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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 IN AND FOR THE COUNTY OF SANTA CLARA

17 SANDISK CORPORATION,

18 Plaintiff,

19 v.

20 SK HYNIX, INC., SK HYNIX AMERICA,  
21 INC., SK HYNIX SEMICONDUCTOR  
22 MEMORY SOLUTIONS and DOES ONE  
23 through TEN, inclusive.

24 Defendants,

Case No.

**COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF FOR TRADE  
SECRET MISAPPROPRIATION (CIV.  
CODE §§ 3426 ET SEQ.)**

**DEMAND FOR JURY TRIAL**

ENDORSED

2014 MAR 13 A 11:49

By: T. Gagliardi  
County of Santa Clara  
Deputy Clerk

114CV262078

COMPLAINT

Case No.

1 Plaintiff SanDisk Corporation ("SanDisk") alleges as follows:

2 **NATURE OF THE ACTION**

3 1. SanDisk seeks both damages and an injunction to prevent SK Hynix, Inc. and its  
4 North American subsidiaries from misusing confidential trade secret information that it stole from  
5 SanDisk in or about 2008.

6 2. SanDisk is a global leader in flash storage solutions. Its products—including  
7 solid-state drives, flash memory cards, USB flash drives and digital audio players—are sold at  
8 260,000 retail locations in more than 100 countries. SanDisk also provides embedded flash  
9 drives and removable memory cards to most major smartphone and tablet makers worldwide. Its  
10 patented NAND flash memory provides robust and reliable data storage that enables faster and  
11 smoother performance.

12 3. SanDisk's success comes from decades of work to develop cutting edge  
13 technology and billions of dollars invested in research and development. Today, SanDisk has  
14 over 4,800 patents, more than 5,500 employees, and research and development operations in 16  
15 countries—including the United States, Japan and Korea. As a result of these efforts, SanDisk  
16 has developed confidential, proprietary technology, processes and techniques for, among other  
17 things, making the flash memory devices for which it has become famous worldwide.

18 4. SanDisk's NAND flash memory technology and related trade secret information  
19 are among its "crown jewels," and the company has worked equally hard to protect them.  
20 SanDisk shares its confidential information and trade secrets with trusted employees and joint  
21 venture partners on a need-to-know basis—and, even then, only after they sign strict  
22 confidentiality agreements.

23 5. Despite these precautions, SanDisk has recently learned that Defendants  
24 knowingly collaborated with a former SanDisk subsidiary employee, Yoshitaka Sugita, to steal  
25 and misuse SanDisk's trade secrets. Until mid-2008, Mr. Sugita worked at a SanDisk-Toshiba  
26 joint venture fabrication plant in Yokkaichi, Japan, where—after signing a non-disclosure  
27 agreement with SanDisk—he was given access to SanDisk's confidential and proprietary trade  
28 secrets relating to the latest generations of its NAND flash memory technology and its future

1 development roadmap. Shortly after leaving SanDisk, Mr. Sugita began work at SanDisk's  
2 competitor, SK Hynix Inc.

3 6. SanDisk recently learned of information provided by a former SK Hynix, Inc.  
4 employee that, before jumping from SanDisk to Hynix, and at Hynix's request, Mr. Sugita  
5 downloaded a "huge number of files" from a Japanese R & D database to take to his new  
6 employer. According to the informant's report, Mr. Sugita openly disclosed SanDisk's trade  
7 secret information to his Hynix employers in emails and reports that he prepared for Hynix.  
8 Hynix knowingly received and misused this information for, among other things, its own NAND  
9 flash memory development.

10 7. Rather than compete lawfully with SanDisk, Defendants have engaged in a  
11 campaign to misappropriate SanDisk's trade secret and other confidential information to gain  
12 technical expertise and to unfairly compete with SanDisk. By stealing SanDisk's confidential and  
13 proprietary information, Defendants have been unjustly enriched and have gained an unlawful  
14 advantage by using SanDisk's own expertise to compete against SanDisk in SanDisk's own  
15 backyard—California—as well as elsewhere in the United States and around the world.  
16 Defendants' misconduct has caused injury to SanDisk in California, where it is headquartered.

17 8. SanDisk seeks an injunction against Defendants to prevent further misuse or  
18 disclosure of SanDisk's trade secrets, to prevent further unfair competition, to prevent Defendants  
19 from misusing technical and other information derived from the misappropriation, and to require  
20 Defendants to return all of SanDisk's trade secret information. SanDisk also seeks compensatory,  
21 exemplary and punitive damages to redress past and present injuries and to deter future injury to  
22 SanDisk as a result of Defendants' illegal practices.

