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7 *Lead and Liaison Counsel for*  
*Indirect Purchaser Class*

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

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

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

**DECLARATION OF FRANCIS O.  
SCARPULLA IN SUPPORT OF MOTION  
TO APPROVE PROPOSED FORMS OF  
NOTICE REGARDING CLASS ACTION  
AND PARTIAL SETTLEMENTS AND  
FOR PRELIMINARY APPROVAL OF  
SETTLEMENTS (MICRON, HYNIX,  
RENASAS-HITACHI-MITSUBISHI,  
ETRON, TOSHIBA, NEC)**

14  
15 This Document Relates to:  
16 ALL INDIRECT PURCHASER ACTIONS

19 I, Francis O. Scarpulla, declare as follows:

20 1. I am a partner of Zelle Hofmann Voelbel & Mason LLP, Lead Counsel for the  
21 Indirect Purchaser Plaintiffs (“Plaintiffs”) Class in this case. The matters set forth herein are  
22 within my personal knowledge, and if called and sworn as a witness I could competently testify  
23 regarding them. I make this declaration pursuant to 28 U.S.C. § 1746.

24 2. In December, 2007, the parties entered into a Stipulation and Protective Order  
25 concerning the disclosure of confidential and highly confidential information. That stipulation and  
26 protective order was granted on December 21, 2007, and shortly thereafter the Defendants began  
27 producing copies of documents and sales data in addition to the documents that Defendants had  
28 previously turned over to Plaintiffs in connection with the Department of Justice (“DOJ”)’s SRAM

1 investigation, as well as the DRAM Production. The Defendants' productions took place on a  
2 rolling basis. To date, Defendants have produced over eleven million pages from both domestic  
3 and foreign entities in addition to the millions of pages of documents previously produced in the  
4 DRAM antitrust litigation (*In re Dynamic Random Access Memory (DRAM) Antitrust Litigation*,  
5 Case No. M-02-1486 PJH (N.D. Cal.)) ("DRAM Production") and ordered produced in this case.  
6 Many of the documents are in Korean, Japanese and Chinese, and have been translated as well as  
7 being indexed, analyzed, and entered into a database.

8         3. Counsel for Plaintiffs dedicated numerous lawyers and paralegals, and considerable  
9 other resources (including third party vendors and technical staff) to the translation, analysis, and  
10 electronic coding of the documents produced by Defendants. During the document review, teams  
11 of attorneys electronically reviewed the documents produced by Defendants and continually  
12 inputted and coded the relevant subjective and objective data from documents into a document  
13 review database. The document review database provided Plaintiffs' counsel the ability to run  
14 sophisticated queries regarding the documents and significant issues in the case. In total,  
15 Plaintiffs' counsel reviewed and analyzed many millions of pages of documents from Defendants.

16         4. Defendants continued producing documents to Plaintiffs, on a rolling basis, until at  
17 least June 2009. Starting in February 2009, Defendants began producing documents on behalf of  
18 the foreign parent companies, many of which were in a foreign language. Many of these  
19 documents were reviewed, and some were translated.

20         5. In addition to reviewing the content of the produced documents, Plaintiffs' counsel  
21 organized certain "key" documents by subject matter category, and documents relating to more  
22 than 50 potential deponents that were compiled in preparation for depositions. These efforts were  
23 vital to Plaintiffs' preparation of motions, meet and confer efforts, damages analyses, and ability to  
24 timely respond to complex legal and factual issues that arose during this litigation, and also  
25 enhanced Plaintiffs' counsel's negotiations with Settling Defendants as Plaintiffs' counsel were  
26 armed with a full understanding of the strengths and weaknesses of their case.

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1           6.       In addition to the review of documents produced in connection with the DOJ's  
2 SRAM investigation (and the DRAM Production), Plaintiffs propounded separate Requests for  
3 Production of Documents and Interrogatories to all Defendants.

4           7.       Plaintiffs' counsel frequently met and conferred with opposing counsel regarding  
5 certain inadequacies in their document productions, and particularly about Defendants' consistent  
6 and uniform refusal to produce documents in response to Indirect Purchaser Plaintiffs' First and  
7 Second Set of Document Requests to All Defendants.

