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9
 10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA**
 12 **OAKLAND DIVISION**

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

Case No. 4:07-md-1819 CW

MDL No. 1819

**INDIRECT PURCHASER PLAINTIFFS’
 MEMORANDUM IN SUPPORT OF FINAL
 APPROVAL OF SETTLEMENTS (MICRON,
 HYNIX, RENESAS-HITACHI-MITSUBISHI,
 ETRON, TOSHIBA, NEC)**

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

Hearing Date: September 30, 2010
 Time: 2:00 p.m.
 Courtroom: 2, 4th Floor
 Judge: Hon. Claudia Wilken

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1 **I. INTRODUCTION**

2 Pursuant to this Court's June 10, 2010 Second Amended Order Approving Proposed Forms
 3 of Notice Regarding Class Action and Partial Settlements and Granting Preliminary Approval of
 4 Settlements (Micron, Hynix, Renesas-Hitachi-Mitsubishi, Etron, Toshiba, NEC) (Docket Entry
 5 ("DE") 1013) ("Preliminary Approval Order"), Indirect Purchaser Plaintiffs ("IP Plaintiffs" or
 6 "Plaintiffs"), on behalf of themselves and the Settlement Class defined in the Preliminary Approval
 7 Order,¹ submits this memorandum in support of final approval of the settlements preliminarily
 8 approved therein (the "Settlements") and the entry of orders of final judgment dismissing, with
 9 prejudice, each Settling Defendant.²

10 IP Plaintiffs have reached settlements with six sets of defendants totaling \$25,422,000. In
 11 exchange for a release of claims of the Settlement Class, Micron agreed to pay \$1,550,000; Hynix
 12 agreed to pay \$950,000; Renesas-Hitachi-Mitsubishi agreed to pay \$4,497,000; Etron agreed to pay
 13 \$2,000,000; Toshiba agreed to pay \$1,525,000; and NEC agreed to pay \$14,900,000. All of these
 14 payments have now been made into an escrow account. Each Settlement's general terms and
 15 conditions are described in greater detail below. Copies of each Settlement were also previously
 16 submitted to this Court. *See* Declaration of Francis O. Scarpulla, filed April 15, 2010, Exs. A-F (DE
 17 986-1 – 986-6) ("Scarpulla Decl.").

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 19
 20 ¹ The Settlement Class is defined as "All persons and entities residing in the United States who, from
 21 November 1, 1996 through December 31, 2006, purchased SRAM in the United States indirectly
 22 from Defendants. The class excludes the following persons and entities: the Defendants; the
 23 officers, directors or employees of any Defendant; any entity in which any Defendant has a
 controlling interest; any affiliate, legal representative, heir or assign of any Defendant; any federal,
 state or local governmental entities; and any judicial officer presiding over this action and the
 members of her immediate family and judicial staff." Preliminary Approval Order at 2.

24 ² The Settling Defendants are Micron Technology, Inc. and Micron Semiconductor Products, Inc.
 25 (collectively "Micron"); Hynix Semiconductor Inc. and Hynix Semiconductor America Inc.
 26 (collectively "Hynix"); Renesas Technology Corp., Renesas Technology America, Inc. (collectively
 "Renesas"), Hitachi Ltd., Hitachi Semiconductor (America), Inc., (collectively "Hitachi"), and
 Mitsubishi Electric Corporation, and Mitsubishi Electric & Electronics USA, Inc. (collectively
 "Mitsubishi") (together "Renesas-Hitachi-Mitsubishi"); Etron Technology, Inc. and Etron
 27 Technology America, Inc. (collectively "Etron"); Toshiba Corporation and Toshiba America
 28 Electronic Components, Inc., (collectively "Toshiba"); and NEC Electronics Corporation and NEC
 Electronics America, Inc. (collectively "NEC").

1 On June 10, 2010, this Court provisionally certified the Settlement Class, preliminarily
2 approved the Settlements and ordered that Class Members be provided notice of the preliminary
3 approval of the Settlements, as well as notice of the September 30, 2010 final approval hearing and
4 Class Members' right to object. IP Plaintiffs' Lead Counsel (Zelle Hofmann Voelbel & Mason
5 LLP), through the Settlement Administrator, caused such notice to be provided to Settlement Class
6 Members. Only two objections were received, neither of which should be considered by the Court,
7 and if considered, lack merit in any event. For the reasons detailed below, this Court should finally
8 certify the Settlement Class and grant final approval of the Settlements on the grounds that each
9 Settlement is fair, adequate and reasonable to the Settlement Class.

10 This memorandum is supported by the Scarpulla Declaration (DE 986), the Declaration of
11 Christopher T. Micheletti in Support of Final Approval of Settlements (Micron, Hynix, Renesas-
12 Hitachi-Mitsubishi, Etron, Toshiba, NEC) ("Micheletti Decl."), the Declaration of Dennis Gilardi in
13 support thereof, the Proposed Orders Finally Approving Settlements and Entering Judgment as to
14 each Settling Defendant, the complete files and records in this action, and such other written or oral
15 arguments that may be presented to the Court.

16 **II. STATEMENT OF ISSUES**

17 Whether the Court should finally certify the Settlement Class and approve each Settlement as
18 fair, adequate and reasonable to the Settlement Class.

19 **III. STATEMENT OF FACTS**

20 **A. Allegations**

21 This action alleges that Defendants conspired to fix the price of SRAM. IP Plaintiffs are
22 individuals and entities that indirectly purchased SRAM during the period November 1, 1996
23 through December 31, 2006. Defendants are domestic and foreign entities that manufactured, sold
24 or distributed SRAM in the United States during the Class Period. *See* Fifth Consolidated Amended
25 Class Action Complaint ("Compl.") ¶¶ 110-128. IP Plaintiffs allege injuries incurred as a result of
26 Defendants' conduct and seek: (i) injunctive relief pursuant to Section 16 of the Clayton Act, 15
27 U.S.C. § 16, for Defendants' violations of Section 1 of the Sherman Act, 15 U.S.C. § 1; and (ii)
28

1 damages or restitution under relevant state antitrust, consumer protection and unjust enrichment
2 laws.

3 Defendants have denied and continue to deny each and all of the claims and contentions
4 alleged in the Complaint, have asserted and continue to assert many defenses, and have expressly
5 denied any legal liability arising out of the conduct alleged in the litigation. Nevertheless, Settling
6 Defendants have concluded that it is desirable that this action be settled in the manner and on the
7 terms and conditions set forth in the Settlement Agreements in order to avoid the expense,
8 inconvenience and burden of further protracted legal proceedings throughout the country and the
9 uncertainties inherent in any litigation.

10 **B. Discovery and Class Certification**

11 In Spring 2007, actions initially commenced throughout the nation were transferred and
12 centralized before this Court. *See* DE 1, 5, 34. Following the U.S Department of Justice's ("DOJ")
13 2007 motion to intervene and to stay discovery, this Court entered an order staying all deposition
14 and interrogatory discovery until June 1, 2008. DE 208. During this time, Plaintiffs served limited
15 document discovery on Defendants, much of which Defendants objected to, necessitating motions to
16 compel before the Court-appointed Special Master.³ IP Plaintiffs, however, were allowed access to
17 the millions of pages of documents that Defendants had produced to the DOJ, as well as the millions
18 of pages of documents previously produced in the DRAM antitrust litigation (*In re Dynamic*
19 *Random Access Memory (DRAM) Antitrust Litig.*, Case No. M-02-1486 PJH (N.D. Cal.)) ("DRAM
20 Production").

21 After the parties entered into a Stipulation and Protective Order concerning the disclosure of
22 confidential and highly confidential information (granted on December 21, 2007), the Defendants
23 began producing copies of documents and sales data in addition to the documents that Defendants
24 initially turned over in connection with the DOJ's SRAM investigation, as well as the DRAM
25 Production. The Defendants' productions took place on a rolling basis. To date, the Defendants

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27 ³ *See, e.g.*, May 20, 2008 Order (DE 442) (ordering Defendants to produce non U.S. transactional
28 SRAM sales data); Jan. 5, 2009 Order (DE 624) (ordering Defendants to produce, *inter alia*,
documents from foreign defendants, documents prepared for investigative entities and additional
foreign transactional sales data).

1 have produced over *eleven million pages* from both domestic and foreign entities – in addition to the
2 millions of pages in the DRAM Production. Many of the documents are in Korean, Japanese and
3 Chinese, and have been translated in addition to being indexed and analyzed. *See Scarpulla Decl.*,
4 ¶ 2.

