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NORTHERN DISTRICT OF CALIFORNIA

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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

EMC

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16 TECHNOLOGY DEPOT OF LA MESA and CV 10 CASE NO.
17 HEATHER TREMBLAY, on behalf of
18 themselves and others similarly situated;

19 Plaintiffs,

20 v.

21 SONY OPTIARC, INC.; SONY OPTIARC
22 AMERICA INC.; SONY NEC OPTIARC
23 INC.; SONY CORP.; TOSHIBA SAMSUNG
24 STORAGE TECHNOLOGY CORP.;
TOSHIBA CORP.; SAMSUNG
ELECTRONICS CO.; HITACHI-LG DATA
STORAGE INC.; HITACHI LTD.; and LG
ELECTRONICS INC.;

25 Defendants.

CLASS ACTION COMPLAINT
JURY TRIAL DEMAND

I. INTRODUCTION

1
2 1. Plaintiffs Technology Depot of La Mesa and Heather Tremblay
3 (collectively "Plaintiffs") bring this action on behalf of themselves individually and a
4 plaintiff class (the "Class") consisting of all persons and entities who purchased optical
5 disc drives ("ODDs") and products containing them (referred to collectively as "ODD
6 Products") in the United States directly from one or more named defendants between
7 November 1, 2005 and the present (the "Class Period").

8 2. The ODDs that are the subject of this lawsuit include the following formats
9 for use in notebook and desktop computers: CD-ROMS ("CD"), CD-
10 recordable/rewritable ("CD-R/RW"), DVD-ROM ("DVD"), DVD-recordable/rewritable
11 (DVD±R/RW), Blu-Ray ("BD"), Blu-Ray-recordable/rewritable ("BD-R"/"BD-RE") and
12 HD-DVD. During the Class Period, ODDs served as one of the primary means for
13 recording and reading music, movies, and other digital data. During this time,
14 defendants' sales of ODDs generated billions of dollars in annual revenues and
15 exponentially expanded with the increased utilization of computers in households and
16 businesses throughout the United States. Nearly every computer that is used or sold in
17 the United States today is equipped with an ODD.

18 3. Upon information and belief in order to maintain price stability and
19 increase profitability in the ODD market, defendants conspired, combined, and
20 contracted to fix, raise, maintain, and stabilize the price at which ODD Products were
21 sold in the United States. Upon information and belief defendants fraudulently concealed
22 their anticompetitive conduct from plaintiffs and the Class in furtherance of the
23 conspiracy. As a result of defendants' unlawful conduct, plaintiffs and the other
24 members of the Class paid artificially inflated prices for ODD Products during the Class
25 Period. Such prices exceeded the amount they would have paid if the price for ODD
26 Products had been determined by a competitive market.

1 subsequently renamed SOI. In 2008, SOI reported revenues of \$1.52 billion. During the
2 Class Period, SOI manufactured, sold, and distributed ODD Products throughout the
3 United States.

4 11. Defendant Sony NEC Optiarc, Inc. ("SNOI") was a Japanese company with
5 its headquarters located at 4-16-1 Okata, Atsugi-shi, Kanagawa 243-0021, Japan.
6 Defendant Sony NEC Optiarc, Inc. was created on April 3, 2006 as a joint venture
7 between defendants Sony Corp. and NEC Corp. in which Sony Corp. had a 55% interest
8 and NEC Corp. had a 45% interest. Sony Corp. purchased NEC Corp.'s interest in Sony
9 NEC Optiarc, Inc. in 2008 and renamed it Sony Optiarc, Inc. During the Class Period,
10 SNOI manufactured, sold, and distributed ODD Products throughout the United States.
11 Sony Corp. and NEC Corp. exercised joint control over SNOI

12 12. Defendant Sony Corp. ("Sony") is a Japanese company with its principal
13 place of business at 22-22 Nagaike-cho, Abeno-ku, Oasaka 545-8522, Japan. During the
14 Class Period, Sony manufactured, sold, and distributed ODD Products throughout the
15 United States.

16 13. Defendant Toshiba Samsung Storage Technology Corp. ("TSST") is a joint
17 venture of defendants Toshiba Corp. and Samsung Electronics Co. that was established
18 on April 1, 2004. Toshiba owns 51% of the stock in TSST, while Samsung owns the
19 remaining 49%. TSST and Toshiba share corporate headquarters, which are located at 1-
20 1, Shibaura 1-chome, Minato-ku, Tokyo 105-8001, Japan. During the Class Period,
21 TSST manufactured, sold, and distributed ODD Products throughout the United States.
22 Toshiba Corp. and Samsung Electronics Co. jointly control TSST. TSST forecasted
23 revenue of Y250 billion in fiscal 2004, when it was established.

