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 13 MICRON TECHNOLOGY, INC. AND  
 14 MICRON SEMICONDUCTOR PRODUCTS, INC.

15 UNITED STATES DISTRICT COURT  
 16 FOR THE NORTHERN DISTRICT OF CALIFORNIA

17 Case No. C 06-4333 PJH

18 STATE OF CALIFORNIA, *et al.*,  
 19 Plaintiff,  
 20 v.  
 21 INFINEON TECHNOLOGIES AG, *et al.*,  
 22 Defendants.

23 **DEFENDANTS' RESPONSES TO**  
 24 **PLAINTIFFS' EVIDENTIARY**  
 25 **OBJECTIONS TO SANDERS**  
 26 **DECLARATION FILED IN SUPPORT OF**  
 27 **DEFENDANTS' OPPOSITION TO**  
 28 **PLAINTIFFS' MOTION TO VOID**  
**DEFENDANTS' JUDGMENT SHARING**  
**AGREEMENT**

**ORAL ARGUMENT REQUESTED**

Hearing Date: November 14, 2007  
 Hearing Time: 9:00 a.m.  
 Location: Courtroom 3, 17th Floor  
 Judge: Hon. Phyllis J. Hamilton

1 Defendants respectfully submit the following responses to Plaintiffs' evidentiary objections to  
2 the Declaration of Joel S. Sanders filed in support of Defendants' Opposition to Plaintiffs' Motion to  
3 Void Defendants' Judgment Sharing Agreement.

4 1. Plaintiffs contend that paragraphs 2-6, and 8 "contravene Federal Rule of Evidence 1002  
5 (the Best Evidence Rule) because the JSA is in the defendants' possession." The best evidence rule  
6 does not apply where, as here, Defendants have offered to disclose the text of the agreement to the  
7 Court *in camera* if the Court deems such an examination necessary. In this context, it is also  
8 important to note that Plaintiffs could have requested the JSA via discovery. They chose not to  
9 pursue that avenue and instead entered into an agreement with Defendants by which Plaintiffs'  
10 counsel was allowed to view certain provisions of the JSA, but could not quote the language of the  
11 document. As noted in the Sanders Declaration filed in support of Defendants' Opposition, Plaintiffs  
12 did not adhere to that agreement. Nevertheless, the fact remains that Plaintiffs did not attempt to  
13 obtain the JSA through discovery. As such, they cannot now complain that the JSA is "in defendants'  
14 possession." Indeed, because Plaintiffs could have attempted to obtain access to the document,  
15 Plaintiffs' objection, if accepted, would bar Plaintiffs' representations concerning the contents of the  
16 document in their moving papers. In any event, Plaintiffs' objection on the grounds of the best  
17 evidence rule should be denied.

18 2. Plaintiffs further contend that paragraphs 2-6, and 8 violate "the prohibition against the  
19 introduction of opinion testimony to interpret or to provide the legal meaning of contracts." But the  
20 Sanders Declaration only describes the relevant content of the JSA; it does not purport to interpret the  
21 legal meaning of the JSA. As such, Plaintiffs' objection on this ground should also be denied.

22 3. Plaintiffs object to paragraph 7 of the Sanders Declaration as a violation of Federal Rule  
23 of Evidence 802 (prohibiting hearsay). Plaintiffs argue that this paragraph "testifies to out-of-court  
24 statements made by 'other defense counsel,' to prove the truth of those statements." This objection  
25 should be denied because, while the Sanders Declaration was not signed by all Defendants,  
26 Defendants jointly submitted the opposition brief containing the same statements to which Plaintiffs'  
27 object. Thus, because all Defendants have, in effect, endorsed the statement made in paragraph 7 of  
28 the Sanders Declaration, the statement cannot be hearsay.

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DATED: November 7, 2007

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