3 65. Plaintiff David Loomis is a resident of West Virginia who indirectly purchased
4 SRAM from one or more of the Defendants or their co-conspirators during the Class Period, for
5 end use and not for resale, and was injured as a result of Defendants' illegal conduct.

6 66. Plaintiff Stephanie Luekel is a resident of Massachusetts who indirectly purchased
7 SRAM from one or more of the Defendants or their co-conspirators during the Class Period, for
8 end use and not for resale, and was injured as a result of Defendants' illegal conduct. Pursuant to
9 Mass. Gen. L. 93A, §9, Plaintiff mailed a written demand for relief to Defendants at least 30 days
10 prior to filing her initial complaint. No Defendant responded with a reasonable tender of
11 settlement.

12 67. Plaintiff Laura Magnuson is a resident of New York who indirectly purchased SRAM
13 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
14 and not for resale, and was injured as a result of Defendants' illegal conduct.

15 68. Plaintiff Lawrence Markey is a resident of California who indirectly purchased
16 SRAM from one or more of the Defendants or their co-conspirators during the Class Period, for
17 end use and not for resale, and was injured as a result of Defendants' illegal conduct.

18 69. Plaintiff Terrence Martin is a resident of Michigan who indirectly purchased SRAM
19 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
20 and not for resale, and was injured as a result of Defendants' illegal conduct.

21 70. Plaintiff Kym Masters, a California resident, indirectly purchased SRAM from one or
22 more of the Defendants or their co-conspirators during the Class Period, for end use and not for
23 resale, and was injured as a result of Defendants' illegal conduct.

24 71. Plaintiff Mark Miles is a resident of Arkansas who indirectly purchased SRAM from
25 one or more of the Defendants or their co-conspirators during the Class Period, for end use and not
26 for resale, and was injured as a result of Defendants' illegal conduct.

27 72. Plaintiff Roman Muñoz is a resident of California who indirectly purchased SRAM
28 from one or more of the Defendants or their co-conspirators during the Class Period, for end use

1 and not for resale, and was injured as a result of Defendants' illegal conduct.

2 73. Plaintiff Allen Nassiff is a resident of Vermont who indirectly purchased SRAM from
3 one or more of the Defendants or their co-conspirators during the Class Period, for end use and not
4 for resale, and was injured as a result of Defendants' illegal conduct.

5 74. Plaintiff Jo Nash is a California resident who indirectly purchased SRAM from one or
6 more of the Defendants or their co-conspirators during the Class Period, for end use and not for
7 resale, and was injured as a result of Defendants' illegal conduct.

8 75. Troung Nguyen is a Washington resident who indirectly purchased SRAM from one
9 or more of the Defendants or their co-conspirators during the Class Period, for end use and not for
10 resale, and was injured as a result of Defendants' illegal conduct.

11 76. Plaintiff Blaine Olson is a Montana resident who indirectly purchased SRAM from
12 one or more of the Defendants or their co-conspirators during the Class Period, for end use and not
13 for resale, and was injured as a result of Defendants' illegal conduct.

14 77. Plaintiff Cade Oyadomori is a resident of Hawaii who indirectly purchased SRAM
15 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
16 and not for resale and primarily for personal, family, or household purposes, and was injured as a
17 result of Defendants' illegal conduct. Pursuant to Hawaii Rev. Stat. §480-13.3, Plaintiff filed his
18 initial Complaint under seal and served a copy on Hawaii's Attorney General within seven days.
19 Following expiration of the statutory review period, the Hawaii Attorney General informed the
20 United States District Court for the District of Hawaii that it would not proceed with the action or
21 file its own action involving the same or similar claims as set forth in Plaintiff's initial Complaint.

22 78. Plaintiff Jai Paguirigan is a resident of Wisconsin who indirectly purchased SRAM
23 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
24 and not for resale, and was injured as a result of Defendants' illegal conduct.

25 79. Plaintiff Penobscot Eye Care is Maine company that indirectly purchased SRAM
26 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
27 and not for resale, and was injured as a result of Defendants' illegal conduct.

28 80. Plaintiff David Perez is a resident of California who indirectly purchased SRAM from

1 one or more of the Defendants or their co-conspirators during the Class Period, for end use and not
2 for resale, and was injured as a result of Defendants' illegal conduct.

3 81. Plaintiff John Pharr d/b/a JP Micro is a resident of Florida who indirectly purchased
4 SRAM from one or more of the Defendants or their co-conspirators during the Class Period, for
5 end use and not for resale, and was injured as a result of Defendants' illegal conduct.

6 82. Plaintiff Suzanna Purdy is a resident of Nevada who indirectly purchased SRAM
7 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
8 and not for resale, and was injured as a result of Defendants' illegal conduct.

9 83. Plaintiff Mark Pierce is a New Hampshire resident who indirectly purchased SRAM
10 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
11 and not for resale, and was injured as a result of Defendants' illegal conduct.

12 84. Plaintiff Daniel Price is a resident of California who indirectly purchased SRAM
13 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
14 and not for resale, and was injured as a result of Defendants' illegal conduct.

15 85. Plaintiff Greg Proiette is a resident of California who indirectly purchased SRAM
16 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
17 and not for resale, and was injured as a result of Defendants' illegal conduct.

18 86. Plaintiff Reclaim Center, Inc. is a Minnesota corporation that indirectly purchased
19 SRAM from one or more of the Defendants or their co-conspirators during the Class Period, for
20 end use and not for resale, and was injured as a result of Defendants' illegal conduct.

21 87. Plaintiff David Reedy is a resident of California who indirectly purchased SRAM
22 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
23 and not for resale, and was injured as a result of Defendants' illegal conduct.

24 88. Plaintiff Richard Romero is a resident of New Mexico who indirectly purchased
25 SRAM from one or more of the Defendants or their co-conspirators during the Class Period, for
26 end use and not for resale, and was injured as a result of Defendants' illegal conduct.

27 89. Plaintiff Candace Rowlette is a resident of Florida who indirectly purchased SRAM
28 from one or more of the Defendants or their co-conspirators during the Class Period, for end use

1 and not for resale, and was injured as a result of Defendants' illegal conduct.

2 90. Plaintiff Frederick Rozo is a resident of California who indirectly purchased SRAM
3 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
4 and not for resale, and was injured as a result of Defendants' illegal conduct.

5 91. Plaintiffs Stacy Salzman and Mitchell Salzman are residents of Florida who indirectly
6 purchased SRAM from one or more of the Defendants or their co-conspirators during the Class
7 Period, for end use and not for resale, and were injured as a result of Defendants' illegal conduct.

8 92. Plaintiffs Timothy Show and Nuja Show are residents of Arizona who indirectly
9 purchased SRAM from one or more of the Defendants or their co-conspirators during the Class
10 Period, for end use and not for resale, and were injured as a result of Defendants' illegal conduct.

11 93. Plaintiff Jason Smith is a resident of Pennsylvania who indirectly purchased SRAM
12 from one or more of the Defendants or their co-conspirators during the Class Period, primarily for
13 personal, family or household purposes, and was injured as a result of Defendants' illegal conduct.

14 94. Plaintiff Joe Solo is a resident of California who indirectly purchased SRAM from
15 one or more of the Defendants or their co-conspirators during the Class Period, for end use and not
16 for resale, and was injured as a result of Defendants' illegal conduct.

17 95. Plaintiff Craig Sparks is a resident of Iowa who indirectly purchased SRAM from one
18 or more of the Defendants or their co-conspirators during the Class Period, for end use and not for
19 resale, and was injured as a result of Defendants' illegal conduct.

20 96. Plaintiff Stargate Films is a California corporation that indirectly purchased SRAM
21 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
22 and not for resale, and was injured as a result of Defendants' illegal conduct.

23 97. Plaintiff Christopher J. Stawski is a resident of Wisconsin who indirectly purchased
24 SRAM from one or more of the Defendants or their co-conspirators during the Class Period, for
25 end use and not for resale, and was injured as a result of Defendants' illegal conduct.

26 98. Plaintiff Lara Sterenberg is a resident of Arizona who indirectly purchased SRAM
27 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
28 and not for resale, and was injured as a result of Defendants' illegal conduct.

1 99. Plaintiff Aaron Stobbe is a Utah resident who indirectly purchased SRAM from one
2 or more of the Defendants or their co-conspirators during the Class Period, for end use and not for
3 resale, and was injured as a result of Defendants' illegal conduct.

4 100. Plaintiff David Takeda is a California resident who indirectly purchased SRAM from
5 one or more of the Defendants or their co-conspirators during the Class Period, for end use and not
6 for resale, and was injured as a result of Defendants' illegal conduct.

7 101. Plaintiff Don Thompson is a resident of California who indirectly purchased SRAM
8 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
9 and not for resale, and was injured as a result of Defendants' illegal conduct.

10 102. Plaintiffs E. Carol Vinson and Robert Vinson are residents of Arizona who indirectly
11 purchased SRAM from one or more of the Defendants or their co-conspirators during the Class
12 Period, for end use and not for resale, and were injured as a result of Defendants' illegal conduct.

13 103. Plaintiff Robert Schulyer Watson is a resident of Vermont who indirectly purchased
14 SRAM from one or more of the Defendants or their co-conspirators during the Class Period, for
15 end use and not for resale, and was injured as a result of Defendants' illegal conduct.

16 104. Plaintiff UFCW 8 – Golden State is a resident of California that indirectly purchased
17 SRAM from one or more of the Defendants or their co-conspirators during the Class Period, for
18 end use and not for resale, and was injured as a result of Defendants' illegal conduct.

19 105. Plaintiff United Food & Commercial Workers Local 99 is a resident of Arizona that
20 indirectly purchased SRAM from one or more of the Defendants or their co-conspirators during the
21 Class Period, for end use and not for resale, and was injured as a result of Defendants' illegal
22 conduct.

23 106. Plaintiff United Food & Commercial Workers Local 711 is a resident of Nevada that
24 indirectly purchased SRAM from one or more of the Defendants or their co-conspirators during the
25 Class Period, for end use and not for resale, and was injured as a result of Defendants' illegal
26 conduct.

27 107. Plaintiff Daniel Yohalem is a resident of New Mexico who indirectly purchased
28 SRAM from one or more of the Defendants or their co-conspirators during the Class Period, for

1 end use and not for resale, and was injured as a result of Defendants' illegal conduct.

2 108. Plaintiff Rachael Zaas is a resident of Michigan who indirectly purchased SRAM
3 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
4 and not for resale, and was injured as a result of Defendants' illegal conduct.

5 109. Plaintiff Bekah Zietz is a resident of Washington who indirectly purchased SRAM
6 from one or more of the Defendants or their co-conspirators during the Class Period, for end use
7 and not for resale, and was injured as a result of Defendants' illegal conduct.

8 **B. The Defendants.**

9 110. Defendant Samsung Electronics Company, Ltd. is a business entity organized under
10 the laws of South Korea, with its principal place of business at Samsung Main Building 250-
11 Taepyungro-2 ka, Chung-gu, Seoul, Korea. During the time period covered by this Complaint,
12 Defendant Samsung Electronics Company, Ltd. manufactured, sold and distributed SRAM to
13 customers throughout the United States.

14 111. Defendant Samsung Electronics America, Inc. is a wholly owned and controlled
15 subsidiary of Defendant Samsung Electronic Company, Ltd. with its principal place of business at
16 105 Challenger Road, Ridgefield Park, New Jersey. During the time period covered by this
17 Complaint, Defendant Samsung Electronics America, Inc. sold SRAM to customers throughout the
18 United States.

19 112. Defendant Samsung Semiconductor, Inc. is a wholly owned and controlled subsidiary
20 of defendant Samsung Electronics Company, Ltd. with its principal place of business at 3655 North
21 First Street, San Jose, California. During the time period covered by this Complaint, Defendant
22 Samsung Semiconductor, Inc. sold and distributed SRAM to customers throughout the United
23 States. Samsung Electronics Company, Ltd. and Samsung Semiconductor, Inc. are referred to
24 collectively herein as "Samsung."

25 113. Defendant Hynix Semiconductor, Inc. is a business entity organized under the laws of
26 South Korea, with its principal place of business at SAN 163-1, Ami-Ri Bubal-Up, Ichon-City,
27 Korea. During the time period covered by this Complaint, Defendant Hynix Semiconductor, Inc.
28 manufactured, sold and distributed SRAM to customers throughout the United States.

1 114. Defendant Hynix Semiconductor America, Inc. is a wholly owned and controlled
2 subsidiary of defendant Hynix Semiconductor, Inc. with its principal place of business at 3101
3 North First Street, San Jose, California. During the time period covered by this Complaint,
4 Defendant Hynix Semiconductor America, Inc. sold and distributed SRAM to customers
5 throughout the United States. Hynix Semiconductor, Inc. and Hynix Semiconductor America, Inc.
6 are referred to collectively herein as “Hynix.”

7 115. Defendant Micron Technology, Inc. is a Delaware Corporation with its principal
8 place of business at 8000 South Federal Way, Boise, Idaho. During the time period covered by this
9 Complaint, Defendant Micron Technology, Inc. manufactured, sold and distributed SRAM
10 throughout the United States.

11 116. Defendant Micron Semiconductor Products, Inc. is a wholly owned and controlled
12 subsidiary of defendant Micron Technology, Inc. with its principal place of business at 8000 South
13 Federal Way, Boise, Idaho. During the time period covered by this Complaint, Defendant Micron
14 Semiconductor Products, Inc. sold and distributed SRAM to customers throughout the United
15 States. Micron Technology, Inc. and Micron Semiconductor Products, Inc. are referred to
16 collectively herein as “Micron.”

17 117. Defendant NEC Electronics Corporation is a business entity organized under the laws
18 of Japan, with its principal place of business at 1753 Shimonumabe, Nakahara-Ku, Kawasaki,
19 Kanagawa, Japan. During the time period covered by this Complaint, Defendant NEC Electronics
20 Corporation sold SRAM to customers throughout the United States.

