

1 GUIDO SAVERI (22349)
R. ALEXANDER SAVERI (173102)
2 GEOFFREY C. RUSHING (126910)
CADIO ZIRPOLI (179108)
3 SAVERI & SAVERI, INC.
706 Sansome Street
4 San Francisco, CA 94111-5619
Telephone: (415) 217-6810
5 Facsimile: (415) 217-6813
guido@saveri.com
rick@saveri.com

6 ANTHONY D. SHAPIRO (*pro hac vice*)
7 GEORGE W. SAMPSON (*pro hac vice*)
HAGENS BERMAN SOBOL SHAPIRO LLP
8 1301 Fifth Avenue, Suite 2900
Seattle, Washington 98101
9 Telephone: (206) 623-7292
Facsimile No.: (206) 623-0594

10 FRED TAYLOR ISQUITH (*pro hac vice*)
11 MARY JANE FAIT (*pro hac vice*)
WOLF, HALDENSTEIN, ADLER,
12 FREEMAN & HERZ
270 Madison Avenue
13 New York, NY 10016
Telephone: (212) 545-4600
14 Facsimile: (212) 545-4653

15 Co-Lead Counsel for Plaintiffs

16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18

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

Master File No. M-02-1486 PJH

MDL No. 1486

**DIRECT PURCHASER PLAINTIFFS'
MOTION FOR AN ORDER
AUTHORIZING DISTRIBUTION OF
SETTLEMENT FUND;
MEMORANDUM IN SUPPORT
THEREOF**

21 This Document Relates To:

22 All Direct Purchaser Actions
23
24
25
26

Time: October 28, 2009
Date: 9:00 a.m.
Judge: Hon. Phyllis J. Hamilton
Courtroom: 3, 3rd Floor

TABLE OF CONTENTS

1

2 I. Introduction..... 1

3 II. Statement of Facts..... 2

4 A. Background of the Settlements..... 2

5 B. Notice to Class Members Regarding the Settlements..... 3

6 C. The Claims Process..... 4

7 D. Disputed Claims 9

8 E. Reserving Funds in the Net Settlement Fund 9

9 III. Argument..... 10

10 IV. Conclusion..... 12

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

TABLE OF AUTHORITIES

CASES

Class Plaintiffs v. City of Seattle,
955 F.2d 1268 (9th Cir. 1992).....10

In re Cendant Corp. Securities Litig.,
109 F.Supp.2d 235 (D.N.J. 2000).....10

In re Computron Software, Inc.,
6 F.Supp.2d 313 (D.N.J. 1998).....10, 11

In re Lloyd's Am. Trust Fund Litig.,
2002 WL 31663577 (S.D.N.Y. Nov. 26, 2002)10

In re PaineWebber Ltd. Partnerships Litig.,
171 F.R.D. 104 (S.D.N.Y. 1997).....11

In re Vitamins Antitrust Litig.,
2000 WL 1737867 (D.D.C. Mar. 31, 2000).....10

TREATISES

Newberg on Class Actions, § 11:33 (4th ed. Nov. 2005)11

1 **NOTICE OF MOTION AND MOTION**

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on October 28, 2009, at 9:00 a.m., or as soon thereafter as
4 counsel can be heard, before the Honorable Phyllis J. Hamilton, United States District Judge, at the
5 United States District Courthouse, 1301 Clay Street, Courtroom 3, 3rd Floor, Oakland, California,
6 94612, Direct Purchaser Plaintiffs will move this Court for an Order authorizing the distribution of
7 settlement proceeds obtained in the Direct Purchaser Actions to class members who submitted a
8 valid claim.