24 14. Defendant Toshiba Corp. ("Toshiba") is a Japanese company with its
25 principal place of business at 1-1, Shibaura 1-chome, Minato-ku, Tokyo 105-8001, Japan.
26 During the Class Period, Toshiba manufactured, sold, and distributed ODD Products
27 throughout the United States.

28 15. Defendant Samsung Electronics Co., Ltd. ("Samsung") is a Korean

1 company with its principal place of business at Samsung Main Building, 250,
2 Taepyeongno 2-ga, Jung-gu, Seoul 100-742, Korea. During the Class Period, Samsung
3 manufactured, sold, and distributed ODD Products throughout the United States.

4 16. Hitachi-LG Data Storage (“HLDS”) is a joint venture between defendants
5 Hitachi, Ltd. and LG Electronics, Inc., with its corporate headquarters located at 4F MSC
6 Center Bldg., 22-23, Kaigan 3-chome, Minato-Ku, Tokyo 108-0022, Japan. Hitachi, Ltd.
7 owns 51% of the stock in HLDS, while LG Electronics, Inc. owns the remaining 49%.
8 Hitachi, Ltd. and LG Electronics, Inc. jointly control and direct the operations of HLDS.
9 HLDS was established in November of 2000 and started operation in January of 2001.
10 Between 2001 and 2005 HLDS sold over 170 million optical disk drives, generating
11 approximately \$5.5 billion in total revenues. During the Class Period, HLDS
12 manufactured, sold, and distributed ODD Products throughout the United States.

13 17. Defendant Hitachi, Ltd. (“Hitachi”) is a Japanese company with its
14 principal executive office at 6-6, Marunouchi 1-chome, Chiyoda-ku,, Tokyo 100-8280,
15 Japan. During the Class Period, Hitachi manufactured, sold, and distributed ODD
16 Products throughout the United States.

17 18. Defendant LG Electronics, Inc. (“LG Electronics”) is a Korean entity
18 headquartered at LG Twin Towers 20, Yeouido-dong, Yeongdeungpo-gu, Seoul, South
19 Korea 150-721. During the Class Period, LG Electronics manufactured, sold, and
20 distributed ODD Products throughout the United States.

21 **IV. AGENTS AND CO-CONSPIRATORS**

22 19. Various other persons, firms and corporations, not named herein as
23 defendants have participated as co-conspirators with the defendants and have performed
24 acts and made statements in furtherance of the conspiracy. Some of these firms are as yet
25 unidentified. Plaintiffs believe that these co-conspirators include Lite-On IT
26 Corporation, Koninklijke Philips Electronics N.V. and their joint venture that makes
27 ODD products, Philips & Lite-On Digital Solutions Corporation and its United States
28 subsidiary, Philips & Lite-On Digital Solutions USA, Inc.

1 conduct that is common to the Class, including but not limited to:

- 2 a. Whether defendants engaged in a contract, combination, and/or
3 conspiracy to fix, raise, maintain, or stabilize prices of ODD Products
4 sold in the United States;
- 5 b. Whether defendants engaged in a contract, combination, and/or
6 conspiracy to restrict output of ODD Products sold in the United
7 States;
- 8 c. Whether defendants' conduct caused the prices of ODD Products sold
9 in the United States to be at artificially high and noncompetitive
10 levels;
- 11 d. Whether plaintiffs and the other members of the Class were injured by
12 defendants' conduct, and, if so, the appropriate class-wide measure of
13 damages for Class members; and
- 14 e. Whether plaintiffs and the other members of the Class are entitled to,
15 among other things, injunctive relief, and if so, the nature and extent
16 of such injunctive relief.

17 27. These and other questions of law and fact are common to the Class, and
18 predominate over any questions affecting only individual Class members.

19 28. Plaintiffs' claims are typical of the claims of the Class because plaintiffs
20 directly purchased ODD Products from one or more of the defendants.

21 29. Plaintiffs will fairly and adequately represent the interests of the Class in
22 that plaintiffs are direct purchasers of ODD Products and have no conflict with any other
23 members of the Class. Furthermore, plaintiffs have retained competent counsel
24 experienced in antitrust, class action, and other complex litigation.

25 30. Defendants have acted on grounds generally applicable to the Class,
26 thereby making final injunctive relief appropriate with respect to the Class as a whole.

27 31. This class action is superior to the alternatives, if any, for the fair and
28 efficient adjudication of this controversy. Prosecution as a class action will eliminate the

1 possibility of repetitive litigation. There will be no material difficulty in the management
2 of this action as a class action.

3 32. The prosecution of separate actions by individual Class members would
4 create the risk of inconsistent or varying adjudications, establishing incompatible
5 standards of conduct for defendants.

6 33. Injunctive relief is appropriate as to the Class as a whole because
7 defendants have acted or refused to act on grounds generally applicable to the Class.

8 34. Plaintiffs reserve the right to expand, modify or alter the Class definition in
9 response to information learned during discovery

10 VI. TRADE AND COMMERCE

11 35. During the Class Period, each defendant, or one or more of its subsidiaries,
12 sold ODD Products in the United States in a continuous and uninterrupted flow of
13 interstate commerce and foreign commerce, including through and into this judicial
14 district.

15 36. During the Class Period, the defendants collectively controlled a large share
16 of the market for ODD products globally and throughout the United States.

17 37. The business activities of the defendants substantially affected interstate
18 trade and commerce in the United States and caused antitrust injury in the United States.

19 VII. FACTUAL ALLEGATIONS

20 A. **Optical Disk Drive Technology & Industry Background**

21 38. Optical discs contain microscopic pits where data are stored. These pits are
22 made from a crystalline metal alloy and are usually pressed into the disc in a spiral
23 arrangement, starting at the center of the disc. Once a disc containing information is
24 inserted into the ODD, the disc spins while a lens inside the device guides a
25 semiconductor laser beam over the disk and a photodiode detects the light reflected from
26 the disc's bumps and pits. The laser moves outward from the center of the disc, scanning
27 over the disc's surface. Then the photodiode reads the light's reflection as a binary code,
28 a series of ones and zeros that the computer translates into usable data. Changes in the

1 intensity of the beams as the lasers hit the pits are detected and translated into electrical
2 signals. The more pits that can be packed onto the disc, the more data the disc can store.
3 The pits are approximately 0.8 micrometers on CDs, 0.4 micrometers on DVDs, and 0.15
4 micrometers on BDs. Reading the different disc formats requires the ODD to have lasers
5 of different wavelengths. Blu-ray disc players use a shorter wavelength laser, which is
6 blue-violet, to read discs. Additional layers can be added to the disc as well, increasing
7 storage capacity. In addition to reading discs, ODDs can write and rewrite on the disc,
8 depending on the technology of the drive and accompanying disc.

9 39. When a recordable disk (*e.g.*, CD-R, DVD-R or BD-R) is inserted into an
10 ODD that has the ability to record data, the ODD's laser is used to selectively heat parts
11 of the organic photosensitive dye layer. By exposing the disc to light with the laser, the
12 reflective properties of the disc's surface change, which causes the photodiode to
13 recognize these changes as bumps and pits and read the new information on the disc.

14 40. ODDs include half height and slim models. Half height ODDs are thicker
15 and generally incorporated into desktop computer towers. Slim ODDs are thinner and
16 generally incorporated into laptop computers. As laptop computers have become more
17 popular with consumers, demand for slim optical disk drives has increased and is
18 expected to overtake half height demand over the next five years.

19 41. Table 1 provides an overview of the names, sizes and capabilities of the
20 main, available ODD standards. There are also differences in ODDs with regard to data
21 access speeds and writing speeds. ODDs built more recently are "backwards compatible"
22 such that ODDs with the latest technology can still read first generation CD-ROMs. DVD
23 rewriteable drives have been the mainstream ODD for computers since 2006.

