

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into this 27 day of June, 2008, by and between defendant Hitachi, Ltd. (“Hitachi”) and the plaintiff class representatives (“Plaintiffs”), both individually and on behalf of a settlement class of direct purchasers of DRAM (“Class”) that purchased DRAM in the United States at any time during the period beginning April 1, 1999 and continuing through June 30, 2002 (the “Class Period”), as more particularly defined in paragraph A.1 below.

WHEREAS, Plaintiffs will be prosecuting an action (the “Action”) on their own behalf and on behalf of the Class against Hitachi;

WHEREAS, Plaintiffs allege that Hitachi participated in an unlawful conspiracy to raise, fix, maintain, or stabilize the price of DRAM at artificially high levels in violation of Section 1 of the Sherman Act;

WHEREAS, Hitachi denies Plaintiffs’ allegations and has asserted defenses to Plaintiffs’ claims;

WHEREAS, Plaintiffs have conducted an investigation into the facts and the law regarding the Action and have concluded that resolving claims against Hitachi according to the terms set forth below is in the best interest of Plaintiffs and the Class;

WHEREAS, Hitachi, despite its belief that it is not liable for the claims asserted and has good defenses thereto, has nevertheless agreed to enter into this Agreement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, and to obtain the releases, orders, and judgment contemplated by this Agreement, and to put to rest with finality all claims that have been or could have been asserted against Hitachi based on the allegations of the Action, as more particularly set out below;

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, it is agreed by and among the undersigned that the Action be settled, compromised, and dismissed on the merits with prejudice as to the Hitachi Releasees, as defined below, and except as hereinafter provided, without costs as to Plaintiffs, the Class, or Hitachi, subject to the approval of the Court, on the following terms and conditions:

A. Definitions.

1. For purposes of this Agreement, "the Class" is defined as all individuals and entities who, at any time during the period beginning April 1, 1999 and continuing through June 30, 2002 (the "Class Period"), purchased DRAM in the United States directly from Hitachi or its alleged co-conspirators Elpida Memory, Inc., Elpida Memory (USA) Inc., Hynix Semiconductor, Inc., Hynix Semiconductor America, Inc., Infineon Technologies AG, Mosel-Vitellic, Inc., Mosel Vitelic Corp., NEC Electronics America, Inc., Nanya Technology Corporation USA, Samsung Electronics Company, Ltd., Infineon Technologies North America Corp., Micron Technology, Inc., Micron Semiconductor Products, Inc. through its Crucial Technology division, Samsung Semiconductor, Inc., Winbond Electronics Corporation, Winbond Electronics Corporation America, and their parents, subsidiaries or affiliates. The definitions of Class and Class Period herein do not limit the scope of the Release provided in paragraphs 13-15 of this Agreement. Excluded from the Class are Hitachi and its alleged co-conspirators, their parents, subsidiaries, affiliates, and all governmental entities.

2. For purposes of this Agreement, DRAM is defined to mean dynamic random access memory components, including without limitation, synchronous dynamic random access memory ("SDRAM"), Rambus dynamic random access memory ("RDRAM"), asynchronous dynamic random access memory ("ASYNC"), FPM DRAM, EDO DRAM, BEDO RAM and double data rate synchronous dynamic random access memory ("DDR") semiconductor devices and modules.

3. "Hitachi Releasees" shall refer to Hitachi and to all of its respective past and present, direct and indirect, parents, subsidiaries, affiliates; the predecessors, successors and assigns of any of the above; and each and all of the present and former principals, partners, officers, directors, supervisors, employees, representatives, insurers, attorneys, heirs, executors, administrators, and assigns of each of the foregoing.

4. "Class Member" means each member of the Class who does not timely elect to be excluded from the Class.

5. "Releasers" shall refer to the plaintiff class representatives and the Class Members, and to their past and present officers, directors, employees, agents, stockholders, attorneys, servants, representatives, parents, subsidiaries, affiliates, partners, insurers and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and the predecessors, successors, heirs, executives, administrators and assigns of any of the foregoing.

6. "The Settlement Fund" shall be \$11,500,000, in United States funds, plus accrued interest on said deposits set forth in paragraph 17.

7. "Co-Lead Counsel" shall refer to the law firms of:

Guido Saveri
Saveri & Saveri, Inc.
111 Pine Street, Suite 1700
San Francisco, CA 94111

Anthony D. Shapiro
Hagens Berman Sobol Shapiro
1301 Fifth Avenue, Suite 2900
Seattle, WA 98101

Fred Taylor Isquith
Wolf Haldenstein Adler Freeman & Herz LLP
270 Madison Avenue
New York, NY 10016

B. Approval of this Agreement and Dismissal of Claims Against Hitachi.

8. Plaintiffs and Hitachi shall use their best efforts to effectuate this Agreement, including cooperating in promptly seeking the Court's approval for the establishment of procedures (including the giving of class notice under Federal Rules of Civil Procedure 23(c) and (e)) to secure the prompt, complete, and final dismissal with prejudice of the Action as to Hitachi.

