

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: STATIC RANDOM ACCESS MEMORY
(SRAM) ANTITRUST LITIGATION,

No. C 07-01819 CW
ORDER GRANTING IP
PLAINTIFFS' MOTION
FOR CLASS
CERTIFICATION AND
DENYING MOTIONS TO
EXCLUDE EXPERT
OPINIONS

_____ /

In this antitrust multi-district litigation, Indirect Purchaser Plaintiffs (IP Plaintiffs) move for class certification pursuant to Rule 23 of the Federal Rules of Civil Procedure. Defendants¹ oppose the motion. Having considered oral argument and

_____ ¹Defendants are Samsung Electronics Company, Ltd., Samsung Electronics America, Inc., Samsung Semiconductor, Inc., Hynix Semiconductor, Inc., Hynix Semiconductor America, Inc., Micron
(continued...)

1 all of the papers filed by the parties, the Court grants IP
2 Plaintiffs' motion for class certification and denies the parties'
3 motions to exclude expert opinions.

4 BACKGROUND

5 The facts of this case were laid out in greater detail in the
6 Court's order on the initial motions to dismiss. In brief, IP
7 Plaintiffs are a group of individuals and companies that purchased
8 Static Random Access Memory (SRAM) indirectly from one or more
9 Defendants, for end use and not for resale. Defendants are various
10 corporations that sold SRAM to customers throughout the United
11 States.

12 SRAM is a type of memory device that cannot retain stored data
13 absent a source of power. SRAM is used in a variety of product
14 markets, including: (1) the communications market in cell phones
15 and Voice Over Internet Protocol (VOIP) technology; (2) the
16 computer market in servers, mainframes, high-end computer
17 workstations, and personal digital assistants (PDAs) and smart
18 phones; and (3) the networking communications market in routers,
19 switches, proxy and gateway devices, modems, storage area networks
20 and firewalls. Michael Harris Decl. ¶¶ 14-17. There are three
21 general types of SRAM: (1) asynchronous SRAM (typically called slow
22 or low power), which is used in mobile phones and other hand-held
23 devices that contain a central processor, (2) synchronous SRAM

24
25 ¹(...continued)

26 Technology, Inc., Micron Semicondcutor Products, Inc., NEC
27 Electronics Corp., NEC Electronics America, Inc., Cypress
28 Semiconductor, Inc., Mitsubishi Electric Corp., Mitsubishi Electric
& Electronics USA, Inc., Renesas Technology Corp., Renesas
Technology America, Inc., Toshiba Corp., Toshiba America Electronic
Components, Inc. and Etron Technology America, Inc.

1 (typically called fast or high power), which is generally found in
2 computers and networking equipment and (3) pseudo SRAM (PSRAM),
3 which is found in smart phones and other devices that require low
4 power consumption and fast memory. Id. at ¶¶ 8-13.

5 During the class period, Defendants possessed sixty to seventy
6 percent of the market share of total SRAM sales. Defendants sell
7 SRAM to various customers, both large and small scale, through a
8 variety of distribution paths. SRAM manufactured by Defendants can
9 be purchased by an SRAM distributor and resold to an original
10 equipment manufacturer (OEM) or purchased by a contract
11 manufacturer. Contract manufacturers create individual SRAM
12 components and finished products containing SRAM for OEMs. Thus,
13 OEMs purchase SRAM directly from SRAM manufacturers, distributors
14 and contract manufacturers. OEMs then sell SRAM directly to
15 consumers or to consumers through a reseller, distributor or
16 retailer. Id. ¶¶ 41-47.

17 IP Plaintiffs allege that, between 1996 and 2006, Defendants
18 conspired to fix and maintain artificially high prices for SRAM.
19 According to IP Plaintiffs, Defendants carried out this conspiracy
20 through in-person, telephone and email communications regarding
21 pricing to customers and market conditions. IP Plaintiffs allege
22 violations of Section 1 of the Sherman Act, California's Cartwright
23 Act, California Business and Professions Code §§ 16720 and 17200,
24 and numerous other states' antitrust, unfair competition and
25 consumer protection laws. They seek disgorgement of profits and
26 unjust enrichment.

27 IP Plaintiffs seek certification of a nation-wide class for
28 injunctive relief defined as follows:

1 All persons and entities residing in the United
 2 States who, from November 1, 1996 through at least
 3 December 31, 2006, purchased SRAM in the United
 4 States indirectly from the Defendants for their
 5 own use and not for resale. Specifically excluded
 6 from this class are the Defendants; the officers,
 7 directors or employees of any Defendant; any
 8 entity in which any Defendant has a controlling
 interest; and any affiliate, legal representative,
 heir or assign of any Defendant. Also excluded
 are any federal, state or local governmental
 entities, any judicial officer presiding over this
 action and the members of his/her immediate family
 and judicial staff, and any juror assigned to this
 action.

9 IP Plaintiffs also move to certify twenty-seven separate classes
 10 pursuant to Fed. R. Civ. P. 23(b)(3).² Those classes represent
 11 residents of Arizona, Arkansas, California, Florida, Hawaii, Iowa,
 12 Kansas, Maine, Massachusetts, Michigan, Minnesota, Montana, Nevada,
 13 New Mexico, New York, North Carolina, North Dakota, Pennsylvania,
 14 Rhode Island, South Dakota, Tennessee, Utah, Washington, West
 15 Virginia, Wisconsin, Puerto Rico and the District of Columbia.

16 LEGAL STANDARD

17 Plaintiffs seeking to represent a class must satisfy the
 18 threshold requirements of Rule 23(a) as well as the requirements
 19 for certification under one of the subsections of Rule 23(b). Rule
 20 23(a) provides that a case is appropriate for certification as a
 21 class action if: "(1) the class is so numerous that joinder of all
 22 members is impracticable; (2) there are questions of law or fact
 23 common to the class; (3) the claims or defenses of the

24
 25 ²IP Plaintiffs note that their classes are "not meant to and
 26 do not include purchasers of used or refurbished products
 27 containing SRAM." Reply at 18 n.17. Their use of the phrase "not
 28 for resale" in the class definition "is meant to limit the class to
 persons who purchased new products (and not products that were
 refurbished and bought from E-bay or elsewhere) and to eliminate
 retailers, wholesalers, distributors and other resellers." Reply
 at 21 n.21.

1 representative parties are typical of the claims or defenses of the
2 class; and (4) the representative parties will fairly and
3 adequately protect the interests of the class." Fed. R. Civ. P.
4 23(a).

5 Rule 23(b) further provides that a case may be certified as a
6 class action only if one of the following is true:

7 (1) prosecuting separate actions by or against individual
8 class members would create a risk of:

9 (A) inconsistent or varying adjudications with
10 respect to individual class members that would
11 establish incompatible standards of conduct for the
12 party opposing the class; or

13 (B) adjudications with respect to individual class
14 members that, as a practical matter, would be
15 dispositive of the interests of the other members
16 not parties to the individual adjudications or would
17 substantially impair or impede their ability to
18 protect their interests;

19 (2) the party opposing the class has acted or refused to
20 act on grounds that apply generally to the class, so that
21 final injunctive relief or corresponding declaratory
22 relief is appropriate respecting the class as a whole; or

23 (3) the court finds that the questions of law or fact
24 common to class members predominate over any questions
25 affecting only individual members, and that a class
26 action is superior to other available methods for fairly
27 and efficiently adjudicating the controversy. The
28 matters pertinent to these findings include:

(A) the class members' interests in individually
controlling the prosecution or defense of separate
actions;

(B) the extent and nature of any litigation
concerning the controversy already begun by or
against class members;

(C) the desirability or undesirability of
concentrating the litigation of the claims in the
particular forum; and

(D) the likely difficulties in managing a class
action.

Fed. R. Civ. P. 23(b).

