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RICHARD W. WIEKING
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NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JSC

CV 13 1877

STATE OF FLORIDA, OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT OF LEGAL AFFAIRS, Plaintiff, v. HITACHI-LG DATA STORAGE, INC., HITACHI-LG DATA STORAGE KOREA, INC., Defendants.	**COMPLAINT FOR DAMAGES, CIVIL PENALTIES, INJUNCTIVE RELIEF** DEMAND FOR JURY TRIAL

Plaintiff, the State of Florida, through the Attorney General and the Department of Legal Affairs, files this Complaint against Defendants Hitachi-LG Data Storage, Inc., and Hitachi-LG Data Storage Korea, Inc., (collectively "Defendants"), and alleges:

I. NATURE OF THE ACTION

1. The State of Florida brings this action against the Defendants under the Sherman Act, the Clayton Act, the Florida Antitrust Act, and the Florida Deceptive and Unfair Trade Practices Act on behalf of itself and its governmental entities, on behalf of businesses within

Florida and on behalf of natural persons in Florida. The State of Florida demands a trial by jury of all issues stated herein.

2. Defendants conspired to suppress and eliminate competition by fixing the prices of optical disk drives.

3. Defendants' conspiracy affected millions of dollars of commerce and damaged virtually every government entity, business, and consumer in Florida.

4. The Attorney General of Florida has reviewed this matter and determined that an enforcement action serves the public interest.

II. JURISDICTION AND VENUE

5. Count One alleges violations of Section 1 of the Sherman Act, 15 U.S.C. § 1, and is brought pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26 (injunctive relief). Count One also alleges violations of the Florida Antitrust Act, Section 542.15, *et seq.*, Florida Statutes, and is brought pursuant to Section 542.23, Florida Statutes (injunctive relief). Additionally, Count One alleges violations of the Florida Deceptive and Unfair Trade Practices Act, Section 501.201, *et seq.*, Florida Statutes, and is brought pursuant to Section 501.207(1)(b), Florida Statutes (injunctive relief). This Court has original jurisdiction over the federal antitrust claim pursuant to Title 28, United States Code Sections 1331 (federal question) and 1337 (original jurisdiction of proceeding under an Act of Congress regulating commerce or protecting trade and commerce against restraints). This Court has subject matter jurisdiction over the state claims pursuant to Title 28, United States Code Section 1367 (supplemental jurisdiction) because these claims are so related to the federal claim that they form part of the same case or controversy that would ordinarily be tried in one judicial proceeding. The exercise of supplemental jurisdiction

avoids unnecessary duplication and multiplicity of actions and is in the interest of judicial economy, convenience, and fairness.

6. Count Two alleges violations of Section 1 of the Sherman Act, 15 U.S.C. § 1, and is brought pursuant to Section 4 of the Clayton Act, 15 U.S.C. § 15 (suits by persons injured). This Court has original jurisdiction over the federal antitrust claim pursuant to Title 28, United States Code Sections 1331 (federal question) and 1337 (original jurisdiction of proceeding under an Act of Congress regulating commerce or protecting trade and commerce against restraints).

7. Counts Three and Four arise under the Florida Antitrust Act, Section 542.15, *et seq.*, Florida Statutes, and the Florida Deceptive and Unfair Trade Practices Act, Section 501.201, *et seq.*, Florida Statutes, respectively. This Court has subject matter jurisdiction over the state claims pursuant to Title 28, United States Code Section 1367 (supplemental jurisdiction) because these claims are so related to the federal claim that they form part of the same case or controversy that would ordinarily be tried in one judicial proceeding. The exercise of supplemental jurisdiction avoids unnecessary duplication and multiplicity of actions and is in the interest of judicial economy, convenience, and fairness.

8. Venue is proper in the United States District Court, Northern District of California, under Title 15, United States Code Section 22 (commerce and trade venue) and Title 28, United States Code Section 1391 (general venue). Each Defendant is an alien corporation or resides, transacts business, committed an illegal or tortious act, or is found in this district, and a substantial part of the events giving rise to the claims arose in this district.

III. DEFINITIONS

9. As used herein,

a. "ODD" or "ODDs" means "optical disk drive(s)."

b. The following types of ODDs are the subject of this lawsuit: CD-ROM ("CD"), CD-recordable ("CD-R"), CD-rewritable ("CD-RW"), DVD-ROM ("DVD"), DVD-recordable ("DVD-R" and "DVD+R"), DVD-rewritable ("DVD-RW" and "DVD+RW"), Blu-Ray ("BD"), Blu-Ray recordable ("BD-R"), Blue-Ray rewritable ("BD-RE"), and High-Definition/Density DVD (HD-DVD).

c. "ODD Products" refer to products containing the ODDs that are the subject of this lawsuit, i.e. desktop and notebook computers, video game consoles, and ODDs designed to be attached externally to devices such as computers.

d. "OEM" means any Original Equipment Manufacturer of ODD Products.

e. "Person" means any individual, partnership, corporation, association, or other business or legal entity.

f. "Relevant Period" means the period beginning at least January 1, 2004, through at least January 1, 2010.

IV. PARTIES

A. Plaintiff

10. The State of Florida is authorized to file Count I under 15 U.S.C. § 26 to enjoin Defendants from the violations alleged herein.

11. The State of Florida is assigned the rights giving rise to certain claims under Counts II and III from vendors that sold ODDs and/or ODD Products, purchased directly from a Defendant, to Florida governmental entities pursuant to a state contract, and is therefore authorized to file Count II under 15 U.S.C. § 15 and Count III under Section 542.22(1), Florida Statutes.

12. The Attorney General of Florida is the chief legal officer of Florida and the enforcement authority of Chapter 542, Florida Statutes, and is authorized to file Counts I and III seeking the full range of relief afforded by Chapter 542, Florida Statutes.

13. The Department of Legal Affairs of Florida is the enforcing authority for violations of Chapter 501, Florida Statutes, and has the authority to file Counts I and IV to enjoin any person who has violated the Florida Deceptive and Unfair Trade Practices Act and to seek actual damages on behalf of one or more individual consumers, businesses, and governmental entities in Florida, including direct and indirect purchases.

B. Defendants

14. Defendant Hitachi-LG Data Storage, Inc. ("HLDS") is a joint venture between LG Electronics, Inc. ("LGE") and Hitachi, Ltd. ("Hitachi"). HLDS has its principal place of business at 4F MSC Center Bldg., 22- 23, Kaigan 3-chome, Minato-Ku, Tokyo 108-0022, Japan. HLDS has offices in Seoul, Korea and Houston, Texas. Hitachi owns 51 percent of the stock in HLDS, while LGE owns the remaining 49 percent. Hitachi and LGE jointly control and direct the operations of HLDS. HLDS was established in November 2000 and started operation in January 2001. In 2005 alone, HLDS had revenues of $2.4 billion. During the Relevant Period, HLDS designed and/or manufactured ODDs with the intent and agreement to distribute throughout the United States.

15. Defendant Hitachi-LG Data Storage Korea, Inc. was formed in December 2000 as a wholly-owned and controlled subsidiary of Defendant HLDS, and has its principal place of business located at LG Gasan Digital Center, 459-9 Gasan-dong, Geumceon-gu, Seoul, 153-803 Korea. During the Relevant Period, Hitachi-LG Data Storage Korea, Inc. designed and/or manufactured ODDs with the intent and agreement to distribute throughout the United States.

V. CO-CONSPIRATORS AND AGENTS

16. Various Persons that are not named as Defendants herein conspired with the Defendants in the violations of law alleged in this Complaint. These co-conspirators engaged in conduct and made statements in furtherance of the conspiracy. State of Florida reserves the right to name some or all of these Persons as Defendants at a later date.

17. Co-conspirator Hitachi, Ltd. ("Hitachi") is a Japanese company that has its principal executive office at 6-6, Marunouchi l-chome, Chiyoda-ku, Tokyo 100-8280, Japan. During the Relevant Period, Hitachi designed and/or manufactured ODDs with the intent and agreement to distribute throughout the United States.

18. Co-conspirator LG Electronics, Inc. ("LGE") is a Korean entity headquartered at LG Twin Towers 20, Yoido-dong, Youngdungpo-gu, Seoul, South Korea 150-721. During the Relevant Period, LGE designed and/or manufactured ODDs with the intent and agreement to distribute throughout the United States.

19. Co-conspirator BenQ Corporation ("BenQ") is a Taiwanese company that has its principal place of business at 16 Jihu Rd., Neihu, Taipei 114, Taiwan. During the Relevant Period, BenQ designed and/or manufactured ODDs with the intent and agreement to distribute throughout the United States.

