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MICRON TECHNOLOGY, INC. AND
8 MICRON SEMICONDUCTOR PRODUCTS, INC.

9
10 UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12

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14 Case No. C 06-4333 PJH

15 STATE OF CALIFORNIA, *et al.*,
16 Plaintiff,
17 v.
18 INFINEON TECHNOLOGIES AG, *et al.*,
19 Defendants.
20

**DECLARATION OF JOEL S. SANDERS IN
SUPPORT OF DEFENDANTS'
OPPOSITION TO 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 I, Joel S. Sanders, declare as follows:

2 1. I am a partner at the law firm of Gibson, Dunn & Crutcher LLP, counsel for Micron
3 Technology, Inc. and Micron Semiconductor Products, Inc., in the above-entitled action. I am
4 competent to testify, and have personal knowledge of the matters stated herein.

5 2. The Judgment Sharing Agreement at issue in Plaintiffs' Motion to Void Defendants'
6 Judgment Sharing Agreement creates a contractual right of contribution.

7 3. The Judgment Sharing Agreement allows the parties to settle on any terms at any time
8 with or without notice to the other parties.

9 4. The Judgment Sharing Agreement contains no provision barring any participant from
10 litigating or settling Plaintiffs' claims in whatever manner it sees fit.

11 5. The Judgment Sharing Agreement here provides that the parties will allocate
12 responsibility for the damages portion of a judgment based on specified percentages related to their
13 market shares.

14 6. The Judgment Sharing Agreement allows a party to settle with the Plaintiffs without
15 continuing to have obligations to the other parties to the agreement by (a) obtaining a proportionally
16 equal settlement offer for the other parties to the agreement and (b) obtaining an agreement from
17 Plaintiffs to exclude its sharing percentage from any judgment Plaintiffs seek to enforce against the
18 other parties. A party may settle without satisfying these provisions, but the other parties will retain
19 the contractual contribution claims against it for its share of a litigated judgment less the amount it
20 paid in settlement.

21 7. I have conferred with the other defense counsel of those Defendants who are
22 signatories to the Judgment Sharing Agreement and am informed and believe that Plaintiffs have not
23 made a separate settlement offer since the execution of the Judgment Sharing Agreement to any
24 signatory to the Judgment Sharing Agreement.

25 8. The Judgment Sharing Agreement at issue expressly excludes civil or criminal fines or
26 penalties.

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1 9. Upon reviewing the Plaintiffs' Motion, I informed Plaintiffs' counsel in writing on
2 October 11, 2007 that the Judgment Sharing Agreement expressly excludes fines and penalties and
3 suggested that Plaintiffs withdraw this argument before Defendants had to file their opposition. I also
4 offered to provide a declaration or to allow Plaintiffs' counsel to examine the provision of the
5 Judgment Sharing agreement that states it does not apply to civil or criminal fines or penalties. A
6 true and correct copy of that October 11, 2007 letter is attached hereto as **Exhibit A**.

7 10. I am informed and believe that, on October 19, 2007, Plaintiffs' counsel examined the
8 portion of the Judgment Sharing Agreement that explicitly excludes civil or criminal fines or
9 penalties.

10 11. I am informed and believe that Defendants allowed Plaintiffs to view certain portions
11 of the Judgment Sharing Agreement in lieu of motion practice based on Plaintiffs' agreement "not to
12 quote specific language as such in any document (other than internal documents . . .)." Plaintiffs'
13 Motion quotes from the Judgment Sharing Agreement. Attached as **Exhibit B** is a true and correct
14 copy of an August 24, 2007 e-mail communication between G. Charles Nierlich, a partner with
15 Gibson, Dunn & Crutcher LLP who is also counsel of record for the Micron Defendants, and Emilio
16 Varanini, one of the counsel of record for Plaintiffs, setting forth this agreement.

17 12. Attached as **Exhibit C** to this Declaration is a true and correct copy of *In re Workers*
18 *Compensation Ins. Antitrust Litig.*, Master File No. 4-85-1166 (D. Minn. Aug. 24, 1990)

19 13. Attached as **Exhibit D** to this Declaration is a true and correct copy of *In re Industrial*
20 *Gas Antitrust Litig.*, Civ. Action No. 80C3470 (N.D. Ill. Oct. 10, 1984).

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22 I declare under penalty of perjury that the foregoing is true and correct. Executed this 24th
23 day of October, 2007, in San Francisco, CA.

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25 _____
26 /s/ Joel S. Sanders
27 Joel S. Sanders
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