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7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**

11
12 STATE OF FLORIDA, OFFICE OF THE
13 ATTORNEY GENERAL, DEPARTMENT
OF LEGAL AFFAIRS,

14 Plaintiff,

15 v.

16 HITACHI-LG DATA STORAGE, INC.,
17 HITACHI-LG DATA STORAGE KOREA,
INC.,

18 Defendants.

**COMPLAINT FOR DAMAGES, CIVIL
PENALTIES, INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

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

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23 **I. NATURE OF THE ACTION**

24 1. The State of Florida brings this action against the Defendants under the Sherman
25 Act, the Clayton Act, the Florida Antitrust Act, and the Florida Deceptive and Unfair Trade
26 Practices Act on behalf of itself and its governmental entities, on behalf of businesses within
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1 Florida and on behalf of natural persons in Florida. The State of Florida demands a trial by jury
2 of all issues stated herein.

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

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

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

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10 **II. JURISDICTION AND VENUE**

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

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

8 7. Counts Three and Four arise under the Florida Antitrust Act, Section 542.15, *et*
9 *seq.*, Florida Statutes, and the Florida Deceptive and Unfair Trade Practices Act, Section
10 501.201, *et seq.*, Florida Statutes, respectively. This Court has subject matter jurisdiction over
11 the state claims pursuant to Title 28, United States Code Section 1367 (supplemental
12 jurisdiction) because these claims are so related to the federal claim that they form part of the
13 same case or controversy that would ordinarily be tried in one judicial proceeding. The exercise
14 of supplemental jurisdiction avoids unnecessary duplication and multiplicity of actions and is in
15 the interest of judicial economy, convenience, and fairness.
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18 8. Venue is proper in the United States District Court, Northern District of
19 California, under Title 15, United States Code Section 22 (commerce and trade venue) and Title
20 28, United States Code Section 1391 (general venue). Each Defendant is an alien corporation or
21 resides, transacts business, committed an illegal or tortious act, or is found in this district, and a
22 substantial part of the events giving rise to the claims arose in this district.
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25 **III. DEFINITIONS**

26 9. As used herein,

27 a. “ODD” or “ODDs” means “optical disk drive(s).”
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1 b. The following types of ODDs are the subject of this lawsuit: CD-ROM
2 ("CD"), CD-recordable ("CD-R"), CD-rewritable ("CD-RW"), DVD-ROM ("DVD"),
3 DVD-recordable ("DVD-R" and "DVD+R"), DVD-rewritable ("DVD-RW" and
4 "DVD+RW"), Blu-Ray ("BD"), Blu-Ray recordable ("BD-R"), Blue-Ray rewritable
5 ("BD-RE"), and High-Definition/Density DVD (HD-DVD).
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7 c. "ODD Products" refer to products containing the ODDs that are the
8 subject of this lawsuit, i.e. desktop and notebook computers, video game consoles, and
9 ODDs designed to be attached externally to devices such as computers.
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11 d. "OEM" means any Original Equipment Manufacturer of ODD Products.

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

14 f. "Relevant Period" means the period beginning at least January 1, 2004,
15 through at least January 1, 2010.
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17 **IV. PARTIES**

18 **A. Plaintiff**

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

21 11. The State of Florida is assigned the rights giving rise to certain claims under
22 Counts II and III from vendors that sold ODDs and/or ODD Products, purchased directly from a
23 Defendant, to Florida governmental entities pursuant to a state contract, and is therefore
24 authorized to file Count II under 15 U.S.C. § 15 and Count III under Section 542.22(1), Florida
25 Statutes.
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1 12. The Attorney General of Florida is the chief legal officer of Florida and the
2 enforcement authority of Chapter 542, Florida Statutes, and is authorized to file Counts I and III
3 seeking the full range of relief afforded by Chapter 542, Florida Statutes.

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

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10 **B. Defendants**

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

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21 15. Defendant Hitachi-LG Data Storage Korea, Inc. was formed in December 2000 as
22 a wholly-owned and controlled subsidiary of Defendant HLDS, and has its principal place of
23 business located at LG Gasan Digital Center, 459-9 Gasan-dong, Geumcheon-gu, Seoul, 153-803
24 Korea. During the Relevant Period, Hitachi-LG Data Storage Korea, Inc. designed and/or
25 manufactured ODDs with the intent and agreement to distribute throughout the United States.
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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 1-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.

