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17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA

19 IN RE DYNAMIC RANDOM ACCESS
20 MEMORY (DRAM) ANTITRUST
LITIGATION

Master File No. M-02-1486 PJH

MDL No. 1486

21 **DECLARATION OF ROBIN**
22 **NIEMIEC IN SUPPORT OF MOTION**
AUTHORIZING DISTRIBUTION OF
23 **SETTLEMENT FUND**

24 This Document Relates To:

25 All Direct Purchaser Actions
26
27
28

Time: October 28, 2009

Date: 9:00 a.m.

Judge: Hon. Phyllis J. Hamilton

Courtroom: 3, 3rd Floor

1 I, Robin Niemiec, declare:

2 1. I submit this Declaration in order to provide the Court and the parties to the
3 above-captioned litigation with information regarding the dissemination and processing of the
4 Proof of Claim Form (“Claim Form”) and allocation and distribution of the Net Settlement Fund
5 (the “Fund”) to the Settlement Class. I am over 21 years of age and am not a party to this action.

6 2. Pursuant to the Order Approving Joint Notice to Class Regarding Class
7 Certification and Preliminary Approval of Class Action Settlements with Samsung, Infineon and
8 Hynix Defendants dated July 27, 2006 (“Preliminary Approval Order”), Rust Consulting, Inc.
9 (“Rust”) was appointed the Class Administrator. Complete Claim Solutions, LLC (“CCS”), a
10 sister company of Rust, has overseen, among other things, the process of providing notice about
11 the Settlement and Claim Forms to potential Class Members, process, evaluate and audit
12 completed Claim Forms submitted to CCS (“Claims”), calculate the *pro rata* share for each
13 Class Member who filed a valid Claim (“Claimants”), and distribute the Fund to the Claimants.

14 3. I am a Project Manager for CCS and have personal knowledge of the facts set
15 forth herein, and if called as a witness, could and would testify competently hereto.

16 **Dissemination of the Claim Form**

17 4. Pursuant to the September 11, 2007 Order Approving Claim Form to be Provided
18 to Class Members Regarding Distribution of Settlement Fund (“September 11 Order”), CCS
19 caused the Claim Form to be e-mailed and/or printed and mailed to potential Class Members. A
20 copy of the Claim Form is attached as Exhibit A.

21 5. As a result of the mailings of the Notice of Pendency of Class Action and Partial
22 Class Action Settlements on August 25, 2006, February 23, 2007 and June 5, 2007 and during
23 the normal course of administration of the Samsung, Infineon, Hynix, Elpida, NEC, Winbond,
24 Micron, Mosel and Nanya Settlements, the mailing list¹ for the Claim Form changed as a result
25 of the following:

- 26 a. CCS electronically scrubbed the data to ensure adequate formatting and to
27 remove duplicative name and address records;
- 28 b. CCS submitted the names and physical addresses to the United States Postal
Service (“USPS”) National Change of Address Service (“NCOA”) to ensure

¹ The mailing list and information regarding the potential Class Members and their Claims are kept in a segregated database (“DRAM Database”).

