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 16 SEMICONDUCTOR PRODUCTS, INC.

17 [Additional counsel listed on signature page]

18 UNITED STATES DISTRICT COURT
 19 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 20 OAKLAND DIVISION

21 ORACLE AMERICA, INC.,
 22 Plaintiff,

23 v.

24 MICRON TECHNOLOGY, INC. and MICRON
 25 SEMICONDUCTOR PRODUCTS, INC.,
 26 Defendants.

CASE NO. 10-cv-04340 PJH

Action Filed: September 24, 2010

**STIPULATION TO CLARIFY
 COMPLAINT AND WITHDRAW
 PORTIONS OF MOTION TO DISMISS
 AND [PROPOSED] ORDER**

Hearing Date: January 12, 2011
 Hearing Time: 9:00 a.m.
 Location: Courtroom 3, 3rd Floor
 Judge: Hon. Phyllis J. Hamilton
 Trial Date: None set

1 **STIPULATION TO CLARIFY COMPLAINT**

2 **AND PARTIALLY WITHDRAW MOTION TO DISMISS**

3 WHEREAS, Plaintiff Oracle America, Inc. (“Oracle”) filed a complaint (the “Complaint”) in
4 the above-captioned matter against Defendants Micron Technology, Inc. and Micron Semiconductor
5 Products, Inc. (collectively, “Micron”). Oracle asserts that it is the successor-in-interest to Sun
6 Microsystems, Inc. (“Sun”). The Complaint asserts claims for violation of the Sherman Act,
7 California’s Cartwright Act, and California’s Unfair Competition Law based on Sun’s purchases of
8 dynamic random access memory (“DRAM”).

9 WHEREAS, on November 5, 2010, Micron filed a Motion to Dismiss the Complaint for
10 Failure to State a Claim, Failure to Satisfy Rule 8’s Notice Pleading Requirement, and Lack of
11 Subject Matter Jurisdiction (the “Motion to Dismiss”). The Motion to Dismiss is scheduled to be
12 heard at 9:00 a.m. on January 12, 2011 in Courtroom 3, 3rd Floor. The Motion to Dismiss is based in
13 part on Micron’s reading of the Complaint to include claims to recover for indirect purchases of
14 DRAM through Sun’s external manufacturers under federal antitrust law and to recover for Sun’s and
15 its external manufacturers’ foreign purchases of DRAM.

16 WHEREAS, Oracle stipulates that its Complaint asserts claims based solely on purchases of
17 DRAM by Sun and its external manufacturers in the United States, and the Complaint does not assert
18 any claims based on purchases of DRAM by Sun’s foreign subsidiaries or external manufacturers
19 located outside the United States or for any other DRAM purchases outside the United States;

20 WHEREAS, Oracle further stipulates that its Complaint seeks to recover damages for
21 purchases of DRAM incorporated into products that Sun purchased from external manufacturers in
22 the United States, and that Oracle seeks to recover for such purchases only as an indirect purchaser
23 under California state law, and not under the Sherman Act;

24 WHEREAS, based on Oracle’s stipulation that the Complaint asserts claims based solely on
25 purchases of DRAM by Sun and its external manufacturers in the United States and does not assert
26 any claims based on purchases of DRAM by Sun’s foreign subsidiaries and external manufacturers
27 located outside the United States, or for any DRAM initially delivered abroad , Micron partially
28 withdraws its Motion to Dismiss.

1 THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between Oracle and
2 Micron, through their respective attorneys of record, based on the foregoing, and subject to the
3 approval of this Court, that:

4 (1) Oracle is not asserting any claim for damages or other relief based on purchases of
5 DRAM by Sun’s foreign subsidiaries or external manufacturers located outside the
6 United States, or any other purchases of DRAM initially delivered outside the
7 United States (provided, however, that the term “initially delivered” for purposes
8 of this paragraph and the paragraph directly above shall not include any transfers
9 of DRAM between foreign facilities under the direct control and operation of a
10 DRAM manufacturer or one of its agents, or both, such as a manufacturer’s
11 transfer of DRAM from its manufacturing facility outside the United States to its
12 shipment facility outside the United States);

13 (2) Oracle is not asserting claims in this action under the Sherman Act for its
14 purchases of DRAM incorporated into products that Sun purchased from external
15 manufacturers in the United States, and Oracle seeks to recover for such purchases
16 only as an indirect purchaser under California state law; this stipulation in
17 paragraph (2) in no way affects Oracle’s ability to bring its claims based on direct
18 purchases of DRAM under California state law;

19 (3) Based on Oracle’s assertion that the complaint asserts claims based solely on
20 purchases of DRAM by Sun and its external manufacturers in the United States,
21 that Oracle asserts no claims based on purchases of DRAM by Sun’s foreign
22 subsidiaries or external manufacturers located outside the United States, or any
23 other purchases of DRAM initially delivered to Sun outside the United States, and
24 that Oracle does not assert claims under the Sherman Act for its purchases of
25 DRAM incorporated into products that Sun purchased from external
26 manufacturers in the United States, Micron withdraws certain portions of its
27 Motion to Dismiss, filed on November 5, 2010; specifically, Micron withdraws all
28 arguments in its Motion except the arguments contained in Section III.B. of the

1 Motion (“Sun Lacks Antitrust Standing To Bring Claims For Indirect Purchases
2 Under State Law”);

3 (4) Arguments regarding Section III.B. of Micron’s Motion to Dismiss will be heard
4 on January 12, 2011 as currently scheduled; and

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(5) Oracle and Micron reserve all of their rights and preserve all of their arguments with respect to the sufficiency and propriety of the Complaint, including without limitation, objections to jurisdiction, venue, and the adequacy of the pleadings.

IT IS SO STIPULATED.

DATED: 12/2/2010

GIBSON, DUNN & CRUTCHER LLP
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By: G. Charles Nierlich
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*Attorneys for Defendants Micron Technology, Inc. and
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DATED: 12/2/10

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 12/3/10

Honorable Phyllis J. Hamilton
United States District Court



ATTESTATION OF CONCURRENCE IN FILING

In accordance with the Northern District of California's General Order No. 45, Section X.(B), I attest that concurrence in the filing of this document has been obtained from each of the signatories who are listed above.

_____/s/ *Michael Cecchini*_____
Michael Cecchini