### 23 THE PARTIES

24 9. Plaintiff SanDisk is a corporation organized in 1988 and existing under the laws of  
25 Delaware. SanDisk's principal place of business is 951 SanDisk Drive, Milpitas, CA 95305.  
26 SanDisk designs, develops and manufactures flash memory storage solutions; its products include  
27 solid-state drives for computers, memory cards for imaging, computing, mobile, and gaming  
28 devices, USB flash drives, and other flash-based memory products.

10. Upon information and belief, Defendant SK Hynix, Inc. (“SK Hynix”) is organized under the laws of South Korea. Hynix’s principal place of business is 2091, Gyeongchung-daero, Bubal-eub, Icheon-si, Gyeonggi-do, Korea. During the time period at issue in this Complaint, SK Hynix and/or its predecessor companies, affiliates and related entities—manufacturers of SRAM, DRAM, flash memory and other semiconductor devices—sold and distributed products throughout the world, including in and through California, and elsewhere in the United States.

11. Defendant SK Hynix America, Inc. ("Hynix America") is a corporation organized in 1983 and existing under the laws of California. Hynix America's principal place of business is at 3101 North First Street, San Jose, CA 95134. Upon information and belief, Hynix America is a wholly-owned and controlled North American subsidiary of defendant SK Hynix. During the time period at issue in this Complaint, Hynix America sold and distributed Hynix flash memory products in California, and throughout the United States.

12. Defendant SK Hynix Semiconductor Memory Solutions (“HSMS”) is a corporation organized and existing under the laws of California. HSMS’s principal place of business is 3103 North First Street, San Jose, CA 95134. Upon information and belief, HSMS is a wholly-owned and controlled North American subsidiary of defendant SK Hynix. During the time period at issue in this Complaint, HSMS sold and distributed flash memory products in California, and throughout the United States.

13. Upon information and belief, the true identities of Defendant Does 1 through 10 are presently unknown.

## JURISDICTION AND VENUE

14. This Court has personal jurisdiction over SK Hynix, Hynix America and HSMS (collectively, “Hynix” or the “Hynix Defendants”) pursuant to California Code of Civil Procedure § 410.10 because they have purposely availed themselves of the benefits of doing business in California such that the exercise of personal jurisdiction comports with fair play and substantial justice.

15. This Court also has personal jurisdiction over the Hynix Defendants because they have engaged in intentional conduct directed towards California by soliciting business and investments from California-based companies, and by offering to sell and/or entering into contracts with California-based companies to develop, sell, market and distribute semiconductor devices, integrated circuits, NAND flash memory data storage products, and embedded flash drives. These technologies and products embody, or were created using, confidential SanDisk information and misappropriated trade secrets, as a result of which SanDisk has suffered injury in California and elsewhere.

16. This Court also has jurisdiction over Hynix America and HSMS because they are corporations incorporated in, and with their principal places of business in, the State of California.

17. Venue is proper in Santa Clara County pursuant to California Code of Civil Procedure § 395.5 because SanDisk has its principal place of business in Milpitas, in the county of Santa Clara, and because Hynix America and HSMS are, and at all times relevant hereto were, California corporations with their principal place of business in San Jose, in the county of Santa Clara; and because SK Hynix is present in and does business in Santa Clara County through its subsidiaries and agents Hynix America and HSMS.

## FACTUAL BACKGROUND

### A. SanDisk's Technology

18. SanDisk began as a three-person start-up in Silicon Valley; today, it is a multinational corporation with some 4,800 patents and over 5,500 employees. Over the past 25 years, SanDisk has been innovating, researching, designing, developing and engineering flash memory storage solutions that have transformed and shaped the world. SanDisk both invented, and is the world's largest supplier of, flash storage cards.

19. Every day, SanDisk ships more than two million of its products, many of which end up embedded in ubiquitous and vital devices—from laptops and USB flash drives to smartphones and tablets. A key component of these products is “flash memory,” an electronic non-volatile computer storage medium, also known as an integrated circuit (“IC”), a semiconductor device, or a “chip.”