20. Co-conspirator BenQ America Corporation is a California corporation that has its principal place of business at 15375 Barranca Parkway, Suite A-205, Irvine, California 92618. BenQ America Corporation is a wholly-owned and controlled subsidiary of BenQ Corporation. During the Relevant Period, BenQ America Corporation designed and/or manufactured ODDs with the intent and agreement to distribute throughout the United States.

21. Co-conspirator Koninklijke Philips Electronics N.V. ("Philips") is a Dutch company that has its principal place of business at Amstelplein 2, Breitner Center, P.O. Box 77900, 1070 MX Amsterdam, The Netherlands. During the Relevant Period, Philips designed and/or manufactured ODDs with the intent and agreement to distribute throughout the United States.

22. Co-conspirator Lite-On IT Corporation ("Lite-On") is a Taiwanese company that has its principal place of business at 12F, 392, Ruey Kuang Road, Taipei City, TAP 11492, Taiwan. During the Relevant Period, Lite-On designed and/or manufactured ODDs with the intent and agreement to distribute throughout the United States.

23. Co-conspirator Philips & Lite-On Digital Solutions Corporation ("PLDS") is a Taiwanese company that has its principal place of business at 16F, 392, Ruey Kuang Road, Taipei City, TAP 11492, Taiwan. PLDS is a joint venture established in 2007 between Philips and Lite-On. During the Relevant Period, PLDS designed and/or manufactured ODDs with the intent and agreement to distribute throughout the United States.

24. Co-conspirator Philips & Lite-On Digital Solutions USA, Inc. is a Delaware corporation that has its principal place of business at 42000 Christy St., Fremont, California 94538. Philips & Lite-On Digital Solutions USA, Inc. is a subsidiary of PLDS. During the Relevant Period, Philips & Lite-On Digital Solutions USA, Inc. designed and/or manufactured ODDs with the intent and agreement to distribute throughout the United States.

25. Co-conspirator Sony Corporation ("Sony") is a Japanese company that has its principal place of business at 1-7-1 Konan, Minato-ku, Tokyo 108-0075, Japan. During the Relevant Period, Sony designed and/or manufactured ODDs with the intent and agreement to distribute throughout the United States.

26. Co-conspirator NEC Corporation ("NEC") is a Japanese company that has its principal place of business at 7-1 Shiba, 5-chome, Minato-Ku, Tokyo, 108-8001, Japan. Prior to 2008, NEC owned 45 percent of Sony Optiarc, Inc. During the Relevant Period, NEC designed and/or manufactured ODDs with the intent and agreement to distribute throughout the United States.

27. Co-conspirator Sony NEC Optiarc, Inc. ("Sony NEC Optiarc") was a Japanese company with its headquarters located at 4-16-1 Okata, Atsugi-shi, Kanagawa 243-0021, Japan. Sony NEC Optiarc, Inc. was created on April 3, 2006, as a joint venture between Defendants Sony and NEC, in which Sony had a 55 percent interest and NEC had a 45 percent interest. Sony and NEC exercised joint control over Sony NEC Optiarc, Inc. Sony purchased NEC's interest in Sony NEC Optiarc, Inc. in 2008 and renamed the company Sony Optiarc, Inc. During the Relevant Period, Sony NEC Optiarc, Inc. designed and/or manufactured ODDs with the intent and agreement to distribute throughout the United States.

28. Co-conspirator Sony Optiarc, Inc. ("Sony Optiarc") is a Japanese company that has its headquarters located at 4-16-1 Okata, Atsugi-shi, Kanagawa 243-0021, Japan. Prior to 2008, Sony Optiarc was a joint venture between Sony and NEC called Sony NEC Optiarc, Inc. On September 11, 2008, Sony agreed to purchase NEC's interest in Sony NEC Optiarc and the company was subsequently renamed Sony Optiarc, Inc. In 2008, Sony Optiarc reported revenues of $1.52 billion. During the Relevant Period, Sony Optiarc designed and/or manufactured ODDs with the intent and agreement to distribute throughout the United States.

29. Co-conspirator Sony Optiarc America, Inc. ("Sony Optiarc America") is a Delaware corporation headquartered at 1730 N. 1st Street, San Jose, California 95112. Sony Optiarc America is a wholly-owned subsidiary of Sony Optiarc. Sony Optiarc America was

formed in April 2007 as Sony NEC Optiarc America, Inc. In 2008, when Sony NEC Optiarc, Inc. became a wholly-owned subsidiary of Sony, the company was renamed Sony Optiarc America, Inc. During the Relevant Period, Sony Optiarc America designed and/or manufactured ODDs with the intent and agreement to distribute throughout the United States.

30. Co-conspirator Samsung Electronics Co., Ltd. ("Samsung") is a Korean company that has its principal place of business at 1320-10, Seocho 2-dong, Seocho-gu, Seoul 137-857, South Korea. During the Relevant Period, Samsung designed and/or manufactured ODDs with the intent and agreement to distribute throughout the United States.

31. Co-conspirator Toshiba Corporation ("Toshiba") is a Japanese company that has its principal place of business at 1-1, Shibaura l-chome, Minato-ku, Tokyo 105-8001, Japan. During the Relevant Period, Toshiba designed and/or manufactured ODDs with the intent and agreement to distribute throughout the United States.

32. Co-conspirator Toshiba Samsung Storage Technology Corporation ("TSST") is a joint venture of Toshiba and Samsung that was established on April 1, 2004. Toshiba owns 51 percent of the stock in TSST, while Samsung owns the remaining 49 percent. TSST and Toshiba share corporate headquarters, which are located at 1-1, Shibaura l-Chome, Minato-ku, Tokyo 105-8001, Japan. Toshiba and Samsung jointly control TSST. TSST forecasted revenue of 250 billion yen in fiscal year 2004, when it was established. During the Relevant Period, TSST designed and/or manufactured ODDs with the intent and agreement to distribute throughout the United States.

33. Co-conspirator Toshiba Samsung Storage Technology Corporation Korea is a wholly-owned and controlled subsidiary of TSST. Toshiba Samsung Storage Technology Corporation Korea is a business entity organized under the laws of South Korea with its principal

place of business located at Digital Empire2, 486, Sin-dong, Yeongton-gu, Suwon-si, Gyeonggi-do, Korea 443-734. During the Relevant Period, Toshiba Samsung Storage Technology Corporation Korea designed and/or manufactured ODDs with the intent and agreement to distribute throughout the United States.

34. Co-conspirator Panasonic Corporation ("Panasonic") is a Japanese entity that has its principal place of business at 1006, Oaza Kadoma, Kadoma-shi, Osaka 571-8501, Japan. Up until October 1, 2008, Panasonic was known as Matsushita Electric Industrial Co., Ltd. During the Relevant Period, Panasonic designed and/or manufactured ODDs with the intent and agreement to distribute throughout the United States.

35. Co-conspirator Panasonic Corporation of North America, formerly known as Matsushita Electric Corporation of North America, is a Delaware corporation and has its principal place of business at 1 Panasonic Way, Secaucus, New Jersey 07094. Panasonic Corporation of North America is a wholly-owned and controlled subsidiary of Panasonic Corporation. During the Relevant Period, Panasonic Corporation of North America designed and/or manufactured ODDs with the intent and agreement to distribute throughout the United States.

36. Co-conspirator TEAC Corporation ("TEAC") is a Japanese company that has its principal place of business at 1-47 Ochiai Tama-shi, Tokyo 206-8530, Japan. During the Relevant Period, TEAC designed and/or manufactured ODDs with the intent and agreement to distribute throughout the United States.

37. Co-conspirator TEAC America Inc. is a business entity organized under the laws of California and has its principal place of business at 7733 Telegraph Rd., Montebello, California, 90640. TEAC America Inc. is a wholly-owned subsidiary of TEAC Corporation.

During the Relevant Period, TEAC America Inc. designed and/or manufactured ODDs with the intent and agreement to distribute throughout the United States.

38. Co-conspirator Quanta Storage Inc. ("Quanta") is a Taiwanese entity that has its principal place of business at 3F, No. 188, Wenhua 2nd Rd., Guishan Shiang, Taoyuan County 333, Taiwan. Quanta was incorporated on February 10, 1999 in Taoyuan County, Taiwan. During the Relevant Period, Quanta designed and/or manufactured ODDs with the intent and agreement to distribute throughout the United States.