21 118. Defendant NEC Electronics America, Inc. is a wholly owned and controlled
22 subsidiary of NEC Electronics Corporation, with its principal place of business at 2880 Scott
23 Boulevard, Santa Clara, California and its manufacturing plant in Roseville, California. During the
24 time period covered by this Complaint, Defendant NEC Electronics America, Inc. sold and
25 distributed SRAM to customers throughout the United States. NEC Electronics Corporation and
26 NEC Electronics America, Inc. are referred to collectively herein as “NEC.”

27 119. Defendant Cypress Semiconductor, Inc. (“Cypress”) is a business entity organized
28 under the laws of California, with its principal place of business at 3939 North First Street, San

1 Jose, California. During the time period covered by this Complaint, Defendant Cypress
2 Semiconductor, Inc. sold and distributed SRAM to customers throughout the United States.

3 120. Defendant Mitsubishi Electric Corporation is a business entity organized under the
4 laws of Japan, with its principal place of business at Tokyo Building 2-7-3, Marunouchi, Chiyoda-
5 ku, Tokyo 100-8310, Japan. During the time period covered by this Complaint, Defendant
6 Mitsubishi Electric Corporation, Inc. manufactured, sold and distributed SRAM to customers
7 throughout the United States.

8 121. Defendant Mitsubishi Electric & Electronics USA, Inc. is a wholly owned and
9 controlled subsidiary of defendant Mitsubishi Electric Corporation. Defendant Mitsubishi
10 Electric & Electronics USA, Inc. is a business entity organized under the laws of Delaware, with its
11 principal place of business at 500 Corporate Woods Parkway, Vernon Hills, IL 60061. During the
12 time period covered by this Complaint, Defendant Mitsubishi Electric & Electronics USA, Inc.
13 manufactured, sold and distributed SRAM to customers throughout the United States. Mitsubishi
14 Electric Corporation and Mitsubishi Electric & Electronics USA, Inc. are referred to collectively
15 herein as “Mitsubishi.”

16 122. Defendant Renesas Technology Corporation is a business entity organized under the
17 laws of Japan with its principal place of business at Nippon Bldg., 2-6-2, Ote-machi, Chiyoda-ku,
18 Tokyo 100-0004, Japan. Renesas Technology Corporation was established in April 2003 as a joint
19 venture between Defendants Hitachi, Ltd. and Mitsubishi Electric Corp. During the time period
20 covered by this Complaint, Defendant Renesas Technology Corporation sold SRAM to customers
21 throughout the United States.

22 123. Defendant Renesas Technology America, Inc. is a wholly owned and controlled
23 subsidiary of Renesas Technology Corporation with its principal place of business at 450 Holger
24 Way, San Jose, California, 95134-1368. During the time period covered by this Complaint,
25 Defendant Renesas Technology America, Inc. sold and distributed SRAM to customers throughout
26 the United States. Renesas Technology America, Inc. and Renesas Technology Corporation are
27 referred to collectively herein as “Renesas.”

28 124. Defendant Toshiba Corporation is a business entity organized under the laws of

1 Japan, with its principal place of business at 1-1, Shibaura 1-chome, Minato-ku, Tokyo 105-8001,
2 Japan. During the time period covered by this Complaint, Defendant Toshiba Corporation
3 manufactured, sold and distributed SRAM to customers throughout the United States.

4 125. Defendant Toshiba America, Inc. is a wholly owned and controlled subsidiary of
5 Toshiba Corporation with its principal place of business at 1251 Avenue of the Americas, Suite
6 4110 New York, NY 10020. During the time period covered by this Complaint, Defendant
7 Toshiba America, Inc. manufactured, sold and distributed SRAM to customers throughout the
8 United States.

9 126. Defendant Toshiba America Electronic Components, Inc. is a wholly owned and
10 controlled subsidiary of Toshiba Corporation with its principal place of business located at
11 19900 MacArthur Boulevard, Suite 400, Irvine, CA 92612. During the time covered by this
12 Complaint, Defendant Toshiba America Electronic Components, Inc. sold and distributed SRAM
13 to customers throughout the United States. Toshiba Corporation, Toshiba America Corporation,
14 and Toshiba America Electronic Components, Inc. are referred to collectively herein as “Toshiba.”

15 127. Defendant Etron Technology, Inc. is a business entity organized under the laws of
16 Taiwan, with its principal place of business at No. 6, Technology Road 5, Hsinchu Science Park,
17 Hsinchu, Taiwan. During the time period covered by this Complaint, Defendant Etron
18 Technology, Inc. sold and distributed SRAM to customers throughout the United States.

19 128. Defendant Etron Technology America, Inc. is a wholly owned and controlled
20 subsidiary of Etron Technology, Inc. with its principal place of business at 3375 Scott Blvd., Suite
21 128, Santa Clara, California. During the time period covered by this Complaint, Defendant Etron
22 Technology America, Inc. sold SRAM to customers throughout the United States. Etron
23 Technology, Inc. and Etron Technology America, Inc. are referred to collectively herein as
24 “Etron.”

25 129. Each of the Defendants named herein acted as the agent or joint venturer of or for the
26 other Defendants with respect to the acts, violations and common course of conduct alleged herein.
27 Each Defendant which is a subsidiary of a foreign parent acts as the sole United States agent for
28 SRAM made by its parent company.

1 **C. Co-Conspirators.**

2 130. Premier Technical Sales, Inc., Stratus Technical Sales, LLC, and Jack Shattuck
3 participated as co-conspirators with the Defendants in the violations of law alleged in this
4 Complaint and have engaged in conduct and made statements in furtherance thereof.

5 131. Various other firms, corporations, partnerships and/or individuals, domestic and/or
6 foreign, who are presently unknown to Plaintiffs, participated as co-conspirators with the
7 Defendants in the violations of law alleged in this Complaint and have engaged in conduct and
8 made statements in furtherance thereof.

9 132. The acts charged in this Complaint have been done by some or all of Defendants and
10 their co-conspirators, or were authorized, ordered or done by their respective officers, agents,
11 employees or representatives while actively engaged in the management of each Defendant's
12 business or affairs.

13 133. Defendants are also liable for acts done in furtherance of the alleged conspiracy by
14 companies they acquired through merger or acquisition.

15 **EFFECTS ON INTERSTATE AND INTRASTATE COMMERCE**

16 134. Defendants conduct business throughout the United States, including in the State of
17 California, and they have purposefully availed themselves of the laws of the United States.
18 Defendants' products are sold in the flow of interstate commerce and Defendants' activities had a
19 direct, substantial and reasonably foreseeable effect on such commerce.

20 135. Defendants' conspiracy further substantially affected commerce in each of the states
21 identified herein. Defendants have purposefully availed themselves of the laws of each of the
22 states identified herein in connection with their activities relating to the pricing of SRAM.
23 Defendants produced, promoted, sold, marketed, and/or distributed SRAM in each of the states
24 identified herein, thereby purposefully profiting from access to indirect purchasers in each such
25 state. As a result of the activities described herein, Defendants:

- 26 a. Caused tortious damage to the residents of the states identified herein;
27 b. Caused tortious damage in each of the states identified herein by acts
28 or omissions committed outside each such state by regularly doing or

1 139. Plaintiffs also bring this action on their own behalf and as a class action pursuant to
2 Rules 23 of the Federal Rules of Civil Procedure and/or respective state statute(s), on behalf of all
3 members of the following classes (collectively, the “Indirect-Purchaser State Classes”) with respect
4 to claims under the antitrust and/or consumer protection statutes of each of those jurisdictions and
5 under common law principles of unjust enrichment recognized in each of those jurisdictions:

6 a. **ARIZONA:** All persons and entities in Arizona who indirectly
7 purchased SRAM and/or products containing SRAM, for end use and
8 not for resale, that was manufactured and/or sold by one or more of
9 the Defendants during the Class Period. Specifically excluded from
10 this Class are the Defendants, the officers, directors or employees of
11 any Defendant; any entity in which any Defendant has a controlling
12 interest; and any affiliate, legal representative, heir or assign of any
13 Defendant. Also excluded are any federal, state or local governmental
14 entities, any judicial officer presiding over this action and the
15 members of his/her immediate family and judicial staff, and any juror
16 assigned to this action (the “Arizona Indirect Purchaser Class”).

17 b. **ARKANSAS:** All persons and entities in Arkansas who indirectly
18 purchased SRAM and/or products containing SRAM, for end use and
19 not for resale, that was manufactured and/or sold by one or more of
20 the Defendants during the Class Period. Specifically excluded from
21 this Class are the Defendants, the officers, directors or employees of
22 any Defendant; any entity in which any Defendant has a controlling
23 interest; and any affiliate, legal representative, heir or assign of any
24 Defendant. Also excluded are any federal, state or local governmental
25 entities, any judicial officer presiding over this action and the
26 members of his/her immediate family and judicial staff, and any juror
27 assigned to this action (the “Arkansas Indirect Purchaser Class”).

28 c. **CALIFORNIA:** All persons and entities in California who indirectly

1 purchased SRAM and/or products containing SRAM, for end use and
2 not for resale, that was manufactured and/or sold by one or more of
3 the Defendants during the Class Period. Specifically excluded from
4 this Class are the Defendants, the officers, directors or employees of
5 any Defendant; any entity in which any Defendant has a controlling
6 interest; and any affiliate, legal representative, heir or assign of any
7 Defendant. Also excluded are any federal, state or local governmental
8 entities, any judicial officer presiding over this action and the
9 members of his/her immediate family and judicial staff, and any juror
10 assigned to this action (the “California Indirect Purchaser Class”).

11 d. **FLORIDA:** All persons and entities in Florida who indirectly
12 purchased SRAM and/or products containing SRAM, for end use and
13 not for resale, that was manufactured and/or sold by one or more of
14 the Defendants during the Class Period. Specifically excluded from
15 this Class are the Defendants, the officers, directors or employees of
16 any Defendant; any entity in which any Defendant has a controlling
17 interest; and any affiliate, legal representative, heir or assign of any
18 Defendant. Also excluded are any federal, state or local governmental
19 entities, any judicial officer presiding over this action and the
20 members of his/her immediate family and judicial staff, and any juror
21 assigned to this action (the “Florida Indirect Purchaser Class”).

22 e. **HAWAII:** All persons and entities in Hawaii who indirectly purchased
23 SRAM and/or products containing SRAM, for personal, family or
24 household use, that was manufactured and/or sold by one or more of
25 the Defendants during the Class Period. Specifically excluded from
26 this Class are the Defendants, the officers, directors or employees of
27 any Defendant; any entity in which any Defendant has a controlling
28 interest; and any affiliate, legal representative, heir or assign of any

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Defendant. Also excluded are any federal, state or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action (the “Hawaii Indirect Purchaser Class”).

f. **IOWA:** All persons and entities in Iowa who indirectly purchased SRAM and/or products containing SRAM, for end use and not for resale, that was manufactured and/or sold by one or more of the Defendants during the Class Period. Specifically excluded from this Class are the Defendants, the officers, directors or employees of any Defendant; any entity in which any Defendant has a controlling interest; and any affiliate, legal representative, heir or assign of any Defendant. Also excluded are any federal, state or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action (the “Iowa Indirect Purchaser Class”).

g. **KANSAS:** All persons and entities in Kansas who indirectly purchased SRAM and/or products containing SRAM, for personal, family or household use, that was manufactured and/or sold by one or more of the Defendants during the Class Period. Specifically excluded from this Class are the Defendants, the officers, directors or employees of any Defendant; any entity in which any Defendant has a controlling interest; and any affiliate, legal representative, heir or assign of any Defendant. Also excluded are any federal, state or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action (the “Kansas Indirect Purchaser Class”).

h. **MAINE:** All persons and entities in Maine who indirectly purchased

1 SRAM and/or products containing SRAM, for personal family or
2 household use, that was manufactured and/or sold by one or more of
3 the Defendants during the Class Period. Specifically excluded from
4 this Class are the Defendants, the officers, directors or employees of
5 any Defendant; any entity in which any Defendant has a controlling
6 interest; and any affiliate, legal representative, heir or assign of any
7 Defendant. Also excluded are any federal, state or local governmental
8 entities, any judicial officer presiding over this action and the
9 members of his/her immediate family and judicial staff, and any juror
10 assigned to this action (the “Maine Indirect Purchaser Class”).

11 i. **MASSACHUSETTS:** All persons and entities in Massachusetts who
12 indirectly purchased SRAM and/or products containing SRAM, for
13 end use and not for resale, that was manufactured and/or sold by one
14 or more of the Defendants during the Class Period. Specifically
15 excluded from this Class are the Defendants, the officers, directors or
16 employees of any Defendant; any entity in which any Defendant has a
17 controlling interest; and any affiliate, legal representative, heir or
18 assign of any Defendant. Also excluded are any federal, state or local
19 governmental entities, any judicial officer presiding over this action
20 and the members of his/her immediate family and judicial staff, and
21 any juror assigned to this action (the “Massachusetts Indirect
22 Purchaser Class”).

23 j. **MICHIGAN:** All persons and entities in Michigan who indirectly
24 purchased SRAM and/or products containing SRAM, for end use and
25 not for resale, that was manufactured and/or sold by one or more of
26 the Defendants during the Class Period. Specifically excluded from
27 this Class are the Defendants, the officers, directors or employees of
28 any Defendant; any entity in which any Defendant has a controlling

1 interest; and any affiliate, legal representative, heir or assign of any
2 Defendant. Also excluded are any federal, state or local governmental
3 entities, any judicial officer presiding over this action and the
4 members of his/her immediate family and judicial staff, and any juror
5 assigned to this action (the “Michigan Indirect Purchaser Class”).

6 k. **MINNESOTA:** All persons and entities in Minnesota who indirectly
7 purchased SRAM and/or products containing SRAM, for end use and
8 not for resale, that was manufactured and/or sold by one or more of
9 the Defendants during the Class Period. Specifically excluded from
10 this Class are the Defendants, the officers, directors or employees of
11 any Defendant; any entity in which any Defendant has a controlling
12 interest; and any affiliate, legal representative, heir or assign of any
13 Defendant. Also excluded are any federal, state or local governmental
14 entities, any judicial officer presiding over this action and the
15 members of his/her immediate family and judicial staff, and any juror
16 assigned to this action (the “Minnesota Indirect Purchaser Class”).