1           20.     Today's chips contain millions of microscopic electrical components (each less  
2     than a micron in size) that are typically embedded in silicon, interconnected with stacked layers  
3     of ultra-fine metallic traces, and etched or plated to become an integrated circuit. SanDisk has  
4     developed its own flash memory designs and devices, and has developed or co-developed with  
5     Toshiba the manufacturing processes—known as “process flows”—and even more detailed and  
6     exacting “recipes” that specify, *inter alia*, what equipment to use, at what settings, as well as the  
7     order and duration of each process sub-step used to fabricate the flash memory devices it makes.  
8     SanDisk's agreements with Toshiba provide that SanDisk maintains sole ownership of its own  
9     intellectual property, and is joint owner of any process technologies that SanDisk and Toshiba co-  
10    develop.

11           21.     SanDisk's designs, devices, processes and recipes are trade secrets that provide  
12    SanDisk an edge over its competitors, including Hynix. They are protected with the utmost  
13    confidentiality and shared only with those who agree to keep them secret. SanDisk's trade secrets  
14    are embodied within SanDisk's flash memory devices, and include trade secret characteristics that  
15    cannot be readily ascertained even through reverse engineering—characteristics that give  
16    SanDisk an advantage over its competitors.

17           22.     SanDisk has spent billions of dollars on research and development to create its  
18    trade secret technologies and to develop its highly reliable, high-performance flash storage  
19    designs, devices and processes.

20           23.     SanDisk has also developed or co-developed confidential information regarding  
21    foundry operations and production management, including the best and most efficient ways to  
22    handle matters like scheduling, logistics, process control and maintenance issues.

23           24.     SanDisk's technical, operational and business trade secrets derive independent  
24    economic value, actual or potential, from not being generally known to the public, or to other  
25    entities and persons such as the Hynix Defendants, who can obtain competitive advantage from  
26    their disclosure or use. These secrets give SanDisk a competitive advantage over others in the  
27    market, including Hynix.

1           25.     SanDisk has made, and continues to make, reasonable efforts to protect the secrecy  
2 of its technical, operational and business trade secrets by—among other things—requiring that all  
3 employees execute non-disclosure agreements. SanDisk also restricts access to trade secret  
4 information to only those employees, customers or joint venture partners who need to know them,  
5 and then only upon their entering into non-disclosure agreements.

6           26.     As set forth below, Defendants have misappropriated SanDisk's valuable trade  
7 secrets and have used them to compete unfairly with SanDisk with respect to products sold in  
8 California, elsewhere in the United States, and around the world.

9           **B.     SanDisk's Joint Venture with Toshiba**

10          27.     In the 2000s, SanDisk and Toshiba Corporation ("Toshiba") established a series of  
11 joint ventures, directed in part to developing and manufacturing various flash memory devices  
12 and processes.

13          28.     SanDisk and Toshiba both contributed management, engineers, support personnel,  
14 and—subject to strict confidentiality provisions—intellectual property to these joint ventures.  
15 SanDisk has maintained exclusive rights to its own products, technology and patents, and joint  
16 ownership of any technology borne of the joint venture. SanDisk and Toshiba agreed and took  
17 reasonable measures to maintain the confidentiality of information they each contributed to the  
18 joint venture, and of that which they jointly developed.

19          29.     One of the SanDisk–Toshiba joint venture projects was located in Yokkaichi,  
20 Japan—about 200 miles west of Tokyo. In 2002, SanDisk and Toshiba consolidated their  
21 manufacturing efforts at a semiconductor fabrication plant ("fab") in Yokkaichi. In 2008, they  
22 entered into a Joint Memory Development Yoakkaichi Agreement that was aimed specifically at  
23 developing cutting-edge NAND flash memory devices and processes.

24          30.     As with all other employees, those stationed at the Yokkaichi fab had access to  
25 confidential information on a strict need-to-know basis—and only after they signed non-  
26 disclosure agreements.

1       **C.     Yoshitaka Sugita Steals SanDisk's Trade Secrets**

2           31.     One of the employees at the Yokkaichi fab was Yoshitaka Sugita, who worked for  
3     SanDisk from approximately February 2003 through his resignation effective June 30, 2008.

4           32.     In or about February 2003, Mr. Sugita signed a Proprietary Information and  
5     Inventions Agreement ("PIIA") with SanDisk. In that PIIA, Mr. Sugita agreed that he would not  
6     disclose any SanDisk proprietary or confidential information to anyone without SanDisk's  
7     express written consent. He also confirmed his understanding that all documents furnished to or  
8     produced by him during his employment with SanDisk were, and would remain, SanDisk's  
9     exclusive property, and that he would not take any SanDisk documents with him when he left the  
10    company.

