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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

TONY DICKEY and PAUL PARMER,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

ADVANCED MICRO DEVICES, INC., a
Delaware corporation,

Defendant.

Case No. 4:15-cv-04922-HSG

**CLASS ACTION SETTLEMENT
AGREEMENT**

Judge: Hon. Haywood S. Gilliam, Jr.

1 This Agreement (“Agreement” or “Settlement Agreement”) is entered on this 9th day of
2 August, 2019 by and among (i) Tony Dickey and Paul Parmer (the “Named Plaintiffs”); (ii) the
3 Settlement Class (as defined herein); and (iii) Defendant Advanced Micro Devices, Inc. (“AMD”
4 or “Defendant”), by and through their respective counsel. The Settlement Class and Named
5 Plaintiffs are collectively referred to as the “Plaintiffs” unless otherwise noted. The Plaintiffs and
6 the Defendant are collectively referred to herein as the “Parties.” This Agreement is intended by
7 the Parties to fully, finally and forever resolve, discharge, and settle the Released Claims (as
8 defined herein), upon and subject to the terms and conditions of this Agreement, and subject to the
9 final approval of the Court.

10 RECITALS

11 **A.** On October 26, 2015 plaintiff Tony Dickey filed a putative class action complaint
12 (the “Complaint”) against Defendant in the Northern District of California, alleging violations of
13 Cal. Civ. Code §§ 1750 *et seq.*, violations of Cal. Bus. & Prof. Code §§ 17200, *et seq.*, violations
14 of Cal. Bus. & Prof. Code §§ 17500, *et seq.*, common law fraudulent inducement; common law
15 breach of express warranties, negligent misrepresentation, and unjust enrichment.

16 **B.** In response to the Complaint, on December 21, 2015, Defendant moved to dismiss
17 pursuant to Fed. R. Civ. P. 12. After full briefing and argument, on April 7, 2016, the Court
18 granted Defendant’s motion to dismiss with leave to amend.

19 **C.** Thereafter, on May 5, 2016, Plaintiffs filed a First Amended Complaint (the
20 “FAC”) which removed the claim for unjust enrichment, but realleged the other causes of action
21 that were included in the Complaint.

22 **D.** In response to the FAC, on May 26, 2016, Defendant again moved to dismiss
23 pursuant to Fed. R. Civ. P. 12. After full briefing and argument, on October 31, 2016, the Court
24 granted Defendant’s motion to dismiss with leave to amend.

25 **E.** Thereafter, on November 21, 2016, Plaintiffs filed a Second Amended Complaint
26 (the “SAC”), realleging all causes of action that were included in the FAC.

27 **F.** In response to the SAC, on December 15, 2016, Defendant once again moved to
28 dismiss pursuant to Fed. R. Civ. P. 12. After full briefing and argument, on June 14, 2017, the

1 Court granted in part, and denied in part, the motion to dismiss, granting the motion as to
2 Plaintiff's claim for injunctive relief, and denying the motion in all other respects.

3 **G.** Thereafter, on July 19, 2017, the Defendant answered the SAC. The Parties then
4 embarked on discovery, exchanging substantial fact and expert discovery, including document
5 production, exchanges of multiple sets of interrogatories, depositions of plaintiffs, and disclosure
6 of expert reports.

7 **H.** On March 27, 2018, Plaintiffs filed a motion to certify the Unfair Competition Law
8 and False Advertising Law claims of a proposed class.

9 **I.** On January 17, 2019, the Court granted Plaintiffs' motion and certified a class
10 comprised of "[a]ll individuals who purchased one or more of the following AMD computer chips
11 either (1) while residing in California or (2) after visiting the AMD.com website: FX-8120, FX-
12 8150, FX-8320, FX-8350, FX-8370, FX-9370, and FX- 9590."

13 **J.** On March 28, 2019 and on June 3, 2019, amended case schedules were entered,
14 under which fact discovery would close in September 2019.

15 **K.** Throughout the pendency of the Action, the Parties discussed the prospect of
16 settlement. In August 2016, they had agreed to an early mediation with the former Chief
17 Magistrate Judge of the Northern District of Illinois, the Honorable Morton Denlow (ret.) of
18 JAMS (Chicago). However, an initial call with Judge Denlow on August 18, 2016 revealed that
19 the Parties had dramatically different views on settlement. As a result, and at the suggestion of
20 Judge Denlow, the Parties agreed to cancel the mediation. Nevertheless, the Parties committed to
21 revisiting settlement talks at a later date if they deemed it appropriate.

22 **L.** After much litigation, in January 2019, the Parties agreed to attend a full-day
23 mediation, with the former Chief Judge of the Northern District of Illinois, the Honorable James F.
24 Holderman (ret.) of JAMS (Chicago). On May 9, 2019, the Parties attended a full-day mediation
25 before Judge Holderman, and after several rounds of arms' length negotiations, ultimately reached
26 a class action settlement that, if finally approved by the Court, would completely resolve this
27 Action.

28 **M.** At all times, Defendant has denied and continues to deny any wrongdoing

1 whatsoever and has denied and continues to deny that it committed, or threatened or attempted to
2 commit, any wrongful act or violation of law or duty alleged in the Action. Nonetheless, taking
3 into account the uncertainty and risks inherent in any litigation, Defendant has concluded it is
4 desirable and beneficial that the Action be fully and finally settled and terminated in the manner
5 and upon the terms and conditions set forth in this Agreement. This Agreement is a compromise,
6 and the Agreement, any related documents, and any negotiations resulting in it shall not be
7 construed as or deemed to be evidence of or an admission or concession of liability or wrongdoing
8 on the part of Defendant, or any of the Released Parties (defined below), with respect to any claim
9 of any fault or liability or wrongdoing or damage whatsoever.

10 N. Plaintiffs believe that the claims asserted in the Action against Defendant have
11 merit and that they would have prevailed at summary judgment and/or trial. Nonetheless, Plaintiffs
12 and Class Counsel recognize that Defendant has raised factual and legal defenses that present a
13 risk that Plaintiffs may not prevail. Plaintiffs and Class Counsel also recognize the expense and
14 delay associated with continued prosecution of the Action against Defendant through summary
15 judgment, trial, and any further appeals. Plaintiffs and Class Counsel have also taken into account
16 the uncertain outcome and risks of litigation, especially in complex class actions, as well as the
17 difficulties inherent in such litigation. Therefore, Plaintiffs believe it is desirable that the Released
18 Claims be fully and finally compromised, settled, and resolved with prejudice. Based on their
19 evaluation, Class Counsel have concluded that the terms and conditions of this Agreement are fair,
20 reasonable, and adequate to the Settlement Class, and that it is in the best interests of the
21 Settlement Class to settle the claims raised in the Action pursuant to the terms and provisions of
22 this Agreement.

23 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among
24 Named Plaintiffs, the Settlement Class, and each of them, and Defendant, by and through their
25 undersigned counsel that, subject to final approval of the Court after a hearing or hearings as
26 provided for in this Settlement Agreement, in consideration of the benefits flowing to the Parties
27 from the Agreement set forth herein, that the Action and the Released Claims shall be finally and
28 fully compromised, settled, and released, and the Action shall be dismissed with prejudice, upon

1 and subject to the terms and conditions of this Agreement.

