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 14 Governmental Purchaser Class Plaintiffs

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

17 In re DYNAMIC RANDOM ACCESS
 MEMORY (DRAM) ANTITRUST
 18 LITIGATION

Master File No. M-02-1486-PJH

MDL No. 1486

19 This document relates to:

Case No. C 06-4333 PJH

Case No. C 06-6436 PJH

20 **ALL INDIRECT PURCHASER**
21 ACTIONS

22 STIPULATION AND [PROPOSED]
SECOND SUPPLEMENTAL ORDER RE:
(1) APPOINTMENT OF HON. CHARLES
B. RENFREW AS SPECIAL MASTER;
23 AND (2) TREATMENT OF THE
SETTLEMENT FUNDS AS QUALIFIED
SETTLEMENT FUNDS UNDER
24 TREASURY REGULATIONS

and

25 *State of California et. al. v. Infineon*
 26 *Technologies AG, et. al.*

Judge: Honorable Phyllis J. Hamilton

and

State of New York v. Micron Technology,
Inc., et al.

27 STIPULATION AND [PROPOSED] SECOND SUPPLEMENTAL ORDER APPOINTING THE
 28 HONORABLE CHARLES B. RENFREW AS SPECIAL MASTER

1 **STIPULATION AND [PROPOSED] ORDER**

2 WHEREAS, pursuant to the Court’s November 15, 2007 Order and Federal Rule of
3 Civil Procedure 53, the Indirect Purchaser Plaintiffs, the Governmental Purchaser Plaintiffs,
4 and Attorneys General (collectively “Plaintiffs”), Defendants Samsung Semiconductor, Inc.
5 and Samsung Electronics Company, Ltd. (“Samsung”) and Defendants Winbond Electronics
6 Corporation and Winbond Electronics Corporation America (“Winbond”) entered into a
7 Stipulation and [Proposed] Order on November 28, 2007; and

8 WHEREAS, on November 30, 2007, the Court signed the proposed Stipulation and
9 Order submitted by Plaintiffs, Samsung and Winbond, appointing the Honorable Charles B.
10 Renfrew, United States District Court Judge (Retired), as Special Master in these proceedings
11 pursuant to Federal Rule of Civil Procedure 53(a)(1)(A), and charging him with the duty of
12 preparing a report and issuing recommendations on the subjects of: (1) the plan of allocation
13 of settlement proceeds for the benefit of members of the Private Indirect Purchaser
14 Settlement Class and the Government Purchaser Settlement Class, and (2) the development
15 of form(s) of notice for the Classes (Dkt. # 1787); and

16 WHEREAS, also on November 30, 2007, this Court entered an Order Modifying
17 Stipulation and Order Appointing Special Master, in which the Court broadened the
18 reference to Judge Renfrew to include the duty of preparing a report and issuing
19 recommendations on the subject of whether, in light of the guidance of the Manual for
20 Complex Litigation, Fourth, § 21.23, certification of the proposed settlement classes,
21 including the creation of subclasses, is appropriate (Dkt. # 1789); and

22 WHEREAS, Plaintiffs subsequently entered into a separate settlement agreement with
23 Defendants Infineon Technologies AG and Infineon Technologies North America Corp.
24 (“Infineon”), Elpida Memory, Inc. and Elpida Memory (USA) Inc. (“Elpida”), NEC
25 Electronics America, Inc., presently known as Renesas Electronics America Inc. (“NEC”),
26 Mosel Vitelic Corp. and Mosel Vitelic, Inc. (“Mosel”), Micron Technology, Inc. and Micron

1 Semiconductor Products, Inc. (“Micron”), and Hynix Semiconductor Inc. and Hynix
2 Semiconductor America Inc. (“Hynix”) (collectively, the “Settling Defendants”); and

3 WHEREAS, pursuant to Federal Rule of Civil Procedure 53, the Plaintiffs and
4 Settling Defendants entered into a Stipulation and [Proposed] Order on November 22, 2010;
5 and

6 WHEREAS, on November 29, 2010, the Court signed the Stipulation and [Proposed]
7 Order submitted by Plaintiffs and the Settling Defendants appointing the Honorable Charles
8 B. Renfrew, United States District Court Judge (Retired), as Special Master in these
9 proceedings pursuant to Federal Rule of Civil Procedure 53(a)(1)(A), and charging him with
10 the duty of preparing a report and issuing recommendations on the subjects of: (1) the plan of
11 allocation of settlement proceeds for the benefit of members of the Private Indirect Purchaser
12 Settlement Class and the Government Purchaser Settlement Class, and (2) the development
13 of form(s) of notice for the Classes (Dkt. # 2099); and