- 1 adequate physical address formatting, obtain current physical addresses and
2 qualify for postal discounts;
- 3 c. CCS updated Claimants' addresses pursuant to their written requests;
- 4 d. CCS updated Claimants' addresses as a result of receiving forwarding addresses
5 from the USPS or addresses found through a trace processing service;
- 6 e. CCS added Claimants and their addresses, per their request for previous Notices;
- 7 f. CCS removed Claimants' names from the mailing list, per their written request;
- 8 g. CCS removed Claimants' names from the mailing list due to a failure to obtain a
9 deliverable address during the administration of the Samsung, Infineon, Hynix,
10 Elpida, NEC, Winbond, Micron, Mosel and Nanya Settlements and failure to
11 receive a deliverable address prior to the Claim Form mailing in the current action;
12 and
- 13 h. CCS removed the Claimants' names from the mailing list that Requested Exclusion
14 from the Settlement.
- 15 6. Between September 28, 2007 and October 2, 2007, pursuant to the September 11
16 Order, CCS mailed the Claim Form, by standard first-class U.S. mail, postage prepaid, to
17 642,384 entities and electronically mailed a notification that Claim Forms were available ("E-
18 mail Notification") to 417,430 entities. A copy of the E-mail Notification is attached as Exhibit
19 B.
- 20 7. Of the 417,430 E-mail Notifications referred to in ¶ 6 above, 20,224 e-mails were
21 returned as undeliverable. The names and physical addresses were forwarded to NCOA to
22 ensure adequate physical address formatting, obtain current physical addresses and qualify for
23 postal discounts. Between October 22, 2007 and October 25, 2007, 20,224 Claim Forms were
24 mailed by standard first-class U.S. mail, postage prepaid, to the physical addresses of those
25 records that had undeliverable e-mails.
- 26 8. As of August 31, 2009, additional Claim Forms were mailed by standard first-
27 class mail, postage prepaid, to 91 entities, at their request.
- 28 9. As of August 31, 2009, the USPS returned 1,774 Claim Forms as undeliverable
 with a forwarding address. CCS subsequently re-mailed 1,774 Claim Forms to the addresses
 provided by the USPS.
10. As of August 31, 2009, the USPS returned 25,420 Claim Forms as undeliverable
 without forwarding addresses.

1 19. Potential Class Members also had the opportunity to file a Claim online.
2 Claimants could use their Claimant ID # (provided on the Notice)² or file online without using a
3 Claimant ID #.

4 20. Pursuant to the September 11, 2007 Order, potential Class Members had ninety
5 (90) days to file a Claim Form. The Claim Form filing deadline was December 31, 2007.

6 21. Through June 30, 2009, CCS received and processed 19,821 Claim Forms from
7 potential Class Members. Of the Claim Forms received, filed and processed, 3,387 paper Claim
8 Forms and 16,434 online Claim Forms were filed.

9 22. The value of total Claims received was in excess of \$6.8 billion.

10 23. For quality control purposes, each paper Claim Form was sequentially stamped
11 upon receipt with a unique "Claim Number." The paper Claim Forms were grouped in batches
12 of fifty (50), each Claim was grouped in the order in which it was processed by CCS' mailroom
13 staff, and each batch of Claims was numbered sequentially.

14 24. The online Claim Form was also given a unique "Claim Number" at the time the
15 Claim was filed online and the Claim information, as well as any contact information, supplied
16 by the potential Class Member was entered directly into the DRAM database.

17 25. Between January 1, 2008 and February 29, 2008, CCS reviewed each submitted
18 Claim Form that had been received by February 29, 2008 to determine whether it was valid and
19 included all required information.

20 26. For the Claims received by February 29, 2008, CCS initially determined that
21 certain Claim Forms were missing information, in whole or in part, that was required to confirm
22 the validity of such Claim and necessary to calculate a Claimant's *pro rata* share.

23 27. Between October 1, 2007 and November 29, 2007, CCS received "purchase data"
24 from Class Counsel.³ CCS uploaded and entered this information into the DRAM database.

25 28. The purchase data identified, per the Defendants, the amounts of DRAM
26 purchased by all individuals or entities during the Class Period.

27 29. Of the Claims received by February 29, 2008, CCS determined that:

- 28 a. 19 Claim Forms were not signed; and
- b. 393 did not contain purchase information.

² If a Claimant used their Claimant ID#, the name and address was pre-populated with an opportunity to modify the address.

³ This information was provided by Defendants counsel in the form of a disc or a paper list.

1 30. On March 3, 2008, a “Deficiency Letter” was sent to the potential Class Member
2 filing the Claim Form advising them of the deficiency and requesting a correction of the defect.
3 The Deficiency Letters advised Claimants that unless the indicated deficiency was corrected
4 within thirty (30) days, his or her Claim Form would be denied. Examples of the letters sent for
5 failure to sign the Claim Form and filing a Claim Form that did not contain purchase information
6 are attached as Exhibits C and D, respectively.

