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Indirect Purchaser Class
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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

**DECLARATION OF CHRISTOPHER T.
MICHELETTI IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF
DISTRIBUTION PLAN AND NOTICE PLAN
AND SETTING FAIRNESS HEARING**

15
16 This Document Relates to:
17 ALL INDIRECT PURCHASER ACTIONS
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Hearing Date: July 7, 2011*
Time: 2:00 p.m.
Courtroom: 2, 4th Floor
Judge: Hon. Claudia Wilken

*Pursuant to stipulation, the parties request an earlier
hearing date

1 I, Christopher T. Micheletti, declare:

2 1. I am a member in good standing of the State Bar of California and am a member of
3 the firm Zelle Hofmann Voelbel & Mason LLP, Lead and Liaison Counsel for the Indirect Purchaser
4 Class. I am duly licensed to practice before the Supreme Court of the State of California and all
5 other inferior courts of this State. I am admitted to practice before the United States Supreme Court,
6 the Court of Appeals for the Sixth, Seventh and Ninth Circuits, and the Federal District Court for the
7 Northern District of California. This Declaration is based on personal knowledge, except where
8 specified that information is based on information and belief, and if called to testify, I could and
9 would do so competently as to the matters set forth herein.

10 2. I submit this Declaration in support of Indirect Purchaser (“IP”) Plaintiffs’ Motion
11 For Preliminary Approval Of Distribution Plan And Notice Plan And Setting Fairness Hearing.

12 3. During March, April and May of 2011, Francis Scarpulla and I conferred and
13 negotiated with the Reseller counsel and representative regarding allocation of settlement proceeds
14 as between Resellers and End Users in the Settlement Class, and regarding an appropriate Plan of
15 Distribution of the settlement proceeds. The parties agreed to allocate 63.3 percent of the net
16 settlement proceeds to the End Users and 36.7 percent to the Resellers. The decision to allocate the
17 Settlement Fund and the percentage of allocation was the product of vigorous, non-collusive
18 negotiations between Lead Counsel and court-appointed counsel for the Resellers, and was mediated
19 by a respected retired jurist. The formulation of the distribution plan was also the product of non-
20 collusive negotiations and discussions between Lead Counsel and the above-referenced appointees
21 for the Resellers. In my opinion and based upon my experience, the allocation and distribution plan
22 are fair, adequate and reasonable. Attached hereto as Exhibit A, is a true and correct copy of the
23 Declaration of The Honorable Alfred Chiantelli (Ret.) Regarding Allocation Mediation.

24 4. The “SRAM Overcharge Calculation” uses the weighted average of the direct
25 overcharge amounts for fast SRAM, slow SRAM and PSRAM that were calculated by IP Plaintiffs’
26 experts in the litigation. IP Plaintiffs’ experts estimated the overall weighted average of the alleged
27 overcharges to be 39.56 percent. This estimate is used in the Reseller claims process. As noted in
28

1 the expert reports, the direct overcharge percentages prepared by the IP Plaintiffs' experts were
2 estimated overcharges on "but for" pricing.

3 5. The "Percentage Products Containing SRAM" is the estimated percentage of the
4 product type (*e.g.*, all routers sold in the U.S.) that contains SRAM. This percentage is used to avoid
5 compensating Resellers for purchases of products that do not contain SRAM, and is derived from
6 averaging the percentages applicable to each product type as used by IP Plaintiffs' experts to
7 calculate damages in the IP litigation. The estimated percentages applicable to each product type are
8 as follows: Desktops – 45%; Servers – 90%; Routers – 82%; Switches – 32%; Modems – 58%;
9 Smartphones – 22%; PDAs – 40%. These estimated percentages are used in the Reseller claims
10 process.

11 6. "Defendants' Market Share" is the estimated percentage of Defendants' Market Share
12 of all SRAM sales during 1998 to 2005. This estimate was calculated by IP Plaintiffs' experts and is
13 derived from weighting the averages of the market share numbers used by IP Plaintiffs' experts to
14 calculate damages in the IP litigation. This estimated percentage is 69.2%. This is used in the
15 claims calculation to eliminate from the claim the percentage of the Reseller's product type
16 purchases that did not contain Defendants' SRAM.