8           8.       Plaintiffs' counsel also served approximately 80 subpoenas to third parties and met  
9 and conferred with counsel for the third parties prior to production. Plaintiffs were forced to file  
10 motions to compel regarding the production of some of the information sought from the third  
11 parties. Plaintiffs' counsel also reviewed the third party documents produced.

12           9.       Through the diligent analysis of the documents and other evidence produced,  
13 Plaintiffs identified current and former employees of the defendants with knowledge of the  
14 relevant issues in this case. As a result, Plaintiffs have participated with the Direct Purchaser  
15 Plaintiffs in taking the depositions of approximately 35 witnesses. Further, Plaintiffs also noticed  
16 and took the Rule 30(b)(6) depositions of the remaining non-settling Defendants, Cypress and  
17 Samsung, in February 2010.

18           10.      Plaintiffs' counsel has worked extensively with consultants and experts in  
19 preparation for trial and future motions. In particular, Plaintiffs' counsel spent considerable time  
20 working with expert antitrust economists, Michael J. Harris, Ph.D., and Mark Dwyer, Ph.D.

21           11.      Class certification was granted on November 25, 2009, over Defendants'  
22 opposition, and was by no means guaranteed. Plaintiffs also successfully overcame a petition to  
23 the Ninth Circuit, pursuant to Fed. R. Civ. P. 23(f), to review the Court's class certification order.

24           12.      At each stage in this case, Defendants have strenuously contested Plaintiffs' claims.  
25 Defendants not only filed several *Twombly*-based motions to dismiss and aggressively opposed  
26 Plaintiffs' motion to certify the Class, but they also vigorously opposed virtually all of Plaintiffs'  
27 discovery requests – forcing Plaintiffs to engage in extensive meet and confer discussions and  
28 ultimately file multiple motions to compel.

1           13.     Only after a substantial amount of discovery and analysis, including as described  
2 above, and only after consideration of applicable law, did Plaintiffs' counsel begin settlement  
3 negotiations with Defendants. As an initial matter, the parties retained former state Judge Daniel  
4 Weinstein, now of JAMS in San Francisco, as a neutral mediator. A mediation session was held in  
5 California on February 17, 2009, and, in anticipation of mediation, all parties submitted  
6 confidential mediation briefs to Judge Weinstein. During that session, counsel for the parties and  
7 Judge Weinstein discussed the facts of the cases, the strengths, weaknesses and procedural  
8 postures of the federal and state law claims, and the defenses to all of the cases. The parties and  
9 the mediator also discussed the size and scope of the class, the amount of sales of SRAM,  
10 Plaintiffs' demands for damages and restitution, and Defendants' position on damages. Thereafter,  
11 extensive, vigorous and non-collusive, arm's length negotiations ensued between Defendants'  
12 numerous counsel and counsel for the Plaintiffs, including meetings, exchanges of information as  
13 well as presentations by the parties about their views of the case. I participated in all of the  
14 settlement negotiations. I have more than 42 years experience prosecuting antitrust claims,  
15 including price-fixing claims similar to those alleged in this case.

16           14.     I participated in all of the settlement negotiations with the first Settling Defendant,  
17 Micron. Only after a substantial amount of the discovery and analysis, including as described  
18 above, and only after thorough consideration of applicable law, did Plaintiffs' counsel begin  
19 settlement negotiations with Micron. Plaintiffs' counsel was well aware of the strengths and  
20 weaknesses of Plaintiffs' case. Final settlement with Micron was reached in March 2009, after the  
21 mediation before Judge Weinstein, and protracted arm's-length negotiations. The Micron  
22 settlement agreement is attached as Exhibit A. The negotiations were vigorous and non-collusive,  
23 and included considerable meetings, exchanges of information as well as presentations by the  
24 parties about their views of the case.

25           15.     It is my opinion that the Micron Settlement is, in every respect, fair, adequate and  
26 reasonable and in the best interests of the Class members. My opinion in this regard is based upon  
27 the knowledge gained from the extensive investigation and discovery conducted in this case to  
28 date, as described above, and consultation with other lawyers representing Plaintiffs and the Class

1 in this case, who are of the same opinion. My opinion is also based on my extensive experience in  
2 class action antitrust cases. I have practiced in this field for more than 42 years and have been  
3 involved in many class action settlements. Based on my experience, a settlement such as that  
4 obtained here with Micron for \$1,550,000 is a fair and reasonable result.

