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18 **UNITED STATES DISTRICT COURT**

19 **NORTHERN DISTRICT OF CALIFORNIA**

20 IN RE: HARD DISK DRIVE SUSPENSION
21 ASSEMBLIES ANTITRUST LITIGATION

Case No. 19-md-02918-MMC

MDL No. 2918

22 This Document Relates to:
23 ALL END-USER ACTIONS

**END-USER PLAINTIFFS' FOURTH
AMENDED CONSOLIDATED CLASS
ACTION COMPLAINT**

JURY TRIAL DEMANDED

Hon. Maxine M. Chesney

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1 Plaintiffs, on behalf of themselves and all others similarly situated (the “Classes” as defined
 2 below), upon personal knowledge as to the facts pertaining to themselves and upon information
 3 and belief based on the investigation of counsel as to all other matters, bring suit against TDK
 4 Corporation (“TDK”), Magnecomp Precision Technology Public Co. Ltd. (“MPT”), Magnecomp
 5 Corporation (“Magnecomp”), SAE Magnetics (H.K.) Ltd. (“SAE”), Hutchinson Technology Inc.
 6 (“HTI”), NHK Spring Co., Ltd. (“NHK Spring”), NHK International Corporation (“NHK
 7 International”), NHK Spring (Thailand) Co., Ltd. (“NHK Thailand”), NAT Peripheral (Dong
 8 Guan) Co., Ltd. (“NAT Dong Guan”), and NAT Peripheral (H.K.) Co., Ltd. (“NAT H.K.”) for
 9 damages and other relief pursuant to state antitrust, unfair competition, and consumer protection
 10 laws, and the laws of unjust enrichment, demand a trial by jury, and allege as follows:

11 I. NATURE OF THE ACTION

12 1. This lawsuit arises out of a global conspiracy among Defendants and their co-
 13 conspirators to fix prices of, and allocate market shares for, hard disk drive (“HDD”) suspension
 14 assemblies. HDD suspension assemblies are indispensable components of HDDs, which use
 15 magnetism to store information electronically. HDDs containing HDD suspension assemblies are
 16 sold both as stand-alone storage devices and incorporated into a variety of electronics.

17 2. The fact of the price-fixing conspiracy is not in doubt. On July 29, 2019, the U.S.
 18 Department of Justice (“DOJ”) announced that NHK Spring agreed to plead guilty and pay a \$28.5
 19 million fine for its role in the conspiracy.¹ On September 23, 2019, NHK Spring pled guilty.²

20 3. According to the plea agreement, Defendants “engaged in discussions and attended
 21 meetings with each other. During these discussions, [Defendants] reached agreements to refrain
 22 from competing on prices for, fix the prices of, and allocate their respective market shares for, HDD

23 ¹ *Japanese Manufacturer Agrees to Plead Guilty to Fixing Prices for Suspension Assemblies*
 24 *Used in Hard Disk Drives*, DOJ (Jul. 29, 2019), available at
 25 [https://www.justice.gov/opa/pr/japanese-manufacturer-agrees-plead-guilty-fixing-prices-](https://www.justice.gov/opa/pr/japanese-manufacturer-agrees-plead-guilty-fixing-prices-suspension-assemblies-used-hard-disk)
 26 [suspension-assemblies-used-hard-disk](https://www.justice.gov/opa/pr/japanese-manufacturer-agrees-plead-guilty-fixing-prices-suspension-assemblies-used-hard-disk); Information at 2-3, *United States v. NHK Spring Co., Ltd.*,
 No. 2:19-cr-20503 (E.D. Mich. Sept. 23, 2019).

27 ² Rule 11 Plea Agreement, *United States v. NHK Spring Co., Ltd.*, No. 2:19-cr-20503 (E.D. Mich.
 28 Sept. 23, 2019); Notice of Criminal Monetary Imposition, *United States v. NHK Spring Co., Ltd.*,
 No. 2:19-cr-20503 (E.D. Mich. Dec. 18, 2019).

1 suspension assemblies to be sold in the United States and elsewhere. To effectuate these
2 agreements, employees and officers of [Defendants] exchanged HDD suspension assemblies
3 pricing information, including anticipated pricing quotes, in the United States and elsewhere. The
4 [Defendants] relied on their agreements not to compete and used the exchanged pricing information
5 to inform their negotiations with U.S. and foreign customers that purchased HDD suspension
6 assemblies and produced hard disk drives for sale, or delivery to, the United States and elsewhere.”³

7 4. On February 13, 2020, the DOJ indicted Hitoshi Hashimoto and Hiroyuki Tamura
8 for their roles in the “conspiracy to suppress and eliminate competition by agreeing to stabilize,
9 maintain, and fix prices for HDD suspension assemblies sold in the United States and elsewhere.”
10 Both were general managers of NHK Spring’s disk drive suspension and component sales
11 department, who were involved in the sale and pricing of NHK Spring’s HDD suspension
12 assemblies.

13 5. Defendants’ conspiracy has also drawn the attention of antitrust regulators abroad.
14 On February 9, 2018, the Japanese Fair Trade Commission (“JFTC”) issued a cease and desist order
15 to Defendants NHK Spring and NAT H.K., found that they substantially restrained competition in
16 the HDD suspension assemblies market by agreeing to maintain sales prices, and imposed fines of
17 ¥1076.16 million yen. The JFTC’s cease and desist order identified cartel activity by Defendants
18 NHK Spring, NAT HK, TDK, MPT, and SAE.

19 6. In April 2018, Brazilian antitrust authorities launched an investigation into
20 allegations that TDK, HTI, MPT, SAE, and NHK Spring colluded from 2003 to May 2016 to fix
21 prices of HDD suspension assemblies. The Taiwan Fair Trade Commission and the Competition
22 and Consumer Commission of Singapore also have investigated the cartel.

23 7. This conspiracy went to the highest levels of these companies including the
24 President and CEO of TDK, the President and CEO of MPT, the Vice Chairman of SAE, the
25 President and CEO of NHK Spring, the President of NAT, as well as other senior directors, board
26 members, vice presidents and other top management personnel.

27 ³ Rule 11 Plea Agreement, *United States v. NHK Spring Co., Ltd.*, No. 2:19-cr-20503 (E.D. Mich.
28 Sept. 23, 2019).

8. Defendants knew that what they were doing was wrong and sought to conceal their conduct. Emails and memoranda containing information from competitors advised recipients to *“handle with care,” “delete this email and all other related ones,” “we would be better off not leaving anything in the emails,”* and *“please be careful with the handling [of] the information.”* After NHK Spring received confidential information from MPT’s President Albert Ong, NHK Spring’s Tamura—who was subsequently indicted for his role in the conspiracy—instructed, *“Don’t mention Mr. Albert, since it’s a crime.”*

9. As a result of Defendants’ conspiracy, American consumers have been substantially harmed. In announcing the guilty plea, Assistant Attorney General of the DOJ Antitrust Division Makan Delrahim stated that the “impact on American consumers and businesses is direct and substantial.”⁴

10. NHK confirmed these effects on U.S. commerce in its recent responses to Plaintiffs’ Requests for Admissions:

Defendants ADMIT that NHK Spring Co., Ltd. entered a guilty plea to the charge of “participating in a conspiracy to suppress and eliminate competition by fixing prices for hard disk drive suspension assemblies . . . sold in the United States and elsewhere.” (Plea Agreement at ¶2.) Defendants further ADMIT that “[d]uring the relevant period, the conspiracy involved and had a direct, substantial, and reasonably foreseeable effect on interstate and import trade and commerce.”

11. TDK admitted that it participated in the conspiracy and that the conspiracy affected U.S. commerce, when it applied for leniency with the DOJ on behalf of itself and its subsidiaries pursuant to the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 (“ACPERA”), Public Law 108-237. To enter into the DOJ’s leniency program, TDK, like all other leniency applicants, was required to “report to the Antitrust Division . . . activity or other conduct constituting a criminal violation of Section 1 of the Sherman Act,” which requires that the activity

⁴ *Japanese Manufacturer Agrees to Plead Guilty to Fixing Prices for Suspension Assemblies Used in Hard Disk Drives*, DOJ (Jul. 29, 2019), available at <https://www.justice.gov/opa/pr/japanese-manufacturer-agrees-plead-guilty-fixing-prices-suspension-assemblies-used-hard-disk>.

1 affected U.S. commerce.⁵

2 12. Plaintiffs and the End-User Classes they represent are limited to purchasers of three
3 product types: (1) personal HDD storage devices, (2) enterprise HDD storage systems, and (3)
4 desktop and portable computers—each of which contain multiple suspension assemblies. Personal
5 HDD storage devices and enterprise HDD storage systems (described in more detail below) are
6 collectively referred herein as “Standalone Storage Devices.” Desktop and portable computers are
7 referred to herein as “Computers.”

8 13. Plaintiffs seek to represent all persons and entities who, during the period from
9 January 1, 2003 through at least May 2016 (the “Class Period”),⁶ indirectly purchased Standalone
10 Storage Devices or Computers, not for resale, which included HDD suspension assemblies that
11 were manufactured or sold by Defendants, any current or former subsidiary of Defendants, or any
12 co-conspirator of Defendants.

13 14. In the alternative, Plaintiffs seek to represent all persons and entities who, during
14 the Class Period, indirectly purchased Standalone Storage Devices, not for resale, which included
15 HDD suspension assemblies that were manufactured or sold by Defendants, any current or former
16 subsidiary of Defendants, or any co-conspirator of Defendants.

17 15. Through the conspiracy, Defendants and their co-conspirators unreasonably
18 restrained interstate and foreign trade and commerce in violation of state antitrust, unfair
19 competition, and consumer protection laws, and the common law of unjust enrichment. As a direct
20 and proximate result of Defendants’ anticompetitive and unlawful conduct, Plaintiffs and the
21 Classes paid more during the Class Period for HDD suspension assemblies than they otherwise
22 would have paid in a competitive market, and have thereby suffered antitrust injury to their business
23

24 ⁵ See Model Corporate Conditional Leniency Letter, *available at*
25 <https://www.justice.gov/atr/page/file/1112911/download>; *see also* Frequently Asked Questions
26 About the Antitrust Division’s Leniency Program and Model Leniency Letters, *available at*
27 <https://www.justice.gov/atr/page/file/926521/download> (“Q. Does a leniency applicant have to
28 admit to a criminal violation of the antitrust laws before receiving a conditional leniency letter?
A. Yes. . . . , the applicant must admit its participation in a criminal antitrust violation[.]”).

