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12 Attorneys for Defendants
 HYNIX SEMICONDUCTOR INC. and
 13 HYNIX SEMICONDUCTOR AMERICA INC.

14 [Other counsel listed on signature page]

15 **UNITED STATES DISTRICT COURT**
 16 **NORTHERN DISTRICT OF CALIFORNIA**

18 SUN MICROSYSTEMS, INC., a
 California corporation, and Unisys
 19 Corporation, a Delaware corporation,

20 Plaintiffs,

21 v.

22 HYNIX SEMICONDUCTOR INC., a
 23 Korean corporation, HYNIX
 SEMICONDUCTOR AMERICA INC.,
 24 a California corporation, et al.,

25 Defendants.

Case Nos. C 06-01665 PJH

**STIPULATION AND [PROPOSED]
 ORDER RE SUN PURCHASE DATA**

**THIS STIPULATION RELATES TO
 DEFENDANTS' MOTION TO DISMISS
 CLAIMS BASED ON FOREIGN
 PURCHASES FOR LACK OF SUBJECT
 MATTER JURISDICTION PURSUANT
 TO FEDERAL RULE OF CIVIL
 PROCEDURE 12(H)(3)**

Date: December 10, 2008
 Time: 9:00 A.M.
 Place: Courtroom 17

1 **STIPULATION**

2 This Stipulation between Plaintiff Sun Microsystems, Inc. and Defendants
3 Hynix Semiconductor Inc., Hynix Semiconductor America Inc., Elpida Memory, Inc.,
4 Elpida Memory (USA) Inc., Nanya Technology Corporation and Nanya Technology
5 Corporation USA (collectively “Defendants”) is made with reference to the following
6 facts:

7 A. WHEREAS on July 8, 2008, Defendants filed a Motion to Dismiss
8 Claims Based on Foreign Purchases for Lack of Subject Matter Jurisdiction Pursuant to
9 Federal Rule of Civil Procedure 12(h)(3) (“Motion to Dismiss”); and

10 B. WHEREAS in support of the Motion to Dismiss Defendants lodged
11 with the Court the Declaration of Steven H. Bergman which included, among other
12 exhibits, Exhibit 17 which consisted of five spreadsheets labeled SUN000001. These five
13 spreadsheets are:

- 14 (i) Alwin_DRAM_FY01_FY02_Commodity.xls, containing Sun
15 purchase data for the period of July 2000 through June 2002;
16 (ii) Alwin_Memory.xls, containing Sun purchase data for the
17 period of August 2002 through September 2002;
18 (iii) Alwin_Memory _Jan98_Jun02.xls, containing Sun purchase
19 data for the period of October 1998 through November 2001;
20 (iv) FY-3Q3_Wk13_Raw.xls, containing Sun purchase data for the
21 period of November 2002 through March 2003; and
22 (v) FY03Q4_Final_Raw.xls, containing Sun purchase data for the
23 period of March 2003 through June 2003; and

24 C. WHEREAS Sun has designated the spreadsheets labeled SUN000001
25 as “Highly Confidential” under the August 21, 2006 Protective Order entered in this
26 action; and

27 D. WHEREAS Defendants rely upon the spreadsheets labeled
28 SUN000001 and attached as Exhibit 17 to the Declaration of Steven H. Bergman in

1 support of the Motion to Dismiss primarily to: (i) identify the parties to DRAM purchase
2 transactions which are the DRAM purchase transactions upon which Sun is claiming
3 damages in this action; and (ii) identify which DRAM purchase transactions are part of
4 the claims based on foreign purchases that Defendants have moved to dismiss ; and

5 E. WHEREAS on July 8, 2008 Defendants filed an Administrative
6 Motion to file SUN000001 and certain other documents under seal; and

7 F. WHEREAS on July 15, 2008 Sun filed a Declaration in support of
8 keeping SUN000001 and certain other documents under seal, but has consented to other
9 exhibits attached to the Bergman Declaration being filed; and