5 16. I also participated in all of the settlement negotiations with Hynix. Again, only  
6 after a substantial amount of the discovery and analysis, including as described above, and only  
7 after thorough consideration of applicable law, did Plaintiffs' counsel begin settlement  
8 negotiations with Hynix. Plaintiffs' counsel was well aware of the strengths and weaknesses of  
9 Plaintiffs' case. Initial discussions with Hynix occurred in the Spring and Summer of 2009 and  
10 were protracted and difficult; they occurred over many months and involved both meetings and  
11 telephone discussions. An agreement in principle was reached with Hynix prior to the hearing on  
12 Plaintiffs' motion for class certification in early September 2009, with the executed settlement  
13 agreement being finalized in December 2009. The Hynix settlement agreement is attached as  
14 Exhibit B. Again, the negotiations were vigorous and non-collusive, and included considerable  
15 meetings, exchanges of information as well as presentations by the parties about their views of the  
16 case.

17 17. It is my opinion that the Hynix Settlement is, in every respect, fair, adequate and  
18 reasonable and in the best interests of the Class members. My opinion in this regard is based upon  
19 the knowledge gained from the extensive investigation and discovery conducted in this case to  
20 date, as described above, and consultation with other lawyers representing Plaintiffs and the Class  
21 in this case, who are of the same opinion. My opinion is also based on my extensive experience in  
22 class action antitrust cases described above. Based on my experience, a settlement such as that  
23 obtained here with Hynix for \$950,000 is a fair and reasonable result.

24 18. I also participated in all of the settlement negotiations with Renesas-Hitachi-  
25 Mitsubishi. Again, only after a substantial amount of the discovery and analysis, including as  
26 described above, and only after thorough consideration of applicable law, did Plaintiffs' counsel  
27 begin settlement negotiations with Renesas-Hitachi-Mitsubishi. Plaintiffs' counsel was well aware  
28 of the strengths and weaknesses of Plaintiffs' case. The first settlement discussions occurred in the

1 Spring and Summer of 2009 and were protracted and difficult; they occurred over many months  
2 and involved both meetings and telephone discussions. An agreement in principle was reached  
3 with Renesas-Hitachi-Mitsubishi on the eve of the hearing on Plaintiffs' motion for class  
4 certification in early September 2009, with the executed settlement agreement being finalized in  
5 December 2009. The Renesas-Hitachi-Mitsubishi settlement agreement is attached as Exhibit C.  
6 Again, the negotiations were vigorous and non-collusive, and included considerable meetings,  
7 exchanges of information as well as presentations by the parties about their views of the case.

8         19. It is my opinion that the Renesas-Hitachi-Mitsubishi Settlement is, in every respect,  
9 fair, adequate and reasonable and in the best interests of the Class members. My opinion in this  
10 regard is based upon the knowledge gained from the extensive investigation and discovery  
11 conducted in this case to date, as described above, and consultation with other lawyers  
12 representing Plaintiffs and the Class in this case, who are of the same opinion. My opinion is also  
13 based on my extensive experience in class action antitrust cases described above. Based on my  
14 experience, a settlement such as that obtained here with Renesas-Hitachi-Mitsubishi for  
15 \$4,497,000 is a fair and reasonable result.

16         20. I also participated in all of the settlement negotiations with Etron. Again, only after  
17 a substantial amount of the discovery and analysis, including as described above, and only after  
18 thorough consideration of applicable law, did Plaintiffs' counsel begin settlement negotiations with  
19 Etron. Plaintiffs' counsel was well aware of the strengths and weaknesses of Plaintiffs' case.  
20 Negotiations with Etron were extensive, necessitating meetings, telephone discussions, and a  
21 further mediation session before Judge Weinstein following the class certification hearing, in  
22 which Plaintiffs' counsel and Etron participated. An agreement in principle was reached with  
23 Etron in late November 2009, with the Settlement Agreement being finalized in December 2009.  
24 The Etron settlement agreement and individual releases of certain Etron employees are attached as  
25 Exhibit D. Again, the negotiations were vigorous and non-collusive, and included considerable  
26 meetings, exchanges of information as well as presentations by the parties about their views of the  
27 case.