5 Counsel for Plaintiffs dedicated numerous lawyers and paralegals, and considerable other
6 resources (including third-party vendors and technical staff) to the translation, analysis, and
7 electronic coding of the documents produced by Defendants. During the document review
8 (Defendants continued producing documents to Plaintiffs on a rolling basis until at least June 2009),
9 teams of attorneys electronically reviewed the documents produced by Defendants and continually
10 inputted and coded the relevant subjective and objective data from documents into a document
11 review database. The database provided Plaintiffs’ counsel the ability to run sophisticated queries
12 regarding the documents and significant issues in the case. *See Scarpulla Decl.* ¶¶ 3, 4.

13 In addition to reviewing the content of the produced documents, Plaintiffs’ counsel organized
14 certain critical documents by subject-matter category, and documents relating to more than 50
15 potential deponents that were compiled in preparation for depositions. These efforts were vital to
16 Plaintiffs’ preparation of motions, damages analyses, and ability to timely respond to complex legal
17 and factual issues that arose during this litigation. Their preparation and organization also enhanced
18 Plaintiffs’ counsel’s negotiations with Settling Defendants as Plaintiffs’ counsel were armed with a
19 full understanding of the strengths and weaknesses of their case. *See Scarpulla Decl.* ¶ 5.

20 In addition to the review of documents produced in connection with the DOJ’s SRAM
21 investigation (and the DRAM Production), Plaintiffs propounded separate Document Requests and
22 Interrogatories to all Defendants. *See Scarpulla Decl.* ¶ 6. Plaintiffs’ counsel participated in
23 numerous negotiations regarding discovery disputes and inadequacies in Defendants’ document
24 productions. *See Scarpulla Decl.* ¶ 7. Further, Plaintiffs served approximately 80 subpoenas on
25 third parties, and frequently met and conferred with counsel for the third-parties regarding the
26 production of this information. *See Scarpulla Decl.* ¶ 8. Through the diligent analysis of all of the
27 documents and other evidence produced, Plaintiffs identified numerous current and former
28 employees of the Defendants with knowledge of the relevant issues in this case and participated with

1 the Direct Purchaser Plaintiffs in taking the depositions of approximately 35 witnesses. Plaintiffs
2 also noticed and took the Rule 30(b)(6) depositions of the remaining Non-Settling Defendants,
3 Cypress and Samsung, in February 2010. *See* Scarpulla Decl. ¶ 9.

4 IP Plaintiffs' counsel has worked extensively with consultants and experts in preparation for
5 litigation of class certification motions, dispositive motions and trial. In particular, Plaintiffs'
6 counsel spent considerable time working with expert antitrust economists Michael J. Harris, Ph.D.
7 and Mark Dwyer, Ph.D., especially in connection with class certification proceedings. *See* Scarpulla
8 Decl. ¶ 10.

9 On January 29, 2009, Plaintiffs filed a motion for class certification, and on November 25,
10 2009, over Defendants' opposition, the Court certified the Litigation Classes.⁴ Class certification
11 was by no means guaranteed, and Plaintiffs were successful in overcoming a petition to the Ninth
12 Circuit, pursuant to Fed. R. Civ. P. 23(f), to review the Court's class certification order. *See*
13 Scarpulla Decl. ¶ 11. Since the Spring of last year, Defendants Cypress Semiconductor Corporation
14 and the Samsung Defendants (Samsung Electronics Company, Ltd., Samsung Semiconductor, Inc.,
15 and Samsung Electronics America, Inc.) (collectively the "Non-Settling Defendants"), have
16 vigorously litigated this case against IP Plaintiffs, including through the filing of five separate briefs
17 challenging IP Plaintiffs' case on summary judgment, Foreign Trade Antitrust Improvements Act,
18 decertification, and other grounds.

19 C. Settlement Negotiations

20 At each stage in this case, Defendants have strenuously contested Plaintiffs' claims.
21 Defendants not only filed several *Twombly*-based motions to dismiss and vigorously opposed
22 Plaintiffs' motion to certify the classes, but they also opposed virtually all of Plaintiffs' discovery
23

24 ⁴ The Litigation Classes comprise (1) pursuant to Rule 23(b)(2), a nationwide injunctive class of all
25 persons who indirectly purchased SRAM (a memory device used in, *inter alia*, smart phones,
26 servers, routers, and other electronic devices) from the Defendants for their own use and not for
27 resale during the relevant time period; and (2) pursuant to Rule 23(b)(3), classes of all persons in the
28 states of Arizona, Arkansas, California, Florida, Hawaii, Iowa, Kansas, Maine, Massachusetts,
Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Washington, West Virginia,
Wisconsin, Puerto Rico, and the District of Columbia who indirectly purchased SRAM from the
Defendants for their own use and not for resale, during the relevant time period.

1 requests, forcing Plaintiffs to engage in extensive meet and confer discussions and ultimately file
2 motions to compel. *See* Scarpulla Decl. ¶ 12.

3 Only after a substantial amount of discovery and analysis, including as described above, and
4 only after thorough consideration of applicable law, did Plaintiffs' counsel begin settlement
5 negotiations with the first Settling Defendant, Micron.⁵ The six Settlements with the Settling
6 Defendants were the result of these communications and the ensuing negotiations. The first
7 agreement, with Micron, was reached in March 2009, after the mediation before Judge Weinstein,
8 and protracted arm's-length negotiations. *See* Scarpulla Decl. ¶ 14. Negotiations with Toshiba,
9 Hynix and Renesas-Hitachi-Mitsubishi occurred during the Spring and Summer of 2009 and were
10 similarly protracted and difficult; they occurred over many months and involved both meetings and
11 telephone discussions. Agreements in principle were reached with those Defendants prior to the
12 hearing on Plaintiffs' motion for class certification in early September 2009 (including one on the
13 eve of that hearing), with executed Settlement Agreements being finalized by December 2009. *See*
14 Scarpulla Decl. ¶¶ 16, 18, 22. Negotiations with Etron and NEC were similarly extensive,
15 necessitating both meetings and telephone discussions. *See* Scarpulla Decl. ¶¶ 20, 24. There were
16 extensive negotiations with those Defendants following the class certification hearing, including a
17 further mediation session before Judge Weinstein vis-à-vis Etron. An agreement in principle was
18 reached with Etron in late November 2009, and the Settlement Agreement was finalized in
19 December 2009. *See* Scarpulla Decl. ¶ 20. After the Court's class certification ruling, hard-fought
20 settlement negotiations with NEC were pursued in December 2009 and January 2010. Plaintiffs and
21 NEC reached an agreement in principle in January 2010 and the Settlement Agreement was finalized

22 _____
23 ⁵ As an initial matter, the parties retained former state Judge Daniel Weinstein, now of JAMS in San
24 Francisco, as a neutral mediator. A mediation session was held in California on February 17, 2009,
25 and, in anticipation of mediation, all parties submitted confidential mediation briefs to Judge
26 Weinstein. During that session, counsel for the parties and Judge Weinstein discussed the facts of
27 the cases, the strengths, weaknesses and procedural postures of the federal and state law claims, and
28 the defenses to all of the cases. The parties and the mediator also discussed the size and scope of the
class, the amount of sales of SRAM, Plaintiffs' demands for damages and restitution, and
Defendants' position on damages. Thereafter, extensive, vigorous and non-collusive, arm's-length
negotiations ensued between Defendants' numerous counsel and counsel for the Plaintiffs (primarily
Francis Scarpulla), including meetings, exchanges of information as well as presentations by the
parties about their views of the case. *See* Scarpulla Decl. ¶ 13.

1 in March 2010. *See* Scarpulla Decl. ¶ 24. Despite the Settlements, Settling Defendants maintain that
2 they have meritorious defenses to Plaintiffs' claims.

3 **IV. THE TERMS OF THE SETTLEMENTS**

4 **A. The Settlement Class**

5 Each of the Settlements utilizes the same definition of the Settlement Class described above.
6 *See* Micron Settlement, ¶ 1; Hynix Settlement ¶ 1; Renesas-Hitachi-Mitsubishi Settlement ¶ 1; Etron
7 Settlement ¶ 1; Toshiba Settlement ¶ 1; NEC Settlement ¶ 1.⁶

8 **B. The Financial Terms of Each Settlement**

9 Micron has agreed to pay \$1,550,000 to the Class in exchange for a dismissal with prejudice
10 and a release of all claims asserted in the Complaint. Micron made the Settlement payment to an
11 interest-bearing escrow account on January 8, 2010. *See* Micron Settlement ¶¶ 16, 17; Micheletti
12 Decl. ¶ 2. Additionally, the Micron Settlement authorizes the use of \$200,000 of the Settlement
13 payment for notice and administrative purposes, and the use of \$200,000 of the Settlement payment
14 for expenses incurred in prosecuting the case against the Non-Settling Defendants. *See* Micron
15 Settlement ¶ 19.