1 Plaintiffs seeking class certification bear the burden of
2 demonstrating that each element of Rule 23 is satisfied, and a
3 district court may certify a class only if it determines that
4 plaintiffs have borne their burden. General Tel. Co. v. Falcon,
5 457 U.S. 147, 158-61 (1982); Doninger v. Pac. Nw. Bell, Inc., 564
6 F.2d 1304, 1308 (9th Cir. 1977). In making this determination, the
7 court may not consider the merits of plaintiffs' claims.
8 Burkhalter Travel Agency v. MacFarms Int'l, Inc., 141 F.R.D. 144,
9 152 (N.D. Cal. 1991). Rather, the court must take the substantive
10 allegations of the complaint as true. Blackie v. Barrack, 524 F.2d
11 891, 901 (9th Cir. 1975). Nevertheless, the court need not accept
12 conclusory or generic allegations regarding the suitability of the
13 litigation for resolution through class action. Burkhalter, 141
14 F.R.D. at 152. In addition, the court may consider supplemental
15 evidentiary submissions of the parties. In re Methionine Antitrust
16 Litig., 204 F.R.D. 161, 163 (N.D. Cal. 2001) (Methionine I); see
17 also Moore v. Hughes Helicopters, Inc., 708 F.2d 475, 480 (9th Cir.
18 1983) (noting that "some inquiry into the substance of a case may
19 be necessary to ascertain satisfaction of the commonality and
20 typicality requirements of Rule 23(a)"; however, "it is improper to
21 advance a decision on the merits at the class certification
22 stage"). Ultimately, it is in the district court's discretion
23 whether a class should be certified. Burkhalter, 141 F.R.D. at
24 152.

25 "Class actions play an important role in the private
26 enforcement of antitrust actions. For this reason courts resolve
27 doubts in these actions in favor of certifying the class." In re
28 Rubber Chemicals Antitrust Litig., 232 F.R.D. 346, 350 (N.D. Cal

1 2005).

2 DISCUSSION

3 I. Class Definitions

4 Defendants first argue that class certification must be denied
5 because IP Plaintiffs' proposed class definitions are not precise
6 and the identity of the class members is not objectively
7 ascertainable. "An adequate class definition specifies 'a distinct
8 group of plaintiffs whose members [can] be identified with
9 particularity.'" Campbell v. PricewaterhouseCoopers, LLP, 253
10 F.R.D. 586, 593 (E.D. Cal. 2008) (quoting Lerwill v. Inflight
11 Motion Pictures, Inc., 582 F.2d 507, 512 (9th Cir. 1978). "The
12 identity of class members must be ascertainable by reference to
13 objective criteria." 5 James W. Moore, Moore's Federal Practice,
14 § 23.21[1] (2001). Thus, a class definition is sufficient if the
15 description of the class is "definite enough so that it is
16 administratively feasible for the court to ascertain whether an
17 individual is a member." O'Connor v. Boeing N. Am., Inc., 184
18 F.R.D. 311, 319 (C.D. Cal. 1998).

19 Here, the class definitions meet this standard. The
20 definitions of the classes are relatively straightforward. Class
21 members (1) must live in a particular state, (2) cannot be a direct
22 purchaser, (3) cannot be a reseller, (4) must have made a purchase
23 within the relevant time period and (5) must have purchased a
24 product containing SRAM made by a Defendant. These definitions are
25 not subjective or imprecise. IP Plaintiffs will be able to
26 identify all products that contain Defendants' SRAM by analyzing
27 Defendants' documents, testimony from Defendants' personnel, third
28 party transactional data, third party discovery responses that

1 state whether their products contain SRAM, BoMs³ from OEMs and
2 contract manufacturers, and publicly available information. Thus,
3 absent class members will easily be able to identify themselves.

4 II. Class Certification Under Rule 23(a)

5 To certify a class, IP Plaintiffs must satisfy Rule 23(a). As
6 noted above, Rule 23(a) provides that a case is appropriate for
7 certification as a class action if: "(1) the class is so numerous
8 that joinder of all members is impracticable; (2) there are
9 questions of law or fact common to the class; (3) the claims or
10 defenses of the representative parties are typical of the claims or
11 defenses of the class; and (4) the representative parties will
12 fairly and adequately protect the interests of the class."

13 Defendants do not dispute IP Plaintiffs' assertion that this
14 action satisfies the numerosity and commonality requirements of
15 Rule 23(a)(1) and (2), and the Court finds that it does. See 1
16 Alba Cone & Herbert B. Newberg, Newberg on Class Actions § 3.3 (4th
17 ed. 2002) (where "the exact size of the class is unknown, but
18 general knowledge and common sense indicate that it is large, the
19 numerosity requirement is satisfied"); Hanlon v. Chrysler Corp.,
20 150 F.3d 1011, 1019 (9th Cir. 1998) ("All questions of fact and law
21 need not be common to satisfy [Rule 23(a)(2)]. The existence of
22 shared legal issues with divergent factual predicates is
23 sufficient, as is a common core of salient facts coupled with
24 disparate legal remedies within the class.")

25 Defendants assert that class certification must fail because
26 (1) IP Plaintiffs cannot meet the typicality requirement of Rule

27
28 ³BoM is the acronym for Bill of Materials.

1 23(a)(3) and (2) IP Plaintiffs cannot protect the interests of all
2 class members as required by Rule 23(a)(4).

3 A. Typicality

4 The typicality prerequisite of Rule 23(a) is fulfilled if "the
5 claims or defenses of the representative parties are typical of the
6 claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). The
7 test for typicality is "whether other members have the same or
8 similar injury, whether the action is based on conduct which is not
9 unique to the named plaintiffs, and whether other class members
10 have been injured by the same course of conduct." Hanon v.
11 Dataproducts Corp., 976 F.2d 497, 508 (9th Cir. 1992) (quoting
12 Schwartz v. Harp, 108 F.R.D. 279, 282 (C.D. Cal. 1985)). "Under
13 the rule's permissive standards, representative claims are
14 'typical' if they are reasonably co-extensive with those of absent
15 class members; they need not be substantially identical." Hanlon,
16 150 F.3d at 1020. "The typicality requirement does not mandate
17 that products purchased, methods of purchase, or even damages of
18 the named plaintiffs must be the same as those of the absent class
19 members." In re Vitamins Antitrust Litig., 209 F.R.D. 251, 261
20 (D.D.C. 2002).

21 Here, all of the IP Plaintiffs are indirect purchasers of SRAM
22 who allege that Defendants engaged in a price-fixing conspiracy.
23 As the Court noted when it certified the DP Plaintiff class, "the
24 overarching price fixing scheme is the linchpin of [IP] Plaintiff's
25 complaint, 'regardless of the product purchased, the market
26 involved or the price ultimately paid.'" In re Static Random
27 Access Memory (SRAM) Litig., 2008 WL 4447592, *3 (quoting In re
28 Flat Glass Antitrust Litig., 191 F.R.D. 472, 480 (W.D. Pa 1999)).

1 Thus, IP Plaintiffs' claims are typical even though they may have
2 used different purchasing procedures, purchased different
3 quantities or a different mix of products, or received different
4 prices than other class members. Accordingly, Rule 23(a)(3)'s
5 typicality requirement is met.

6 B. Adequate Representation

7 Rule 23(a)(4) requires that "the representative parties will
8 fairly and adequately protect the interests of the class." Fed. R.
9 Civ. P. 23(a)(4). The adequacy requirement consists of two
10 inquiries: "(1) do the representative plaintiffs and their counsel
11 have any conflicts of interest with other class members, and
12 (2) will the representative plaintiffs and their counsel prosecute
13 the action vigorously on behalf of the class?" Staton v. Boeing
14 Co., 327 F.3d 938, 958 (9th Cir. 2003). Defendants challenge IP
15 Plaintiffs as to both requirements of the rule.

16 The mere potential for a conflict of interest is not
17 sufficient to defeat class certification; the conflict must be
18 actual, not hypothetical. See Cummings v. Connell, 316 F.3d 886,
19 896 (9th Cir. 2003) ("[T]his circuit does not favor denial of class
20 certification on the basis of speculative conflicts."); Soc. Servs.
21 Union, Local 535 v. County of Santa Clara, 609 F.2d 944, 948 (9th
22 Cir. 1979) ("Mere speculation as to conflicts that may develop at
23 the remedy stage is insufficient to support denial of initial class
24 certification."); Blackie v. Barrack, 524 F.2d 891, 909 (9th Cir.
25 1975) (noting that class members might have differing interests at
26 later stages of litigation, but that "potential conflicts" do not
27 present a valid reason for refusing to certify a class).

28 Defendants argue that several proposed representatives are not

1 adequate because they have business or personal relationships with
2 the attorneys who represent them in this case. For instance, one
3 representative Plaintiff is the uncle of one of Plaintiffs'
4 attorneys and some of the other representative Plaintiffs know some
5 of Plaintiffs' attorneys socially or have had prior business
6 dealings with them. However, Defendants have not shown how any of
7 these relationships have manifested a conflict nor have they
8 provided legal authority that establishes that these relationships
9 establish conflicts. To the contrary, it "would seem a bit
10 anomalous that an individual whose [relative or friend] has
11 developed a reputation as a competent [] lawyer should be
12 prohibited from turning to his [relative or friend] for assistance
13 if he has a legitimate legal claim." Lewis v. Goldsmith, 95 F.R.D.
14 15, 20 (D.N.J. 1982).