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Drive Standard	Capacity [a]	Capability
CD-ROM	700 MB	Read Only
CD-R	700 MB	Read, Write
CD-RW	700 MB	Read, Write, Rewritable
DVD-ROM	4.7 GB	Read Only
DVD-RAM	4.7 GB	Read, Write
DVD-R [b]	4.7 GB	Read, Write
DVD-RW [b]	4.7 GB	Read, Write, Rewritable
BD-ROM	25 GB Single Layer; 50 GB Dual Layer	Read Only
BD-R	25 GB Single Layer; 50 GB Dual Layer	Read, Write
BD-RE	25 GB Single Layer; 50 GB Dual Layer	Read, Write, Rewritable
[a] These are standard capacities. Depending on the number of layers, or if the disc can be read double-sided, the capacity will be larger.		
[b] There are other DVD standards such as DVD+R/RW, which include other features or improvements- see http://www.videohelp.com/dvd .		
Source: See http://www.videohelp.com/dvd and http://www.tech-faq.com/blu-ray.shtml .		

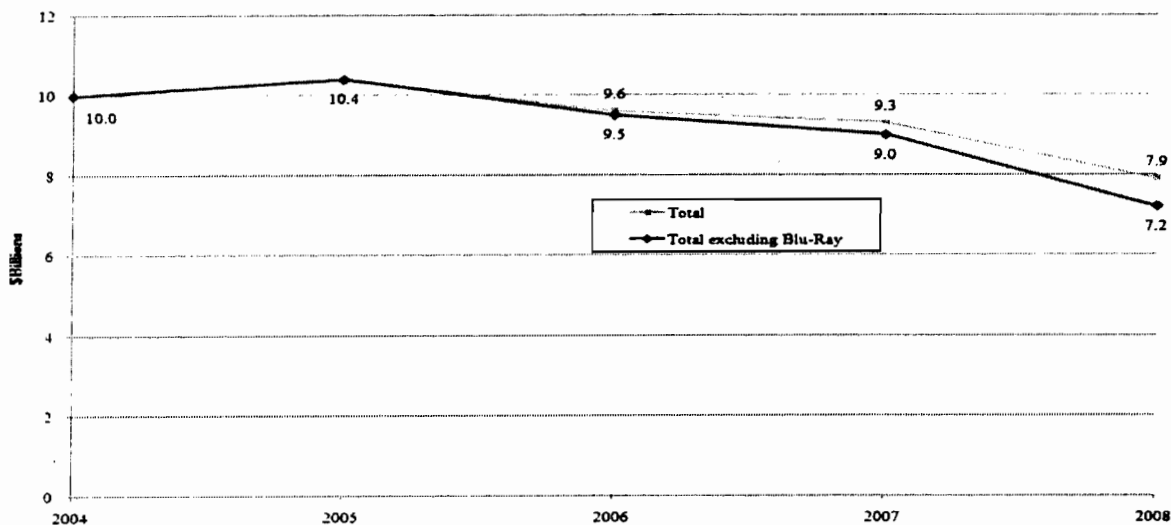
42. The first ODD was invented with the creation of the audio compact disc (audio "CD"), which was jointly invented by Sony and Philips Electronics ("Philips"). In 1972, Philips announced a technique for storing audio recordings on an optical disc with a small diameter. At the same time, Sony was exploring optically recording audio on a larger disc but was focusing on developing an error correction technique. In 1978, Sony and Philips agreed on a single format for the disc and the error correction method that would be used. The compact disc system was introduced to the public in Japan and Europe in 1982. Since the 1980s, several companies have created spin-offs of the CD project by covering specific CD-based applications and extending the previously established standards set by Sony and Philips.

43. Once the standard of how to create a CD and an optical device that reads the information on the CD were established, CD-ROM drives began to penetrate the