17 l. **MISSISSIPPI:** All persons and entities in Mississippi who indirectly
18 purchased SRAM and/or products containing SRAM, for end use and
19 not for resale, that was manufactured and/or sold by one or more of
20 the Defendants during the Class Period. Specifically excluded from
21 this Class are the Defendants, the officers, directors or employees of
22 any Defendant; any entity in which any Defendant has a controlling
23 interest; and any affiliate, legal representative, heir or assign of any
24 Defendant. Also excluded are any federal, state or local governmental
25 entities, any judicial officer presiding over this action and the
26 members of his/her immediate family and judicial staff, and any juror
27 assigned to this action (the “Mississippi Indirect Purchaser Class”).

28 m. **MONTANA:** All persons and entities in Montana who indirectly

1 purchased SRAM and/or products containing SRAM, for end use and
2 not for resale, that was manufactured and/or sold by one or more of
3 the Defendants during the Class Period. Specifically excluded from
4 this Class are the Defendants, the officers, directors or employees of
5 any Defendant; any entity in which any Defendant has a controlling
6 interest; and any affiliate, legal representative, heir or assign of any
7 Defendant. Also excluded are any federal, state or local governmental
8 entities, any judicial officer presiding over this action and the
9 members of his/her immediate family and judicial staff, and any juror
10 assigned to this action (the “Montana Indirect Purchaser Class”).

11 n. **NEBRASKA:** All persons and entities in Nebraska who indirectly
12 purchased SRAM and/or products containing SRAM, for end use and
13 not for resale, that was manufactured and/or sold by one or more of
14 the Defendants during the Class Period. Specifically excluded from
15 this Class are the Defendants, the officers, directors or employees of
16 any Defendant; any entity in which any Defendant has a controlling
17 interest; and any affiliate, legal representative, heir or assign of any
18 Defendant. Also excluded are any federal, state or local governmental
19 entities, any judicial officer presiding over this action and the
20 members of his/her immediate family and judicial staff, and any juror
21 assigned to this action (the “Nebraska Indirect Purchaser Class”).

22 o. **NEVADA:** All persons and entities in Nevada who indirectly
23 purchased SRAM and/or products containing SRAM, for end use and
24 not for resale, that was manufactured and/or sold by one or more of
25 the Defendants during the Class Period. Specifically excluded from
26 this Class are the Defendants, the officers, directors or employees of
27 any Defendant; any entity in which any Defendant has a controlling
28 interest; and any affiliate, legal representative, heir or assign of any

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Defendant. Also excluded are any federal, state or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action (the “Nevada Indirect Purchaser Class”).

p. **NEW HAMPSHIRE:** All persons and entities in New Hampshire who indirectly purchased SRAM and/or products containing SRAM, for end use and not for resale, that was manufactured and/or sold by one or more of the Defendants during the Class Period. Specifically excluded from this Class are the Defendants, the officers, directors or employees of any Defendant; any entity in which any Defendant has a controlling interest; and any affiliate, legal representative, heir or assign of any Defendant. Also excluded are any federal, state or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action (the “New Hampshire Indirect Purchaser Class”).,

q. **NEW MEXICO:** All persons and entities in New Mexico who indirectly purchased SRAM and/or products containing SRAM, for end use and not for resale, that was manufactured and/or sold by one or more of the Defendants during the Class Period. Specifically excluded from this Class are the Defendants, the officers, directors or employees of any Defendant; any entity in which any Defendant has a controlling interest; and any affiliate, legal representative, heir or assign of any Defendant. Also excluded are any federal, state or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action (the “New Mexico Indirect Purchaser Class”).

- 1 r. **NEW YORK:** All persons and entities in New York who indirectly
2 purchased SRAM and/or products containing SRAM, for end use and
3 not for resale, that was manufactured and/or sold by one or more of
4 the Defendants during the Class Period. Specifically excluded from
5 this Class are the Defendants, the officers, directors or employees of
6 any Defendant; any entity in which any Defendant has a controlling
7 interest; and any affiliate, legal representative, heir or assign of any
8 Defendant. Also excluded are any federal, state or local governmental
9 entities, any judicial officer presiding over this action and the
10 members of his/her immediate family and judicial staff, and any juror
11 assigned to this action (the “New York Indirect Purchaser Class”).
- 12 s. **NORTH CAROLINA:** All persons and entities in North Carolina
13 who indirectly purchased SRAM and/or products containing SRAM,
14 for end use and not for resale, that was manufactured and/or sold by
15 one or more of the Defendants during the Class Period. Specifically
16 excluded from this Class are the Defendants, the officers, directors or
17 employees of any Defendant; any entity in which any Defendant has a
18 controlling interest; and any affiliate, legal representative, heir or
19 assign of any Defendant. Also excluded are any federal, state or local
20 governmental entities, any judicial officer presiding over this action
21 and the members of his/her immediate family and judicial staff, and
22 any juror assigned to this action (the “North Carolina Indirect
23 Purchaser Class”).
- 24 t. **PENNSYLVANIA:** All persons and entities in Pennsylvania who
25 indirectly purchased SRAM and/or products containing SRAM, for
26 personal, family or household use, that was manufactured and/or sold
27 by one or more of the Defendants during the Class Period.
28 Specifically excluded from this Class are the Defendants, the officers,

1 directors or employees of any Defendant; any entity in which any
2 Defendant has a controlling interest; and any affiliate, legal
3 representative, heir or assign of any Defendant. Also excluded are
4 any federal, state or local governmental entities, any judicial officer
5 presiding over this action and the members of his/her immediate
6 family and judicial staff, and any juror assigned to this action (the
7 “Pennsylvania Indirect Purchaser Class”).,

8 u. **RHODE ISLAND:** All persons and entities in Rhode Island who
9 indirectly purchased SRAM and/or products containing SRAM, for
10 personal, family or household use, that was manufactured and/or sold
11 by one or more of the Defendants during the Class Period.
12 Specifically excluded from this Class are the Defendants, the officers,
13 directors or employees of any Defendant; any entity in which any
14 Defendant has a controlling interest; and any affiliate, legal
15 representative, heir or assign of any Defendant. Also excluded are any
16 federal, state or local governmental entities, any judicial officer
17 presiding over this action and the members of his/her immediate
18 family and judicial staff, and any juror assigned to this action (the
19 “Rhode Island Indirect Purchaser Class”).,

20 v. **SOUTH DAKOTA:** All persons and entities in South Dakota who
21 indirectly purchased SRAM and/or products containing SRAM, for
22 end use and not for resale, that was manufactured and/or sold by one
23 or more of the Defendants during the Class Period. Specifically
24 excluded from this Class are the Defendants, the officers, directors or
25 employees of any Defendant; any entity in which any Defendant has a
26 controlling interest; and any affiliate, legal representative, heir or
27 assign of any Defendant. Also excluded are any federal, state or local
28 governmental entities, any judicial officer presiding over this action

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

and the members of his/her immediate family and judicial staff, and any juror assigned to this action (the “South Dakota Indirect Purchaser Class”).

w. **TENNESSEE:** All persons and entities in Tennessee who indirectly purchased SRAM and/or products containing SRAM, for end use and not for resale, that was manufactured and/or sold by one or more of the Defendants during the Class Period. Specifically excluded from this Class are the Defendants, the officers, directors or employees of any Defendant; any entity in which any Defendant has a controlling interest; and any affiliate, legal representative, heir or assign of any Defendant. Also excluded are any federal, state or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action (the “Tennessee Indirect Purchaser Class”).,

x. **UTAH:** All persons and entities in Utah who indirectly purchased SRAM and/or products containing SRAM, for end use and not for resale, that was manufactured and/or sold by one or more of the Defendants during the Class Period. Specifically excluded from this Class are the Defendants, the officers, directors or employees of any Defendant; any entity in which any Defendant has a controlling interest; and any affiliate, legal representative, heir or assign of any Defendant. Also excluded are any federal, state or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action (the “New Hampshire Indirect Purchaser Class”).,

y. **WEST VIRGINIA:** All persons and entities in West Virginia who indirectly purchased SRAM and/or products containing SRAM, for

1 end use and not for resale, that was manufactured and/or sold by one
2 or more of the Defendants during the Class Period. Specifically
3 excluded from this Class are the Defendants, the officers, directors or
4 employees of any Defendant; any entity in which any Defendant has a
5 controlling interest; and any affiliate, legal representative, heir or
6 assign of any Defendant. Also excluded are any federal, state or local
7 governmental entities, any judicial officer presiding over this action
8 and the members of his/her immediate family and judicial staff, and
9 any juror assigned to this action (the “West Virginia Indirect
10 Purchaser Class”).,

11 z. **WISCONSIN:** All persons and entities in Wisconsin who indirectly
12 purchased SRAM and/or products containing SRAM, for end use and
13 not for resale, that was manufactured and/or sold by one or more of
14 the Defendants during the Class Period. Specifically excluded from
15 this Class are the Defendants, the officers, directors or employees of
16 any Defendant; any entity in which any Defendant has a controlling
17 interest; and any affiliate, legal representative, heir or assign of any
18 Defendant. Also excluded are any federal, state or local governmental
19 entities, any judicial officer presiding over this action and the
20 members of his/her immediate family and judicial staff, and any juror
21 assigned to this action (the “Wisconsin Indirect Purchaser Class”).

22 and

23 aa. **DISTRICT OF COLUMBIA:** All persons and entities in the District
24 of Columbia who indirectly purchased SRAM and/or products
25 containing SRAM, for personal, family or household use, that was
26 manufactured and/or sold by one or more of the Defendants during
27 the Class Period. Specifically excluded from this Class are the
28 Defendants, the officers, directors or employees of any Defendant;

1 any entity in which any Defendant has a controlling interest; and any
2 affiliate, legal representative, heir or assign of any Defendant. Also
3 excluded are any federal, state or local governmental entities, any
4 judicial officer presiding over this action and the members of his/her
5 immediate family and judicial staff, and any juror assigned to this
6 action (the “District of Columbia Indirect Purchaser Class”).

7 140. This action has been brought and may be properly maintained as a class action
8 pursuant to Rule 23 of the Federal Rules of Civil Procedure for the following reasons:

- 9 a. The Class is ascertainable and there is a well-defined community of
10 interest among the members of the Class;
- 11 b. Based upon the nature of the trade and commerce involved and the
12 number of indirect purchasers of SRAM, Plaintiffs believe that the
13 members of the Class number in the thousands, and therefore is
14 sufficiently numerous that joinder of all Class members is not
15 practicable;
- 16 c. Plaintiffs’ claims are typical of the claims of the members of the Class
17 because Plaintiffs indirectly purchased SRAM from one or more of
18 the Defendants or their co-conspirators, and therefore Plaintiffs’
19 claims arise from the same common course of conduct giving rise to
20 the claims of the members of the Class and the relief sought is
21 common to the Class;
- 22 d. The following common questions of law or fact, among others, exist as
23 to the members of the Class:
- 24 i. whether Defendants formed and operated a combination or
25 conspiracy to fix, raise, maintain or stabilize the prices of, or
26 allocate the market for, SRAM;
- 27 ii. whether the combination or conspiracy caused SRAM prices to
28 be higher than they would have been in the absence of

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- Defendants' conduct;
- iii. the operative time period of Defendants' combination or conspiracy;
- iv. whether Defendants' conduct caused injury to the business or property of Plaintiffs and the members of the Class;
- v. the appropriate measure of the amount of damages suffered by the Class;
- vi. whether Defendants' conduct violates Section 1 of the Sherman Act;
- vii. whether Defendants' conduct violates Sections 16720 and 17200 of the California Business and Professions Code;
- viii. whether Defendants' conduct violates the antitrust, unfair competition, and consumer protection laws of the other states as alleged below; and
- ix. the appropriate nature of class-wide equitable relief.
- e. These and other questions of law or fact which are common to the members of the Class predominate over any questions affecting only individual members of the Class;
- f. After determination of the predominate common issues identified above, if necessary or appropriate, the Class can be divided into logical and manageable subclasses;
- g. Plaintiffs will fairly and adequately protect the interests of the Class in that Plaintiffs have no interests that are antagonistic to other members of the Class and have retained counsel competent and experienced in the prosecution of class actions and antitrust litigation to represent themselves and the Class;
- h. A class action is superior to other available methods for the fair and efficient adjudication of this litigation since individual joinder of all

1 damaged Class Members is impractical; the damages suffered by
2 individual Class Members are relatively small, thus, absent the
3 availability of class action procedures, it would not be feasible for
4 Class Members to redress the wrongs done to them;

5 i. Defendants have acted, and refused to act, on grounds generally
6 applicable to the Class, thereby making appropriate final injunctive
7 relief with respect to the Class as a whole; and

8 j. In the absence of a class action, Defendants would be unjustly
9 enriched because they would be able to retain the benefits and fruits
10 of their wrongful conduct.

11 141. The Claims in this case are also properly certifiable under the laws of the State of
12 California, and of the other individual states identified below in the Fourth and Fifth Claims for
13 Relief.

14 **NATURE OF THE MARKET**

15 142. Throughout the period of time covered by this Complaint, Defendants and their co-
16 conspirators engaged in the business of manufacturing, marketing and selling SRAM throughout
17 the United States. The sale of SRAM constituted a multi-billion dollar business on an annual basis.
18 For example, worldwide SRAM sales were estimated at approximately \$3.3 billion in 2003, and at
19 approximately \$4.1 billion in 2004, 50% of which were in the United States.

20 143. In 1998, the top six manufacturers accounted for approximately 63% of SRAM sales,
21 and the top nine manufacturers accounted for approximately 79% of such sales. In both 2003 and
22 2004, the top six manufacturers accounted for approximately 75% of SRAM sales; the top eight
23 manufacturers accounted for approximately 82% of SRAM sales. In 2004, the top nine
24 manufacturers sold approximately 84% of all SRAM. The Defendants are the largest
25 manufacturers and sellers of SRAM in the United States.

26 144. The shares of the leading SRAM manufacturers in 2003 were as follows: Samsung:
27 32.5%; Renesas 15.0%; Cypress 11.6%; Toshiba 7.9%; NEC 7.2%; Hynix 3.7%.