9 This Motion is based upon this Notice of Motion and Motion, the Memorandum of Points
10 and Authorities in Support thereof, the Declaration of Robin Niemiec in Support of Motion
11 Authorizing Distribution of Settlement Fund, the Declaration of R. Alexander Saveri in Support of
12 Direct Purchaser Plaintiffs' Motion for an Order Authorizing Distribution of Settlement Fund, the
13 [Proposed] Order Granting Motion Authorizing Distribution of Settlement Fund, submitted
14 herewith, as well as the complete files and records in this case.¹

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I. INTRODUCTION**

17 Direct Purchaser Plaintiffs ("Plaintiffs") settled this action with all named defendants,
18 except for Nanya Technology Corporation which was granted summary judgment, resulting in
19 settlement proceeds of \$325,997,000, plus accrued interest.² This Court has granted final approval

20
21 ¹ After Plaintiffs file this Motion, all documents including the Notice of Motion and Motion, the
22 Memorandum of Points and Authorities in Support thereof, the Declaration of Robin Niemiec in
23 Support of Motion Authorizing Distribution of Settlement Fund, the Declaration of R. Alexander
24 Saveri in Support of Direct Purchaser Plaintiffs' Motion for an Order Authorizing Distribution of
25 Settlement Fund, and the [Proposed] Order Granting Motion Authorizing Distribution of
26 Settlement Fund will be posted on the DRAM website (<http://www.dramantitrustsettlement.com>)
27 monitored by the Claims Administrator.

28 ² The settling defendants include: Infineon Technologies AG and Infineon Technologies North
America Corp. ("Infineon"); Samsung Semiconductor, Inc. and Samsung Electronics Co. Ltd.
("Samsung"); Hynix Semiconductor, Inc. and Hynix Semiconductor America, Inc. ("Hynix.");
Elpida Memory, Inc. and Elpida Memory (USA) Inc. ("Elpida"); NEC Electronics America, Inc.
("NEC"); Winbond Electronics Corporation and Winbond Electronics Corporation America
("Winbond"); Micron Technology, Inc. and Micron Semiconductor Products, Inc. ("Micron");
Mosel Vitelic Corp. and Mosel-Vitelc, Inc. ("Mosel"); and Nanya Technology Corporation USA
("Nanya USA") (collectively, "Settling Defendants").

1 to each of the settlement agreements and the time for appeal has expired. All settlement payments
2 have been made and placed in an interest-earning escrow account. Notice of the settlements was
3 sent to class members, and potential class members submitted claims to the settlement proceeds.

4 The Claims Administrator has completed an extensive, fair and reasonable review of each
5 submitted claim. As of August 31, 2009, the Net Settlement Fund, which includes the settlement
6 proceeds plus interest through that date, less Court-ordered attorneys' fees, costs and expenses, and
7 incentive benefits to Class Representatives, amounts to approximately \$245,472,196.10. (Decl. of
8 R. Alexander Saveri in Support of Direct Purchaser Plaintiffs' Motion for an Order Authorizing
9 Distribution of Settlement Fund ("Saveri Decl.") ¶2.) Plaintiffs recommend reserving sufficient
10 funds in the Net Settlement Fund for the payment of federal and state taxes, claims administration
11 costs, and the disputed claim of Kimball Electronics Tampa, Inc. f/k/a Reptron Electronics, Inc.
12 ("Reptron") (*Id.* at ¶4.)

13 Pursuant to the settlement agreements, Plaintiffs request that the Court enter the Proposed
14 Order, submitted herewith, which approves a *pro rata* distribution of the Net Settlement Fund, less
15 funds reserved for taxes, claims administration costs and Reptron's claim, and authorizes payment
16 of all claims approved by the Claims Administrator.

17 **II. STATEMENT OF FACTS**

18 **A. Background of the Settlements**

19 Plaintiffs brought this action alleging that, from April 1, 1999, to June 30, 2002, defendants
20 unlawfully agreed to fix, raise, maintain and stabilize the prices of DRAM and/or to allocate
21 among themselves major customers and accounts in violation of the federal antitrust laws.
22 Plaintiffs further alleged that, as a result of defendants' unlawful conduct, they and members of the
23 Certified Class paid more for DRAM than they would have in the absence of defendants' wrongful
24 conduct. Defendants denied plaintiffs' allegations and asserted numerous affirmative defenses. In
25 exchange for the release of Plaintiffs' claims, ten separate settlement agreements were reached with
26 Settling Defendants. The settlements total \$325,997,000. On November 1, 2006, April 18, 2007,
27 and August 1, 2007, the Court held final approval hearings on the settlements, determined that each
28

