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1	GIBSON, DUNN & CRUTCHER LLP			
2	JOEL S. SANDERS, SBN 107234 JSanders@gibsondunn.com			
3	G. CHARLES NIERLICH, SBN 196611 GNierlich@gibsondunn.com			
4	REBECCA JUSTICE LAZARUS, SBN 227330 RJustice@gibsondunn.com			
5	One Montgomery Street, Suite 3100 San Francisco, California 94104 Telephone: (415) 202, 8200			
6	Telephone: (415) 393-8200 Facsimile: (415) 986-5309			
7	Attorneys for Defendants MICRON TECHNOLOGY, INC. AND			
8	MICRON SEMICONDUCTOR PRODUCTS, INC	· ·		
9				
10	UNITED STATES DISTRICT COURT			
11	FOR THE NORTHERN DISTRICT OF CALIFORNIA			
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14		Case No. C 06-433	3 PJH	
15	STATE OF CALIFORNIA, et al.,	DEFENDANTS' I	RESPONSES TO	
16	Plaintiff,	PLAINTIFFS' EV OBJECTIONS TO		
17	V.		FILED IN SUPPORT OF	
18 19	INFINEON TECHNOLOGIES AG, et al.,	PLAINTIFFS' M	OTION TO VOID JUDGMENT SHARING	
20	Defendants.	AGREEMENT	IUDGMENT SHAKING	
20				
22		ORAL ARGUME	NT REQUESTED	
23		Hearing Date:	November 14, 2007	
24		Hearing Time: Location:	9:00 a.m. Courtroom 3, 17th Floor	
25		Judge:	Hon. Phyllis J. Hamilton	
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Defendants respectfully submit the following responses to Plaintiffs' evidentiary objections to the Declaration of Joel S. Sanders filed in support of Defendants' Opposition to Plaintiffs' Motion to Void Defendants' Judgment Sharing Agreement.

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

18 2. Plaintiffs further contend that paragraphs 2-6, and 8 violate "the prohibition against the 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 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 of Evidence 802 (prohibiting hearsay). Plaintiffs argue that this paragraph "testifies to out-of-court statements made by 'other defense counsel,' to prove the truth of those statements." This objection 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' object. Thus, because all Defendants have, in effect, endorsed the statement made in paragraph 7 of the Sanders Declaration, the statement cannot be hearsay.

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Gibson, Dunn & Crutcher LLP

Defendants' Responses to Plaintiffs' Evidentiary Objections; Case No. C 06-4333 PJH