9. As soon as practicable after the date of this Agreement, Plaintiffs shall submit to the Court a motion for authorization to disseminate notice of the settlement and final judgment contemplated by this Agreement to all putative class members (the "Motion"). If notice to the class is given jointly with any other future settlement with any additional company, for purposes of paragraph 19 below, the costs of

notice and claims administration shall be shared equally with any other such company. The Motion shall include (i) a proposed form of, method for, and date of dissemination of notice; and (ii) a proposed form of order and final judgment. The text of the foregoing items (i) and (ii) shall be agreed upon by Plaintiffs and Hitachi before submission of the Motion, with the understanding that, among other things, individual notice of the settlement shall be mailed by regular mail or email, with appropriate notice by publication, with all expenses paid from the Settlement Fund, to persons and entities identified in the Action as direct purchasers of DRAM that purchased DRAM during the Class Period from Hitachi. Hitachi has supplied to Co-Lead Counsel, at Hitachi's expense and in such form as may be reasonably requested by Co-Lead Counsel, such names and addresses of putative class members as it has. The Motion shall recite and ask the Court to find that the mailing of the notice of settlement to all members of the Class who can be identified upon reasonable effort constitutes valid, due and sufficient notice to the Class, constitutes the best notice practicable under the circumstances, and complies fully with the requirements of Federal Rule of Civil Procedure 23.

10. Plaintiffs and Hitachi shall jointly seek entry of an order and final judgment, the text of which Plaintiffs and Hitachi shall agree upon. The terms of that order and final judgment will include, at a minimum, the substance of the following provisions that:

- a. as to the Action, approving finally this settlement and its terms as being a fair, reasonable and adequate settlement as to the Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to its terms;
- b. as to Hitachi, directing that the action be dismissed with prejudice and, except as provided for in this Agreement, without costs;
- c. reserving exclusive jurisdiction over the settlement and this Agreement, including the administration and consummation of this settlement to the United States District Court for the Northern District of California;
- d. determining under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing that the judgment of dismissal as to Hitachi shall be final; and

- e. Co-Lead Counsel shall file with the Clerk of the Court a record of putative class members who timely excluded themselves from the class and shall provide a copy of the record to counsel for Hitachi.

11. This Agreement shall become final when (i) the Court has entered a final order approving this Agreement under Federal Rule of Civil Procedure 23(e) and a final judgment dismissing the Action with prejudice as to Hitachi against all Class Members and without costs other than those provided for in this Agreement, and (ii) the time for appeal or to seek permission to appeal from the Court's approval of this Agreement and entry of a final judgment as to Hitachi has expired or, if appealed, approval of this Agreement and the final judgment as to Hitachi have been affirmed in their entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review. It is agreed that the provisions of Rule 60 of the Federal Rules of Civil Procedure shall not be taken into account in determining the above-stated times. On the date that Plaintiffs and Hitachi have executed this Agreement, Plaintiffs and Hitachi shall be bound by its terms and this Agreement shall not be rescinded except in accordance with paragraphs 17, 18 or 25 of this Agreement.

12. Neither this Agreement (whether or not it should become final) nor the final judgment, nor any and all negotiations, documents and discussions associated with them, shall be deemed or construed to be an admission by Hitachi (or the Hitachi Releasees) or evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by Hitachi (or the Hitachi Releasees), or of the truth of any of the claims or allegations contained in any complaint or any other pleading filed by Plaintiffs in the Action, and evidence thereof shall not be discoverable or used directly or indirectly, in any way, whether in the Action or in any other action or proceeding. Neither this Agreement, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any other action taken to carry out this Agreement by any of the settling parties shall be referred to, offered as evidence or received in evidence in any pending or future civil, criminal, or administrative action or proceedings, except in a proceeding to enforce this Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law.