14 WHEREAS, Plaintiffs have entered into a separate settlement agreement with
15 Defendants Nanya Technology Corporation and Nanya Technology Corporation USA, Inc.
16 (collectively "Settling Nanya Defendants"); and

17 WHEREAS, the settlement agreement between the Plaintiffs and the Settling Nanya
18 Defendants, as well as the settlement agreements entered into previously between the
19 Plaintiffs and the Settling Defendants, the Plaintiffs and Samsung and the Plaintiffs and
20 Winbond, all contemplate the establishment of one or more "Escrow Accounts," each
21 intended to qualify as a "qualified settlement fund" within the meaning of section 1.468B-1,
22 et. seq. of the Treasury Regulations promulgated under section 468B of the Internal Revenue
23 Code.

24 THEREFORE, the Plaintiffs and the Settling Nanya Defendants hereby stipulate to
25 the following proposed Order:

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27
28 STIPULATION AND [PROPOSED] SECOND SUPPLEMENTAL ORDER APPOINTING THE
HONORABLE CHARLES B. RENFREW AS SPECIAL MASTER

1 1. The Honorable Charles B. Renfrew, United States District Court Judge
2 (Retired), previously appointed as Special Master in these proceedings pursuant to Federal
3 Rule of Civil Procedure 53(a)(1)(A), shall have the authority granted by Rule 53(c), Federal
4 Rules of Civil Procedure, as to Plaintiffs' proposed settlement with the Settling Nanya
5 Defendants.¹

6 2. The Special Master's duties shall be supplemented and modified to also
7 include assisting the Plaintiffs, the Settling Nanya Defendants and the Court by preparing a
8 report and issuing recommendations on the following subjects in connection with Plaintiffs'
9 proposed settlement with the Settling Nanya Defendants:

- 10 a. The development of a plan of allocation of settlement proceeds for the
11 benefit of members of the Private Indirect Purchaser Settlement Class and
12 the Government Purchaser Settlement Class, including the consideration
13 and/or addition of any subclasses or other means of ensuring a fair and
14 equitable allocation;
- 15 b. The development of a proposed form of notice, and methods to
16 disseminate that notice, in order to adequately apprise settlement class
17 members of the proposed settlements;
- 18 c. In connection with the above duties, and taking into consideration the
19 guidance provided by the Manual for Complex Litigation, Fourth, § 21.23,
20 whether ultimate certification of the classes is appropriate; and
- 21 d. The appropriate amount of fees and reimbursement of costs to be awarded
22 to Plaintiffs and the appropriate amount of incentive awards to be awarded
23 to class representatives pursuant to Section 29 of the settlement agreement
24 between Plaintiffs and the Settling Nanya Defendants.

25 ¹ The Special Master's authority shall include the authority to appoint counsel to represent the
26 interests of any portion of the Settlement Class if he, in his discretion, determines that would be helpful.

1 3. The Special Master shall proceed in the performance of these duties, which
2 may be combined with the performance of the duties for which he was previously appointed,
3 with all reasonable diligence and shall file his report and recommendations with the Court
4 and serve the report on the parties on or before a date to be specified in future orders of the
5 Court. In all respects this Court's Orders of November 30, 2007 and November 29, 2010
6 shall remain in full force and effect.

7 4. The Special Master shall maintain and preserve any written order, report or
8 recommendation the Special Master may make pursuant to this Stipulation and Order until
9 this matter is finally resolved. The Special Master may designate formal briefs, information
10 submissions, or any other materials as materials to be preserved and filed as the record of the
11 master's activities and shall file such record with the Court in electronic format pursuant to
12 future order of the Court. In order to facilitate the fair and effective performance of the
13 duties set forth in Paragraph 3 above, the Special Master may communicate *ex parte* with the
14 Court, counsel and the settling parties. The Special Master may review confidential
15 documents and other information that is subject to the Protective Order issued in these
16 actions as a court officer and shall be bound by the terms of the Protective Order.