1 21. Co-conspirator Koninklijke Philips Electronics N.V. (“Philips”) is a Dutch
2 company that has its principal place of business at Amstelplein 2, Breitner Center, P.O. Box
3 77900, 1070 MX Amsterdam, The Netherlands. During the Relevant Period, Philips designed
4 and/or manufactured ODDs with the intent and agreement to distribute throughout the United
5 States.
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7 22. Co-conspirator Lite-On IT Corporation (“Lite-On”) is a Taiwanese company that
8 has its principal place of business at 12F, 392, Ruey Kuang Road, Taipei City, TAP 11492,
9 Taiwan. During the Relevant Period, Lite-On designed and/or manufactured ODDs with the
10 intent and agreement to distribute throughout the United States.
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12 23. Co-conspirator Philips & Lite-On Digital Solutions Corporation (“PLDS”) is a
13 Taiwanese company that has its principal place of business at 16F, 392, Ruey Kuang Road,
14 Taipei City, TAP 11492, Taiwan. PLDS is a joint venture established in 2007 between Philips
15 and Lite-On. During the Relevant Period, PLDS designed and/or manufactured ODDs with the
16 intent and agreement to distribute throughout the United States.
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18 24. Co-conspirator Philips & Lite-On Digital Solutions USA, Inc. is a Delaware
19 corporation that has its principal place of business at 42000 Christy St., Fremont, California
20 94538. Philips & Lite-On Digital Solutions USA, Inc. is a subsidiary of PLDS. During the
21 Relevant Period, Philips & Lite-On Digital Solutions USA, Inc. designed and/or manufactured
22 ODDs with the intent and agreement to distribute throughout the United States.
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24 25. Co-conspirator Sony Corporation (“Sony”) is a Japanese company that has its
25 principal place of business at 1-7-1 Konan, Minato-ku, Tokyo 108-0075, Japan. During the
26 Relevant Period, Sony designed and/or manufactured ODDs with the intent and agreement to
27 distribute throughout the United States.
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1 26. Co-conspirator NEC Corporation (“NEC”) is a Japanese company that has its
2 principal place of business at 7-1 Shiba, 5-chome, Minato-Ku, Tokyo, 108-8001, Japan. Prior to
3 2008, NEC owned 45 percent of Sony Optiarc, Inc. During the Relevant Period, NEC designed
4 and/or manufactured ODDs with the intent and agreement to distribute throughout the United
5 States.
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7 27. Co-conspirator Sony NEC Optiarc, Inc. (“Sony NEC Optiarc”) was a Japanese
8 company with its headquarters located at 4-16-1 Okata, Atsugi-shi, Kanagawa 243-0021, Japan.
9 Sony NEC Optiarc, Inc. was created on April 3, 2006, as a joint venture between Defendants
10 Sony and NEC, in which Sony had a 55 percent interest and NEC had a 45 percent interest. Sony
11 and NEC exercised joint control over Sony NEC Optiarc, Inc. Sony purchased NEC’s interest in
12 Sony NEC Optiarc, Inc. in 2008 and renamed the company Sony Optiarc, Inc. During the
13 Relevant Period, Sony NEC Optiarc, Inc. designed and/or manufactured ODDs with the intent
14 and agreement to distribute throughout the United States.
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16 28. Co-conspirator Sony Optiarc, Inc. (“Sony Optiarc”) is a Japanese company that
17 has its headquarters located at 4-16-1 Okata, Atsugi-shi, Kanagawa 243-0021, Japan. Prior to
18 2008, Sony Optiarc was a joint venture between Sony and NEC called Sony NEC Optiarc, Inc.
19 On September 11, 2008, Sony agreed to purchase NEC’s interest in Sony NEC Optiarc and the
20 company was subsequently renamed Sony Optiarc, Inc. In 2008, Sony Optiarc reported revenues
21 of \$1.52 billion. During the Relevant Period, Sony Optiarc designed and/or manufactured ODDs
22 with the intent and agreement to distribute throughout the United States.
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24 29. Co-conspirator Sony Optiarc America, Inc. (“Sony Optiarc America”) is a
25 Delaware corporation headquartered at 1730 N. 1st Street, San Jose, California 95112. Sony
26 Optiarc America is a wholly-owned subsidiary of Sony Optiarc. Sony Optiarc America was
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1 formed in April 2007 as Sony NEC Optiarc America, Inc. In 2008, when Sony NEC Optiarc, Inc.
2 became a wholly-owned subsidiary of Sony, the company was renamed Sony Optiarc America,
3 Inc. During the Relevant Period, Sony Optiarc America designed and/or manufactured ODDs
4 with the intent and agreement to distribute throughout the United States.
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6 30. Co-conspirator Samsung Electronics Co., Ltd. ("Samsung") is a Korean company
7 that has its principal place of business at 1320-10, Seocho 2-dong, Seocho-gu, Seoul 137-857,
8 South Korea. During the Relevant Period, Samsung designed and/or manufactured ODDs with
9 the intent and agreement to distribute throughout the United States.
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11 31. Co-conspirator Toshiba Corporation ("Toshiba") is a Japanese company that has
12 its principal place of business at 1-1, Shibaura 1-chome, Minato-ku, Tokyo 105-8001, Japan.
13 During the Relevant Period, Toshiba designed and/or manufactured ODDs with the intent and
14 agreement to distribute throughout the United States.
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16 32. Co-conspirator Toshiba Samsung Storage Technology Corporation ("TSST") is a
17 joint venture of Toshiba and Samsung that was established on April 1, 2004. Toshiba owns 51
18 percent of the stock in TSST, while Samsung owns the remaining 49 percent. TSST and Toshiba
19 share corporate headquarters, which are located at 1-1, Shibaura 1-Chome, Minato-ku, Tokyo
20 105-8001, Japan. Toshiba and Samsung jointly control TSST. TSST forecasted revenue of 250
21 billion yen in fiscal year 2004, when it was established. During the Relevant Period, TSST
22 designed and/or manufactured ODDs with the intent and agreement to distribute throughout the
23 United States.
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25 33. Co-conspirator Toshiba Samsung Storage Technology Corporation Korea is a
26 wholly-owned and controlled subsidiary of TSST. Toshiba Samsung Storage Technology
27 Corporation Korea is a business entity organized under the laws of South Korea with its principal
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1 place of business located at Digital Empire2, 486, Sin-dong, Yeongton-gu, Suwon-si, Gyeonggi-
2 do, Korea 443-734. During the Relevant Period, Toshiba Samsung Storage Technology
3 Corporation Korea designed and/or manufactured ODDs with the intent and agreement to
4 distribute throughout the United States.

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

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

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

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

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

3 38. Co-conspirator Quanta Storage Inc. ("Quanta") is a Taiwanese entity that has its
4 principal place of business at 3F, No. 188, Wenhua 2nd Rd., Guishan Shiang, Taoyuan County
5 333, Taiwan. Quanta was incorporated on February 10, 1999 in Taoyuan County, Taiwan.

6 During the Relevant Period, Quanta designed and/or manufactured ODDs with the intent and
7 agreement to distribute throughout the United States.

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

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

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

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

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

4 **VI. BACKGROUND**

5 **A. ODD Technology**

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

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

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

4 47. ODDs of all types come in half-height (“HH”) and slim, including ultraslim,
5 models. The slim size formats are better suited to integration into notebook computers and
6 mobile computing equipment, but can also be used in desktop computers. HH units fit into
7 standard half-height, i.e. 1.75” high, desktop computer bays, and are less appropriate for use in
8 mobile equipment, where size, weight, and form factors are more important. Slim units typically
9 trade off some degree of performance to achieve a smaller size. As notebook computers have
10 become more popular with consumers, demand for slim optical disk drives has increased. In
11 2008, the sales of notebook computers surpassed desktop sales. Units incorporated into game
12 consoles are very similar, and in most cases identical, to ODDs incorporated into computers.

13 48. Both HH and slim ODDs can be integrated into external cases by equipment
14 manufacturers or end-users. An external ODD drive is intended for external use with a computer
15 and connects to the computer through some type of interface, such as a USB connection.
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17 49. An internal ODD drive is incorporated into a desktop computer tower or notebook
18 computer and connects to the motherboard of the computer through either a Serial Advanced
19 Technology Attachment (“SATA”) or Parallel Advanced Technology Attachment (“PATA”)
20 interface.
21

22 **B. ODD Industry**

23 50. Dell Inc. (“Dell”) and Hewlett-Packard Company (“HP”) introduced direct
24 competitive bidding by using processes such as electronic auctions (“e-auctions”). Dell was one
25 of the first OEMs to introduce e-auctions in 2002, which it referred to as “Internet Negotiations”
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1 (“INs”). HP introduced a similar type of e-auction in 2004. HP implemented its e-auction
2 program in part as a reaction to the success of Dell’s online procurement events in decreasing the
3 component costs for its personal computers. These e-auctions brought with them increased
4 pricing competition and significant pricing pressure. They also further commoditized the ODD
5 industry.
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7 51. The e-auctions used by Dell and HP were e-auctions, INs, and electronic RFQs
8 (Requests for Quotations). E-auctions and INs typically took place over a few hours or a single
9 day. Electronic RFQs could involve real-time events that sometimes spanned multiple days and
10 rounds of bidding. During the procurement event, the OEM sometimes provided feedback to the
11 ODD supplier. Typically, the OEM procurement events occurred quarterly or, at most, six times
12 a year per product.
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14 52. These auctions did not usually result in a winner-take-all scenario, although on
15 rare occasions a sole winner did exist. Instead, awards went to multiple sources or winners. Some
16 OEMs often selected three or four suppliers on a tiered basis. The volume to be awarded under
17 the contract was generally referred to as Total Available Market (“TAM”). TAM could be
18 determined as a fixed number or as a target that moved based on the final bidding prices.
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20 **VII. DEFENDANTS’ ANTICOMPETITIVE CONDUCT**