16 Hynix has agreed to pay \$950,000 to the Class in exchange for a dismissal with prejudice and
17 a release of all claims asserted in the Complaint, and as otherwise stated in the Settlement
18 Agreement. Hynix made the Settlement Payment to an interest-bearing escrow account on January 7,
19 2010. *See* Hynix Settlement ¶¶ 16, 17; Micheletti Decl. ¶ 2. Additionally, the Settlement authorizes
20 the use of \$200,000 of the Settlement payment for notice and administrative purposes, and the use of
21 \$200,000 of the Settlement payment for expenses incurred in prosecuting the case against the Non-
22 Settling Defendants. *See* Hynix Settlement ¶ 19.

23 Renesas-Hitachi-Mitsubishi have agreed to pay \$4,497,000 to the Class in exchange for a
24 dismissal with prejudice and a release of all claims asserted in the Complaint. Renesas-Hitachi-
25 Mitsubishi made the Settlement payment to an interest-bearing escrow account on December 14,
26 2009. *See* Renesas-Hitachi-Mitsubishi Settlement ¶¶ 16, 17; Micheletti Decl. ¶ 2. Additionally, the
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1 Settlement authorizes the use of \$580,000 of the Settlement payment for notice and administrative
2 purposes, and the use of \$580,000 of the Settlement payment for expenses incurred in prosecuting
3 the case against the Non-Settling Defendants. *See* Renesas-Hitachi-Mitsubishi Settlement ¶ 19.

4 Etron has agreed to pay \$2,000,000 to the Class in exchange for a dismissal with prejudice
5 and a release of all claims asserted in the Complaint. Etron made the Settlement payment in two
6 parts to an interest-bearing escrow account on January 11, 2010. *See* Etron Settlement ¶¶ 16, 17;
7 Micheletti Decl. ¶ 2. Additionally, the Settlement authorizes the use of \$260,000 of the Settlement
8 payment for notice and administrative purposes, and the use of \$260,000 of the Settlement payment
9 for expenses incurred in prosecuting the case against the Non-Settling Defendants. *See* Etron
10 Settlement ¶ 19.

11 Toshiba has agreed to pay \$1,525,000 to the Class in exchange for a dismissal with prejudice
12 and a release of all claims asserted in the Complaint. Toshiba made the Settlement Payment to an
13 interest-bearing escrow account on January 8, 2010. *See* Toshiba Settlement ¶¶ 16, 17; Micheletti
14 Decl. ¶ 2. Additionally, the Settlement authorizes the use of \$320,000 of the Settlement payment for
15 notice and administrative purposes, and the use of \$320,000 of the Settlement payment for expenses
16 incurred in prosecuting the case against the Non-Settling Defendants. *See* Toshiba Settlement ¶ 19.

17 NEC has agreed to pay \$14,900,000⁷ to the Class in exchange for a dismissal with prejudice
18 and a release of all claims asserted in the Complaint. NEC made its Settlement payment to an
19 interest-bearing escrow account on April 19, 2010. *See* NEC Settlement ¶¶ 16(a), 17; Micheletti
20 Decl. ¶ 2. Additionally, the Settlement authorizes the use of \$4,660,000 of the Settlement payment
21 for notice and administrative purposes, and the use of \$4,660,000 of the Settlement payment for
22 expenses incurred in prosecuting the case against the Non-Settling Defendants. *See* NEC Settlement
23 ¶ 19.

24
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26 ⁶ The definition of SRAM in each of the Settlement Agreements includes “Pseudo SRAM” or
27 “PSRAM”.

28 ⁷ This sum is subject to reduction under certain circumstances related to future settlements, if any,
with the Non-Settling Defendants. *See* NEC Settlement ¶ 16(b)-(c).

1 **C. Other Common Settlement Provisions**

2 When the Settlements become final, Plaintiff and the Class members will release any claims
3 that they may have against each of the Settling Defendants based, in whole or in part, on the matters
4 alleged or that might have been alleged relating to the manufacture, sale, pricing, etc. of SRAM up
5 through the last date of the Class Period. *See* Micron Settlement ¶¶ 13-15; Hynix Settlement ¶¶ 13-
6 15; Renesas-Hitachi-Mitsubishi Settlement ¶¶ 13-15; Etron Settlement ¶¶ 13-15; Toshiba Settlement
7 ¶¶ 13-15; NEC Settlement ¶¶ 13-15. The release does not include claims for product liability,
8 breach of contract, direct purchaser claims, or indirect purchaser claims for SRAM purchased
9 outside the United States. *See* Micron Settlement ¶¶ 15, 30; Hynix Settlement ¶¶ 15, 30; Renesas-
10 Hitachi-Mitsubishi Settlement ¶¶ 15, 30; Etron Settlement ¶¶ 15, 30; Toshiba Settlement ¶¶ 15, 30;
11 NEC Settlement ¶¶ 15, 30. Each Settlement becomes final upon: (i) the Court entering a final order
12 of approval of the Settlement under Federal Rule of Civil Procedure 23(e) and a final judgment
13 dismissing the case with prejudice as to each of the Settling Defendants; and (ii) expiration of the
14 time to appeal the Court’s final approval and judgment, or, if an appeal is taken, affirmance of the
15 Court’s final approval and judgment with no possibility of further review. *See* Micron Settlement
16 ¶ 11; Hynix Settlement ¶ 11; Renesas-Hitachi-Mitsubishi Settlement ¶ 11; Etron Settlement ¶ 11;
17 Toshiba Settlement ¶ 11; NEC Settlement ¶ 11.

18 Each Settlement also requires each of the Settling Defendants to provide cooperation that
19 Plaintiffs believe will assist in prosecuting this action against the Non-Settling Defendants. The
20 cooperation that each Settling Defendant is required to provide includes producing sales and pricing
21 documents and meeting and conferring on making employees available for deposition and trial,
22 including to testify about the authenticity and admissibility of documents. *See* Micron Settlement ¶
23 23; Hynix Settlement ¶ 23; Renesas-Hitachi-Mitsubishi Settlement ¶ 23; Etron Settlement ¶¶ 13, 23
24 and Individual Releases of Hsun-Feng (“Steven”) Li, Chao-Chun (“Nicky”) Lu, and Y.C. Chu;
25 Toshiba Settlement ¶ 23; NEC Settlement ¶ 23.

26 Subject to the approval and direction of the Court, the total amount of the Settlements, plus
27 accrued interest, will be: (i) distributed in accordance with a plan to be submitted to and approved by
28 the Court at the appropriate time; (ii) used to pay Class Counsel’s attorneys’ fees, costs and expenses

1 as they may be awarded by the Court; and (iii) used to pay costs and expenses incurred in the
 2 prosecution of the action, as well as the administration and distribution of the Settlement payments.
 3 See Micron Settlement ¶¶ 19, 21, 22, 24; Hynix Settlement ¶¶ 19, 21, 22, 24; Renesas-Hitachi-
 4 Mitsubishi Settlement ¶¶ 19, 21, 22, 24; Etron Settlement ¶¶ 19, 21, 22, 24; Toshiba Settlement
 5 ¶¶ 19, 21, 22, 24; NEC Settlement ¶¶ 19, 21, 22, 24.⁸

6 **V. PRELIMINARY APPROVAL AND NOTICE OF THE SETTLEMENTS**

7 On June 10, 2010, this Court preliminarily approved the Settlements and ordered that Class
 8 Members be provided notice of the preliminary approval of the Settlements, as well as notice of the
 9 September 30, 2010 final approval hearing and Class Members' right to object. See DE 1013. The
 10 Court-ordered deadline to file objections was August 17, 2010. See *id.* IP Plaintiffs' Lead Counsel
 11 caused notice to be provided to Class Members as required by this Court's June 10, 2010 order. See
 12 Micheletti Decl. ¶ 3; Declaration of Dennis Gilardi Re Dissemination of Notice to Class Members
 13 ("Gilardi Decl.") ¶¶ 5-8, 10, 15.