28 145. The SRAM industry has been subject to consolidation during the Class Period. For

1 example, on December 26, 2002, Hitachi, Ltd. and Mitsubishi Electric Corporation announced an
2 agreement to combine their semiconductor operations into a new company, Renesas Technology
3 Corp., by April 1, 2003. In the Spring of 2003, Micron announced that it was exiting the SRAM
4 market and agreed to sell its synchronous SRAM product inventory to Cypress.

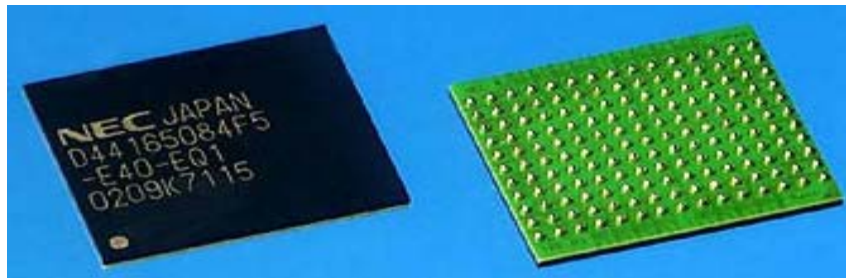
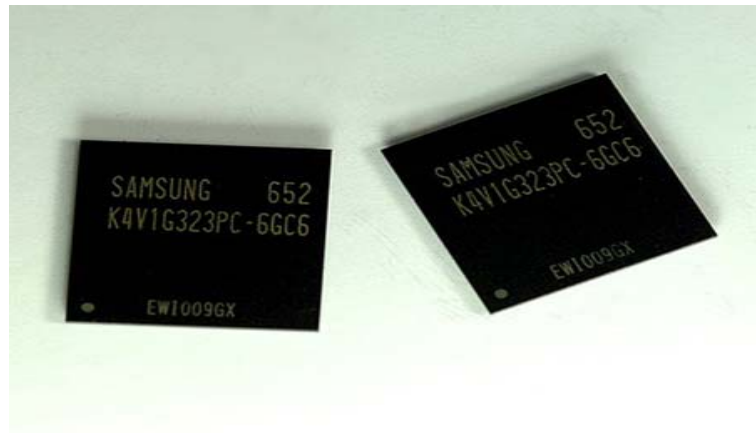
5 146. Defendants operate manufacturing factories called fabrication plants or “fabs.” These
6 fabrication plants make “wafers” that are cut into individual chips, called “dies.” Once the dies
7 have electronics printed on them, the chip is complete.

8 147. SRAM has no free-standing use; it must be inserted into a device, such as a computer,
9 to serve any function. Because SRAM has no independent utility, the value of, and thus demand
10 for, SRAM is derived through its storage capabilities for products that need volatile memory.

11 148. SRAM is a commodity, with commodity margins. The SRAM market is
12 characterized by price inelasticity. In fact, Defendants refer to “commodity SRAM” to mean a
13 common memory type of SRAM.

14 149. When SRAM is purchased by consumers as part of an electronic device, it is a
15 distinct, physically-discrete, hardware element of the end-use product and is traceable throughout
16 the chain of distribution to the end user. SRAM does not undergo any alterations as it moves
17 through the chain of distribution. SRAM is identifiable by a part number, and bears a unique serial
18 number that would permit tracing. Manufacturers such as Cypress, Hynix, Micron, NEC, Renesas,
19 Samsung, and Toshiba manufacture SRAM that is clearly identifiable by a specific, discrete part or
20 model number, and that bears a unique serial number that is directly traceable to the specific
21 manufacturing defendant. Photos of samples of SRAM from Samsung, NEC and Micron are
22 depicted below.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



150. The SRAM manufacturing market is dominated by a handful of leading manufacturers – the Defendants in this case. The market for the manufacture and sale of SRAM is subject to high manufacturing and technological barriers to entry. Efficient fabrication plants are large and costly.

151. Defendants’ direct-purchaser customers include the world’s largest computer manufacturers, such as Hewlett Packard, IBM, Apple, Dell and Sun Microsystems; microprocessor manufacturers, such as Intel; computer equipment manufacturers such as Cisco; and cellular phone manufacturers such as Motorola and Ericsson.

152. During the Class Period, the markets for the manufacture of the end-use products in

1 which SRAM is incorporated were subject to vigorous price competition. The SRAM and end-use
2 markets are therefore inextricably linked, and cannot be considered separately. Participants in the
3 SRAM industry were well aware of this intimate relationship, and utilized end-use industry
4 forecasts to predict sales of their own products.

5 153. The end-use industries were all subject to vigorous price competition during the Class
6 Period. The SRAM direct purchasers had very thin net margins. They were therefore at the mercy
7 of their component costs, so that increases in component costs, such as the price of SRAM, lead to
8 quick, corresponding price increases in the end-use products.

9 154. SRAM is a significant cost component of end-use electronic products using memory
10 chips. Because of the thin margins for those electronic products, the original equipment
11 manufacturers (“OEM”) could not absorb any part of the increased cost of SRAM.

12 155. The cost of memory chips, including SRAM, to direct-purchaser OEMs is an
13 important component in the selling price of that OEM’s electronic products. If the cost that an
14 OEM pays for SRAM increases, that directly affects the prices of the products sold by the OEM.

15 156. As the market for computers, system servers, and other electronic devices was highly
16 competitive during the Class Period, whenever an OEM paid more for memory chips, including
17 SRAM, that OEM passed on 100% of that increased cost to its customers, who, in turn, passed on
18 at least 100% of the increased SRAM costs to the end-user consumers, such as the Indirect-
19 Purchaser Plaintiffs and the Class Members.

20 157. Beginning in 1998 and continuing through much of 2001, SRAM prices rose, due to
21 the effects of the industry-wide collusion alleged herein and which is being investigated by the
22 DOJ. During 2000 alone, the average selling price of SRAM in the United States increased by
23 35%—from \$3.93 in 1999 to approximately \$5.31 in 2000. SRAM prices experienced an increase
24 in 2002, and again in 2003 and subsequent years, which was the result of the Defendants’ and their
25 co-conspirators’ price-fixing conspiracy.

26 158. California is the largest market in the United States for SRAM and is the world-wide
27 center of the computer industry and other industries that depend upon the SRAM markets.
28 Statements concerning the prices and market conditions for SRAM were disseminated by

1 Defendants from and into California on a regular and continuous basis.

2 **DEFENDANTS' ILLEGAL CONDUCT**

3 159. In October of 2006, the DOJ subpoenaed several companies in connection with an
4 investigation of cartel activity in the SRAM industry, which included: Samsung, Cypress, Hynix,
5 Micron, Mitsubishi, NEC, Renesas, and Toshiba. Several of the companies being investigated—
6 Hynix, Micron and Samsung—pled guilty to price-fixing in the DRAM industry and paid
7 substantial fines to the DOJ for those unlawful activities (\$300 million for Samsung and \$185
8 million for Hynix). Micron, another major SRAM manufacturer, was the amnesty applicant in the
9 DRAM price-fixing investigation and paid a substantial fine.

10 160. The DOJ's SRAM investigation is a criminal one. This fact is significant because,
11 according to Chapter III, Section C.5 of the DOJ's Antitrust Division Manual, "[c]urrent Division
12 policy is to proceed by criminal investigation and prosecution in cases involving horizontal, per se
13 unlawful agreements such as price-fixing, bid rigging and horizontal customer and territorial
14 allocations."

15 161. Several of the individuals employed by Defendants who pled guilty to criminal
16 felonies in the DRAM criminal case investigation also had pricing responsibility for SRAM. For
17 Defendant Samsung, these include: (1) Tom Quinn, Vice-President of Marketing for Memory
18 Products; (2) Y. H. Park, Vice-President of Sales who had responsibility for U.S. memory pricing;
19 and (3) I. U. Kim, Vice-President of Marketing. Those from Defendant Hynix who pled guilty to
20 felony price-fixing violations in DRAM and who also had responsibility for SRAM pricing
21 included its Senior Vice President and General Manager of Worldwide Sales and Marketing, D.S.
22 Kim; its Director of Global Strategic Accounts, C.K. Chung; and its Senior Manager and Vice
23 President for Product Marketing and Vice President for Operations, C.Y. Choi.

24 162. Beginning at a date unknown to the Plaintiffs, but at least as early as November 1,
25 1996, and continuing thereafter to at least October 15, 2006, Defendants and their co-conspirators
26 engaged in a contract, combination, or conspiracy, the effect of which was to raise the prices at
27 which they sold SRAM to artificially-inflated and supra-competitive levels.

28 163. Defendants, through their officers, directors and employees, effectuated the aforesaid

1 contract, combination, or conspiracy between themselves and their co-conspirators by, among other
2 things:

- 3 a. participating in meetings and conversations, including through various
4 trade associations consortiums, and working groups, to discuss the
5 prices of SRAM in the United States;
- 6 b. agreeing, during those meetings and conversations, to charge prices at
7 specified levels and otherwise to increase and maintain prices of
8 SRAM sold in the United States;
- 9 c. issuing price announcements and quotations in accordance with the
10 agreements reached; and
- 11 d. selling SRAM in the United States at non-competitive prices.

12 164. In furtherance of this conspiracy to fix prices, the SRAM manufacturers engaged in a
13 systematic and continuous exchange of confidential pricing, quantity and other business
14 information. Defendants and their co-conspirators communicated extensively with one another to
15 discuss and exchange information about SRAM, including the market and prices for SRAM in
16 general, as well as related to specific OEMs.

17 165. Throughout the class period, representatives of the defendants communicated
18 personally or over the telephone or in writing in the United States to discuss SRAM business,
19 including SRAM pricing. Such communications occurred in or about: March 1997; May 1998;
20 December 1998; August 1999; October 1999; November 1999; December 1999; March 2000;
21 April 2000; July 2000; August 2000; October 2000; November 2000; March 2001; April 2001;
22 May 2001; June 2001; July 2001; October 2001; November 2001; January 2002; February 2002;
23 March 2002; April 2002; June 2002; July 2002; November 2002; February 2003; April 2003; May
24 2003; June 2003; July 2003; December 2003; during 2004 (the exact months being unknown to
25 Plaintiffs) and September 2005.

26 166. More specifically, representatives of one or more Defendants communicated on the
27 following dates about the subjects stated:

- 28 a. Ken Yap of Samsung had direct contact with Cypress. In a May 1998

1 email to his colleague, he asked, "I wonder if you have a wish list as
2 we discussed in the previous meeting. I'll have lunch with my buddy
3 at Cypress on Thursday." Il Ung Kim responds, "I am open to talk
4 about anything related to SRAM business. One curious topic could
5 be mini-BGA cost, capacity and ramp-up plan."

6 b. In September 1999, CK Chung sent an e-mail to Gary Swanson and
7 others at Hynix regarding October pricing for Strategic Accounts and
8 stated that he had "chatted with Samsung guys this morning" and
9 learned about Samsung's memory prices to certain OEMs. Regarding
10 the price increases contemplated by the e-mail, he says, "Hopefully
11 [sic] this price increases have our strategic customers reduce their
12 purchases, we can move more products in the spot, spot market price
13 down reducing the gap with contract price, etc, etc. Let's hope the
14 best."

15 c. John Bugee of Samsung had direct contact with Cypress as well. He
16 sent an e-mail to his colleagues in October 1999 which contained
17 LPSRAM pricing to Intel he received from Cypress. He spoke to
18 Cypress again and in March 13, 2000 reported on information,
19 including pricing, he learned when he "spoke to Cypress today
20 regarding their LPSRAM program with Intel." He spoke to Cypress
21 again on April 28, 2000 and reported that he "encouraged Cypress to
22 significantly increase (not decrease) their price" to Intel. Bugee also
23 shared pricing information he received concerning Micron, NEC, and
24 Toshiba. Mr. Bugee again spoke to Cypress on October 2, 1999
25 regarding pricing to Intel, and reported back to Samsung that
26 Cypress' "[c]urrent pricing is in the \$6.00 range." On October 21,
27 1999, Mr. Bugee again spoke to Cypress, and reported to Samsung
28 that "Cypress has quoted Y2K pricing of: 2M: Presently very low

1 \$3.00 range, and sub-\$2.00 in Q400. 4M: \$6.00.” Mr. Bugee further
2 reported that “Cypress acknowledged that the market is tightening,
3 and that customers are requesting upsides. This might cause them to
4 re-adjust their forward pricing upwards, as well as continue to
5 minimize capacity commitments to Intel.” Bugee also spoke directly
6 to Cypress in August 2000 about prices to Intel and others. His direct
7 communications continued into 2001. In March 2001, HD Park asked
8 Bugee and Steve Wienger to let him know how much the competition
9 sold in January and February since they had “whole competition
10 information.”

- 11 d. In November 1999, a new Samsung employee traveled to the United
12 States and met with representatives of Micron and Cypress. J.H. Ko,
13 wrote that he, “met to discuss the Sync SRAM market.”
- 14 e. Bugee spoke directly to his contacts at Etron in December 1999
15 regarding LPSRAM pricing. He spoke to his contacts again in July
16 2000, when he e-mailed, “I spoke to Etron this morning. I am pleased
17 to report the following ...” and provided intelligence about Etron’s
18 LPSRAM products and pricing to Intel. Bugee spoke again to his
19 contact at Etron in October of that year. Bugee spoke to his Etron
20 contact in November 2000, regarding among other things, prices to
21 Intel. Based on the information he received directly from Etron about
22 pricing to Intel, he suggests that the Etron “price” that Intel will try to
23 use to get Samsung to move its price is meaningless and that
24 Samsung should stay firm at its higher price. Bugee’s
25 communications continued to 2001. In addition, Woung Moo Lee,
26 Senior Manager, Worldwide SRAM Marketing, also had direct
27 communications with Etron regarding pricing.
- 28 f. In July 2000, Bagbee of Samsung sent around competitive

1 information. Upon receiving it, his colleague, H.D. Park, Manager
2 SRAM Marketing, replied, “can we share this kind of competitive
3 info, with price info, once per month at least!!!”