17 7. The "Estimated Cost of SRAM" is the estimated cost of SRAM in the relevant
18 product type (*e.g.*, estimated cost of SRAM in a router). This estimate is derived from averaging
19 SRAM cost estimates for product types used by IP Plaintiffs' experts to calculate damages in the IP
20 litigation. The estimated SRAM costs in each product type are as follows: Desktops – \$7.83;
21 Servers – \$32.00; Routers – \$12.04; Switches – \$24.67; Modems – \$2.80; Smartphones – \$4.88;
22 PDAs – \$4.38. These estimated SRAM costs are used in the Reseller claims process.

23 8. We have been advised by Defendants that they do not have names and addresses for
24 class members and would not be able to identify the class members with diligent effort (*see* Docket
25 Entry 905, 986). The proposed multi-pronged publication and notice program, which specifically
26 directs notice by mailing the proposed Long Form Notice to potential indirect purchasers of SRAM
27 that are likely resellers of finished products containing SRAM, as well as end-users of SRAM, along
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1 with publication notice of the proposed Summary Notice in national newspapers and magazines as
2 well as supplemental notice through the use of internet banner notices, press releases and an
3 informational website – is commonly used in class actions like this one and constitutes valid, due
4 and sufficient notice to class members, and satisfies either Rule 23(c)(2)(B)’s “best notice
5 practicable” standard or Rule 23(e)(1)’s “notice in a reasonable manner” standard.

6 9. I and persons under my supervision prepared the list of Proposed Cy Pres Candidates
7 attached as Exhibit 3 to the Proposed Order Granting Preliminary Approval of the Distribution Plan
8 and Notice Plan and Setting Fairness Hearing. The list identifies the names of the proposed cy pres
9 candidates, their contact information and mission. Unless otherwise indicated in the list, I, my co-
10 counsel or others under our supervision have contacted these entities and have received verbal or
11 written confirmation from them as to their 501(c)(3) nonprofit status and missions. For a small
12 number of the candidates listed (denoted by an asterisk on the list), confirmations had not been
13 received in time for this filing, but their 501(c)(3) status was confirmed on the IRS website, and
14 further confirmation will be obtained from the nonprofit if and when any specific distribution is
15 recommended in the future.

16 Executed this 24th day of May, 2011 in San Francisco, California.

17
18 /s/ Christopher T. Micheletti
Christopher T. Micheletti

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EXHIBIT A

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

IN RE STATIC RANDOM ACCESS
MEMORY (SRAM) ANTITRUST
LITIGATION

Case No. M:07-CV-01819-CW
MDL No. 1819

**DECLARATION OF THE HONORABLE
ALFRED CHIANTELLI (RET.)
REGARDING ALLOCATION
MEDIATION**

This Document Relates to:

ALL INDIRECT PURCHASER ACTIONS

I, Alfred Chiantelli, declare as follows:

1. I am a mediator with ADR Services, Inc. I was retained by Lead Counsel for the Indirect Purchaser Plaintiffs, Zelle Hofmann Voelbel & Mason LLP, and by court-appointed counsel for the Settlement Class "Resellers" (described below), Berman DeValerio, to assist as a mediator with certain tasks related to the Indirect Purchaser Plaintiffs' settlements reached in the above-referenced matter. The matters set forth herein are within my personal knowledge, and if called and sworn as a witness I could competently testify regarding them. I make this declaration pursuant to 28 U.S.C. § 1746.

2. Based upon my review of filings in this matter, I understand that (a) on October 7, 2010, the Court entered orders finally approving settlements with, and dismissed with prejudice

1 claims against, six sets of defendants¹ in the above-referenced actions (*see* Docket Entries (“DE”)
2 1141, 1143-1148); (b) on February 11, 2011, the Court entered an order preliminarily approving a
3 settlement with Samsung Electronics Co., Ltd., Samsung Semiconductor, Inc., and Samsung
4 Electronics America, Inc. (the “Samsung Defendants”) (*see* DE 1324); and (c) on March 11, 2011,
5 the Court entered an order preliminarily approving a settlement with Cypress Semiconductor
6 Corporation (*see* DE 1329).