15 Defendants also challenge representative Plaintiffs' level of
16 participation in the case. While class representatives must be
17 familiar with the basics of, and "understand the gravamen" of,
18 their claims, it is not necessary that they be "intimately familiar
19 with every factual and legal issue in the case." Moeller v. Taco
20 Bell Corp., 220 F.R.D. 604, 611 (N.D. Cal. 2004). A class
21 representative "will be deemed inadequate only if she is
22 'startlingly unfamiliar' with the case." Id. (quoting Greenspan v.
23 Brassler, 78 F.R.D. 130, 133-34 (S.D.N.Y. 1978). Here, IP
24 Plaintiffs have been involved in providing answers to written
25 discovery and giving depositions and have shown that they can carry
26 out the duties of class representatives. Thus, IP Plaintiffs meet
27 the requirements of Rule 23(a)(4).
28

1 III. Class Certification Under Rule 23(b)(2)

2 IP Plaintiffs move for certification of a nation-wide
3 injunctive relief class under Rule 23(b)(2). The class "seeks to
4 enjoin Defendants from engaging in conduct that continues to cause
5 prices for SRAM to be fixed at supracompetitive levels." Motion at
6 40.

7 Rule 23(b)(2) permits certification where "the party opposing
8 the class has acted or refused to act on grounds that apply
9 generally to the class, so that final injunctive relief or
10 corresponding declaratory relief is appropriate respecting the
11 class as a whole." Federal R. Civ. P. 23(b). "Class certification
12 under Rule 23(b)(2) is appropriate only where the primary relief
13 sought is declaratory or injunctive." Zinser v. Accufix Research
14 Institute, Inc., 253 F.3d 1180, 1195 (9th Cir. 2001). A class
15 seeking monetary damages may be certified pursuant to Rule 23(b)(2)
16 where such relief is "merely incidental to [the] primary claim for
17 injunctive relief." Probe v. State Teachers' Retirement Sys., 780
18 F.2d 776, 780 (9th Cir. 1986).⁴

19 Here, the primary relief sought is an injunction. The first
20 paragraph of the complaint states: "This complaint is filed under
21 Section 16 of the Clayton Act, 15 U.S.C. § 26, to obtain injunctive
22 relief" Further, members of the nation-wide class are far
23 more numerous than the members of the Indirect State Classes. The
24 nation-wide class includes persons in all fifty states, the

25
26 ⁴IP Plaintiffs erroneously cite Dukes v. Wal-Mart, Inc., 509
27 F.3d 1168 (9th Cir. 2007). However, by order of the Ninth Circuit,
28 that opinion "shall not be cited as precedent by or to any court of
the Ninth Circuit." Dukes v. Wal-Mart, Inc., 556 F.3d 919 (9th
Cir. 2009).

1 District of Columbia, and Puerto Rico who indirectly purchased
2 SRAM. Moreover, the long-lasting effect of an injunction would
3 likely be greater than a damages award. See Ellis v. Costco
4 Wholesale Corp., 240 F.R.D. 627, 643 (N.D. Cal. 2007) (certifying
5 Rule 23(b)(2) class where injunction would have "far-reaching"
6 effects on defendant's promotion practices and would "benefit class
7 members in the same way").

8 Defendants argue that IP Plaintiffs do not have standing to
9 assert their claim for injunctive relief. The Court disagrees.
10 Article III limits the jurisdiction of the federal courts to
11 "cases" and "controversies." In order to satisfy the "case or
12 controversy" requirement, a plaintiff must show that: "(1) he or
13 she has suffered an injury in fact that is concrete and
14 particularized, and actual or imminent; (2) the injury is fairly
15 traceable to the challenged conduct; and (3) the injury is likely
16 to be redressed by a favorable court decision." Salmon Spawning &
17 Recovery Alliance v. Gutierrez, 545 F.3d 1220, 1225 (9th Cir.
18 2008). "Article III standing requires an injury that is actual or
19 imminent, not conjectural or hypothetical." Cole v. Oroville Union
20 High Sch. Dist., 228 F.3d 1092, 1100 (9th Cir. 2000) (internal
21 quotation marks omitted). A plaintiff seeking declaratory and
22 injunctive relief cannot rely solely on a past injury; instead, he
23 or she must demonstrate a "very significant possibility of future
24 harm" to warrant the requested relief. San Diego County Gun Rights
25 Comm. v. Reno, 98 F.3d 1121, 1126 (9th Cir. 1996).

26 At this stage in the proceedings, IP Plaintiffs have alleged
27 sufficient facts to establish Article III standing for their
28 nation-wide injunctive relief class. IP Plaintiffs allege that

1 Defendants and their co-conspirators entered into a continuing
2 conspiracy in restraint of trade artificially to raise prices for
3 SRAM in the United States. They further allege that these market-
4 wide overcharges were then passed through the chains of
5 distribution, and that they were injured by paying supra-
6 competitive prices when they indirectly purchased Defendants'
7 products.

8 Finally, Defendants argue that, because IP Plaintiffs seek to
9 certify a nation-wide injunctive class from November 1, 1996
10 through December 31, 2006, they have impliedly alleged that the
11 conspiracy ended in 2006. However, a finite proposed class period
12 does not defeat certification of a class under Rule 23(b)(2). See,
13 e.g., Jaffe v. Morgan Stanley & Co., 2008 WL 346417, at *3 (N.D.
14 Cal.) (certifying injunctive-relief class for settlement affecting
15 persons employed by the defendants "at any time between October 12,
16 2002 and December 3, 2007). Further, IP Plaintiffs allege that the
17 same market conditions that facilitated the conspiracy from 1996 to
18 2006 continue today. They allege that Defendants' price-fixing
19 resulted from a systematic, repeated pattern of sharing sensitive
20 competitive information which was greatly facilitated by the cross-
21 competitor business relationships that still exist. Thus, there is
22 alleged a significant risk that the conspiracy will persist or re-
23 form in the future. Therefore, the Court certifies a nation-wide
24 class under Rule 23(b)(2).

25 IV. Class Certification Under Rule 23(b)(3)

26 A. Predominance

27 IP Plaintiffs' motion for certification under Rule 23(b)(3)
28 centers around the issue of predominance. "The Rule 23(b)(3)

1 predominance inquiry tests whether proposed classes are
2 sufficiently cohesive to warrant adjudication by representation."
3 Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 623 (1997). "When
4 common questions present a significant aspect of the case and they
5 can be resolved for all members of the class in a single
6 adjudication, there is clear justification for handling the dispute
7 on a representative rather than an individual basis." Hanlon, 150
8 F.3d at 1022 (internal quotation marks omitted). "The common
9 issues must only predominate; they do not have to be dispositive of
10 the litigation." In re Lorazepam & Clorazepate Antitrust Litig.,
11 202 F.R.D. 12, 29 (D.D.C. 2001).

12 To determine whether the predominance requirement is
13 satisfied, "courts must identify the issues involved in the case
14 and determine which are subject to 'generalized proof,' and which
15 must be the subject of individualized proof." In re Dynamic Random
16 Access Memory (DRAM) Antitrust Litig., 2006 WL 1530166, at *6 (N.D.
17 Cal.).

18 Liability in an antitrust case is based on: (1) whether there
19 was a conspiracy to fix prices in violation of the antitrust laws;
20 (2) whether the plaintiffs sustained an antitrust injury, or the
21 "impact" of the defendants' unlawful activity; and (3) the amount
22 of damages sustained as a result of the antitrust violations. In
23 re Dynamic Random Access Memory (DRAM) Antitrust Litig., 2006 WL
24 1530166, at *7 (N.D. Cal.).

25 IP Plaintiffs need not show that there will be common proof on
26 each element of the claim. "In price-fixing cases, courts
27 repeatedly have held that the existence of the conspiracy is the
28 predominant issue and warrants certification even where significant

1 individual issues are present." Thomas & Thomas Rodmakers, Inc. v.
2 Newport Adhesives & Composites, Inc., 209 F.R.D. 159, 167 (C.D.
3 Cal. 2002). "[C]ommon liability issues such as conspiracy or
4 monopolization have, almost invariably, been held to predominate
5 over individual issues." 6 Newberg on Class Actions, at § 18.25.

6 Here, the central issue in the case is the existence of
7 Defendants' price-fixing conspiracy. IP Plaintiffs allege that
8 Defendants engaged in illicit communications with each other to
9 share pricing and other sensitive competitive information related
10 to SRAM, and that they set common minimum prices of SRAM based on
11 this information. Differences among class members regarding the
12 SRAM products they purchased, from whom they purchased the products
13 and the price at which they purchased them relate primarily to the
14 amount of damages and not the common issue of Defendants' conduct.

15 Defendants focus their arguments on the second element of the
16 antitrust claim; they assert that IP Plaintiffs have failed to
17 demonstrate that common proof can be used to show class-wide
18 impact. As the court in DRAM stated:

19 [D]uring the class certification stage, the court must
20 simply determine whether plaintiffs have made a
21 sufficient showing that the evidence they intend to
22 present concerning antitrust impact will be made using
23 generalized proof common to the class and that these
24 common issues will predominate. The court cannot weigh
in on the merits of plaintiffs' substantive arguments,
and must avoid engaging in a battle of expert testimony.
Plaintiffs need only advance a plausible methodology to
demonstrate that antitrust injury can be proven on a
class-wide basis.

25 Id. at *9 (citations and internal quotation marks omitted). "On a
26 motion for class certification, the Court only evaluates whether
27 the method by which plaintiffs propose to prove class-wide impact
28 could prove such impact, not whether plaintiffs in fact can prove

1 class-wide impact." In re Magnetic Audiotape Antitrust Litig.,
2 2001 WL 619305, at *4 (S.D.N.Y. 2001); See In re Flat Glass
3 Antitrust Litig., 191 F.R.D. 472, 485-88 (W.D. Pa. 1999); In re
4 Polypropelene Carpet Antitrust Litig., 178 F.R.D. 603, 620-23 (N.D.
5 Ga. 1997).

6 Many courts have recognized a presumption of class-wide
7 antitrust impact.⁵ For instance, California courts routinely
8 recognize a presumption of class-wide impact for indirect purchaser
9 antitrust price-fixing claims. See B.W.I. Custom Kitchen v. Owens-
10 Illinois, Inc., 191 Cal. App. 3d 1341, 1351-52 (1987) ("courts have
11 assumed consumers were injured when they purchased products in an
12 anticompetitive market" even when the market is "characterized by
13 individually negotiated prices, varying profit margins, and intense
14 competition"); Hopkins v. De Beers Centenary AG, 2005 WL 1020868,
15 at *4 (Cal. Super.) ("fact-of-injury is assumed for class
16 certification purposes"); Microsoft I-V Cases, 2000 WL 35568182, at
17 88,563-64 (Cal. Super.) ("A per se violation raises a presumption
18 of harm because conduct such as a conspiracy to fix prices has the
19 sole purpose of artificially raising the price of the item. It
20 follows that consumers of the product pay more than they would in a
21 competitive market even if the prices charged to direct purchasers
22 vary.").

23 The presumption of impact is not necessarily rebutted even if
24 an intermediary has altered the product. In re Cipro Cases I and
25 II, 121 Cal App. 4th 402, 416 (2004). Impact "is ordinarily a

26
27 ⁵The existence of a presumption of antitrust impact is a
28 matter of substantive law. Computer Economics, Inc. v. Gartner
Group, Inc., 50 F. Supp. 2d 980, 990 (S.D. Cal. 1999); In re
Relafen Antitrust Litig., 221 F.R.D. 260, 288 (D. Mass. 2004).

1 permissible assumption in cases where consumers have purchased
2 products in an anticompetitive market, even if some consumers did
3 not actually have to pay the overcharge because of their individual
4 circumstances." Id. at 413.

5 Some federal courts recognize the same presumption. See In re
6 Potash Antitrust Litig., 159 F.R.D. 682, 693 (D. Minn. 1995) ("[A]s
7 a general rule in antitrust price-fixing cases, questions common to
8 the members of the class will predominate over questions affecting
9 only individual members."); In re Catfish Antitrust Litig., 826 F.
10 Supp. 1019, 1041 (N.D. Miss. 1993) ("[I]n an illegal price-fixing
11 scheme, there is a presumption that all purchasers will be
12 impacted/injured by having to pay the higher price."); In re Cement
13 and Concrete Antitrust Litig., 1979 WL 1595, at *3 (D. Ariz. 1979)
14 ("Courts have consistently held that an illegal price fixing scheme
15 presumptively impacts upon all purchasers of a price fixed product
16 in a conspiratorially affected market.").

17 Notwithstanding this presumption, IP Plaintiffs cannot
18 demonstrate common impact by simply alleging a price-fixing
19 conspiracy. The "problem of proof in an indirect purchaser case is
20 intrinsically more complex [than in a direct purchaser case],
21 because the damage model must account for the actions of innocent
22 intermediaries who allegedly passed on the overcharge." William H.
23 Page, The Limits of State Indirect Purchaser Suits: Class
24 Certification in the Shadow of Illinois Brick, 67 Antitrust L.J. 4,
25 12 (1999).

26 The Court granted class certification in the Direct Purchaser
27 (DP) Plaintiffs' class action. There, despite customer, pricing
28 and product differences, the Court held that the methodologies

1 advanced by DP Plaintiffs' expert would allow impact to be
2 demonstrated with generalized proof. However, here, the issue is
3 "from one to several steps removed from the inquiry in the direct
4 purchaser class action." Methionine I, 204 F.R.D. at 164. IP
5 Plaintiffs must "show that there is a reasonable method for
6 determining on a class-wide basis whether and to what extent that
7 overcharge was passed on to each of the [IP Plaintiffs] at all
8 levels of the distribution chain." Id.; see also, Robert Harris &
9 Lawrence A. Sullivan, Passing on the Monopoly Overcharge: A
10 Comprehensive Policy Analysis, 128 U. Pa. L. Rev. 269, 315 (1979)
11 (H&S Article) ("Before the incidence of an overcharge can be
12 traced, one must be able to identify the distribution chain and
13 follow transactions down the chain."). IP Plaintiffs must find a
14 way to account for the decision-making of a variety of resellers
15 and manufacturers in an intricate distribution chan. In evaluating
16 a method to prove injury to all IP Plaintiffs, it is important to
17 note that SRAM is but one component of an end-product and that it
18 was sold to some indirect purchasers as a stand-alone product but
19 to others bundled with other products. "Each divergent factor --
20 customer size, type, procurement channel, product, distribution
21 step -- is a factor that increases the likelihood that proof of
22 pass-through can only be shown with resort to individualized
23 proof." California v. Infineon Technologies AG, 2008 WL 4155665,
24 at *11 (N.D. Cal.).

25 Here, IP Plaintiffs' method of proving injury on a class-wide
26 basis is based on the declarations of their experts, economists
27 Drs. Michael J. Harris and Mark Dwyer. Dr. Harris explains that,
28 according to the H&S article, there are five classes of factors

1 that should be considered in evaluating whether generalized
2 evidence can be used to determine the rate of pass-through. These
3 include temporal relationships, pricing practices, directness of
4 affected costs, supply and demand.

5 Temporal factors relate to the frequency of price changes and
6 the duration of anti-competitive overcharge. Pricing practices
7 relate to the consistency and basis of pricing policy. The
8 directness of affected costs refers to whether an overcharge
9 affects a direct (i.e. variable) cost or an indirect (i.e.
10 overhead) cost. Because SRAM is a direct cost, Dr. Harris claims
11 that overcharges will be passed through sooner and at a higher
12 rate. The more elastic the supply-curve of an individual
13 intermediary the higher is the rate of pass-through. A less
14 elastic demand-curve will increase the rate of pass-through. Dr.
15 Harris concludes, "Taken together, the theoretical issues discussed
16 above as applied to the SRAM product markets indicate that, a-
17 priori, one fully expects that these markets would exhibit a high
18 degree of pass through." Harris Decl. ¶ 67. This economic
19 evidence would be offered by the proposed class representatives and
20 by every single individual class member if their claims were
21 separately tried to a jury to prove impact and the amount of
22 damages suffered. Thus, this evidence is common to all class
23 members for class certification purposes.

24 Dr. Dwyer proposes two different types of regression models
25 that will establish that the fact of injury can be shown on a
26 class-wide basis using common proof: a reduced form model and a
27 structural model. A reduced form model can be used when component
28 cost information is provided. This model measures the extent of

1 pass-through of component costs and the prices paid for end-use
2 products. The structural model can be used regardless of whether
3 component cost information is available. This model uses end-use
4 purchase price information and analyzes market supply and demand to
5 determine the presence of pass-through.

6 Defendants argue that the reduced form model fails to take
7 into account actual SRAM cost data and that the model ignores
8 entire distribution chains. However, Dr. Dwyer states that the
9 "data provided by the OEMs specify SRAM cost components themselves,
10 and allow for a further statistical test, precisely, whether the
11 SRAM cost pass-through differs from the overall BoM (i.e.,
12 component cost) pass-through rate." Dwyer Decl. ¶ 38. In fact,
13 Dr. Dwyer performed a preliminary reduced form analysis utilizing
14 both total BoM costs and SRAM component costs for a router that
15 contains SRAM and found a 103 percent pass-through rate on sales to
16 end-users. Dwyer Reply Decl. ¶¶ 30-32. Defendants assert that
17 relying on BoM data is improper because it is not an accurate
18 source of costs; however, BoMs are commonly used by OEMs and
19 contract manufacturers in the electronics industry to monitor input
20 costs and adjust pricing.

21 Defendants also argue that the structural model is flawed
22 because it assumes pass-through without actually testing for it.
23 However, the structural model derives a pass-through rate from many
24 economic variables, such as the price elasticity of end-use
25 products, the structure of competition among product suppliers and
26 the degree to which cost changes are common across end-use
27 products. Dr. Dwyer notes that pass-through rates vary
28 significantly depending on the values of these variables.

1 Defendants also criticize IP Plaintiffs for using aggregated
2 and averaged data in their structural model because such data could
3 yield "false-positive pass-through." Opposition at 31. However,
4 this criticism is not well taken. In the context of an IP
5 antitrust case against Microsoft, a district court in Minnesota
6 held,

7 The damages question for trial is presumably not about
8 whether a specific Microsoft price increase found its
9 way through the distribution chain and resulted in an
10 increase in the price paid by a specific class member.
11 Rather, the question is how a series of Microsoft price
12 increases, and/or a series of Microsoft failures to
13 reduce prices, impacted the price each consumer paid.
14 The question of what would have happened but for
15 Microsoft's monopoly overcharge is a hypothetical, and
16 a hypothetical question generally cannot be answered by
17 historical data about what actually happened, but must
18 often be answered by general principles about what
19 generally tends to happen. Thus, average pass through
20 rates appear reasonable and even necessary to prove
21 damages here.

22 Gordon v. Microsoft Corp., 2003 WL 23105550, at *3 (D. Minn.); see
23 also In re Cardizem CD Antitrust Litig., 200 F.R.D. 326, 345, 350
24 (E.D. Mich. 2001); In re NASDAQ Market-Makers Antitrust Litig., 169
25 F.R.D. 493, 523 (S.D.N.Y. 1996); Presidio Golf Club of San
26 Francisco v. National Linen Supply Corp., 1976 WL 1359, at *5 (N.D.
27 Cal.). Thus, the use of averaged and aggregated data is not fatal
28 to IP Plaintiffs' econometric models.

29 Defendants argue that the SRAM distribution chain is too
30 complex from which to discern evidence of pass-through. However,
31 these complexities do not preclude an estimation of whether an SRAM
32 overcharge impacted end purchasers of SRAM-containing products.
33 Dr. Harris has noted that many other markets have the same features
34 as the markets at issue here, and those markets are routinely
35 tested for relationships among variables of interest. Harris Reply

1 Decl. ¶¶ 44-48. Moreover, divergent pricing and sales practices
2 are not necessarily an impediment to measuring pass-through.
3 Courts have held that “contentions of infinite diversity of
4 product, marketing practices, and pricing have been made in
5 numerous cases and rejected.” Rosack v. Volvo of America Corp.,
6 131 Cal. App. 3d 741, 755 (1982) (quoting In re Folding Carton
7 Antitrust Litig., 75 F.R.D. 727, 734 (N.D. Ill. 1977)). Courts may
8 look past “surface distinctions” in “marketing mechanisms” when
9 analyzing whether to certify indirect purchaser classes;
10 “[i]dentical products, uniform prices, and unitary distribution
11 patterns are not indispensable for class certification in this
12 context.” B.W.I., 191 Cal. App. 3d at 1350 (quoting Shelter
13 Realty Corp. v. Allied Maintenance Corp., 75 F.R.D. 34, 37
14 (S.D.N.Y. 1977)).

15 Defendants also argue that, because SRAM is a relatively small
16 portion of the price of an overall product, any price increase in
17 SRAM will have a de minimis effect. This argument has no merit.
18 Defendants may not shield themselves from liability by fixing
19 prices on a relatively inexpensive item. See Free v. Abbott
20 Laboratories, 982 F. Supp. 1211, 1217 (M.D. La. 1997) (stating that
21 “a price fixing scheme at the top of the distribution chain” would
22 be actionable if it only “increased the retail price of the product
23 by a few cents per unit”).

24 In sum, IP Plaintiffs have presented plausible methodologies
25 that will be used to perform quantitative analyses to demonstrate
26 class-wide injury.

27 As to the third element of an anti-trust claim, damages,
28 “[a]ntitrust plaintiffs have a limited burden with respect to

1 showing that individual damages issues do not predominate." In re
2 Potash Antitrust Litig., 159 F.R.D. at 697. IP Plaintiffs are not
3 required to "supply a 'precise damage formula' at the certification
4 stage of an antitrust action. Instead, in assessing whether to
5 certify a class, the Court's inquiry is limited to whether or not
6 the proposed methods are so insubstantial as to amount to no method
7 at all." Id.

8 IP Plaintiffs have proffered three methodologies for
9 calculating damages on a class-wide basis: the first compares SRAM
10 prices before and after the period of the price-fixing conspiracy;
11 the second compares SRAM prices during the class period with prices
12 for comparable products; and the third uses Defendants' cost data
13 to estimate what competitive prices for SRAM should have been. Dr.
14 Dwyer concludes that these methods will "allow direct computation
15 of per-unit overcharges to indirect SRAM purchasers." Dwyer Decl.
16 ¶ 63. The validity of those methods "will be adjudicated at trial
17 based upon economic theory, data sources, and statistical
18 techniques that are entirely common to the class." In re Market-
19 Makers Antitrust Litig., 169 F.R.D. at 521.

20 Defendants have not shown that the methods are "so
21 insubstantial as to amount to no method at all." Potash, 159
22 F.R.D. at 697. Therefore, the Court concludes that common issues
23 predominate with respect to IP Plaintiffs' proof of the damages
24 element of the antitrust conspiracy claim, as well as the
25 conspiracy and impact elements.

26 B. Superiority

27 Rule 23(b)(3) also requires that class resolution must be
28 "superior to other available methods for the fair and efficient

1 adjudication of the controversy." Fed. R. Civ. P. 23(b)(3). "The
2 policy at the very core of the class action mechanism is to
3 overcome the problem that small recoveries do not provide the
4 incentive for any individual to bring a solo action prosecuting his
5 or her rights." Amchem Prod., Inc. v. Windsor, 521 U.S. 591, 617
6 (1997). In antitrust cases such as this, the damages of individual
7 indirect purchasers are likely to be too small to justify
8 litigation, but a class action would offer those with small claims
9 the opportunity for meaningful redress.

10 Certifying the IP national injunctive relief class and state
11 classes is superior to, and more manageable than, any other
12 procedure available for the treatment of factual and legal issues
13 raised by IP Plaintiffs' claims. What would be unmanageable is the
14 institution of countless individual lawsuits with the same facts
15 and legal issues. See In re Terazosin Hydrochloride Antitrust
16 Litig., 220 F.R.D. 672, 700 (S.D. Fla. 2004) ("Multiple lawsuits
17 brought by thousands of consumers and third-party payors in
18 seventeen different states would be costly, inefficient, and would
19 burden the court system."); See In re Cardizem, 200 F.R.D. at 351.