4 g. Mike Black of Micron Marketing had good friends at all of Micron’s
5 so-called competitors. For example, in May 2001, Micron was
6 looking for information on Samsung and Cypress’ datasheets for
7 various SRAM. Mike Black was asked to get some information by
8 Tom Pawlowski, another Micron employee. Another of Black’s co-
9 workers reported that Black was “pinging his contacts for
10 information” but it was not being received quickly enough for
11 Pawlowski, who directed Black to “please get the Cypress and
12 Samsung info directly from our contacts there? Looks like this is a
13 real hot potato now.” On October 26, 2001, Micron’s Black reported
14 to Micron and David Carr of Silicon Access regarding discussions
15 with Samsung, and wrote that “[m]y conversations with them would
16 put their road map similar to ours. Pricing for 18M parts out in 2004
17 around \$20 for a 400MHz and in 2005 would move to \$15 range...”
18 [ellipsis in original].

19 h. On June 15, 2001, Hee Sang Yoon, a Hynix employee in charge of
20 SRAM Strategic Marketing, sent an e-mail to SRAM Manufacturers,
21 including among others, Micron, suggesting that they meet for an
22 “SRAM Manufacturer Meeting” on a regular basis. Hynix states that
23 “suppliers can control the market situation if they have accurate
24 information on customer and market demand in general.” According
25 to Hynix, it “would be a golden opportunity for us (SRAM vendors)
26 since we could discuss how we could manage the ever changing
27 market situation by exchanging our views on Today’s SRAM
28 Market.” The proposed meeting agenda included: SRAM Market

- 1 Analysis by Application, Sales Performance and Forecast, Production
2 Volume by Density, world wide supply forecasts by manufacturer and
3 product roadmaps.
- 4 i. Tom Pawlowski of Micron sent a Hynix e-mail to Jerry Johnson and
5 Mike Black with the following note: “Hmmm. Interesting”, Black’s
6 response to the request to have an official meeting to discuss SRAM
7 prices was “Wow”.
- 8 j. Tom Pawlowski must have replied to Yoon at Hynix, who sent
9 Pawlowski an e-mail on June 25, 2001, “I think we can make good
10 time to get suppliers’ status which you wanted it. In my mind,
11 someone who is in charge of marketing, they need two information
12 one is demand forecast and the other one is supplier forecast...” He
13 suggests that Hynix can get “a lot of demand information” and
14 proposes a private SRAM meeting between the two companies. The
15 next day, June 26, Pawlowski responds to Hee Sang suggesting that
16 he contact Mike Black. On June 27, 2001, Micron’s Black confirmed
17 to Hynix’ Yoon that “I would like to have an opportunity to meet
18 with you and discuss this SRAM market.” That same day, Yoon
19 wrote back and suggested that they meet in Korea.
- 20 k. In October 2001, J. M. Sung of Hynix met with a Cypress employee,
21 Mario Martinez in California about “SRAM product development &
22 Market.”
- 23 l. Similarly, Mike Black sent an email in January 2002 to Jerry Johnson
24 of Micron containing information that he had received on Samsung’s
25 worldwide synchronous SRAM sales and promised to send the
26 Cypress data and GSI Technology, Inc. (“GSI”) information “when
27 they get back from Japan ...” Jerry Johnson asked Black to put the
28 information into a chart and Black replied, “I will, but I want to wait

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

until my Samsung buddy gets back, he has the numbers for everybody!”

- m. On January 17, 2002, Mike Black (Micron Marketing) provided detailed information regarding Samsung’s “worldwide sync SRAM sales” to Jerry Nalywajko (Micron Tactical Marketing Mgr.) and other Micron employees.
- n. Jack Truong of Samsung wrote to Mark D’Arcangelo, Product Marketing Manager for SRAM at Hitachi, in February 2002 providing Samsung’s SRAM revenue numbers for low power, async fast and sync, and asking for Hitachi’s revenue numbers. In response, D’Arcangelo asked why Samsung’s async number was down from previous month and the sync number doubled and Truong provided an explanation involving who the buyer was and other information. D’Arcangelo responded with Hitachi’s numbers, and again asked Truong about the Samsung numbers. Truong provided additional explanations. They also asked one another about exchanging the competitors’ latest roadmaps, which, they both did. On June 18, 2002, Hitachi’s D’Arcangelo emailed Hitachi’s “SRAM numbers” to Truong as follows: “Low Power: \$435k Async: \$628k Sync: \$17k * Sun problem.” On September 6, 2002, Hitachi’s Toshihiko Seki wrote to Samsung’s Truong regarding Low Power SRAM, and asked “Are you able to share with me some of the low power SRAM revenue number?” and “Can you share some data?” and shared that “we do roughly 7M\$/mo in worldwide right now and wafer business is about 2M\$. . . “
- o. David Bagby, Samsung’s Director of SRAM Sales, had lunch with “the NEC America guys” in March 2002 regarding, among other things, the SRAM prices to Intel. Bagby provided “key” information

1 from the lunch to his colleague Woung Moo Lee (Senior Manager,
2 Worldwide SRAM and MCP Marketing, Semiconductor Sales
3 Division, Samsung Electronics Company, Ltd.), who thanked him for
4 the “valuable” information. After his conversation with the “NEC
5 guys,” Bagby was able to tell Lee that with respect to 2M low power
6 SRAM, “I think we have a chance to raise this price come April 1.
7 My feeling [is] a small increase will trigger the thought that maybe
8 things will get tight and they better be careful.” NEC also reported to
9 Bagby in that conversation that NEC had excess 4M low power
10 SRAM that Intel did not want, and the parties discussed the TAM.
11 Bagby concluded “Keep price at \$1.80.” On April 17, 2002,
12 Samsung’s Bagby wrote to Takahiro Kambe of Hitachi and stated “I
13 would like to give you WW [world-wide] data on SRAM from all
14 competitors would you like that.”

- 15 p. In April 2002, Micron’s Jerry Nalywajko sent an e-mail around
16 Micron with SRAM competitor ASP (“average selling price”) and
17 other data as well as data on the low power SRAM market. He told
18 his colleagues that while the data seemed reliable, “Mike Black will
19 double ck on this with his sources.”
- 20 q. In July 2002, Black reached out to Mike Pearson at Samsung to see
21 whether Samsung would answer a number of questions about its
22 SRAM manufacturing processes and told Pearson that “this may
23 seem too sensitive, but we would be willing to exchange this level of
24 information.” At first, Samsung “politely decline[d] ... [the] offer to
25 share data” but two days later had a “change of heart” and let Black
26 know that he would have his competitor’s sensitive data in a few
27 days.
- 28 r. In a November 21, 2002 e-mail to Jan Dupreez (Micron), Mike Black

1 (Micron) provided comparative SSRAM specifications for Micron's
2 top two competitors, Samsung and Cypress.

3 s. In February 2003, Truong (Samsung) sent an e-mail to Goto at NEC
4 thanking him for their conversation and attaching PSRAM roadmaps.
5 Goto responded in kind with NEC's latest roadmaps. Both asked the
6 other to keep the information confidential. On May 1, 2003,
7 Samsung's Truong asked NEC's Goto "Would you like to exchange
8 sync SRAM & Low power SRAM presentation between NEC and
9 Samsung," and NEC's Goto responded that same day that "I have
10 absolutely no problem to exchange an [updated] roadmap . . ."

11 t. Samsung's Jack Truong met with Rob Sloan of Cypress on June 11,
12 2003 regarding SRAM. After that meeting, Sloan sent an e-mail to
13 Truong attaching Cypress's current SRAM presentation and
14 requesting that Truong forward Samsung's to him.

15 u. In September 2005, Y. S. Lee of Samsung wrote to Hiroyuki Goto of
16 NEC and Clint Min of Renesas following up on their conversation
17 during a "cigarette break" at a trade association meeting earlier in the
18 day, and seeking a private dinner to discuss QDR II (SRAM). The
19 dinner was set up for September 23, 2005. Before the dinner, Goto of
20 NEC e-mailed his colleague at NEC to see what specific information
21 was needed from Renesas, "I am having informal dinner with John
22 and Clint tonight. Is there anything you want me to hear from them?"
23 S. J. Han of NEC asked Goto to get some information about Samsung
24 and Renesas SRAM QDR II+ and S3 and "run rates."

25 167. In addition to the communications among the Defendants listed above, Defendants
26 distributed various press releases and public statements designed to mislead the public about the
27 reasons for SRAM price increases of SRAM. For example on October 11, 1999, Electronic Buyers
28 News reported:

1 a. “[D]uring a conference call last week to financial analysts to report its
2 quarterly earnings, Don Baldwin, vice president of Micron
3 Technology, Boise, Idaho, said the company ‘is on allocation across
4 the board on all its memory products-128-Mbit and 64-Mbit DRAMs,
5 flash, and SRAMs. We're forced to turn away a large amount of
6 business, and most of the other DRAM manufacturers are doing the
7 same.’”

8 168. On January 13, 2000, Purchasing Magazine, quoted Avo Kanadjian, vice president of
9 memory marketing for Samsung Electronics, as follows: "Samsung's capacity utilization is at an
10 all-time high, . . . All of my product lines are fighting for capacity allocation. Flash would kill for
11 additional capacity. SRAM we can't supply enough of because of cell phones.”

12 169. The Defendants’ earnings conference calls, transcripts of which are available online
13 in written and audio form, also revealed many misleading public statements about the pricing of
14 SRAM. For example:

15 a. On July 18, 2002 Cypress Semiconductor Corp. Q2 2002 Earnings
16 Call: “Follow Up: Samsung is shifting production from older DRAM
17 to SRAM, thoughts? . . .
18 Answer: . . . Right now, relationships, products are what’s required to hang in
19 there until capacity, supply and demand are equal, it’s a non-event. It won’t
20 change pricing, the customer is driving pricing.” Cypress participants on the
21 call were T.J. Rodgers (President and CEO), Emmanuel Hernandez (VP,
22 Finance & Administration, and CFO), and Ralph Schmitt (EVP, Sales and
23 Marketing.)

24 b. During the July 15, 2004 Cypress Semiconductor Corp. Q2 2004
25 Earnings Call: Ralph Schmitt (Cypress EVP, Sales and Marketing)
26 stated: “Our SRAM pricing in Q3 will be up, primarily due to the fact
27 that we've negotiated that pricing with major contracts at our
28 customers back in the May and June timeframe. . . T. J. Rodgers

1 (Cypress President and CEO) stated: “On pricing, our average selling
2 price last quarter was \$1.38, up from \$1.36 the quarter before that,
3 \$1.33 the quarter before, \$1.28 a quarter before that and that was the
4 bottom of the recession. So we've been actively raising prices. Right
5 now we are not actively raising prices, but many of the price raises
6 we've done have yet to really show up in revenue, so we still expect
7 favorable news on ASPs going forward, although we're not, as I said,
8 currently raising prices more.”

9 c. On a January 26, 2006 Cypress Semiconductor Corp. Q4 2005
10 Earnings Call: T.J. Rodgers (President, CEO and Director) noted:
11 “What's happened is the way we run our fabs, the value added
12 products always get everything they need and then we fill up the rest
13 of our fabs to their capability to make with SRAMs and right now
14 we're 33% short, or 25% short on an \$80mm demand and it's only the
15 third week of the quarter. So we're booked up, we're in the process of
16 pushing out some deliveries to the least profitable segments of the
17 SRAM business. So we're going through the standard up turn
18 maneuver of focusing on the best of our SRAM business to try to
19 raise margins. So your question about double ordering is something
20 we don't consider right now, what the mode we're in right now is
21 we're calling our strategic accounts, we're telling them about the
22 issues with SRAMs and we're asking them to tell us exactly what they
23 need to stay alive and we are scheduling less than what they have
24 ordered and we're making sure that their lines stay up and we don't
25 contribute to a lines down situation. With regard to new business, we
26 are raising our prices so that demand and supply will come into
27 equilibrium. Double ordering always happens. I always say I don't
28 think we have it because we have visibility. We really don't and I am

1 sure we have it right now, but for right now what we ship is more of a
2 negotiation with our customers than what the backlog is.”

3 d. Additionally, during a July 20, 2006 Cypress Semiconductor Corp.
4 Q2 2006 Earnings Call: T.J. Rodgers (Cypress President and CEO)
5 stated: “Pricing did go up for SRAM last quarter. We have an active
6 price raising program going on. . . . If you look at some of the more
7 popular products, our 16 megabit SRAM, which is a high profit
8 margin generator for us, went up to 931 from 915. So we drove that
9 set (inaudible) faster (multiple speakers). Okay, let me give you a
10 different number. That's a kind of aggregate number, which is not as
11 good. Our fast SRAMs -- those are high-speed 10 nanoseconds
12 asynchronous RAMs -- the 16-meg is up to \$15.25 for an ASP. In
13 micropower, we raised the ASP in our 16-meg there, we raised the
14 ASP in the 4-meg, which has been a commodity product to \$1.40
15 from \$1.04. So across the board, when we are allocating, one of the
16 things we say is -- how many would you like and how much are you
17 willing to pay? So we have been asked to sell SRAMs below our cost
18 to stay alive in the past and we're not hesitating now to take whatever
19 profit the market will bear when we have SRAMs that are needed and
20 there aren't enough of in the world.”

21 e. On a January 25, 2007 Q4 2006 Cypress Semiconductor Earnings
22 Conference Call – Final, Chris Seams, (EVP, Marketing, Sales and
23 Manufacturing, Cypress Semiconductor) stated: “. . . Let me cover a
24 few of the usual indices for the fourth quarter. Revenue splits by
25 geography were not changed significantly, Asia remained number one
26 at 38% of sales, followed by North America at 31%, Europe at 23%,
27 and Japan at 9% of sales. No single customer was greater than 10% of
28 sales. Units for the quarter were 158 million, down slightly, mostly

1 from the PC Clock divestiture and shipping more high density
2 synchronous static RAMs. ASP was a high point for the quarter. We
3 enjoyed a continued strong pricing environment. ASP was \$1.22, up
4 significantly from the third quarter ASP of \$1.13. This is due to the
5 SRAM market consolidation and a larger percent of our revenue
6 coming from proprietary parts where customers price on value.”

