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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 UNITED STATES OF AMERICA)	Case No. CR 06-692 (PJH)
)	
13 v.)	UNITED STATES' AND
)	DEFENDANT IL UNG KIM'S
14)	JOINT SENTENCING
)	MEMORANDUM
15 IL UNG KIM,)	
)	DATE: May 2, 2007
16 Defendant.)	TIME: 2:30 p.m.
)	COURT: Hon. Phyllis J. Hamilton

17 **JOINT SENTENCING MEMORANDUM**

18 The United States of America and Il Ung Kim ("Defendant"), file this Joint Sentencing
19 Memorandum in support of their recommendation that this Court: (1) sentence the Defendant to
20 pay a fine of \$250,000, payable in full before the fifteenth day after the date of entry of
21 judgment; (2) sentence the Defendant to a period of incarceration of fourteen months; (3)
22 recommend, pursuant to a request by the Defendant that is not opposed by the United States, that
23 the Defendant be placed in a federal minimum security camp, and specifically to the Lompoc
24 Prison Camp in Lompoc, California; (4) release Defendant on his own personal recognizance
25 under 18 U.S.C. § 3142(b) following imposition of sentence to allow the Defendant to self-

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28 Joint Sentencing Memo.
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1 surrender to the designated institution on June 11, 2007, or as soon as possible thereafter; and (5)
2 impose no period of supervised release (“the recommended sentence”).

3 The parties have separately filed a motion under Criminal Local Rule 32-1(b) requesting
4 that the sentence be imposed immediately upon acceptance of the plea presently contemplated to
5 be entered on May 2, 2007, or as soon thereafter as possible, based on the current record and
6 without need of an evidentiary sentencing hearing or a presentence report.

7 **INTRODUCTION**

8 On October 18, 2006, the defendant was indicted by a federal grand jury in San Francisco
9 and charged with joining and participating in a combination and conspiracy in the United States
10 and elsewhere, from on or about April 1, 2001 until on or about June 15, 2002, to suppress and
11 eliminate competition by fixing the prices of Dynamic Random Access Memory (“DRAM”) to
12 be sold to certain original equipment manufacturers of personal computers and servers
13 (“OEMs”), in violation of the Sherman Antitrust Act, 15 U.S.C. § 1. Defendant is scheduled for
14 a change of plea and possible sentencing on May 2, 2007. Defendant will plead guilty under Fed.
15 R. Crim. P. 11(c)(1)(C). A copy of the Defendant’s 11(c)(1)(C) Plea Agreement is attached to
16 this Joint Sentencing Memorandum.

17 **MATERIAL TERMS OF PLEA AGREEMENTS**

18 The material terms of the Plea Agreements include:

- 19
- 20 1. The Defendant will waive all rights enumerated in the Plea Agreement, and plead
21 guilty to a one-count Indictment charging him with participating in a conspiracy in the United
22 States and elsewhere to suppress and eliminate competition by fixing the prices of DRAM to be
23 sold to certain OEM customers from on or about April 1, 2001, to on or about June 15, 2002, (the
24 “relevant period”), in violation of the Sherman Antitrust Act, 15 U.S.C. § 1. The conspiracy
25 directly affected these OEMs in the United States: Dell Inc., Hewlett-Packard Company, Compaq
26 Computer Corporation, International Business Machines Corporation, Apple Computer Inc., and

1 Gateway, Inc.

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

5 3. The United States will not seek restitution in this case in light of the many civil
6 cases filed against Defendant's corporate employer. Those suits, including *In re DRAM Antitrust*
7 *Litigation*, No. M-02-1486-PJH, MDL No. 1486, consolidated in the United States District
8 Court, Northern District of California, potentially provide for a recovery of a multiple of actual
9 damages. Additionally, the United States agrees that, pursuant to U.S.S.G. § 5E1.1(b),
10 Defendant should not be ordered to pay restitution because: (1) the courts in the related civil
11 cases referred to above are best situated to determine which parties, if any, are entitled to recover
12 in this matter and are best situated to compensate those parties who may be aggrieved and would
13 otherwise receive restitution; (2) the victims are well-represented companies that have ample
14 ability to recover in the civil cases; and (3) any amount of restitution Defendant could
15 reasonably be ordered to pay would be negligible in comparison to the amount of potential
16 claims in these civil matters. Therefore, under the unique circumstances of this case, determining
17 restitution would complicate or prolong the sentencing process to a degree that the need to
18 provide restitution is outweighed by the burden on the sentencing process. U.S.S.G. §
19 5E1.1(b)(2)(B).
20

21 4. The United States will move for a downward departure under § 5K1.1 of the
22 Guidelines based on the Defendant's substantial assistance to the government's investigation and
23 prosecutions of violations of federal criminal law in the DRAM industry and other related
24 industries. The recommended terms of incarceration and fines are below the Guidelines ranges.
25 The United States' motion for a downward departure at the time of sentencing does not cancel or
26 negate Defendant's continuing obligation under the Plea Agreement to cooperate in the United
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1 States' ongoing antitrust investigation of the DRAM industry.