C. Release, Discharge, and Covenant Not to Sue.

13. In addition to the effect of any final judgment entered in accordance with this Agreement, upon this Agreement becoming final as set out in paragraph 11 of this Agreement, and in consideration of payment of the Settlement Fund, as specified in paragraph 16 of this Agreement, and for other valuable consideration, the Hitachi Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits, causes of action, whether class, individual, or otherwise in nature (whether or not any Class Member has objected to the settlement or makes a claim upon or participates in the Settlement Fund, whether directly, representatively, derivatively or in any other capacity) that Releasors, or each of them, ever had, now has, or hereafter can, shall, or may have on account of, or in any way arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected injuries, damages, and the consequences thereof in any way arising out of or relating in any way to any act or omission of the Hitachi Releasees (or any of them) concerning the manufacture, supply, distribution, sale or pricing of DRAM products up to the date of execution of this Agreement, including but not limited to any conduct alleged, and causes of action asserted or that could have been alleged or asserted, in class action complaints filed in the Action, including those arising under any federal or state antitrust, unfair competition, unfair practices, price discrimination, unitary pricing, or trade practice law, including without limitation, the Sherman Antitrust Act, 15 U.S.C. § 1 et seq. (the "Released Claims"). Releasors shall not, after the date of this Agreement, seek to establish liability against any Hitachi Releasee based, in whole or in part, upon any of the Released Claims or conduct at issue in the Released Claims.

14. In addition to the provisions of paragraph 13 of this Agreement, Releasors hereby expressly waive and release, upon this Agreement becoming final, any and all provisions, rights, and benefits conferred by § 1542 of the California Civil Code, which states:

CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF

EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT
WITH THE DEBTOR;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code. Each Releasor may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims which are the subject matter of the provisions of paragraph 13 of this Agreement, but each Releasor hereby expressly waives and fully, finally, and forever settles and releases, upon this Agreement becoming final, any known or unknown, suspected or unsuspected, contingent or non-contingent claim with respect to the subject matter of the provisions of paragraph 13 of this Agreement, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

15. The release, discharge, and covenant not to sue set forth in paragraph 13 of this Agreement does not include claims by any of the Class Members other than the Released Claims and does not include other claims, such as those solely arising out of product liability or breach of contract claims in the ordinary course of business not covered by the Released Claims. Further, the release, discharge and covenant not to sue set forth in paragraph 13 of this Agreement includes only direct purchaser claims.

D. Settlement Amount.

16. Subject to the provisions hereof, and in full, complete and final settlement of the Action as provided herein, defendant Hitachi shall pay \$11,500,000 in United States Dollars into an escrow account to be administered in accordance with the provisions of paragraph 17 of this Agreement (the "Escrow Account"). The \$11,500,000 amount shall be wired into the Escrow Account according to the following schedule:

\$5,750,000 shall be wired within fifteen (15) business days from the date on which the motion for preliminary approval of settlement pursuant to the Federal Rules of Civil Procedure and terms of this Agreement is filed. The remaining \$5,750,000 shall be wired within fifteen (15) business days from the date on which the motion for preliminary approval of the settlement is granted by the Court. In reaching the present settlement, Plaintiffs relied upon Hitachi's representation that it had not separately entered into settlement agreements with Class Members whose total purchases during the Class Period amounted to approximately \$125,000,000. Hitachi will provide Plaintiffs' Co-Lead Counsel with a list of direct purchasers of Hitachi DRAM in the United States with whom it has settled and a list of direct purchasers of Hitachi DRAM in the United States with whom it has not settled, and the total amount of purchases made by each direct purchaser of Hitachi DRAM in the United States. Both lists shall be kept confidential. Plaintiffs' Co-Lead Counsel shall have the right to audit both lists consistent with any confidentiality restrictions that are applicable. If Hitachi settles with additional direct purchasers of Hitachi DRAM in the United States, the settlement fund of \$11,500,000 will not be reduced.

17. Escrow Account.

(a) The Escrow Account will be established at Union Bank of California, 350 California Street, San Francisco, California, with such Bank serving as escrow agent ("Escrow Agent") subject to escrow instructions mutually acceptable to plaintiffs' Co-Lead counsel and Hitachi, such escrow to be administered under the Court's continuing supervision and control.

(b) The Escrow Agent shall cause the funds deposited in the Escrow Account to be invested in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, or

money market funds invested substantially in such instruments, and shall reinvest any income from these instruments and the proceeds of these instruments as they mature in similar instruments at their then current market rates.

(c) All funds held in the Escrow Account shall be deemed and considered to be in custodia legis of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Agreement and/or further order(s) of the Court.

(d) Plaintiffs and Hitachi agree to treat the Settlement Fund as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. §1.468B-1. In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this paragraph 17, including the “relation-back election” (as defined in Treas. Reg. §1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

(e) For the purpose of §468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the Escrow Agent. The Escrow Agent shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitation the returns described in Treas. Reg. §1.468B-2(k)(1)). Such returns (as well as the election described in paragraph 17(d)) shall be consistent with paragraph 17(d) and in all events shall reflect that all Taxes, as defined below (including any estimated Taxes, interest or penalties), on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in paragraph 17(f) hereof.

(f) All (i) taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon Hitachi or any other Hitachi Releasee with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax