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12  
13 **UNITED STATES DISTRICT COURT**  
14 **NORTHERN DISTRICT OF CALIFORNIA**  
15 **OAKLAND DIVISION**

16 In re DYNAMIC RANDOM ACCESS ) Case No. M-02-1486-PJH  
17 MEMORY (DRAM) ANTITRUST ) MDL No. 1486  
18 LITIGATION )

19 This Document Relates to: ) **[REVISED PROPOSED] ORDER**  
20 ALL INDIRECT PURCHASER ACTIONS ) **GRANTING MOTION TO DISTRIBUTE**  
21 and ) **SETTLEMENT FUNDS**

22 *State of California et al. v. Infineon* ) Case No. C 06-4333 PJH  
23 *Technologies AG, et al.* ) Case No. C 06-6436 PJH

24 *State of New York v. Micron Technology Inc., et* ) Case No. C 07-1347 PJH  
25 *al.* ) Case No. C 07-2589 PJH

26 *State of California et al. v. Samsung Electronics* ) Case No. C 12-5213 PJH  
27 *Co., Ltd., et al.* ) Case No. C 12-5214 PJH

28 *State of California et al. v. Winbond Electronics* ) Case No. C 12-5215 PJH  
*Co.* ) Case No. C 12-5230 PJH

*Petro Computer Systems, Inc. v. Hitachi, Ltd.* ) Case No. C 12-5229 PJH

*Petro Computer Systems, Inc. v. Mitsubishi* ) Case No. C 12-5231 PJH  
*Electric Corporation, et. al.* )

*Petro Computer Systems, Inc. v. Toshiba* )

1	<i>Corporation, et. al.</i>	)	
2	<i>State of California et</i>	)	The Honorable Phyllis J. Hamilton
3	<i>al., v. Toshiba Corporation et al.,</i>	)	
4	<i>State of California et</i>	)	
5	<i>al., v. Mitsubishi Electric Corporation, et. al.</i>	)	
6	<i>State of California et</i>	)	
7	<i>al., v. Hitachi, Ltd.</i>	)	
8		)	

9 This matter came before the Court on the Joint Motion (the “Motion”) by the Indirect-  
 10 Purchaser Plaintiffs and the Attorneys General (collectively, “Settling Plaintiffs”) for an order  
 11 authorizing distributions of the settlement funds to members of the various settlement classes in  
 12 accordance with the Court’s previous Orders and certain proposed protocols. The Court, having  
 13 reviewed the papers filed and arguments made in connection with the Motion, and good cause  
 14 appearing, hereby GRANTS the Motion as follows:

**Appointment of Rust Consulting, Inc. as Fund Administrator**

17 1. Rust Consulting, Inc. (“Rust”) is hereby appointed the Fund Administrator of all  
 18 settlement monies in the Qualified Settlement Funds (“QSFs”), pursuant to 26 U.S.C § 468B(g) and  
 19 the related United States Treasury Regulations. Rust shall perform all duties of a Fund  
 20 Administrator specified therein, including determining and satisfying the tax obligations of the  
 21 QSFs, filing income tax return(s), paying income tax and information return reporting.

23 2. The current Fund Administrator and Escrow Agent, Union Bank, N.A. (“Union  
 24 Bank”), is ORDERED to transfer as soon as practicable all funds in the Escrow Accounts<sup>1</sup> to

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26 <sup>1</sup> The Escrow Accounts include: (a) Samsung Indirect Purchaser Settlement Fund Escrow Account, Union  
 27 Bank account number 6711807300; (b) Samsung Indirect Purchaser Plaintiffs’ Fees Escrow Account, Union  
 28 Bank account number 6711807302; (c) Samsung Government Purchaser Settlement Fund Escrow Account,  
 Union Bank account number 6711807301; (d) Samsung States’ (AG’s) Fees Escrow Account, Union Bank

1 accounts established for the QSFs at the Huntington Bank and administered by Rust. Rust shall  
2 establish separate accounts at Huntington Bank, as necessary, and hold the QSF(s) until  
3 disbursement as follows:

4 a. funds designated in the accounting approved below for payment to Government  
5 Purchaser Plaintiffs and members of the Government Purchaser Settlement Classes, including the  
6 Attorneys General's attorneys fees and expenses shall be transferred into one or more "Government  
7 Plaintiff Account(s);"

8 b. funds designated in the accounting approved below for payment to the private  
9 Indirect Purchaser Settlement Class Members, including attorneys' fees and expenses and incentive  
10 awards, shall be transferred into one or more Private Plaintiff Account(s); and  
11

12 c. the amount of \$1,250,000 designated for the payment of unreimbursed expenses and  
13 future settlement administration expenses shall be transferred into a Reserve Account.  
14

15 3. Union Bank shall promptly deliver to Rust all of the income tax returns for the  
16 QSF(s) and proof of tax payments for the QSF(s). Union Bank shall cooperate with Rust, Co-Lead  
17 Counsel, and the Attorneys General in effecting the transition of its responsibilities to Rust.

18 4. Rust shall disburse, withdraw and transfer funds from a Government Plaintiff  
19 Account only upon written authorization from Emilio Varanini and Lizabeth Brady.  
20

21  
22 account number 6711807303; (e) Winbond Settlement Fund Escrow Account, Union Bank account number  
23 6711815800; (f) Micron Settlement Fund Escrow Account, Union Bank account number 6711916501; (g)  
24 Hynix Settlement Fund Escrow Account, Union Bank account number 6711916502; (h) Infineon Settlement  
25 Fund Escrow Account, Union Bank account number 6711916503; (i) Elpida Settlement Fund Escrow  
26 Account, Union Bank account number 6711916504; (j) NEC Settlement Fund Escrow Account, Union Bank  
27 account number 6711916505; (k) Mosel Settlement Fund Escrow Account, Union Bank account number  
28 6711916506; (l) Nanya Settlement Fund Escrow Account, Union Bank account number 6711929400; (m)  
Hitachi Settlement Fund Escrow Account, Union Bank account number 6711980900; (n) Mitsubishi  
Settlement Fund Escrow Account, Union Bank account number 6711980800; and (o) Toshiba Settlement  
Fund Escrow Account, Union Bank account number 6711995800.

1 5. Rust shall disburse, withdraw or transfer funds from a Private Plaintiff Account only  
2 upon written authorization from Co-Lead Counsel: Josef D. Cooper, Timothy D. Battin, Daniel J.  
3 Mogin, and Daniel E. Gustafson.

4 6. Rust shall disburse, withdraw or transfer funds from the Reserve Account only upon  
5 written authorization from Co-Lead Counsel.  
6

7 **Approval of Accounting of Settlement Funds**

8 7. Attached as Exhibits to the “Declaration of Josef D. Cooper in Support of Motion to  
9 Distribute Settlement Funds,” filed May 4, 2016, (Dkt. 2273-1) is an accounting of the sources and  
10 uses of the monies in the QSFs, as well as a computation of the divisions, disbursements and  
11 distributions to be made from the QSFs in accordance with the prior Orders and Judgments of this  
12 Court. No objections to the accounting having been received and the Court having reviewed said  
13 accounting, the accounting set forth in the exhibits to the Cooper Declaration is hereby approved,  
14 and Rust is authorized to divide, disburse and distribute the monies in the QSFs pursuant thereto.  
15

16 **Payment of Claims Administration Expenses**

17 8. The Court finds that Rust has reasonably incurred \$1,7878,071 in claims  
18 administration expenses, and the Court hereby authorizes the payment of this amount pursuant to  
19 the allocation among the defendants employed in the Court’s previous Order authorizing the  
20 payment to Kinsella Media for notice expenses. Samsung’s portion of the payment may be paid  
21 directly to Rust, at the discretion of Co-Lead Counsel and in the interests of not delaying the  
22 transfer of the QSFs from Union Bank to Huntington Bank.  
23

24 9. The Court finds that the \$174,301.29 in expenses set out in the Declaration of Terry  
25 Gross, filed May 4, 2016 (Dkt. No. 2273-4) were reasonably incurred and authorizes the payment  
26 of those amounts from the Reserve Account.  
27  
28