14 In the Preliminary Approval Order, the Court provisionally certified the Settlement Class
 15 pursuant to Federal Rule of Civil Procedure 23 and found that there are thousands of class members
 16 and therefore joinder of all members is impracticable; that there are questions of law or fact common
 17 to the class which predominate over individual issues; that the claims or defenses of the class
 18 representatives are typical of the claims or defenses of the class; and that the class representatives
 19 will fairly and adequately protect the interests of the class, and have retained counsel experienced in
 20 complex antitrust class action litigation who have and will continue to adequately represent the class.
 21 Preliminary Approval Order ¶¶ 2-3.

22 With regard to notice, the Court found that a comprehensive list of individual Settlement
 23 Class members does not exist, and that one could not be generated through reasonable efforts, which
 24 would enable notice to be mailed directly to each class member. As a result, the Court found that
 25 _____

26 ⁸ As discussed below, Class Counsel have not submitted to the Court either a plan of distribution or a
 27 request for attorneys' fees at this time. They intend to do so at the conclusion of the case because
 28 Plaintiffs are continuing to litigate against the Non-Settling Defendants and the total recovery may
 impact the nature of the plan of distribution, and a piecemeal approach to plans of distribution of
 settlements would be expensive, time consuming, and can confuse Class members.

1 notice by publication was the most appropriate manner of providing notice to the Settlement Class
2 (and Litigation Classes). Nevertheless, the Court ordered that mailed notice should also be made to
3 the potential indirect purchasers of SRAM identified by IP Plaintiffs and their Settlement
4 Administrator in their preliminary approval papers (hereinafter the “Direct Mail Recipients”). IP
5 Plaintiffs were authorized to utilize up to \$1.15 million of the Settlement Funds to administer and
6 disseminate class notice, pursuant to the Notice Plan, to the Settlement and Litigation Classes.
7 Preliminary Approval Order ¶¶ 8-9.

8 As detailed below, IP Plaintiffs complied with the notice requirements set out in the Court’s
9 Preliminary Approval Order. See Gilardi Decl. ¶¶ 5-8, 10, 15. For example, by June 18, 2010, a
10 Long Form Notice substantially in the form attached to the Preliminary Approval Order as Exhibit B
11 was sent by the Settlement Administrator via first-class U.S. mail, postage prepaid, to the Direct
12 Mail Recipients; it was also made available on a website entitled www.indirectsramcase.com. The
13 Long Form Notice was also sent to all class members who requested written notice. Gilardi Decl. ¶
14 6. Additionally, by June 11, 2010, IP Plaintiffs commenced the published notice program through,
15 *inter alia*, publication of the notice on the Internet and through press releases. By July 13, 2010, IP
16 Plaintiffs published a Summary Notice substantially in the form attached to the Preliminary
17 Approval Order as Exhibit A in national newspapers and journals, and on the Internet, pursuant to
18 the Notice Plan. Gilardi Decl. ¶ 7. In addition, IP Plaintiffs provided notice on the above-described
19 website and on the website of lead counsel. Micheletti Decl. ¶ 3.

20 Each class member was advised of the right to be excluded from the Settlement Class (or
21 from the Litigation Class), which could be accomplished through mailing a request for exclusion to
22 the Settlement Administrator not later than August 17, 2010. Two requests for exclusion were
23 submitted by Class members. Gilardi Decl. ¶ 16.

24 With regard to objections to the Settlements, the Preliminary Approval Order provided that
25 “each class member who does not timely exclude itself from the Settlement Class shall have the right
26 to object to the Settlements by filing written objections with the Court not later than August 17,
27 2010, copies of which shall be served on all counsel listed in the Class Notice. Failure to timely file
28 and serve written objections will preclude a class member from objecting at the Fairness Hearing.”

1 Preliminary Approval Order ¶ 16. The Summary Notice, Long Form Notice and website also stated
2 that objections “must be filed by August 17, 2010.” *See* Exhibit B to the Gilardi Decl. (tearsheets of
3 summary notices, published in print media pursuant to IP Plaintiffs’ Notice Plan, stating same).

4 On August 16, 2010, a document titled “Objection of Rosemarie Bonas’ Estate to Class
5 Settlements” was filed by “Gary Joseph Bonas II,” on behalf of “the Estate of Rosemarie Bonas and
6 Eric Charles Sawyers.” *See* Objection of Rosemarie Bonas’ Estate to Class Settlements (DE 1072)
7 (the “Bonas Objection”) at 1. IP Plaintiffs believe that the individual who filed the Bonas Objection,
8 *i.e.*, “Gary ‘Cash’ Joseph Bonas II,” is the same “Cash Joseph Bonas” who was ordered inactive by
9 the California State Bar (most recently) on January 2, 2005 pursuant to a California State Bar order
10 dated December 30, 2004, and who was thereafter disbarred on June 18, 2005. *See* Micheletti Decl.
11 ¶ 4 and Exhibits 1 and 2 (California State Bar Attorney Search result for Cash J. Bonas and the Dec.
12 30, 2004 Order pertaining to Mr. Bonas, respectively) thereto.

13 Mr. Bonas’s disbarment arose out of his felony convictions in December of 2003 for stalking
14 and making a criminal threat. *See id.* Ex. 2 (Dec. 30, 2004 State Bar Order) at 3-4. The State Bar
15 Court found that, following the dismissal of an antitrust case Bonas had filed on behalf of his sister
16 and others, Bonas began a pattern of harassment against several lawyers and law firms, some of
17 whom were involved in the dismissed case. *Id.* at 4. During a two-month period in 2001, he made
18 between 300 and 1,000 harassing or threatening phone calls to at least 11 law firms and sent more
19 than 1,000 e-mails to several of the same lawyers he was calling. He personally appeared at three
20 law offices that were targets of his threats and harassment, but was denied access to the buildings or
21 escorted off the premises. *Id.* One of the defense attorneys in Bonas’s antitrust case received 143
22 calls from Bonas and scores of emails, as well as a “screaming, obscenity laced voice mail message
23 in which he made specific threats to kill the attorney.” *Id.* at 5. Another attorney (who is one of the
24 IP Plaintiffs’ Class counsel in this case), received from Bonas 218 emails, harassing and threatening
25 calls at his office, and telephone messages containing threatening references to his family. *Id.* He
26 also appeared outside the lawyer’s office one day, pacing back and forth and looking dirty and
27 unkempt, before departing. *Id.* According to the State Bar Court, Bonas intended his threats to be
28 taken seriously: “When he was escorted from the premises of [the] law firm and was asked about

1 the threats, (Bonas) admitted to them and stated, ‘Good. They were supposed to upset people.’” *Id.*
2 at 7. The court concluded that “the egregious conduct that led to [Bonas’s] criminal convictions
3 clearly involved moral turpitude” (*id.*), and recommended disbarment (*id.* at 9).

4 Mr. Bonas is not permitted to practice law in California or this Court, so it is unclear whether
5 he is duly authorized to represent the Bonas Estate or Sawyers. Moreover, while the Bonas
6 Objection states that the objectors bought “one or more class product during the Class Period,” no
7 proof of those purchases is submitted or described. Finally, while the Bonas Objection is for the
8 most part incomprehensible, it appears to argue that the settlement negotiations here were not at
9 arm’s-length, and that the case was not vigorously litigated. As detailed below, to the extent these
10 arguments can be gleaned from the Bonas Objection, they are without merit.

11 The other objection, submitted by Chase Thompson, was not timely filed and was not served
12 on counsel; it was filed on August 25, 2010, eight days after the deadline for objections to be filed
13 and served on counsel. *See* DE 1080 (Thompson letter filed on Aug. 25, 2010). Thompson’s one-
14 page letter similarly does not state or provide any proof that he is a Settlement Class member or
15 otherwise has standing to object to the Settlements. *See* DE 1080. As for his substantive
16 complaints, Thompson states that he “object[s] to the fact that we, as customers, don’t even know
17 what we might get;” that he “object[s] to the amount of money the lawyers are getting;” that he will
18 apparently get nothing as an Alabama resident, and that the settlement amount is inadequate. DE
19 1080. For the reasons detailed below, Thompson’s untimely objection is without merit and should
20 be stricken.

21 **VI. ARGUMENT**

22 **A. The Court Should Certify the Settlement Class**

23 As outlined above, the Court provisionally certified the Settlement Class in the Preliminary
24 Approval Order. All of the grounds for certification articulated at that time apply with equal force
25 now, and the Settlement Class should be certified under Rule 23.