2 **AGREEMENT**

3 1. **DEFINITIONS.**

4 As used in this Settlement Agreement, the following terms have the meanings specified
5 below:

6 **1.1 “Action”** means *Tony Dickey and Paul Parmer v. Advanced Micro Devices, Inc.*,
7 Case No. 4:15-cv-04922-HSG, pending in the United States District Court for the Northern
8 District of California, Oakland Division.

9 **1.2 “Approved Claim”** means a Claim Form submitted by a Settlement Class Member
10 that: (a) is submitted timely and in accordance with the directions on the Claim Form and the
11 provisions of the Settlement Agreement; (b) is fully and truthfully completed by a Settlement
12 Class Member with all of the information requested in the Claim Form; (c) is signed by the
13 Settlement Class Member, physically or electronically; and (d) is approved by the Settlement
14 Administrator pursuant to the provisions of this Agreement.

15 **1.3 “Claim Form”** means the document substantially in the form attached hereto as
16 Exhibit A, as approved by the Court. The Claim Form, to be completed by Settlement Class
17 Members who wish to file a Claim for a payment, shall be available in electronic and paper format
18 in the manner described below.

19 **1.4 “Claims Deadline”** means the date by which all Claim Forms must be postmarked
20 or received to be considered timely and shall be set at a date no later than seven (7) days prior to
21 the Final Approval Hearing. The Claims Deadline shall be clearly set forth in the Order for Notice
22 and Hearing as well as in the Notice and the Claim Form.

23 **1.5 “Class Counsel”** means Rafey S. Balabanian and Todd Logan of Edelson PC.

24 **1.6 “Class Representatives”** means the Named Plaintiffs in this Action, Tony Dickey
25 and Paul Parmer.

26 **1.7 “Court”** means the United States District Court for the Northern District of
27 California, the Honorable Haywood S. Gilliam, Jr. presiding, or any judge who shall succeed him
28 as the Judge in this Action.

1 **1.8** “**Defendant**” means Advanced Micro Devices, Inc., the defendant in the Action.

2 **1.9** “**Defendant’s Counsel**” means Matthew D. Powers and E. Clay Marquez of
3 O’Melveny & Myers LLP.

4 **1.10** “**Effective Date**” means the date ten (10) days after which all of the events and
5 conditions specified in Paragraph 9.1 have been met and have occurred.

6 **1.11** “**Escrow Account**” means the separate, interest-bearing escrow account to be
7 established by the Settlement Administrator under terms acceptable to all Parties at a depository
8 institution insured by the Federal Deposit Insurance Corporation. The Settlement Payments shall
9 be deposited by Defendant into the Escrow Account and the money in the Escrow Account shall
10 be invested in the following types of accounts and/or instruments and no other: (i) demand deposit
11 accounts and/or (ii) time deposit accounts and certificates of deposit, in either case with maturities
12 of forty-five (45) days or less. The costs of establishing and maintaining the Escrow Account shall
13 be paid from the Settlement Fund.

14 **1.12** “**Fee Award**” means the amount of attorneys’ fees and reimbursement of expenses
15 awarded by the Court to Class Counsel, which will be paid out of the Settlement Fund.

16 **1.13** “**Final**” means one business day following the latest of the following events: (i) the
17 date upon which the time expires for filing or noticing any appeal of the Court’s Final Judgment
18 approving the Settlement Agreement; (ii) if there is an appeal or appeals, other than an appeal or
19 appeals solely with respect to the Fee Award, the date of completion, in a manner that finally
20 affirms and leaves in place the Final Judgment without any material modification, of all
21 proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all
22 deadlines for motions for reconsideration or petitions for review and/or *certiorari*, all proceedings
23 ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following
24 decisions on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any
25 proceeding on *certiorari*.

26 **1.14** “**Final Approval Hearing**” means the hearing before the Court where the Parties
27 will request the Final Judgment to be entered by the Court approving the Settlement Agreement,
28 the Fee Award, and the incentive award to the Class Representatives.

1 **1.15 “Final Judgment” or “Final Settlement Order”** means the Final Judgment and
2 Order to be entered by the Court approving the Agreement after the Final Approval Hearing.

3 **1.16 “Notice”** means the notice of this proposed Class Action Settlement Agreement
4 and Final Approval Hearing, which is to be sent to the Settlement Class substantially in the
5 manner set forth in this Agreement, is consistent with the requirements of Due Process and Rule
6 23, and is substantially in the form of Exhibits B, C, and D hereto.

7 **1.17 “Notice Date”** means the date by which the Notice set forth in Paragraph 4.1 is
8 complete, which shall be no later than forty-five (45) days after Preliminary Approval.

9 **1.18 “Objection/Exclusion Deadline”** means the date by which a written objection to
10 this Settlement Agreement or a request for exclusion submitted by a Person within the Settlement
11 Class must be made, which shall be designated as a date no later than forty-five (45) days after the
12 Notice Date and no sooner than fourteen (14) days after papers supporting the Fee Award are filed
13 with the Court and posted to the settlement website listed in Paragraph 4.1(d), or such other date
14 as ordered by the Court.

15 **1.19 “Person”** shall mean, without limitation, any individual, corporation, partnership,
16 limited partnership, limited liability company, association, joint stock company, estate, legal
17 representative, trust, unincorporated association, and any business or legal entity and their
18 spouses, heirs, predecessors, successors, representatives, or assigns. “Person” is not intended to
19 include any governmental agencies or governmental actors, including, without limitation, any state
20 Attorney General office.

21 **1.20 “Plaintiffs”** means Tony Dickey, Paul Parmer, and the Settlement Class Members.

22 **1.21 “Preliminary Approval”** means the Court’s preliminary approval of this
23 Settlement Agreement, and approval of the form and manner of the Notice.

24 **1.22 “Preliminary Approval Order”** means the order preliminarily approving the
25 Settlement Agreement and directing notice thereof to the Settlement Class, which will be agreed
26 upon by the Parties and submitted to the Court in conjunction with Plaintiffs’ motion for
27 preliminary approval of the Agreement.
28

1 **1.23 “Released Claims”** means any and all actual, potential, filed, known or unknown,
2 fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities,
3 rights, causes of action, contracts or agreements, extracontractual claims, damages, punitive,
4 exemplary or multiplied damages, expenses, costs, attorneys’ fees and or obligations (including
5 “Unknown Claims,” as defined below), whether in law or in equity, accrued or unaccrued, direct,
6 individual or representative, of every nature and description whatsoever, whether based on
7 California’s Unfair Competition Law, California’s False Advertising Law, California’s Consumer
8 Legal Remedies Act, or on claims of fraudulent inducement, breach of express warranty, or
9 negligent misrepresentation, or other federal, state, local, statutory or common law or any other
10 law, rule or regulation, against the Released Parties, or any of them, arising out of any marketing
11 materials, advertising, descriptions, facts, transactions, events, matters, occurrences, acts,
12 disclosures, statements, representations, omissions or failures to act regarding the number of cores
13 in AMD’s FX-8120, FX-8150, FX-8320, FX-8350, FX-8370, FX-9370, and FX- 9590 processors,
14 including all claims that were brought or could have been brought in the Action relating to
15 representations about those CPUs.