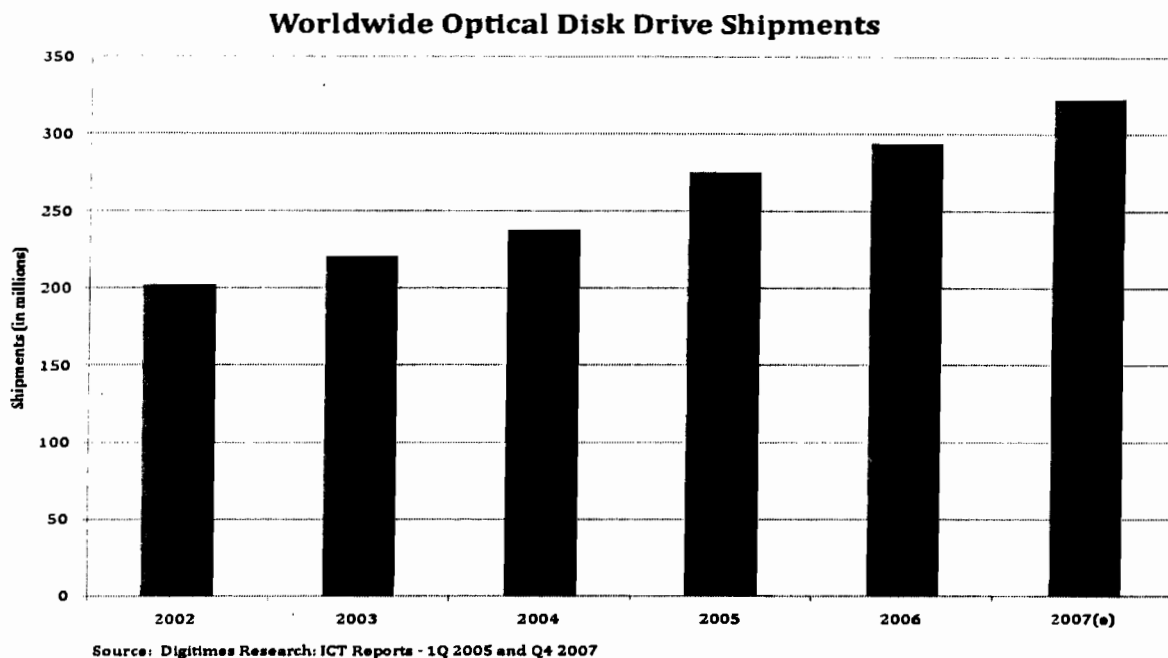
1 computer market. Optical drives have been in common use in computers since the 1990s,
 2 when CD-ROM drives became affordable for the average consumer. Thereafter,
 3 manufacturers developed optical disk drives for computers that could read and write
 4 DVDs and Blu-Ray discs, which can hold more data than a CD-ROM.

5 44. Today, ODDs are a standard component on almost every computer used in
 6 the United States. Due to the increasing popularity of personal computers, hundreds of
 7 millions of ODDs and ODD Products are shipped by defendants each year, generating
 8 billions of dollars in annual revenues. As seen in Figures 1 and 2 below, worldwide
 9 ODD shipments increased to over 300 million in 2007 and generated over \$45 billion in
 10 revenues between 2004 and 2008.

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 12 **Worldwide Optical Drive Shipment Value,
 2004-2008**



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 22 *Note: Value based on imputed prices to OEM customers.
 Source: "Worldwide Blu-Ray, DVD, CD and Other Optical Storage Drive 2009-2013 Forecast and Analysis", IDC, May 2009, Table 8.*



13 **B. Characteristics of the ODD Products Industry Made it Ripe for Collusion**

14 45. The ODD Products industry has several characteristics that facilitate a
15 conspiracy, including market concentration, ease of information sharing, multiple
16 interrelated business relationships, significant barriers to entry, and homogeneity of
17 products.

18 **i. Market Concentration**

19 46. During the Class Period, the ODD industry has been dominated by
20 relatively few companies, including defendants. During the Class Period, defendant
21 HLDS, which is a joint venture between defendants Hitachi and LG Electronics,
22 established itself as the industry's top manufacturer with overall annual market share of
23 between 25% and 30% of shipments. TSST, a joint venture formed in 2004 by
24 defendants Toshiba and Samsung, is the second largest optical disk drive manufacturer in
25 the world with an annual market share in excess of 20%. In 2008, defendants HLDS,
26 TSST, and SOI were among the largest producers of ODDs in the world, with a
27 combined market share of 67%. Defendants' dominance and control over the ODD
28 market facilitated their ability to implement their conspiracy to fix the price of ODD

1 Products.

2 ii. **Joint Ventures and Coordinated Business Activities**

3 47. Defendants were also involved and relied upon joint ventures and long
4 standing business relationships in the ODD market that gave them continuous
5 opportunities to discuss pricing, capacity utilization, and other important prospective
6 market information. As noted above, the first of these joint ventures was HLDS, which
7 was established as a joint venture between defendants Hitachi and LG Electronics in
8 November of 2000 and started operation in January of 2001. In April of 2004,
9 defendants Toshiba and Samsung consolidated their optical disc drive divisions to form
10 TSST. Approximately two years later, Sony and NEC Corporation entered into an
11 optical disc drive joint venture to form SNOI.