7 31. Of the 19 failure to sign deficiency letters mailed, referred to ¶¶ 29-30 above, 15
8 potential Class Members responded. For the 4 Claims that remained deficient for a failure to
9 sign the Claim Form, the condition was waived and did not render the Claim ineligible.

10 32. Following the mailing of the failure to sign deficiency letters, late Claims were
11 processed. Of the late Claims, there was an additional five (5) Claims that were deficient for
12 failure to sign the Claim Form. Following a review of these Claims, it was determined that this
13 condition was waived and no deficiency letter was sent. These Claims are included in the
14 distribution.

15 33. Of the 393 deficiency letters mailed for a failure to provide any purchase
16 information, referred to above, 53 claimants responded and provided purchase information. For
17 the 340 Claims that remained deficient for a failure to provide purchase information, 303
18 Claims:

- 19 • Requested that we used Defendant purchase data (115 Claims);
- 20 • Remained blank but Defendant’s purchase data submissions were
21 researched and the purchase information located was used as the Claim
22 Form amount (160 claims); or,
- 23 • The original Claim Form filed was illegible and a Claim Form amount was
24 subsequently determined (28 claims).

25 These 303 Claims were eligible, using the Defendant Amount or the amount originally provided
26 as the Claim Form total. No Defendant purchase data could be found for the remaining 37
27 Claims and they are rendered ineligible.

28 34. Following the mailing of the failure to provide purchase information letters, 12
blank Claim Forms were filed. An additional 8 claims supplied “\$0” or “\$1” on their Claim
Form, as opposed to leaving it blank. Defendant data was found for these 20 Claims and the
Defendant data was used as the Claim Form amount.

 35. Therefore, a total of 37 Claims are ineligible as a result of a failure to provide
purchase information on their Claim Form.

1 March 3, 2008. Of the 589 Claims selected for review, 521 were sent a Notice of Claim
2 Adjustment letter. An example of the Notice of Claim Adjustment is attached as Exhibit F.

3 45. Of the 521 Claims that were sent a Notice of Claim Adjustment letter, the total
4 value of the Claims was \$6,169,617,180.

5 46. If the potential Class Member did not agree with the revised Claim amount, they
6 were told to supply adequate documentation to support their Claim within thirty (30) days of the
7 Notice of Claim Adjustment.

8 47. If a potential Class Member requested an extension of the deadline in which to
9 supply documentation, the extension was granted.

10 48. CCS received supporting documentation as late as March, 2009.

11 49. Five (5) Deficiency Letters were returned by the United States Postal Service as
12 undeliverable without a forwarding address. CCS contacted each of these individuals via
13 telephone and/or email to advise them of the deficiency status.

14 50. Of the 521 Notices of Claim Adjustment Letter mailed, referred to above, 432 did
15 not respond and their Claims were adjusted accordingly. 89 Claimants responded and supplied
16 documentation.

17 51. 59 of the 432 failures to respond outlined above, were adjusted to "\$0" since no
18 response was provided. 13 of the 89 responses were adjusted to \$0 as a result of failing to
19 provide adequate documentation of DRAM purchases from a named Defendant. Therefore,
20 these 72 Claims are deemed ineligible because they did not provide proof that they purchased
21 DRAM during the Class Period from one of the named Defendants.

22 52. Documentation supplied by Claimants in response to the Notice of Adjustment,
23 which totaled in excess of \$1.1 billion, was comprised of thousands of pieces of documentation
24 in the form of invoices, cancelled checks, purchase orders, spreadsheets, screen shots of
25 computer images, packing slips, wire transfer confirmations and other such documentation.

26 53. CCS reviewed the documentation supplied by the Claimants to confirm:

- 27 • the amount of the purchase;
- 28 • the date of the purchase;
- the type of purchase (ensure it was DRAM as defined by the Notice)
- who it was purchased from; and
- that it was "purchased in the United States."

54. Between March 17, 2008 and August 31, 2009, CCS:

- exchanged in excess of 6,032 emails with Claimants; and