21 53. Defendants and their co-conspirators engaged in a contract, combination, trust or
22 conspiracy in order to control and maintain profitable prices for ODDs. The object and effect of
23 this unlawful behavior has been to raise, fix, maintain, and/or stabilize the prices at which
24 Defendants and their co-conspirators sold ODDs to artificially inflated levels from at least
25 January 1, 2004 through at least January 1, 2010.
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1 54. Defendants and their co-conspirators engaged in a conspiracy to reduce ODD
2 price competition in online auctions and to raise, fix, maintain, and/or stabilize prices in the
3 ODD market, effectuated by overt acts in furtherance thereof, including agreements, and the
4 exchange of competitively sensitive information, including prices, sales, production, desired tier
5 positions, aggressiveness of bidding, rankings, pull rates, and TAM. The purpose of these
6 information exchanges was anticompetitive price collusion and the effect of these exchanges was
7 to change pricing behavior.
8

9 55. Defendants' and their co-conspirators' information exchanges and agreements on
10 prices and bid positions were conducted and reached by sales managers, account managers or
11 global account managers who typically reported to sales executives within each of their
12 respective companies.
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14 56. Although Defendants' and their co-conspirators' employees had previously
15 exchanged confidential business information, the inception of internet auctions by Dell in 2002
16 caused Defendants and their co-conspirators to increase the intensity, frequency and specificity
17 in their exchanges of competitive information. Defendants and their co-conspirators feared that
18 internet auctions would accelerate the downward price trends for ODDs.
19

20 57. By the time HP began e-auctions and electronic RFQs in 2004, Defendants and
21 their co-conspirators had in place a network of contacts at each Defendant and co-conspirator
22 ODD manufacturer who they could call to exchange confidential business information.
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24 58. Defendants' and their co-conspirators' customers, OEMs such as Dell and HP,
25 would host events that the suppliers would attend together. At these events, Defendants'
26 representatives would trade contact information for purposes of setting up future information
27 exchanges and pricing agreements. Thus, personal relationships were developed between key
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1 employees at competitor companies, forming communication links to allow the illicit sharing of
2 sensitive information.

3 59. These contacts were so important that when employees switched positions, they
4 would introduce their replacements to their contacts at other firms in order to maintain the
5 continuity of information exchanges.
6

7 60. These exchanges of sensitive information were undertaken at the direction of the
8 account managers' superiors. Account managers and sales directors were responsible for
9 cultivating contacts at rival firms. These employees would exchange cell phone numbers and
10 non-business e-mail addresses to maintain these contacts. These employees were required to call
11 their counterparts at other ODD manufacturers before, during, and after many procurement
12 events, and at other times as necessary, in order to exchange a wide variety of competitively
13 sensitive information.
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15 61. The results of these competitor contacts were sometimes reported to the larger
16 sales team within each Defendant and co-conspirator. By reaching out to multiple contacts at
17 rival firms, an industry-wide picture could be drawn. Each Defendant and co-conspirator would
18 then know how it could bid on an upcoming procurement event to capture its desired sales at a
19 price above the competitive price.
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21 62. Defendants and their co-conspirators exchanged competitively sensitive
22 information through e-mail communications and telephone calls. They also met face to face at
23 times to exchange competitive information, meeting, for example, at establishments, including
24 restaurants, in Texas and abroad.
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26 63. Defendants' and their co-conspirators' conspiracy raised, fixed, maintained,
27 and/or stabilized prices of ODDs. Before this anticompetitive conduct, the ODD market was
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1 characterized by a steep downward trend in prices, frequently observed in technology markets.
2 However, during the Relevant Period, the conduct complained of herein reduced the rate of
3 decline in prices, thereby stabilizing prices, in the ODD market. In fact, market data indicate the
4 effect of the conspiracy in slowing price declines was tremendous, and the illegal conduct
5 appears to have caused ODD prices to increase at certain points.
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7 64. To date, the United States Department of Justice ("DOJ") has charged one
8 company and four individuals in connection with its investigation into the ODD industry:

9 a. On or about November 8, 2011, HLDS paid a \$21,100,000 criminal fine
10 and pled guilty to participating in a series of conspiracies to rig bids and fix prices for the
11 sale of ODDs between about June 2004 and about September 2009. DOJ had charged
12 HLDS with a 15-count felony charge in the United States District Court in San Francisco
13 on September 30, 2011, for conspiring with unnamed co-conspirators to suppress and
14 eliminate competition by rigging bids for ODDs sold to Dell and HP and by fixing the
15 prices of ODDs sold to Microsoft Corporation ("Microsoft").
16

17 b. On or about March 27, 2012, Young Keun Park ("Park"), an executive of
18 HLDS, pled guilty to participating in a series of conspiracies to rig bids and fix prices for
19 the sale of ODDs. Park has agreed to serve eight months in prison and pay a \$25,000
20 criminal fine. According to the information filed in the United States District Court for
21 the Northern District of California in San Francisco, Park (as HLDS's Vice President and
22 Chief Marketing Officer in charge of ODD sales) conspired with unnamed co-
23 conspirators to suppress and eliminate competition by rigging bids for ODDs sold to Dell
24 and HP and by fixing the prices of ODDs sold to Microsoft from about November 2005
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1 until about September 2009. According to DOJ, Park had supervisory responsibility for
2 HLDS's Dell, Microsoft, and HP accounts.

3 c. On or about April 17, 2012, Sang Hun Kim ("Kim"), an executive of
4 HLDS, pled guilty to participating in a series of conspiracies to rig bids and fix prices for
5 the sale of ODDs. Kim has agreed to serve eight months in prison and pay a \$25,000
6 criminal fine. According to the information filed in the United States District Court for
7 the Northern District of California in San Francisco, Kim (as HLDS's team leader in
8 charge of the HP and Dell accounts and as deputy chief marketing officer) conspired with
9 unnamed co-conspirators to suppress and eliminate competition by rigging bids for
10 optical disk drives sold to Dell and HP from about November 2005 until about September
11 2009.

12
13
14 d. On or about April 10, 2012, Sik Hur, a/k/a Daniel Hur ("Hur"), an
15 executive of HLDS, pled guilty to participating in a series of conspiracies to rig bids and
16 fix prices for the sale of ODDs. Hur has agreed to serve seven months in prison and pay a
17 \$25,000 criminal fine. According to the information filed in the United States District
18 Court for the Northern District of California in San Francisco, Hur conspired with
19 unnamed co-conspirators to suppress and eliminate competition by rigging bids for
20 optical disk drives sold to HP from about November 2005 until about June 2009.

21
22 e. In April 2012, Senior Sales Manager Woo Jin Yang a/k/a Eugene Yang
23 ("Yang") of HLDS agreed to plead guilty and to serve prison time in the United States for
24 his participation in a series of conspiracies to rig bids for the sale of ODDs. Yang has
25 agreed to serve six months in prison and pay a \$25,000 criminal fine. According to the
26 information filed in the United States District Court for the Northern District of
27
28

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

4 65. In order to form and carry out the conspiracy to raise, fix, maintain, and/or
5 stabilize the prices of ODDs, Defendants:
6

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

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

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

12 d. exchanged information on sales, production, market share, capacity, and
13 pricing of ODDs for the purpose of monitoring and enforcing adherence to the
14 agreements and preparing for future conspiratorial discussions; and
15

16 e. authorized, ordered, and consented to the participation of subordinate
17 employees in the conspiracy.
18

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

21 a. From about June 2004 to about September 2004, HLDS and unknown co-
22 conspirators conspired to suppress and restrain competition for Dell's June 2004 ODD
23 procurement event for 48x Combo drives by predetermining the order in which the co-
24 conspirators would finish in this event and by submitting rigged bids for this event.
25

26 b. From about August 2004 to about December 2004, HLDS and unknown
27 co-conspirators conspired to suppress and restrain competition for Dell's August 2004
28

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

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

8
9 d. From about November 2004 to about February 2005, HLDS and unknown
10 co-conspirators conspired to suppress and restrain competition for Dell's November 2004
11 ODD procurement event for HH DVD-ROM drives by predetermining the order in which
12 the co-conspirators would finish in this event and by submitting rigged bids for this
13 event.