1 settlement was fair, adequate and reasonable, approved each settlement, and dismissed the
2 litigation with prejudice against Settling Defendants.³ The Court also found that the notice given to
3 the class regarding the settlements was the best notice practicable under the circumstances, and that
4 such notice provided due and adequate notice of the proceedings and satisfied the requirements of
5 due process. *See supra*, n.2. The judgments entered provide that the Court retains jurisdiction over
6 disbursement of the settlement fund. *See id.*

7 **B. Notice to Class Members Regarding the Settlements**

8 The Claims Administrator mailed notice to class members and also created a settlement
9 website, which contained the notice and a claim form. (Decl. of Robin Niemiec in Support of
10 Motion to Modify Order Granting Final Approval of Class Settlement with Micron, Ex. A. (Dkt.
11 No. 1952).) Notice occurred in three phases based on the timing of the settlements. (*Id.*) The first
12 notice informed class members about Plaintiffs' settlements with Infineon, Hynix, and Samsung.
13 (*Id.*) The second notice informed class members about Plaintiffs' settlements with Elpida, NEC,
14 Winbond, and Micron. (*Id.*) The third notice informed class members of Plaintiffs' settlements
15 with Mosel and Nanya USA. (*Id.*) Each of the three Notices informed class members that the plan
16 of allocation provides for distribution of the Net Settlement Fund on a *pro rata* basis, based on the
17 dollar amount each class member paid to defendants for direct purchases of DRAM from April 1,
18 2009, to June 30, 2002. (*Id.*) The deadline to submit a Proof of Claim was December 31, 2007.

19
20 ³ *See* Final J. of Dismissal With Prejudice as to Def. Samsung Electronics Co., Ltd. (Aug. 10,
21 2007) (Dkt. No. 1677); Final J. of Dismissal With Prejudice as to Def. Mosel Vitelic, Inc. (Aug. 1,
22 2007) (Dkt. No. 1664); Final J. of Dismissal With Prejudice as to Def. Mosel Vitelic Corp. (Aug. 1,
23 2007) (Dkt. No. 1663); Final J. of Dismissal With Prejudice as to Def. Nanya Technology
24 Corporation USA (Aug. 1, 2007) (Dkt. No. 1662); Final J. of Dismissal With Prejudice as to Def.
25 NEC Electronics America, Inc. (April 18, 2007) (Dkt. No. 1534); Final J. of Dismissal With
26 Prejudice as to Defs. Winbond Electronics Corporation and Winbond Electronics Corporation
27 America (April 18, 2007) (Dkt. No. 1536); Final J. of Dismissal With Prejudice as to Defs. Micron
28 Technology, Inc., and Micron Semiconductor Products, Inc. through its Crucial Technology
Division (April 18, 2007) (Dkt. No. 1535); Final J. of Dismissal With Prejudice as to Defs. Elpida
Memory, Inc. and Elpida Memory (USA) Inc. (April 18, 2007) (Dkt. No. 1533); Final J. of
Dismissal With Prejudice as to Defs. Hynix Semiconductor, Inc. and Hynix Semiconductor
America Inc (Nov. 1, 2006) (Dkt. No. 1153); Final J. of Dismissal With Prejudice as to Def.
Samsung Semiconductor, Inc. (Nov. 1, 2006) (Dkt. No. 1154); Final J. of Dismissal With Prejudice
as to Def. Infineon Technologies AG and Infineon Technologies North America Corp. (Nov. 1,
2006) (Dkt. No. 1155) (collectively, "Final Approval Orders").

1 **C. The Claims Process**

2 Between September 28, 2007, and October 2, 2007, pursuant to the September 11, 2007,
3 Order Approving Claim Form to be Provided to Class Members Regarding Distribution of
4 Settlement Fund (“September 11 Order”), the Settlement Administrator mailed the Claim Form to
5 642,384 entities and electronically mailed a notification that Claim Forms were available (“E-mail
6 Notification”) to 417,430 entities. (Decl. of Robin Niemiec In Support of Motion Authorizing
7 Distribution of Settlement Fund (“Niemiec Decl.”) ¶¶ 4-6, Exs. A-B.)

