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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
FOR PRELIMINARY APPROVAL OF
SETTLEMENT WITH SAMSUNG**

14
15 This Document Relates to:
16 ALL INDIRECT PURCHASER ACTIONS
17

18
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 Class (“Plaintiffs”) in this case. The matters set forth herein are within my
22 personal knowledge, and if called and sworn as a witness I could competently testify regarding
23 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 Cypress and Samsung in February 2010.

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

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 Since then, the parties completed merits discovery and engaged in and completed expert
25 discovery—including the exchange of several expert merits reports regarding, *inter alia*, liability
26 and damages as well as depositions of their respective experts.

27 12. At each stage in this case, Defendants have strenuously contested Plaintiffs' claims.
28 Defendants not only filed several *Twombly*-based motions to dismiss and aggressively opposed

1 Plaintiffs' motion to certify the Class, but they also vigorously opposed virtually all of Plaintiffs'
2 discovery requests – forcing Plaintiffs to engage in extensive meet and confer discussions and
3 ultimately file multiple motions to compel.

4 13. Only after the close of discovery and multiple rounds of summary judgment and
5 related briefing, including as described above, and only after consideration of applicable law, did
6 Plaintiffs' counsel begin settlement negotiations with Samsung. Negotiations with Samsung were
7 protracted and difficult, much like the negotiations with the other six sets of Settling Defendants.

8 14. I participated in all of the settlement negotiations with Samsung. Plaintiffs' counsel
9 was well aware of the strengths and weaknesses of Plaintiffs' case. The settlement discussions
10 occurred through the latter half of 2010, including a mediation session with Samsung and Cypress
11 before the Court-appointed mediator, the Hon. Daniel Weinstein, on September 27, 2010.
12 Negotiations continued until the Samsung Settlement was concluded and entered on October 4,
13 2010. The negotiations were vigorous and non-collusive, and included considerable meetings,
14 exchanges of information as well as presentations by the parties about their views of the case. The
15 Samsung settlement agreement is attached hereto as Exhibit A.

16 15. It is my opinion that the Samsung Settlement is, in every respect, fair, adequate and
17 reasonable and in the best interests of the Class members. My opinion in this regard is based upon
18 the knowledge gained from the extensive investigation and discovery conducted in this case to
19 date, as described above, and consultation with other lawyers representing Plaintiffs and the Class
20 in this case, who are of the same opinion. My opinion is also based on my extensive experience in
21 class action antitrust cases. I have practiced in this field for more than 42 years and have been
22 involved in many class action settlements. Based on my experience, a settlement such as that
23 obtained here with Samsung for \$14,900,000 is a fair and reasonable result.

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

26 Executed this 22nd day of December, 2010, in San Francisco, California.

27 /s/ Francis O. Scarpulla

28 Francis O. Scarpulla

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EXHIBIT A

**SETTLEMENT AGREEMENT BETWEEN SAMSUNG DEFENDANTS AND SRAM
INDIRECT-PURCHASER CLASS PLAINTIFFS**

This Settlement Agreement (“Agreement”) is made and entered into this 4th day of October 2010, by and between defendants Samsung Electronics Company, Ltd., Samsung Semiconductor, Inc. and Samsung Electronics America, Inc. (collectively “Samsung”) and the plaintiff class representatives, Lara Sterenberg, United Food & Commercial Workers Local 99, Robert Harmon, Michael Brooks, Lawrence Markey, Roman J. Munoz, Joseph Solo, Stargate Films, United Food & Commercial Workers Local 8, Dona Culver, Ronnie Barnes, Ryan Edwards, John Pharr d/b/a JP Micro, Ramon Oyadomari, Unite Here Local 5, Herbert Harmison, David Sly, nXio, LLC, Penobscot Eye Care, James W. Allen, Matthew Frank, Fairmont Orthopedics & Sports Medicine, P.A., Reclaim Center, Inc., Henry Kornegay, Our Montana, Inc., Culinary Workers Union Local 226, Allen Robert Kelley, Daniel Yohalem, Rodrigo Bazan Gatti, CHP Media, Inc., Curtis Hogue, Jr., Ward Cater, Beth O’Donnell, Carlos R. Carrillo, Javier Oyola-Aleman, Kevin Kicia, Mitch Mudlin, Frank C. Warner, Christopher K. Giaque, Christopher Smith, Donna Hark, David Loomis, Mark and Shannon Schneider and Christopher Stawski (“Plaintiffs”), both individually and on behalf of a settlement class of indirect purchasers of Static Random Access Memory (the “Class”), as more particularly defined in paragraph 1 below.