14
15 e. From about March 2005 to about June 2005, HLDS and unknown co-
16 conspirators conspired to suppress and restrain competition for Dell's March 2005 ODD
17 procurement event for Slim CD-ROM drives by predetermining the order in which the
18 co-conspirators would finish in this event and by submitting rigged bids for this event.

19
20 f. From about November 2005 to about April 2006, HLDS, Young Keun
21 Park, Sang Hun Kim, and Daniel Hur, with unknown co-conspirators conspired to
22 suppress and restrain competition for HP's November 2005 ODD procurement event for
23 CD-ROM, CD-RW, DVD-ROM, and Combo drives by predetermining the order in
24 which the co-conspirators would finish in this event and by submitting rigged bids for
25 this event.
26
27
28

1 g. From about August 2006 to about December 2006, HLDS, Young Keun
2 Park, Sang Hun Kim, Daniel Hur, and Eugene Yang, with unknown co-conspirators,
3 conspired to suppress and restrain competition for HP's August 2006 ODD procurement
4 event for HH PATA and SATA DVD-ROM drives by predetermining the order in which
5 the co-conspirators would finish in this event and by submitting rigged bids for this
6 event.
7

8 h. From about August 2007 to about December 2007, HLDS, Young Keun
9 Park and Daniel Hur, with unknown co-conspirators, conspired to suppress and restrain
10 competition for HP's August 2007 ODD procurement event for Lightscribe DVD-RW
11 drives by predetermining the order in which the co-conspirators would finish in this event
12 and by submitting rigged bids for this event.
13

14 i. From about May 2008 to about June 2009, HLDS, Young Keun Park,
15 Sang Hun Kim, Daniel Hur, and Eugene Yang, with unknown co-conspirators, conspired
16 to suppress and restrain competition for HP's May 2008, August 2008, November 2008,
17 and February 2009 ODD procurement events for HH SATA DVD-RW drives by
18 predetermining the order in which the co-conspirators would finish in these events and by
19 submitting rigged bids for these events.
20

21 j. From about July 2008 to about March 2009, HLDS, Young Keun Park,
22 Sang Hun Kim, Daniel Hur, and Eugene Yang, with unknown co-conspirators, conspired
23 to suppress and restrain competition for HP's July 2008 and October 2008 ODD
24 procurement events for 12.7mm SATA DVD-RW drives by predetermining the order in
25 which the co-conspirators would finish in these events and by submitting rigged bids for
26 these events.
27
28

1 k. From about October 2008 to about March 2009, HLDS, Young Keun
2 Park, Sang Hun Kim, Daniel Hur, and Eugene Yang, with unknown co-conspirators,
3 conspired to suppress and restrain competition for HP's supplemental October 2008 ODD
4 procurement event for 12.7mm SATA DVD-RW drives by predetermining the order in
5 which the co-conspirators would finish on this event and by submitting rigged bids for
6 this event.
7

8 l. From about February 2009 to about July 2009, HLDS, Young Keun Park
9 and Sang Hun Kim, with unknown co-conspirators, conspired to suppress and restrain
10 competition for Dell's February 2009 ODD procurement event for HH SATA Tray DVD-
11 RW drives by predetermining the order in which the co-conspirators would finish in this
12 event and by submitting rigged bids for this event.
13

14 m. From about May 2009 to about September 2009, HLDS, Young Keun
15 Park and Sang Hun Kim, with unnamed co-conspirators, conspired to suppress and
16 restrain competition for Dell's May 2009 ODD procurement event for HH DVD-RW and
17 12.7mm Tray DVD-RW drives by predetermining the order in which the co-conspirators
18 would finish in this event and by submitting rigged bids for this event.
19

20 67. Additionally, on or about April 2009, HLDS devised a scheme to defraud HP in
21 relation to HP's April 2009 ODD procurement event for HH SATA DVD-ROM drives by
22 predetermining the order in which HLDS and others would finish in this event and by submitting
23 rigged bids for this event. In order to carry out this scheme, on or about April 22, 2009, an HLDS
24 employee in Houston, Texas sent an e-mail communication to other participants in the scheme
25 located in San Jose, California, in the Northern District of California, and the Republic of Korea,
26
27
28

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

3 68. Furthermore, from about June 2007 to about March 2008, HLDS and Young
4 Keun Park, with unknown co-conspirators, conspired to suppress and restrain competition in the
5 sales of ODDs to Microsoft by fixing the prices of these ODDs.
6

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

10 70. In order to fix the prices of ODDs sold to Microsoft, the Defendant HLDS
11 engaged in the following overt acts, among others:
12

- 13 a. participating in meetings, conversations, and communications in Taiwan
14 and the Republic of Korea in order to discuss the price of ODDs;
- 15 b. agreeing, during these meetings, discussions, and communications to sell
16 ODDs at certain prices;
- 17 c. issuing price quotations in accordance with the agreements reached;
- 18 d. exchanging information on sales of ODDs for the purpose of monitoring
19 and enforcing adherence to the agreed-upon prices; and
20
- 21 e. authorizing, ordering, and consenting to the participation of subordinate
22 employees in the conspiracy.
23

24 **VIII. INDUSTRY DYNAMICS**

25 71. Structurally, the ODD industry is conducive to the type of collusion alleged in this
26 Complaint because of characteristics such as optical disk technology patent pools charging large
27 royalties, which function as barriers to entry, increasing concentration in the industry, and the
28

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

3 **A. Barriers to Entry**

4 72. A significant barrier preventing new firms from successfully entering or
5 competing in the ODD industry has been the very large royalties, and the discriminatory manner
6 in which these now-prohibitive royalties are collected, charged by patent pools on optical disk
7 technology. A "patent pool" is an agreement between two or more patent owners to license one
8 or more of their patents to one another or to third parties. The patent owners, also known as
9 licensors, are members of the patent pool and the third parties, who pay to use the patents of the
10 members and are considered external to the patent pool, are called licensees.
11
12

13 **a. The CD Patent Pools**

14 73. After individual research and development efforts in the 1970s and early 1980s,
15 Philips and Sony formed a joint task force, which developed and publicized the CD Digital
16 Audio standard for music optical disks in 1982 and the CD-ROM standard for read-only data
17 storage in 1984. Then, in the 1980s and 1990s, Philips and Sony developed standards for CD-R
18 (writeable once) and CD-RW (re-writeable), which became highly successful. These data CD
19 formats revolutionized the way in which digital data, including software programs, were stored
20 and distributed.
21

22 74. Sony and Philips pooled their CD-related patents in a worldwide joint CD Disc
23 Licensing Program, which is managed by Philips. This patent pool charges its licensees high
24 royalties, which have been maintained despite the fall in the prices of CD-R/RWs. These royalty
25 rates continue to represent a significant percentage of the average net selling price in the
26 industry. Additionally, the pool has licensed its patents in a discriminatory fashion: Pool
27
28