⁶ Plaintiffs reserve the right to extend the Class Period consistent with discovery including to the date when the effects of the conspiracy ceased to impact the Classes.

1 or property.

2 II. JURISDICTION AND VENUE

3 16. Plaintiffs bring this action under state antitrust, unfair competition, consumer
4 protection and unjust enrichment laws, and seek to obtain restitution, recover damages and secure
5 other relief against Defendants for violations of those state laws. Plaintiffs and the Classes also
6 seek attorneys' fees, costs, and other expenses.

7 17. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1332(d), in that
8 this is a class action in which the matter or controversy exceeds the sum of \$5,000,000, exclusive
9 of interests and costs, and in which some members of the proposed Classes are citizens of a state
10 different from some Defendants.

11 18. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 (b), (c), and (d),
12 because a substantial part of the events giving rise to Plaintiffs' claims occurred in this District, a
13 substantial portion of the affected interstate trade and commerce discussed below has been carried
14 out in this District, and one or more Defendants reside, are licensed to do business in, are doing
15 business in, had agents in, or are found or transact business in this District.

16 19. On October 8, 2019, the Judicial Panel on Multidistrict Litigation ("JPML")
17 centralized several related actions pertaining to the conspiracy alleged herein in this District before
18 the Honorable Maxine M. Chesney as *In re Hard Disk Drive Suspension Assemblies Antitrust*
19 *Litigation*, MDL No. 2918.

20 20. This Court has *in personam* jurisdiction over Defendants because each, either
21 directly or through the ownership and/or control of its subsidiaries, *inter alia*: (a) transacted
22 business in the United States, including in this District; (b) directly or indirectly sold or marketed
23 substantial quantities of HDD suspension assemblies throughout the United States as a whole,
24 including in this District; (c) had substantial aggregate contacts with the United States, including
25 in this District; or (d) engaged in an illegal price-fixing conspiracy that was directed at, and had a
26 direct, substantial, reasonably foreseeable and intended effect of causing injury to, the business or
27 property of persons and entities residing in, located in, or doing business throughout the United
28 States, including in this District. Defendants also conduct business throughout the United States,

1 including in this District, and they have purposefully availed themselves of the laws of the United
2 States.

3 21. Defendants' collusive conduct was intended to, and did, cause injury to Plaintiffs
4 and the Classes, who purchased Standalone Storage Devices or Computers containing HDD
5 suspension assemblies manufactured and sold by Defendants, any current or former subsidiary of
6 Defendants, or any co-conspirator of Defendants. Defendants expressly aimed their conspiracy at
7 the U.S. marketplace and their collusive conduct has resulted in an adverse effect on purchasers of
8 HDDs in each state identified in this Complaint.

9 22. In addition, NHK Spring, NHK International, NHK Thailand, NAT Dong Guan, and
10 NAT H.K. have subjected themselves to this Court's jurisdiction through the cooperation
11 provisions of NHK Spring's plea agreement in its criminal case. Those provisions require NHK
12 Spring and "its subsidiaries that are engaged in the production or sale of HDD suspension
13 assemblies" to cooperate fully, truthfully, and continuously by, among other things, producing
14 documents, witnesses, and testimony in the United States, in exchange for limitations on further
15 criminal prosecutions of those companies."⁷

16 23. This Court already has determined that SAE is subject to the Court's personal
17 jurisdiction.⁸ TDK, MPT, Magnecomp, SAE, and HTI also have subjected themselves to this
18 Court's jurisdiction by seeking leniency from the DOJ under the Antitrust Criminal Penalty
19 Enhancement and Reform Act of 2004 ("ACPERA"), Public Law 108-237. TDK has entered into
20 an antitrust leniency agreement with the DOJ on behalf of itself and its subsidiaries including all
21 named Defendants in this paragraph. Under ACPERA, an antitrust leniency applicant must provide
22 cooperation to plaintiffs in any civil action alleging a violation of Section 1 of the Sherman Act or
23 any similar State law, including, among other things, providing a full account of all relevant facts
24 known to the applicant, producing all relevant documents or other items wherever they are located,

25
26 ⁷ Rule 11 Plea Agreement at ¶¶ 12-15, *United States v. NHK Spring Co., Ltd.*, No. 2:19-cr-20503
(E.D. Mich. Sept. 23, 2019).

27 ⁸ Order Denying Defendant SAE Magnetics (H.K.) Ltd.'s Motion to Dismiss Complaints for Lack
28 of Personal Jurisdiction (ECF No. 261).

1 and using best efforts to secure and facilitate complete and truthful interviews, depositions, or
 2 testimony at trial or other court proceedings from covered cooperating individuals.⁹ The Court has
 3 the authority to determine whether an antitrust leniency applicant has provided timely, satisfactory
 4 cooperation with respect to this litigation.¹⁰

5 **III. THE PARTIES**

6 **A. Plaintiffs**

7 24. Plaintiff Dustin Lancaster is a citizen of Arkansas. During the Class Period, he
 8 purchased in Arkansas at least one HP Pavilion G6 notebook computer with 500GB HDD from
 9 Best Buy. The HDD purchased by Lancaster contained HDD suspension assemblies manufactured
 10 or sold by at least one Defendant, and he suffered injury as a result of the unlawful conduct alleged
 11 herein.

12 25. Plaintiff Jonathan Rizzo is a citizen of Arizona. During the Class Period, he
 13 purchased in Arizona at least two 1TB Western Digital My Book external HDD from Fry's
 14 Electronics, three 2TB Hitachi internal HDD from Newegg.com, and one 320GB Hitachi internal
 15 HDD from Ibuypower.com. The HDDs purchased by Rizzo contained HDD suspension assemblies
 16 manufactured or sold by at least one Defendant, and he suffered injury as a result of the unlawful
 17 conduct alleged herein.

18 26. Plaintiff Joanna Katcher is a citizen of California. During the Class Period, she
 19 purchased in California at least one Glyph Technologies external 1TB HDD from Amazon.com.
 20 The HDD purchased by Katcher contained HDD suspension assemblies manufactured or sold by
 21 at least one Defendant, and she suffered injury as a result of the unlawful conduct alleged herein.

22 27. Plaintiff Rhonda Glover is a citizen of California. During the Class Period, she
 23 purchased in California at least one Apple Macintosh MacBook Pro laptop computer with 500GB
 24 HDD from Apple Store. The HDD purchased by Glover contained HDD suspension assemblies
 25 manufactured or sold by at least one Defendant, and she suffered injury as a result of the unlawful
 26

27 ⁹ Public Law 108-237, § 213(a)–(b).

28 ¹⁰ *Id.* § 213(b)

1 conduct alleged herein.

2 28. Plaintiff James Walnum is a citizen of California. During the Class Period, he
3 purchased in California at least one Apple MacBook Pro laptop computer with 320GB HDD and
4 one Western Digital My Passport for Mac Portable 2TB external HDD, both from Best Buy. The
5 HDDs purchased by Walnum contained HDD suspension assemblies manufactured or sold by at
6 least one Defendant, and he suffered injury as a result of the unlawful conduct alleged herein.

7 29. Plaintiff Timothy A. St. Cyr is a citizen of Minnesota. During the Class Period and
8 while residing in California, he purchased in California at least one Dell XPS L702X laptop
9 computer with 750GB HDD from Dell.com. The HDD purchased by St. Cyr contained HDD
10 suspension assemblies manufactured or sold by at least one Defendant, and he suffered injury as a
11 result of the unlawful conduct alleged herein.

12 30. Plaintiff David Lietz is a citizen of the District of Columbia. During the Class
13 Period, he purchased in the District of Columbia at least one Dell Vostro A860 laptop computer
14 with 160GB HDD and one Dell Vostro 3550 laptop computer containing 320GB HDD, both from
15 Dell.com. The HDDs purchased by Lietz contained HDD suspension assemblies manufactured or
16 sold by at least one Defendant, and he suffered injury as a result of the unlawful conduct alleged
17 herein.

18 31. Plaintiff John Hinshaw is a citizen of District of Columbia. During the Class Period,
19 he purchased in District of Columbia at least one 4TB Seagate Backup Plus portable HDD from
20 Staples. The HDD purchased by Hinshaw contained HDD suspension assemblies manufactured or
21 sold by at least one Defendant, and he suffered injury as a result of the unlawful conduct alleged
22 herein.

23 32. Plaintiff Jeffrey Greenfield is a citizen of Florida. During the Class Period, he
24 purchased in Florida at least one Toshiba Satellite P855-S5200 laptop containing 500GB HDD
25 from Best Buy, a SimpleTech Simple Drive 1TB external HDD from Costco, a Toshiba V63700-
26 B 750GB external HDD from Costco, and a Western Digital My Cloud 1TB external HDD from
27 Westerndigital.com. The HDDs purchased by Greenfield contained HDD suspension assemblies
28 manufactured or sold by at least one Defendant, and he suffered injury as a result of the unlawful

1 conduct alleged herein.

2 33. Plaintiff Ted Ingber is a citizen of Florida. During the Class Period, he purchased in
3 Florida at least one Hewlett Packard Envy all-in-one desktop PC with 320GB HDD from Best Buy.
4 The HDD purchased by Ingber contained HDD suspension assemblies manufactured or sold by at
5 least one Defendant, and he suffered injury as a result of the unlawful conduct alleged herein.

6 34. Plaintiff Harley Oda is a citizen of Hawaii. During the Class Period, he purchased
7 in Hawaii at least one 1TB Seagate ST1000DM003 internal HDD for desktop and a 1TB Western
8 Digital My Passport Ultra 1TB external HDD, both from Best Buy. The HDDs purchased by Oda
9 contained HDD suspension assemblies manufactured or sold by at least one Defendant, and he
10 suffered injury as a result of the unlawful conduct alleged herein.