12 48. The formation of these joint ventures was the product of the exchange of
13 information, and evidence of an ongoing antitrust conspiracy between defendants.
14 Furthermore, the mutually beneficial nature of the business relations between certain
15 defendants provided the opportunity to conspire and created a financial incentive to do
16 so. As one Sony spokesman explained when announcing the formation of SNOI, the
17 joint venture came into existence because: *“There was a feeling that those two
18 complementary strengths [Sony and NEC] would make more sense in a joint venture
19 than competing against each other.”*

20 iii. **Barriers to Entry Into the ODD Industry**

21 49. There are significant manufacturing and technological barriers to entry into
22 the ODD industry. In order to compete in the ODD industry, companies have to spend
23 hundreds of millions of dollars in research and development, licensing, and
24 manufacturing of products. Moreover, the ownership and control exerted by defendants
25 over ODD Product technology and market share has allowed defendants to dictate who
26 enters the market and at what cost. These barriers to entry have made it extremely
27 difficult for smaller manufacturers of ODD Products to compete with defendants and
28 overcome the effects of economies of scale. Accordingly, the financial structure of the

1 ODD industry allowed defendants to implement their antitrust conspiracy by eliminating
2 competition and artificially stabilizing the prices of ODD Products without losing market
3 share.

4 iv. **Trade and Business Organizations**

5 50. During the Class Period, defendants belonged to trade and business
6 organizations that focused on ODD Products and related industries, such as the DVD
7 Forum, the Optical Storage Technology Association (“OSTA”), the International
8 Symposium of Optical Memory (“ISOM”) and the Blue-ray Disc Association (“BDA”).
9 The DVD Forum, which includes defendants Hitachi, LG Electronics, Samsung, Sony,
10 and Toshiba as members of its steering committee, is an organization responsible for the
11 licensing and distribution of DVD products whose “purpose is to exchange and
12 disseminate ideas and information about the DVD Format and its technical capabilities,
13 improvements and innovations.” BDA’s members include Hitachi, LG, NEC, Philips,
14 Samsung, Sony, and Toshiba. OSTA’s members include LG Electronics and Sony. As
15 explained on its website, OSTA was:

16 incorporated as an international trade association in 1992 to promote the
17 use of writable optical technologies and products for storage of computer
18 data. The organization’s membership includes optical product
19 manufacturers and resellers from three continents, representing more than
20 85 percent of worldwide writable optical product shipments. They work to
shape the future of the industry through regular meetings of CD/DVD, file
interchange, market development, magneto-optical and planning
committees.

21 51. During the Class Period, these organizations held multiple meetings and
22 conferences attended by defendants and their employees, which provided defendants with
23 the opportunity to meet, discuss, and agree upon their pricing of ODD Products. For
24 example, on March 16-18, 2009, the members of OSTA met at the Pacific Business
25 Centers at 19925 Stevens Blvd., Cupertino, California 95104. All defendants were
26 present at that meeting, where they were able to communicate and confer. Similarly, the
27 Steering Committee of the DVD Forum last met on September 10, 2009 at the Universal
28 Hilton Hotel in Los Angeles, California. At the meeting, for which defendant Toshiba

1 was the chair.

2 v. **Standardization of ODD Products**

3 52. Since its inception in the 1970s, the ODD industry has been typified by
4 standardization of discs (e.g., CD-ROMs, DVD-ROMs) and ODD Products driven by
5 industry participants and a variety of industry-related organizations such as ECMA
6 International, the International Standardization Organization (“ISO”), and International
7 Electrotechnical Commission (“IEC”). These organizations and their members are
8 dedicated to “standardizing the use of information communication technology and
9 consumer electronics.”

10 53. The ODD industry is also subject to patents and intellectual property rights
11 which require adoption of standardized product specifications. As stated by Philips
12 Consumer Electronics B.V., which is responsible for the development of CD technology
13 and continues to hold patents and licensing rights arising therefrom:

14 Standardization offers many other advantages to industry as a whole. For
15 example: [1] Improvements to performance, compatibility, reliability, safety
16 and interoperability; [2] Economies of scale and lower costs – for example,
17 by allowing manufacturers to address multiple regions with a single product
18 or manufacturing line; and [3] *Cooperation between industry leaders,
reducing the risk for ‘first-mover’ companies which pioneer new products
or technologies.*(Emphases added)

19 54. The standardization of the ODD Products industry provided defendants
20 with the mechanism to implement, enforce, and oversee their anticompetitive conspiracy
21 to fix the price of ODD Products. Furthermore, as a result of this standardization, ODD
22 Products are commodity products, and buyers make decisions to purchase such products
23 based largely, if not exclusively, on price.