1     DATED: November 7, 2007     GIBSON, DUNN & CRUTCHER LLP JOEL S. SANDERS G. CHARLES NIEKLICH REBECCA JUSTICE LAZARUS       5     By:/c/ Joel S. Sanders       6     Joel S. Sanders       7     Joel S. Sanders       7     Joel S. Sanders       7     Joel S. Sanders       8     Joel S. Sanders       9     DATED: November 7, 2007     OMELVENY & MYERS LLP KENNETH OROURKE       10     DATED: November 7, 2007     OMELVENY & MYERS LLP Kenneth O'Rourke       11     By: /c/ Kenneth O'Rourke       12     By: /c/ Kenneth O'Rourke       13     By: /c/ Menneth O'Rourke       14     Auomeys for Defendants       15     HYNIX SEMICONDUCTOR, INC. AND HYNIX       16     By: /c/ Julian Brew       17     JOSHUA STAMBAUGH       18     DATED: November 7, 2007       19     DATED: November 7, 2007       10     KAYE SCHOLER LLP JULIAN BREW ATON ARBISSER JOSHUA STAMBAUGH       12     By: /c/ Julian Brew       13     By: /c/ Julian Brew       14     Auomeys for Defendants INFINEON TECHNOLOGIES NORTH AMERICA CORP. AND INFINEON TECHNOLOGIES SAG       16     CORP. AND INFINEON TECHNOLOGIES AG       17     THELEN REID BROWN RAYSMAN & STEINFR LLP ROBERT B. PRINGLE		Case4:06-cv-04333-PJH	Document265 Filed11/07/07 Page3 of 4
a       JOFE S. SANDERS         3       G. CHARLES NIERLICH         4       REBECCA JUSTICE LAZARUS         5       By:/// Joel S. Sanders         6       By:/// Joel S. Sanders         7       Joel S. Sanders         6       Micron Technology, INC. AND MICRON         8       Semiconductor products, INC.         9       OMELVENY & MYERS LLP         10       DATED: November 7, 2007       O'MELVENY & MYERS LLP         11       Renneth O'Rourke         12       By: /// Kenneth O'Rourke         13       By: /// Kenneth O'Rourke         14       Attorneys for Defendants         15       Attorneys for Defendants         16       By: /// Kenneth O'Rourke         17       SEMICONDUCTOR, INC. AND HYNIX         18       By: /// Milan Brew         19       DATED: November 7, 2007       KAYE SCHOLER LLP         19       DATED: November 7, 2007       KAYE SCHOLER LLP         20       Julian Brew       Julian Brew         21       Julian Brew       Julian Brew         22       DATED: November 7, 2007       THELEN REID BROWN RAYSMAN & STEINER LLP         23       CORP. AND INFINEON TECHNOLOGIES NORTH AMERICA         24	1		
3       G. CHARLES NEELICH REBECCA JUSTICE LAZARUS         4	2	DATED: November 7, 2007	
4       5         6       By:/s/ Joel S. Sanders         7       Joel S. Sanders         7       Attorneys for Defendants         MICRON TECHNOLOGY, INC. AND MICRON         8       SEMICONDUCTOR PRODUCTS, INC.         9       0         10       DATED: November 7, 2007       OMELVENY & MYERS LLP         11       KENNETH OROURKE         12       By: /s/ Kenneth O'Rourke         13       By: /s/ Kenneth O'Rourke         14       Attorneys for Defendants         15       Attorneys for Defendants         16       Attorneys for Defendants         17       NOVENCETOR AMERICA, INC.         18       DATED: November 7, 2007         KAYE SCHOLER LLP       Julian Brew         19       DATED: November 7, 2007         KAYE SCHOLER LLP       Julian Brew         20       By: /s/ Julian Brew         21       Julian Brew         22       Julian Brew         23       Attorneys for Defendants         24       Attorneys for Defendants         25       INFINEON TECHNOLOGIES NORTH AMERICA         26       CORP. AND INFINCE         27       DATED: November 7, 2007       THELEN REID BROWN RAYSMA	3		G. CHARLES NIERLICH
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<ul> <li>By: <u>/s/ Julian Brew</u></li> <li>Julian Brew</li> <li>Attorneys for Defendants INFINEON TECHNOLOGIES NORTH AMERICA CORP. AND INFINEON TECHNOLOGIES AG</li> <li>DATED: November 7, 2007 THELEN REID BROWN RAYSMAN &amp; STEINER LLP ROBERT B. PRINGLE</li> </ul>	21		
23Attorneys for Defendants INFINEON TECHNOLOGIES NORTH AMERICA CORP. AND INFINEON TECHNOLOGIES AG26THELEN REID BROWN RAYSMAN & STEINER LLP ROBERT B. PRINGLE22	22		By: /s/ Julian Brew
21       INFINEON TECHNOLOGIES NORTH AMERICA         25       CORP. AND INFINEON TECHNOLOGIES AG         26       THELEN REID BROWN RAYSMAN &         27       DATED: November 7, 2007         28       THELEN REID BROWN RAYSMAN &         28       Z	23		Julian Brew
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1	PAUL R. GRIFFIN JONATHAN SWARTZ
2	JORATHAR SWARTZ
3	By: /s/ Robert B. Pringle
4	Robert B. Pringle
5	Attorneys for Defendant NEC ELECTRONICS AMERICA, INC.
6	
7	DATED, November 7, 2007 SIMDSON THACHED & DADTLETT LLD
8	DATED: November 7, 2007 SIMPSON THACHER & BARTLETT LLP HARRISON J. FRAHN ISABELLE A. YOUNG
9	
10	
11 12	By: <u>/s/ Harrison J. Frahn</u> Harrison J. Frahn
12	Attorneys for Defendants
13	Attorneys for Defendants ELPIDA MEMORY (USA) INC. AND ELPIDA MEMORY, INC.
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