WHEREAS, Plaintiffs are prosecuting the *In re Static Random Access Memory (SRAM) Antitrust Litigation*, Case No. 4:07-md-1819 CW, MDL No. 1819 (the “Action”) on their own behalf and on behalf of the Class against, among others, Samsung;

WHEREAS, Plaintiffs allege that Samsung participated in an unlawful conspiracy to raise, fix, maintain, or stabilize the price of SRAM at artificially high levels in violation of Section 1

of the Sherman Act and other antitrust, unfair competition and/or consumer protection laws of all jurisdictions within the United States;

WHEREAS, Samsung denies Plaintiffs' allegations and has asserted defenses to Plaintiffs' claims;

WHEREAS, on November 25, 2009, the Court certified a nationwide class pursuant to Fed. R. Civ. P. 23(a) and (b)(2) for injunctive and declaratory relief and 27 state-wide plaintiff classes for Arizona, Arkansas, California, Florida, Hawaii, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Mexico, New York, North Carolina, North Dakota, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Washington, West Virginia, Wisconsin, Puerto Rico, and the District of Columbia;

WHEREAS, on February 10, 2010, the United States Court of Appeal for the Ninth Circuit denied Defendants' Rule 23(f), Federal Rules of Civil Procedure Petition;

WHEREAS, on July 15, 2010, Samsung filed a motion raising a factual challenge to the Court's subject matter jurisdiction over foreign conduct, a motion for summary judgment and/or partial summary judgment, a motion to decertify the plaintiff classes, and a motion to exclude the expert opinion of Dr. Mark Dwyer, among other anticipated pre-trial motions;

WHEREAS, Plaintiffs have conducted an investigation into the facts and the law regarding the Action and have concluded that resolving claims against Samsung according to the terms set forth below is in the best interest of Plaintiffs and the Class; and

WHEREAS, Samsung believes that it is not liable for the claims asserted and has good defenses thereto, but nevertheless has agreed to enter into this Agreement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation and to obtain the releases, orders and judgment contemplated by this Agreement, and to put to rest with finality

all claims that have been or could have been asserted against Samsung based on the allegations of the Action, as more particularly set out below;

WHEREAS, the Court entered an order granting summary judgment to Samsung Electronics America, Inc. ("SEA") on all claims asserted by Plaintiffs on September 21, 2010;

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, it is agreed by and among the undersigned that the Action be settled, compromised, and dismissed on the merits with prejudice as to the Samsung Releasees, as defined below, and except as hereinafter provided, without costs as to Plaintiffs, the Class, or Samsung, subject to the approval of the Court, on the following terms and conditions:

A. Definitions.

1. (a) For purposes of this Agreement, and subject to paragraphs 1(b) and 1(c) below, the "Class" is defined as all persons and entities residing in the United States who, from November 1, 1996 through December 31, 2006 (the "Class Period"), purchased SRAM (as defined in paragraph 2) in the United States indirectly from the Defendants. The Class excludes the following persons and entities: the Defendants; the officers, directors or employees of any Defendant; any entity in which any of the Defendants 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 the Action and the members of her immediate family and judicial staff. The definitions of the Class and Class Period herein do not limit the scope of the Release provided for in paragraphs 13 through 15 of this Agreement. For the avoidance of doubt, "Defendants" refers to all parties that were defendants in the Action, and the "Class" is meant to include indirect purchasers described above who purchased products containing Defendants' SRAM.

