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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

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|---|---|
| UNITED STATES OF AMERICA<br><br>Plaintiff,<br>v.<br><br>THOMAS QUINN,<br><br>Defendant. | Case No. CR 06-0635 PJH<br><br>PLEA AGREEMENT |

**PLEA AGREEMENT**

The United States of America and Thomas Quinn ("Defendant") hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."):

**RIGHTS OF DEFENDANT**

1. Defendant understands that he has the right:

(a) to be represented by an attorney;

(b) to be charged by Indictment;

(c) to plead not guilty to any criminal charge brought against him;

(d) to have a trial by jury, at which he would be presumed not guilty of the charge and the United States would have to prove every essential element of the charged offense beyond a reasonable doubt for him to be found guilty;

(e) to confront and cross-examine witnesses against him and to subpoena

witnesses in his defense at trial;

(f) not to be compelled to incriminate himself;

(g) to appeal his conviction; and

(h) to appeal the imposition of sentence against him.

**AGREEMENT TO PLEAD GUILTY AND WAIVE CERTAIN RIGHTS**

2. Defendant knowingly and voluntarily waives the rights set out in Paragraph 1(b)-(g) above. Defendant also knowingly and voluntarily waives the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2241 or 2255 that challenges the sentence imposed by the Court, if that sentence is consistent with or below the recommended sentence in Paragraph 8 of this Plea Agreement, regardless of how the sentence is determined by the Court. This agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b)-(c). Nothing in this paragraph, however, shall act as a bar to the Defendant perfecting any legal remedies he may otherwise have on appeal or collateral attack respecting claims of ineffective assistance of counsel. Further, pursuant to Fed. R. Crim. P. 7(b), Defendant will waive Indictment and plead guilty at arraignment to a one-count Information to be filed in the United States District Court for the Northern District of California. The Information will charge that beginning on or about April 1, 1999, and continuing until on or about June 15, 2002, Samsung Electronics, Co. Ltd. ("Samsung") and coconspirators participated in a conspiracy in the United States and elsewhere to suppress and eliminate competition by fixing the price 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 will further charge that Defendant, an employee of Samsung's U.S. subsidiary, Samsung Semiconductor Inc., joined and participated in the charged conspiracy from on or about April 1, 2001, until on or about June 15, 2002 and also reached agreements with his coconspirators to coordinate bids to Sun Microsystems on a 1 Gigabyte Next-Generation Dual In-Line Memory Module ("1 Gigabyte

Next-Generation Module") lot during a Sun Microsystems auction on December 5, 2001.

3. Defendant, pursuant to the terms of this Plea Agreement, will plead guilty to the criminal charge described in Paragraph 2 above and will make a factual admission of guilt to the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below.

**FACTUAL BASIS FOR OFFENSE CHARGED**

4. Had this case gone to trial, the United States would have presented evidence to prove the following facts:

(a) For purposes of this Plea Agreement, the "relevant period" is that period from on or about April 1, 2001, to on or about June 15, 2002. Samsung is an entity organized and existing under the laws of Korea, with its principal place of business in Seoul, Korea. During the relevant period, Defendant was employed by Samsung Semiconductor, Inc., a wholly-owned Samsung subsidiary in the United States. During the relevant period, Defendant's title was V.P. of Marketing for Memory Products, and in that position he was involved in DRAM marketing and sales in the United States.

(b) DRAM is the most commonly used semiconductor memory product. DRAM provides high-speed storage and retrieval of electronic information in personal computers, servers, and other devices.

(c) In the course of his employment during the relevant period, Defendant was engaged in the marketing of DRAM in the United States. Among other responsibilities, Defendant recommended to his superiors and other employees at Samsung prices for the sale of DRAM to be sold to certain OEMs in the United States.

(d) During the relevant period, Defendant participated in a pre-existing conspiracy, as described below, in the United States and elsewhere among certain DRAM producers and their officers and employees, the primary purpose of which was to raise and stabilize the price of DRAM sold to certain OEMs. 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. The Defendant participated in the conspiracy by engaging in communications with

representatives of other DRAM producers and sellers, during which information on pricing was exchanged between competitors. Defendant communicated that pricing information to his superiors and, based in part on that information, recommended to his superiors price ranges for the sale of DRAM to certain OEMs in the United States. Defendant knew that, at certain times, his superiors would use the information he communicated for the purpose and with the effect of setting the price of DRAM sold to certain OEMs. Defendant is aware that understandings were reached with other DRAM manufacturers, the ultimate effect of which was to stabilize and raise the price of DRAM sold to certain OEMs. In addition, the Defendant had meetings and discussions and reached agreements with his coconspirators on how they would coordinate a bid offered by Sun Microsystems in an auction on or about December 5, 2001. The Defendant and his coconspirators submitted bid proposals to Sun Microsystems for a bid on a 1 Gigabyte Next-Generation Module lot to achieve that result.