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

4 **b. The DVD Patent Pools**

5
6 75. In 1995, after the commercial success of the CD patent pool and its variants,
7 major players in the consumer electronics industry formed a group to study and promote a
8 standard for the development of a DVD. Each member of this group was a holder or assignee of
9 patents that in some way involved a use or application of DVD technology. The study group
10 participants agreed to a single standard for next-generation DVD video disks and read-only data
11 storage. However, no agreement on writeable DVD data storage was reached and the participants
12 split into two groups, with one group supporting a DVD "+" format and the other group
13 supporting a DVD "-" format. The result was two sets of incompatible write formats for DVDs,
14 ultimately unified only by more complex products, "super multi" DVD drives capable of reading
15 or writing all the incompatible formats (as well as CDs).
16

17
18 76. This split resulted in the formation of two separate patent pools. The DVD3c
19 patent pool was formed by the core members of the DVD "+" group and today includes Philips,
20 Sony, Pioneer Corporation ("Pioneer"), Hitachi, Panasonic, and Toshiba. The core members of
21 the DVD "-" camp formed the DVD6c patent pool. The current licensors of the DVD6c patent
22 pool include Toshiba, Panasonic, Samsung, Sharp Corporation ("Sharp"), and Hitachi Consumer
23 Electronics Co., Ltd.
24

25 77. The DVD3c and the DVD6c patent pools govern the use of intellectual property
26 (IP) necessary for the production of DVD-capable ODDs. The royalties charged by the DVD
27 patent pools comprise a large share of the total cost of manufacturing ODDs and constitute a
28

1 significant barrier to entry, preventing new companies from entering or efficiently competing in
2 the market. In a 2008 presentation to the Japanese Industrial Standards Committee, Hisashi Kato,
3 of Mitsubishi Electric Corporation, estimated the royalties payable to the four principal patent
4 pools holding relevant IP (the DVD6c, DVD3c pools, as well the MPEG2 and AC-3 pools,
5 which relate to DVD audio and video compression). Kato estimated that, for a DVD recorder, the
6 royalties payable to these four patent pools would total \$17, of which \$14 would go to the
7 DVD6c and DVD3c pools alone. At the time, this amounted to a significant percentage of the
8 average selling price but, presumably, an even larger share of the cost of the DVD recorder.
9
10 Upon information and belief, for a DVD recorder, the royalties currently payable to these patent
11 pools amount to approximately \$14, of which \$12 goes to the DVD6c and DVD3c pools.

12
13 78. These prohibitively high royalties prevent potential industry entrants from
14 exerting downward pressure on the prices fixed by the conspirators, and shelter the conspirators
15 from any external competitive challenge. The members of the pool, and their affiliates, joint
16 ventures, and subcontractors, do not appear to be required to pay royalties to the pools, by virtue
17 of their network of cross-licenses, sheltering them from any competition external to the pools.
18
19 Thus, the DVD patent pools explicitly discriminate between members and non-members. It is no
20 surprise that, as a result, the patent pool members, along with their affiliates, joint ventures, and
21 subcontractors, survived an initial period of intense industrial competition, and then established
22 their control over a substantial majority of the global sales of ODDs early in the Relevant Period.

23
24 79. Thus, the only firms left in the ODD industry with the ability to effectively
25 compete are the firms who are, or whose parents are, members of the DVD patent pools. This is
26 because the large royalties charged by the patent pools act as a highly effective barrier to market
27 entry by non-patent pool firms. However, during the Relevant Period, competition among the
28

1 companies that dominate these patent pools and their joint ventures should have been more than
2 enough pressure to drive prices down, closer to the much lower cost of making a DVD drive.
3 What has prevented this is the impact of the price-fixing conspiracy, which has united these
4 firms in an effort to prevent the more rapid price cuts that characteristically reflect continuing
5 declines in production costs in dynamic high tech industries.
6

7 **B. Increasing Industry Concentration**

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

13 81. In November 2000, Japanese ODD producer Hitachi and Korean LGE established
14 a joint venture for ODDs, HLDS, which was formed for design, development, and marketing
15 efforts. HLDS outsourced certain of its manufacturing to LGE. Hitachi acquired a 51 percent
16 stake of HLDS, while LGE acquired the remaining 49 percent. After implementation of the
17 transaction, Hitachi and LGE jointly controlled the operations of HLDS. The Chief Executive
18 Officer of the joint venture was Korean, from LGE, while the Chief Financial Officer was
19 Japanese, from Hitachi. Hitachi, however, effectively controlled the operation, through both its
20 ownership and its control of key technologies. Indeed, Hitachi's 51 percent ownership of the
21 joint venture was critical to the success of HLDS, which became a very profitable joint venture,
22 since HLDS's position as a Hitachi affiliate gave it access to the benefits of Hitachi's cross-
23 licenses with other ODD patent holders as well as Hitachi's preferred position inside the patent
24 pool, thus allowing it to avoid paying increasingly burdensome royalties (as the fixed size of the
25 minimum royalty increased in importance in relation to the falling ODD price).
26
27
28

1 82. In 2004, ODD producers Samsung and Toshiba formed a joint venture, TSST.
2 TSST was tasked with the design, development, and marketing of ODDs, and all ODD
3 manufacturing was contracted to the parent companies. Toshiba and Samsung jointly controlled
4 the venture. Toshiba held the majority of shares in the joint venture, 51 percent, with Samsung
5 holding the remaining 49 percent. However, Samsung retained veto rights on strategic decisions.
6 Therefore, both parents retained the possibility to exercise decisive influence over the joint
7 venture.
8

9 83. In 2006, ODD producers NEC and Sony formed a joint venture, Sony NEC
10 Optiarc. The new joint venture undertook all design, development, marketing, and sales related
11 to ODDs, with all manufacturing (except a small amount of manufacturing of magneto-optical
12 drives by Sony) subcontracted out to third parties. Sony had a 55 percent ownership share of the
13 joint venture, while NEC owned the remaining 45 percent. Sony appointed the majority of the
14 board of directors (four out of seven), but NEC retained the right to veto certain decisions.
15 Additionally, certain sensitive matters which required resolution by a vote of the board of
16 directors also required an affirmative vote by at least one director appointed by NEC. Thus, Sony
17 and NEC retained substantial operational control over Sony NEC Optiarc, and each also retained
18 key technology development efforts outside the joint venture. Sony NEC Optiarc had a cost
19 advantage in royalties because its majority ownership share was controlled by a patent pool
20 member, Sony. In late 2008, NEC sold its interest in Sony NEC Optiarc to Sony, and Sony NEC
21 Optiarc was renamed Sony Optiarc. Sony Optiarc is now a wholly-owned subsidiary of Sony.
22
23
24

25 84. In February 2003, Taiwanese ODD producer BenQ formed a joint venture with
26 Dutch Philips called Philips & BenQ Digital Storage Corporation ("PBDS"). PBDS was to
27 design, develop, and market ODDs, with all manufacturing contracted out to BenQ. In early
28

1 2006, Taiwanese ODD producer Lite-On purchased BenQ's ODD production facilities in China
2 and took over BenQ's manufacturing ties to PBDS. BenQ exited the ODD contract
3 manufacturing business. In 2007, BenQ sold its interest in PBDS to Lite-On, completely exiting
4 the ODD business. PBDS was subsequently renamed Philips & Lite-On Digital Solutions
5 Corporation ("PLDS"). Philips retained its 51 percent ownership stake in PLDS, while Lite-On
6 acquired the remaining 49 percent. Lite-On and Philips each gained the right to appoint members
7 of board of directors, which has the responsibility for the strategic management, direction and
8 control of PLDS.
9