11 35. Plaintiff Benjamin Allen is a citizen of Iowa. During the Class Period, he purchased
12 in Iowa at least one Apple MacBook Pro laptop computer containing 120GB Hitachi Hard Drive
13 from Best Buy, one 1 TB Western Digital My Book Pro Edition external HDD, and one 1TB
14 Western Digital My Book Essential external HDD. The HDDs purchased by Allen contained HDD
15 suspension assemblies manufactured or sold by at least one Defendant, and he suffered injury as a
16 result of the unlawful conduct alleged herein.

17 36. Plaintiff Jeeyoon Lee is a citizen of Kansas. During the Class Period, she purchased
18 in Kansas at least one Seagate 1TB Backup Plus Portable Drive from Best Buy. The HDD
19 purchased by Lee contained HDD suspension assemblies manufactured or sold by at least one
20 Defendant, and she suffered injury as a result of the unlawful conduct alleged herein.

21 37. Plaintiff John R. Shannon III is a citizen of Kansas. During the Class Period, he
22 purchased in Kansas at least one Apple iMac Desktop computer containing 1TB HDD from
23 Nebraska Furniture Mart. The HDD purchased by Shannon contained HDD suspension assemblies
24 manufactured or sold by at least one Defendant, and he suffered injury as a result of the unlawful
25 conduct alleged herein.

26 38. Plaintiff Brian Fahey is a citizen of Massachusetts. During the Class Period, he
27 purchased in Massachusetts at least one Lenovo B50-80 laptop computer containing 500GB HDD
28 from eBay. The HDD purchased by Fahey contained HDD suspension assemblies manufactured or

1 sold by at least one Defendant, and he suffered injury as a result of the unlawful conduct alleged
2 herein.

3 39. Plaintiff Martin Gasman is a citizen of Massachusetts. During the Class Period, he
4 purchased in Massachusetts at least one 160GB Seagate external HDD from Walmart, one 160GB
5 Seagate internal HDD from newegg.com, one 80GB Seagate portable HDD from Walmart, one
6 2TB Seagate Black Armor NAS 220 Centralized Network Storage HDD from Newegg.com, and
7 one 1TB Western Digital My Book AV external HDD from Amazon.com. The HDDs purchased
8 by Gasman contained HDD suspension assemblies manufactured or sold by at least one Defendant,
9 and he suffered injury as a result of the unlawful conduct alleged herein.

10 40. Plaintiff Robert V. Nicastro is a citizen of Massachusetts. During the Class Period,
11 he purchased in Massachusetts at least one 1TB Toshiba external HDD, one 1TB Western Digital
12 My Passport Ultra external HDD, and one 300 GB Seagate Maxtor One Touch II external HDD
13 from Best Buy. The HDDs purchased by Nicastro contained HDD suspension assemblies
14 manufactured or sold by at least one Defendant, and he suffered injury as a result of the unlawful
15 conduct alleged herein.

16 41. Plaintiff James Marean is a citizen of Maine. During the Class Period, he purchased
17 in Maine at least one Dell Dimension 4600 Desktop computer with 40GB HDD from Staples. The
18 HDD purchased by Marean contained HDD suspension assemblies manufactured or sold by at least
19 one Defendant, and he suffered injury as a result of the unlawful conduct alleged herein.

20 42. Plaintiff Nate Coffin is a citizen of Maine. During the Class Period, he purchased in
21 Maine at least one G-Tech 500GB G-Drive slim HDD from the Apple Store. The HDD purchased
22 by Coffin contained HDD suspension assemblies manufactured or sold by at least one Defendant,
23 and he suffered injury as a result of the unlawful conduct alleged herein.

24 43. Plaintiff Jordan Leff is a citizen of Michigan. During the Class Period, he purchased
25 in Michigan at least one Lenovo ThinkPad Edge laptop computer containing 320GB HDD from
26 Amazon.com. The HDD purchased by Leff contained HDD suspension assemblies manufactured
27 or sold by at least one Defendant, and he suffered injury as a result of the unlawful conduct alleged
28 herein.

1 44. Plaintiff Yitah Wu is a citizen of Michigan. During the Class Period, he purchased
2 in Michigan at least one Iomega 360GB external HDD from Amazon.com. The HDD purchased
3 by Wu contained HDD suspension assemblies manufactured or sold by at least one Defendant, and
4 he suffered injury as a result of the unlawful conduct alleged herein.

5 45. Plaintiff Chad Klebs is a citizen of Minnesota. During the Class Period, he
6 purchased in Minnesota at least one Samsung Seagate HN-M201RAD Momentous SpinPoint
7 ST2000LM003 2TB 2.5-Inch internal hard drive from Amazon.com, one Toshiba
8 HDTC605CK3A1 500GB portable HDD from Sam's Club, and one 500GB Seagate FreeAgent
9 Desktop 9NK2AG-500 external HDD. The HDDs purchased by Klebs contained HDD suspension
10 assemblies manufactured or sold by at least one Defendant, and he suffered injury as a result of the
11 unlawful conduct alleged herein.

12 46. Plaintiff Pamela Uglem is a citizen of Minnesota. During the Class Period, she
13 purchased in Minnesota at least one HP Pavilion dv7 laptop computer containing 320GB HDD,
14 and one Toshiba Satellite C55-B5201 laptop computer containing 500GB HDD, both from Best
15 Buy. The HDDs purchased by Uglem contained HDD suspension assemblies manufactured or sold
16 by at least one Defendant, and she suffered injury as a result of the unlawful conduct alleged herein.

17 47. Plaintiff Andrew Syverson is a citizen of Minnesota. During the Class Period, he
18 purchased in Minnesota at least one Hewlett Packard 15z-ba000 ABA laptop computer containing
19 500GB HDD from HP.com. The HDD purchased by Syverson contained HDD suspension
20 assemblies manufactured or sold by at least one Defendant, and he suffered injury as a result of the
21 unlawful conduct alleged herein.

22 48. Plaintiff Joseph Mattingly is a citizen of Montana. During the Class Period, he
23 purchased in Montana at least one Seagate Barracuda 7200, 500GB SATA internal HDD from
24 Amazon.com, one Hewlett Packard laptop Computer G70-257CL containing 320GB HDD from
25 Best Buy, and one Hewlett Packard Computer G60 containing 320GB HDD from Best Buy. The
26 HDDs purchased by Mattingly contained HDD suspension assemblies manufactured or sold by at
27 least one Defendant, and he suffered injury as a result of the unlawful conduct alleged herein.

28 49. Plaintiff Richard Jones is a citizen of Montana. During the Class Period, he

1 purchased in Montana at least one Toshiba L75-B7150 laptop computer containing 500GB HDD
2 from Staples. The HDD purchased by Jones contained HDD suspension assemblies manufactured
3 or sold by at least one Defendant, and he suffered injury as a result of the unlawful conduct alleged
4 herein.

5 50. Plaintiff Thomas Leon Meltzer is a citizen of North Carolina. During the Class
6 Period, he purchased in North Carolina at least one 2TB Western Digital internal HDD from
7 TigerDirect.com. The HDD purchased by Meltzer contained HDD suspension assemblies
8 manufactured or sold by at least one Defendant, and he suffered injury as a result of the unlawful
9 conduct alleged herein.

10 51. Plaintiff Ashely Boswell is a citizen of North Dakota. During the Class Period, she
11 purchased in North Dakota at least one Hewlett Packard 17-P161DX 17.3" AMD A10 series laptop
12 computer containing 1TB HDD from Best Buy. The HDD purchased by Boswell contained HDD
13 suspension assemblies manufactured or sold by at least one Defendant, and she suffered injury as
14 a result of the unlawful conduct alleged herein.

15 52. Plaintiff Chad Nodland is a citizen of North Dakota. During the Class Period, he
16 purchased in North Dakota at least one Western Digital 4TB WD Red Plus NAS Internal Hard
17 Drive from Amazon.com. The HDD purchased by Nodland contained HDD suspension assemblies
18 manufactured or sold by at least one Defendant, and he suffered injury as a result of the unlawful
19 conduct alleged herein.

20 53. Plaintiff Matthew Carlson is a citizen of North Dakota. During the Class Period, he
21 purchased in North Dakota at least one Seagate 4TB Backup Plus Portable HDD from Best Buy.
22 The HDD purchased by Carlson contained HDD suspension assemblies manufactured or sold by at
23 least one Defendant, and he suffered injury as a result of the unlawful conduct alleged herein.

24 54. Plaintiff Leslie Working is a citizen of Nebraska. During the Class Period, she
25 purchased in Nebraska at least one Toshiba Satellite T115D laptop computer containing 230GB
26 HDD and one Hewlett Packard s5000 desktop computer containing 500GB HDD both from either
27 Best Buy or Office Depot. The HDDs purchased by Working contained HDD suspension
28 assemblies manufactured or sold by at least one Defendant, and she suffered injury as a result of

1 the unlawful conduct alleged herein.

2 55. Plaintiff Matthew Landry is a citizen of New Hampshire. During the Class Period,
3 he purchased in New Hampshire at least one Dell Latitude E5570 laptop computer containing
4 500GB HDD from Dell.com. The HDD purchased by Landry contained HDD suspension
5 assemblies manufactured or sold by at least one Defendant, and he suffered injury as a result of the
6 unlawful conduct alleged herein.

7 56. Plaintiff Sara Steffen is a citizen of New Hampshire. During the Class Period, she
8 purchased in New Hampshire at least one G-Technology G-Raid 6TB external HDD and one G-
9 Technology G-Raid 8TB external HDD both from the Apple Store, as well as a Western Digital
10 My Passport 4TB external HDD from Best Buy. The HDDs purchased by Landry contained HDD
11 suspension assemblies manufactured or sold by at least one Defendant, and she suffered injury as
12 a result of the unlawful conduct alleged herein.

13 57. Plaintiff Christina Cordova is a citizen of New Mexico. During the Class Period, she
14 purchased in New Mexico at least one 250GB Seagate FreeAgent Go Portable HDD from, upon
15 information and belief, Costco; an HP TS 320M desktop computer with 1TB HDD from HP.com;
16 and an HP Pavilion DV6 laptop computer with 500GB HDD from, upon information and belief,
17 either Sam's Club or Costco. The HDDs purchased by Cordova contained HDD suspension
18 assemblies manufactured or sold by at least one Defendant, and she suffered injury as a result of
19 the unlawful conduct alleged herein.

20 58. Plaintiff Gregory Painter is a citizen of Nevada. During the Class Period, he
21 purchased in Nevada at least one Apple Macintosh MacBook Pro 15.4" laptop computer with
22 320GB HDD from Apple Store, two units of Gateway DX4720-03 desktop computers with 640GB
23 HDD from Newegg.com, two units of Western Digital My Passport Essential 500GB external HDD
24 and a Seagate FreeAgent GoFlex 320GB external HDD—all three external HDDs from Best Buy.
25 The HDDs purchased by Painter contained HDD suspension assemblies manufactured or sold by
26 at least one Defendant, and he suffered injury as a result of the unlawful conduct alleged herein.

27 59. Plaintiff Michelle Felich is a citizen of Nevada. During the Class Period, she
28 purchased in Nevada at least one 500GB Toshiba external HDD from Best Buy. The HDD

1 purchased by Felich contained HDD suspension assemblies manufactured or sold by at least one
2 Defendant, and she suffered injury as a result of the unlawful conduct alleged herein.

3 60. Plaintiff Vincent Cimino is a citizen of New York. During the Class Period, he
4 purchased in New York at least one LaCie D2 Quadra v3 2TB External HDD from Amazon.com.
5 The HDD purchased by Cimino contained HDD suspension assemblies manufactured or sold by at
6 least one Defendant, and he suffered injury as a result of the unlawful conduct alleged herein.

7 61. Plaintiff Anthony Cimino is a citizen of New York. During the Class Period, he
8 purchased in New York at least one Western Digital My Book Thunderbolt Duo Dual Drive High-
9 Speed Storage with RAID 6 TB external HDD from Amazon.com. The HDD purchased by Cimino
10 contained HDD suspension assemblies manufactured or sold by at least one Defendant, and he
11 suffered injury as a result of the unlawful conduct alleged herein.

12 62. Plaintiff David Anderson is a citizen of Oregon. During the Class Period, he
13 purchased in Oregon at least one Dell Studio XPS 8000 desktop computer with two 750GB HDDs
14 from Dell.com, one Apple Macintosh iMac 12.1 (21.5") desktop computer containing Western
15 Digital WDC WD1001FALS-403AA0 1TB HDD from The Mac Store, and four units of Seagate
16 Barracuda 7200.12 (9SL153-302) 750GB internal HDDs from Amazon.com. The HDDs
17 purchased by Anderson contained HDD suspension assemblies manufactured or sold by at least
18 one Defendant, and he suffered injury as a result of the unlawful conduct alleged herein.

19 63. Plaintiff Angela Gardner is a citizen of Rhode Island. During the Class Period, she
20 purchased in Rhode Island at least one Dell Inspiron 15 3000 series laptop computer with 500GB
21 HDD from Dell.com. The HDDs purchased by Gardner contained HDD suspension assemblies
22 manufactured or sold by at least one Defendant, and she suffered injury as a result of the unlawful
23 conduct alleged herein.

24 64. Plaintiff Sara Speziale-Phillips is a citizen of South Carolina. During the Class
25 Period, she purchased in South Carolina at least one Western Digital My Passport 2TB external
26 HDD from Walmart. The HDD purchased by Speziale-Phillips contained HDD suspension
27 assemblies manufactured or sold by at least one Defendant, and she suffered injury as a result of
28 the unlawful conduct alleged herein.

1 65. Plaintiff Tracy Nurzynski is a citizen of California. During the Class Period, and
2 while residing in South Carolina, she purchased in South Carolina at least one Hewlett Packard
3 Pavilion dv7-2185DX laptop computer containing one 250GB Western Digital Scorpio
4 WD2500BEVS- 60USTO internal HDD from Best Buy. The HDD purchased by Nurzynski
5 contained HDD suspension assemblies manufactured or sold by at least one Defendant, and she
6 suffered injury as a result of the unlawful conduct alleged herein.

7 66. Plaintiff Ann Marie Putzier is a citizen of South Dakota. During the Class Period,
8 she purchased in South Dakota at least one Dell Studio 1558 laptop computer containing 320GB
9 HDD, and one Hewlett Packard 6777c desktop computer containing 1TB HDD, a Western Digital
10 1TB My Book Home Pan-am external HDD, and one Hitachi LifeStudio 250GB external HDD
11 from Best Buy, Walmart, Staples, or Sam's Club. The HDDs purchased by Putzier contained HDD
12 suspension assemblies manufactured or sold by at least one Defendant, and she suffered injury as
13 a result of the unlawful conduct alleged herein.

14 67. Plaintiff Alex Nicholson is a citizen of Tennessee. During the Class Period, he
15 purchased in Tennessee at least one Dell Inspiron 5720 laptop computer containing 1TB HDD from
16 Affinity Technology Partners (formerly, 3N1 Media), one 500GB Seagate FreeAgent Black
17 external HDD and 250GB WD Red portable HDD both from Office Depot. The HDD purchased
18 by Nicholson contained HDD suspension assemblies manufactured or sold by at least one
19 Defendant, and he suffered injury as a result of the unlawful conduct alleged herein.

20 68. Plaintiff Yvonne Peychal is a citizen of Tennessee. During the Class Period, she
21 purchased in Tennessee at least one Hewlett-Packard ProBook 4530s Notebook computer with
22 320GB HDD from Tigerdirect.com. The HDD purchased by Peychal contained HDD suspension
23 assemblies manufactured or sold by at least one Defendant, and she suffered injury as a result of
24 the unlawful conduct alleged herein.

25 69. Plaintiff Doug Fuller is a citizen of Utah. During the Class Period, he purchased in
26 Utah at least one 100GB Fujitsu Mobile internal HDD from a Dell Supplier, and one Western
27 Digital 500GB Scorpio Blue Internal HDD from Amazon.com. The HDDs purchased by Fuller
28 contained HDD suspension assemblies manufactured or sold by at least one Defendant, and he

1 suffered injury as a result of the unlawful conduct alleged herein.

2 70. Plaintiff Nicole Laird is a citizen of Utah. During the Class Period, she purchased
3 in Utah at least one Apple Macintosh Mac Mini 2.3GHz desktop computer with 1TB HDD from
4 Simply Mac. The HDD purchased by Laird contained HDD suspension assemblies manufactured
5 or sold by at least one Defendant, and she suffered injury as a result of the unlawful conduct alleged
6 herein.

7 71. Plaintiff Samuel Bringham is a citizen of Utah. During the Class Period, he
8 purchased in Utah at least one Dell Inspiron 15.6" Touchscreen i3542-6003BK laptop computer
9 containing 500GB HDD from Amazon.com. The HDD purchased by Bringham contained HDD
10 suspension assemblies manufactured or sold by at least one Defendant, and he suffered injury as a
11 result of the unlawful conduct alleged herein.

12 72. Plaintiff Jonathan Lewis is a citizen of Florida. During the Class Period and while
13 residing in Vermont, he purchased in Vermont at least two G-Tech 4TB G-Raid OG00273 Gen 4
14 portable HDDs from Macmall.com, one Seagate Backup Plus 1TB portable HDD from
15 Amazon.com, one G-Tech G-RAID OG00273 4TB portable HDD and one G-Tech G-RAID
16 OG02492 8TB portable HDD from newegg.com. The HDDs purchased by Lewis contained HDD
17 suspension assemblies manufactured or sold by at least one Defendant, and he suffered injury as a
18 result of the unlawful conduct alleged herein.

19 73. Plaintiff Derek McRoberts is a citizen of Wisconsin. During the Class Period, he
20 purchased in Wisconsin at least two Seagate Barracuda 2TB internal HDD and a HGST Travelstar
21 500GB internal HDD for notebooks all from newegg.com. The HDDs purchased by McRoberts
22 contained HDD suspension assemblies manufactured or sold by at least one Defendant, and he
23 suffered injury as a result of the unlawful conduct alleged herein.

24 74. Plaintiff Seth Swanson is a citizen of Wisconsin. During the Class Period, he
25 purchased in Wisconsin at least two Western Digital My Book Essential 1TG external HDD from
26 Best Buy, two ASUS G75 Series G75VW-NS71 laptop computers each containing 500GB HDD
27 from Newegg.com, and one MacBook Pro laptop computer containing 160GB HDD from Best
28 Buy. The HDDs purchased by Swanson contained HDD suspension assemblies manufactured or

1 sold by at least one Defendant, and he suffered injury as a result of the unlawful conduct alleged
2 herein.

3 75. Plaintiff Larry Steele is a citizen of West Virginia. During the Class Period, he
4 purchased in West Virginia at least two Dell OptiPlex 9010 desktop computers containing HDDs,
5 one Dell Latitude E6330 desktop computer containing HDDs, and one Dell Latitude D630 desktop
6 computer containing 120GB HDD—all four products from Dell.com, one Western Digital
7 WD1600ME 160GB portable HDD and one HP Simple Save hp sd500a 500GB external HDD—
8 both from Staples, and three Dell OptiPlex 760 Minitower desktop computers each containing 160
9 GB HDD from Dell Shop Direct. The HDDs purchased by Steele contained HDD suspension
10 assemblies manufactured or sold by at least one Defendant, and he suffered injury as a result of the
11 unlawful conduct alleged herein.

12 **B. TDK Defendants**

13 76. Defendant TDK Corporation is a Japanese corporation with its principal place of
14 business located at 2-5-1 Nihonbashi 2-chome, Chuo-ku, Tokyo, 103-8272, Japan. TDK has a
15 California-based branch located at 1745 Technology Drive, Suite 200, San Jose, CA 95110. TDK—
16 directly and/or through its affiliates, which it wholly owned and/or controlled—manufactured,
17 marketed and/or sold HDD suspension assemblies that were sold, purchased, and/or delivered
18 throughout the United States, including in this District, during the Class Period.

19 77. Defendant Magnecomp Precision Technology Public Co. Ltd. is a Thai corporation
20 with its principal place of business located at 162 M.5 Phaholyothin Road, T.Lamsai A. Wangnoi,
21 Ayutthaya 13170, Thailand. It is an affiliate of and wholly controlled by TDK. Defendant MPT—
22 directly and/or through its affiliates—manufactured, marketed and/or sold HDD suspension
23 assemblies that were sold, purchased, and/or delivered throughout the United States, including in
24 this District, during the Class Period.

25 78. Defendant Magnecomp Corporation is a California corporation with its principal
26 place of business located at 38975 Sky Canyon Drive, Suite 111, Murrieta, CA 92563. It is an
27 affiliate of and wholly controlled by TDK. Defendant Magnecomp—directly and/or through its
28 affiliates—manufactured, marketed, and/or sold HDD suspension assemblies that were sold,

1 purchased, and/or delivered throughout the United States, including in this District, during the Class
2 Period.

3 79. Defendant SAE Magnetics (H.K.) Ltd. is a Chinese corporation with its principal
4 place of business located at 6 Science Park East Avenue, Hong Kong Science Park, Hong Kong,
5 Shatin, N.T., Hong Kong, China. It is an affiliate of and wholly controlled by TDK. Defendant
6 SAE—directly and/or through its affiliates—manufactured, marketed and/or sold HDD suspension
7 assemblies that were sold, purchased, and/or delivered throughout the United States, including in
8 this District, during the Class Period.

9 80. Defendant Hutchinson Technology, Inc. is a Minnesota corporation with its
10 principal place of business located at 40 West Highland Park Drive NE, Hutchinson, Minnesota
11 55350. HTI was an independent company until it was acquired by TDK on October 6, 2016.¹¹ It is
12 an affiliate of and wholly controlled by TDK. HTI—directly and/or through its affiliates—
13 manufactured, marketed and/or sold HDD suspension assemblies that were sold, purchased, and/or
14 delivered throughout the United States, including in this District, during the Class Period.

15 **C. NHK Defendants**

16 81. Defendant NHK Spring Co., Ltd. is a Japanese corporation with its principal place
17 of business located at 3-10 Fukuura, Kanazawa-ku, Yokohama, 236-0004, Japan. NHK Spring—
18 directly and/or through its affiliates, which it wholly owned and/or controlled—manufactured,
19 marketed and/or sold HDD suspension assemblies that were sold, purchased, and/or delivered
20 throughout the United States, including in this District, during the Class Period.

21 82. Defendant NHK International Corporation is a Michigan corporation and U.S.
22 subsidiary established by NHK Spring in 1976, with its principal place of business located at 46855
23 Magellan Drive, Novi, Michigan. NHK International maintains offices in this District at 2350
24 Mission College Boulevard, Suite 1090, Santa Clara, California. It is an affiliate of and wholly
25 controlled by NHK Spring. NHK International—directly and/or through its affiliates—
26 manufactured, marketed and/or sold HDD suspension assemblies that were sold, purchased, and/or

27 ¹¹ *TDK Corporation Announces Completion of Hutchinson Acquisition*, TDK Global (Oct. 6,
28 2016).

1 delivered throughout the United States, including in this District, during the Class Period.

2 83. Defendant NHK Spring (Thailand) Co., Ltd. is a Thai corporation with its principal
3 place of business located at Bangna Tower A, 6th-7th floor, 2/3 Moo 14, Bangna-Trad Rd., (km.
4 6.5), Bangkaew, Bangplee, Samutprakarn, 10540 Thailand. It is an affiliate of and wholly
5 controlled by NHK Spring. NHK Thailand—directly and/or through its affiliates—manufactured,
6 marketed and/or sold HDD suspension assemblies that were sold, purchased, and/or delivered
7 throughout the United States, including in this District, during the Class Period.

8 84. Defendant NAT Peripheral (Dong Guan) Co., Ltd. is a Chinese corporation with its
9 principal place of business located at Conrad Hi-Tech Park, Shangsha, ZhenAn Road, ChangAn
10 Town, Dongguan, Guangdong, 523830 China. It is an affiliate of and wholly controlled by NHK
11 Spring. Defendant NAT Dong Guan—directly and/or through its affiliates—manufactured,
12 marketed and/or sold HDD suspension assemblies that were sold, purchased, and/or delivered
13 throughout the United States, including in this District, during the Class Period.

14 85. Defendant NAT Peripheral (H.K.) Co., Ltd. is a Chinese corporation with its
15 principal place of business located at Suite 15b-17, 9/F, Tower 3, China Hong Kong City, 33 Canton
16 Rd., T.S.T., Kowloon, Hong Kong, China. It was formed as a joint venture between SAE and NHK
17 Spring in 2003, and operated as such until March 31, 2015. During this period, SAE had one seat
18 on NAT H.K.'s board of directors and owned 19% of the joint venture, while NHK Spring owned
19 the remainder. On April 10, 2015, SAE transferred 100% of its voting rights in NAT H.K. to NHK
20 Spring, at which time NAT H.K. become a wholly-owned subsidiary of NHK Spring. Defendant
21 NAT H.K.—directly and/or through its affiliates—manufactured, marketed and/or sold HDD
22 suspension assemblies that were sold, purchased, and/or delivered throughout the United States,
23 including in this District, during the Class Period.¹² NAT H.K. and NAT Dong Guan are referred
24 to herein collectively as “NAT.”

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27 ¹² TDK Press Release, *TDK Subsidiary dissolve Joint Venture of HDD Suspension Manufacturing*
28 *Company* (Apr. 1, 2014), available at
https://www.tdk.com/corp/en/news_center/press/201504011768.htm.

IV. AGENTS AND CO-CONSPIRATORS

86. The acts alleged against Defendants in this Complaint were authorized, ordered, or done by their officers, agents, employees, or representatives, while actively engaged in the management and operation of Defendants' business or affairs. Defendants' officers, directors, agents, employees, or representatives engaged in the conduct alleged in the usual management, direction, or control of Defendants' business affairs. Defendants are also liable for acts done in furtherance of the alleged conspiracy by companies they acquired through mergers or acquisitions.

87. When Plaintiffs refer to a corporate family or companies by a single name in this Complaint, they are alleging that one or more employees or agents of entities within that corporate family engaged in conspiratorial acts on behalf of every company in that family. The individual participants in the conspiratorial acts did not always know the corporate affiliation of their counterparts, nor did they distinguish between the entities within a corporate family. Customers often did not recognize these distinctions either, because Defendants marketed themselves as corporate families.

88. Defendants obscured the differences between members of their corporate families by using networks and/or domain names associated with their affiliates for email communications. For example, during the Class Period email addresses for both MPT and Magnecomp employees used the @magnecomp.com domain name. Personnel at MPT based in Asia used U.S.-based email servers, conveying to recipients that they held dual roles or dual responsibilities at both MPT and Magnecomp.

89. Personnel often shifted back and forth between different entities within the same Defendant corporate family, further blurring the distinctions between the entities. A number of Defendants' employees engaged in collusive conduct during the Class Period and then brought their knowledge with them when they moved between members of their corporate families. For example, in 2009, NHK Thailand's Vice President and General Manager of the Disk Drive Suspension Division, returned to NHK Spring in Japan after four years in Thailand.

90. The individual participants entered into agreements on behalf of their respective corporate families. As a result, those agents represented the entire corporate family with respect to

1 such conduct, and the corporate family was party to the agreements that those agents reached.

2 91. Various persons and/or firms not named as Defendants participated as co-
3 conspirators in the violations alleged and performed acts and made statements in furtherance of the
4 conspiracy. Plaintiffs reserve the right to name some or all of these persons as defendants at a later
5 date.

6 92. Whenever in this Complaint reference is made to any act, deed, or transaction of any
7 corporation, the allegation means that the corporation engaged in the act, deed, or transaction by or
8 through its officers, directors, agents, employees, or representatives while they were actively
9 engaged in the management, direction, control, or transaction of the corporation's business or
10 affairs.

11 93. Each Defendant or co-conspirator acted as the principal, agent, or joint venture of,
12 or for, other Defendants and co-conspirators with respect to the acts, violations, and common course
13 of conduct alleged by Plaintiffs. Each Defendant and co-conspirator that is a subsidiary of a foreign
14 parent acts as the United States agent for HDD suspension assemblies made by its parent company.

15 **V. INTERSTATE TRADE AND COMMERCE**

16 94. The conduct of Defendants and their co-conspirators has taken place in, and affected
17 the continuous flow of interstate trade and commerce of the United States in that, among other
18 things, during the Class Period:

19 a. Defendants and their co-conspirators sold HDD suspension assemblies in, or for
20 delivery to, the United States;

21 b. Defendants and their co-conspirators sold foreign-manufactured HDD suspension
22 assemblies outside the United States for incorporation into HDDs that were sold in, or for delivery
23 to, the United States;

24 c. HDD suspension assemblies and HDDs traveled in, and substantially affected,
25 interstate and import trade and commerce;

26 d. The conspiracy involved and had a direct, substantial, and reasonably foreseeable
27 effect on interstate and import trade and commerce, including in HDD suspension assemblies and
28 HDDs; and

e. The conspiracy alleged herein affected billions of dollars of commerce. Defendants collectively controlled 97% of the global HDD suspension parts market. Defendants and their co-conspirators have inflicted antitrust injury by artificially raising prices paid by Plaintiffs and other entities who are themselves engaged in commerce.

95. According to NHK Spring’s plea agreement, “[d]uring the relevant period, [NHK Spring] and its co-conspirators manufactured HDD suspension assemblies outside the United States and sold them in, or for delivery to, the United States. During the relevant period, [NHK Spring] and its co-conspirators sold foreign-manufactured HDD suspension assemblies outside the United States for incorporation into products—namely, hard disk drives—that were sold in, or for delivery to, the United States. During the relevant period, HDD suspension assemblies and certain hard disk drives incorporating affected HDD suspension assemblies traveled in, and substantially affected, interstate and import trade and commerce. During the relevant period, the conspiracy involved and had a direct, substantial, and reasonably foreseeable effect on interstate and import trade and commerce, including in HDD suspension assemblies and certain hard disk drives incorporating affected HDD suspension assemblies.”¹³

96. In announcing the guilty plea, Assistant Attorney General of the DOJ Antitrust Division Makan Delrahim stated that the “impact on American consumers and businesses is direct and substantial.”¹⁴

97. Defendants’ unlawful activities substantially affected commerce throughout the United States, causing injury to Plaintiffs and members of the Classes. Defendants, directly and through their agents, engaged in activities affecting all states, including activities to fix, raise, maintain and/or stabilize prices, and to allocate the market and customers for HDD suspension assemblies, and which conspiracy unreasonably restrained trade and adversely affected the market

¹³ Rule 11 Plea Agreement at ¶ 4(d), *United States v. NHK Spring Co., Ltd.*, No. 2:19-cr-20503 (E.D. Mich. Sept. 23, 2019).