24 C. **Collusion on Prices for ODD Products**

25 55. Upon information and belief plaintiffs herein allege that faced with
26 shrinking profits from ODD Products, defendants conspired to fix, raise, maintain, and
27 stabilize the price of ODD Products in the United States at artificially inflated and
28 anticompetitive levels in order to preserve and increase their revenues.

1 56. Defendants have been the subject of government investigations for their
2 cartel activity in recent years. For example, Samsung admitted guilt and paid a \$300
3 million fine following an investigation by the United States Department of Justice
4 (“DOJ”) into price-fixing of dynamic random access memory (“DRAM”) computer
5 chips. The DOJ is currently investigating Samsung, LG Electronics, Toshiba, and
6 Hitachi, among others, concerning collusion among manufacturers of thin film transistor
7 liquid crystal display (“TFT-LCDs”). The ongoing TFT-LCD criminal investigation has
8 resulted in hundreds of millions of dollars in criminal penalties and admissions of guilt
9 by LG Electronics (\$400 million) and Hitachi (\$31 million).

10 57. These same companies have been under investigation in the European
11 Union (“EU”). The entities mentioned in the preceding paragraph are all under
12 investigation for colluding to fix prices on TFT-LCDs sold in Europe. And in November
13 of 2007, the EU fined, *inter alia*, Sony and various related entities and the Hitachi Maxell
14 Limited joint venture \$110 million for fixing the prices of professional videotapes sold in
15 Europe between 1999 and 2002. Similarly, Hitachi and Toshiba were fined by the
16 European Commission for their roles in a conspiracy to control prices and allocate market
17 shares in the market for gas-insulated switchgear between 1988 and 2004.

18 58. Upon information and belief, defendants are currently under investigation
19 by the DOJ for anticompetitive conduct in connection with the ODD industry. Plaintiffs
20 are further informed and believe, and thereon allege, that the United States’ criminal
21 investigation of the ODD conspiracy is being conducted by the DOJ’s Antitrust Division
22 in the Northern District of California.

23 59. On Monday, October 26, 2009, defendants SOA, TSST and HLDS
24 confirmed that they received subpoenas from the DOJ in connection with a criminal
25 antitrust investigation into possible price-fixing, bid-rigging, and allocation of markets
26 regarding ODDs. News reports indicated that EU and Singaporean antitrust authorities
27 were conducting similar investigations.

28 60. On Tuesday, October 28, 2009, it was announced that Sony and Philips

1 were fined by the foreign antitrust enforcement agency, the Taiwan Fair Trade
2 Commission, for their anticompetitive business practices in connection with the licensing
3 of the technology for CD-Rs, discs that are used in optical disk drives.

4 61. It is significant that defendants' anticompetitive behavior has been the
5 subject of a criminal grand jury investigation by the DOJ. In order for the DOJ to
6 institute a grand jury investigation, a DOJ Antitrust Division attorney must believe that a
7 crime has been committed and prepare a detailed memorandum to that effect. *See*
8 *Antitrust Grand Jury Practice Manual*, Vol. 1, Ch. I.B.1 ("[i]f a Division attorney believes
9 that a criminal violation of the antitrust laws has occurred, he should prepare a
10 memorandum requesting authority to conduct a grand jury investigation.") Furthermore,
11 following a review of the memorandum, the request for a grand jury must be approved by
12 the Assistant Attorney General for the Antitrust Division, based on the standard that a
13 criminal violation may have occurred. *See id.* In addition, the fact that the DOJ Antitrust
14 Division investigation is criminal, as opposed to civil, is significant as well. The
15 Antitrust Division's "Standards for Determining Whether to Proceed by Civil or Criminal
16 Investigation" state: "[i]n general, current Division policy is to proceed by criminal
17 investigation and prosecution in cases involving horizontal, per se unlawful agreements
18 such as price fixing, bid rigging and horizontal customer and territorial allocations." *See*
19 *Antitrust Division Manual*, Chapter III.C.5. Accordingly, the existence of a criminal
20 investigation into the ODD industry supports the existence of the conspiracy alleged
21 herein.