11          33.     Among other duties, Mr. Sugita analyzed defective products at the Yokkaichi fab.  
12    To perform this role, Mr. Sugita needed to have and was given access to SanDisk's independent  
13    trade secret information, as well as the trade secret information that was jointly developed and  
14    owned by SanDisk and Toshiba related to the development and production of NAND flash  
15    memory designs, devices and processes for multiple technology nodes.

16          34.     In or about May 2008, while working at Yokkaichi and before leaving SanDisk to  
17    join Hynix, Mr. Sugita accessed and misappropriated an enormous amount of information that  
18    included certain of SanDisk's most sensitive and valuable flash memory trade secrets. Upon  
19    information and belief, Mr. Sugita downloaded 10 gigabytes of information including, but not  
20    limited to, semiconductor fabrication process flows, steps and recipes, circuit layouts, research  
21    and development analyses and results, optimal process tool settings, and other design, device,  
22    process, operational and business trade secrets. SanDisk is informed and believes that Hynix  
23    solicited Mr. Sugita to download these files and misappropriate SanDisk's trade secret  
24    information for Hynix's benefit.

25          35.     Sandisk is informed and believes that, in or about July 2008, Mr. Sugita officially  
26    commenced work at SK Hynix in South Korea—where he was employed until approximately  
27    June 2011.



1     **D.     SanDisk Learns about Sugita's Theft—and Hynix's Involvement**

2           36.     More than five years later, in or about January 2014, SanDisk learned that an  
3     informant had documented his personal knowledge of Sugita's and Hynix's disclosure and misuse  
4     of San Disk's information. Like Mr. Sugita, the informant had worked first at SanDisk and then  
5     at Hynix. The informant knew the information disclosed was SanDisk information or information  
6     jointly owned by SanDisk and Toshiba. On information and belief, so did Hynix and its  
7     employees, as the informant reports that documents containing the legend "SanDisk/Toshiba  
8     Confidential" were distributed among Hynix employees and were posted on Hynix's database.  
9     One such document is printed on paper bearing a Hynix watermark, but it clearly contains  
10    evaluations, test results and technical decisions and information co-developed by SanDisk and  
11    Toshiba and bearing the legend "SanDisk/Toshiba Confidential." The document compares the  
12    SanDisk/Toshiba technology with Hynix's, and concludes with a list of ways in which Hynix will  
13    use it.

14          37.     Upon information and belief, Mr. Sugita delivered to Defendants substantial  
15    SanDisk technical, operational and business trade secret information in violation of his non-  
16    disclosure agreement, and Defendants have knowingly and intentionally used that information,  
17    despite knowing that it was acquired by improper means.

18          38.     SanDisk and Toshiba have provided Tokyo's Metropolitan Police Department with  
19    evidence supporting allegations that Mr. Sugita and Hynix misappropriated SanDisk's trade  
20    secret information. Upon information and belief, on or about March 13, 2014 in Japan, a warrant  
21    was issued for Sugita's arrest and he was detained by Japanese law enforcement authorities.

22                   **FIRST CAUSE OF ACTION**

23                   **(Trade Secret Misappropriation under Cal. Civ. Code §§ 3426 et seq.)**

24          39.     Paragraphs 1 through 38 above are incorporated herein by reference.

25          40.     To avoid the substantial time and expense required to research, develop, design  
26    and qualify their own flash memory manufacturing processes, Defendants solicited Mr. Sugita to  
27    steal SanDisk's technical, operational and business trade secrets—including but not limited to  
28    SanDisk's flash memory research and development analyses, cell and circuit designs and layouts,

1 integrated circuit devices and features, and fabrication processes, including process flows, steps  
2 and recipes, and other operational and business trade secrets.

3 41. Defendants acquired and used, and continue to use, SanDisk trade secret  
4 information acquired by Mr. Sugita and belonging to SanDisk, knowing or having reason to know  
5 that the trade secrets were acquired by improper means, or were disclosed to Defendants by a  
6 person who owed a duty to SanDisk to maintain the secrecy of SanDisk's trade secrets.

7 42. Upon information and belief, SanDisk's trade secrets have been and are used  
8 throughout Defendants' operations, procedures, manufacturing processes and related business  
9 activities, and in Defendants' products. Defendants have directed these products towards,  
10 introduced them into, and offered to sell, have sold and continue to sell them to California  
11 customers, and to other North American customers through marketing and sales activities  
12 conducted in California, in order to obtain business and revenues from California and United  
13 States customers, and to compete directly and unfairly against SanDisk in and throughout  
14 California. Defendants' misuse of SanDisk's trade secrets is continuing, and poses the additional  
15 threat of unauthorized disclosure and use of SanDisk's trade secrets by others.