39. Co-conspirator Quanta Storage America, Inc. is a California corporation that has its principal place of business at 2726 Bayview Dr, Fremont, California 94538. Quanta Storage America, Inc. is a wholly-owned and controlled subsidiary of Quanta Storage Inc. During the Relevant Period, Quanta Storage America, Inc. designed and/or manufactured ODDs with the intent and agreement to distribute throughout the United States.

40. Various other Persons, unknown to the State of Florida at the present, conspired with the Defendants in the violations of law alleged in this Complaint. These co-conspirators engaged in conduct and made statements in furtherance of the conspiracy. State of Florida reserves the right to name some or all of these Persons as Defendants at a later date.

41. Any reference in this Complaint to any act, deed, or transaction by a corporation means that the corporation engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while they were actively engaged in the management, direction, control, or transaction of the corporation's business or affairs.

42. Defendants are also liable for acts done in furtherance of the alleged conspiracy by companies they acquired through mergers or acquisitions.

43. Each of the Defendants named herein acted as the agent or joint venturer of or for the other Defendants with respect to the acts, violations, and common course of conduct alleged herein.

VI. BACKGROUND

A. ODD Technology

44. Optical disks contain microscopic pits where data is stored. These pits are made from a crystalline metal alloy and are usually pressed into a disk in a spiral arrangement, starting at the center of the disk. Once a disk containing information is inserted into an ODD, the disk spins while a lens inside the device guides a semiconductor laser beam over the disk and a photodiode detects the light reflected from the disk's bumps and pits. The laser moves outward from the center of the disk, scanning over the disk's surface. Then, the photodiode reads the light's reflection as a binary code, a series of ones and zeros that the computer translates into usable data. Changes in the intensity of the beams as the lasers hit the pits are detected and translated into electrical signals. The more pits that can be packed onto a disk, the more data a disk can store.

45. In addition to reading disks, ODDs can write and rewrite on a disk, depending on the technology of the drive and accompanying disk. When a recordable disk, such as a CD-R, DVD-R, or BD-R, is inserted into an ODD that has the ability to record data, the ODD's laser is used to selectively heat parts of the organic photosensitive dye layer on a disk, changing the reflective properties of the disk surface. Thereafter, if the disk is inserted into an ODD, the photodiode will recognize these changes as bumps and pits and read the new information on the disk.

46. Typically, ODDs are "backwards-compatible," meaning that an ODD designed to for a higher format optical disk is also able to process prior optical disk formats (e.g., a DVD-RW is generally able to process a disk formatted as a CD-ROM).

47. ODDs of all types come in half-height ("HH") and slim, including ultraslim, models. The slim size formats are better suited to integration into notebook computers and mobile computing equipment, but can also be used in desktop computers. HH units fit into standard half-height, i.e. 1.75" high, desktop computer bays, and are less appropriate for use in mobile equipment, where size, weight, and form factors are more important. Slim units typically trade off some degree of performance to achieve a smaller size. As notebook computers have become more popular with consumers, demand for slim optical disk drives has increased. In 2008, the sales of notebook computers surpassed desktop sales. Units incorporated into game consoles are very similar, and in most cases identical, to ODDs incorporated into computers.

48. Both HH and slim ODDs can be integrated into external cases by equipment manufacturers or end-users. An external ODD drive is intended for external use with a computer and connects to the computer through some type of interface, such as a USB connection.

49. An internal ODD drive is incorporated into a desktop computer tower or notebook computer and connects to the motherboard of the computer through either a Serial Advanced Technology Attachment ("SATA") or Parallel Advanced Technology Attachment ("PATA") interface.

B. <u>ODD Industry</u>

50. Dell Inc. ("Dell") and Hewlett-Packard Company ("HP") introduced direct competitive bidding by using processes such as electronic auctions ("e-auctions"). Dell was one of the first OEMs to introduce e-auctions in 2002, which it referred to as "Internet Negotiations"

("INs")". HP introduced a similar type of e-auction in 2004. HP implemented its e-auction program in part as a reaction to the success of Dell's online procurement events in decreasing the component costs for its personal computers. These e-auctions brought with them increased pricing competition and significant pricing pressure. They also further commoditized the ODD industry.

51. The e-auctions used by Dell and HP were e-auctions, INs, and electronic RFQs (Requests for Quotations). E-auctions and INs typically took place over a few hours or a single day. Electronic RFQs could involve real-time events that sometimes spanned multiple days and rounds of bidding. During the procurement event, the OEM sometimes provided feedback to the ODD supplier. Typically, the OEM procurement events occurred quarterly or, at most, six times a year per product.

52. These auctions did not usually result in a winner-take-all scenario, although on rare occasions a sole winner did exist. Instead, awards went to multiple sources or winners. Some OEMs often selected three or four suppliers on a tiered basis. The volume to be awarded under the contract was generally referred to as Total Available Market ("TAM"). TAM could be determined as a fixed number or as a target that moved based on the final bidding prices.

VII. DEFENDANTS' ANTICOMPETITIVE CONDUCT

53. Defendants and their co-conspirators engaged in a contract, combination, trust or conspiracy in order to control and maintain profitable prices for ODDs. The object and effect of this unlawful behavior has been to raise, fix, maintain, and/or stabilize the prices at which Defendants and their co-conspirators sold ODDs to artificially inflated levels from at least January 1, 2004 through at least January 1, 2010.

54. Defendants and their co-conspirators engaged in a conspiracy to reduce ODD price competition in online auctions and to raise, fix, maintain, and/or stabilize prices in the ODD market, effectuated by overt acts in furtherance thereof, including agreements, and the exchange of competitively sensitive information, including prices, sales, production, desired tier positions, aggressiveness of bidding, rankings, pull rates, and TAM. The purpose of these information exchanges was anticompetitive price collusion and the effect of these exchanges was to change pricing behavior.

55. Defendants' and their co-conspirators' information exchanges and agreements on prices and bid positions were conducted and reached by sales managers, account managers or global account managers who typically reported to sales executives within each of their respective companies.

56. Although Defendants' and their co-conspirators' employees had previously exchanged confidential business information, the inception of internet auctions by Dell in 2002 caused Defendants and their co-conspirators to increase the intensity, frequency and specificity in their exchanges of competitive information. Defendants and their co-conspirators feared that internet auctions would accelerate the downward price trends for ODDs.

57. By the time HP began e-auctions and electronic RFQs in 2004, Defendants and their co-conspirators had in place a network of contacts at each Defendant and co-conspirator ODD manufacturer who they could call to exchange confidential business information.

58. Defendants' and their co-conspirators' customers, OEMs such as Dell and HP, would host events that the suppliers would attend together. At these events, Defendants' representatives would trade contact information for purposes of setting up future information exchanges and pricing agreements. Thus, personal relationships were developed between key

employees at competitor companies, forming communication links to allow the illicit sharing of sensitive information.

59. These contacts were so important that when employees switched positions, they would introduce their replacements to their contacts at other firms in order to maintain the continuity of information exchanges.

60. These exchanges of sensitive information were undertaken at the direction of the account managers' superiors. Account managers and sales directors were responsible for cultivating contacts at rival firms. These employees would exchange cell phone numbers and non-business e-mail addresses to maintain these contacts. These employees were required to call their counterparts at other ODD manufacturers before, during, and after many procurement events, and at other times as necessary, in order to exchange a wide variety of competitively sensitive information.

61. The results of these competitor contacts were sometimes reported to the larger sales team within each Defendant and co-conspirator. By reaching out to multiple contacts at rival firms, an industry-wide picture could be drawn. Each Defendant and co-conspirator would then know how it could bid on an upcoming procurement event to capture its desired sales at a price above the competitive price.

62. Defendants and their co-conspirators exchanged competitively sensitive information through e-mail communications and telephone calls. They also met face to face at times to exchange competitive information, meeting, for example, at establishments, including restaurants, in Texas and abroad.

63. Defendants' and their co-conspirators' conspiracy raised, fixed, maintained, and/or stabilized prices of ODDs. Before this anticompetitive conduct, the ODD market was

characterized by a steep downward trend in prices, frequently observed in technology markets. However, during the Relevant Period, the conduct complained of herein reduced the rate of decline in prices, thereby stabilizing prices, in the ODD market. In fact, market data indicate the effect of the conspiracy in slowing price declines was tremendous, and the illegal conduct appears to have caused ODD prices to increase at certain points.