10 85. Additionally, a few companies dominate the global market of ODD sales. The
11 patent pool members, along with their affiliates and joint ventures, controlled a substantial
12 majority of the global sales of ODDs during most of the Relevant Period.
13

14 **C. Several Opportunities for Information Sharing Exist**

15 **a. Interrelated Business Relationships Facilitate Information Sharing**

16 86. Manufacturing and supply agreements between Defendants and their co-
17 conspirators have allowed the sharing of sensitive competitive information. Outsourced
18 manufacturing has provided communication links between competitors. Each of the joint
19 ventures includes a manufacturing investor and an intellectual-property-holder investor. For
20 example, TSST outsourced manufacturing to its parent companies. Defendant HLDS outsourced
21 some of its manufacturing to LGE.
22

23 87. The fact that some competitors also functioned as component suppliers for ODDs
24 allowed otherwise private business information to be shared between competitors. For example,
25 Hitachi is a supplier of OPUs (known as either optical pickup units or optical processing units),
26
27
28

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

3 88. Manufacturing agreements beyond the joint ventures also provided avenues for
4 sharing competitive information. For example, Japanese ODD manufacturer TEAC entered into
5 a co-development agreement with PLDS to produce certain ODDs.
6

7 **b. Industry Organizations Facilitate Information Sharing**

8 89. During the Relevant Period, Defendants and their co-conspirators belonged to
9 trade and business organizations that focused on ODDs and related industries. These
10 organizations held multiple meetings and conferences during the Relevant Period that were
11 attended by representatives of Defendants and their co-conspirators. These industry meetings
12 provided opportunities for Defendants and their co-conspirators to meet, discuss, and agree upon
13 their pricing of ODDs.
14

15 i. The DVD Forum

16 90. The DVD Forum is an international association whose work includes defining
17 DVD Format specifications and approving DVD verification programs. Its "purpose is to
18 exchange and disseminate ideas and information about the DVD Format and its technical
19 capabilities, improvements and innovations." At various time during the Relevant Period, LGE,
20 Hitachi, Philips, Panasonic, Pioneer, Sharp, Samsung, Sony, NEC, and Toshiba served on the
21 DVD Forum's steering committee.
22

23 91. During the Relevant Period, the DVD Forum met on multiple occasions each
24 year. On or about December 1, 2004, the DVD Forum held its meeting at Walt Disney World in
25 Orlando, Florida. Upon information and belief, present at this meeting were representatives from
26 LGE, Toshiba, Pioneer, Philips, Sharp, Sony, Hitachi, Samsung, and NEC.
27
28

1 ii. The International Symposium on Optical Memory

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

6
7 93. During the Relevant Period, the membership list of the International Symposium
8 on Optical Memory included LGE, Hitachi, NEC, Panasonic, Philips, Samsung, Sony, and
9 Toshiba. Upon information and belief, the International Symposium on Optical Memory met
10 each year during the Relevant Period.

11 iii. The Blu-Ray Disc Association

12
13 94. The Blu-Ray Disc Association is an industry consortium that, among other things,
14 develops Blu-Ray Disc specifications and aims to ensure that “Blu-ray Disc products are
15 implemented by licensees according to the intent of the specifications.” The Blu-Ray Disc
16 Association is divided into three levels of membership: the Board of Directors, Contributors, and
17 General Members.

18
19 95. The Board of Directors of the Blu-Ray Disc Association currently includes
20 Hitachi, LGE, Panasonic, Philips, Pioneer, Samsung, and Sony. Contributors to the Blu-Ray Disc
21 Association currently include Lite-On and Toshiba. Additionally, Quanta and TEAC are
22 currently general members.

23 c. **The Patent Pools Facilitate Information Sharing**

24
25 96. The DVD3c and DVD6c patent pools facilitated the price-fixing conspiracy by
26 making it easier to monitor production and pricing. The terms of both the DVD3c and DVD6c
27 patent pools require licensees to pay a royalty equal to a fixed fee per unit produced or a fixed
28

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

4
5 97. The model license agreement of the DVD3c pool requires licensees to report, on a
6 quarterly basis, the quantities of DVD products on which royalties are due, including specifying
7 the identities of the buyers, the trademarks used in connection with the DVD players, the net
8 selling price of the DVD players, and the quantities of DVD players sold. The model license
9 agreement of the DVD6c pool requires licensees to report, on a semi-annual basis, the quantities
10 of DVD products on which royalties are due, the trademarks or trade names used for such
11 products, and a computation of the royalties due on the agreement. Upon information and belief,
12 both patent pools also have "compliance" programs that require licensees to identify their
13 suppliers and customers to the licensing administrator.

14
15 98. A unique feature of the DVD3c and DVD6c patent pools, which differentiates
16 them from other patent pools, is that they are administered by the patent owners themselves and
17 not by any independent administrative entity. The DVD3c pool is administered by Philips and
18 the DVD6c pool is administered by, depending on the region, Toshiba, Hitachi, or Panasonic.
19 Hence, the patent pool members are able to gain access to and share amongst themselves
20 sensitive competitive information in order to monitor and facilitate their price-fixing conspiracy.

21
22 **IX. DEFENDANTS' CONSPIRACY STABILIZED ODD PRICES**

23
24 99. Defendants' and their co-conspirators' illegal conduct raised, fixed, maintained,
25 and/or stabilized the prices of ODDs.

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

4 101. As a consequence, the conspiracy to raise, fix, maintain, and/or stabilize prices to
5 the largest customers, i.e. Dell and HP, had a broad and pervasive impact, raising, fixing,
6 maintaining, and/or stabilizing the price to all customers and market segments purchasing ODDs.
7

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

10 102. As with most high-tech information technology products, dramatic declines in
11 price and improvement in quality occur over time. An effective conspiracy to restrain trade
12 significantly slows what would otherwise be a more rapid decline in quality-adjusted price,
13 rather than increase the price in absolute terms. Put another way, the price is higher relative to
14 the more rapid price decline that would have occurred without the price-fixing conspiracy.
15

16 103. Price movements on global markets, such as the ODD market, can be measured
17 using two producer price indexes for ODDs manufactured in Japan, converted to a common
18 currency basis (dollars). These two indexes show a clear trend toward slower rates of price
19 declines for ODDs over the period 2004 to 2009. These data suggest that, after declining at very
20 high rates prior to the emergence of an effective ODD conspiracy in 2004, price declines of
21 ODDs not only came to a complete halt in 2008, but prices even increased substantially during
22 the 2008 to 2009 period.
23

24 **XI. TRADE AND COMMERCE**

25 104. Throughout the period of time covered by this Complaint, Defendants and their
26 co-conspirators engaged in the business of designing, manufacturing, selling and/or distributing
27 ODDs in a continuous and uninterrupted flow of interstate and foreign trade and commerce to
28

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

4 105. Defendants' and their co-conspirators' unlawful activities, as described in this
5 Complaint, took place within the flow of and substantially affected interstate trade and
6 commerce, as well as trade and commerce within the State of Florida. Defendants' and their co-
7 conspirators' conduct had a direct, substantial, and reasonably foreseeable effect on domestic
8 interstate commerce within the United States, including Florida. These effects proximately
9 caused the domestic injuries alleged in this Complaint, in that governmental purchasers,
10 businesses, consumers, and other end-payors paid more for ODD Products than they would have
11 absent the conspiracy.
12
13