16 **1.24 “Released Parties”** means Defendant Advanced Micro Devices, Inc., as well as
17 any and all of its respective present or past heirs, executors, estates, administrators, predecessors,
18 successors, subsidiaries, direct and indirect distributors, resellers, and customers (including
19 through multiple levels of sale or distribution), licensors, licensees, associates, affiliates,
20 employers, employees, agents, consultants, independent contractors, insurers, directors, managing
21 directors, officers, partners, principals, members, attorneys, accountants, financial and other
22 advisors, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives,
23 successors in interest, assigns and companies, firms, and trusts.

24 **1.25 “Releasing Parties”** means Plaintiffs, those Settlement Class Members who do not
25 timely opt out of the Settlement Class, and all of their respective present or past heirs, executors,
26 estates, administrators, predecessors, successors, assigns, parent companies, subsidiaries,
27 associates, affiliates, employers, employees, agents, consultants, independent contractors, insurers,
28 directors, managing directors, officers, partners, principals, members, attorneys, accountants,

1 financial and other advisors, underwriters, shareholders, lenders, auditors, investment advisors,
2 legal representatives, successors in interest, assigns and companies, firms, trusts, and corporations.

3 **1.26 “Settlement Administration Expenses”** means the expenses incurred by the
4 Settlement Administrator in providing Notice, processing claims, responding to inquiries from
5 members of the Settlement Class, mailing checks for Approved Claims, and related services. The
6 Settlement Administrator anticipates the total cost of Settlement Administration to be
7 approximately \$350,000-\$700,000, depending on factors such as the number of physical addresses
8 ultimately produced pursuant to subpoenas served upon third parties to this litigation.

9 **1.27 “Settlement Administrator”** means Angeion Group, subject to Court approval,
10 who shall oversee the distribution of Notice, as well as the processing and payment of Approved
11 Claims to the Settlement Class as set forth in this Agreement.

12 **1.28 “Settlement Class”** means all Persons who purchased one or more of the following
13 AMD computer chips either (1) while residing in California or (2) after visiting the AMD.com
14 website: FX-8120, FX-8150, FX-8320, FX-8350, FX-8370, FX-9370, and FX-9590. Excluded
15 from the Settlement Class are (1) any Judge or Magistrate presiding over this action and members
16 of their families, (2) the defendant, defendant’s subsidiaries, parent companies, successors,
17 predecessors, and any entity in which the defendant or its parents have a controlling interest and
18 their current or former officers, directors, and employees, (3) persons who properly execute and
19 file a timely request for exclusion from the class, and (4) the legal representatives, successors or
20 assigns of any such excluded persons.

21 **1.29 “Settlement Class Member”** means a Person who falls within the definition of the
22 Settlement Class as set forth above and who has not submitted a valid request for exclusion.

23 **1.30 “Settlement Fund”** means the non-reversionary cash fund that shall be
24 established by Defendant in the total amount of twelve million one hundred thousand dollars
25 (\$12,100,000.00) to be deposited into the Escrow Account via Defendant’s Settlement Payments,
26 plus all interest earned thereon. From the Settlement Fund, the Settlement Administrator shall pay
27 all Approved Claims made by Settlement Class Members, Settlement Administration Expenses,
28 any incentive award to the Class Representatives, and any Fee Award to Class Counsel. The

1 Settlement Fund shall be kept in the Escrow Account with permissions granted to the Settlement
2 Administrator to access said funds until such time as the above-listed payments are made. The
3 Settlement Fund includes all interest that shall accrue on the sums deposited in the Escrow
4 Account. The Settlement Administrator shall be responsible for all tax filings with respect to any
5 earnings on the Settlement Fund and the payment of all taxes that may be due on such earnings.
6 The Settlement Payments represents the total extent of Defendant's monetary obligations under
7 this Agreement. In no event shall Defendant's total monetary obligation with respect to this
8 Agreement exceed or be less than twelve million one hundred thousand dollars (\$12,100,000.00)

9 **1.31 "Settlement Payments"** means those payments made by Defendant, totaling
10 twelve million one hundred thousand dollars (\$12,100,000.00), and deposited in the Escrow
11 Account for the purpose of establishing the Settlement Fund.

12 **1.32 "Unknown Claims"** means claims that could have been raised in the Action and
13 that any or all of the Releasing Parties do not know or suspect to exist, which, if known by him or
14 her, might affect his or her agreement to release the Released Parties or the Released Claims or
15 might affect his or her decision to agree, object or not to object to the Settlement. Upon the
16 Effective Date, the Releasing Parties shall be deemed to have, and shall have, expressly waived
17 and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of
18 § 1542 of the California Civil Code, which provides as follows:

19 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
20 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
21 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE
22 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
PARTY.

23 Upon the Effective Date, the Releasing Parties also shall be deemed to have, and shall have,
24 waived any and all provisions, rights and benefits conferred by any law of any state or territory of
25 the United States, or principle of common law, or the law of any jurisdiction outside of the United
26 States, which is similar, comparable or equivalent to § 1542 of the California Civil Code. The
27 Releasing Parties acknowledge that they may discover facts in addition to or different from those
28 that they now know or believe to be true with respect to the subject matter of this release, but that

1 it is their intention to finally and forever settle and release the Released Claims, notwithstanding
2 any Unknown Claims they may have, as that term is defined in this Paragraph.

3 **2. SETTLEMENT CONSIDERATION.**

4 In consideration of the Release provided for in Section 3 and the dismissal of the Action
5 with prejudice, AMD agrees to provide the following consideration to the Plaintiffs under the
6 terms of the Settlement Agreement.

7 **2.1 Monetary Compensation.**

8 (a) Defendant shall pay or cause to be paid into the Escrow Account an initial
9 Settlement Payment in the amount of six million fifty thousand dollars (\$6,050,000.00) within
10 fourteen (14) business days after Preliminary Approval. Defendants shall then pay or cause to be
11 paid into the Escrow Account a second and final Settlement Payment in the amount of six million
12 fifty thousand dollars (\$6,050,000.00) within ten (10) business days after Final Approval.

13 (b) Settlement Class Members shall have until the Claims Deadline to submit
14 an Approved Claim for up to five (5) qualifying purchases of an FX-8120, FX-8150, FX-8320,
15 FX-8350, FX-8370, FX-9370, or FX-9590 CPU(s), without proof of purchase. Settlement Class
16 Members seeking to file a claim for more than five (5) qualifying purchases will be required to
17 provide the Claims Administrator with reasonable proof of purchase. Each Settlement Class
18 Member with an Approved Claim shall be entitled to a *pro rata* portion, on a per- -CPU basis, of
19 the Settlement Fund to be paid by check after deducting the Settlement Administration Expenses,
20 any Fee Award to Class Counsel, any incentive award for the Class Representatives, and any other
21 amounts payable under the Agreement.