64. To date, the United States Department of Justice ("DOJ") has charged one company and four individuals in connection with its investigation into the ODD industry:

a. On or about November 8, 2011, HLDS paid a $21,100,000 criminal fine and pled guilty to participating in a series of conspiracies to rig bids and fix prices for the sale of ODDs between about June 2004 and about September 2009. DOJ had charged HLDS with a 15-count felony charge in the United States District Court in San Francisco on September 30, 2011, for conspiring with unnamed co-conspirators to suppress and eliminate competition by rigging bids for ODDs sold to Dell and HP and by fixing the prices of ODDs sold to Microsoft Corporation ("Microsoft").

b. On or about March 27, 2012, Young Keun Park ("Park"), an executive of HLDS, pled guilty to participating in a series of conspiracies to rig bids and fix prices for the sale of ODDs. Park has agreed to serve eight months in prison and pay a $25,000 criminal fine. According to the information filed in the United States District Court for the Northern District of California in San Francisco, Park (as HLDS's Vice President and Chief Marketing Officer in charge of ODD sales) conspired with unnamed co-conspirators to suppress and eliminate competition by rigging bids for ODDs sold to Dell and HP and by fixing the prices of ODDs sold to Microsoft from about November 2005

until about September 2009. According to DOJ, Park had supervisory responsibility for HLDS's Dell, Microsoft, and HP accounts.

c. On or about April 17, 2012, Sang Hun Kim ("Kim"), an executive of HLDS, pled guilty to participating in a series of conspiracies to rig bids and fix prices for the sale of ODDs. Kim has agreed to serve eight months in prison and pay a $25,000 criminal fine. According to the information filed in the United States District Court for the Northern District of California in San Francisco, Kim (as HLDS's team leader in charge of the HP and Dell accounts and as deputy chief marketing officer) conspired with unnamed co-conspirators to suppress and eliminate competition by rigging bids for optical disk drives sold to Dell and HP from about November 2005 until about September 2009.

d. On or about April 10, 2012, Sik Hur, a/k/a Daniel Hur ("Hur"), an executive of HLDS, pled guilty to participating in a series of conspiracies to rig bids and fix prices for the sale of ODDs. Hur has agreed to serve seven months in prison and pay a $25,000 criminal fine. According to the information filed in the United States District Court for the Northern District of California in San Francisco, Hur conspired with unnamed co-conspirators to suppress and eliminate competition by rigging bids for optical disk drives sold to HP from about November 2005 until about June 2009.

e. In April 2012, Senior Sales Manager Woo Jin Yang a/k/a Eugene Yang ("Yang") of HLDS agreed to plead guilty and to serve prison time in the United States for his participation in a series of conspiracies to rig bids for the sale of ODDs. Yang has agreed to serve six months in prison and pay a $25,000 criminal fine. According to the information filed in the United States District Court for the Northern District of

California in San Francisco, Yang conspired with others to suppress and eliminate competition by rigging bids for ODDs sold to HP between about August 2006 and about June 2009.

65. In order to form and carry out the conspiracy to raise, fix, maintain, and/or stabilize the prices of ODDs, Defendants:

a. participated in meetings, discussions, and communications in the United States or elsewhere in order to discuss bidding strategies and prices of ODDs;

b. agreed, during these meetings, discussions, and communications on how the participants would bid on ODDs;

c. bid on ODDs in accordance with the agreements reached;

d. exchanged information on sales, production, market share, capacity, and pricing of ODDs for the purpose of monitoring and enforcing adherence to the agreements and preparing for future conspiratorial discussions; and

e. authorized, ordered, and consented to the participation of subordinate employees in the conspiracy.

66. The following reflects some of the actions taken by Defendants in furtherance of the conspiracy to raise, fix, maintain, and/or stabilize ODD prices:

a. From about June 2004 to about September 2004, HLDS and unknown co-conspirators conspired to suppress and restrain competition for Dell's June 2004 ODD procurement event for 48x Combo drives by predetermining the order in which the co-conspirators would finish in this event and by submitting rigged bids for this event.

b. From about August 2004 to about December 2004, HLDS and unknown co-conspirators conspired to suppress and restrain competition for Dell's August 2004

ODD procurement event for HH CD-RW drives by predetermining the order in which the co-conspirators would finish in this event and by submitting rigged bids for this event.

c. From about September 2004 to about December 2004, HLDS and unknown co-conspirators conspired to suppress and restrain competition for Dell's September 2004 ODD procurement event for 24x Combo drives by predetermining the order in which the co-conspirators would finish in this event and by submitting rigged bids for this event.

d. From about November 2004 to about February 2005, HLDS and unknown co-conspirators conspired to suppress and restrain competition for Dell's November 2004 ODD procurement event for HH DVD-ROM drives by predetermining the order in which the co-conspirators would finish in this event and by submitting rigged bids for this event.

e. From about March 2005 to about June 2005, HLDS and unknown co-conspirators conspired to suppress and restrain competition for Dell's March 2005 ODD procurement event for Slim CD-ROM drives by predetermining the order in which the co-conspirators would finish in this event and by submitting rigged bids for this event.

f. From about November 2005 to about April 2006, HLDS, Young Keun Park, Sang Hun Kim, and Daniel Hur, with unknown co-conspirators conspired to suppress and restrain competition for HP's November 2005 ODD procurement event for CD-ROM, CD-RW, DVD-ROM, and Combo drives by predetermining the order in which the co-conspirators would finish in this event and by submitting rigged bids for this event.

g. From about August 2006 to about December 2006, HLDS, Young Keun Park, Sang Hun Kim, Daniel Hur, and Eugene Yang, with unknown co-conspirators, conspired to suppress and restrain competition for HP's August 2006 ODD procurement event for HH PATA and SATA DVD-ROM drives by predetermining the order in which the co-conspirators would finish in this event and by submitting rigged bids for this event.

h. From about August 2007 to about December 2007, HLDS, Young Keun Park and Daniel Hur, with unknown co-conspirators, conspired to suppress and restrain competition for HP's August 2007 ODD procurement event for Lightscribe DVD-RW drives by predetermining the order in which the co-conspirators would finish in this event and by submitting rigged bids for this event.

i. From about May 2008 to about June 2009, HLDS, Young Keun Park, Sang Hun Kim, Daniel Hur, and Eugene Yang, with unknown co-conspirators, conspired to suppress and restrain competition for HP's May 2008, August 2008, November 2008, and February 2009 ODD procurement events for HH SATA DVD-RW drives by predetermining the order in which the co-conspirators would finish in these events and by submitting rigged bids for these events.

j. From about July 2008 to about March 2009, HLDS, Young Keun Park, Sang Hun Kim, Daniel Hur, and Eugene Yang, with unknown co-conspirators, conspired to suppress and restrain competition for HP's July 2008 and October 2008 ODD procurement events for 12.7mm SATA DVD-RW drives by predetermining the order in which the co-conspirators would finish in these events and by submitting rigged bids for these events.

k. From about October 2008 to about March 2009, HLDS, Young Keun Park, Sang Hun Kim, Daniel Hur, and Eugene Yang, with unknown co-conspirators, conspired to suppress and restrain competition for HP's supplemental October 2008 ODD procurement event for 12.7mm SATA DVD-RW drives by predetermining the order in which the co-conspirators would finish on this event and by submitting rigged bids for this event.

l. From about February 2009 to about July 2009, HLDS, Young Keun Park and Sang Hun Kim, with unknown co-conspirators, conspired to suppress and restrain competition for Dell's February 2009 ODD procurement event for HH SATA Tray DVD-RW drives by predetermining the order in which the co-conspirators would finish in this event and by submitting rigged bids for this event.

m. From about May 2009 to about September 2009, HLDS, Young Keun Park and Sang Hun Kim, with unnamed co-conspirators, conspired to suppress and restrain competition for Dell's May 2009 ODD procurement event for HH DVD-RW and 12.7mm Tray DVD-RW drives by predetermining the order in which the co-conspirators would finish in this event and by submitting rigged bids for this event.

67. Additionally, on or about April 2009, HLDS devised a scheme to defraud HP in relation to HP's April 2009 ODD procurement event for HH SATA DVD-ROM drives by predetermining the order in which HLDS and others would finish in this event and by submitting rigged bids for this event. In order to carry out this scheme, on or about April 22, 2009, an HLDS employee in Houston, Texas sent an e-mail communication to other participants in the scheme located in San Jose, California, in the Northern District of California, and the Republic of Korea,

containing the results of the first round of bidding and non-public, competitively sensitive information provided by competitors that participated in the HP procurement event.

68. Furthermore, from about June 2007 to about March 2008, HLDS and Young Keun Park, with unknown co-conspirators, conspired to suppress and restrain competition in the sales of ODDs to Microsoft by fixing the prices of these ODDs.