(b) If Plaintiffs, or any of them, settle with any remaining defendant and agree to a release broader in scope than the release agreed to below, Plaintiffs agree that the broader release agreed to by Plaintiffs and any remaining defendant shall apply to this Agreement as well. For purposes of this provision, the scope of the release refers to the (1) time period; (2) geographic territory; (3) products covered; and/or (4) persons or entities included in the scope of the release. For purposes of this paragraph, “remaining defendant” refers to Cypress Semiconductor Corporation and/or any parent, subsidiary or affiliate companies.

(c) Plaintiffs warrant and represent that no defendant that has previously settled has obtained a release broader in scope than the release agreed to in this Agreement. To the extent Plaintiffs have agreed to such a release, Plaintiffs agree that any such broader release agreed to by Plaintiffs with any other settled defendant shall apply to this Agreement as well. For purposes of this provision, the scope of the release refers to the (1) time period; (2) geographic territory; (3) products covered; and/or (4) persons or entities included in the scope of the release.

2. For purposes of this Agreement only, SRAM is defined to mean all types of static random access memory (including pseudo static random memory known as “PSRAM”), whether or not packaged, and any parts and modules thereof.

3. “Samsung Releasees” shall refer to Samsung and to each and all of its respective past and present, and direct and indirect, parents, subsidiaries, affiliates; the predecessors, successors and assigns of any and all of the above; and each and all of the present and former principals, partners, officers, directors, supervisors, employees, representatives, insurers, attorneys, heirs, executors, administrators, and assigns of each of the foregoing. “Samsung Releasees” does not include any defendant in the Action other than Samsung.

4. “Class Member” means each member of the Class who has not timely elected to be excluded from the Class.

5. "Releasers" shall refer to the Plaintiffs and the Class Members, and to their past and present officers, directors, employees, agents, stockholders, attorneys, servants, representatives, parent entities, subsidiaries, affiliates, partners, insurers and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and the predecessors, successors, heirs, executives, administrators and assigns of any of the foregoing.

6. The "Settlement Fund" shall be \$14,900,000 (Fourteen Million Nine Hundred Thousand Dollars) in United States funds, plus accrued interest on said deposits set forth in paragraph 17, below.

7. "Lead Counsel" shall refer to:

Francis O. Scarpulla
Craig C. Corbitt
Christopher T. Micheletti
Zelle Hofmann Voelbel & Mason LLP
44 Montgomery St., Suite 3400
San Francisco, CA 94104

B. Approval of this Agreement and Dismissal of Claims Against Samsung.

8. Plaintiffs and Samsung shall use their best efforts to effectuate this Agreement, including cooperating in promptly seeking the Court's approval for the establishment of procedures (including the giving of class notice under Federal Rules of Civil Procedure 23(c) and (e)) to secure the prompt, complete, and final dismissal with prejudice of the Action as to Samsung only.

9. As soon as practicable after the date of this Agreement, Plaintiffs shall submit to the Court a motion for authorization to disseminate notice of the settlement, class certification, and final judgment contemplated by this Agreement to all Class Members consistent with due process requirements and as ordered by the Court (the "Motion"). If notice to the Class is given jointly with any other settling defendant, for purposes of paragraph 19 below, the costs of notice

and claims administration shall be prorated with any other such defendant based on their respective settlement amounts. The Motion shall include: (i) a proposed form of, method for, and date of dissemination of notice; and (ii) a proposed form of order and final judgment. The text of the foregoing items (i) and (ii) shall be agreed upon by Plaintiffs and Samsung before submission of the Motion, with the understanding that, among other things, notice to the Class will meet the requirements of Federal Rule of Civil Procedure 23 and due process, with all expenses paid from the Settlement Fund. The Motion shall recite and ask the Court to find that the proposed form of notice constitutes valid, due and sufficient notice to the Class, constitutes the best notice practicable under the circumstances, and complies fully with the requirements of Federal Rule of Civil Procedure 23.

