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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA v. YOUNG WOO LEE, Defendant.	Case No. CR 06-180 (PJH) UNITED STATES' AND DEFENDANT YOUNG WOO LEE'S JOINT SENTENCING MEMORANDUM DATE: August 30, 2006 TIME: 2:30 p.m. COURT: Hon. Phyllis J. Hamilton

JOINT SENTENCING MEMORANDUM

The United States of America and Young Woo Lee ("Defendant"), file this Joint Sentencing Memorandum in support of their recommendation that this Court: (1) sentence the Defendant to pay a fine of $250,000, payable in full before the fifteenth day after the date of entry of judgment; (2) sentence the Defendant to a period of incarceration of seven months; (3) recommend, pursuant to a request by the Defendant that is not opposed by the United States, that the Defendant be placed in a federal minimum security camp, and specifically to the Lompoc Prison Camp in Lompoc, California; (4) release Defendant on his own personal recognizance under 18 U.S.C. § 3142(b) following imposition of sentence to allow the Defendant to self-surrender to the designated institution on April 2, 2007; and (5) impose no period of supervised

release ("the recommended sentence").

The parties have separately filed a motion under Criminal Local Rule 32-1(b) requesting that the sentence be imposed immediately upon acceptance of the plea presently contemplated to be entered on August 30, 2006, or as soon thereafter as possible, based on the current record and without need of an evidentiary sentencing hearing or a presentence report.

INTRODUCTION

On March 22, 2006, the United States filed an Information charging that beginning on or about April 1, 1999, and continuing until on or about June 15, 2002, Samsung Electronics Company, Ltd. ("Samsung") and Samsung Semiconductor, Inc. ("Samsung Semiconductor"), and coconspirators, entered into and engaged in a combination and conspiracy in the United States and elsewhere to suppress and eliminate competition by fixing the prices of Dynamic Random Access Memory ("DRAM") to be sold to certain original equipment manufacturers of personal computers and servers ("OEMs"), in violation of the Sherman Antitrust Act, 15 U.S.C. § 1. The Information further charged that the Defendant, an employee of Samsung's European subsidiary, Samsung Semiconductor Europe Gmbh ("Samsung Europe"), joined and participated in the charged conspiracy from on or about June 1, 2001 until on or about June 15, 2002. Defendant is scheduled for a change of plea and possible sentencing on August 30, 2006. Defendant will waive Indictment and plead guilty under Fed. R. Crim. P. 11(c)(1)(C). A copy of the Defendant's 11(c)(1)(C) Plea Agreement is attached to this Joint Sentencing Memorandum.

On October 13, 2005 the United States filed an Information charging Samsung, the corporate parent of Samsung Europe, and Samsung Semiconductor. On November 30, 2005, Samsung and Samsung Semiconductor pleaded guilty to participating in the DRAM price-fixing conspiracy and was sentenced to pay a $300 million fine. *United States v. Samsung Electronics Company, Ltd. and Samsung Semiconductor Inc.*, CR No. 05-643 PJH.

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MATERIAL TERMS OF PLEA AGREEMENTS

The material terms of the Plea Agreements include:

1. The Defendant will waive indictment, waive all rights enumerated in the Plea Agreement, and plead guilty to a one-count Information charging him with participating in a conspiracy in the United States and elsewhere to suppress and eliminate competition by fixing the prices of DRAM to be sold to certain OEM customers from on or about June 1, 2001, to on or about June 15, 2002, (the "relevant period"), in violation of the Sherman Antitrust Act, 15 U.S.C. § 1. The conspiracy directly affected these OEMs in the United States: Dell Inc., Hewlett-Packard Company, Compaq Computer Corporation, International Business Machines Corporation, Apple Computer Inc., and Gateway, Inc.

2. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the Defendant agree that the recommended sentence in this case is a fine of $250,000; a period of incarceration of seven months; a special assessment of $100; and no term of supervised release.

3. The United States will not seek restitution in this case in light of the many civil cases filed against Defendant's corporate employers. Those suits, including *In re DRAM Antitrust Litigation*, No. M-02-1486-PJH, MDL No. 1486, consolidated in the United States District Court, Northern District of California, potentially provide for a recovery of a multiple of actual damages. Additionally, the United States agrees that, pursuant to U.S.S.G. § 5E1.1(b), Defendant should not be ordered to pay restitution because: (1) the courts in the related civil cases referred to above are best situated to determine which parties, if any, are entitled to recover in this matter and are best situated to compensate those parties who may be aggrieved and would otherwise receive restitution; (2) the victims are well-represented companies that have ample ability to recover in the civil cases; and (3) any amount of restitution Defendant could reasonably be ordered to pay would be negligible in comparison to the amount of potential claims in these civil matters. Therefore, under the unique circumstances of this case,

determining restitution would complicate or prolong the sentencing process to a degree that the need to provide restitution is outweighed by the burden on the sentencing process. U.S.S.G. § 5E1.1(b)(2)(B).

4. The United States will move for a downward departure under § 5K1.1 of the Guidelines based on the Defendant's substantial assistance in the investigation. The recommended terms of incarceration and fines are below the Guidelines ranges. The United States' motion for a downward departure at the time of sentencing does not cancel or negate Defendant's continuing obligation under the Plea Agreement to cooperate in the United States' ongoing antitrust investigation of the DRAM industry.

