

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA,)	
Plaintiff,)	Civil Action No. 1:08 CV 1311
)	
v.)	
)	
MICROSEMI CORPORATION,)	Hearing Date: February 20, 2009
Defendant.)	
)	

**PLAINTIFF’S MEMORANDUM IN SUPPORT OF ITS MOTION TO FILE UNDER
SEAL ITS MEMORANDUM IN OPPOSITION TO DEFENDANT MICROSEMI’S
MOTION TO DISMISS FOR IMPROPER VENUE, MOTION TO DISMISS FOR LACK
OF PERSONAL JURISDICTION, OR, IN THE ALTERNATIVE, MOTION TO
TRANSFER VENUE AND EXHIBITS B, C, D, E, F, G, H, AND I APPENDED THERETO**

Plaintiff United States, through its undersigned counsel, respectfully requests that this Court enter an order sealing its Memorandum in Opposition to Defendant Microsemi’s Motion to Dismiss for Improper Venue, Motion to Dismiss for Lack of Personal Jurisdiction, or, in the Alternative, Motion to Transfer Venue and Exhibits B, C, D, E, F, G, H, and I appended thereto. This relief is sought on an interim basis, pending the entry by the Court of a protective order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure. In support of this motion, Plaintiff states as follows:

1. On December 18, 2008, Plaintiff filed with the Court a Complaint alleging that Microsemi’s acquisition of Semicoa, Inc. violated Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 2 of the Sherman Act, 15 U.S.C. § 2. On January 21, 2009, Defendant filed its Motion to Dismiss for Improper Venue, Motion to

Dismiss for Lack of Personal Jurisdiction, or, in the Alternative, Motion to Transfer Venue. On February 4, 2009, Plaintiff filed its Memorandum in Opposition to Defendant Microsemi's Motion to Dismiss for Improper Venue, Motion to Dismiss for Lack of Personal Jurisdiction, or, in the Alternative, Motion to Transfer Venue ("Memorandum in Opposition").

2. Plaintiff's Memorandum in Opposition and Exhibits B, C, D, E, F, G, H, and I appended thereto contain information that was supplied to the Department of Justice by the Defendant and a non-party customer of the Defendant's. This information was provided to the Department in confidence and, to date, has been protected from public disclosure. To ensure the continued confidentiality of this information, Plaintiff seeks to file its Memorandum in Opposition and Exhibits B, C, D, E, F, G, H, and I appended thereto under seal.
3. Plaintiff's Memorandum in Opposition contains detailed descriptions of the Defendant's relationship with the aforementioned non-party customer, as well as lists of Defendant's other customers, distributors, and potential industry entrants. Exhibit B is a declaration given by the Purchasing Manager of Technical Operations East for the aforementioned non-party customer. It contains detailed information regarding the non-party customer's transactions with the Defendant, including product price information. Exhibit C is a declaration given by Kevin C. Quin, an attorney for the United States, that lists the Defendant's customers, distributors, and potential industry entrants. Exhibit D is a transmittal e-mail from the Defendant for a spreadsheet containing the Defendant's sales information for

the products at issue from the years 1997 to 2008. This spreadsheet has already been filed under seal in CD-ROM format as Exhibit 6 in support of Plaintiff's Emergency Motion for a Temporary Restraining Order. Exhibits E, F, and G are derived from the information in that spreadsheet. Exhibit H is a spreadsheet containing the names of the Defendant's customers for the products at issue as well as the amount of business transacted with each for the years 2005 to 2008. Exhibit I is a spreadsheet containing the Defendant's product orders for its Lawrence, Massachusetts, facility from October, 2007, to July 14, 2008.

4. Public disclosure of the confidential information contained in the aforementioned documents might place the Defendant, as well as any company that may acquire assets divested as a result of this action, at a disadvantage with respect to their existing and potential competitors, who would gain access to customer, pricing, and contractual information. Disclosure might also place the non-party customer at a disadvantage with respect to its existing and potential competitors and suppliers, who would gain access to its purchasing information.
5. *Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 302 (4th Cir. 2000), sets out the legal standard that this Court must apply when determining whether it is appropriate to order the sealing of documents. It states that before entering an order to seal, a district court must "(1) provide public notice of the request to seal and allow interested parties a reasonable opportunity to object, (2) consider less drastic alternatives to sealing the documents, and (3) provide specific reasons and factual findings supporting its decision to seal the documents and for rejecting the

alternatives.” *Id.*

6. The first *Ashcraft* consideration, *i.e.*, public notice of the motion to seal, is satisfied by docketing the motion “reasonably in advance of deciding the issue.” *See In re Knight Publ’g Co.*, 743 F.2d 231, 235 (4th Cir. 1984) (cited by *Ashcraft*, 218 F.3d at 302). Plaintiff’s motion to seal has been noticed for hearing on February 20, 2009.
7. The second *Ashcraft* consideration is satisfied because there are no less drastic alternatives to sealing the aforementioned documents. Redacting the information from these documents is not a viable option. While redaction would protect the Defendant and the non-party customer from future competitive disadvantage, it would also deprive the Court of the business information it needs to evaluate the extent of Defendant’s contacts with the Eastern District of Virginia.
8. The third *Ashcraft* consideration - that the Court “provide specific reasons and factual findings supporting its decision to seal the documents and for rejecting the alternatives” - is satisfied by the findings of fact in the proposed Order accompanying this Motion.

WHEREFORE, the Plaintiff respectfully requests that the Court enter an order sealing its Memorandum in Opposition to Defendant Microsemi’s Motion to Dismiss for Improper Venue, Motion to Dismiss for Lack of Personal Jurisdiction, or, in the Alternative, Motion to Transfer Venue and Exhibits B, C, D, E, F, G, H, and I appended thereto. The Plaintiff further requests that the documents remain under seal until a protective order has been entered by the Court

pursuant to Rule 26(c) of the Federal Rules of Civil Procedure.

Respectfully submitted,

_____/s/_____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of February, 2009, I will hand deliver the foregoing document to the following:

Brian A. O’Dea
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