69. During this time period, Microsoft was a major seller of video gaming consoles. Microsoft purchased ODDs from the HLDS and co-conspirators that were incorporated into video gaming consoles produced for sale by Microsoft.

70. In order to fix the prices of ODDs sold to Microsoft, the Defendant HLDS engaged in the following overt acts, among others:

a. participating in meetings, conversations, and communications in Taiwan and the Republic of Korea in order to discuss the price of ODDs;

b. agreeing, during these meetings, discussions, and communications to sell ODDs at certain prices;

c. issuing price quotations in accordance with the agreements reached;

d. exchanging information on sales of ODDs for the purpose of monitoring and enforcing adherence to the agreed-upon prices; and

e. authorizing, ordering, and consenting to the participation of subordinate employees in the conspiracy.

VIII. INDUSTRY DYNAMICS

71. Structurally, the ODD industry is conducive to the type of collusion alleged in this Complaint because of characteristics such as optical disk technology patent pools charging large royalties, which function as barriers to entry, increasing concentration in the industry, and the

ease of information sharing facilitated by interrelated business relationships, industry organizations, and patent pools.

A. Barriers to Entry

72. A significant barrier preventing new firms from successfully entering or competing in the ODD industry has been the very large royalties, and the discriminatory manner in which these now-prohibitive royalties are collected, charged by patent pools on optical disk technology. A "patent pool" is an agreement between two or more patent owners to license one or more of their patents to one another or to third parties. The patent owners, also known as licensors, are members of the patent pool and the third parties, who pay to use the patents of the members and are considered external to the patent pool, are called licensees.

a. The CD Patent Pools

73. After individual research and development efforts in the 1970s and early 1980s, Philips and Sony formed a joint task force, which developed and publicized the CD Digital Audio standard for music optical disks in 1982 and the CD-ROM standard for read-only data storage in 1984. Then, in the 1980s and 1990s, Philips and Sony developed standards for CD-R (writeable once) and CD-RW (re-writeable), which became highly successful. These data CD formats revolutionized the way in which digital data, including software programs, were stored and distributed.

74. Sony and Philips pooled their CD-related patents in a worldwide joint CD Disc Licensing Program, which is managed by Philips. This patent pool charges its licensees high royalties, which have been maintained despite the fall in the prices of CD-R/RWs. These royalty rates continue to represent a significant percentage of the average net selling price in the industry. Additionally, the pool has licensed its patents in a discriminatory fashion: Pool

members and their affiliates, joint ventures, and subcontractors have paid no royalties to the other patent pool members for licensed products, whereas the patent pool licensees are required to pay these royalties.

b. The DVD Patent Pools

75. In 1995, after the commercial success of the CD patent pool and its variants, major players in the consumer electronics industry formed a group to study and promote a standard for the development of a DVD. Each member of this group was a holder or assignee of patents that in some way involved a use or application of DVD technology. The study group participants agreed to a single standard for next-generation DVD video disks and read-only data storage. However, no agreement on writeable DVD data storage was reached and the participants split into two groups, with one group supporting a DVD "+" format and the other group supporting a DVD "-" format. The result was two sets of incompatible write formats for DVDs, ultimately unified only by more complex products, "super multi" DVD drives capable of reading or writing all the incompatible formats (as well as CDs).

76. This split resulted in the formation of two separate patent pools. The DVD3c patent pool was formed by the core members of the DVD "+" group and today includes Philips, Sony, Pioneer Corporation ("Pioneer"), Hitachi, Panasonic, and Toshiba. The core members of the DVD "-" camp formed the DVD6c patent pool. The current licensors of the DVD6c patent pool include Toshiba, Panasonic, Samsung, Sharp Corporation ("Sharp"), and Hitachi Consumer Electronics Co., Ltd.

77. The DVD3c and the DVD6c patent pools govern the use of intellectual property (IP) necessary for the production of DVD-capable ODDs. The royalties charged by the DVD patent pools comprise a large share of the total cost of manufacturing ODDs and constitute a

significant barrier to entry, preventing new companies from entering or efficiently competing in the market. In a 2008 presentation to the Japanese Industrial Standards Committee, Hisashi Kato, of Mitsubishi Electric Corporation, estimated the royalties payable to the four principal patent pools holding relevant IP (the DVD6c, DVD3c pools, as well the MPEG2 and AC-3 pools, which relate to DVD audio and video compression). Kato estimated that, for a DVD recorder, the royalties payable to these four patent pools would total $17, of which $14 would go to the DVD6c and DVD3c pools alone. At the time, this amounted to a significant percentage of the average selling price but, presumably, an even larger share of the cost of the DVD recorder. Upon information and belief, for a DVD recorder, the royalties currently payable to these patent pools amount to approximately $14, of which $12 goes to the DVD6c and DVD3c pools.

78. These prohibitively high royalties prevent potential industry entrants from exerting downward pressure on the prices fixed by the conspirators, and shelter the conspirators from any external competitive challenge. The members of the pool, and their affiliates, joint ventures, and subcontractors, do not appear to be required to pay royalties to the pools, by virtue of their network of cross-licenses, sheltering them from any competition external to the pools. Thus, the DVD patent pools explicitly discriminate between members and non-members. It is no surprise that, as a result, the patent pool members, along with their affiliates, joint ventures, and subcontractors, survived an initial period of intense industrial competition, and then established their control over a substantial majority of the global sales of ODDs early in the Relevant Period.

79. Thus, the only firms left in the ODD industry with the ability to effectively compete are the firms who are, or whose parents are, members of the DVD patent pools. This is because the large royalties charged by the patent pools act as a highly effective barrier to market entry by non-patent pool firms. However, during the Relevant Period, competition among the

companies that dominate these patent pools and their joint ventures should have been more than enough pressure to drive prices down, closer to the much lower cost of making a DVD drive. What has prevented this is the impact of the price-fixing conspiracy, which has united these firms in an effort to prevent the more rapid price cuts that characteristically reflect continuing declines in production costs in dynamic high tech industries.

B. Increasing Industry Concentration

80. Despite a large market for ODDs, which has estimated worldwide revenues of over $12 billion per year, the market has become increasingly concentrated with the creation of joint ventures and the fact that a few manufacturers control a substantial majority of the global sales of ODDs.

81. In November 2000, Japanese ODD producer Hitachi and Korean LGE established a joint venture for ODDs, HLDS, which was formed for design, development, and marketing efforts. HLDS outsourced certain of its manufacturing to LGE. Hitachi acquired a 51 percent stake of HLDS, while LGE acquired the remaining 49 percent. After implementation of the transaction, Hitachi and LGE jointly controlled the operations of HLDS. The Chief Executive Officer of the joint venture was Korean, from LGE, while the Chief Financial Officer was Japanese, from Hitachi. Hitachi, however, effectively controlled the operation, through both its ownership and its control of key technologies. Indeed, Hitachi's 51 percent ownership of the joint venture was critical to the success of HLDS, which became a very profitable joint venture, since HLDS's position as a Hitachi affiliate gave it access to the benefits of Hitachi's cross-licenses with other ODD patent holders as well as Hitachi's preferred position inside the patent pool, thus allowing it to avoid paying increasingly burdensome royalties (as the fixed size of the minimum royalty increased in importance in relation to the falling ODD price).

82. In 2004, ODD producers Samsung and Toshiba formed a joint venture, TSST. TSST was tasked with the design, development, and marketing of ODDs, and all ODD manufacturing was contracted to the parent companies. Toshiba and Samsung jointly controlled the venture. Toshiba held the majority of shares in the joint venture, 51 percent, with Samsung holding the remaining 49 percent. However, Samsung retained veto rights on strategic decisions. Therefore, both parents retained the possibility to exercise decisive influence over the joint venture.

83. In 2006, ODD producers NEC and Sony formed a joint venture, Sony NEC Optiarc. The new joint venture undertook all design, development, marketing, and sales related to ODDs, with all manufacturing (except a small amount of manufacturing of magneto-optical drives by Sony) subcontracted out to third parties. Sony had a 55 percent ownership share of the joint venture, while NEC owned the remaining 45 percent. Sony appointed the majority of the board of directors (four out of seven), but NEC retained the right to veto certain decisions. Additionally, certain sensitive matters which required resolution by a vote of the board of directors also required an affirmative vote by at least one director appointed by NEC. Thus, Sony and NEC retained substantial operational control over Sony NEC Optiarc, and each also retained key technology development efforts outside the joint venture. Sony NEC Optiarc had a cost advantage in royalties because its majority ownership share was controlled by a patent pool member, Sony. In late 2008, NEC sold its interest in Sony NEC Optiarc to Sony, and Sony NEC Optiarc was renamed Sony Optiarc. Sony Optiarc is now a wholly-owned subsidiary of Sony.