10 G. WHEREAS Defendants' Administrative Motion remains under
11 consideration; and

12 H. WHEREAS Sun and Defendants have met-and-conferred regarding
13 alternatives to filing SUN000001 under seal.

14 THEREFORE, SUBJECT TO APPROVAL OF THE COURT, IT IS
15 HEREBY STIPULATED AND AGREED BETWEEN Sun and Defendants as follows:

16 1. The Declaration of Steven H. Bergman lodged with the Court on July
17 8, 2008 shall be returned to Defendants Hynix Semiconductor Inc. and Hynix
18 Semiconductor America Inc.; and

19 2. Defendants shall be permitted to refile the Declaration of Steven H.
20 Bergman along with any exhibits thereto for which "Confidential" or "Highly
21 Confidential" designations have been removed or for which the Court's August 7, 2008
22 Order would preclude filing under seal; and

23 3. The files contained in Exhibit 17 currently lodged with the Court will
24 be returned to Defendants Hynix Semiconductor Inc. and Hynix Semiconductor America
25 Inc.; and

26 4. Sun admits that SUN000001 shows that Sun Microsystems Scotland
27 B.V. , a Netherlands entity, and Sun Microsystems International B.V., a Netherlands
28 entity, purchased DRAM from European affiliates of DRAM manufacturers and other

1 foreign entities, including Benchmark Electronics Ireland, Celestica Italia SRL, Celestica
2 Ltd., Elpida Memory Europe GmbH, Hitachi Europe Ltd., Hynix Semiconductor UK
3 Ltd., Infineon Technologies AG, LG Semicon Co. Ltd., Micron Europe Ltd., Mitsubishi
4 Electric UK Ltd., Samsung Ltd., and Synnex Information Technologies UK Ltd. Sun
5 further admits that these DRAM purchases total more than \$762 million between August
6 1998 and June 2002 and more than \$732 million between April 1999 and June 2002.
7 These admissions shall be admissible by any party for any and all purposes in connection
8 with Defendants' Motion to Dismiss; and

9 5. The facts admitted to in the preceding paragraph are deemed
10 established and no further evidence is necessary for Defendants to prove the admitted
11 facts; and

12 6. The transactions identified with "Plant Codes" "200" or "201" in
13 SUN000001 refer to plants located outside of the United States; and

14 7. The transactions in SUN000001 associated with "Plant Codes" "200"
15 and "201" are individually and collectively the transactions at issue in the Motion to
16 Dismiss.

17
18 **SO STIPULATED.**

19 Dated: September 10, 2008

O'MELVENY & MYERS LLP

21 By: /Steven H. Bergman/
22 Steven H. Bergman

23 Attorneys for Defendants
24 HYNIX SEMICONDUCTOR INC. and
25 HYNIX SEMICONDUCTOR AMERICA
26 INC.

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Dated: September 10, 2008

ORRICK, HERRINGTON & SUTCLIFFE
LLP

By: /Howard Ullman/
Howard Ullman

Attorneys for Defendants
NANYA TECHNOLOGY CORPORATION
and NANYA TECHNOLOGY
CORPORATION USA

Dated: September 10, 2008

SIMPSON THACHER & BARTLETT LLP

By: /Harrison J. Frahn/
Harrison J. Frahn

Attorneys for Defendants
ELPIDA MEMORY, INC. and
ELPIDA MEMORY (USA) INC.

Dated: September 10, 2008

CROWELL & MOORING LLP

By: /Jerome B. Murphy/
Jerome B. Murphy

Attorneys for Plaintiff
SUN MICROSYSTEMS, INC.

ATTESTATION OF FILING

I hereby attest that I have obtained concurrence in the filing of this document from the
Plaintiff and Defendants listed in the signature blocks above.

/Steven H. Bergman/
Steven H. Bergman

Counsel for Defendants
HYNIS SEMICONDUCTOR INC. and
HYNIX SEMICONDUCTOR AMERICA INC.

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[PROPOSED] ORDER

PURSUANT TO THE STIPULATION OF THE PARTIES, IT IS SO ORDERED.

Dated: 9/15/08