10. Plaintiffs and Samsung shall jointly seek entry of an order and final judgment, the text of which Plaintiffs and Samsung shall agree upon. The terms of that order and final judgment will include, at a minimum, the substance of the following provisions:

(a) certifying the Class described in paragraph 1, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for purposes of the settlement set forth in this Agreement;

(b) as to the Action, approving finally the settlement set forth in this Agreement and its terms as being a fair, reasonable and adequate settlement as to the Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to its terms;

(c) as to Samsung, directing that the Action be dismissed with prejudice and, except as provided for in this Agreement, without costs;

(d) reserving exclusive jurisdiction over the settlement and this Agreement, including the administration and consummation of this settlement to the United States District Court for the Northern District of California; and

(e) determining under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay in entering a judgment of dismissal as to Samsung and directing that the judgment of dismissal as to Samsung shall be final.

11. This Agreement shall become final when: (a) the Court has entered a final order approving this Agreement under Federal Rule of Civil Procedure 23(e) and a final judgment dismissing the Action with prejudice as to Samsung against all Class Members and without costs other than those provided for in this Agreement; and (b) the time for appeal or to seek permission to appeal from the Court's approval of this Agreement and entry of a final judgment as to Samsung as described in (a) hereof has expired or, if appealed, approval of this Agreement and the final judgment as to Samsung have been affirmed in their entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review. It is agreed that the provisions of Rule 60 of the Federal Rules of Civil Procedure shall not be taken into account in determining the above-stated times. On the date that Plaintiffs and Samsung have executed this Agreement, Plaintiffs and Samsung shall be bound by its terms and this Agreement shall not be rescinded except in accordance with paragraphs 17 or 25 of this Agreement.

12. Neither this Agreement (whether or not it should become final) nor the final judgment, nor any and all negotiations, documents and discussions associated with them, shall be deemed or construed to be an admission by Samsung (or the Samsung Releasees) or evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by Samsung (or the Samsung Releasees), or of the truth of any of the claims or allegations contained in any complaint or any other pleading filed by Plaintiffs in the Action, and evidence thereof shall not be discoverable or used directly or indirectly, in any way, whether in the Action or in any other action or proceeding. Neither this Agreement, nor any of its terms and provisions, nor any of the

negotiations or proceedings connected with it, nor any other action taken to carry out this Agreement by any of the Plaintiffs and/or Samsung shall be referred to, offered as evidence or received in evidence in any pending or future civil, criminal, or administrative action or proceeding, except in a proceeding to enforce this Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law. This provision will survive even if this Agreement does not become final and/or is rescinded.

C. Release, Discharge, and Covenant Not to Sue.

13. In addition to the effect of any final judgment entered in accordance with this Agreement, upon this Agreement becoming final as set out in paragraph 11 of this Agreement, and in consideration of payment of the Settlement Fund, as specified in paragraph 16 of this Agreement, and for other valuable consideration, the Samsung Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits, causes of action, whether class, individual, direct, derivative, representative or otherwise in nature (whether or not any Class Member has objected to the settlement or makes a claim upon or participates in the Settlement Fund, whether directly, representatively, derivatively or in any other capacity) that Releasors, or each of them, ever had, now has, or hereafter can, shall, or may have on account of, or in any way arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected injuries, damages, and the consequences thereof in any way arising out of or relating in any way to any act or omission of the Samsung Releasees (or any of them) concerning the manufacture, supply, distribution, sale or pricing of SRAM up through the last date of the Class Period (subject to any adjustment pursuant to paragraphs 1(b) and/or 1(c) above), including but not limited to any conduct alleged, and causes of action asserted or that could have been alleged or asserted, in class action complaints filed in the Action, including those arising under any federal or state antitrust, unfair competition, unfair practices, price

discrimination, unitary pricing, trade practice law, or consumer protection law, including without limitation, the Sherman Antitrust Act, 15 U.S.C. § 1 et seq. (the "Released Claims"). Releasors shall not, after the date of this Agreement, seek to establish liability against any Samsung Releasee based, in whole or in part, upon any of the Released Claims or conduct at issue in the Released Claims.