84. In February 2003, Taiwanese ODD producer BenQ formed a joint venture with Dutch Philips called Philips & BenQ Digital Storage Corporation ("PBDS"). PBDS was to design, develop, and market ODDs, with all manufacturing contracted out to BenQ. In early

2006, Taiwanese ODD producer Lite-On purchased BenQ's ODD production facilities in China and took over BenQ's manufacturing ties to PBDS. BenQ exited the ODD contract manufacturing business. In 2007, BenQ sold its interest in PBDS to Lite-On, completely exiting the ODD business. PBDS was subsequently renamed Philips & Lite-On Digital Solutions Corporation ("PLDS"). Philips retained its 51 percent ownership stake in PLDS, while Lite-On acquired the remaining 49 percent. Lite-On and Philips each gained the right to appoint members of board of directors, which has the responsibility for the strategic management, direction and control of PLDS.

85. Additionally, a few companies dominate the global market of ODD sales. The patent pool members, along with their affiliates and joint ventures, controlled a substantial majority of the global sales of ODDs during most of the Relevant Period.

C. <u>Several Opportunities for Information Sharing Exist</u>

a. Interrelated Business Relationships Facilitate Information Sharing

86. Manufacturing and supply agreements between Defendants and their co-conspirators have allowed the sharing of sensitive competitive information. Outsourced manufacturing has provided communication links between competitors. Each of the joint ventures includes a manufacturing investor and an intellectual-property-holder investor. For example, TSST outsourced manufacturing to its parent companies. Defendant HLDS outsourced some of its manufacturing to LGE.

87. The fact that some competitors also functioned as component suppliers for ODDs allowed otherwise private business information to be shared between competitors. For example, Hitachi is a supplier of OPUs (known as either optical pickup units or optical processing units),

and sold these parts to other manufacturers. Hitachi's supply of these component parts to its competitors became an important channel for information exchange during the Relevant Period.

88. Manufacturing agreements beyond the joint ventures also provided avenues for sharing competitive information. For example, Japanese ODD manufacturer TEAC entered into a co-development agreement with PLDS to produce certain ODDs.

b. Industry Organizations Facilitate Information Sharing

89. During the Relevant Period, Defendants and their co-conspirators belonged to trade and business organizations that focused on ODDs and related industries. These organizations held multiple meetings and conferences during the Relevant Period that were attended by representatives of Defendants and their co-conspirators. These industry meetings provided opportunities for Defendants and their co-conspirators to meet, discuss, and agree upon their pricing of ODDs.

i. <u>The DVD Forum</u>

90. The DVD Forum is an international association whose work includes defining DVD Format specifications and approving DVD verification programs. Its "purpose is to exchange and disseminate ideas and information about the DVD Format and its technical capabilities, improvements and innovations." At various time during the Relevant Period, LGE, Hitachi, Philips, Panasonic, Pioneer, Sharp, Samsung, Sony, NEC, and Toshiba served on the DVD Forum's steering committee.

91. During the Relevant Period, the DVD Forum met on multiple occasions each year. On or about December 1, 2004, the DVD Forum held its meeting at Walt Disney World in Orlando, Florida. Upon information and belief, present at this meeting were representatives from LGE, Toshiba, Pioneer, Philips, Sharp, Sony, Hitachi, Samsung, and NEC.

ii. The International Symposium on Optical Memory

92. The International Symposium on Optical Memory is an organization "concerned with the materials, the physics, and the technology of optical memories and provides an opportunity to share the latest information in these fields with the international research community."

93. During the Relevant Period, the membership list of the International Symposium on Optical Memory included LGE, Hitachi, NEC, Panasonic, Philips, Samsung, Sony, and Toshiba. Upon information and belief, the International Symposium on Optical Memory met each year during the Relevant Period.

iii. The Blu-Ray Disc Association

94. The Blu-Ray Disc Association is an industry consortium that, among other things, develops Blu-Ray Disc specifications and aims to ensure that "Blu-ray Disc products are implemented by licensees according to the intent of the specifications." The Blu-Ray Disc Association is divided into three levels of membership: the Board of Directors, Contributors, and General Members.

95. The Board of Directors of the Blu-Ray Disc Association currently includes Hitachi, LGE, Panasonic, Philips, Pioneer, Samsung, and Sony. Contributors to the Blu-Ray Disc Association currently include Lite-On and Toshiba. Additionally, Quanta and TEAC are currently general members.

c. The Patent Pools Facilitate Information Sharing

96. The DVD3c and DVD6c patent pools facilitated the price-fixing conspiracy by making it easier to monitor production and pricing. The terms of both the DVD3c and DVD6c patent pools require licensees to pay a royalty equal to a fixed fee per unit produced or a fixed

percent of revenues from units sold, whichever amount is higher. The royalty has effectively been the fixed per-unit payment because the fee represents such a large portion of the price of a unit. Thus, all producers outside of the patent pools must report production statistics to the pool.

97. The model license agreement of the DVD3c pool requires licensees to report, on a quarterly basis, the quantities of DVD products on which royalties are due, including specifying the identities of the buyers, the trademarks used in connection with the DVD players, the net selling price of the DVD players, and the quantities of DVD players sold. The model license agreement of the DVD6c pool requires licensees to report, on a semi-annual basis, the quantities of DVD products on which royalties are due, the trademarks or trade names used for such products, and a computation of the royalties due on the agreement. Upon information and belief, both patent pools also have "compliance" programs that require licensees to identify their suppliers and customers to the licensing administrator.

98. A unique feature of the DVD3c and DVD6c patent pools, which differentiates them from other patent pools, is that they are administered by the patent owners themselves and not by any independent administrative entity. The DVD3c pool is administered by Philips and the DVD6c pool is administered by, depending on the region, Toshiba, Hitachi, or Panasonic. Hence, the patent pool members are able to gain access to and share amongst themselves sensitive competitive information in order to monitor and facilitate their price-fixing conspiracy.

IX. DEFENDANTS' CONSPIRACY STABILIZED ODD PRICES

99. Defendants' and their co-conspirators' illegal conduct raised, fixed, maintained, and/or stabilized the prices of ODDs.

100. Dell and HP have a majority share of ODD purchases for the personal computer market. During the Relevant Period, HP and Dell made up a significant portion of the personal computer market in the United States.

101. As a consequence, the conspiracy to raise, fix, maintain, and/or stabilize prices to the largest customers, i.e. Dell and HP, had a broad and pervasive impact, raising, fixing, maintaining, and/or stabilizing the price to all customers and market segments purchasing ODDs.

X. DEFENDANTS' CONSPIRACY CAUSED CONSUMERS TO PAY SUPRA-COMPETITIVE PRICES

102. As with most high-tech information technology products, dramatic declines in price and improvement in quality occur over time. An effective conspiracy to restrain trade significantly slows what would otherwise be a more rapid decline in quality-adjusted price, rather than increase the price in absolute terms. Put another way, the price is higher relative to the more rapid price decline that would have occurred without the price-fixing conspiracy.

103. Price movements on global markets, such as the ODD market, can be measured using two producer price indexes for ODDs manufactured in Japan, converted to a common currency basis (dollars). These two indexes show a clear trend toward slower rates of price declines for ODDs over the period 2004 to 2009. These data suggest that, after declining at very high rates prior to the emergence of an effective ODD conspiracy in 2004, price declines of ODDs not only came to a complete halt in 2008, but prices even increased substantially during the 2008 to 2009 period.

XI. TRADE AND COMMERCE

104. Throughout the period of time covered by this Complaint, Defendants and their co-conspirators engaged in the business of designing, manufacturing, selling and/or distributing ODDs in a continuous and uninterrupted flow of interstate and foreign trade and commerce to

consumers located in Florida and the United States. Defendants and their co-conspirators collectively controlled the vast majority of the market for ODDs, both globally and in the United States.

105. Defendants' and their co-conspirators' unlawful activities, as described in this Complaint, took place within the flow of and substantially affected interstate trade and commerce, as well as trade and commerce within the State of Florida. Defendants' and their co-conspirators' conduct had a direct, substantial, and reasonably foreseeable effect on domestic interstate commerce within the United States, including Florida. These effects proximately caused the domestic injuries alleged in this Complaint, in that governmental purchasers, businesses, consumers, and other end-payors paid more for ODD Products than they would have absent the conspiracy.