17 5. Except as ordered by the Special Master, all papers submitted to the Special
18 Master in connection with any hearing to be held by him shall be served upon counsel for
19 Plaintiffs and the Settling Defendants at least five (5) court days before any hearing;
20 responses shall be filed and served at least two (2) court days before any hearing; and reply
21 briefs shall be filed and served at least one (1) court day before the hearing.

22 6. The Special Master's fee shall be computed by multiplying the hours incurred
23 by him by his normal and customary hourly rate and all expenses shall be reasonably
24 incurred and shall be billed at the Special Master's actual out-of-pocket cost. All payments
25 to the Special Master shall be made from the settlement funds and be allocated pursuant to
26

1 the agreement of the parties or by order of the Court upon the recommendation of the Special
2 Master.

3 7. The parties and the Court have reviewed the Declaration executed by Judge
4 Renfrew, attached as Exhibit 1, to the November 30, 2007, Stipulation and Order (Dkt.
5 #1787), pursuant to Rule 53(b)(3), Federal Rules of Civil Procedure and 28 U.S.C. 455.

6 8. Pursuant to Rule 53(g)(1), Federal Rules of Civil Procedure, the Court may
7 adopt, affirm, modify, wholly or partly reject, or resubmit to the Special Master with
8 instructions any order, report, or recommendation submitted by the Special Master. All
9 objections to findings of fact and all conclusions of law made or recommended by the
10 Special Master shall be reviewed by the Court *de novo* unless otherwise ordered by the
11 Court.

12 9. The Escrow Accounts created pursuant to each and all of the settlement
13 agreements referenced above shall be administered under the continuing supervision of this
14 Court, and shall be treated, administered, maintained, managed and operated at all times as
15 qualified settlement funds within the meaning of Treas. Reg. Section 1.468B-1 through
16 mechanisms that provide for the Escrow Agents to make such elections as are necessary or
17 advisable to treat the Escrow Accounts as such, including the "relation-back election" (as
18 defined in Treas. Reg. Section 1.468B-1) back to the earliest permitted date, and to make
19 reasonable assurance that the Escrow Accounts will be in a financial position to pay all
20 claims in strict compliance with the terms of the settlement agreements and as directed by the
21 Court. This order shall be effective *nunc pro tunc* to the date(s) of lodging of each of the
22 settlement agreements.

23 This Stipulation and Proposed Order is respectfully submitted this 10th day of March,
24 2011 by the following counsel for the Plaintiffs and the Settling Nanya Defendants.
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COOPER & KIRKHAM, P.C.

By: _____ /s/
Josef D. Cooper
Co-Lead Counsel for
Indirect Purchaser Plaintiffs

By: _____ /s/
Emilio E. Varanini
Liaison Counsel On Behalf of All Attorneys General
and All Governmental Purchaser Class Plaintiffs

By: _____ /s/
Robert E. Freitas
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1000 Marsh Road
Menlo Park, CA 94025-1015
Telephone: (650) 614-7400

Counsel for Defendants Nanya Technology Corporation
and Nanya Technology Corporation USA, Inc.

ATTESTATION OF FILING

Pursuant to General Order No. 45§ X(B), I hereby attest that I have obtained
concurrence in the service and filing of this Stipulation with electronic signatures from all
counsel of the parties listed above.

DATED: March 10, 2011

COOPER & KIRKHAM, P.C.

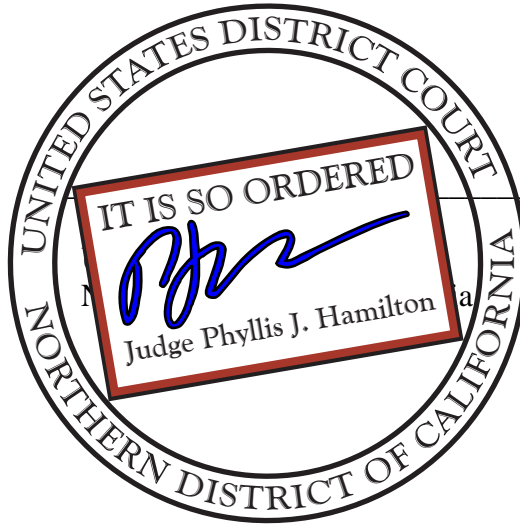
By: _____ /s/
Josef D. Cooper

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ORDER

It is SO ORDERED.

3/16/11



STIPULATION AND [PROPOSED] SECOND SUPPLEMENTAL ORDER APPOINTING THE
HONORABLE CHARLES B. RENFREW AS SPECIAL MASTER