2 5. The United States will not oppose Defendant's request that this Court make a
3 recommendation to the Bureau of Prisons that it designate that Defendant be assigned to a
4 Federal Minimum Security Camp to serve his sentence, and specifically recommend placement
5 to the Lompoc Prison Camp in Lompoc, California. Placement in that facility will permit
6 reasonable access by Defendant's counsel, families, and by the government in connection with
7 the ongoing obligation to cooperate in the government's investigations. In addition, FPC
8 Lompoc has experience in housing foreign nationals in the DRAM antitrust investigation and in
9 similar cases. The United States also will not oppose the Defendant's request that he be released
10 on his own personal recognizance under 18 U.S.C. § 3142(b) following imposition of sentence to
11 allow Defendant to self-surrender to the designated institution on June 11, 2007, or as soon as
12 possible thereafter. The Department of Homeland Security has stated that it is willing to
13 authorize the Defendant's parole into this country for purposes of entering his plea and serving
14 his sentence, as set forth in the letter from Julie L. Myers, Assistant Secretary for the U.S.
15 Department of Homeland Security, Immigration and Customs Enforcement.

16 6. Subject to Defendant's continuing cooperation as set forth in the Plea Agreement,
17 and upon this Court's acceptance of his guilty plea and imposition of the agreed-upon sentence,
18 the United States agrees it will not seek to exclude, deport, or remove the Defendant from the
19 United States based upon his guilty pleas. The U.S. Department of Justice, Antitrust Division,
20 has requested U.S. Immigration and Customs Enforcement (ICE), on behalf of the Department of
21 Homeland Security to agree to the inclusion of a provision in the Plea Agreement (Paragraph 16)
22 that would relieve the Defendant of an adverse immigration consequence based on this
23 conviction. ICE has agreed to this request in the form of a letter from Julie L. Myers, Assistant
24 Secretary.
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1 7. If the Court does not accept the sentences provided for in the Plea Agreement,
 2 Defendant will be free to withdraw his guilty plea, and the Plea Agreement will be rendered void.

3 **UNITED STATES SENTENCING GUIDELINES CALCULATIONS**

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

11	(a)	Base Offense Level (§ 2R1.1(a))	10
12	(b)	Volume of Affected Commerce (§ 2R1.1(b)(2)(G)) (More than \$100 million)	+7
13			
14	(c)	Total Adjusted Offense Level	17
15	(d)	Victim-Related Adjustments (§ 3A)	+0
16	(e)	Role in the Offense Adjustments (§ 3B)	+3
17	(f)	Obstruction Adjustments (§ 3C)	+0
18	(g)	Acceptance of Responsibility (§ 3E1.1(a) and (b))	-3
19			
20	(h)	Total Offense Level	17
21	(i)	Criminal History Category (§ 4A1.1)	I

22 Therefore, the appropriate range of sentence under the Guidelines for Defendant is 24-30
 23 months, no term of probation (§ 5B1.1), supervised release of one year (§§ 5D1.1, 5D1.2(a)(3)),
 24 restitution (§ 5E1.1), a fine of 1% to 5% of the volume of commerce (§§ 2R1.1(c)(1), 5E1.2(b))
 25 or the statutory maximum of \$350,000 pursuant to 15 U.S.C. §1, and a special assessment of
 26 \$100 (§ 5E1.3). With a volume of affected commerce in excess of \$100 million the appropriate
 27

1 fine range under the Guidelines is either at least \$1-5 million (1% to 5% of \$100 million)
2 pursuant to the alternative fine statute under 18 U.S.C. § 3571(b)(2), or the statutory maximum
3 fine of \$350,000 under 15 U.S.C. 1 (The Sherman Act). The United States will elect to proceed
4 under the maximum fine of \$350,000 pursuant to 15 U.S.C. § 1.

5 **MOTION FOR DOWNWARD DEPARTURE**

6 Based on the Defendant's substantial assistance to the United States, and the requirement
7 of cooperation in the future under the Plea Agreement, the United States moves under § 5K1.1
8 of the Sentencing Guidelines for a downward departure from the minimum Guidelines
9 incarceration and fine ranges to an incarceration of fourteen months and a \$250,000 fine.

10 Defendant has already cooperated by submitting to a voluntary interview with the government
11 that has been accepted by the United States as truthful and candid. The United States has
12 determined that such cooperation constitutes substantial assistance in the investigation and
13 prosecution of another entity or person who has committed an offense, and is the basis for the
14 downward departure pursuant to U.S.S.G. § 5K1.1. Additionally, Defendant has agreed to
15 continue assisting the United States in its ongoing DRAM and related investigations, including
16 making himself available for additional interviews and testimony at the United States' request.
17 The United States believes that Defendant intends to be completely candid and cooperative with
18 the United States' ongoing criminal investigation.

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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.

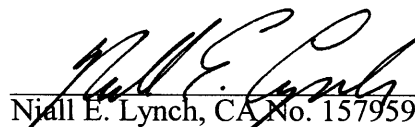
DATED: May 1, 2006

Respectfully submitted,

IL UNG KIM

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CRIME VICTIMS' NOTIFICATION

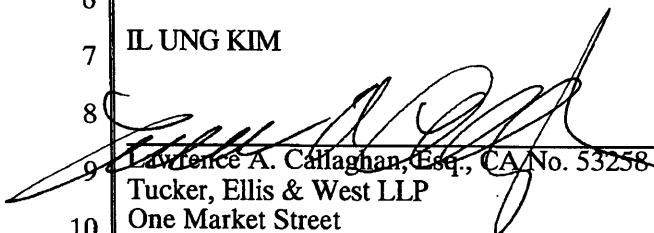
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DATED: May 1, 2006

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