20 Defendants are also concerned that this Court will be unable
21 to manage state-law claims from twenty-seven state classes.
22 However, there is no qualitative difference between a federal
23 district court considering class certification of state claims
24 under that state law and a federal court serving as a multi-
25 district litigation forum performing the same task for many federal
26 courts. Moreover, courts frequently certify classes under the laws
27 of multiple jurisdictions. See, e.g., Norvir Anti-Trust Litig.,
28 2007 WL 1689899, at *8 (N.D. Cal.) (certifying class under the

1 common law of forty-eight states); In re Pharm. Indus. Average
2 Wholesale Price Litig., 233 F.R.D. 229, 230-31 (D. Mass. 2006)
3 (certifying multi-state defendant subclasses under the consumer
4 protection laws of forty-one states). Thus, a class action is the
5 superior method of resolving this controversy.

6 V. Expert Evidence

7 To support their motion for class certification, IP Plaintiffs
8 rely on the declarations of experts Drs. Mark Dwyer and Michael
9 Harris. To support their opposition to IP Plaintiffs' motion,
10 Defendants rely on the declarations of expert Dr. Michelle Burtis.
11 Each party moves to exclude the other's expert declarations under
12 Federal Rule of Evidence 702 and Daubert v. Merrell Dow
13 Pharmaceuticals, Inc., 509 U.S. 579 (1993).

14 Federal Rule of Evidence 702 provides:

15 If scientific, technical, or other specialized knowledge
16 will assist the trier of fact to understand the evidence
17 or determine a fact in issue, a witness qualified as an
18 expert by knowledge, skill, experience, training, or
19 education, may testify thereto in the form of an opinion
20 or otherwise, if (1) the testimony is based upon
21 sufficient facts or data, (2) the testimony is the product
22 of reliable principles and methods, and (3) the witness
23 has applied the principles and methods reliably to the
24 facts of the case.

25 Under the Federal Rules of Evidence, "the trial judge must
26 ensure that any and all scientific testimony or evidence admitted
27 is not only relevant, but reliable." Daubert, 509 U.S. at 589. At
28 the class certification stage of the proceedings, "robust
gatekeeping" of expert evidence is not required; rather, the court
must assess only whether expert evidence is useful in evaluating
whether class certification requirements have been met. Kurihara
v. Best Buy Co., 2007 WL 2501698, at *5 (N.D. Cal.) Daubert's

1 relevance and reliability requirements serve as "useful guideposts"
2 but the court retains discretion in determining how to test
3 reliability as well as whether an expert's testimony is both
4 relevant and reliable. Id.; see also Kumho Tire Co. v. Carmichael,
5 526 U.S. 137, 152 (1999). Although this standard is "more
6 lenient," the court "'must ensure that the basis of the expert
7 opinion is not so flawed that it would be inadmissible as a matter
8 of law.'" Sepulveda v. Wal-Mart Stores, Inc., 237 F.R.D. 229, 235
9 (C.D. Cal. 2006) (quoting In re Visa Check/MasterMoney Antitrust
10 Litig., 280 F.3d 124, 135 (2d Cir. 2001)).

11 The question for the court is whether the expert evidence is
12 sufficiently probative to be useful in evaluating whether class
13 certification requirements have been met. See In re Polypropylene
14 Carpet Antitrust Litigation, 996 F. Supp. 18, 26 (N.D. Ga. 1997)
15 (at class certification stage court only examined whether the
16 expert's methodology will (a) comport with basic principles,
17 (b) have any probative value and (c) primarily use evidence that is
18 common to all members of the proposed class); Bacon v. Honda of
19 America Mfg., Inc., 205 F.R.D. 466, 470-71 (S.D. Ohio 2001) ("'For
20 common questions to exist, plaintiffs' statistical evidence must
21 logically support the inference of discrimination against the class
22 asserted.'") (citation omitted).

23 Although each side presents myriad valid challenges to the
24 other's expert, the Court concludes that these challenges are of
25 the type that go to the weight of the evidence, not the
26 admissibility. The economic principles and regression models
27 relied upon by IP Plaintiffs' experts, Drs. Harris and Dwyer, are
28 solidly grounded in the academic literature. They cite extensive

1 facts and data from this case that they reviewed and relied upon in
2 rendering their opinions. The Court concludes that their opinions
3 are reliable and admissible.

4 Similarly, Dr. Burtis' expert opinions are also supported by
5 academic and economic literature. She reviewed IP Plaintiffs'
6 allegations, Drs. Harris' and Dwyer's opinions and third-party data
7 related to sales and purchases of the relevant products.
8 Therefore, the Court concludes that her opinions are also reliable
9 and admissible. The parties' motions to exclude reflect
10 disagreement with the opposing parties' position; however, this
11 disagreement does not warrant exclusion.⁶

12 CONCLUSION

13 For the foregoing reasons, the Court grants IP Plaintiffs'
14 motion (Docket No. 645) for class certification.

15 The following nation-wide plaintiff class is hereby certified
16 pursuant to Fed. R. Civ. P. 23(a) and (b)(2) for injunctive and
17 declaratory relief:

18 All persons and entities residing in the United States
19 who, from November 1, 1996 through at least December 31,
20 2006, purchased SRAM in the United States indirectly from
21 the Defendants for their own use and not for resale.
22 Specifically excluded from this Class are the Defendants;
23 the officers, directors or employees of any Defendant;
24 any entity in which any Defendant has a controlling
interest; and any affiliate, legal representative, heir
or assign of any Defendant. Also excluded are any
federal, state or local governmental entities, any
judicial officer presiding over this action and the
members of his/her immediate family and judicial staff,
and any juror assigned to this action.

25
26 ⁶The Court notes that IP Plaintiffs did not violate the
27 Court's May 21, 2009 Discovery Order. IP Plaintiffs' experts were
28 permitted to analyze and opine on third party information they
possessed at the time that they filed their initial declarations to
the extent that information was "referred to and analyzed" by Dr.
Burtis.

1 In addition, the following state plaintiff classes are hereby
2 certified pursuant to Fed. R. Civ. P. 23(a) and (b)(3):

3 Arizona:

4 All persons and entities in Arizona who indirectly
5 purchased SRAM and/or products containing SRAM, for end
6 use and not for resale, that was manufactured and/or sold
7 by one or more of the Defendants during the Class Period.
8 Specifically excluded from this Class are the Defendants,
9 the officers, directors or employees of any Defendant; any
10 entity in which any Defendant has a controlling interest;
11 and any affiliate, legal representative, heir or assign of
12 any Defendant. Also excluded are any federal, state or
13 local governmental entities, any judicial officer
14 presiding over this action and the members of his/her
15 immediate family and judicial staff, and any juror
16 assigned to this action.

11 Arkansas:

12 All persons and entities in Arkansas who indirectly
13 purchased SRAM and/or products containing SRAM, for end
14 use and not for resale, that was manufactured and/or sold
15 by one or more of the Defendants during the Class Period.
16 Specifically excluded from this Class are the Defendants,
17 the officers, directors or employees of any Defendant; any
18 entity in which any Defendant has a controlling interest;
19 and any affiliate, legal representative, heir or assign of
20 any Defendant. Also excluded are any federal, state or
21 local governmental entities, any judicial officer
22 presiding over this action and the members of his/her
23 immediate family and judicial staff, and any juror
24 assigned to this action.

19 California:

20 All persons and entities in California who indirectly
21 purchased SRAM and/or products containing SRAM, for end
22 use and not for resale, that was manufactured and/or sold
23 by one or more of the Defendants during the Class Period.
24 Specifically excluded from this Class are the Defendants,
25 the officers, directors or employees of any Defendant; any
26 entity in which any Defendant has a controlling interest;
27 and any affiliate, legal representative, heir or assign of
28 any Defendant. Also excluded are any federal, state or
29 local governmental entities, any judicial officer
30 presiding over this action and the members of his/her
31 immediate family and judicial staff, and any juror
32 assigned to this action.

27 Florida:

28 All persons and entities in Florida who indirectly

1 purchased SRAM and/or products containing SRAM, for end
2 use and not for resale, that was manufactured and/or sold
3 by one or more of the Defendants during the Class Period.
4 Specifically excluded from this Class are the Defendants,
5 the officers, directors or employees of any Defendant; any
6 entity in which any Defendant has a controlling interest;
7 and any affiliate, legal representative, heir or assign of
8 any Defendant. Also excluded are any federal, state or
9 local governmental entities, any judicial officer
10 presiding over this action and the members of his/her
11 immediate family and judicial staff, and any juror
12 assigned to this action.