14. In addition to the provisions of paragraph 13 of this Agreement, Releasors hereby expressly waive and release, upon this Agreement becoming final, any and all provisions, rights, and benefits conferred by Section 1542 of the California Civil Code, which states:

CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code. Each Releasor may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims which are the subject matter of the provisions of paragraph 13 of this Agreement, but each Releasor hereby expressly waives and fully, finally, and forever settles and releases, upon this Agreement becoming final, any known or unknown, suspected or unsuspected, contingent or non-contingent claim with respect to the subject matter of the provisions of paragraph 13 of this Agreement, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

15. The release, discharge, and covenant not to sue set forth in paragraph 13 of this Agreement does not include claims by any of the Class Members other than the Released Claims and does not include other claims, such as those solely arising out of product liability or breach

of contract claims in the ordinary course of business not covered by the Released Claims.

Further, the release, discharge and covenant not to sue set forth in paragraph 13 of this Agreement includes only indirect-purchaser claims.

D. Settlement Amount.

16. Subject to the provisions hereof, and in full, complete and final settlement of the Action as provided herein, Samsung shall pay \$14,900,000 (Fourteen Million Nine Hundred Thousand) (the "Settlement Amount") in United States Dollars into an escrow account to be administered in accordance with the provisions of paragraph 17 of this Agreement (the "Escrow Account") within 15 days from the execution date of this Agreement. The foregoing Settlement Amount shall be neither increased nor decreased based on: (a) any requests for exclusion from the Class, or (b) any past or future separate settlements between Samsung and Class Members.

17. Escrow Account.

(a) The Escrow Account will be established at Wells Fargo Bank, National Association, or such other bank as mutually agreed by Samsung and Lead Counsel, with such Bank serving as escrow agent ("Escrow Agent") subject to escrow instructions mutually acceptable to Lead Counsel and Samsung and escrow agreement among Samsung, Lead Counsel and Escrow Agent, such escrow to be administered under the Court's continuing supervision and control.

(b) The Escrow Agent shall cause the funds deposited in the Escrow Account to be invested in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, or money market funds invested substantially in such instruments, and shall reinvest any income from these instruments and the proceeds of these instruments as they mature in similar instruments at their then-current market rates.

(c) All funds held in the Escrow Account shall be deemed and considered to be in custodia legis of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Agreement and/or further order(s) of the Court.

(d) Plaintiffs and Samsung agree to treat the Settlement Fund as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. § 1.468B-1. In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this paragraph 17, including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

(e) For the purpose of Section 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the Escrow Agent. The Escrow Agent shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitation the returns described in Treas. Reg. Section 1.468B-2(k)(1)). Such returns (as well as the election described in paragraph 17(d)) shall be consistent with paragraph 17(d) and in all events shall reflect that all Taxes, as defined below (including any estimated Taxes, interest or penalties), on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in paragraph 17(f) hereof.

(f) All (i) taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon Samsung or any other Samsung Releasee with respect to any income

earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a "qualified settlement fund" for federal or state income tax purposes ("Taxes"); and (ii) expenses and costs incurred in connection with the operation and implementation of paragraphs 17(d) through 17(f) (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in paragraph 17(g) ("Tax Expenses")), shall be paid out of the Settlement Fund.