(e) During the relevant period, DRAM sold by one or more of the conspirators, equipment and supplies necessary to the production and distribution of DRAM, and payments for DRAM, traveled in interstate and foreign commerce. The business activities of Defendant and his coconspirators in connection with the production and sale of DRAM affected by this conspiracy were within the flow of, and substantially affected, interstate and foreign trade and commerce.

(f) Acts in furtherance of these conspiracies were carried out within the Northern District of California. Furthermore, DRAM affected by these conspiracies was sold by one or more of the conspirators to customers in this District.

**POSSIBLE MAXIMUM SENTENCE**

5. Defendant understands that the statutory maximum penalty which may be imposed against him upon conviction for a violation of Section One of the Sherman Antitrust Act is:

(a) a term of imprisonment for three (3) years (15 U.S.C. § 1);

(b) a fine in an amount equal to the greatest of (1) $350,000, (2) twice the gross pecuniary gain the conspirators derived from the crime, or (3) twice the gross

pecuniary loss caused to the victims of the crime by the conspirators (15 U.S.C. § 1; 18 U.S.C. § 3571(b) and (d)); and

(c) a term of supervised release of one (1) year following any term of imprisonment. If Defendant violates any condition of supervised release, Defendant could be imprisoned for the entire term of supervised release (18 U.S.C. § 3559(a)(5); 18 U.S.C. § 3583(b)(3) and (e)(3); and United States Sentencing Guideline ("U.S.S.G." or "Guidelines") § 5D1.2(a)(3)).

6. In addition, Defendant understands that:

(a) pursuant to U.S.S.G. § 5E1.1 and 18 U.S.C. § 3583(d), this Court may order him to pay restitution to the victims of the offense; and

(b) pursuant to 18 U.S.C. § 3013(a)(2)(A) and U.S.S.G. § 5E1.3, this Court is required to order Defendant to pay a $100.00 special assessment upon conviction of the charged crime.

**SENTENCING GUIDELINES**

7. Defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines, along with the other factors set forth in 18 U.S.C. § 3553(a), in determining and imposing sentence. Defendant understands that the Guidelines determinations will be made by the Court by a preponderance of the evidence standard. Defendant understands that although the Court is not ultimately bound to impose a sentence within the applicable Guidelines range, its sentence must be reasonable based upon consideration of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a). Pursuant to U.S.S.G. § 1B1.8, the United States agrees that self-incriminating information that Defendant provides to the United States pursuant to this Plea Agreement will not be used to increase the volume of affected commerce attributable to Defendant or in determining the Defendant's applicable Guidelines range, except to the extent provided in U.S.S.G. § 1B1.8(b). Defendant and the United States agree that the Court should consider the 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 United States and Defendant agree that the Guidelines may be applied and, if

applied, the applicable sentencing guideline is U.S.S.G. § 2R1.1 with a base level of 10; plus a one-level adjustment for participation in an agreement to submit noncompetitive bids pursuant to U.S.S.G. § 2R1.1(b)(1); a volume of commerce adjustment of plus 7 pursuant to U.S.S.G. § 2R1.1(b)(2)(G); no role in the offense adjustment under U.S.S.G. § 3B1.1, for a subtotal of 18; less a 3-level adjustment for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(a) and (b), for a total offense level of 15. Further, the United States agrees to make a motion for downward departure pursuant to Paragraph 10 herein and U.S.S.G. § 5K1.1, recommending that Defendant be sentenced to the recommended sentence agreed to below.

**SENTENCING AGREEMENT**

8. (a) Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and Defendant agree that the appropriate disposition of this case is, and agree to recommend jointly that the Court impose, a sentence requiring that Defendant pay to the United States a criminal fine of $250,000, payable in full before the fifteenth (15th) day after the date of judgment; a period of incarceration of eight months; no order of restitution; and no period of supervised release ("the recommended sentence"). Defendant understands that this Court will order him to pay a $100 special assessment pursuant to 18 U.S.C. § 3013(a)(2)(A) in addition to any fine imposed. The parties agree that there exists no aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the U.S. Sentencing Commission in formulating the Sentencing Guidelines justifying a departure pursuant to U.S.S.G. § 5K2.0. The parties agree not to seek or support any sentence outside of the Guidelines range nor any Guidelines adjustment for any reason that is not set forth in this Plea Agreement. The parties further agree that the recommended sentence set forth in this Plea Agreement is reasonable.