13 Hawaii:

14 All persons and entities in Hawaii who indirectly purchased
15 SRAM and/or products containing SRAM, for personal, family
16 or household use, that was manufactured and/or sold by one
17 or more of the Defendants during the Class Period.
18 Specifically excluded from this Class are the Defendants,
19 the officers, directors or employees of any Defendant; any
20 entity in which any Defendant has a controlling interest;
21 and any affiliate, legal representative, heir or assign of
22 any Defendant. Also excluded are any federal, state or
23 local governmental entities, any judicial officer presiding
24 over this action and the members of his/her immediate
25 family and judicial staff, and any juror assigned to this
26 action.

27 Iowa:

28 All persons and entities in Iowa who indirectly purchased
SRAM and/or products containing SRAM, for end use and not
for resale, that was manufactured and/or sold by one or
more of the Defendants during the Class Period.
Specifically excluded from this Class are the Defendants,
the officers, directors or employees of any Defendant; any
entity in which any Defendant has a controlling interest;
and any affiliate, legal representative, heir or assign of
any Defendant. Also excluded are any federal, state or
local governmental entities, any judicial officer presiding
over this action and the members of his/her immediate
family and judicial staff, and any juror assigned to this
action.

Kansas:

All persons and entities in Kansas who indirectly purchased
SRAM and/or products containing SRAM, for personal, family
or household use, that was manufactured and/or sold by one
or more of the Defendants during the Class Period.
Specifically excluded from this Class are the Defendants,
the officers, directors or employees of any Defendant; any
entity in which any Defendant has a controlling interest;
and any affiliate, legal representative, heir or assign of

1 any Defendant. Also excluded are any federal, state or
2 local governmental entities, any judicial officer presiding
3 over this action and the members of his/her immediate
family and judicial staff, and any juror assigned to this
action.

4 Maine:

5 All persons and entities in Maine who indirectly purchased
6 SRAM and/or products containing SRAM, for personal family
or household use, that was manufactured and/or sold by one
7 or more of the Defendants during the Class Period.
Specifically excluded from this Class are the Defendants,
8 the officers, directors or employees of any Defendant; any
entity in which any Defendant has a controlling interest;
9 and any affiliate, legal representative, heir or assign of
any Defendant. Also excluded are any federal, state or
10 local governmental entities, any judicial officer presiding
over this action and the members of his/her immediate
11 family and judicial staff, and any juror assigned to this
action.

12 Massachusetts:

13 All persons and entities in Massachusetts who indirectly
14 purchased SRAM and/or products containing SRAM, for end use
and not for resale, that was manufactured and/or sold by
15 one or more of the Defendants during the Class Period.
Specifically excluded from this Class are the Defendants,
16 the officers, directors or employees of any Defendant; any
entity in which any Defendant has a controlling interest;
17 and any affiliate, legal representative, heir or assign of
any Defendant. Also excluded are any federal, state or
18 local governmental entities, any judicial officer presiding
over this action and the members of his/her immediate
19 family and judicial staff, and any juror assigned to this
action.

20 Michigan:

21 All persons and entities in Michigan who indirectly
22 purchased SRAM and/or products containing SRAM, for end use
and not for resale, that was manufactured and/or sold by
23 one or more of the Defendants during the Class Period.
Specifically excluded from this Class are the Defendants,
24 the officers, directors or employees of any Defendant; any
entity in which any Defendant has a controlling interest;
25 and any affiliate, legal representative, heir or assign of
any Defendant. Also excluded are any federal, state or
26 local governmental entities, any judicial officer presiding
over this action and the members of his/her immediate
27 family and judicial staff, and any juror assigned to this
action.

1 Minnesota:

2 All persons and entities in Minnesota who indirectly
3 purchased SRAM and/or products containing SRAM, for end use
4 and not for resale, that was manufactured and/or sold by
5 one or more of the Defendants during the Class Period.
6 Specifically excluded from this Class are the Defendants,
7 the officers, directors or employees of any Defendant; any
8 entity in which any Defendant has a controlling interest;
9 and any affiliate, legal representative, heir or assign of
10 any Defendant. Also excluded are any federal, state or
11 local governmental entities, any judicial officer presiding
12 over this action and the members of his/her immediate
13 family and judicial staff, and any juror assigned to this
14 action.

9 Montana:

10 All persons and entities in Montana who indirectly
11 purchased SRAM and/or products containing SRAM, for end use
12 and not for resale, that was manufactured and/or sold by
13 one or more of the Defendants during the Class Period.
14 Specifically excluded from this Class are the Defendants,
15 the officers, directors or employees of any Defendant; any
16 entity in which any Defendant has a controlling interest;
17 and any affiliate, legal representative, heir or assign of
18 any Defendant. Also excluded are any federal, state or
19 local governmental entities, any judicial officer presiding
20 over this action and the members of his/her immediate
21 family and judicial staff, and any juror assigned to this
22 action.

17 Nevada:

18 All persons and entities in Nevada who indirectly purchased
19 SRAM and/or products containing SRAM, for end use and not
20 for resale, that was manufactured and/or sold by one or
21 more of the Defendants during the Class Period.
22 Specifically excluded from this Class are the Defendants,
23 the officers, directors or employees of any Defendant; any
24 entity in which any Defendant has a controlling interest;
25 and any affiliate, legal representative, heir or assign of
26 any Defendant. Also excluded are any federal, state or
27 local governmental entities, any judicial officer presiding
28 over this action and the members of his/her immediate
family and judicial staff, and any juror assigned to this
action.

25 New Mexico:

26 All persons and entities in New Mexico who indirectly
27 purchased SRAM and/or products containing SRAM, for end use
28 and not for resale, that was manufactured and/or sold by one
or more of the Defendants during the Class Period.
Specifically excluded from this Class are the Defendants,

1 the officers, directors or employees of any Defendant; any
2 entity in which any Defendant has a controlling interest;
3 and any affiliate, legal representative, heir or assign of
4 any Defendant. Also excluded are any federal, state or
5 local governmental entities, any judicial officer presiding
6 over this action and the members of his/her immediate family
7 and judicial staff, and any juror assigned to this action.

8 New York:

9 All persons and entities in New York who indirectly
10 purchased SRAM and/or products containing SRAM, for end use
11 and not for resale, that was manufactured and/or sold by one
12 or more of the Defendants during the Class Period.
13 Specifically excluded from this Class are the Defendants,
14 the officers, directors or employees of any Defendant; any
15 entity in which any Defendant has a controlling interest;
16 and any affiliate, legal representative, heir or assign of
17 any Defendant. Also excluded are any federal, state or
18 local governmental entities, any judicial officer presiding
19 over this action and the members of his/her immediate family
20 and judicial staff, and any juror assigned to this action.

21 North Carolina:

22 All persons and entities in North Carolina who indirectly
23 purchased SRAM and/or products containing SRAM, for end use
24 and not for resale, that was manufactured and/or sold by one
25 or more of the Defendants during the Class Period.
26 Specifically excluded from this Class are the Defendants,
27 the officers, directors or employees of any Defendant; any
28 entity in which any Defendant has a controlling interest;
and any affiliate, legal representative, heir or assign of
any Defendant. Also excluded are any federal, state or
local governmental entities, any judicial officer presiding
over this action and the members of his/her immediate family
and judicial staff, and any juror assigned to this action.

North Dakota:

All persons and entities in North Dakota who indirectly
purchased products containing SRAM, for end use and not for
resale, that were manufactured and/or sold by one or more of
the Defendants during the Class Period. Specifically
excluded from this Class are the Defendants, the officers,
directors or employees of any Defendant; any entity in which
any Defendant has a controlling interest; and any affiliate,
legal representative, heir or assign of any Defendant. Also
excluded are any federal, state or local governmental
entities, any judicial officer presiding over this action
and the members of his/her immediate family and judicial
staff, and any juror assigned to this action.

1 Pennsylvania:

2 All persons and entities in Pennsylvania who indirectly
3 purchased SRAM and/or products containing SRAM, for
4 personal, family or household use, that was manufactured
5 and/or sold by one or more of the Defendants during the
6 Class Period. Specifically excluded from this Class are the
7 Defendants, the officers, directors or employees of any
8 Defendant; any entity in which any Defendant has a
controlling interest; and any affiliate, legal
representative, heir or assign of any Defendant. Also
excluded are any federal, state or local governmental
entities, any judicial officer presiding over this action
and the members of his/her immediate family and judicial
staff, and any juror assigned to this action.