106. Defendants' and their co-conspirators' conspiracy specifically targeted the United States market. The procurement events held by Dell and HP occurred in the United States. For large parts of the Relevant Period, HP's ODD purchasing occurred in Palo Alto, California and Houston, Texas. For Dell, ODD purchasing took place in Austin, Texas during most of the Relevant Period. As alleged in this Complaint, these procurement events resulted in raised, fixed, maintained, and/or stabilized prices due to Defendants' and their co-conspirators' conspiracy.

107. Although Defendants' and their co-conspirators' price-fixing conspiracy reaches beyond merely Dell and HP, price-fixing the auctions of these two OEMs alone had a direct, substantial, and reasonably foreseeable effect on United States commerce. During the Relevant Period, Dell and HP accounted for a significant portion of the United States market for personal computers. These two companies together shipped roughly 30 million units within the United States each year during the Relevant Period.

108. The effect of Defendants' and their co-conspirators' anticompetitive conduct (higher prices for ODD Products) did not change in any substantial way between the beginning of the process (overcharges for ODDs) and the end (overcharges for ODD Products, such as computers). Thus, the effect on prices proceeded without deviation or interruption from the ODD manufacturer to the United States retail store. Therefore, there is a domestic injury here that is concrete, quantifiable, and directly traceable back to the Defendants' and their co-conspirators' anticompetitive conduct.

XII. THE PASS-THROUGH OF OVERCHARGES TO CONSUMERS

109. Defendants' and their co-conspirators' conspiracy to raise, fix, maintain, and/or stabilize the price of ODDs at artificial levels resulted in harm to the State of Florida and its consumers, businesses and governmental entities because the conspiracy resulted in the State of Florida and its consumers, businesses and governmental entities paying higher prices for ODD Products than they would have paid in absence of Defendants' and their co-conspirators' conspiracy. The entire overcharge at issue was passed on the State of Florida and its consumers, businesses and governmental entities.

110. ODDs are commodity products, with functionally equivalent products available from the Defendants and their co-conspirators, which manufacture ODDs pursuant to standard specifications.

111. An ODD is purchased by an end-user as a stand-alone device or as a part of an ODD Product. When an ODD is purchased by end-users as a stand-alone device, the device itself is directly traceable to the specific manufacturing Defendant or co-conspirators. When an ODD is purchased by an end-user as part of an ODD Product, it is a distinct, physically discrete hardware element of the product and is identifiable by a specific, discrete part or model number

that permits tracing. ODDs are identifiable and traceable throughout the distribution chain to the end-user. They do not undergo any alterations as they move through the chain of distribution.

112. The indirect purchaser end-user buys an ODD through one of two distribution chains, either from the direct purchaser OEM, or through a reseller, e.g. a retailer such as Best Buy. Thus, an ODD follows a traceable physical chain from a Defendant or a co-conspirator to the OEMs and then to the purchasers of ODD Products. Tracing can help show that changes in the prices paid by direct purchasers of ODDs affect the prices paid by indirect purchasers of the ODDs or ODD Products.

113. ODDs make up a substantial component of the cost of ODD Products. The retail price of an ODD Product is determined in substantial part by the cost of the ODD it contains.

114. The OEM and the retail markets of ODDs and ODD Products are subject to vigorous price competition. The direct purchaser OEMs and retailers have very thin net margins. They are therefore at the mercy of component costs, so that increases in the price of ODDs lead to quick, corresponding price increases at the OEM and retail levels for stand-alone ODDs and ODD Products.

115. As a result, the raised, fixed, maintained, and/or stabilized prices of ODDs resulting from Defendants' and their co-conspirators' price-fixing conspiracy have been passed on to the State of Florida and its consumers, businesses and governmental entities by the manufacturers, distributors, and retailers, and the State of Florida and its consumers, businesses and governmental entities have been forced to pay supracompetitive prices for ODDs and ODD Products.

XIII. FRAUDULENT CONCEALMENT/EQUITABLE ESTOPPEL

116. Fraudulent concealment, a species of equitable estoppel in Florida, precludes Defendants from asserting a statute of limitations defense in this matter.

117. To the extent that Defendants claim that the State of Florida's filing is late, Defendants bear responsibility for the late filing.

118. Defendants and their co-conspirators affirmatively and fraudulently concealed the existence of the conspiracy alleged in this Complaint.

119. The State of Florida has exercised due diligence to learn of its legal rights and, despite such diligence, failed to uncover the possible existence of the violations alleged in this Complaint until on or about October 26, 2009, when reports of the investigation by the United States Department of Justice into price-fixing in the ODD industry were first publicly disseminated by news organizations.

120. Defendants and their co-conspirators lulled the State of Florida into a disadvantageous legal position, and effectively, affirmatively, and fraudulently concealed the existence of the violations alleged in this Complaint through the following actions, among others:

a. by agreeing amongst themselves not to discuss publicly, or otherwise reveal, the nature and substance of the acts and communications in furtherance of their illegal scheme;

b. by agreeing amongst themselves to limit the number of representatives from each Defendant or co-conspirator who were aware of the conspiracy, so as to avoid detection and prosecution under the antitrust laws;

c. by agreeing to limit the number of written communications regarding the conspiracy, so as to avoid detection and prosecution under the antitrust laws, accomplished by oral communications via telephone or face-to-face meetings;

d. by agreeing to meet at locations where the conspiracy was less likely to be detected, such as in the lobby of a competitor's building rather than in the offices themselves;

e. by falsely stating to the public and industry sources that ODD manufacturers faced intense pricing in the ODD market;

f. by giving false and pretextual reasons for ODD Product price increases or price stabilization and describing such pricing falsely as being the result of external causes rather than collusion; and

g. by engaging in a successful, illegal price-fixing conspiracy that by its nature was inherently self-concealing.

121. The affirmative acts of Defendants and their co-conspirators alleged in this Complaint were wrongfully concealed and were carried out in a manner that precluded detection. Furthermore, Defendants and their co-conspirators knew their activities were illegal.

122. In the context of the circumstances surrounding Defendants' and their co-conspirators' pricing practices, Defendants' and their co-conspirators' acts of concealment were more than sufficient to preclude suspicion by a reasonable person that Defendants' and their co-conspirators' pricing was conspiratorial. Accordingly, a reasonable person under the circumstances would not have been alerted to investigate the legitimacy of Defendants' and their co-conspirators' ODD prices before October 26, 2009.

123. The State of Florida could not have discovered the alleged contract, conspiracy or combination at an earlier date by the exercise of reasonable diligence because of the deceptive practices and techniques of secrecy employed by the Defendants and their co-conspirators to fraudulently conceal and to avoid detection of their contract, combination or conspiracy.

124. Because the alleged conspiracy was both self-concealing and affirmatively concealed by Defendants and their co-conspirators, the State of Florida had no knowledge of the alleged conspiracy, or of any facts or information that would have caused a reasonably diligent person to investigate whether a conspiracy existed until October 26, 2009, when reports of the investigations into price fixing in the ODD industry were first publicly disseminated.

125. Upon having reasonable suspicion of the existence of Defendants' and their co-conspirators' conspiracy, the State of Florida exercised due diligence by promptly investigating, to the extent permitted by law, the facts giving rise to the claims asserted herein.

126. None of the facts or information available to the State of Florida prior to October 26, 2009, if investigated with reasonable diligence, could or would have led to the discovery of the conspiracy alleged herein prior to October 26, 2009.

127. As a result of Defendants' and their co-conspirators' fraudulent concealment of their conspiracy, the running of any statute of limitations has been tolled with respect to any claims the State of Florida has as a result of the anticompetitive conduct alleged in this Complaint.

XIV. ASSIGNMENT

128. The State of Florida, Department of Management Services, Procurement Division ("DMS"), requires vendors contracting through DMS for provision of products and/or services to Florida agencies, political subdivisions, universities, and community colleges to assign claims

those vendors may accrue relating to violations of federal and/or state antitrust laws to the State of Florida when the claims relate to purchases by Florida governmental entities.

129. As a result of this requirement, the State of Florida has contractual agreements with certain retailers or makers of ODD Products assigning any accrued claims relating to violations of federal and/or state antitrust laws to the State of Florida, when the claims relate to purchases by Florida governmental entities.

130. The retailers or makers of ODD Products that sold to Florida governmental entities commonly purchased products containing ODDs directly from Defendants and their co-conspirators.