7 170. In reality, price increases in the SRAM market were the result of careful collaboration
8 and manipulation by the SRAM manufacturers in order to raise market prices.

9 171. In addition to the communications listed above, Defendants attended various trade
10 associations meetings in the state of California, at which meetings they discussed SRAM pricing
11 with the purpose and effect of raising, fixing and stabilizing SRAM prices. Defendants’
12 participation in the trade associations, industry consortiums, and working groups was recognized as
13 a way to communicate with so-called competitors. Such meetings occurred at the following trade
14 associations:

- 15 a. The JEDEC Solid State Technology Association (“JEDEC”) (formerly
16 the Joint Electron Device Engineering Council) is the semiconductor
17 engineering standardization body of the Electronic Industries
18 Alliance, a trade association representing segments of the electronic
19 industry. All Defendants are members of this group and have
20 representatives on various of its committees and subcommittees,
21 which meet regularly. The JEDEC touts the benefits of membership
22 in the organization as including the ability to “take advantage of
23 networking opportunities” and “make valuable contacts throughout
24 the industry.” The activities of the JEDEC provided the Defendants
25 with opportunities to conspire on the pricing of SRAM. The
26 defendants participated in JEDEC committee and board meetings in
27 California on the following dates: 11/5/01; 11/6/01; 11/7/01; and
28 11/8/01.;

- 1 b. The QDR (Quad Data Rate) Consortium (“QDRC”) was formed in
2 February of 1999 to jointly develop QDR SRAM, a type of high
3 speed SRAM. Initial members included, on information and belief,
4 Defendants Cypress, Micron, NEC and IDT. In March 2001,
5 Samsung joined the consortium and in September 2001, Hitachi
6 joined as well. The nature of the market and the relationships of the
7 Defendants create the likelihood that there were other Defendants, not
8 yet known to Plaintiffs, who were members of the consortium. The
9 QDRC held regular meetings both in person and telephonically, at
10 which members, and perhaps others, attended. The activities of the
11 QDRC provided the Defendants with opportunities to conspire on the
12 pricing of SRAM. The defendants participated in QDRC meetings in
13 California on the following dates: 4/21/01; 6/5/01; 7/19/01; 9/27/01;
14 11/8/01; 5/14/02; 4/3/03; 6/10/03; 10/28/03; 11/20/03; 12/16/03;
15 10/15/04; 12/13/04; 1/28/05; 2/24/05; 3/24/05; 4/28/05; 5/20/05;
16 6/29/05; 8/2/05; 9/05; 11/15/05; 1/19/06;
- 17 c. The SigmaRAM Consortium was founded in July of 1999 to jointly
18 develop high-speed asynchronous SRAM for networking and
19 telecommunications applications. By 2003, its members included
20 Sony, Mitsubishi and Toshiba amd Alliance Semiconductor, GSI, and
21 ISSI. The activities of the SigmaRAM Consortium provided the
22 Defendants with opportunities to conspire on the pricing of SRAM;
- 23 d. The Common Specifications for Mobile RAM (COSMORAM) Group,
24 consisting of Fujitsu, NEC and Toshiba, was formed in 2002 to
25 jointly examine common specifications for mobile RAM. The
26 activities of the COSMORAM Group provided the Defendants with
27 opportunities to conspire on the pricing of SRAM:
- 28 e. The CellularRAM Working Group (“CWG”) was initially formed by

1 Defendants Cypress, Micron and one of the guilty parties in the
2 DOJ's DRAM investigation, Infineon Technologies, Inc., to jointly
3 work on development of CellularRAM technology. Defendant Hynix
4 joined in 2005. The activities of the CWG provided the Defendants
5 with opportunities to conspire on the pricing of SRAM;

6 f. The Die Products Consortium ("DPC") is an organization dealing
7 with, *inter alia*, development of strategies to enlarge the market for
8 memory die products. Samsung, Hynix, Infineon and IBM were
9 members at times between 2002 and 2004. Micron employees
10 discussed joining the DPC in April 2003 to among other reasons
11 "track" Samsung. The memory suppliers met at Hynix in California
12 on June 25, 2003 to develop standards for packing die, and agreed to
13 meet again on August 12, 2003 in San Jose, California. The activities
14 of the DPC provided the Defendants with opportunities to conspire on
15 the pricing of SRAM;

16 g. The Multi Chip Package (MCP) Consortium was formed to handle
17 issues regarding die products and MCP issues. The group held a
18 meeting in California on June 25, 2003, apparently in conjunction
19 with the DPC meeting, and again in August 4, 2004 in California.
20 The members included Micron, Samsung, Hynix, Infineon, Intel,
21 AMD, Sharp, and Qualcomm, and Elpida and Toshiba were invited to
22 join. The activities of the MPC Consortium provided the Defendants
23 with opportunities to conspire on the pricing of SRAM;

24 h. The Council on Computing Power (CoCP) is an industry group
25 dedicated to maximizing computer performance by increasing
26 awareness of RAM by joint marketing. It was created in 1999 by
27 Hyundai, NEC, Samsung, Infineon, and Micron. TAEC was added in
28 2000 and the defendants participated in CoCP meetings in California

1 on the following dates: 3/3/00; 3/7/00; 6/12/00; 6/13/00. The
2 activities of the CoCP provided the Defendants with opportunities to
3 conspire on the pricing of SRAM;

4 i. The World Semiconductor Trade Statistics Industry Association was
5 formed to provide timely, accurate and authentic semiconductor
6 market data on industry product shipments in a product line format.
7 Cypress, Micron, NEC, Renesas, Seiko Epson, Sony and Toshiba are
8 members; and

9 j. The MultiMediaCard Association (MMCA) is an industry group
10 headquartered in Cupertino, California and promotes standards for a
11 variety of memory products. In April 2003, Defendants Samsung,
12 Micron, Renesas, among others, attended meetings together. The
13 activities of the MMCA provided the Defendants with opportunities
14 to conspire on the pricing of SRAM.

15 172. The conduct of the “business” of these organizations gave Defendants and their co-
16 conspirators the cover needed to contact one another with impunity and to communicate
17 competitive information, including SRAM pricing. For example, after a QDRC meeting in 2001,
18 as the Defendants began to exchange competitive information, including pricing information, they
19 designated the documents “QDR” as opposed to specific company names, in order to hide the
20 identity of the company providing that information so that their price-fixing activities would not
21 disclose the participants. These “consortium” meetings often led to separate and more private
22 meetings at which SRAM prices and markets were discussed. This is exemplified by an e-mail
23 sent by NEC to Micron seeking “the opportunity to shoot the breeze with you guys outside of the
24 [February 8, 2002] consortium meeting.”

25 173. In a January 11, 2001 e-mail regarding the provision of pricing information on QDRC
26 presentation materials, Jerry Johnson (Micron) states “now that we’ve beaten Sigma the pricing is
27 going up.”

28 174. In addition to these trade associations, Defendants also participated in many working

1 groups and attended conferences, in California, all of which provided Defendants with
2 opportunities to conspire on the pricing of SRAM. For example:

3 175. On November 14, 1997, Rahman of Hynix met with a Samsung employee in
4 California to discuss SRAM business.

5 176. On May 28, 1998, Ken Yap of Samsung had lunch in California with a Cypress
6 employee.

7 177. In December 6, 1999, Jay Ko from Samsung in Korea met with Cypress and IDT in
8 San Jose, California.

9 178. On June 12-13, 2000, a number of Defendants participated in an “exchange” meeting
10 in San Jose, California.

11 179. In March 2001, J. M. Sung of Hynix met with Infineon and ISSI (Jung Chang) in
12 California about SRAM Business and Hynix met with ISSI again in April about SRAM business.

13 180. On May 14 and 15, 2001, representatives of Micron attended a Network Processor
14 Forum (“NPF”) in Ottawa, Canada, that was also attended by representatives of Cypress and IDT.
15 Among the issues under consideration was whether the QDR Consortium SRAM specifications or
16 those of Sigma RAM should be adopted as the industry standard. A follow-up meeting of the NPF
17 was scheduled for June 26 and 27, 2001 in Cypress’ San Jose offices.

18 181. In October 2001, J. M. Sung of Hynix met separately with both Cypress (Mario
19 Martinez) and ISSI, in California, about “SRAM product development & Market.”

20 182. On July 24, 2002, Mike Pearson (Samsung) e-mailed the other members of the
21 QDRC suggesting a meeting at Samsung on August 21, 2002—“prior to our QDR face-to-face”—
22 with members of Sigma RAM to discuss the “standardization of timings.” Pearson indicates that
23 this suggestion was prompted by discussions with members of the Sigma RAM group at the “NPF
24 Look Aside Task Group.”

25 183. On January 28-29, 2003, a number of defendants had a platform conference in San
26 Jose, California.

27 184. On July 28, 2003, Samsung and Cypress employees met in San Jose, California
28 regarding SRAM market and technology.

1 185. In February, 2005, NEC and Cypress met in California to exchange sample memory
2 devices

3 186. On May 19, 2005, QDRC members met with Marvel in California
4 to discuss SRAM issues.

5 187. Defendants subscribed to the NECX, an online market exchange for electronic
6 components and computer systems, and the American Integrated Chip Exchange (“AICE”), a real-
7 time commodity chip exchange, based in California, that published lists of spot prices, including
8 for SRAM. In July 2000, NECX purchased the AICE and its RAMDEX website. Thereafter, in
9 2001, NECX was acquired by Converge, a California exchange founded by a group of
10 manufacturers including HP, Agilent Technologies, Compaq, Gateway, Hitachi, NEC and
11 Samsung. The stated goal of Converge was to reduce members’ material costs. In addition, the
12 Defendants participated in surveys from, for example, Gartner/Dataquest’s Monthly Pricing and
13 Procurement Project. These exchanges provided Defendants with additional outlets for shared
14 pricing to use in their SRAM conspiracy.

15 188. The predominant locus of Defendants’ actions in the United States which formed a
16 contract, combination, trust or conspiracy was the State of California. Therefore, all members of
17 the Class, whether or not California residents, are entitled to recover under California law, as well
18 as the laws of their own states.

19 **ACTIVE CONCEALMENT**

20 189. Throughout and beyond the conspiracy, Defendants and their co-conspirators
21 affirmatively and actively concealed their unlawful conduct from Plaintiffs. Defendants and their
22 co-conspirators conducted their conspiracy in secret and kept it mostly within the confines of their
23 higher-level executives. Defendants and their co-conspirators publicly provided pre-textual and
24 false justifications regarding their price increases. Defendants and their co-conspirators conducted
25 their conspiracy in secret, concealed the true nature of their unlawful conduct and acts in
26 furtherance thereof, and actively concealed their activities through various other means and
27 methods to avoid detection. Plaintiffs did not discover, and could not have discovered through the
28 exercise of reasonable diligence, that Defendants and their co-conspirators were violating the

1 antitrust laws as alleged herein until shortly before this class action litigation was commenced.

2 190. As a result of the active concealment of the conspiracy by Defendants and their co-
3 conspirators, any and all applicable statutes of limitations otherwise applicable to the allegations
4 herein have been tolled.

5 **PLAINTIFFS' INJURIES**

6 191. Plaintiffs and the Class members as defined below have been damaged as a direct,
7 foreseeable, and proximate result of Defendants' misconduct. Plaintiffs and the Class members
8 participate in the market for the sale of SRAM. To the extent Plaintiffs and Class members
9 purchase SRAM as part of a computer or other equipment purchase, Defendants' unlawful
10 conspiracy and unfair, deceptive and unconscionable practices have caused the prices at which
11 OEMs sell such SRAM to increase to supra-competitive levels.

12 192. Defendants have extinguished the market forces of competition to their mutual
13 benefit. Consumers, including Plaintiffs and Class members, are injured by paying supra-
14 competitive prices for SRAM.

15 193. Because Defendants control the market for SRAM, there are virtually no choices for
16 consumers who require such a memory product other than buying one from entities that pay supra-
17 competitive prices to Defendants because of Defendants' unlawful agreement alleged herein.

18 194. The market for SRAM and the markets for Computers and mobile phones are
19 intertwined because the SRAM market exists to serve the Computer and mobile phone markets.
20 SRAM and Computer and mobile phone markets are united in that one cannot exist without the
21 other.

22 195. The conspiratorial conduct of the Defendants and their co-conspirators, the purpose of
23 which is to raise the price of SRAM, would, on information and belief, directly increase the price
24 of the Computers and mobile telecommunications devices. The economic and legal literature has
25 recognized that unlawful overcharges on a component normally resulted in higher prices for
26 products that contained that price-fixed component. As two noted antitrust scholars – Professors
27 Robert G. Harris (Professor Emeritus and former Chair of the Business and Public Policy Group at
28 the Haas School of Business at the University of California at Berkeley) and Lawrence A. Sullivan

1 (Professor of Law Emeritus at Southwestern Law School and author of the Handbook of the Law
2 of Antitrust) – have observed, “in a multiple-level chain of distribution, passing on monopoly
3 overcharges is not the exception: it is the rule.”

4 196. Where as here, there are few products whose price is dependent on only one factor or
5 variable, economists have developed techniques to isolate and understand the relationship between
6 one “explanatory” variable and a “dependent” variable in those cases when the dependent variable
7 is explained by a multitude of variables—when all such variables may be changing simultaneously.
8 That analysis—called regression analysis—is commonly used in the real world and in litigation to
9 determine the impact of a price increase on one cost in a product (or service) that is an assemblage
10 of costs. Thus, it will be possible to isolate and identify the impact of increases in the price of
11 SRAM on computer and mobile telecommunication equipment prices even though these products
12 contain a numbers of other components whose prices may be changing over time.

13 197. During the Class Period, Plaintiffs and the Class Members paid supra-competitive
14 prices for SRAM. These inflated prices were passed on to them by manufacturers, distributors, and
15 retailers. Those overcharges have unjustly enriched Defendants.

16
17 **VIOLATIONS ALLEGED**

18 **First Claim for Relief**

19 **(Violation of Section 1 of the Sherman Act)**

20 198. Plaintiffs incorporate and reallege, as though fully set forth herein, each and every
21 allegation set forth in the preceding paragraphs of this Complaint.