(g) Neither Samsung nor any other Samsung Releasee nor their respective counsel shall have any liability or responsibility for the Taxes or the Tax Expenses. Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall be timely paid by the Escrow Agent out of the Settlement Fund without prior order from the Court and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to any claimants authorized by the Court any funds necessary to pay such amounts including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. Section 1.468B-2(1)(2)). Neither Samsung nor any other Samsung Releasee is responsible nor shall they have any liability therefor. Plaintiffs and Samsung agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of paragraphs 17(d) through 17(f).

(h) If this Agreement does not receive final Court approval, or if the Action is not certified as a class action for settlement purposes, then all amounts paid by Samsung into the Settlement Fund (other than notice costs expended in accordance with paragraph 19(a)) shall be promptly returned to Samsung from the Escrow Account by the Escrow Agent along with any interest accrued thereon.

18. Exclusions. Lead Counsel will cause copies of requests for exclusion from the Class to be provided to counsel for Samsung.

19. Payment of Expenses.

(a) Samsung agrees to permit use of a maximum of \$1,600,000 of the Settlement Fund towards notice to the Class and administration costs provided, however, that any such amount shall be based on Samsung's pro rata share of such costs based on the amounts of any other settlement. The notice and claims administration expenses actually paid (to a maximum of \$1,600,000) are not recoverable if this settlement does not become final. Other than as set forth in this paragraph 19(a) and except as Plaintiffs' counsel ("Class Counsel") shall apply for reimbursement of costs and attorneys' fees pursuant to paragraph 24 below, neither Samsung nor any of the other Samsung Releasees under this Agreement shall be liable for any of the costs or expenses of the litigation of the Action, including attorneys' fees; fees and expenses of expert witnesses and consultants; and costs and expenses associated with discovery, motion practice, hearings before the Court or any Special Master, appeals, trials or the negotiation of other settlements, or for Class administration and costs.

(b) If Lead Counsel enter into any other settlements on behalf of the Class before notice of this settlement is given to the Class, Lead Counsel shall use their reasonable best efforts to provide a single notice to prospective Class Members of all of the settlements.

(c) After this Agreement becomes final within the meaning of paragraph 11, Class Counsel may use, subject to prior approval of the Court, up to \$4,660,000 of the Settlement Fund for expenses incurred for prosecution of the Action on behalf of the Class against non-settling defendants, provided that nothing in this paragraph 19(c) shall prohibit Class Counsel from applying for an award of expenses and costs pursuant to paragraph 24(a). Failure of the

Court to approve such use shall not be a ground for rescission of this Agreement by Plaintiffs under paragraph 25.

E. The Settlement Fund.

20. Releasors shall look solely to the Settlement Fund for settlement and satisfaction against the Samsung Releasees of all Released Claims, and shall have no other recovery against Samsung or any other Samsung Releasee.

21. After this Agreement becomes final within the meaning of paragraph 11, the Settlement Fund shall be distributed in accordance with a plan to be submitted at the appropriate time by Plaintiffs, subject to approval by the Court. In no event shall Samsung nor any Samsung Releasee have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution, or administration of the Settlement Fund, including, but not limited to, the costs and expenses of such distribution and administration, with the sole exception of the provisions set forth in paragraph 19(a) of this Agreement.

22. Plaintiffs and Class Counsel shall be reimbursed and indemnified solely out of the Settlement Fund for all expenses. The Samsung Releasees shall not be liable for any costs, fees, or expenses of any of Plaintiffs' or the Class' respective attorneys, experts, advisors, agents, or representatives, but all such costs, fees, and expenses as approved by the Court shall be paid out of the Settlement Fund.