22 62. It is also significant that pricing trends for ODD technology have not
23 followed the traditional price declination patterns of older technologies. Strangely, the
24 disappearance of HD-DVD from the market has had no significant effect on the prices for
25 Blu-Ray optical disk drives, which have remained substantially the same over time.

26 **D. Effects of Defendants' Antitrust Violations**

27 63. The above combination and conspiracy has had the following effects,
28 among others:

- 1 a. Price competition in the sale of ODD Products by defendants and their
2 co-conspirators has been restrained, suppressed, and eliminated
3 throughout the United States;
- 4 b. Prices for ODD Products sold by defendants have been raised, fixed,
5 maintained, and stabilized at artificially high and noncompetitive
6 levels throughout the United States; and
- 7 c. Direct purchasers of ODD Products from defendants have been
8 deprived of the benefit of free and open competition in the purchase of
9 ODD Products.

10 64. As a direct and proximate result of the unlawful conduct of defendants,
11 plaintiffs and other members of the Class have been injured in their businesses and
12 property in that they paid more for ODD Products than they otherwise would have paid in
13 the absence of the unlawful conduct of defendants.

14 **E. Fraudulent Concealment**

15 65. Plaintiffs had neither actual nor constructive knowledge of the facts
16 constituting their claim for relief despite diligence in trying to discover the pertinent
17 facts. Plaintiffs and members of the Class did not discover, and could not have
18 discovered through the exercise of reasonable diligence, the existence of the conspiracy
19 alleged herein until October of 2009 when the antitrust investigation by the DOJ became
20 public. Defendants engaged in a secret conspiracy that did not give rise to facts that
21 would put plaintiffs or the Class on inquiry notice that there was a conspiracy to fix
22 prices for ODDs.

23 66. As a result of defendants' fraudulent concealment of their conspiracy, the
24 running of any statute of limitations has been tolled with respect to any claims that
25 plaintiff and the Class members have as a result of the anticompetitive conduct alleged in
26 this Complaint.

27 **VIII. CLAIM FOR VIOLATIONS OF 15 U.S.C. § 1**

28 67. Plaintiffs incorporate by reference all the above allegations as if fully set

1 forth herein.

2 68. Beginning at least as early as November 1, 2005, the exact date being
3 unknown to plaintiffs and exclusively within the knowledge of defendants, defendants
4 and their co-conspirators entered into a continuing contract, combination or conspiracy to
5 unreasonably restrain trade and commerce in violation of Section 1 of the Sherman Act
6 (15 U.S.C. § 1) by artificially reducing or eliminating competition in the United States.

7 69. In particular, defendants have combined and conspired to raise, fix,
8 maintain or stabilize the prices of ODD Products sold in the United States.

9 70. As a result of defendants' unlawful conduct, prices for ODD Products were
10 raised, fixed, maintained, and stabilized in the United States.

11 71. The contract, combination or conspiracy among defendants consisted of a
12 continuing agreement, understanding, and concerted action among defendants and their
13 co-conspirators.

14 72. For purposes of formulating and effectuating their contract, combination, or
15 conspiracy, defendants and their co-conspirators did those things they contracted,
16 combined, or conspired to do, including:

- 17 a. Participating in meetings and conversations to discuss the prices and
18 supply of ODD Products;
- 19 b. Communicating in writing and orally to fix prices of ODD Products;
- 20 c. Agreeing to manipulate prices and supply of ODD Products sold in
21 the United States in a manner that deprived direct purchasers of free
22 and open competition;
- 23 d. Issuing price announcements and price quotations in accordance with
24 the agreements reached;
- 25 e. Selling ODD Products to customers in the United States at non-
26 competitive prices; and
- 27 f. Providing false statements to the public to explain increased prices for
28 ODD Products.

1 alleged herein;

2 E. Plaintiffs and the members of the Class be awarded pre-judgment and post-
3 judgment interest, and that such interest be awarded at the highest legal rate from and
4 after the date of service of the initial complaint in this action;

5 F. Plaintiffs and the members of the Class recover their costs of this suit,
6 including reasonable attorneys' fees as provided by law; and


7 G. Plaintiffs and the members of the Class receive such other or further relief as
8 may be just and proper.

9 **XI. JURY TRIAL DEMANDED**

10 Pursuant to Federal Rule of Civil Procedure 38(b), plaintiffs demand a trial by jury
11 of all of the claims asserted in this Complaint so triable.

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