¹⁴ *Japanese Manufacturer Agrees to Plead Guilty to Fixing Prices for Suspension Assemblies Used in Hard Disk Drives*, DOJ (Jul. 29, 2019), available at <https://www.justice.gov/opa/pr/japanese-manufacturer-agrees-plead-guilty-fixing-prices-suspension-assemblies-used-hard-disk>.

1 for HDD suspension assemblies.

2 98. NHK confirmed these effects on U.S. commerce in its recent responses to Plaintiffs’
3 Requests for Admissions:

4 Defendants ADMIT that NHK Spring Co., Ltd. entered a guilty plea
5 to the charge of “participating in a conspiracy to suppress and
6 eliminate competition by fixing prices for hard disk drive suspension
7 assemblies . . . sold in the United States and elsewhere.” (Plea
8 Agreement at ¶2.) Defendants further ADMIT that “[d]uring the
relevant period, the conspiracy involved and had a direct, substantial,
and reasonably foreseeable effect on interstate and import trade and
commerce.”

9 99. TDK has admitted that the conspiracy affected U.S. commerce as well via the
10 leniency application it entered into with the DOJ on behalf of itself and its subsidiaries pursuant to
11 the ACPERA, which required that TDK “report to the Antitrust Division . . . activity or other
12 conduct constituting a criminal violation of Section 1 of the Sherman Act,” which requires that the
13 activity affected U.S. commerce. *See* Model Corporate Conditional Leniency Letter, available at
14 <https://www.justice.gov/atr/page/file/1112911/download>.

15 100. Defendants’ transactional sales data include bill-to and ship-to addresses in the
16 United States.

17 101. Products containing HDD suspension assemblies manufactured and sold by
18 Defendants and their subsidiaries and co-conspirators during the Class Period were imported into,
19 and sold in, the United States, ultimately to end-users including Plaintiffs.

20 102. Defendants’ conspiracy and wrongdoing described herein harmed persons in the
21 United States who purchased Standalone Storage Devices and Computers in the United States not
22 for resale which included as a component one or more HDD suspension assemblies that were
23 manufactured or sold by Defendants, any current or former subsidiary of Defendants, or any co-
24 conspirator of Defendants.

25 VI. FACTUAL ALLEGATIONS

26 A. The HDD Suspension Assembly Industry

27 103. HDDs use magnetism to write, retrieve and store vast amounts of information
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electronically¹⁵ and are installed in a variety of electronic products including portable and external hard drives, desktop and laptop computers, game consoles, set-top boxes/DVRs, network servers and enterprise storage arrays.

104. HDD suspension assemblies are indispensable components of HDDs.¹⁶ HDDs cannot read and write data without a suspension assembly. Suspension assemblies serve the essential functions of (i) securing the read/write head in position over the disk, (ii) maintaining a constant height, and (iii) linking the read/write head to the electronic circuitry of the HDD.

105. Defendants acknowledge the importance of suspension assemblies to HDDs. For example, according to MPT, “[t]he suspension assembly is a critical component of a HDDs performance and reliability whose function is to enable the magnetic head to fly at a precise height, frequently less than a millionth of an inch, above the spinning magnetically coated disk.”¹⁷ In fact, MPT describes the suspension assembly as “one of the three most critical mechanical components in the HDD.”¹⁸ HTI acknowledged in public securities filings that, “Suspension assemblies are a critical component of disk drives, and our results of operations are highly dependent on the disk drive industry.”¹⁹

106. Defendants’ customers echo the importance of these components. For example, Seagate, one of the largest purchasers of HDD suspension assemblies and manufacturers of HDDs, has stated, “suspension assemblies are one of the *highest cost* components of an HDD (and for certain HDDs are the highest cost component).”²⁰ Seagate credits this fact to the importance of

¹⁵ *Hard Drives*, EXPLAINTHATSTUFF, available at <https://www.explainthatstuff.com/harddrive.html> (last visited Jul. 30, 2015).

¹⁶ *Hutchinson Shares Extend Slide on Continued FTC Antitrust Review*, THESTREET (Jan. 5, 2016), available at <https://www.thestreet.com/story/13412469/1/hutchinson-shares-keep-falling-on-extended-ftc-antitrust-review.html>.

¹⁷ MPT 2006 Annual Report.

¹⁸ http://capital.sec.or.th/webapp/corp_fin/datafile/56/20050520E06.DOC.

¹⁹ HTI 2007 Annual Report and Form 10-K.

²⁰ See, e.g., Seagate Plaintiffs’ Amended Complaint for Damages and Other Relief at ¶ 54, *In re Hard Disk Drive Suspension Assemblies Antitrust Litigation*, No. 19-md-2918 (N.D. Cal. Oct. 2, 2020) (ECF No. 271).

1 suspension assemblies to the essential functions of HDDs.²¹ Suspension assemblies comprise
2 approximately 5-10% or more—up to 15% in some instances—of the cost of an HDD.²²
3 Suspension assemblies are therefore a significant cost component of an HDD.

4 107. Western Digital also acknowledges the importance of HDD suspension assemblies,
5 describing it as a “[p]articularly important component[.]”²³

6 108. HDDs are comprised of, among other things, spinning magnetic disks (sometimes
7 called platters) and magnetic heads that fly over the disks, reading and writing the information
8 contained on the disks (*see* Figures 1 & 2).²⁴ HDD suspension assemblies hold the magnetic heads
9 in position over the disks.²⁵ Thus, HDD suspension assemblies are essential to the functioning of
10 HDDs.

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22 ²¹ *Id.*

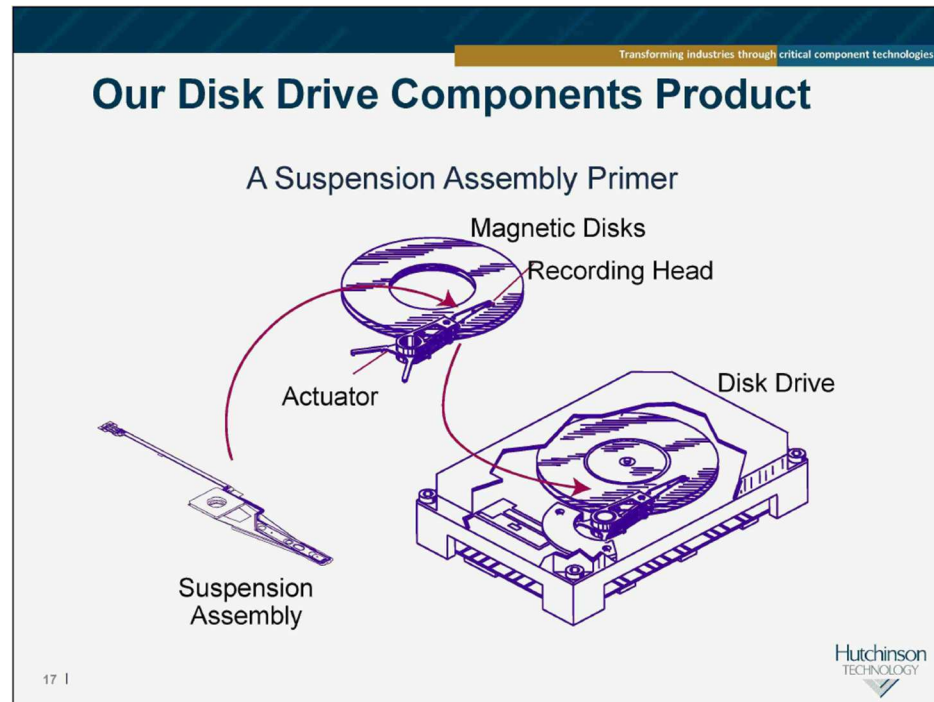
23 ²² These figures are based on preliminary information and productions. Plaintiffs reserve the right
24 to revise these estimates consistent with full discovery from Defendants and third parties related to
suspension assembly and HDD cost data and information.

25 ²³ *See* Western Digital 2012 Annual Report, at 23, *available at*
26 https://www.annualreports.com/HostedData/AnnualReportArchive/s/NASDAQ_STX_2012.pdf

27 ²⁴ *Id.*; *Hard Disk Drives*, TEXAS A&M UNIVERSITY, *available at*
<https://microtribodynamics.engr.tamu.edu/hard-disk-drives/> (last visited Jul. 30, 2019).