14 106. Defendants' and their co-conspirators' conspiracy specifically targeted the United
15 States market. The procurement events held by Dell and HP occurred in the United States. For
16 large parts of the Relevant Period, HP's ODD purchasing occurred in Palo Alto, California and
17 Houston, Texas. For Dell, ODD purchasing took place in Austin, Texas during most of the
18 Relevant Period. As alleged in this Complaint, these procurement events resulted in raised, fixed,
19 maintained, and/or stabilized prices due to Defendants' and their co-conspirators' conspiracy.
20

21 107. Although Defendants' and their co-conspirators' price-fixing conspiracy reaches
22 beyond merely Dell and HP, price-fixing the auctions of these two OEMs alone had a direct,
23 substantial, and reasonably foreseeable effect on United States commerce. During the Relevant
24 Period, Dell and HP accounted for a significant portion of the United States market for personal
25 computers. These two companies together shipped roughly 30 million units within the United
26 States each year during the Relevant Period.
27
28

1 108. The effect of Defendants' and their co-conspirators' anticompetitive conduct
2 (higher prices for ODD Products) did not change in any substantial way between the beginning
3 of the process (overcharges for ODDs) and the end (overcharges for ODD Products, such as
4 computers). Thus, the effect on prices proceeded without deviation or interruption from the ODD
5 manufacturer to the United States retail store. Therefore, there is a domestic injury here that is
6 concrete, quantifiable, and directly traceable back to the Defendants' and their co-conspirators'
7 anticompetitive conduct.
8

9 **XII. THE PASS-THROUGH OF OVERCHARGES TO CONSUMERS**

10 109. Defendants' and their co-conspirators' conspiracy to raise, fix, maintain, and/or
11 stabilize the price of ODDs at artificial levels resulted in harm to the State of Florida and its
12 consumers, businesses and governmental entities because the conspiracy resulted in the State of
13 Florida and its consumers, businesses and governmental entities paying higher prices for ODD
14 Products than they would have paid in absence of Defendants' and their co-conspirators'
15 conspiracy. The entire overcharge at issue was passed on the State of Florida and its consumers,
16 businesses and governmental entities.
17

18 110. ODDs are commodity products, with functionally equivalent products available
19 from the Defendants and their co-conspirators, which manufacture ODDs pursuant to standard
20 specifications.
21

22 111. An ODD is purchased by an end-user as a stand-alone device or as a part of an
23 ODD Product. When an ODD is purchased by end-users as a stand-alone device, the device itself
24 is directly traceable to the specific manufacturing Defendant or co-conspirators. When an ODD
25 is purchased by an end-user as part of an ODD Product, it is a distinct, physically discrete
26 hardware element of the product and is identifiable by a specific, discrete part or model number
27
28

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

3 112. The indirect purchaser end-user buys an ODD through one of two distribution
4 chains, either from the direct purchaser OEM, or through a reseller, e.g. a retailer such as Best
5 Buy. Thus, an ODD follows a traceable physical chain from a Defendant or a co-conspirator to
6 the OEMs and then to the purchasers of ODD Products. Tracing can help show that changes in
7 the prices paid by direct purchasers of ODDs affect the prices paid by indirect purchasers of the
8 ODDs or ODD Products.
9

10 113. ODDs make up a substantial component of the cost of ODD Products. The retail
11 price of an ODD Product is determined in substantial part by the cost of the ODD it contains.
12

13 114. The OEM and the retail markets of ODDs and ODD Products are subject to
14 vigorous price competition. The direct purchaser OEMs and retailers have very thin net margins.
15 They are therefore at the mercy of component costs, so that increases in the price of ODDs lead
16 to quick, corresponding price increases at the OEM and retail levels for stand-alone ODDs and
17 ODD Products.
18

19 115. As a result, the raised, fixed, maintained, and/or stabilized prices of ODDs
20 resulting from Defendants' and their co-conspirators' price-fixing conspiracy have been passed
21 on to the State of Florida and its consumers, businesses and governmental entities by the
22 manufacturers, distributors, and retailers, and the State of Florida and its consumers, businesses
23 and governmental entities have been forced to pay supracompetitive prices for ODDs and ODD
24 Products.
25
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1 c. by agreeing to limit the number of written communications regarding the
2 conspiracy, so as to avoid detection and prosecution under the antitrust laws,
3 accomplished by oral communications via telephone or face-to-face meetings;

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

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

9 f. by giving false and pretextual reasons for ODD Product price increases or
10 price stabilization and describing such pricing falsely as being the result of external
11 causes rather than collusion; and
12

13 g. by engaging in a successful, illegal price-fixing conspiracy that by its
14 nature was inherently self-concealing.
15

16 121. The affirmative acts of Defendants and their co-conspirators alleged in this
17 Complaint were wrongfully concealed and were carried out in a manner that precluded detection.
18 Furthermore, Defendants and their co-conspirators knew their activities were illegal.
19

20 122. In the context of the circumstances surrounding Defendants' and their co-
21 conspirators' pricing practices, Defendants' and their co-conspirators' acts of concealment were
22 more than sufficient to preclude suspicion by a reasonable person that Defendants' and their co-
23 conspirators' pricing was conspiratorial. Accordingly, a reasonable person under the
24 circumstances would not have been alerted to investigate the legitimacy of Defendants' and their
25 co-conspirators' ODD prices before October 26, 2009.
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1 123. The State of Florida could not have discovered the alleged contract, conspiracy or
2 combination at an earlier date by the exercise of reasonable diligence because of the deceptive
3 practices and techniques of secrecy employed by the Defendants and their co-conspirators to
4 fraudulently conceal and to avoid detection of their contract, combination or conspiracy.

5
6 124. Because the alleged conspiracy was both self-concealing and affirmatively
7 concealed by Defendants and their co-conspirators, the State of Florida had no knowledge of the
8 alleged conspiracy, or of any facts or information that would have caused a reasonably diligent
9 person to investigate whether a conspiracy existed until October 26, 2009, when reports of the
10 investigations into price fixing in the ODD industry were first publicly disseminated.

11
12 125. Upon having reasonable suspicion of the existence of Defendants' and their co-
13 conspirators' conspiracy, the State of Florida exercised due diligence by promptly investigating,
14 to the extent permitted by law, the facts giving rise to the claims asserted herein.

15
16 126. None of the facts or information available to the State of Florida prior to October
17 26, 2009, if investigated with reasonable diligence, could or would have led to the discovery of
18 the conspiracy alleged herein prior to October 26, 2009.

19
20 127. As a result of Defendants' and their co-conspirators' fraudulent concealment of
21 their conspiracy, the running of any statute of limitations has been tolled with respect to any
22 claims the State of Florida has as a result of the anticompetitive conduct alleged in this
23 Complaint.

