

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CYPRESS INSURANCE COMPANY, as
subrogee of Microsoft Corporation,

Plaintiff,

v.

SK HYNIX AMERICA INC.,

Defendant.

Case No. 2:17-cv-00467-RAJ

OMNIBUS ORDER

This order addresses the admission of Plaintiff's Exhibit Nos. 383 and 384, Plaintiff's motions for judgment as a matter of law, and Defendant's motion for judgment of a matter of law.

A. Plaintiff's Exhibit Nos. 383 and 384

Plaintiff's Exhibit No. 383 is **ADMITTED** by stipulation of the parties. The Court will also **ADMIT** Plaintiff's Exhibit 384 (RFA Nos. 43-50) subject to redactions. The Court requires Plaintiff to redact the objections to Request for Admission Nos. 43-50, so that each response begins with: "SKHA states as follows"

B. Plaintiff's Motions for Judgment as a Matter of Law

Plaintiff's moved for judgment as a matter of law on Day 9 of trial. Dkt. # 273. The Court rules as follows:

i. Breach of the Buffer Inventory

Plaintiff's motion is **DENIED**. Disputed facts preclude finding that there is no

1 legally sufficient evidentiary basis for a reasonable jury to find for Hynix on the issue of
2 damages.

3 **ii. Voluntary Payor Affirmative Defense**

4 Plaintiff's motion is **DENIED**. Disputed facts preclude finding that there is no
5 legally sufficient evidentiary basis for a reasonable jury to find for Hynix on this issue.

6 **iii. Impracticability Affirmative Defense**

7 Plaintiff's motion is **DENIED**. Disputed facts preclude finding that there is no
8 legally sufficient evidentiary basis for a reasonable jury to find for Hynix on this issue.

9 **iv. Pre-Incident Conduct**

10 Plaintiff's motion is **DENIED**. Defendant, however, is precluded from referencing
11 comparative fault or pre-incident conduct in closing arguments as a basis for reducing
12 damages for breach of contract.

13 **v. Subsequent Delivery of DRAM chips**

14 Plaintiff's motion is **DENIED**. Disputed facts preclude finding that there is no
15 legally sufficient evidentiary basis for a reasonable jury to find for Hynix on that issue as
16 it pertains to delivery under the Ninth Amendment.

17 **vi. Breach of the Capacity Commitment (Table 3) of the Ninth**
18 **Amendment**

19 Plaintiff's motion is **DENIED**. Disputed facts preclude finding that there is no
20 legally sufficient evidentiary basis for a reasonable jury to find for Hynix on the issue of
21 commercial reasonableness.

22 **vii. Breach of Ninth Amendment Regarding Purchase Orders**

23 Plaintiff's motion is **DENIED**. Disputed facts preclude finding that there is no
24 legally sufficient evidentiary basis for a reasonable jury to find for Hynix on this issue.

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