22 199. Beginning at a time presently unknown to Plaintiffs, but at least as early as
23 November 1, 1996 and continuing through at least December 31, 2006, the exact dates being
24 unknown to Plaintiffs, Defendants and their co-conspirators entered into a continuing agreement,
25 understanding, and conspiracy in restraint of trade to artificially raise, fix, maintain, and/or
26 stabilize prices for SRAM in the United States, in violation of Section 1 of the Sherman Act,
27 15 U.S.C. §1.

28 200. In formulating and carrying out the alleged agreement, understanding, and

1 conspiracy, the Defendants and their co-conspirators did those things that they combined and
2 conspired to do, including but not limited to the acts, practices, and course of conduct set forth
3 above, and the following, among others:

- 4 a. To fix, raise, maintain and stabilize the price of SRAM;
- 5 b. To allocate markets for SRAM among themselves;
- 6 c. To submit rigged bids for the award and performance of certain
7 SRAM contracts; and
- 8 d. To allocate among themselves the production of SRAM.

9 201. The combination and conspiracy alleged herein has had the following effects, among
10 others:

- 11 a. Price competition in the sale of SRAM has been restrained,
12 suppressed, and/or eliminated in the United States;
- 13 b. Prices for SRAM sold by Defendants and their co-conspirators have
14 been fixed, raised, maintained and stabilized at artificially high, non-
15 competitive levels throughout the United States; and
- 16 c. Those who purchased SRAM directly or indirectly from Defendants
17 and their co-conspirators have been deprived of the benefits of free
18 and open competition.

19 202. Plaintiffs have been injured and will continue to be injured in their business and
20 property by paying more for SRAM purchased indirectly from the Defendants and their co-
21 conspirators than they would have paid and will pay in the absence of the combination and
22 conspiracy, including paying more for personal computers and other products in which SRAM is a
23 component as a result of higher prices paid for SRAM by the manufacturers of those products.

24 203. Plaintiffs and the class are entitled to an injunction against Defendants, preventing
25 and restraining the violations alleged herein.

26 **Second Claim for Relief**

27 **(Violation of the California Cartwright Act)**

28 204. Plaintiffs incorporate and reallege, as though fully set forth herein, each and every

1 allegation set forth in the preceding paragraphs of this Complaint.

2 205. Defendants' contract, combination, trust or conspiracy was centered in, carried out,
3 effectuated and perfected mainly within the State of California, and Defendant's conduct within
4 California injured all members of the Class throughout the United States. Therefore, this claim for
5 relief under California law is brought on behalf of all members of the Class, whether or not they
6 are California residents.

7 206. Beginning at a time presently unknown to Plaintiffs, but at least as early as November
8 1, 1996, and continuing thereafter at least up to and including at least December 31, 2006,
9 Defendants and their co-conspirators entered into and engaged in a continuing unlawful trust in
10 restraint of the trade and commerce described above in violation of Section 16720, California
11 Business and Professional Code. Defendants, and each of them, have acted in violation of Section
12 16720 to fix, raise, stabilize and maintain prices of, and allocate markets for, SRAM at supra-
13 competitive levels.

14 207. The aforesaid violations of Section 16720, California Business and Professions Code,
15 consisted, without limitation, of a continuing unlawful trust and concert of action among the
16 Defendants and their co-conspirators, the substantial terms of which were to fix, raise, maintain
17 and stabilize the prices of, and to allocate markets for, SRAM.

18 208. For the purpose of forming and effectuating the unlawful trust, the Defendants and
19 their co-conspirators have done those things which they combined and conspired to do, including
20 but in no way limited to the acts, practices and course of conduct set forth above and the following:

- 21 a. to fix, raise, maintain and stabilize the price of SRAM;
22 b. to allocate markets for SRAM amongst themselves;
23 c. to submit rigged bids for the award and performance of certain SRAM
24 contracts; and
25 d. to allocate among themselves the production of SRAM.

26 209. The combination and conspiracy alleged herein has had, inter alia, the following
27 effects:

- 28 a. price competition in the sale of SRAM has been restrained, suppressed

1 and/or eliminated in the State of California and throughout the United
2 States;

3 b. prices for SRAM sold by Defendants and their co-conspirators have
4 been fixed, raised, maintained and stabilized at artificially high, non-
5 competitive levels in the State of California and throughout the
6 United States; and

7 c. those who purchased SRAM from Defendants and their co-
8 conspirators have been deprived of the benefit of free and open
9 competition.

10 210. Plaintiffs and the other members of the Class paid supra-competitive, artificially
11 inflated prices for SRAM.

12 211. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and the
13 members of the Class have been injured in their business and property in that they paid more for
14 SRAM than they otherwise would have paid in the absence of Defendants' unlawful conduct. As a
15 result of Defendants' violation of Section 16720 of the California Business and Professions Code,
16 Plaintiffs seek treble damages and the costs of suit, including reasonable attorneys' fees, pursuant
17 to Section 16750(a) of the California Business and Professions Code.

18 **Third Claim for Relief**

19 **(Violation of the California Unfair Competition Law)**

20 212. Plaintiffs incorporate and reallege, as though fully set forth herein, each and every
21 allegation set forth in the preceding paragraphs of this Complaint.

22 213. Defendants' business acts and practices were centered in, carried out, effectuated and
23 perfected mainly within the State of California, and Defendant's conduct within California injured
24 all members of the Class throughout the United States. Therefore, this claim for relief under
25 California law is brought on behalf of all members of the Class, whether or not they are California
26 residents.

27 214. Beginning on a date unknown to Plaintiffs, but at least as early as November 1, 1996,
28 and continuing thereafter at least up through and including December 31, 2006, Defendants

1 committed and continue to commit acts of unfair competition, as defined by Sections 17200, *et seq.*
2 of the California Business and Professions Code, by engaging in the acts and practices specified
3 above.

4 215. This Claim is instituted pursuant to Sections 17203 and 17204 of the California
5 Business and Professions Code, to obtain restitution from these Defendants for acts, as alleged
6 herein, that violated Section 17200 of the California Business and Professions Code, commonly
7 known as the Unfair Competition Law.

8 216. The Defendants' conduct as alleged herein violated Section 17200. The acts,
9 omissions, misrepresentations, practices and non-disclosures of Defendants, as alleged herein,
10 constituted a common continuous and continuing course of conduct of unfair competition by means
11 of unfair, unlawful and/or fraudulent business acts or practices within the meaning of California
12 Business and Professions Code, Section 17200, *et seq.*, including, but not limited to, the following:

- 13 a. The violations of Section 1 of the Sherman Act, as set forth above;
- 14 b. The violations of Section 16720, *et seq.*, of the California Business and
15 Professions Code, set above;
- 16 c. Defendants' acts, omissions, misrepresentations, practices and non-
17 disclosures, as described above, whether or not in violation of Section
18 16720, *et seq.* of the California Business and Professions Code, and
19 whether or not concerted or independent acts, are otherwise unfair,
20 unconscionable, unlawful or fraudulent;
- 21 d. Defendants' act and practices are unfair to consumers of SRAM in the
22 State of California and throughout the United States, within the
23 meaning of Section 17200, California Business and Professions Code;
24 and
- 25 e. Defendants' acts and practices are fraudulent or deceptive within the
26 meaning of Section 17200 of the California Business and Professions
27 Code.

28 217. Plaintiffs and each of the Class members are entitled to full restitution and/or

1 disgorgement of all revenues, earnings, profits, compensation and benefits which may have been
2 obtained by Defendants as a result of such business acts or practices.

3 218. The illegal conduct alleged herein is continuing and there is no indication that
4 Defendants will not continue such activity into the future.

5 219. The unlawful and unfair business practices of Defendants, and each of them, as
6 described above, have caused and continue to cause Plaintiffs and the members of the Class to pay
7 supra-competitive and artificially-inflated prices for SRAM. Plaintiffs and the members of the
8 class suffered injury in fact and lost money or property as a result of such unfair competition.

9 220. The conduct of Defendants as alleged in this Complaint violates Section 17200 of the
10 California Business and Professions Code.

11 221. As alleged in this Complaint, Defendants and their co-conspirators have been unjustly
12 enriched as a result of their wrongful conduct and by Defendants' unfair competition. Plaintiff and
13 the members of the Class are accordingly entitled to equitable relief including restitution and/or
14 disgorgement of all revenues, earnings, profits, compensation and benefits which may have been
15 obtained by Defendants as a result of such business practices, pursuant to the California Business
16 and Professions Code, Sections 17203 and 17204.

17 **Fourth Claim for Relief**

18 **(Violation of State Antitrust and Unfair Competition Laws)**

19 222. Plaintiffs incorporate and reallege, as though fully set forth herein, each and every
20 allegation set forth in the preceding paragraphs of this Complaint.

21 223. By reason of the foregoing, Defendants have entered into agreements in restraint of
22 trade in violation of Arizona Revised Stat. §§44-1401 *et seq.*

23 224. By reason of the foregoing, Defendants have entered into agreements in restraint of
24 trade in violation of California Bus. & Prof. Code §§16700 *et seq.* and Cal. Bus. & Prof. Code
25 §§17200 *et seq.*

26 225. By reason of the foregoing, Defendants have entered into agreements in restraint of
27 trade in violation of District of Columbia Code Ann. §§28-4503 *et seq.*

28 226. By reason of the foregoing, Defendants have entered into agreements in restraint of

1 trade in violation of Hawaii Code, H.R.S. §§ 480-1, *et seq.*

2 227. By reason of the foregoing, Defendants have entered into agreements in restraint of
3 trade in violation of Iowa Code §§553.1 *et seq.*

4 228. By reason of the foregoing, Defendants have entered into agreements in restraint of
5 trade in violation of Kansas Stat. Ann. §§50-101 *et seq.*

6 229. By reason of the foregoing, Defendants have entered into agreements in restraint of
7 trade in violation of Maine Rev. Stat. Ann. 10, §§1101 *et seq.*

8 230. By reason of the foregoing, Defendants have entered into agreements in restraint of
9 trade in violation of Michigan Comp. Laws. Ann. §§445.773 *et seq.*

10 231. By reason of the foregoing, Defendants have entered into agreements in restraint of
11 trade in violation of Minnesota Stat. §§325D.52 *et seq.*

12 232. By reason of the foregoing, Defendants have entered into agreements in restraint of
13 trade in violation of Mississippi Code Ann. §75-21-1 *et seq.*

14 233. By reason of the foregoing, Defendants have entered into agreements in restraint of
15 trade in violation of Nebraska Rev. Stat. §§59-801 *et seq.*

16 234. By reason of the foregoing, Defendants have entered into agreements in restraint of
17 trade in violation of Nevada Rev. Stat. Ann. §§598A *et seq.*

18 235. By reason of the foregoing, Defendants have entered into agreements in restraint of
19 trade in violation of New Mexico Stat. Ann. §§57-1-1 *et seq.*

20 236. By reason of the foregoing, Defendants have entered into agreements in restraint of
21 trade in violation of New York Gen. Bus. Law § 340 *et seq.*

22 237. By reason of the foregoing, Defendants have entered into agreements in restraint of
23 trade in violation of North Carolina Gen. Stat. §75-1 *et seq.*

24 238. By reason of the foregoing, Defendants have entered into agreements in restraint of
25 trade in violation of North Dakota Cent. Code §§51-08.1-01 *et seq.*

26 239. By reason of the foregoing, Defendants have entered into agreements in restraint of
27 trade in violation of the Puerto Rico Code 10 LPRA §251, *et seq.* and 31 LPRA §5141.

28 240. By reason of the foregoing, Defendants have entered into agreements in restraint of

1 trade in violation of South Dakota Codified Laws Ann. §§37-1 *et seq.*

2 241. By reason of the foregoing, Defendants have entered into agreements in restraint of
3 trade in violation of Tennessee Code Ann. §§47-25-101 *et seq.*

4 242. By reason of the foregoing, Defendants have entered into agreements in restraint of
5 trade in violation of Vermont Stat. Ann. 9 §§2453 *et seq.*

6 243. By reason of the foregoing, Defendants have entered into agreements in restraint of
7 trade in violation of Utah Stat. §§ 76-10-919 *et seq.*

8 244. By reason of the foregoing, Defendants have entered into agreements in restraint of
9 trade in violation of West Virginia §§47-18-1 *et seq.*

10 245. By reason of the foregoing, Defendants have entered into agreements in restraint of
11 trade in violation of Wisconsin Stat. §§133.01 *et seq.*

12 246. Class Members in each of the states listed above paid supra-competitive, artificially
13 inflated prices for SRAM. As a direct and proximate result of Defendants' unlawful conduct, such
14 members of the Class have been injured in their business and property in that they paid more for
15 SRAM than they otherwise would have paid in the absence of Defendants' unlawful conduct.

16 247. As a result of Defendants' violations of the statutes set forth, Class members seek
17 damages and costs of suit, including reasonable attorneys' fees.

18 **Fifth Claim for Relief**

19 **(Violation of State Consumer Protection and Unfair Competition Laws)**

20 248. Plaintiffs incorporate and reallege, as though fully set forth herein, each and every
21 allegation set forth in the preceding paragraphs of this Complaint.

22 249. Defendants engaged in unfair competition or unfair, unconscionable, deceptive or
23 fraudulent acts or practices in violation of the state consumer protection and unfair competition
24 statutes listed below.