9 Puerto Rico:

10 All persons and entities in Puerto Rico who indirectly
11 purchased products containing SRAM, for end use and not for
12 resale, that were manufactured and/or sold by one or more of
13 the Defendants during the Class Period. Specifically
14 excluded from this Class are the Defendants, the officers,
15 directors or employees of any Defendant; any entity in which
16 any Defendant has a controlling interest; and any affiliate,
legal representative, heir or assign of any Defendant. Also
excluded are any federal, state or local governmental
entities, any judicial officer presiding over this action
and the members of his/her immediate family and judicial
staff, and any juror assigned to this action.

17 Rhode Island:

18 All persons and entities in Rhode Island who indirectly
19 purchased SRAM and/or products containing SRAM, for
20 personal, family or household use, that was manufactured
21 and/or sold by one or more of the Defendants during the
22 Class Period. Specifically excluded from this Class are the
23 Defendants, the officers, directors or employees of any
24 Defendant; any entity in which any Defendant has a
controlling interest; and any affiliate, legal
representative, heir or assign of any Defendant. Also
excluded are any federal, state or local governmental
entities, any judicial officer presiding over this action
and the members of his/her immediate family and judicial
staff, and any juror assigned to this action.

25 South Dakota:

26 All persons and entities in South Dakota who indirectly
27 purchased SRAM and/or products containing SRAM, for end use
28 and not for resale, that was manufactured and/or sold by one
or more of the Defendants during the Class Period.
Specifically excluded from this Class are the Defendants,
the officers, directors or employees of any Defendant; any

1 entity in which any Defendant has a controlling interest;
2 and any affiliate, legal representative, heir or assign of
3 any Defendant. Also excluded are any federal, state or
4 local governmental entities, any judicial officer presiding
5 over this action and the members of his/her immediate family
6 and judicial staff, and any juror assigned to this action.

7 Tennessee:

8 All persons and entities in Tennessee who indirectly
9 purchased SRAM and/or products containing SRAM, for end use
10 and not for resale, that was manufactured and/or sold by one
11 or more of the Defendants during the Class Period.
12 Specifically excluded from this Class are the Defendants,
13 the officers, directors or employees of any Defendant; any
14 entity in which any Defendant has a controlling interest;
15 and any affiliate, legal representative, heir or assign of
16 any Defendant. Also excluded are any federal, state or
17 local governmental entities, any judicial officer presiding
18 over this action and the members of his/her immediate family
19 and judicial staff, and any juror assigned to this action.

20 Utah:

21 All persons and entities in Utah who indirectly purchased
22 SRAM and/or products containing SRAM, for end use and not
23 for resale, that was manufactured and/or sold by one or more
24 of the Defendants during the Class Period. Specifically
25 excluded from this Class are the Defendants, the officers,
26 directors or employees of any Defendant; any entity in which
27 any Defendant has a controlling interest; and any affiliate,
28 legal representative, heir or assign of any Defendant. Also
excluded are any federal, state or local governmental
entities, any judicial officer presiding over this action
and the members of his/her immediate family and judicial
staff, and any juror assigned to this action.

Washington:

All persons and entities in Washington who indirectly
purchased SRAM and/or products containing SRAM, for end use
and not for resale, that was manufactured and/or sold by one
or more of the Defendants during the Class Period.
Specifically excluded from this Class are the Defendants,
the officers, directors or employees of any Defendant; any
entity in which any Defendant has a controlling interest;
and any affiliate, legal representative, heir or assign of
any Defendant. Also excluded are any federal, state or
local governmental entities, any judicial officer presiding
over this action and the members of his/her immediate family
and judicial staff, and any juror assigned to this action.

West Virginia:

All persons and entities in West Virginia who indirectly

1 purchased SRAM and/or products containing SRAM, for end use
2 and not for resale, that was manufactured and/or sold by one
3 or more of the Defendants during the Class Period.
4 Specifically excluded from this Class are the Defendants,
5 the officers, directors or employees of any Defendant; any
6 entity in which any Defendant has a controlling interest;
7 and any affiliate, legal representative, heir or assign of
8 any Defendant. Also excluded are any federal, state or
9 local governmental entities, any judicial officer presiding
10 over this action and the members of his/her immediate family
11 and judicial staff, and any juror assigned to this action.

7 Wisconsin:

8 All persons and entities in Wisconsin who indirectly
9 purchased SRAM and/or products containing SRAM, for end use
10 and not for resale, that was manufactured and/or sold by one
11 or more of the Defendants during the Class Period.
12 Specifically excluded from this Class are the Defendants,
13 the officers, directors or employees of any Defendant; any
14 entity in which any Defendant has a controlling interest;
15 and any affiliate, legal representative, heir or assign of
16 any Defendant. Also excluded are any federal, state or
17 local governmental entities, any judicial officer presiding
18 over this action and the members of his/her immediate family
19 and judicial staff, and any juror assigned to this action.

14 District of Columbia:

15 All persons and entities in the District of Columbia who
16 indirectly purchased SRAM and/or products containing SRAM,
17 for personal, family or household use, that was manufactured
18 and/or sold by one or more of the Defendants during the
19 Class Period. Specifically excluded from this Class are the
20 Defendants, the officers, directors or employees of any
21 Defendant; any entity in which any Defendant has a
22 controlling interest; and any affiliate, legal
23 representative, heir or assign of any Defendant. Also
24 excluded are any federal, state or local governmental
25 entities, any judicial officer presiding over this action
26 and the members of his/her immediate family and judicial
27 staff, and any juror assigned to this action.

22 The following Plaintiffs are appointed as class

23 representatives:

<u>State</u>	<u>Plaintiff</u>
Arizona	Lara Sterenberg
Arizona	United Food & Commercial Workers Local 99
Arkansas	Robert Harmon

United States District Court
For the Northern District of California

1	California	Michael Brooks
2	California	Lawrence Markey
3	California	Roman J. Munoz
4	California	Joseph Solo
5	California	Stargate Films
6	California	United Food & Commercial Workers Local 8
7	District of Columbia	Dona Culver
8		
9	Florida	Ronnie Barnes
10	Florida	Ryan Edwards
11	Florida	John Pharr d/b/a JP Micro
12	Hawaii	Ramon Oyadomari
13	Hawaii	Unite Here Local 5
14	Iowa	Herbert Harmison
15	Iowa	David Sly
16	Kansas	nXio, LLC
17	Maine	Penobscot Eye Care
18	Massachusetts	James W. Allen
19	Michigan	Matthew Frank
20	Minnesota	Fairmont Orthopedics & Sports Medicine, P.A.
21	Minnesota	Reclaim Center, Inc.
22	Montana	Henry Kornegay
23	Montana	Our Montana, Inc.
24	Nevada	Culinary Workers Union Local 226
25	Nevada	Allen Robert Kelley
26	New Mexico	Daniel Yohalem
27	New York	Rodrigo Bazan Gatti
28	New York	CHP Media, Inc.

1 North Carolina Curtis Hogue, Jr.
2 North Dakota Ward Cater
3 Pennsylvania Beth O'Donnell
4 Puerto Rico Carlos R. Carrillo
5 Puerto Rico Javier Oyola-Aleman
6 Rhode Island Kevin Kicia
7 South Dakota Mitch Mudlin
8 Tennessee Frank C. Warner
9 Utah Christopher K. Giaugue
10 Washington Christopher Smith
11 West Virginia Donna Hark
12 West Virginia David Loomis
13 Wisconsin Mark and Shannon Schneider
14 Wisconsin Christopher J. Stawski

15 The Court appoints Zelle Hofmann Voelbel & Mason LLP as class
16 counsel for IP Plaintiffs. Class counsel for IP Plaintiffs shall
17 prepare and submit within thirty days from the date of this Order a
18 proposed form of notice to be sent to members of the Class.
19 Defendants may file any comments to the notice within fifteen days
20 and IP Plaintiffs may reply fifteen days thereafter. Defendants
21 shall prepare and submit to the Court and to counsel for IP
22 Plaintiffs within thirty days from the date of this Order a list of
23 names and addresses of all Class Members who can be identified with
24 diligent effort.

25 The Court denies Defendants' motions to exclude the expert
26 opinions and rebuttal opinions of Drs. Mark Dwyer and Michael
27 Harris (Docket Nos. 706 and 797); and denies IP Plaintiffs' motion
28 to exclude the expert opinion of Dr. Michelle Burtis (Docket No.

1 799).

2 IT IS SO ORDERED.

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4 Dated: 11/25/09



CLAUDIA WILKEN
United States District Judge

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