22 (c) In the event that the total *pro rata*, per-CPU distribution entitlement of any
23 individual class member exceeds \$300 (*i.e.*, the approximate original retail price of the AMD FX-
24 9590 CPU), all amounts above and beyond \$300 per CPU shall be distributed to a reasonable *cy*
25 *pres* recipient, subject to Court approval.

26 (d) Within sixty (60) days after the Effective Date, or such other date as the
27 Court may set, the Settlement Administrator shall pay from the Settlement Fund all Approved
28 Claims by check.

1 (e) All cash payments issued to Settlement Class Members via check will state
2 on the face of the check that it will expire and become null and void unless cashed within ninety
3 (90) days after the date of issuance. To the extent that a check issued to a Settlement Class
4 Member is not cashed within ninety (90) days after the date of issuance, such funds shall be placed
5 into a Second Distribution fund. If appropriate, at the Parties' election, funds remaining from any
6 uncashed checks provided during the initial distribution may be used for a Second Distribution to
7 participating class members on a *pro rata* basis, and/or may be directed to an appropriate *cy pres*
8 recipient, agreed upon by the Parties and subject to Court approval, in lieu of a Second
9 Distribution. To the extent that a Second Distribution is made and any Second Distribution checks
10 remain uncashed after ninety (90) days, such funds shall be directed to an appropriate *cy pres*
11 recipient, agreed upon by the Parties and subject to Court approval.

12 (f) Subject to Court approval, the Parties agree to engage the Rose Foundation,
13 located at 201 4th Street, Suite 102, Oakland, CA 94607, for purposes of managing the distribution
14 of any *cy pres* funds and the selection of an appropriate *cy pres* recipient(s) whose work is closely
15 related to the issues raised by this litigation and/or furthers the objectives of this Settlement
16 Agreement. The Parties further agree that any Rose Foundation fees will be paid exclusively from
17 the Settlement Fund.

18 **3. RELEASE.**

19 **3.1** The obligations incurred pursuant to this Settlement Agreement shall be a full and
20 final disposition of the Action and any and all Released Claims, as against all Released Parties.

21 **3.2** Upon the Effective Date, the Releasing Parties, and each of them, shall be deemed
22 to have, and by operation of the Final Judgment shall have, fully, finally, and forever released,
23 relinquished, and discharged all Released Claims against the Released Parties, and each of them.

24 **4. NOTICE TO THE CLASS.**

25 **4.1** The Notice Plan shall consist of the following:

26 (a) *Settlement Class List.* No later than fourteen (14) business days after the
27 execution of this Agreement, Class Counsel will seek to obtain the last known U.S. Mail addresses
28 and email addresses of Persons in the Settlement Class by issuing subpoenas for such information

1 to certain third-party resellers of AMD's processors at issue in the Action and provide that contact
2 information to the Settlement Administrator. The Settlement Administrator shall use this
3 information to create the "Class List," a copy of which shall be provided to Class Counsel and
4 Defendant's Counsel.

5 **(b)** *Direct Notice via U.S. Mail.* No later than the Notice Date, the Settlement
6 Administrator shall send notice substantially in the form attached as Exhibit B and a postcard
7 Claim Form with return postage prepaid via First Class U.S. Mail to all Settlement Class Members
8 whose U.S. Mail address is available in the Class List. In the event that claims representing fewer
9 than 50,000 CPU purchases have been submitted by the date that is thirty (30) days prior to the
10 Claims Deadline, the Settlement Administrator shall again send notice substantially in the form
11 attached as Exhibit B and a postcard Claim Form with return postage prepaid via First Class U.S.
12 Mail to all Settlement Class Members whose U.S. Mail address is available in the Class List.

13 **(c)** *Direct Notice via Email.* No later than the Notice Date, the Settlement
14 Administrator shall send Notice via email substantially in the form attached as Exhibit C, along
15 with an electronic link to the Claim Form, to all Settlement Class Members for whom a valid
16 email address is available in the Class List. In the event transmission of email notice results in any
17 "bounce-backs," the Settlement Administrator shall, if possible, correct any issues that may have
18 caused the "bounce-back" to occur and make a second attempt to re-send the email notice. Thirty
19 (45) days prior to the Claims Deadline, the Settlement Administrator shall again send Notice via
20 email substantially in the form attached as Exhibit C, along with an electronic link to the Claim
21 Form, to all Settlement Class Members for whom a valid email address is available in the Class
22 List.

23 **(d)** *Settlement Website.* Within ten (10) days from Preliminary Approval,
24 Notice shall be provided on a website at www.amdcpusettlement.com, which shall be
25 administered and maintained by the Settlement Administrator and shall include the ability to file
26 Claim Forms on-line. The Notice provided on the Settlement Website shall be substantially in the
27 form of Exhibit D hereto. The Settlement Website will be periodically updated to provide the
28 estimated pro rata payment amount based on the number of participating Settlement Class

1 Members.

2 **(e)** *Digital Publication Notice.* The Settlement Administrator will supplement
3 the direct mail postcard and email notice with Internet banner ads, which allows access to several
4 thousand premium high-quality websites likely to be visited by Settlement Class Members. These
5 ads will run for at least one month and will contain active hyperlinks to the Settlement Website.
6 The final banner ads, and the banner ad program, to be used shall to be subject to the final
7 approval of Defendant, approval not to be unreasonably withheld. Any disputes between the
8 Parties regarding banner ads shall be submitted to the Honorable James F. Holderman (ret.) of
9 JAMS for binding determination.

10 **(f)** *CAFA Notice.* Pursuant to 28 U.S.C. § 1715, not later than ten (10) days
11 after the Agreement is filed with the Court, Defendant shall cause to be served upon the Attorneys
12 General of each U.S. State in which Settlement Class members reside, the Attorney General of the
13 United States, and other required government officials, notice of the proposed settlement as
14 required by law.

15 **4.2** The Notice shall advise the Settlement Class of their rights, including the right to
16 be excluded from, comment upon, and/or object to the Settlement Agreement or any of its terms.
17 The Notice shall specify that any objection to the Settlement Agreement, and any papers submitted
18 in support of said objection, shall be considered by the Court at the Final Approval Hearing only
19 if, on or before the Objection/Exclusion Deadline approved by the Court and specified in the
20 Notice, the Person making the objection files notice of an intention to do so and at the same time
21 (a) files copies of such papers he or she proposes to be submitted at the Final Approval Hearing
22 with the Clerk of the Court, or alternatively, if the objection is from a Class Member represented
23 by counsel, files any objection through the Court's CM/ECF system, and (b) sends copies of such
24 papers by mail, hand, or overnight delivery service to Class Counsel and Defendant's Counsel.
25 The Notice shall also advise the Settlement Class of the total value of the Settlement Fund and the
26 approximate value of anticipated distributions per CPU.