26 The Court can certify a settlement class where plaintiffs demonstrate that the proposed class
27 and proposed class representatives meet the four prerequisites in Rule 23(a) – numerosity,
28 commonality, typicality and adequacy of representation – and one of the three requirements of Rule

1 23(b). *See* Fed. R. Civ. P. 23; *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998).
2 Certification of a class action for damages requires a showing that “questions of law and fact
3 common to the members of the class predominate over any questions affecting only individual
4 members, and that a class action is superior to other available methods for the fair and efficient
5 adjudication of the controversy.” Fed. R. Civ. P. 23(b)(3). In certifying a settlement class, the Court
6 is not required to determine whether the action, if tried, would present intractable management
7 problems, “for the proposal is that there be no trial.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591,
8 620 (1997). As Judge Posner has explained, manageability concerns that might preclude
9 certification of a litigated class may be disregarded with a settlement class “because the settlement
10 might eliminate all the thorny issues that the court would have to resolve if the parties fought out the
11 case.” *Carnegie v. Household Int’l, Inc.*, 376 F.3d 656, 660 (7th Cir. 2004) (*citing Amchem*, 521
12 U.S. at 620); *see also In re IPO Sec. Litig.*, 226 F.R.D. 186, 190, 195 (S.D.N.Y. 2005) (settlement
13 class may be broader than litigated class because settlement resolves manageability and
14 predominance concerns).

15 Here, the Settlement Class meets the requirements of Rule 23(a) and (b) of the Federal Rules
16 of Civil Procedure and should be certified. It is undisputed that hundreds of thousands of people
17 purchased SRAM products during the class period; therefore, the Class is so numerous that joinder
18 of all Class members in the action is impracticable. *See* Fed. R. Civ. P. 23(a)(1); *see also Harris v.*
19 *Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913-14 (9th Cir. 1964) (“impracticability does not
20 mean ‘impossibility,’ but only the difficulty or inconvenience of joining all members of the class”).
21 Thus, the proposed Class readily satisfies the numerosity requirements of Rule 23. *See In re Static*
22 *Random Access Memory (SRAM) Antitrust Litig.*, 264 F.R.D. 603, 608 (N.D. Cal. Nov. 25, 2009).
23 There are questions of law and fact common to the Class that predominate over any individual
24 questions, including whether Defendants conspired to inflate and fix the prices of SRAM; how long
25 Defendants’ conspiracy lasted; whether Defendants’ conduct violated Section 1 of the Sherman Act
26 as well as the state antitrust and unfair competition laws identified in the Complaint; the extent to
27 which Defendants’ conduct injured the class members; the appropriate measure of damages; and
28 whether the class members are entitled to injunctive relief. “Antitrust, price fixing conspiracy cases,

1 by their nature, deal with common legal and factual questions about the existence, scope and effect
2 of the alleged conspiracy. Whether defendants participated in the actions alleged is a common
3 question.” *In re Linerboard Antitrust Litig.*, 203 F.R.D. 197, 206 (E.D. Pa. 2001) (citation and
4 quotation marks omitted). The issues constitute a common core of questions focusing on the central
5 issue of the existence of the alleged conspiracy and plainly satisfy the commonality requirement of
6 Rule 23(a)(2). *Estate of Jim Garrison v. Warner Bros., et al.*, 1996 WL 407849, at *2 (C.D. Cal.
7 1996) (Plaintiffs’ allegations “which constitute the classic hallmark of antitrust class actions under
8 Rule 23 ... are more than sufficient to satisfy the commonality requirements.”).

9 Plaintiffs’ claims are also typical of those of the Settlement Class. Like all other Settlement
10 Class members, Plaintiffs each indirectly purchased SRAM products during the relevant time period,
11 and allege that Defendants engaged in an anti-competitive conspiracy. As the Court recognized
12 when it certified the Direct Purchaser and Indirect Purchaser Litigation Classes, here “the
13 overarching price fixing scheme is the linchpin of [Plaintiffs’] complaint, ‘regardless of the product
14 purchased, the market involved or the price ultimately paid.’” *In re SRAM*, 264 F.R.D. at 609. This
15 Court also held that Plaintiffs’ claims are typical although they may have used different purchasing
16 procedures, purchased different quantities or a different mix of products, or received different prices
17 than other class members. *Id.* Because the same is true here, the typicality requirement is met.
18 Furthermore, as evidenced by the history of the litigation, Plaintiffs and their counsel have fairly and
19 adequately represented and protected the interests of all Class members. *See* Fed. R. Civ. P. 23(a)(3)
20 and (a)(4).

21 In addition to the prerequisites of Rule 23(a), the Settlement Class also satisfies the
22 prerequisites of Rule 23(b)(3), namely: (1) questions of law or fact common to Class members must
23 predominate over any questions affecting only individual members; and (2) the class action must be
24 superior to other available methods for the fair and efficient adjudication of the matter. The Rule
25 23(b) predominance inquiry is “readily met in certain cases alleging ... violations of the antitrust
26 laws.” *Amchem*, 521 U.S. at 625; *Thomas & Thomas Rodmakers, Inc. v. Newport Adhesives and*
27 *Composites, Inc.*, 209 F.R.D. 159, 167 (C.D. Cal. 2002). “The ... inquiry tests whether proposed
28 classes are sufficiently cohesive to warrant adjudication by representation.” *Amchem*, 521 U.S. at

1 623. Predominance is satisfied “unless it is clear that individual issues will overwhelm the common
2 questions and render the class action valueless.” *In re NASDAQ Market-Makers Antitrust Litig.*, 169
3 F.R.D. 493, 517-18 (S.D.N.Y. 1996). Individual issues in this case will not overwhelm the common
4 questions of law or fact, because the central question is whether the Defendants conspired to
5 improperly raise the prices of SRAM products, and, if so, how. *In re SRAM*, 264 F.R.D. at 611.
6 There is no doubt that Plaintiffs would present common evidence regarding the existence and scope
7 of the alleged conspiracy and illegal activities at any trials of this matter. Similarly, although a wide
8 range of SRAM products are potentially involved, common proof of sales and marketing practices,
9 as well common pricing practices will apply to many claims. Moreover, the fact that individual
10 Class members’ damages may vary due to quantity of purchases or types of SRAM products
11 purchased does not defeat predominance. *See, e.g., In re Master Key Antitrust Litig.*, 528 F.2d 5, 12
12 n.11 (2d Cir. 1975); *In re Indus. Diamonds Antitrust Litig.*, 167 F.R.D. 374, 383 (S.D.N.Y. 1996)
13 (citing cases). Finally, Plaintiffs have presented plausible methodologies that would be used to
14 perform quantitative analysis to demonstrate classwide injury. *In re SRAM*, 264 F.R.D. at 615.

15 With respect to the superiority requirement, a court must consider the following factors: (A)
16 the interest of members of the class in individually controlling the prosecution or defense of separate
17 actions; (B) the extent and nature of any litigation concerning the controversy already commenced
18 by or against members of the class; (C) the desirability or undesirability of concentrating the
19 litigation of the claims in the particular forum; and (D) the difficulties likely to be encountered in the
20 management of a class action. Fed. R. Civ. P. 23(b)(3). The damages of most individual Class
21 members are relatively small compared to the cost of litigation. *Id.* There is no problem in
22 consolidating the litigation here, nor will any unusual difficulties be encountered. Members of the
23 Class, therefore, have no real interest in controlling the prosecution of individual actions, and
24 effectively would be unable to adjudicate their claims individually. Even if they were able to do so,
25 the court system would be overwhelmed by the burden of hundreds of thousands of separate actions.
26 Further, it is highly desirable to concentrate these claims in this court and given the proposed
27 nationwide settlement of the claims, no management difficulties will affect the class. *In re SRAM*,
28 264 F.R.D. at 615.

1 For all of the foregoing reasons, the Court should certify the Settlement Class.

2 **B. The Notice Plan Comports With Due Process**

3 Federal Rule of Civil Procedure 23(e) and due process requires that Class Members be given
4 “reasonable” notice of a proposed settlement and their right to be heard at the fairness hearing to
5 determine whether final approval of the settlement should be granted. *See* Fed. R. Civ. P. 23(e);
6 *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 113-14 (2d Cir. 2005).