131. The retailers or makers of ODD Products paid higher-than-competitive prices for ODDs and ODD Products as a result of Defendants' and their co-conspirators' unlawful conduct.

132. The retailers or makers of ODD Products ("Assignors"), pursuant to DMS bid documents, contracts and/or purchasing agreements, assign to the State of Florida all of their accrued claims for violations of federal and/or state antitrust laws relating to the ODDs or ODD Products that the retailers or makers of ODD Products purchased and then resold to Florida governmental entities.

133. The Assignors include:

a. Acer America Corporation

b. Apple Computer, Inc. / Apple Inc.

c. CDW Government Inc. (Toshiba)

d. Dell Marketing, L.P.

e. Digital Equipment

f. Fujitsu Computer Systems, Inc. / Fujitsu America Inc.

g. Gateway Companies, Inc.

h. Hewlett-Packard Company

i. IBM Corporation

j. Lenovo (United States), Inc.

k. MPC-G / Micron Government Computer Systems LLC

l. NEC Solutions (America) Inc.

m. Panasonic Computer Solutions Company

n. Sony Electronics Inc.

134. With the assignment of these claims, the State of Florida received all right, title, and interest that the Assignors had in federal and/or state antitrust claims against Defendants.

XV. VIOLATIONS ALLEGED

COUNT I

(Request for Injunctive Relief Under Federal and State Laws)

135. The State of Florida incorporates and re-alleges, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Complaint.

136. This is an action that alleges:

a. a violation of Section One of the Sherman Act, 15 U.S.C. § 1, and is brought pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26;

b. a violation of the Florida Antitrust Act, Section 542.18, Florida Statutes, and is brought pursuant to Section 542.23, Florida Statutes; and

c. a violation of the Florida Deceptive and Unfair Trade Practices Act, Section 501.204, Florida Statutes, and is brought pursuant to Section 501.207(1)(b), Florida Statutes.

137. Defendants knowingly – that is, voluntarily and intentionally – entered into a continuing agreement, understanding, and conspiracy to raise, fix, maintain, and/or stabilize the prices charged for ODDs during the relevant period, continuing through the filing of this Complaint.

138. The agreement has caused the State of Florida to suffer a continuing injury to its property for the following reasons:

a. Price competition in the sale of ODDs has been restrained, suppressed, and/or eliminated throughout Florida and the United States.

b. Prices for ODDs sold by Defendants and their co-conspirators have been raised, fixed, maintained, and/or stabilized at artificially high, non-competitive levels throughout Florida and the United States.

c. Purchasers of ODDs and ODD Products have been deprived of the benefits of competition.

139. These violations are continuing and will continue unless enjoined by this Court. The State of Florida is entitled to an injunction against Defendants, preventing and restraining the violations alleged herein, as well as enjoining Defendants from engaging in similar conduct in the future.

COUNT II

(Violation of Section One of the Sherman Act)

140. The State of Florida incorporates and re-alleges, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Complaint.

141. This is an action that alleges a violation of Section One of the Sherman Act, 15 U.S.C. § 1, and is brought pursuant to Section 4 of the Clayton Act, 15 U.S.C. § 15. The State of

Florida seeks treble damages for overcharges for direct purchases of ODDs assigned to the State of Florida and its units of government by the Assignors.

142. Defendants knowingly – that is, voluntarily and intentionally – entered into a continuing agreement, understanding, and conspiracy to raise, fix, maintain, and/or stabilize the prices charged for ODDs during the relevant period, continuing through the filing of this Complaint.

143. The agreement caused the State of Florida to suffer a continuing injury to its property for the following reasons:

a. The State of Florida and its units of government have been assigned the rights giving rise to this action from the Assignors, which purchased ODDs directly from a Defendant.

b. Price competition in the sale of ODDs has been restrained, suppressed, and/or eliminated throughout Florida and the United States.

c. Prices for ODDs sold by Defendants and their co-conspirators have been raised, fixed, maintained, and/or stabilized at artificially high, non-competitive levels throughout Florida and the United States.

d. Purchasers of ODDs and ODD Products have been deprived of the benefits of competition.

COUNT III

(Violation of the Florida Antitrust Act)

144. The State of Florida incorporates and re-alleges, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Complaint.

145. This is an action that alleges a violation of the Florida Antitrust Act, Section 542.18, Florida Statutes. The State of Florida seeks treble damages pursuant to Section 542.22(1), Florida Statutes, for overcharges for direct purchases of ODDs assigned to the State of Florida and its units of government by the Assignors. The State of Florida also seeks the maximum civil penalties under Section 542.21, Florida Statutes, for each contract, combination, or conspiracy in restraint of trade or commerce.

146. Defendants knowingly – that is, voluntarily and intentionally – entered into a continuing agreement, understanding, and conspiracy to raise, fix, maintain, and/or stabilize the prices charged for ODDs during the relevant period, continuing through the filing of this Complaint.

147. The sale of ODDs and ODD Products involves trade or commerce within the meaning of the Florida Antitrust Act.

148. The agreement caused the State of Florida to suffer a continuing injury to its property for the following reasons:

a. The State of Florida and its units of government have been assigned the rights giving rise to this action from the Assignors, which purchased ODDs directly from a Defendant.

b. Price competition in the sale of ODDs has been restrained, suppressed, and/or eliminated throughout Florida and the United States.

c. Prices for ODDs sold by Defendants and their co-conspirators have been raised, fixed, maintained, and/or stabilized at artificially high, non-competitive levels throughout Florida and the United States.

d. Purchasers of ODDs and ODD Products have been deprived of the benefits of competition.

COUNT IV

(Violation of the Florida Deceptive and Unfair Trade Practices Act)

149. The State of Florida incorporates and re-alleges, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Complaint.

150. This is an action that alleges a violation of the Florida Deceptive and Unfair Trade Practices Act, Section 501.204, Florida Statutes. The State of Florida seeks damages, pursuant to Section 501.207(1)(c), Florida Statutes, for all direct and indirect purchases of ODDs and ODD Products by governmental entities, end-user businesses, and individual consumers in the state of Florida. The State of Florida also seeks the maximum civil penalties under Sections 501.2075 and 501.2077, Florida Statutes, for each violation of the Florida Deceptive and Unfair Trade Practices Act.

151. The sale of ODDs and ODD Products involves trade or commerce within the meaning of the Florida Deceptive and Unfair Trade Practices Act.

152. Defendants' actions offend established public policy and are immoral, unethical, oppressive, unscrupulous, or substantially injurious to Florida governmental entities, to businesses in the state of Florida, and to individual consumers in the state of Florida. Thus, Defendants' unfair methods of competition and unconscionable acts and practices in the conduct of trade and commerce violate Section 501.204, Florida Statutes.

XVI. PRAYER FOR RELIEF

153. Accordingly, the State of Florida requests that this Court:

a. Adjudge and decree that Defendants violated Section 1 of the Sherman Act, 15 U.S.C. §1;

b. Adjudge and decree that Defendants violated Section 542.18, Florida Statutes;

c. Adjudge and decree that Defendants violated Section 501.204, Florida Statutes;

d. Enjoin and restrain, pursuant to federal and state law, Defendants, their affiliates, assignees, subsidiaries, successors, and transferees, and their officers, directors, partners, agents and employees, and all other persons acting or claiming to act on their behalf or in concert with them, from continuing to engage in any anticompetitive conduct and from adopting in the future any practice, plan, program, or device having a similar purpose or effect to the anticompetitive actions set forth above;

e. Award to the State of Florida any other equitable relief as the Court finds appropriate to redress Defendants' violations of federal or state law to restore competition;

f. Award to the State of Florida treble damages for overcharges paid by or assigned to the State of Florida and its units of government for purchases of ODDs and ODD Products;

g. Award to the State of Florida any other statutory damages, restitution or equitable disgorgement for the benefit of the state and its consumers, as appropriate;

h. Award to the State of Florida the maximum civil penalties under Section 542.21, Florida Statutes, for each contract, combination, or conspiracy in restraint of trade or commerce;

i. Award to the State of Florida the maximum civil penalties under Sections 501.2075 and 501.2077, Florida Statutes, for each violation of the Florida Deceptive and Unfair Trade Practices Act;

j. Award to the State of Florida its costs, including reasonable attorneys' fees and, as may be appropriate under state law, expert witness fees and investigation costs; and

k. Order any other relief that this Court deems proper.

XVII. DEMAND FOR JURY TRIAL

154. The State of Florida demands a trial by jury of all issues so triable in this case.

Respectfully submitted this 22 day of April, 2013.

The State of Florida

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STATE OF FLORIDA

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