27 **4.3** Any Settlement Class Member who intends to object to this Agreement must
28 present the objection in writing, which must be personally signed by the objector, and must

1 include: (1) the objector's name and address; (2) an explanation of the basis upon which the
2 objector claims to be a Settlement Class Member, including the model of AMD CPU purchased
3 and statement that it was either purchased while residing in California or after visiting the
4 AMD.com website; (3) all grounds for the objection, including all citations to legal authority and
5 evidence supporting the objection; (4) the name and contact information of any and all attorneys
6 representing, advising, or in any way assisting the objector in connection with the preparation or
7 submission of the objection or who may profit from the pursuit of the objection; and (5) a
8 statement indicating whether the objector intends to appear at the Final Approval Hearing (either
9 personally or through counsel who files an appearance with the Court in accordance with the
10 Local Rules).

11 **4.4** A Settlement Class Member may request to be excluded from the Settlement Class
12 by sending a written request postmarked on or before the Objection/Exclusion Deadline approved
13 by the Court and specified in the Notice. To exercise the right to be excluded, a Person in the
14 Settlement Class must timely send a written request for exclusion to the Settlement Administrator
15 providing his/her name and address, the model of AMD processor(s) purchased, the number of
16 AMD processors purchased, and a statement that it was either purchased while residing in
17 California or after visiting the AMD.com website; a signature, the name and number of the case,
18 and a statement that he or she wishes to be excluded from the Settlement Class for purposes of this
19 Settlement. A request to be excluded that does not include all of this information, or that is sent to
20 an address other than that designated in the Notice, or that is not postmarked within the time
21 specified, shall be invalid, and the Person(s) serving such a request shall be a member(s) of the
22 Settlement Class and shall be bound as a Settlement Class Member by this Agreement, if
23 approved. Any member of the Settlement Class who validly elects to be excluded from this
24 Agreement shall not: (i) be bound by any orders or the Final Judgment; (ii) be entitled to relief
25 under this Settlement Agreement; (iii) gain any rights by virtue of this Agreement; or (iv) be
26 entitled to object to any aspect of this Agreement. The request for exclusion must be personally
27 signed by the Person requesting exclusion. So-called "mass" or "class" opt-outs shall not be
28 allowed. To be valid, a request for exclusion must be postmarked or received by the date specified

1 in the Notice.

2 **4.5** The Final Approval Hearing shall be no earlier than ninety (90) days after the
3 Notice described in Paragraph 4.1(f) is provided.

4 **4.6** Any Settlement Class Member who does not, in accordance with the terms and
5 conditions of this Agreement, seek exclusion from the Settlement Class or timely file a valid
6 Claim Form shall not be entitled to receive any payment or benefits pursuant to this Agreement,
7 but will otherwise be bound by all of the terms of this Agreement, including the terms of the Final
8 Judgment to be entered in the Action and the Releases provided for in the Agreement, and will be
9 barred from bringing any action against any of the Released Parties concerning the Released
10 Claims.

11 **5. SETTLEMENT ADMINISTRATION.**

12 **5.1** The Settlement Administrator shall, under the supervision of the Court, administer
13 the relief provided by this Settlement Agreement by processing Claim Forms in a rational,
14 responsive, cost effective, and timely manner. The Settlement Administrator shall maintain
15 reasonably detailed records of its activities under this Agreement. The Settlement Administrator
16 shall maintain all such records as are required by applicable law in accordance with its normal
17 business practices and such records will be made available to Class Counsel and Defendant's
18 Counsel upon request. The Settlement Administrator shall also provide reports and other
19 information to the Court as the Court may require. The Settlement Administrator shall provide
20 Class Counsel and Defendant's Counsel with information concerning Notice, administration, and
21 implementation of the Settlement Agreement. Should the Court request, the Parties shall submit a
22 timely report to the Court summarizing the work performed by the Settlement Administrator,
23 including a post-distribution accounting of all amounts from the Settlement Fund paid to
24 Settlement Class Members on account of Approved Claims, the number and value of checks not
25 cashed, and the amount distributed to any *cy pres* recipient. Without limiting the foregoing, the
26 Settlement Administrator shall:

27 **(a)** Forward to Defendant's Counsel, with copies to Class Counsel, all original
28 documents and other materials received in connection with the administration of the Settlement,

1 and all copies thereof, within thirty (30) days after the date on which all Claim Forms have been
2 finally approved or disallowed in accordance with the terms of this Agreement;

3 **(b)** Receive requests to be excluded from the Settlement Class and other
4 requests and promptly provide to Class Counsel and Defendant's Counsel copies thereof. If the
5 Settlement Administrator receives any exclusion forms or other requests after the deadline for the
6 submission of such forms and requests, the Settlement Administrator shall promptly provide
7 copies thereof to Class Counsel and Defendant's Counsel;

8 **(c)** Provide weekly reports to Class Counsel and Defendant's Counsel,
9 including without limitation, reports regarding the number of Claim Forms received, the number
10 approved by the Settlement Administrator, and the categorization and description of Claim Forms
11 rejected, in whole or in part, by the Settlement Administrator; and

12 **(d)** Make available for inspection by Class Counsel or Defendant's Counsel the
13 Claim Forms received by the Settlement Administrator at any time upon reasonable notice.

14 **5.2** The Settlement Administrator shall be obliged to employ reasonable procedures to
15 screen claims for abuse or fraud and deny Claim Forms where there is evidence of abuse or fraud,
16 including by cross-referencing Approved Claims with the Class List. The Settlement
17 Administrator shall determine whether a Claim Form submitted by a Settlement Class Member is
18 an Approved Claim and shall reject Claim Forms that fail to (a) comply with the instructions on
19 the Claim Form or the terms of this Agreement, or (b) provide full and complete information as
20 requested on the Claim Form. In the event a Person submits a timely Claim Form by the Claims
21 Deadline but the Claim Form is not otherwise complete, then the Settlement Administrator shall
22 give such Person one (1) reasonable opportunity to provide any requested missing information,
23 which information must be received by the Settlement Administrator no later than thirty (30)
24 calendar days after the Claims Deadline. In the event the Settlement Administrator receives such
25 information more than thirty (30) days after the Claims Deadline, then any such claim shall be
26 denied. The Settlement Administrator may contact any Person who has submitted a Claim Form to
27 obtain additional information necessary to verify the Claim Form.

28 **5.4** Defendant's Counsel and Class Counsel shall have the right to challenge the

1 acceptance or rejection of a Claim Form submitted by Settlement Class Members. The Settlement
2 Administrator shall follow any agreed decisions of Class Counsel and Defendant’s Counsel as to
3 the validity of any disputed submitted Claim Form. To the extent Class Counsel and Defendant’s
4 Counsel are not able to agree on the disposition of a challenge, the disputed claim shall be
5 submitted to the Honorable James F. Holderman (ret.) of JAMS for binding determination.

6 **5.5** In the exercise of its duties outlined in this Agreement, the Settlement
7 Administrator shall have the right to reasonably request additional information from the Parties or
8 any Settlement Class Member.