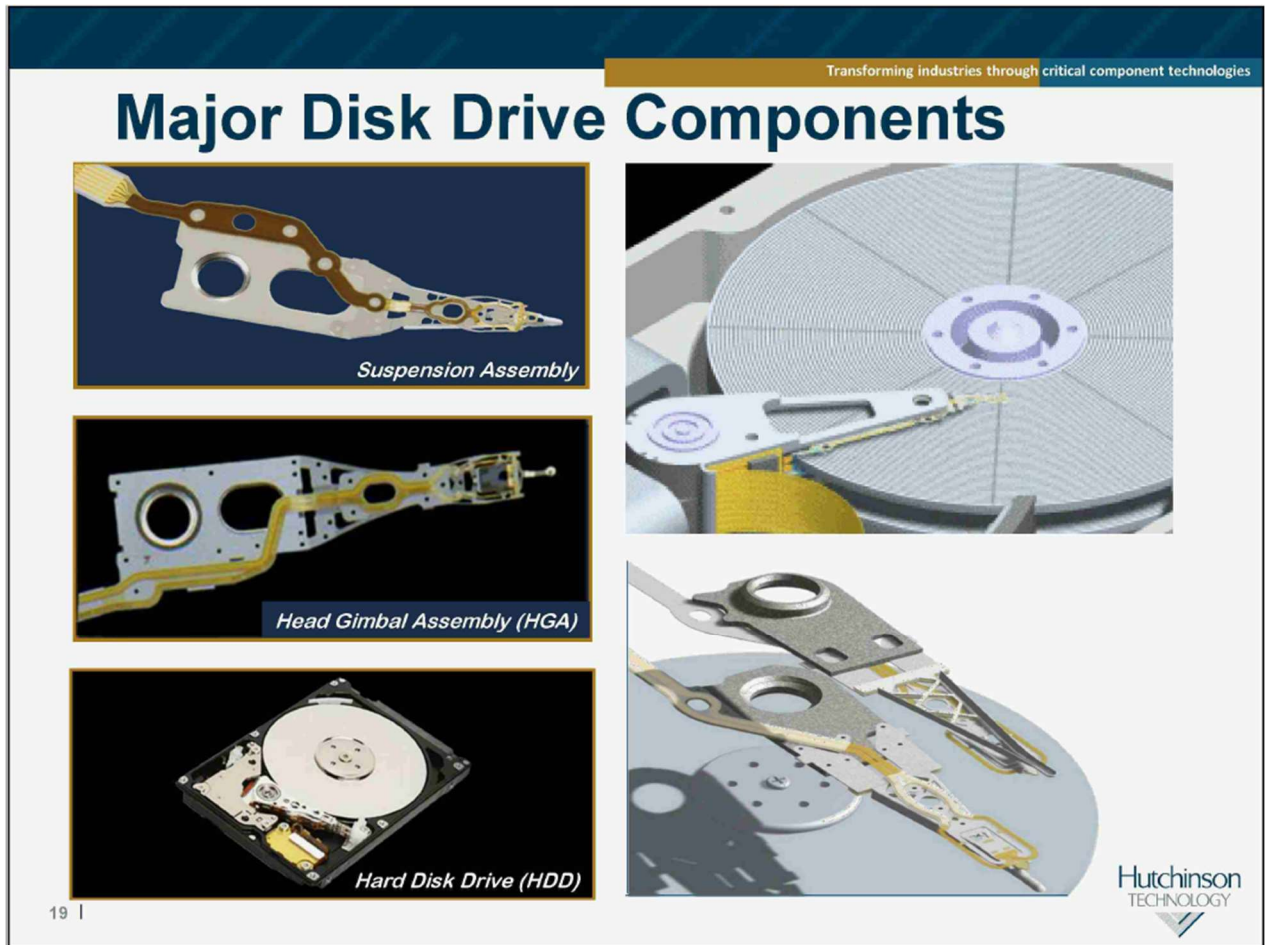
28 ²⁵ *Hard Drives*, EXPLAINTHATSTUFF.

(Figure 1)²⁶



²⁶ Hutchinson Corporate Overview, TDKHDD000289413 at '29.

(Figure 2)²⁷



109. The number of suspension assemblies used per disk drive may be decreased or increased according to the number of magnetic disks or platters installed, and was, in part, driven by the market demand for disk drive storage capacity. An HDD typically includes two suspension assemblies for each platter. HDDs use as many as six platters and therefore up to twelve suspension assemblies.

110. As platters and storage capacity of an HDD increase, the number of and cost of suspension assemblies incorporated into the HDD increase as well. As a result, the number of platters and suspension assemblies is positively correlated with HDD capacity, and HDD capacity is positively correlated with HDD price.

²⁷ TDKHDD000289413 at '31.

111. Defendants manufacture and sell HDD suspension assemblies in the United States and elsewhere to companies that install HDD suspension assemblies into HDDs. End-users then purchase HDDs as either stand-alone products, or as part of larger systems, such as computers.

112. From 2005 through 2016, over six billion units of HDDs were shipped worldwide.²⁸ On information and belief, of those six billion units, approximately 30%-35% were sold in the United States as HDDs or in other products. In 2018, global unit shipments of HDDs were nearly 400 million.²⁹

B. The End-Products at Issue: Standalone Storage Devices and Computers

113. Suspension assemblies are used in personal HDD storage devices and in enterprise HDD storage devices purchased by end-user consumers and businesses. These storage device products are comprised predominantly of HDDs, and are referred to herein as “Standalone Storage Devices.”

114. Personal HDD storage devices include: (i) “bare” HDDs, which are purchased by end-users for installation in a storage device or computer; (ii) external hard drives, which consist of an HDD, a simple USB adapter and/or power cord, and plastic housing; and (iii) network attached storage (NAS) drives, which are similar to an external hard drive but have a separate power supply and some additional hardware and/or software features. External hard drives and NAS drives thus comprise little more than their HDDs.

115. Enterprise HDD storage systems are storage servers and arrays, and include bare HDDs purchased for installation in the systems. For example, a storage server or array generally comprises a chassis with multiple bays for installation of multiple HDDs (four, eight or more). As

²⁸ See *Worldwide Unit Shipments of Hard Disk Drives (HDD) from 1976 to 2022*, available at <https://www.statista.com/statistics/398951/global-shipment-figures-for-hard-disk-drives/>; *Market Views: Hard Drive Shipments Drop by Nearly 17% in 2015*, AnandTech (Mar. 2, 2016), available at <https://www.anandtech.com/show/10098/market-views-2015-hard-drive-shipments>; *Seagate and Western Digital Led the HDD Market Last Year*, Market Realist (Jun. 29, 2017), available at <https://marketrealist.com/2017/06/seagate-and-western-digital-led-the-hdd-market-last-year/>.

²⁹ *Worldwide Unit Shipments of Hard Disk Drives (HDD) from 1976 to 2022 (in millions)*, STATISTA, available at <https://www.statista.com/statistics/398951/global-shipment-figures-for-hard-disk-drives/> (last visited Jul. 30, 2019).

1 a result, the HDDs can comprise a substantial portion of the cost of enterprise HDD storage systems.

2 116. HDDs containing suspension assemblies are also incorporated into computers that
3 are sold to end-user consumers and businesses. HDDs are used in computers to store operating
4 system software, programs and other files. When used in a computer, an HDD is a critical
5 component of the computer's operation and storage capabilities.

6 117. Desktop and laptop computers typically identify the type and level of storage
7 contained therein. End-users purchasing a computer may also be provided with options for selecting
8 or increasing the HDD storage level in the computer at the time of purchase, with higher storage
9 levels generally increasing the price of the internal HDD and the computer. For example, as shown
10 on the Dell website, an end-user purchasing a Dell Inspiron 560 Desktop available in February
11 2010 could purchase an "Essential Plus Package" at \$379 that included a standard 320 GB SATA
12 Hard Drive (7200RPM, 16 MB Cache) and certain memory upgrades. Alternatively, the end-user
13 could increase storage capacity with the purchase of the "Performance Package" at \$449, that
14 includes all of the same memory upgrades plus a 640 GB SATA Hard Drive (7200 RPM, 16 MB
15 Cache), thereby doubling the HDD storage capacity for an additional \$70.

16 (Figure 3)

17 Inspiron 560 Desktop



19 You Selected:

- Intel® Celeron® 450 (2.2GHz, 512KB Cache)
- Genuine Windows Vista® Home Basic SP1
- 320 GB SATA Hard Drive (7200RPM, 16MB Cache)
- 2GB Dual Channel DDR3 SDRAM at 1066MHz
- Integrated Intel® GMA X4500 Graphics
- 16X CD/DVD Burner (Dual Layer DVD+/-R Drive)

22 Starting Price

\$299

23 [Continue Personalizing](#)

24 [Add to Cart](#)

20 Recommended Upgrades:

Get even more from your computer!
(Prices include your selection plus options listed.)

21 Essential Plus Package

[Learn More](#)

More Memory for faster access to your files



Starting Price \$399
Total Savings \$20

Subtotal \$379

[Upgrade](#)

4GB Dual Channel DDR3 SDRAM at 1066MHz
Dell 19 in 1 Media Card Reader

22 Performance Package

[Learn More](#)

More Memory and More Storage



Starting Price \$499
Total Savings \$20

Subtotal \$449

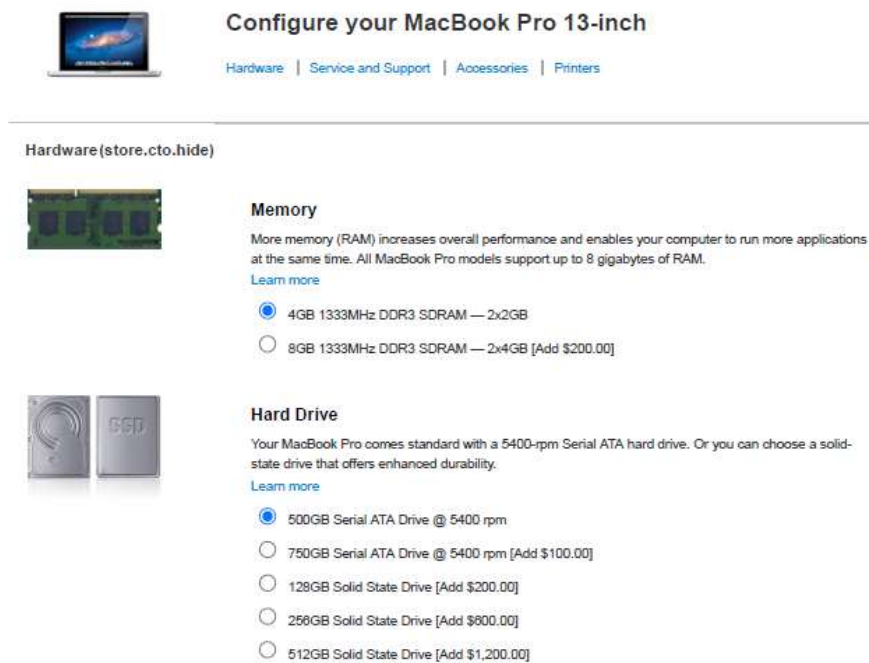
[Upgrade](#)

640GB SATA Hard Drive (7200RPM, 16MB Cache)
4GB Dual Channel DDR3 SDRAM at 1066MHz
Dell 19 in 1 Media Card Reader

25
26
27 118. Similarly, as shown on the Apple website, an end-user purchasing a MacBook Pro
28 13-inch laptop available in January 2012 could increase HDD storage capacity from 500 GB to 750

1 GB for an additional \$100.

2 (Figure 4)



16 119. HDDs are one of the highest cost components in a computer, and are therefore a

17 significant cost component of computers. As the storage capacity of an HDD used in a computer

18 increases, the cost of the computer increases. As a result, HDD capacity and price are positively

19 correlated with total computer price.