7 In its June 10, 2010 order granting preliminary approval of the Settlements, this Court, based
8 on the arguments fully set forth in IP Plaintiff’s motion for preliminary approval (*see* DE 985-987),
9 held that the notice program that IP Plaintiff’s counsel proposed – which included published notice,
10 direct mail, and the posting of notice on the website established for this case – “fully satisfies the
11 requirements of Federal Rule of Civil Procedure 23 and due process, constitutes the best notice
12 practicable under the circumstances, and shall constitute due and sufficient notice to all persons
13 entitled thereto.” DE 1013 at 4. IP Plaintiff’s counsel caused that notice program to be implemented
14 as required by this Court’s order. *See* Micheletti Decl. ¶ 3; Gilardi Decl. ¶¶ 5-8, 10, 15.

15 Therefore, this Court should find the notice program related to the Settlements satisfies the
16 requirements of Rule 23(e) and due process.

17 **C. Each Settlement Should Be Finally Approved**

18 It is well established in the Ninth Circuit that “voluntary conciliation and settlement are the
19 preferred means of dispute resolution.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615,
20 625 (9th Cir. 1982); *accord Knight v. Red Door Salons, Inc.*, 2009 U.S. Dist. LEXIS 11149, at *8
21 (N.D. Cal. Feb. 2, 2009). “[T]here is an overriding public interest in settling and quieting litigation”
22 and this is “particularly true in class action suits.” *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943,
23 950 (9th Cir. 1976). In evaluating a proposed class action settlement, the Ninth Circuit has
24 recognized that:

25 [T]he universally applied standard is whether the settlement is fundamentally fair,
26 adequate and reasonable. The district court's ultimate determination will
27 necessarily involve a balancing of several factors which may include, among
28 others, some or all of the following: the strength of plaintiffs' case; the risk,
expense, complexity, and likely duration of further litigation; the risk of
maintaining class action status throughout the trial; the amount offered in

1 settlement; the extent of discovery completed and the stage of the proceedings;
 2 the experience and views of counsel; the presence of a governmental participant;
 and the reaction of the class members to the proposed settlement.

3 *Officers for Justice*, 688 F.2d at 625 (citations omitted); *accord Torrasi v. Tucson Elec. Power Co.*, 8
 4 F.3d 1370, 1375 (9th Cir. 1993); *In re Immune Response Secs. Litig.*, 497 F. Supp. 2d 1166, 1169
 5 (S.D. Cal. 2007).

6 This Court is entitled to exercise its “sound discretion” when deciding whether to grant final
 7 approval. *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff’d*, 661 F.2d 939
 8 (9th Cir. 1981); *Torrasi*, 8 F.3d at 1375; *see also Simpao v. Gov’t of Guam*, 2010 U.S. App. LEXIS
 9 4765, at **5-6 (9th Cir. Mar. 5, 2010). In doing so, “the court’s intrusion upon what is otherwise a
 10 private consensual agreement negotiated between the parties to a lawsuit must be limited to the
 11 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
 12 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
 13 whole, is fair, reasonable, and adequate to all concerned.” *Officers for Justice*, 688 F.2d at 625; *In re*
 14 *Heritage Bond Litig.*, 2005 U.S. Dist. LEXIS 13555, at *10 (C.D. Cal. June 10, 2005). “Where, as
 15 here, a proposed class settlement has been reached after meaningful discovery, after arm’s-length
 16 negotiation, conducted by capable counsel, it is presumptively fair.” *M. Berenson Co., Inc. v.*
 17 *Faneuil Hall Marketplace, Inc.*, 671 F. Supp. 819, 822 (D. Mass. 1987); *accord In re Heritage Bond*
 18 *Litig.*, 2005 U.S. Dist. LEXIS 13555, at **11-12. Although “[t]he determination of what constitutes
 19 a ‘reasonable’ settlement is not susceptible of a mathematical equation yielding a particularized
 20 sum,” *In re Michael Milken and Assoc. Secs. Litig.*, 150 F.R.D. 57, 66 (S.D.N.Y. 1993), each
 21 Settlement here is certainly fair, reasonable, and adequate.

22 First, the consideration for each Settlement is substantial – Micron has agreed to pay
 23 \$1,550,000, Hynix \$950,000, Renesas-Hitachi-Mitsubishi \$4,497,000, Etron \$2,000,000, Toshiba
 24 \$1,525,000, and NEC \$14,900,000. The Settlements total \$25,422,000 and are generally comparable
 25 to or more favorable than the settlements finally approved in other price-fixing cases. *See, e.g.,*
 26 *Fisher Bros. v. Mueller Brass Co.*, 630 F. Supp. 493, 499 (E.D. Pa. 1985).

27 Second, in addition to these payments, the Settlements provide that the sales of the Settling
 28 Defendants remain in the action, so that Plaintiff can seek recovery based on such sales from the few

1 remaining Non-Settling Defendants who may be held jointly and severally liable for damages caused
2 by the alleged conspiracy. *See* Settlements ¶ 29. The Settlements, therefore, provide a significant
3 and certain recovery for the Class before trial and before motions for summary judgment, but do not
4 reduce the total amount of damages that may be recovered in the case. *See In re Corrugated*
5 *Container Antitrust Litig.*, 643 F.2d 195, 215-16 (5th Cir. 1981).

6 Third, all of the Settlements require Settling Defendants to cooperate in Plaintiffs'
7 prosecution of this case against the Non-Settling Defendants. This is a valuable benefit to
8 Settlement Class Members because it will save time, reduce costs, and provide access to information
9 and documents to which they might not otherwise have access. *See In re Mid-Atlantic Toyota*
10 *Antitrust Litig.*, 564 F. Supp. 1379, 1386 (D. Md. 1983) (“... the commitment [the] Distributor
11 defendants have made to cooperate with plaintiffs will certainly benefit the classes, and is an
12 appropriate factor for a court to consider in approving a settlement”); *In re Automotive Refinishing*
13 *Paint Antitrust Litig.*, 2004 WL 1068807, at *2 (E.D. Pa. May 11, 2004) (discussing benefit of
14 settling defendants' cooperation).

15 Fourth, the Settlements were the product of intense and thorough arm's-length negotiations
16 that were conducted by experienced and informed counsel. The negotiations occurred over a span of
17 many months and involved numerous meetings. The negotiations were contested, conducted in the
18 utmost good faith, and IP Plaintiffs did not accept settlement offers that were not appropriate in light
19 of the position of and evidence against each Settling Defendant.

20 Fifth, IP Plaintiffs' counsel was able to make informed evaluations of proposed settlement
21 offers because IP Plaintiffs' counsel only negotiated the Settlements on behalf of the Settlement
22 Class after extensive discovery, including a review and analysis of millions of pages of Defendants'
23 documents and the taking of numerous depositions, as well as after Plaintiff's Counsel conducted
24 their own substantial investigations and considered the analysis of expert consultants. Together,
25 these steps provided IP Plaintiffs' Counsel with insight to both the strengths and weaknesses of the
26 case, including as against each Defendant. *See* Scarpulla Decl. ¶¶ 3-5.

27 While IP Plaintiffs believe the case against Defendants has merit, these Settlements
28 eliminate significant risks that IP Plaintiffs would otherwise face if the action were to proceed

1 against all Defendants. For instance, IP Plaintiffs would bear the burden of establishing liability,
2 impact and damages. *See, e.g., Wal-Mart*, 396 F.3d at 118 (“Indeed, the history of antitrust litigation
3 is replete with cases in which antitrust plaintiffs succeeded at trial on liability, but recovered no
4 damages, or only negligible damages, at trial, or on appeal.”); *In re NASDAQ Market-Makers*
5 *Antitrust Litig.*, 187 F.R.D. 465, 475 (S.D.N.Y. 1998); *In re Sumitomo Copper Litig.*, 189 F.R.D.
6 274, 283 (S.D.N.Y. 1999).