9 **6. TERMINATION OF SETTLEMENT.**

10 **6.1** Subject to Paragraphs 9.1-9.3 below, Defendant or the Class Representatives on
11 behalf of the Settlement Class, shall have the right to terminate this Agreement by providing
12 written notice of the election to do so (“Termination Notice”) to all other Parties hereto within
13 twenty-one (21) days of any of the following events: (i) the Court’s refusal to grant Preliminary
14 Approval of this Agreement in any material respect; (ii) the Court’s refusal to grant final approval
15 of this Agreement in any material respect; (iii) the Court’s refusal to enter the Final Judgment in
16 this Action in any material respect; (iv) the date upon which the Final Judgment is modified or
17 reversed in any material respect by the U.S. Court of Appeals for the Ninth Circuit or the Supreme
18 Court of the United States; or (v) the date upon which an Alternative Judgment, as defined in
19 Paragraph 9.1(d) of this Agreement is modified or reversed in any material respect by the U.S.
20 Court of Appeals for the Ninth Circuit or the Supreme Court of the United States.

21 **6.2** Within ten (10) business days after the last day for Settlement Class Members to
22 opt-out, the Settlement Administrator will provide to Defendant’s Counsel a list of all Persons
23 who opted out by validly requesting exclusion. In the event that the number of Persons who opted
24 out exceeds 30,000, or the number of CPUs purchased by Persons who opted out exceeds 50,000
25 CPUs, Defendant may elect to terminate this Agreement on the ground that exclusion at that level
26 threatens to frustrate the essential purpose of this Agreement. Defendant may exercise its right to
27 terminate under this subsection by notifying Class Counsel of its election no later than ten (10)
28 business days after receipt of the list of Persons who opted out.

1 **7. PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL ORDER.**

2 **7.1** Promptly after the execution of this Settlement Agreement, Class Counsel shall
3 submit this Agreement together with its Exhibits to the Court and shall move the Court for
4 Preliminary Approval of the settlement set forth in this Agreement; and entry of a Preliminary
5 Approval Order, which order shall set a Final Approval Hearing date and approve the Notice and
6 Claim Form for dissemination substantially in the form of Exhibits A, B, C, and D hereto. The
7 Preliminary Approval Order shall also authorize the Parties, without further approval from the
8 Court, to agree to and adopt such amendments, modifications and expansions of the Settlement
9 Agreement and its implementing documents (including all exhibits to this Agreement) so long as
10 they are consistent in all material respects with the terms of the Final Judgment and do not limit or
11 impair the rights of the Settlement Class.

12 **7.2** At the time of the submission of this Agreement to the Court as described above,
13 Class Counsel shall request that, after Notice is given, the Court hold a Final Approval Hearing
14 and approve the settlement of the Action as set forth herein.

15 **7.3** After Notice is given, the Parties shall request and seek to obtain from the Court a
16 Final Judgment, which will (among other things):

17 **(a)** find that the Court has jurisdiction over all Settlement Class Members and
18 Released Claims, such that the Court may approve the Agreement, including all exhibits thereto;

19 **(b)** approve the Settlement Agreement and the proposed settlement as fair,
20 reasonable and adequate as to, and in the best interests of, the Settlement Class Members; direct
21 the Parties and their counsel to implement and consummate the Agreement according to its terms
22 and provisions; and declare the Agreement to be binding on, and have *res judicata* and preclusive
23 effect in all pending and future lawsuits or other proceedings maintained by or on behalf of
24 Plaintiffs and the Releasing Parties;

25 **(c)** find that the Notice implemented pursuant to the Agreement (i) constitutes
26 the best practicable notice under the circumstances; (ii) constitutes notice that is reasonably
27 calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the
28 Action, their right to object to or exclude themselves from the proposed Agreement, and to appear

1 at the Final Approval Hearing; (iii) is reasonable and constitutes due, adequate, and sufficient
2 notice to all persons entitled to receive notice; and (iv) meets all applicable requirements of the
3 Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, and
4 the rules of the Court;

5 (d) find that the Class Representatives and Class Counsel adequately represent
6 the Settlement Class for purposes of entering into and implementing the Agreement;

7 (e) dismiss the Action (including all individual claims and Settlement Class
8 Claims presented thereby) on the merits and with prejudice, without fees or costs to any Party
9 except as provided in the Settlement Agreement;

10 (f) incorporate the Release set forth above, make the Release effective as of the
11 Effective Date, and forever discharge the Released Parties as set forth herein;

12 (g) permanently bar and enjoin all Settlement Class Members who have not
13 been properly excluded from the Settlement Class from filing, commencing, prosecuting,
14 intervening in, or participating (as class members or otherwise) in, any lawsuit or other action in
15 any jurisdiction based on the Released Claims;

16 (h) without affecting the finality of the Final Judgment for purposes of appeal,
17 retain jurisdiction as to all matters relating to administration (except disputes over the Claim Form
18 as described in Paragraph 5.4), consummation, enforcement, and interpretation of the Settlement
19 Agreement and the Final Judgment, and for any other necessary purpose; and

20 (i) incorporate any other provisions, as the Court deems necessary and just, so
21 long as they do not conflict with the other provisions of this Agreement.

22 **8. CLASS COUNSEL'S ATTORNEYS' FEES AND REIMBURSEMENT OF**
23 **EXPENSES; INCENTIVE AWARD.**

24 **8.1** Defendant acknowledges that Class Counsel is entitled to be paid from the
25 Settlement Fund reasonable attorneys' fees and reimbursement of their expenses, in an amount
26 approved by the Court, and that said amount shall serve as the Fee Award. The Fee Award shall be
27 determined by the Court on the petition of Class Counsel. Without the Parties having discussed the
28 issue of attorneys' fees at any point in their negotiations, and with no consideration given or

1 received, Class Counsel agrees to limit its petition for attorneys' fees and reimbursement of
2 expenses to no more than 30 percent (30%) of the Settlement Fund, or Three Million Six Hundred
3 Thirty Thousand US Dollars (\$3,630,000.00). Payment of the Fee Award shall be made from the
4 Settlement Fund and should Class Counsel seek or be awarded less than this amount, the
5 difference in the amount sought and/or the amount ultimately awarded pursuant to this Paragraph
6 shall remain in the Settlement Fund for distribution to the claiming Class Members.

7 **8.2** The Fee Award shall be payable within seven business (7) days after entry of the
8 Court's Final Judgment, subject to Class Counsel executing the Undertaking Regarding Attorneys'
9 Fees and Costs (the "Undertaking") attached hereto as Exhibit E, and providing all payment
10 routing information and tax I.D. numbers for Class Counsel. Payment of the Fee Award shall be
11 made by wire transfer to Class Counsel in accordance with wire instructions to be provided to the
12 Settlement Administrator, after completion of necessary forms, including but not limited to W-9
13 forms. Notwithstanding the foregoing, if for any reason the Final Judgment is reversed or rendered
14 void, then any Person or firm who has received such funds shall be liable for payments made
15 pursuant to this subparagraph, and shall return such funds to the Settlement Fund by redepositing
16 them in the Escrow Account. Additionally, should any party to the Undertaking dissolve, merge,
17 declare bankruptcy, become insolvent, or cease to exist prior to the final payment to Settlement
18 Class Members, the Parties shall work together in good faith to identify the appropriate successor
19 party(ies) and that party(ies) shall execute a new undertaking guaranteeing repayment of funds
20 within fourteen (14) days of such an occurrence. Class Counsel further agrees to maintain accurate
21 records and accounting regarding the distribution of the Fee Award. Any disputes between the
22 Parties regarding the appropriate party(ies) to execute a new undertaking, as described above, shall
23 be submitted to the Honorable James F. Holderman (ret.) of JAMS for binding determination.