25 250. Defendants have engaged in unfair competition or unconscionable, unfair or
26 deceptive acts or practices in violation of Arkansas Code §4-88-101 *et seq.*

27 251. Defendants have engaged in unfair competition or unfair or deceptive acts or
28 practices in violation of California Bus. & Prof. Code §17200 *et seq.*

1 252. Defendants have engaged in unfair competition or unconscionable, unfair or
2 deceptive acts or practices in violation of District of Columbia Code §28-3901 *et seq.*

3 253. Defendants have engaged in unfair competition or unconscionable, unfair or
4 deceptive acts or practices in violation of Florida Stat. §501.201 *et seq.*

5 254. Defendants have engaged in unfair competition or unfair or deceptive acts or
6 practices in violation of Kansas Stat. §50-623 *et seq.*

7 255. Defendants have engaged in unfair competition or unfair or deceptive acts or
8 practices that were indirectly purchased primarily for personal, family, or household purposes in
9 violation of 5 Maine Rev. Stat. §207 *et seq.*

10 256. Defendants have engaged in unfair competition or unfair or deceptive acts or
11 practices in violation of Massachusetts General Laws, Chapter 93A, §1 *et seq.*

12 257. Defendants have engaged in unfair competition or unfair or deceptive acts or
13 practices in violation of Montana Code § 30-14-201 *et seq.*

14 258. Defendants have engaged in unfair competition or unfair or deceptive acts or
15 practices in violation of Nebraska Rev. Stat. §59-1601 *et seq.*

16 259. Defendants have engaged in unfair competition or unconscionable, unfair or
17 deceptive acts or practices in violation of New Mexico Stat. §57-12-1 *et seq.*

18 260. Defendants have engaged in unfair competition or unfair or deceptive acts or
19 practices in violation of New York Gen. Bus. Law §349 *et seq.* Specifically:

- 20 a. Defendants engaged in commerce in New York;
- 21 b. Defendants and their co-conspirators secretly agreed to raise prices by
22 direct agreement on bids to customers located in New York and
23 through artificial supply restraints on the entire SRAM market;
- 24 c. New York consumers were targets of the conspiracy;
- 25 d. The secret agreements were not known to New York consumers;
- 26 e. Defendants made public statements about the price of SRAM and
27 products containing SRAM that Defendants knew would be seen by
28 New York consumers; such statements either omitted material

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

information that rendered the statements that they made materially misleading or affirmatively misrepresented the real cause of price increases for SRAM and products containing SRAM; and Defendants alone possessed material information that was relevant to consumers, but failed to provide the information;

- f. Because of Defendants’ unlawful trade practices in the State of New York, there was a broad impact on New York consumer class members who indirectly purchased SRAM; and consumer class members have been injured because they have paid more for SRAM than they would have paid in the absence of Defendants’ unlawful trade acts and practices
- g. Because of Defendants’ unlawful trade practices in the State of New York, New York consumer class members who indirectly purchased SRAM were misled to believe that they were paying a fair price for SRAM or the price increases for SRAM were for valid business reasons; and similarly situated consumers were potentially affected by Defendants’ conduct;
- h. Defendants knew that their unlawful trade practices with respect to pricing SRAM would have an impact on New York consumers and not just the Defendants’ direct customers;
- i. Defendants knew that their unlawful trade practices with respect to pricing SRAM would have a broad impact, causing consumer class members who indirectly purchased SRAM to be injured by paying more for SRAM than they would have paid in the absence of Defendants’ unlawful trade acts and practices;
- j. Defendants’ consumer-oriented violations adversely affected the public interest in the State of New York..

1 261. Defendants have engaged in unfair competition or unconscionable, unfair or
2 deceptive acts or practices in violation of North Carolina Gen. Stat. §75-1 *et seq.*

3 262. Defendants have engaged in unfair competition or unfair or deceptive acts or
4 practices in violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73
5 P.S. Section 201-1 *et seq.* Specifically:

- 6 a. Defendants engaged in commerce in Pennsylvania;
- 7 b. As alleged herein, Defendants engaged in acts or practices that were
8 unfair or deceptive to natural persons creating a likelihood of
9 confusion or misunderstanding on Plaintiffs' part;
- 10 c. As alleged herein, Defendants used methods, acts or practices which
11 mislead or deceive members of the public in a material respect about
12 the true reasons for the price of SRAM;
- 13 d. Pennsylvania consumers purchased products primarily for personal,
14 family or household purposes that contained SRAM manufactured by
15 one or more of the Defendants;
- 16 e. The price of SRAM incorporated into those products was artificially
17 inflated due to the illegal price-fixing practices of the Defendants
18 described above;
- 19 f. The purchase price of the products bought by the Pennsylvania
20 consumers which contained price inflated SRAM was thus, itself,
21 artificially inflated;
- 22 g. Pennsylvania consumers reasonably believed they were purchasing
23 SRAM-containing products at a fair and competitive price, and
24 reasonably relied on their respective purchasing prices being
25 established honestly by the free market, but were deceived by the
26 inclusion of illegally priced SRAM, which was artificially inflated the
27 price of the products they bought;
- 28 h. Pennsylvania consumers were injured by Defendants' actions.

1 263. Defendants have engaged in unfair competition or unfair or deceptive acts or
2 practices that were indirectly purchased primarily for personal, family, or household purposes in
3 violation of Rhode Island Gen. Laws. §6-13.1-1 *et seq.* Specifically:

- 4 a. Defendants engaged in commerce in Rhode Island;
- 5 b. Defendants and their co-conspirators unscrupulously and secretly
6 agreed to raise SRAM prices by direct agreement on prices
7 Defendants charged Defendants' customers located in Rhode Island
8 and through artificial supply restraints on the entire SRAM market;
- 9 c. The secret agreements were not known to Rhode Island natural
10 persons who indirectly purchased SRAM primarily for personal,
11 family or household purposes;
- 12 d. Defendants made public statements that Defendants knew would be
13 seen by Rhode Island natural persons who indirectly purchased
14 SRAM primarily for personal, family or household purposes; such
15 statements created a likelihood of confusion or misunderstanding with
16 respect to the real reasons that the prices of SRAM and products
17 containing SRAM were rising; and such statements either omitted
18 material information that rendered the statements that they made
19 materially misleading and confusing, or affirmatively deceived such
20 consumers about the real cause of price increases for SRAM and
21 products containing SRAM;
- 22 e. Because of Defendants' unlawful and unscrupulous trade practices in
23 Rhode Island, natural persons in Rhode Island who indirectly
24 purchased SRAM primarily for personal, family or household
25 purposes were misled or deceived to believe that they were paying a
26 fair price for SRAM or the price increases for SRAM were for valid
27 business reasons;
- 28

- 1 f. Natural persons who indirectly purchased SRAM primarily for
- 2 personal, family or household purposes have been injured because
- 3 they have paid more for SRAM than they would have paid in the
- 4 absence of Defendants' unlawful and unscrupulous trade acts and
- 5 practices;
- 6 g. Defendants knew that their unscrupulous and unlawful trade practices
- 7 with respect to pricing SRAM would have an impact on Rhode Island
- 8 natural persons who indirectly purchased SRAM primarily for
- 9 personal, family or household purposes and not just the Defendants'
- 10 direct customers;
- 11 h. Defendants knew that their violations with respect to pricing SRAM
- 12 would have a broad impact, causing natural persons who indirectly
- 13 purchased SRAM primarily for personal, family or household
- 14 purposes to be injured by paying more for SRAM than they would
- 15 have paid in the absence of Defendants' unlawful trade acts and
- 16 practices;
- 17 i. Defendants' violations adversely affected public policy in Rhode
- 18 Island.

19 264. Defendants have engaged in unfair competition or unfair or deceptive acts or
20 practices in violation of 9 Vermont §2451 *et seq.*

21 265. Class Members in the states listed above paid supra-competitive, artificially inflated
22 prices for SRAM. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and
23 the members of the Class have been injured in their business and property in that they paid more
24 for SRAM than they otherwise would have paid in the absence of Defendants' unlawful conduct.

25 266. As a result of Defendants' violations of the laws listed above, the members of the
26 Class in the states listed above are entitled to equitable relief including restitution and/or
27 disgorgement of all revenues, earnings, profits, compensation and benefits which may have been
28 obtained by Defendants as a result of such business practices, including compensable damages

1 under New York law, and damages wherever else allowed by law.

2 **Sixth Claim for Relief**

3 **(Unjust Enrichment and Disgorgement of Profits)**

4 267. Plaintiffs incorporate and reallege, as though fully set forth herein, each and every
5 allegation set forth in the preceding paragraphs of this Complaint.

6 268. Defendants have been unjustly enriched through overpayments by Plaintiffs and Class
7 members and the resulting profits enjoyed by Defendants as a direct result of such overpayments.
8 Plaintiffs' detriment and Defendants' enrichment were related to and flowed from the conduct
9 challenged in this Complaint.

10 269. Under common law principles of unjust enrichment, Defendants should not be
11 permitted to retain the benefits conferred via overpayments by Plaintiffs and Class members.

12 270. Plaintiffs and members of the following Indirect-Purchaser State Classes seek
13 disgorgement of all profits resulting from such overpayments and establishment of a constructive
14 trust from which Plaintiffs and Class members may seek restitution:

- 15 a. Arizona Indirect-Purchaser Class;
- 16 b. Arkansas Indirect-Purchaser Class;
- 17 c. California Indirect-Purchaser Class;
- 18 d. District of Columbia Indirect-Purchaser Class;
- 19 e. Florida Indirect-Purchaser Class;
- 20 f. Hawaii Indirect-Purchaser Class;
- 21 g. Iowa Indirect-Purchaser Class;
- 22 h. Kansas Indirect-Purchaser Class;
- 23 i. Maine Indirect-Purchaser Class;
- 24 j. Massachusetts Indirect-Purchaser Class;
- 25 k. Michigan Indirect-Purchaser Class;
- 26 l. Minnesota Indirect-Purchaser Class;
- 27 m. Mississippi Indirect-Purchaser Class;
- 28 n. Montana Indirect-Purchaser Class;

- 1 o. Nebraska Indirect-Purchaser Class;
- 2 p. Nevada Indirect-Purchaser Class;
- 3 q. New Hampshire Indirect-Purchaser Class;
- 4 r. New Mexico Indirect-Purchaser Class;
- 5 s. New York Indirect-Purchaser Class;
- 6 t. North Carolina Indirect-Purchaser Class;
- 7 u. Pennsylvania Indirect-Purchaser Class;
- 8 v. Rhode Island Indirect-Purchaser Class;
- 9 w. South Dakota Indirect-Purchaser Class;
- 10 x. Tennessee Indirect-Purchaser Class;
- 11 y. Vermont Indirect-Purchaser Class;
- 12 z. Washington Indirect-Purchaser Class;
- 13 aa. West Virginia Indirect-Purchaser Class; and
- 14 bb. Wisconsin Indirect-Purchaser Class.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs pray:

17 A. That the Court determine that the claims alleged herein under the Sherman
18 Act, state antitrust laws, and state consumer protection and/or unfair competition laws may be
19 maintained as a Class action under Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil
20 Procedure;

21 B. That the unlawful agreement, conduct, contract, conspiracy or combination
22 alleged herein be adjudged and decreed to be:

- 23 1. A restraint of trade or commerce in violation of Section 1 of the Sherman Act,
24 as alleged in the First Claim for Relief;
- 25 2. An unlawful combination, trust, agreement, understanding, and/or concert of
26 action in violation of the state antitrust laws identified in the Second and
27 Fourth Claims for Relief herein;

28

1 J. That Plaintiffs and members of the Class have such other, further, and
2 different relief as the case may require and the Court may deem just and proper under the
3 circumstances.

4 Dated: August 5, 2010

/s/ Christopher T. Micheletti

Christopher T. Micheletti

6 FRANCIS O. SCARPULLA (41059)
7 CRAIG C. CORBITT (83251)
8 CHRISTOPHER T. MICHELETTI (136446)
9 JANE YI (257893)
10 ZELLE HOFMANN VOELBEL & MASON LLP
11 44 Montgomery Street, Suite 3400
12 San Francisco, CA 94104
13 Telephone: (415)639-0700
14 Facsimile: (415) 693-0770
15 fscarpulla@zelle.com
16 ccorbitt@zelle.com

Lead and Liaison Counsel for Indirect-Purchaser Class

14 Steering Committee For Indirect-Purchaser Plaintiffs:

15 Wyatt B. Durette, Jr.
16 Christine A. Williams
17 **DURRETTEBRADSHAW PLC**
18 Main Street Centre, 20th Floor
19 600 East Main Street
20 Richmond, VA 23219
21 Telephone: (804) 775-6900
22 Facsimile: (804) 775-6911

20 Michele C. Jackson (SB No. 90807)
21 Joseph R. Saveri (SB No. 130064)
22 **LIEFF CABRASER HEIMANN**
23 **& BERNSTEIN, LLP**
24 Embarcadero Center West
25 275 Battery Street, Suite 3000
26 San Francisco, CA 94111
27 Telephone: (415) 956-1000
28 Facsimile: (415) 956-1008

25 Natalie Finkelman Bennett
26 **SHEPHERD FINKELMAN MILLER & SHAH, LLC**
27 35 East State Street
28 Media, PA 19063
Telephone: (610) 891-9880
Facsimile: (610) 891-9883

JURY TRIAL DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury for all issues so triable.

Dated: August 5, 2010

/s/ Christopher T. Micheletti

Christopher T. Micheletti

FRANCIS O. SCARPULLA (41059)
CRAIG C. CORBITT (83251)
CHRISTOPHER T. MICHELETTI (136446)
JANE YI (257893)
ZELLE HOFMANN VOELBEL & MASON LLP
44 Montgomery Street, Suite 3400
San Francisco, CA 94104
Telephone: (415)639-0700
Facsimile: (415) 693-0770
fscarpulla@zelle.com
ccorbitt@zelle.com

Lead and Liaison Counsel for Indirect Purchaser Class

Steering Committee For Indirect-Purchaser Plaintiffs:

Wyatt B. Durette, Jr.
Christine A. Williams
DURRETTEBRADSHAW PLC
Main Street Centre, 20th Floor
600 East Main Street
Richmond, VA 23219
Telephone: (804) 775-6900
Facsimile: (804) 775-6911

Michele C. Jackson (SB No. 90807)
Joseph R. Saveri (SB No. 130064)
**LIEFF CABRASER HEIMANN
& BERNSTEIN, LLP**
Embarcadero Center West
275 Battery Street, Suite 3000
San Francisco, CA 94111
Telephone: (415) 956-1000
Facsimile: (415) 956-1008

Natalie Finkelman Bennett
SHEPHERD FINKELMAN MILLER & SHAH, LLC
35 East State Street
Media, PA 19063
Telephone: (610) 891-9880
Facsimile: (610) 891-9883

3221566.1