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1           21.     It is my opinion that the Etron Settlement is, in every respect, fair, adequate and  
2 reasonable and in the best interests of the Class members. My opinion in this regard is based upon  
3 the knowledge gained from the extensive investigation and discovery conducted in this case to  
4 date, as described above, and consultation with other lawyers representing Plaintiffs and the Class  
5 in this case, who are of the same opinion. My opinion is also based on my extensive experience in  
6 class action antitrust cases described above. Based on my experience, a settlement such as that  
7 obtained here with Etron for \$2,000,000 is a fair and reasonable result.

8           22.     I also participated in all of the settlement negotiations with Toshiba. Again, only  
9 after a substantial amount of the discovery and analysis, including as described above, and only  
10 after thorough consideration of applicable law, did Plaintiffs' counsel begin settlement  
11 negotiations with Toshiba. Plaintiffs' counsel was well aware of the strengths and weaknesses of  
12 Plaintiffs' case. Initial discussions with Toshiba occurred in the Spring and Summer of 2009 and  
13 were protracted and difficult; they occurred over many months and involved both meetings and  
14 telephone discussions. An agreement in principle was reached with Toshiba prior to the hearing  
15 on Plaintiffs' motion for class certification in early September 2009, with the executed settlement  
16 agreement being finalized in December 2009. The Toshiba settlement agreement and amendment  
17 thereto is attached as Exhibit E. Again, the negotiations were vigorous and non-collusive, and  
18 included considerable meetings, exchanges of information as well as presentations by the parties  
19 about their views of the case.

20           23.     It is my opinion that the Toshiba Settlement is, in every respect, fair, adequate and  
21 reasonable and in the best interests of the Class members. My opinion in this regard is based upon  
22 the knowledge gained from the extensive investigation and discovery conducted in this case to  
23 date, as described above, and consultation with other lawyers representing Plaintiffs and the class  
24 in this case, who are of the same opinion. My opinion is also based on my extensive experience in  
25 class action antitrust cases described above. Based on my experience, a settlement such as that  
26 obtained here with Toshiba for \$1,525,000 is a fair and reasonable result.

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1           24.     I also participated in all of the settlement negotiations with NEC. Again, only after  
2 a substantial amount of the discovery and analysis, including as described above, and only after  
3 thorough consideration of applicable law, did Plaintiffs' counsel begin settlement negotiations with  
4 NEC. Plaintiffs' counsel was well aware of the strengths and weaknesses of Plaintiffs' case.  
5 Negotiations with NEC were extensive, necessitating both meetings and telephone discussions.  
6 After the Court's class certification ruling, Plaintiffs' counsel pursued hard-fought settlement  
7 negotiations with NEC in December 2009 and January 2010. An agreement in principle was  
8 reached with NEC in January 2010, with the executed settlement agreement being finalized in  
9 March 2010. The NEC settlement agreement is attached as Exhibit F. Again, the negotiations  
10 were vigorous and non-collusive, and included considerable meetings, exchanges of information as  
11 well as presentations by the parties about their views of the case.

12           25.     It is my opinion that the NEC Settlement is, in every respect, fair, adequate and  
13 reasonable and in the best interests of the Class members. My opinion in this regard is based upon  
14 the knowledge gained from the extensive investigation and discovery conducted in this case to  
15 date, as described above, and consultation with other lawyers representing Plaintiffs and the Class  
16 in this case, who are of the same opinion. My opinion is also based on my extensive experience in  
17 class action antitrust cases described above. Based on my experience, a settlement such as that  
18 obtained here with NEC for \$14,900,000 is a fair and reasonable result.

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

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I declare under penalty of perjury that the foregoing is true and correct.

Executed this 15th day of April, 2010, in San Francisco, California.

/s/ Francis O. Scarpulla

Francis O. Scarpulla

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