24 **8.3** Defendant acknowledges that the Class Representatives shall be paid from the
25 Settlement Fund an incentive award, in an amount approved by the Court on the petition of Class
26 Counsel. With no consideration having been given or received, Plaintiffs agree to seek no more
27 than seven thousand five hundred dollars (\$7,500.00) each from the Court as the incentive award.
28 Should the Court award less than this amount, the difference in the amount sought and the amount

1 ultimately awarded pursuant to this Paragraph shall remain in the Settlement Fund. Such incentive
2 awards shall be paid from the Settlement Fund (in the form of checks to the Class Representatives
3 that are sent care of Class Counsel), within five (5) business days after entry of the Court's Final
4 Judgment if there have been no objections to the Settlement Agreement, and, if there have been
5 such objections, within five (5) business days after the Effective Date.

6 **9. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL,**
7 **CANCELLATION OR TERMINATION.**

8 **9.1** The Effective Date of this Settlement Agreement shall not occur unless and until
9 each of the following events occurs and shall be the date upon which the last (in time) of the
10 following events occurs:

- 11 (a) The Parties and their counsel have executed this Agreement;
- 12 (b) The Court has entered the Preliminary Approval Order;
- 13 (c) The Court has entered an order finally approving the Agreement, following
14 Notice to the Settlement Class and a Final Approval Hearing, as provided in the Federal Rules of
15 Civil Procedure, and has entered the Final Judgment, or a judgment consistent with this
16 Agreement in all material respects; and
- 17 (d) The Final Judgment has become Final, as defined above, or, in the event
18 that the Court enters an order and final judgment in a form other than that provided above
19 ("Alternative Judgment") and that has the consent of the Parties, such Alternative Judgment
20 becomes Final.

21 **9.2** If some or all of the conditions specified in Paragraph 9.1 are not met, or in the
22 event that this Agreement is not approved by the Court, or the settlement set forth in this
23 Agreement is terminated or fails to become effective in accordance with its terms, then this
24 Settlement Agreement shall be canceled and terminated subject to Paragraph 6.1 unless Class
25 Counsel and Defendant's Counsel mutually agree in writing to proceed with this Agreement. If
26 any Party contends that another Party is in material breach of the terms of this Agreement, the
27 non-breaching Party shall provide written notice to the breaching Party within thirty (30) days of
28 the alleged breach. If the breaching Party fails to remedy or cure said breach within a reasonable

1 period of time following receipt of written notice, the non-breaching Party, provided that it is in
2 substantial compliance with the terms of this Agreement, may terminate this Agreement on notice
3 to all of the Parties. Notwithstanding anything herein, the Parties agree that the Court's failure to
4 approve, in whole or in part, the attorneys' fees payment to Class Counsel and/or the incentive
5 award set forth in Paragraph 8 above shall not prevent the Agreement from becoming effective,
6 nor shall it be grounds for termination.

7 **9.3** If this Agreement is terminated or fails to become effective for the reasons set forth
8 in Paragraphs 6.1 and 9.1-9.2 above, the Parties shall be restored to their respective positions in
9 the Action as of the date of the signing of this Agreement. In such event, any Final Judgment or
10 other order entered by the Court in accordance with the terms of this Agreement shall be treated as
11 vacated, *nunc pro tunc*, and the Parties shall be returned to the *status quo ante* with respect to the
12 Action as if this Agreement had never been entered into.

13 **10. MISCELLANEOUS PROVISIONS.**

14 **10.1** The Parties (a) acknowledge that it is their intent to consummate this Settlement
15 Agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the
16 extent reasonably necessary to effectuate and implement all terms and conditions of this
17 Agreement, to exercise their reasonable best efforts to accomplish the foregoing terms and
18 conditions of this Agreement, to secure final approval, and to defend the Final Judgment through
19 any and all appeals. Class Counsel and Defendant's Counsel agree to cooperate with one another
20 in seeking Court approval of the Preliminary Approval Order, the Settlement Agreement, and the
21 Final Judgment, and promptly to agree upon and execute all such other documentation as may be
22 reasonably required to obtain final approval of the Agreement.

23 **10.2** The Parties intend this Settlement Agreement to be a final and complete resolution
24 of all disputes between them with respect to the Released Claims by Plaintiffs, the Settlement
25 Class and each or any of them, on the one hand, against the Released Parties, and each or any of
26 the Released Parties, on the other hand. Accordingly, the Parties agree not to assert in any forum
27 that the Action was brought by Plaintiffs or defended by Defendant, or each or any of them, in bad
28 faith or without a reasonable basis.

1 **10.3** The Parties have relied upon the advice and representation of counsel, selected by
2 them, concerning their respective legal liability for the claims hereby released. The Parties have
3 read and understand fully the above and foregoing agreement and have been fully advised as to the
4 legal effect thereof by counsel of their own selection and intend to be legally bound by the same.

5 **10.4** Whether or not the Effective Date occurs or the Settlement Agreement is
6 terminated, neither this Agreement nor the settlement contained herein, nor any act performed or
7 document executed pursuant to or in furtherance of this Agreement or the settlement:

8 **(a)** is, may be deemed, or shall be used, offered or received against the
9 Released Parties, or each or any of them, as an admission, concession or evidence of, the validity
10 of any Released Claims, the truth of any fact alleged by the Plaintiffs, the deficiency of any
11 defense that has been or could have been asserted in the Action, the violation of any law or statute,
12 the reasonableness of the settlement amount or the Fee Award, or of any alleged wrongdoing,
13 liability, negligence, or fault of the Released Parties, or any of them;

14 **(b)** is, may be deemed, or shall be used, offered or received against Defendant,
15 as an admission, concession or evidence of any fault, misrepresentation or omission with respect
16 to any statement or written document approved or made by the Released Parties, or any of them;

17 **(c)** is, may be deemed, or shall be used, offered or received against the
18 Released Parties, or each or any of them, as an admission or concession with respect to any
19 liability, negligence, fault or wrongdoing as against any Released Parties, in any civil, criminal or
20 administrative proceeding in any court, administrative agency or other tribunal. However, the
21 settlement, this Agreement, and any acts performed and/or documents executed in furtherance of
22 or pursuant to this Agreement and/or Settlement may be used in any proceedings as may be
23 necessary to effectuate the provisions of this Agreement. Further, if this Settlement Agreement is
24 approved by the Court, any Party or any of the Released Parties may file this Agreement and/or
25 the Final Judgment in any action that may be brought against such Party or Parties in order to
26 support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release,
27 good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue
28 preclusion or similar defense or counterclaim;

1 **(d)** is, may be deemed, or shall be construed against Plaintiffs, the Settlement
2 Class, the Releasing Parties, or each or any of them, or against the Released Parties, or each or any
3 of them, as an admission or concession that the consideration to be given hereunder represents an
4 amount equal to, less than or greater than that amount that could have or would have been
5 recovered after trial; and

6 **(e)** is, may be deemed, or shall be construed as or received in evidence as an
7 admission or concession against Plaintiffs, the Settlement Class, the Releasing Parties, or each and
8 any of them, or against the Released Parties, or each or any of them, that any of Plaintiffs' claims
9 are with or without merit or that damages recoverable in the Action would have exceeded or
10 would have been less than any particular amount.