23. Cooperation. Samsung agrees to cooperate with Plaintiffs by: (a) withdrawing, within 5 business days of the execution of this Agreement, that portion of Samsung's motion for summary judgment listed under item 2 of its Statement of Issues to Be Decided and addressed in Section II of its Memorandum of Points and Authorities (regarding representative plaintiffs from 17 states lacking standing); (b) producing in the United States relevant documents, including, but not limited to, non-United States transactional information, as well as documents relating to sales,

pricing and damages to the extent they relate to SRAM; (c) upon request from Plaintiffs, using its best efforts to produce Woung Moo (“W.M.”) Lee as a witness at trial; (d) upon request from Plaintiffs, producing HK Jeong, OS Kwon and IJ Lee as witnesses at trial; (e) meeting and conferring on making available other appropriate former and current employees for trial to testify on the merits of the claims, if necessary; and (f) producing at trial in person or by affidavit, whichever is legally necessary for admissibility into evidence, representatives to establish for admission into evidence the amount of Samsung’s sales and to provide affidavits or, if necessary, testimony at trial (whichever is legally necessary and admissible in evidence at trial) limited to the genuineness, status as business records, and authenticity of documents. If possible, trial testimony of individuals outside of the United States will take place either telephonically or by video conference.

24. Class Counsel’s Attorneys’ Fees and Reimbursement of Expenses.

(a) Class Counsel may submit an application or applications to the Court (the “Fee and Expense Application”) for distribution to them from the Settlement Fund and Samsung shall not oppose such application for: (a) an award of attorneys’ fees not in excess of one-third of the Settlement Fund; plus (b) reimbursement of expenses and costs incurred in connection with prosecuting the Action, plus interest on such attorneys’ fees, costs and expenses at the same rate and for the same period as earned by the Settlement Fund (until paid) as may be awarded by the Court (the “Fee and Expense Award”). Class Counsel reserve the right to make additional applications for fees and expenses incurred, but in no event shall Samsung nor any Samsung Releasee be responsible to pay any such additional fees and expenses except to the extent they are paid out of the Settlement Fund.

(b) The Fee and Expense Award, as approved by the Court, shall be paid solely from the Settlement Fund. After this Agreement becomes final within the meaning of paragraph

11, the Fee and Expense Award shall be paid to Lead Counsel within ten (10) business days. Lead Counsel shall allocate the attorneys' fees among Class Counsel in a manner which he or she in good faith believes reflects the contributions of such counsel to the prosecution and settlement of the Action.

(c) The procedure for and the allowance or disallowance by the Court of the application by Class Counsel for attorneys' fees, costs and expenses to be paid out of the Settlement Fund are not part of this Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the settlement, and any order or proceeding relating to the 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.

(d) Neither Samsung nor any other Samsung Releasee under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to any payment to Class Counsel of any Fee and Expense Award in the Action.

(e) Neither Samsung nor any other Samsung Releasee under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to the allocation among Class Counsel, and/or any other person who may assert some claim thereto, of any Fee and Expense Award that the Court may make in the Action.

F. Rescission if this Agreement is Not Approved or Final Judgment is Not Entered.

25. If the Court refuses to approve this Agreement or any part hereof, or if such approval is modified or set aside on appeal, or if the Court does not enter the final judgment provided for in paragraph 10 of this Agreement, or if the Court enters the final judgment and appellate review is sought, and on such review, such formal judgment is not affirmed in its entirety, then Samsung and the Plaintiffs shall each, in their sole discretion, have the option to

rescind this Agreement in its entirety. Written notice of the exercise of any such right to rescind shall be made according to the terms of paragraph 36 within 15 days of the event triggering the right to rescind. A modification or reversal on appeal of any amount of Class Counsel's fees and expenses awarded by the Court from the Settlement Fund shall not be grounds for rescission of this Agreement under this paragraph 25.

26. In the event that this Agreement does not become final, then this Agreement shall be of no force or effect and any and all parts of the Settlement Fund caused to be deposited in the Escrow Account (including interest earned thereon) shall be returned forthwith to Samsung less only amounts spent on class notice and administrative costs up to \$1,600,000, as set forth in paragraph 19(a) of this Agreement. Samsung expressly reserves all of its rights if this Agreement does not become final. Notwithstanding the foregoing, Plaintiffs, Lead Counsel, and Samsung agree that this Agreement, whether or not it shall become final, and any and all negotiations, documents, and discussions associated with it, shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by Samsung (or the Samsung Releasees), or of the truth of any of the claims or allegations contained in the complaint or any other pleading filed by Plaintiffs in the Action, and evidence thereof shall not be discoverable or used directly or indirectly, in any way, whether in the Action or in any other action or proceeding.