(b) The United States will not object to Defendant's request that the Court make a recommendation to the Bureau of Prisons that the Bureau of Prisons designate that Defendant be assigned to a Federal Minimum Security Camp (and specifically to the Lompoc Prison Camp in Lompoc, California) to serve his sentence of imprisonment and that Defendant be released on his own personal recognizance following the imposition of sentence to allow him to self-surrender to the designated institution on a specified date.

9. The United States and Defendant agree that, pursuant to U.S.S.G. § 5E1.1(b), Defendant should not be ordered to pay restitution in light of the civil cases filed against Samsung and Samsung Semiconductor, Inc., Defendant's employer, 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, which potentially provide for a recovery of a multiple of actual damages.

10. The United States and Defendant agree that the applicable Guidelines fine and incarceration ranges exceed the fine and term of imprisonment contained in the recommended sentence set out in Paragraph 8 above. Subject to the full and continuing cooperation of Defendant, as described in Paragraph 13 of this Plea Agreement, and prior to sentencing in this case, the United States agrees that it will make a motion, pursuant to U.S.S.G. § 5K1.1, for a downward departure from the Guidelines fine and incarceration ranges in this case. The motion for downward departure is based on cooperation that has already occurred and any additional cooperation that may occur prior to sentencing. Furthermore, the United States will request that this Court impose the fine and term of imprisonment contained in the recommended sentence set out in Paragraph 8 of this Plea Agreement because of Defendant's substantial assistance in the government's investigation and prosecutions of violations of federal criminal law in the DRAM industry.

11. The United States and Defendant jointly submit that this Plea Agreement and the record that will be created by the United States and Defendant at the plea and sentencing hearing will provide sufficient information concerning Defendant, the offense charged in this case, and Defendant's role in the offense to enable the meaningful exercise of sentencing authority by this Court under 18 U.S.C. § 3553. The United States will not object to Defendant's request that this Court accept Defendant's plea of guilty and impose sentence on an expedited schedule as early as the date of arraignment, based upon the record provided by Defendant and the United States, under the provisions of Rule 32(b)(1), Fed. R. Crim. P., U.S.S.G. § 6A1.1, and Criminal Local Rule 32-1(b). The Court's denial of the request to impose sentence on an expedited schedule will not void this Plea Agreement. Should the Court

deny Defendant's request to impose sentence on an expedited schedule, the United States agrees that, at the initial appearance or arraignment, it will recommend the release of Defendant on his personal recognizance and without bond, under 18 U.S.C. § 3142, without restriction as to travel, pending the sentencing hearing in this case.

12. The United States and Defendant understand that this Court retains complete discretion to accept or reject the recommended sentence provided for in Paragraph 8 of this Plea Agreement.

(a) If this Court does not accept the recommended sentence, the United States and Defendant agree that this Plea Agreement, except for Paragraph 12(b) below, shall be rendered void. Neither party may withdraw from this Plea Agreement, however, based on the type or location of the correctional facility to which Defendant is assigned to serve his sentence.

(b) If this Court does not accept the recommended sentence, Defendant will be free to withdraw his guilty plea (Fed. R. Crim. P. 11(c)(5) and (d)). If Defendant withdraws his plea of guilty, this Plea Agreement, the guilty plea, and any statement made in the course of any proceedings under Fed. R. Crim. P. 11 regarding the guilty plea or this Plea Agreement or made in the course of plea discussions with an attorney for the government shall not be admissible against Defendant in any criminal or civil proceeding, except as otherwise provided in Fed. R. Evid. 410. In addition, should the Court not accept the Plea Agreement and should Defendant then withdraw his guilty plea, the United States agrees that it will dismiss the Information, without prejudice to the United States' right to indict Defendant on the charge contained in the Information and any other related charges. In addition, Defendant agrees that, if he withdraws his guilty plea pursuant to this subparagraph of the Plea Agreement, the statute of limitations period for any Relevant Offense, as defined in Paragraph 13 below, will be tolled for the period between the date of the signing of the Plea Agreement and the date Defendant withdrew his guilty plea or for a period of sixty (60) days after the date of the signing of the Plea Agreement, whichever is greater.