11 **10.5** Upon the Effective Date, all documents and information marked or designated as
12 "Confidential" or "Highly Confidential - Attorney's Eyes Only," as defined in and subject to the
13 Protective Order, granted on February 29, 2016 (dkt. 42), or any other protective order entered in
14 this Action, shall be disposed of within the time frame and according to the procedures set forth in
15 the Protective Order.

16 **10.6** The headings used herein are used for the purpose of convenience only and are not
17 meant to have legal effect.

18 **10.7** The waiver by one Party of any breach of this Agreement by any other Party shall
19 not be deemed as a waiver of any other prior or subsequent breaches of this Agreement.

20 **10.8** All of the Exhibits to this Agreement are material and integral parts thereof and are
21 fully incorporated herein by this reference.

22 **10.9** This Agreement and its Exhibits set forth the entire agreement and understanding
23 of the Parties with respect to the matters set forth herein, and supersede all prior negotiations,
24 agreements, arrangements and undertakings with respect to the matters set forth herein. No
25 representations, warranties or inducements have been made to any Party concerning this
26 Settlement Agreement or its Exhibits other than the representations, warranties and covenants
27 contained and memorialized in such documents. This Agreement may be amended or modified
28 only by a written instrument signed by or on behalf of all Parties or their respective successors-in-

1 interest.

2 **10.10** Except as otherwise provided herein, each Party shall bear its own costs.

3 **10.11** Plaintiffs represent and warrant that they have not assigned any claim or right or
4 interest therein as against the Released Parties to any other Person or Party and that they are fully
5 entitled to release the same.

6 **10.12** Each counsel or other Person executing this Settlement Agreement, any of its
7 Exhibits, or any related settlement documents on behalf of any Party hereto, hereby warrants and
8 represents that such Person has the full authority to do so and has the authority to take appropriate
9 action required or permitted to be taken pursuant to the Agreement to effectuate its terms.

10 **10.13** This Agreement may be executed in one or more counterparts. Signature by digital
11 means, facsimile, or in PDF format will constitute sufficient execution of this Agreement. All
12 executed counterparts and each of them shall be deemed to be one and the same instrument. A
13 complete set of original executed counterparts shall be filed with the Court if the Court so
14 requests.

15 **10.14** This Settlement Agreement shall be binding upon, and inure to the benefit of, the
16 successors and assigns of the Parties hereto and the Released Parties.

17 **10.15** The Court shall retain jurisdiction with respect to implementation and enforcement
18 of the terms of this Agreement, and all Parties hereto submit to the jurisdiction of the Court for
19 purposes of implementing and enforcing the settlement embodied in this Agreement.

20 **10.16** This Settlement Agreement shall be governed by and construed in accordance with
21 the laws of the State of California.

22 **10.17** This Agreement is deemed to have been prepared by counsel for all Parties, as a
23 result of arm's-length negotiations among the Parties. Because all Parties have contributed
24 substantially and materially to the preparation of this Agreement, it shall not be construed more
25 strictly against one Party than another.

26 **10.18** Where this Agreement requires notice to the Parties, such notice shall be sent to the
27 undersigned counsel: Rafey S. Balabanian, Edelson PC, 123 Townsend Street, Suite 100, San
28 Francisco, California 94107; Matthew D. Powers, O'Melveny & Myers LLP, Two Embarcadero

1 Center, 28th Floor, San Francisco, California, 94111.

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IT IS SO AGREED TO BY THE PARTIES:

Dated: August 9, 2019

TONY DICKEY, individually and as representative of the Class

Tony Dickey

Dated: August 9, 2019

PAUL PARMER, individually and as representative of the Class

Dated: August 9, 2019

ADVANCED MICRO DEVICES, INC.

By: _____

IT IS SO STIPULATED BY COUNSEL:

Dated: August 9, 2019

EDELSON PC

By: _____

Rafey S. Balabanian

Todd Logan

Attorneys for Plaintiffs and the Settlement Class

Dated: August 9, 2019

O'MELVENY & MYERS, LLP

By: _____

Matthew D. Powers

E. Clay Marquez

Attorneys for Defendant

ADVANCED MICRO DEVICES, INC.

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IT IS SO AGREED TO BY THE PARTIES:

Dated: August 9, 2019 **TONY DICKEY**, individually and as representative of
the Class

Dated: August 9, 2019 **PAUL PARMER**, individually and as representative of
the Class

Paul Parmer

Dated: August 9, 2019 **ADVANCED MICRO DEVICES, INC.**

By: _____

IT IS SO STIPULATED BY COUNSEL:

Dated: August 9, 2019 **EDELSON PC**

By: _____
Rafey S. Balabanian
Todd Logan
Attorneys for Plaintiffs and the Settlement Class

Dated: August 9, 2019 **O'MELVENY & MYERS, LLP**

By: _____
Matthew D. Powers
E. Clay Marquez
Attorneys for Defendant
ADVANCED MICRO DEVICES, INC.

IT IS SO AGREED TO BY THE PARTIES:

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Dated: August 9, 2019

TONY DICKEY, individually and as representative of
the Class

Dated: August 9, 2019

PAUL PARMER, individually and as representative of
the Class

Dated: August 9, 2019

ADVANCED MICRO DEVICES, INC.

By: _____

IT IS SO STIPULATED BY COUNSEL:

Dated: August 9, 2019

EDELSON PC

By:  _____

Rafey S. Balabanian

Todd Logan

Attorneys for Plaintiffs and the Settlement Class

Dated: August 9, 2019

O'MELVENY & MYERS, LLP

By: _____

Matthew D. Powers

E. Clay Marquez

Attorneys for Defendant

ADVANCED MICRO DEVICES, INC.

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IT IS SO AGREED TO BY THE PARTIES:

Dated: August 9, 2019 **TONY DICKEY**, individually and as representative of
the Class

Dated: August 9, 2019 **PAUL PARMER**, individually and as representative of
the Class

Dated: August 9, 2019 **ADVANCED MICRO DEVICES, INC.**

By: _____


IT IS SO STIPULATED BY COUNSEL:

Dated: August 9, 2019 **EDELSON PC**

By: _____

Rafey S. Balabanian
Todd Logan
Attorneys for Plaintiffs and the Settlement Class

Dated: August 9, 2019 **O'MELVENY & MYERS, LLP**

By:  _____

Matthew D. Powers
E. Clay Marquez
Attorneys for Defendant
ADVANCED MICRO DEVICES, INC.