27. This Agreement shall be construed and interpreted to effectuate the intent of the parties, which is to provide, through this Agreement, for a complete resolution of the relevant claims with respect to each Samsung Releasee as provided in this Agreement.

28. The parties to this Agreement contemplate and agree that, prior to final approval of the settlement as provided for in paragraph 9 of this Agreement, appropriate notice: (a) of the

settlement; and (b) of a hearing at which the Court will consider the approval of this Agreement, will be given to Class Members.

G. Miscellaneous.

29. This Agreement does not settle or compromise any claim by Plaintiffs or any Class Member asserted in the complaint against any defendant or alleged co-conspirator other than the Samsung Releasees. All rights against such other defendants or alleged co-conspirators are specifically reserved by Plaintiffs and the Class.

30. Subject to paragraphs l(b) and l(c) above, this Agreement shall not affect whatever rights Releasors or any of them may have: (a) to seek damages or other relief from any person with respect to any SRAM indirectly purchased outside the United States; (b) to participate in or benefit from, where appropriate, any relief or other recovery as part of a settlement or judgment in any action on behalf of any direct purchasers of SRAM; (c) to participate in or benefit from any relief or recovery as part of a judgment or settlement in the Action against any other party named as a defendant (other than a Samsung Releasee); and (d) to assert any product liability or breach of contract claims in the ordinary course of business which are not covered by the Released Claims.

31. The United States District Court for the Northern District of California shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of this Agreement that cannot be resolved by negotiation and agreement by Plaintiffs and Samsung. This Agreement shall be governed by and interpreted according to the substantive laws of the state of California without regard to its choice of law or conflict of laws principles.

32. This Agreement constitutes the entire, complete and integrate agreement among Plaintiffs and Samsung pertaining to the settlement of the Action against Samsung, and supersedes all prior and contemporaneous undertakings of Plaintiffs and Samsung in connection herewith. This Agreement may not be modified or amended except in writing executed by Plaintiffs and Samsung, and approved by the Court.

33. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Plaintiffs and Samsung. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by Plaintiffs, Lead Counsel or Class Counsel shall be binding upon all Class Members and Releasers. The Samsung Releasees (other than Samsung, which is a party hereto) are third party beneficiaries of this Agreement and are authorized to enforce its terms applicable to them.

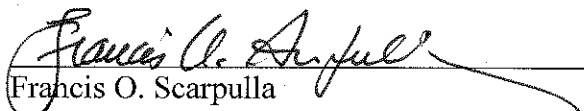
34. This Agreement may be executed in counterparts by Plaintiffs and Samsung, and a facsimile signature shall be deemed an original signature for purposes of executing this Agreement.

35. Neither Plaintiffs nor Samsung shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

36. Where this Agreement requires either party to provide notice or any other communication or document to the other, such notice shall be in writing, and such notice, communication, or document shall be provided by facsimile or letter by overnight delivery to the undersigned counsel of record for the party to whom notice is being provided.

37. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement of the parties he or she represents, subject to Court approval.

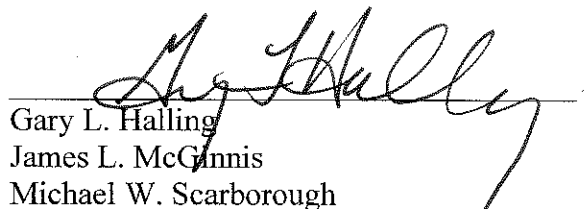
Dated: October 1, 2010


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