## DEFENDANT'S COOPERATION

13. Defendant will cooperate fully and truthfully with the United States in the prosecution of this case, the current federal investigation of violations of federal antitrust and related criminal laws involving the manufacture or sale of DRAM, any other federal investigation resulting therefrom, and any litigation or other proceedings arising or resulting from any such investigation to which the United States is a party ("Federal Proceeding"). The ongoing, full, and truthful cooperation of Defendant shall include, but not be limited to:

(a) producing in the United States and at other mutually agreed-upon locations all non-privileged documents, including claimed personal documents, and other non-privileged materials, wherever located, in the possession, custody, or control of Defendant, requested by attorneys and agents of the United States;

(b) making himself available for interviews in the United States and at other mutually agreed-upon locations, not at the expense of the United States, upon the request of attorneys and agents of the United States;

(c) responding fully and truthfully to all inquiries of the United States in connection with any Federal Proceeding, without falsely implicating any person or intentionally withholding any non-privileged information, subject to the penalties of making false statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503);

(d) otherwise voluntarily providing the United States with any non-privileged material or information, not requested in (a) - (c) of this paragraph, that he may have that is related to any Federal Proceeding; and

(e) when called upon to do so by the United States in connection with any Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings in the United States, fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401 - 402), and obstruction of justice (18 U.S.C. § 1503).

## GOVERNMENT'S AGREEMENT

14. Subject to the full, truthful, and continuing cooperation of Defendant, as described in Paragraph 13 of this Plea Agreement, and upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of the recommended sentence, the United States will not bring further criminal charges against Defendant for any act or offense committed before the date of this Plea Agreement that was undertaken in furtherance of an antitrust conspiracy involving the manufacture or sale of DRAM or undertaken in connection with any investigation of such a conspiracy ("Relevant Offense"). The nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence.

15. Defendant understands that he may be subject to administrative action by federal, state or foreign agencies other than the United States Department of Justice, Antitrust Division, based upon the conviction resulting from this Plea Agreement, and that this Plea Agreement in no way controls whatever action, if any, other agencies may take. However, the United States agrees that, if requested, it will advise the appropriate officials of any governmental agency considering such administrative action of the fact, manner, and extent of the cooperation of Defendant as a matter for that agency to consider before determining what administrative action, if any, to take.

## REPRESENTATION BY COUNSEL

16. Defendant has reviewed all legal and factual aspects of this case with his attorney and is fully satisfied with his attorney's legal representation. Defendant has thoroughly reviewed this Plea Agreement with his attorney and has received satisfactory explanations from his attorney concerning each paragraph of this Plea Agreement and alternatives available to Defendant other than entering into this Plea Agreement. After conferring with his attorney and considering all available alternatives, Defendant has made a knowing and voluntary decision to enter into this Plea Agreement.

## VOLUNTARY PLEA

17. Defendant's decision to enter into this Plea Agreement and to tender a plea of

guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises, or representations other than the representations contained in this Plea Agreement. The United States has made no promises or representations to Defendant as to whether this Court will accept or reject the recommendations contained within this Plea Agreement.

**VIOLATION OF PLEA AGREEMENT**

18. Defendant agrees that, should the United States determine in good faith, during the period that any Federal Proceeding is pending, that Defendant has failed to provide full and truthful cooperation, as described in Paragraph 13 of this Plea Agreement, or has otherwise violated any provision of this Plea Agreement, the United States will notify Defendant or his counsel in writing by personal or overnight delivery or facsimile transmission and may also notify his counsel by telephone of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and Defendant shall be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, the substantive offenses relating to the investigation resulting in this Plea Agreement. Defendant may seek Court review of any determination made by the United States under this Paragraph to void any of its obligations under the Plea Agreement. Defendant agrees that, in the event that the United States is released from its obligations under this Plea Agreement and brings criminal charges against Defendant for any Relevant Offense, the statute of limitations period for such offense will be tolled for the period between the date of the signing of this Plea Agreement and six (6) months after the date the United States gave notice of its intent to void its obligations under this Plea Agreement.

19. Defendant understands and agrees that in any further prosecution of him resulting from the release of the United States from its obligations under this Plea Agreement based on Defendant's violation of the Plea Agreement, any documents, statements, information, testimony, or evidence provided by him to attorneys or agents of the United States, federal grand juries, or courts, and any leads derived therefrom, may be used against him in any such further prosecution. In addition, Defendant unconditionally waives his right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of

Fed. R. Evid. 410.

**ENTIRETY OF AGREEMENT**

20. This Plea Agreement constitutes the entire agreement between the United States and Defendant concerning the disposition of the criminal charge in this case. This Plea Agreement cannot be modified except in writing, signed by the United States and Defendant.

21. The undersigned attorneys for the United States have been authorized by the Attorney General of the United States to enter this Plea Agreement on behalf of the United States.

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22. A facsimile signature shall be deemed an original signature for the purpose of executing this Plea Agreement. Multiple signature pages are authorized for the purpose of executing this Plea Agreement.

DATED: Oct. 5, 2006

Respectfully submitted,

BY:

_____/s/_____
Thomas Quinn
Defendant

_____/s/_____
Counsel for Defendant
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