24 **XIV. ASSIGNMENT**

25
26 128. The State of Florida, Department of Management Services, Procurement Division
27 ("DMS"), requires vendors contracting through DMS for provision of products and/or services to
28 Florida agencies, political subdivisions, universities, and community colleges to assign claims

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

3 129. As a result of this requirement, the State of Florida has contractual agreements
4 with certain retailers or makers of ODD Products assigning any accrued claims relating to
5 violations of federal and/or state antitrust laws to the State of Florida, when the claims relate to
6 purchases by Florida governmental entities.
7

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

11 131. The retailers or makers of ODD Products paid higher-than-competitive prices for
12 ODDs and ODD Products as a result of Defendants' and their co-conspirators' unlawful conduct.
13

14 132. The retailers or makers of ODD Products ("Assignors"), pursuant to DMS bid
15 documents, contracts and/or purchasing agreements, assign to the State of Florida all of their
16 accrued claims for violations of federal and/or state antitrust laws relating to the ODDs or ODD
17 Products that the retailers or makers of ODD Products purchased and then resold to Florida
18 governmental entities.
19

20 133. The Assignors include:

- 21 a. Acer America Corporation
- 22 b. Apple Computer, Inc. / Apple Inc.
- 23 c. CDW Government Inc. (Toshiba)
- 24 d. Dell Marketing, L.P.
- 25 e. Digital Equipment
- 26 f. Fujitsu Computer Systems, Inc. / Fujitsu America Inc.
- 27
- 28

- 1 g. Gateway Companies, Inc.
- 2 h. Hewlett-Packard Company
- 3 i. IBM Corporation
- 4 j. Lenovo (United States), Inc.
- 5 k. MPC-G / Micron Government Computer Systems LLC
- 6 l. NEC Solutions (America) Inc.
- 7 m. Panasonic Computer Solutions Company
- 8 n. Sony Electronics Inc.

9
10 134. With the assignment of these claims, the State of Florida received all right, title,
11 and interest that the Assignors had in federal and/or state antitrust claims against Defendants.

12
13 **XV. VIOLATIONS ALLEGED**

14 **COUNT I**

15 **(Request for Injunctive Relief Under Federal and State Laws)**

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

18 136. This is an action that alleges:

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

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

23 c. a violation of the Florida Deceptive and Unfair Trade Practices Act,
24 Section 501.204, Florida Statutes, and is brought pursuant to Section 501.207(1)(b),
25 Florida Statutes.
26
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1 137. Defendants knowingly – that is, voluntarily and intentionally – entered into a
2 continuing agreement, understanding, and conspiracy to raise, fix, maintain, and/or stabilize the
3 prices charged for ODDs during the relevant period, continuing through the filing of this
4 Complaint.

5
6 138. The agreement has caused the State of Florida to suffer a continuing injury to its
7 property for the following reasons:

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

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

13 c. Purchasers of ODDs and ODD Products have been deprived of the
14 benefits of competition.
15

16 139. These violations are continuing and will continue unless enjoined by this Court.
17 The State of Florida is entitled to an injunction against Defendants, preventing and restraining
18 the violations alleged herein, as well as enjoining Defendants from engaging in similar conduct
19 in the future.
20

21 **COUNT II**

22 **(Violation of Section One of the Sherman Act)**

23 140. The State of Florida incorporates and re-alleges, as though fully set forth herein,
24 each and every allegation set forth in the preceding paragraphs of this Complaint.
25

26 141. This is an action that alleges a violation of Section One of the Sherman Act, 15
27 U.S.C. § 1, and is brought pursuant to Section 4 of the Clayton Act, 15 U.S.C. § 15. The State of
28

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

3 142. Defendants knowingly – that is, voluntarily and intentionally – entered into a
4 continuing agreement, understanding, and conspiracy to raise, fix, maintain, and/or stabilize the
5 prices charged for ODDs during the relevant period, continuing through the filing of this
6 Complaint.
7

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

10 a. The State of Florida and its units of government have been assigned the
11 rights giving rise to this action from the Assignors, which purchased ODDs directly from
12 a Defendant.
13

14 b. Price competition in the sale of ODDs has been restrained, suppressed,
15 and/or eliminated throughout Florida and the United States.
16

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

20 d. Purchasers of ODDs and ODD Products have been deprived of the
21 benefits of competition.
22

23 COUNT III

24 (Violation of the Florida Antitrust Act)

25 144. The State of Florida incorporates and re-alleges, as though fully set forth herein,
26 each and every allegation set forth in the preceding paragraphs of this Complaint.
27
28

1 145. This is an action that alleges a violation of the Florida Antitrust Act, Section
2 542.18, Florida Statutes. The State of Florida seeks treble damages pursuant to Section
3 542.22(1), Florida Statutes, for overcharges for direct purchases of ODDs assigned to the State
4 of Florida and its units of government by the Assignors. The State of Florida also seeks the
5 maximum civil penalties under Section 542.21, Florida Statutes, for each contract, combination,
6 or conspiracy in restraint of trade or commerce.
7

8 146. Defendants knowingly – that is, voluntarily and intentionally – entered into a
9 continuing agreement, understanding, and conspiracy to raise, fix, maintain, and/or stabilize the
10 prices charged for ODDs during the relevant period, continuing through the filing of this
11 Complaint.
12

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

15 148. The agreement caused the State of Florida to suffer a continuing injury to its
16 property for the following reasons:
17

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

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

23 c. Prices for ODDs sold by Defendants and their co-conspirators have been
24 raised, fixed, maintained, and/or stabilized at artificially high, non-competitive levels
25 throughout Florida and the United States.
26

- 1 a. Adjudge and decree that Defendants violated Section 1 of the Sherman
2 Act, 15 U.S.C. §1;
- 3 b. Adjudge and decree that Defendants violated Section 542.18, Florida
4 Statutes;
- 5 c. Adjudge and decree that Defendants violated Section 501.204, Florida
6 Statutes;
- 7 d. Enjoin and restrain, pursuant to federal and state law, Defendants, their
8 affiliates, assignees, subsidiaries, successors, and transferees, and their officers, directors,
9 partners, agents and employees, and all other persons acting or claiming to act on their
10 behalf or in concert with them, from continuing to engage in any anticompetitive conduct
11 and from adopting in the future any practice, plan, program, or device having a similar
12 purpose or effect to the anticompetitive actions set forth above;
- 13 e. Award to the State of Florida any other equitable relief as the Court finds
14 appropriate to redress Defendants' violations of federal or state law to restore
15 competition;
- 16 f. Award to the State of Florida treble damages for overcharges paid by or
17 assigned to the State of Florida and its units of government for purchases of ODDs and
18 ODD Products;
- 19 g. Award to the State of Florida any other statutory damages, restitution or
20 equitable disgorgement for the benefit of the state and its consumers, as appropriate;
- 21 h. Award to the State of Florida the maximum civil penalties under Section
22 542.21, Florida Statutes, for each contract, combination, or conspiracy in restraint of
23 trade or commerce;
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1 i. Award to the State of Florida the maximum civil penalties under Sections
2 501.2075 and 501.2077, Florida Statutes, for each violation of the Florida Deceptive and
3 Unfair Trade Practices Act;

4 j. Award to the State of Florida its costs, including reasonable attorneys'
5 fees and, as may be appropriate under state law, expert witness fees and investigation
6 costs; and
7

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

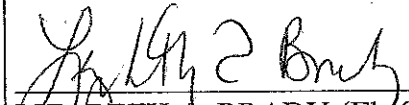
9 **XVII. DEMAND FOR JURY TRIAL**

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

11 Respectfully submitted this 22 day of April, 2013.

12
13 The State of Florida

14 PAMELA JO BONDI
15 Attorney General
16 STATE OF FLORIDA

17 

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