7 The above considerations are important because the Settling Defendants aggressively
8 defended this action and the Non-Settling Defendants continue to do so. For example, the Non-
9 Settling Defendants have filed motions for summary judgment seeking to dismiss all or a majority of
10 IP Plaintiffs’ claims on the grounds of lack of standing, failure to prove elements of various state law
11 claims, and insufficient proof of pass-through, impact and damages. *See Samsung Motion for*
12 *Summary Judgment*, filed July 15, 2010. Cypress has similarly filed a motion for summary
13 judgment asserting that any exchange of pricing information between or among Cypress and the
14 Defendants did not amount to collusion or any violation of the antitrust laws, and that even if it did,
15 no damages were sustained by the Class because of such activities. *See Cypress Motion for*
16 *Summary Judgment*, filed July 15, 2010 (DE 1048) (refiled as a consolidated motion on August 5,
17 2010 (DE 1068)). Other motions have been filed by the Non-Settling Defendants seeking to dismiss
18 significant portions of IP Plaintiffs’ damages claims (*see Defendants’ Joint Motion Raising Factual*
19 *Challenge to Subject Matter Jurisdiction Over Foreign Conduct*, filed July 15, 2010 (DE 1037)),
20 seeking to exclude the opinions of IP Plaintiffs’ expert (*see Defendants’ Joint Motion to Exclude the*
21 *Expert Opinions of Mark Dwyer, Ph.D.*, filed July 15, 2010) and seeking to decertify the Litigation
22 Classes (*see Defendants’ Joint Motion to Decertify Indirect Purchaser Classes*, filed July 15, 2010
23 (DE 1050)). In the absence of the Settlements, IP Plaintiffs would be facing all of the risks posed by
24 these motions (and trial) as against all Defendants. By entering these Settlements, IP Plaintiffs
25 eliminated the burdens and expenses and risks of further litigation vis-à-vis the Settling Defendants,
26 while at the same time obtaining both a substantial cash recovery for the Settlement Class, and the
27 Settling Defendants’ cooperation as IP Plaintiffs pursue this action against the two Non-Settling
28 Defendants.

1 In addition, IP Plaintiffs' counsel's belief that the Settlements are in the best interest of the
2 Class is entitled to "great weight." *In re Paine Webber Partnerships Litig.*, 171 F.R.D. 104, 125
3 (S.D.N.Y. 1997) (citation omitted), *aff'd* 117 F.3d 721 (2d Cir. 1997); *accord Nat'l Rural*
4 *Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) ("Great weight' is
5 accorded to the recommendation of counsel, who are most closely acquainted with the facts of the
6 underlying litigation."). In fact, "the trial judge, absent fraud, collusion, or the like, should be
7 hesitant to substitute its own judgment for that of counsel." *Nat'l Rural Telecomms.*, 221 F.R.D. at
8 528, *quoting Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977).

9 Finally, only two objections have been submitted addressing the Settlements. Millions of
10 potential Settlement Class members were notified of these Settlements in connection with the Notice
11 Program approved by the Court. *See Gilardi Decl* ¶ 17. These potential Settlement Class members
12 were reached through a robust published notice program, through a comprehensive Internet
13 campaign and press releases, as well as through direct mailings to larger potential Settlement Class
14 members. Notwithstanding this massive campaign, only two objections were received, which
15 amounts to an infinitesimal portion of what is indisputably a very large Settlement Class.

16 In determining the fairness and adequacy of a proposed settlement, this Court should
17 consider "the reaction of the Class Members to the proposed settlement." *Churchill Village, L.L.C.*
18 *v. General Electric*, 361 F.3d 566, 575 (9th Cir. 2004); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011,
19 1026. "It is established that the absence of a large number of objections to a proposed class action
20 settlement raises a strong presumption that the terms of a proposed class settlement action are
21 favorable to the class members." *National Rural Telecoms*, 221 F.R.D. at 529; *see also Pallas v.*
22 *Pacific Bell*, 1999 WL 1209495, at *8 (N.D.Cal. 1999) ("The small percentage – less than one
23 percent – of persons raising objections is a factor weighing in favor of approval of the settlement.");
24 *Bynum v. District of Columbia*, 412 F. Supp. 2d 73, 77 (D.D.C. 2006). The inference of class
25 support due to the absence of any objectors is even stronger when, as here, a portion of the
26 Settlement Class consists of sophisticated business entities. *See In re Linerboard Antitrust Litig.*,
27 321 F. Supp. 2d 619, 629 (E.D. Pa. 2004).

28

1 While the absence of any significant objections alone provides ample basis for final approval
2 here, final approval is also warranted because objections submitted are without merit. First, the
3 objectors have not shown that they are Settlement Class members and have standing to object.
4 Second, given his prior felony convictions and disbarment, it is questionable whether Mr. Bonas is
5 authorized or entitled to submit objections on behalf of the Bonas Estate or Sawyer. Third,
6 Thompson's objections to the Settlements were not timely and should be stricken on that basis. And
7 fourth, the challenges asserted in the Bonas Objection and Thompson letter are devoid of merit.

8 Only Settlement Class members have standing to object to the Settlements. *See* Fed. R. Civ.
9 P. 23(e)(5) ("Any *class member* may object to the [settlement] proposal if it requires court approval
10 under this subdivision (e)....") (emphasis added); *see also Amone v. Aveiro*, Civ. No. 04-00508
11 ACK-BMK, 2007 U.S. Dist. LEXIS 63631, at **6-7 (D. Haw. Aug. 27, 2007) (objector lacked
12 standing to object to final approval of settlement where he was "not a member of the Plaintiff Class,
13 nor does he allege a cognizable injury from the settlement.") citing *Wolff v. Cash 4 Titles*, 351 F.3d
14 1348, 1354 (11th Cir. 2003) (holding that nonparties in a class action do not have standing to object
15 to a settlement agreement); 7B Charles Alan Wright, Arthur Miller, and Mary Kay Kane, *Federal*
16 *Practice & Procedure* § 1797.1 at 113 (3d ed. 2005) ("Only clearly presented objections by those
17 who will be bound by the settlement will be considered."). Here, neither the Bonas Estate, nor
18 Sawyer, nor Thompson has submitted any declaration or other proof that they are members of the
19 Settlement Class.⁹ In the absence of such proof, they have no standing to object to the Settlements,
20 and their objections should be stricken and/or overruled. *See Amone*, 2007 U.S. Dist. LEXIS 63631,
21 at **6-7; *Trew v. Volvo Cars of N. Am., LLC*, 2007 U.S. Dist. LEXIS 55305, at *7 (E.D. Cal. July
22 31, 2007).

23 As described above, Mr. Bonas was convicted of four criminal offenses that "involved moral
24 turpitude" (Micheletti Decl. Ex. 2 (State Bar Order) at 1, 6, 7), was transferred to involuntary
25 inactive enrollment status as of Jan. 2, 2005 (*see* Exhibit 3 to the Micheletti Decl. (State Bar of
26 California case docket for Case No. 03-C-3750)), and was formally disbarred in an Order dated May
27 _____

28 ⁹ Thompson does not even claim to be a Settlement Class member in his untimely objection.

1 19, 2005 (*see* Exhibit 4 to the Micheletti Decl. (*Bonas on Discipline*, 2005 Cal. LEXIS 5861 (Cal.
2 May 19, 2005)). While public records are not available, IP Plaintiffs’ counsel understands that Mr.
3 Bonas has been disbarred in this Court as well. Micheletti Decl. ¶ 4.

4 As a disbarred member of the State Bar of California, Mr. Bonas is precluded from practicing
5 law. *See* Cal. Bus. & Prof. Code § 6117. Under California law, a disbarred attorney who thereafter
6 practices law, or holds himself out as practicing or entitled to practice law, is guilty of a “crime
7 punishable by imprisonment in the state prison or county jail.” Cal. Bus. & Prof. Code §§ 6125,
8 6126(b). Such actions also bring the offending individual within contempt of court. *See id.* §
9 6127(b) (“practicing law *in any court*, without being an active member of the State Bar,” is its own
10 “contempt[] of the authority of the courts”) (emphasis added). The Civil Local Rules for the
11 Northern District of California (“L.R.”) likewise provide that “[a] person who exercises, or pretends
12 to be entitled to exercise, any of the privileges of membership in the bar of this Court, when that
13 person is not entitled to avail themselves of such membership privileges, shall be subject to sanctions
14 or other punishment, including a finding of contempt.” L.R. 11-8.

15 Under the above circumstances, IP Plaintiffs submit that Mr. Bonas should be required to
16 establish that he was authorized to submit the Bonas Objection in the first instance. In the absence
17 of such showing, the objection should be stricken or overruled. Assuming he was authorized, Mr.
18 Bonas should be required to withdraw from that representation forthwith. *See Gadda v. Ashcroft*,
19 377 F.3d 934, 938 (9th Cir. 2004) (ordering disbarred counsel to withdraw).