**Payments to Indirect Purchaser Settlement Class Members**

1  
2 10. The Court finds after a review of the facts set forth in the Declarations of Amy L.  
3 Lake and Juan F. Riveros, filed May 4, 2016 (Dkts. Nos. 2273-2 and 2273-3), that Rust, Co-Lead  
4 Counsel and the Attorneys General have complied with the Plan of Distribution for the Indirect  
5 Purchaser Settlement Class and the claims processing protocols set forth in the Special Master’s  
6 Report and Recommendations, Part II (Dkt. No. 2147) and adopted by the Court’s June 27, 2014  
7 Order (Dkt. No. 2235).  
8

9 11. The Court hereby approves for payment all claims received from members of the  
10 Indirect Purchaser Settlement Class that were filed on or before July 1, 2015, and which are  
11 identified as Eligible Claims in the Lake Declaration (the “Approved Indirect Purchaser Class  
12 Claims”). The Court approves the adjustment made to reduce the Computer Equivalent Units in  
13 any Approved Indirect Purchaser Class Claim to the Small Claims threshold, where such reduction  
14 results in the claimant receiving a larger settlement payment than would have been computed  
15 without the reduction.  
16

17 12. The Court hereby directs Rust to process all claims received after July 1, 2015 and  
18 before the date of this Order, and approves for payment all Eligible Claims, as determined by Rust  
19 in accordance with the claims processing and auditing procedures described in the Lake  
20 Declaration, as follows:  
21

- 22 a. Any claim, or adjusted claim, at or below the Computer Equivalent Units for a  
23 Small Claim, shall be paid *pro rata* with funds from any uncashed checks issued  
24 to Small Claimants remaining at the conclusion of the distribution authorized in  
25 Paragraph 11, above. Depending upon the funds available, these late-filed  
26 claims may be paid up to the full *pro rata* value that the claim would have had as  
27 a timely-filed claim under the protocols approved by this Court; and  
28

1           b. All other claims shall be paid from uncashed checks issued to claimants other  
2           than Small Claimants remaining at the conclusion of the distribution authorized  
3           in Paragraph 11, above. If there are sufficient funds from uncashed checks,  
4           these claims may be paid up to the full *pro rata* value that the claim would have  
5           had as a timely-filed claim under the protocols approved by this Court. If,  
6           however, there are insufficient funds from uncashed checks to pay each such  
7           claim at least 50% of its full *pro rata* value as a timely claim, then a contribution  
8           shall be made from future settlement funds received from defendant Mosel up to  
9           a maximum *pro rata* payment amount equal to 50% of the claim's full value.  
10           

11 No claims received after May 18, 2016, shall be processed by Rust, and any such claims that may  
12 be received are hereby disallowed.

13           13. The Court finds that neither of the *cy pres* contingencies in the Plan of Distribution  
14 were triggered by the claims experience.

15           14. The Court finds that after deduction of Court-awarded and approved attorneys' fees,  
16 incentive awards and expenses, and the establishment of the Reserve Account, the funds available  
17 for distribution to the Indirect Purchaser Settlement Class as of April 30, 2016 was \$191,195,595.  
18 Rust shall pay this amount plus interest earned, if any, *pro rata* to all Approved Indirect Purchaser  
19 Class Claims in the manner designated by the Plan of Distribution and this Order as soon as  
20 practicable.  
21

22           15. Checks issued to class claimants by Rust shall bear the notation "Non-Negotiable  
23 After 90-Days." Rust shall void all uncashed checks following the expiration of the 90-day void  
24 date. Rust may re-issue checks as necessary.  
25

26           16. Thereafter, Co-Lead Counsel and the Attorneys General shall advise the Court that  
27 the distribution to claimants had occurred within fifteen (15) days of the mailing of checks, and  
28

1 shall provide the Court with an accounting of the status of the distribution within thirty (30) days of  
2 the void date on the distribution checks.

3 **Payment to the Government Purchaser Settlement Classes**

4 17. Rust shall cooperate with the Attorneys General to distribute the funds remaining in  
5 the Government Plaintiff Account(s) after disbursement of attorneys' fees and expenses as soon as  
6 practicable and in accordance with the Plan of Distribution for the Government Purchaser  
7 Settlement Classes approved in the Court's June 27, 2014 Order (Dkt. No. 2235).  
8

9  
10 **IT IS SO ORDERED.**

11  
12 Dated: May 19, 2016

13  
14 Hon. Phyllis J. Hamilton  
United States District Court