5. The United States will not oppose Defendant's request that this Court make a recommendation to the Bureau of Prisons that it designate that Defendant be assigned to a Federal Minimum Security Camp to serve his sentence, and specifically recommend placement to the Lompoc Prison Camp in Lompoc, California. Placement in that facility will permit reasonable access by Defendant's counsel, families, and by the government in connection with the ongoing obligation to cooperate in the government's investigation. In addition, FPC Lompoc has experience in housing foreign nationals in the DRAM antitrust investigation and in similar cases. The United States also will not oppose the Defendant's request that he be released on his own personal recognizance under 18 U.S.C. § 3142(b) following imposition of sentence to allow Defendant to self-surrender to the designated institution on April 2, 2007. The Department of Homeland Security has stated that it is willing to authorize the Defendant's parole into this country for purposes of entering his plea and serving his sentence, as set forth in the letter from Julie L. Myers, Assistant Secretary for the U.S. Department of Homeland Security, Immigration and Customs Enforcement attached to the plea agreement.

6. Subject to Defendant's continuing cooperation as set forth in the Plea Agreement, and upon this Court's acceptance of his guilty plea and imposition of the agreed-upon sentence,

the United States agrees it will not seek to exclude, deport, or remove the Defendant from the United States based upon his guilty pleas. The U.S. Department of Justice, Antitrust Division, has requested U.S. Immigration and Customs Enforcement (ICE), on behalf of the Department of Homeland Security to agree to the inclusion of a provision in the Plea Agreement (Paragraph 16) that would relieve the Defendant of an adverse immigration consequence based on this conviction. ICE has agreed to this request in the form of a letter from Julie L. Myers, Assistant Secretary attached to the plea agreement.

7. If the Court does not accept the sentences provided for in the Plea Agreement, Defendant will be free to withdraw his guilty plea, and the Plea Agreement will be rendered void.

UNITED STATES SENTENCING GUIDELINES CALCULATIONS

Defendant and the United States agree that the Court should consider the United States Sentencing Guidelines in effect at the time of the offense, June 15, 2002, rather than at the time of sentencing, in accordance with U.S.S.G. § 1B1.11(b). The parties agree to the following Guidelines calculations for the Defendant. Further, the parties agree that the recommended sentence is reasonable. The volume of affected commerce is in excess of $100 million, which are the affected sales of DRAM sold by the Defendants' corporate employers, Samsung and Samsung Semiconductor, to certain OEMs in the United States during the relevant period, June 1, 2001 to June 15, 2002.

(a)	Base Offense Level (§ 2R1.1(a))	10
(b)	Volume of Affected Commerce (§ 2R1.1(b)(2)(G)) (More than $100 million)	+7
(c)	Total Adjusted Offense Level	17
(d)	Victim-Related Adjustments (§ 3A)	+0
(e)	Role in the Offense Adjustments (§ 3B)	+0
(f)	Obstruction Adjustments (§ 3C)	+0

(g)	Acceptance of Responsibility (§ 3E1.1(a) and (b))	-3
(h)	Total Offense Level	14
(i)	Criminal History Category (§ 4A1.1)	I

Therefore, the appropriate range of sentence under the Guidelines for Defendant is 15-21 months, no term of probation (§ 5B1.1), supervised release of one year (§§ 5D1.1, 5D1.2(a)(3)), restitution (§ 5E1.1), a fine of 1% to 5% of the volume of commerce (§§ 2R1.1(c)(1), 5E1.2(b)) or the statutory maximum of $350,000 pursuant to 15 U.S.C. §1, and a special assessment of $100 (§ 5E1.3). With a volume of affected commerce in excess of $100 million the appropriate fine range under the Guidelines is either at least $1-5 million (1% to 5% of $100 million) pursuant to the alternative fine statute under 18 U.S.C. § 3571(b)(2), or the statutory maximum fine of $350,000 under 15 U.S.C. 1 (The Sherman Act). The United States will elect to proceed under the maximum fine of $350,000 pursuant to 15 U.S.C. § 1.

MOTION FOR DOWNWARD DEPARTURE

Based on the Defendant's substantial assistance to the United States, and the requirement of cooperation in the future under the Plea Agreement, the United States moves under § 5K1.1 of the Sentencing Guidelines for a downward departure from the minimum Guidelines incarceration and fine ranges to an incarceration of seven months and a $250,000 fine. Defendant has already cooperated by submitting to a voluntary interview with the government that has been accepted by the United States as truthful and candid. The United States has determined that such cooperation constitutes substantial assistance in the investigation and prosecution of another entity or person who has committed an offense, and is the basis for the downward departure pursuant to U.S.S.G. § 5K1.1. Additionally, Defendant has agreed to continue assisting the United States in its ongoing DRAM investigation, including making himself available for additional interviews and testimony at the United States' request. The

United States believes that Defendant intends to be completely candid and cooperative with the United States' ongoing criminal investigation.

CRIME VICTIMS' NOTIFICATION

The United States will notify crime victims about the Defendant's Plea Agreement and sentence under the Crime Victims' Rights Act, 18 U.S.C. § 3771.

DATED: August 22, 2006

Respectfully submitted,

YOUNG WOO LEE

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U.S. DEPARTMENT OF JUSTICE

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