16 43. SanDisk's trade secrets derive independent economic value, actual or potential,  
17 from not being generally known to the public, or to other entities and persons such as the Hynix  
18 Defendants, who can obtain value from their disclosure or use. SanDisk's knowledge and use of  
19 these trade secrets provides SanDisk with competitive advantages over those who do not know  
20 them. SanDisk's trade secrets are not matters either of general knowledge in the field of  
21 semiconductor processing and manufacture.

22 44. SanDisk has made, and continues to make, efforts that are reasonable under the  
23 circumstances to protect the secrecy of their trade secrets by, among other things, requiring its  
24 employees to execute non-disclosure agreements, by designating certain documents containing  
25 trade secret information as "confidential" or "restricted," and by restricting access to trade secret  
26 information to employees on a need-to-know basis, and to customers or joint venture partners  
27 only upon their agreement to keep such information confidential.

45. Defendants' misuse of SanDisk's trade secrets, unless and until enjoined and restrained by this Court, will greatly and irreparably injure SanDisk.

46. SanDisk has no adequate remedy at law for the present and threatened future injuries being caused by Defendants. Defendants' misuse of SanDisk's trade secrets has allowed Defendants to build a reputation they do not deserve, to gain market share, and to steal business from SanDisk. SanDisk, therefore, is entitled to injunctive relief prohibiting Defendants from further misuse and/or disclosure of SanDisk's trade secrets, and information derived therefrom, in any services and products being sold or offered for sale to California customers, or to others through Defendants' activities in California, to compel Defendants to return all materials incorporating, disclosing, or derived from SanDisk's trade secrets, and to prevent Defendants from further capitalizing on their ill-gotten gains.

47. SanDisk is entitled to damages for the actual loss caused by Defendants' misappropriation of SanDisk's trade secrets, and/or for any unjust enrichment Defendants have enjoyed by such misappropriation.

48. Defendants' misappropriation of SanDisk's trade secrets was willful and malicious. California Civil Code Sections 3426.3(c) and 3426.4 thus entitle SanDisk to an award of exemplary damages equal to twice the actual damages caused by the misappropriation, as well as SanDisk's reasonable attorneys' fees.

## **PRAYER FOR RELIEF**

SanDisk respectfully requests the following relief:

1. A judgment that Defendants are liable on all causes of action alleged herein;
2. Damages for actual loss and unjust enrichment;
3. Pre- and post-judgment interest;
4. Exemplary and punitive damages;
5. Attorneys' fees and costs incurred by SanDisk in bringing and litigating this action;
6. Preliminary and permanent injunctive relief pursuant to which Defendants, and each of them, and their employees or representatives, and all persons acting in concert or

1 participating with them are ordered, enjoined, or restrained, directly or indirectly, by any means  
2 whatsoever, as follows:

- 3 i) From offering to sell or selling products that utilize, embody, or were  
4 developed using SanDisk's trade secrets and/or other valuable  
5 intellectual property and business information;  
6  
7 ii) From disclosing or using SanDisk's trade secrets and other valuable  
8 intellectual property and business information;  
9  
10 iii) From utilizing products or processes that were derived from or  
11 embody SanDisk's trade secrets;  
12  
13 iv) Immediately to preserve and return to SanDisk (i) all copies of all  
14 SanDisk documents and information, including without limitation  
any trade secret and other confidential or proprietary information  
acquired from SanDisk; and (ii) all copies of all materials (in paper,  
electronic, or any other form) containing any, or derived from any,  
SanDisk information, trade secrets, or other confidential or  
proprietary information; and  
v) To turn over to the Court any proceeds they have received from the  
misappropriation of SanDisk's trade secrets and other valuable  
intellectual property and business information, which proceeds  
would be held in constructive trust until the conclusion of this  
litigation;

15 7. Reasonable royalties;

16 8. Costs of court; and

17 9. All such other relief that the Court deems just and proper.

18 **DEMAND FOR JURY TRIAL**

19 Plaintiff SanDisk hereby demands a trial by jury for all causes of action, claims or issues  
20 in this action which are triable as a matter of right to a jury.

21  
22 Dated: March 13, 2014

KEKER & VAN NEST LLP

23  
24 By:

  
JEFFREY R. CHANIN

25 Attorneys for Plaintiff SANDISK  
26 CORPORATION