8 Of the 417,430 E-mail Notifications sent, 20,224 e-mails were returned as undeliverable.
9 (*Id.* at ¶7.) A total of 20,224 Claim Forms were mailed by standard first-class U.S. mail, postage
10 prepaid, to the physical addresses of those records that had undeliverable e-mails. (*Id.*) Additional
11 Claim Forms were mailed by standard first-class mail, postage prepaid, to 91 entities, at their
12 request. (*Id.* at ¶8.) The United States Postal Services (“USPS”) returned 1,774 Claim Forms as
13 undeliverable with a forwarding address; the Claims Administrator re-mailed 1,774 Claim Forms
14 to the forwarding addresses. (*Id.* at ¶9.)

15 The USPS returned 25,420 Claim Forms as undeliverable without forwarding addresses.
16 (*Id.* at ¶10.) The Claims Administrator used a trace processing service to obtain updated addresses
17 for Claim Forms returned as undeliverable. (*Id.* at ¶11.) The Claims Administrator received
18 15,677 updated addresses and subsequently re-mailed 15,677 Claim Forms to the updated
19 addresses. (*Id.*)

20 The Claims Administrator responded to inquiries and communications from claimants and
21 established a Post Office Box and a toll-free number. (*Id.* at ¶¶ 12-14.) The Claims Administrator
22 also created and maintained a website (www.dramantitrustsettlement.com), which made available
23 the Settlement Agreements, First, Second and Amended Preliminary Approval Orders, the Notices,
24 Summary Notices and Claim Form. (*Id.* at ¶15.) In addition, a claimant could file its Claim Form
25 on-line at the website from September 28, 2007, through December 31, 2007. (*Id.* at ¶16.)

26 The Claim Form was designed so that class members could easily fill out the information
27 required. (*Id.* at ¶18.) Pursuant to the September 11, 2007 Order, class members had ninety (90)
28

1 days to file a Claim Form. (*Id.* at ¶20.) The Claim Form filing deadline was December 31, 2007.
2 (*Id.*)

3 The Claims Administrator received and processed 19,821 Claim Forms. (*Id.* at ¶21.) The
4 total value of claims received exceeded \$6.8 billion. (*Id.* at ¶22.) For quality control purposes,
5 each paper and on-line Claim Form submitted was given a unique claim number and entered into a
6 database. (*Id.* at ¶¶ 23-24.) From January 1, 2008, to February 29, 2008, the Claims Administrator
7 reviewed each submitted Claim Form that had been received by February 29, 2008, to determine
8 whether it was valid and included all required information. (*Id.* at ¶25.)

9 For the claims received by February 29, 2008, the Claims Administrator initially
10 determined that certain Claim Forms were missing information that was necessary to confirm the
11 validity of the claim or a claimant's *pro rata* share. (*Id.* at ¶26.) Of the claims received by
12 February 29, 2008, 19 Claim Forms were not signed, and 393 did not contain purchase
13 information. (*Id.* at ¶29.) On March 3, 2008, a "Deficiency Letter" was sent to these claimants,
14 advising them of the deficiency and requesting a correction within 30 days. (*Id.* at ¶30, Exs. C-D.)

15 From January 1, 2008, to February 29, 2008, the Claims Administrator reviewed each
16 Claim Form to determine if they were duplicative. (*Id.* at ¶36.) The Claims Administrator
17 identified 464 duplicate Claim Forms. (*Id.* at ¶37.) On March 3, 2008, the Settlement
18 Administrator mailed a "Notice of Ineligibility" to those whose claims were determined to be
19 ineligible because they were duplicative. (*Id.* at ¶¶ 38-39, Ex. E.) Claimants were given the
20 opportunity to dispute this determination and provide proof in support of their position. (*Id.* at
21 ¶38.) Forty (40) of the claimants provided proof that their claims were not duplicative. (*Id.* at
22 ¶39.) After the March 3, 2008, mailing, two (2) claimants filed duplicate Claim Forms that were
23 late. These claimants were called and/or emailed in regard to their duplicate status and it was
24 confirmed by the claimant that a duplicate Claim Form was filed. Letters were sent to the
25 individuals/entities confirming this determination. (*Id.* at ¶40.) As a result, a total of 426 claims
26 were deemed ineligible because they duplicated another claim. (*Id.* at ¶41.)