20 With regard to Thompson’s objection to the Settlements, pursuant to the Preliminary
21 Approval Order, it was required to be filed by August 17, 2010. It was not filed until August 25,
22 2010, and should be stricken as untimely. *See, e.g., In re Heritage Bond Litig.*, U.S. Dist. LEXIS
23 13555, at *35 n.9 (court did not consider objection where it was received “ten days after the filing
24 deadline for oppositions”); *In re Phenylpropanolamine Prods. Liab. Litig.*, 227 F.R.D. 553, 559-60
25 (D. Wash. 2004) (series of objection papers filed, in the earliest instance, five days after deadline for
26 objections to settlement were deemed untimely, and would only be considered to extent they
27 overlapped with timely objections). Assuming, *arguendo*, that the Court considers Thompson’s
28 objection, none of his assertions provide any basis for not approving the Settlements. While

1 Thompson objects to Class Counsel receiving a fee of one-third of the total recovery, Class Counsel
2 are not requesting that sum at this time, and do not intend to seek fees until the case is resolved with
3 the Non-Settling Defendants. At such time as Class Counsel apply for an attorneys' fee award,
4 Thompson's objection may be heard.¹⁰ Indeed, each of the Settlements provides that the provisions
5 regarding payment of attorneys' fees

6 are not part of this Agreement, and are to be considered by the Court separately
7 from the Court's consideration of the fairness, reasonableness and adequacy of
8 the settlement, . . . and any order or proceeding related to [IP Plaintiffs'
9 counsel's] Fee and Expense Application, or any appeal from any such order shall
not operate to terminate or cancel this Agreement, or affect or delay the finality
of the judgment approving the settlement.

10 See Settlements ¶ 24(c). Thus, any objection to Class Counsel's fees do not impact the fairness of
11 the Settlements, and Thompson's challenge to counsel's fees—assuming it is considered—is
12 irrelevant to final approval of the Settlements.

13 All of the objectors' other challenges to the Settlements also lack merit. The Bonas
14 Objection's apparent claim that the negotiation of the Settlements was not at arm's-length is wholly
15 unsupported, and contradicted by the declaration of counsel who participated in the negotiations.
16 See Scarpulla Decl. ¶¶ 13-25. Indeed, Bonas repeatedly, erroneously cites facts related to the *DRAM*
17 *Antitrust Litigation* as support for his various arguments (*see* Bonas Objection (DE 1072) at 3
18 (comparing the SRAM class period and SRAM class products to those in *DRAM*)), which have no
19 bearing on the adequacy of the Settlements here. In any event, as outlined above, there is no basis
20 for disputing that (1) the Settlements were the product of intense and thorough arm's-length
21 negotiations that were conducted by experienced and informed counsel over many months and
22 meetings; (2) the negotiations were contested and conducted in the utmost good faith; and (3) the
23 Settlements followed extensive discovery and motion practice. *See* § III.C, *supra*; *see* Scarpulla
24 Decl. ¶¶ 13-25.

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27 ¹⁰ *Accord In re Mercury Interactive Corp. Sec. Litig.*, No. 08-17372, 2010 U.S. App. LEXIS 17189,
28 at **12-13 (9th Cir. Aug. 18, 2010) (noting that objections to fee awards may be raised following
counsel's submission of application for fees).

1 Similarly, any claim that the Settlements provide inadequate consideration is also
 2 unsupported. For reasons that are not apparent, the Bonas Objection erroneously compares the
 3 amounts of the direct purchaser settlements in *DRAM* to the amounts of the Settlements here. *See*
 4 Bonas Objection at 5.¹¹ As noted above, *DRAM* is a different case and is irrelevant. Moreover,
 5 here, the amounts of each Settlement with each Settling Defendant either compare favorably with or
 6 *actually exceed* the settlements obtained in and already approved by this Court in the *SRAM* Direct
 7 Purchaser case.¹² The proximity of the Settlements to those attained and approved in the Direct
 8 Purchaser case, particularly given the added complexities and issues faced by IP Plaintiffs, support
 9 final approval here.

10 Thompson's complaint that Settlement Class members do not know "what they might get"
 11 similarly provides no basis for denying approval. First, the notices do provide information on the
 12 potential plans of distribution that will be considered. At the conclusion of the case, Class Counsel
 13 will submit a plan of distribution to the Court that will either provide for distribution of all amounts
 14 recovered in the litigation, plus interest, minus Court-approved attorneys' fees, costs, expenses, and
 15 incentive awards, to (1) Settlement Class Members through a Court-approved claims process; and/or
 16 to (2) eligible charitable organizations in the United States who are, as nearly practicable,
 17 representative of the interests of indirect purchasers of SRAM. If the *cy pres* method of distribution
 18 is chosen, it will be due to the reality that, given the class size, geographical diversity, and the small
 19 volume of purchases made by individual Class members, it would be impractical to distribute
 20 products or cash directly to each and every member of the Class. *See Conroy v. 3M Corp.*, No. C-
 21 00-2810 CW (N.D. Cal. April 21, 2006) (approving *cy pres* settlement in a case involving
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 23

24 ¹¹ Thompson baldly claims that the total settlement is "inadequate" without explanation. He also
 fails to provide any basis for challenging any specific amount provided for in the Settlements.

25 ¹² Micron settled with Direct Purchaser ("DP") Plaintiffs for \$3,100,000 and with IP Plaintiffs for
 26 \$1,550,000; Hynix settled with DP Plaintiffs for \$3,322,476.99 and with IP Plaintiffs for \$950,000;
 27 Renesas-Hitachi-Mitsubishi settled with DP Plaintiffs for \$9,975,000 and with IP Plaintiffs for
 \$4,497,000; Etron settled with DP Plaintiffs for \$400,000 and with IP Plaintiffs for \$2,000,000;
 Toshiba settled with DP Plaintiffs for \$12,350,000 and with IP Plaintiffs for \$1,525,000; and NEC
 28 settled with DP Plaintiffs for \$8,100,000 and with IP Plaintiffs for \$14,900,000. *See DP Plaintiffs'*
Memorandum in Support of Final Approval of Settlements and Plan of Allocation (DE 994) at 7-19.

1 transparent tape purchases by consumers).¹³ Inasmuch as the total available settlement funds are not
 2 yet determined, it is simply not practicable at this time to make final decisions about how the funds
 3 will be distributed. Final approval of antitrust settlements has been granted under similar
 4 circumstances. *See, e.g., In re Tableware Antitrust Litig.*, No C-04-3514 VRW, 2007 U.S. Dist.
 5 LEXIS 89998, at *10 (N.D. Cal. Nov. 28, 2007). Also, because the plan of distribution will be
 6 addressed at the conclusion of the case, and assuming that Thompson’s untimely objection should be
 7 considered, at that point, he may comment on any proposed plan of distribution.¹⁴

8 In light of the above, it is plain that the \$25,422,000 in cash payments guaranteed by the
 9 Settlements presented here are worthy of final approval. They provide substantial and certain
 10 benefits (monetary payments and cooperation) and they avoid – at least with regard to the Settling
 11 Defendants – the risks, delay and expense of further litigation. And while Plaintiffs believe their
 12 case is strong, and the Court has entered the class certification order after vigorous opposition from
 13 all Defendants, the Non-Settling Defendants continue to vigorously defend the case through
 14 dispositive and decertification motions, and will vigorously defend themselves at trial.

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22 ¹³ Courts will often use *cy pres* as the preferred means of distribution when individual claims
 23 processing proves costly. *See generally Six (6) Mexican Workers v. Arizona Citrus Growers*, 904
 24 F.2d 1301 (9th Cir. 1990) (citing *Newberg on Class Actions* (2d ed.)); *Conroy*, No. C-00-2810 CW
 25 (N.D. Cal. April 21, 2006). *See also In re Vitamin Cases*, 107 Cal. App. 4th 820, 826 (2003) (“The
 26 theory underlying fluid class recovery is that since each class member cannot be compensated
 exactly for the damage he or she suffered, the best alternative is to pay damages in a way that
 benefits as many class members as possible...” quoting *Bruno v. Superior Court*, 127 Cal. App. 3d
 120, 123-124 (1981)).

27 ¹⁴ For similar reasons, Thompson’s assertion that, as “an Alabama resident, . . . I do not get anything
 28 anyway,” provides no basis for denying final approval. It is undetermined, as of yet, whether any
 settlement funds will be distributed to specific Settlement Class members, including Alabama
 residents.

1 **VII. CONCLUSION**

2 For the reasons set forth herein, the Court should enter an order: (i) granting final approval of
3 each of the Settlements; (ii) certifying a Settlement Class; and (iii) enter judgments dismissing, with
4 prejudice, the claims against the Settling Defendants.

5 Dated: September 3, 2010

Respectfully submitted,

6 /s/ Christopher T. Micheletti

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