7 3. In the above orders, the Court certified (as it pertains to the six sets of defendants
8 that previously settled) or provisionally certified (as it pertains to the recent Samsung and Cypress
9 settlements) a Settlement Class defined as follows: All persons and entities residing in the United
10 States who, from November 1, 1996 through December 31, 2006 (the “Class Period”), purchased
11 SRAM in the United States indirectly from the Defendants. The Settlement Class includes all
12 indirect purchasers of SRAM (not just end-users) and therefore includes (1) persons and entities
13 that indirectly purchased SRAM for their own use and not for resale (e.g., end-user consumers and
14 businesses) (“End-Users”); and (2) persons and entities that indirectly purchased SRAM for resale
15 (e.g., retailers and value-added resellers that indirectly purchase SRAM or SRAM-containing
16 products and resell them others) (“Resellers”).

17 4. I further understand that plaintiffs intend to present to the Court as soon as is
18 practicable a plan of distribution of the proceeds of the above-referenced settlements, and that, to
19 address any potential disparate interests as between Resellers and End-users in the Settlement
20 Class in connection with the allocation and distribution of settlement proceeds, Lead counsel and
21 plaintiffs requested that the Court appoint Granite Communications, Inc. and Berman DeValerio to
22 represent the interests of Resellers in connection with the allocation and distribution of the
23 settlement proceeds in these actions. On March 14, 2011, the Court granted that request. *See* DE

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25 ¹ These six defendants are Micron Technology, Inc. and Micron Semiconductor Products, Inc.
26 (collectively “Micron”); Hynix Semiconductor Inc. and Hynix Semiconductor America Inc.
27 (collectively “Hynix”); Renesas Technology Corp., Renesas Technology America, Inc.
28 (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 Technology America, Inc. (collectively “Etron”); Toshiba Corporation and Toshiba America
Electronic Components, Inc., (collectively “Toshiba”); and NEC Electronics Corporation and NEC
Electronics America, Inc. (collectively “NEC”).

1 1340.

2 5. On April 12, 2011, I mediated the negotiations between the End-Users and
3 Resellers in connection with the allocation and distribution of the settlement proceeds in these
4 actions. Prior to the April 12 mediation session, I received and reviewed mediation briefs
5 submitted by each group, setting forth their respective positions regarding allocation of the
6 Settlement Fund, and communicated with each group regarding their positions and arguments.
7 Each group presented separate expert analyses, including econometric regression analyses, related
8 to the issue of whether indirect purchasers of SRAM that resold the SRAM passed-through to End-
9 Users all or a portion of any overcharges made by the Defendants.

10 6. During the April 12 mediation, the parties engaged in vigorous, arms-length
11 negotiations regarding allocation of the Settlement Fund. After extensive negotiations, an
12 agreement was reached allocating 63.3 percent of the net Settlement Fund to the End-Users and
13 36.7 percent thereof to the Resellers. Based upon my knowledge of the case and participation in
14 the settlement negotiations, it is my opinion that this allocation was reached through vigorous,
15 non-collusive negotiations, is fair, adequate and reasonable, and is in the best interests of the
16 Settlement Class members. My opinion in this regard is based on the knowledge gained from the
17 above activities, the negotiations between the parties, and on my extensive experience in mediating
18 class action antitrust cases.

19 7. To enable the undersigned to submit this declaration, the parties to the mediation
20 have agreed to waive the mediation privilege only as to the specific statements set forth above.

21 I declare under penalty of perjury under the laws of the United States of America that the
22 foregoing is true and correct.

23 Executed this 2nd day of May, 2011, in San Francisco, California.

24
25 
26 Honorable Alfred Chiantelli (Ret.)

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