20 C. The Nature of the Conspiracy

21 120. During the Class Period, Defendants reached agreements to refrain from competing

22 on prices, fix prices, and allocate market shares for HDD suspension assemblies. To effectuate

23 these agreements, Defendants' high-level executives and managers exchanged competitively-

24 sensitive information and coordinated the manufacturing and sale of HDD suspension assemblies.

25 Such competitively-sensitive information included actual, potential, or projected prices; market

26 share and customer volumes; manufacturing capacity; utilization rates; timing of bid responses; bid

27 information; and product design development. These communications took place at all levels within

28 the Defendant corporate families including between and among senior executives with ultimate

pricing authority.

121. Participants in these competitors communications and agreements included, but were not limited to:

INDIVIDUAL	ENTITY	ROLE
Shigenao Ishiguro	TDK	President & CEO, Representative Director, Corporate Officer, General Manager (“GM”) of Head Business Group
	SAE	Director, Board Member
Takehiro Kamigama	TDK	President & CEO, COO, GM of Electronic Components Sales & Marketing Group, GM of Head Business Group
	SAE	Vice Chairman
Atsuo Kobayashi	TDK	GM, Managing Executive Officer, Board Member, Executive Vice President, GM of Head Business Group
	SAE	Vice Chairman
Albert Ong	TDK	CEO, Corporate Officer, GM of HDD Components Business Group
	MPT	President, CEO, COO
	SAE	Director
Hajime Sawabe	TDK	Executive Advisor, Chairman, Representative Director & President
Tetsuya Ueda	TDK	GM, Department Head of Corporate Planning Group, Leader of Sales Planning Department for HDD Head Business Division
Giichi Nagata	TDK	Leader of Planning Group, Leader of Business Strategy Group – Head Business Group
	MPT	Senior Director of Corporate Planning
	SAE	Director
Kenichiro Fujihara	TDK	GM of Electronic Components Sales & Marketing Group, Senior Vice President, Corporate Officer
Kenichiro Arimura	TDK	President and Director of TDK Philippines Corp., Leader of Business Strategy Group – Head Business Group
	SAE	Senior Manager of Planning & Administration
Shigeki Kimura	TDK	Leader of Applied Head Operation and Product Marketing Group in the HDD Head Business Division, Leader of Sales Group in the HDD Head Business Division

INDIVIDUAL	ENTITY	ROLE
Richard Han	SAE	Vice President, Senior Vice President, Director
	TDK	GM of HDD Heads Business Group, Magnetic Heads & Sensors Business Company
Takao Tsutsui	TDK	Deputy GM, HDD Head Business Group
	SAE	Vice President in charge of Suspension Organization, Director
Kwok Fai (“Frankie”) Lo	TDK	General Manager, HDD Head Business Group
	SAE	Director, Senior Vice President
Arun Dhawan	MPT	Vice President, CMT
Rick McHone	MPT	Vice President of Sales
	Magnecomp	Sales Manager
Hidetomo Nishi	MPT	Senior Manager of Corporate Planning
Steve Mitsuta	Magnecomp	Executive Vice President, COO, Senior Vice President, Vice President
Ken Martini	Magnecomp	Senior Director of Sales
Todd Drahos	Magnecomp	Director of Sales
Wayne Fortun	HTI	President & CEO
Keith Johnson	HTI	MA OIS Strategic Business Unit Director, New Business Development Director, SBU Director of Seagate and Western Digital Accounts
Kiyotaka Hayakawa	HTI	Japan Country Manager
Kazumi Tamamura	NHK Spring	Chairman of the Board, President & CEO, Member of the Board, Corporate Executive Officer, President of Sales Department, Senior Corporate Officer, Director
Kenji Sasaki	NHK Spring	Chairman of the Board, President & CEO
Takehiko Amaki	NHK Spring	President, CEO, Director, Advisor
Akihiro Honda	NHK Spring	Senior Vice President, Director of Disk Drive Suspension Division, GM of Disk Drive Suspension Division
	NHK Thailand	Executive Vice President
Kazuhiko Otake	NHK Spring	Senior Corporate Officer, President of Precision Spring & Component Division, Director of Disk Drive Suspension Division,
	NAT	President
Hitoshi Hashimoto ³⁰	NHK Spring	Department Manager, Sales

³⁰ The U.S. Department of Justice indicted Hitoshi Hashimoto for his role in the conspiracy

INDIVIDUAL	ENTITY	ROLE
Hiroyuki Tamura ³¹	NHK Spring	Senior Manager, Director, Director of Sales for Disk Drive Suspension Division
Kenji Nagai	NHK Spring	Deputy GM for Disk Drive Suspension Division
Isamu Ninomiya	NHK Spring	Deputy Director and Manager, Disk Drive Suspension & Component Sales Department
	NHK Thailand	Sales Manager
	NHK International	Sales
Richard “Skipp” Allen Harvey	NHK International	Vice President, General Manager
Yusuke Inami	NHK Spring	Section Manager, Disk Drive Suspension & Component Sales Department
Hironori Kajii	NHK Spring	Section Manager, Disk Drive Suspension & Component Sales Department
Junichiro Mizutani	NHK Spring	Senior Manager for Marketing & Strategy Department, Manager for Disk Drive Suspension & Component Sales Department
Yuichi Nagase	NHK Spring	Senior Corporate Officer, President, Precision Spring & Components Division
	NHK Thailand	Executive Vice President
Keiichi Suzuki	NHK Spring	Executive Vice President, Senior Managing Executive Officer, Senior Managing Director, Board Member
Hiroshi Takei	NHK Spring	Manager, Sales Department, Disk Drive Suspension Division
	NHK Spring (H.K.)	Director
	NAT (H.K.)	CFO
	NAT (Dong Guan)	CFO
	NHK International	Senior Director, Sales Planning & Management Group
Masahiro Futakami	NHK Spring	Manager, Disk Drive Suspension Division
	NHK Thailand	Executive Managing Coordinator, Disk Drive Suspension Division

alleged herein on February 13, 2020.

³¹ The U.S. Department of Justice indicted Hiroyuki Tamura for his role in the conspiracy alleged herein on February 13, 2020.

INDIVIDUAL	ENTITY	ROLE
Susumu Senkawa	NHK Spring	Division President
	NHK Thailand	Executive Vice President
Tsutomu Yamaguchi	NHK Spring	Representative Deputy President, Director Member of the Board, Sales Department, Disk Drive Suspension Division
Eddie Lam	NHK Spring (H.K.)	Sales Manager
Kunihiko Saika	NHK Spring	Manager, Precision Spring & Component Sales Department, Sales Division

122. Contact between and among Defendants began as early as 2003, when MPT's Ong and NHK Spring's Tamura negotiated a cross-licensing agreement. Cross-licensing discussions between NHK and HTI similarly occurred in 2005, and these discussions were in turn conveyed by NHK executives to MPT executives. From 2005 to 2007, Tamura and Ong met one or two times a year, and shared with each other competitively-sensitive information including future pricing to specific customers, sales volumes, actual and projected shipments, customer information, component supplies, and capacity forecasts. For example, at a meeting prior to the SAE annual dinner in December 2005, Tamura identified NHK Thailand's "starting price" for HDD suspension assemblies to customer Western Digital, while Ong sought pricing information regarding customer Seagate.

123. In April 2005, HTI's Fortun and Hayakawa met with NHK Spring's Tamura, Suzuki, and Yamaguchi. They discussed HTI's production capacity, future capacity plans, yield, and market demand. The parties also discussed SAE's business plans and the impact of HDD business development would have on profitability.

124. In August 2007, TDK acquired MPT and its subsidiary, Magnecomp. Just after the announcement of the acquisition, NHK Spring's Nagase spoke with TDK's Kobayashi and expressed NHK Spring's displeasure with the deal. The following day, TDK's Kobayashi and Ueda met with NHK Spring's Nagase and Suzuki "to massage them." The meeting took place in Yokohama, Japan. During that meeting, TDK and NHK Spring agreed to maintain a positive relationship by not competing with each other and allocating market shares. The parties also agreed

1 to avoid a “price war” and achieve a “win-win” relationship.

2 125. At subsequent meetings from August 2007 through at least January 2009, senior
3 executives of NHK Spring (including Amaki, Hashimoto, Nagase, and Suzuki) and TDK/SAE
4 (including Kamigama, Kimura, Kobayashi, and Ueda) agreed to maintain market share and profit
5 for themselves, and to maintain sales price by collaborating with each other. TDK communicated
6 this plan to SAE and MPT. All five companies—TDK, SAE, MPT, NHK Spring, and NAT—then
7 worked together to exchange information about price and market share. Specific activities among
8 the five companies included coordinating quotes for customers, and sharing information about
9 demand forecast, sales price, and strategies to stabilize pricing.

10 126. From 2007 to 2015, executives and sales managers from TDK, SAE, NHK Spring
11 and NAT met for dinner, New Year’s events, and farewell gatherings in Asia. At such meetings,
12 they discussed specific customers (including Seagate, Western Digital, Hitachi, and Toshiba) as
13 well as the companies’ long-term strategy of agreeing to allocate market shares and not to compete
14 with each other on price. Attendees of these meetings for TDK/SAE included Kamigama,
15 Kobayashi, Kimura, Ueda, Arimura, Fujihara, Ishiguro, and Sawabe. NHK Spring/NAT’s attendees
16 included Amaki, Hashimoto, Nagase, Ninomiya, Suzuki, Tamura, Honda, Imami, Mizutani, Otake,
17 Sasaki, Senkawa, Takei, and Tamamura.

18 127. In addition to the meetings described above, Defendants’ executives and sales
19 managers held quarterly meetings in Asia from at least 2014 until 2016. Participants for
20 TDK/MPT/SAE included Ishiguro, Nagata, and Nishi. Participants for NHK Spring included
21 Hashimoto, Otake, Kajii, and Nagai. At these meetings, the parties discussed bids and exchanged
22 broader market information, including past and expected shipments, capacity, utilization,
23 expansion plans, customers, and collaboration on components. They also discussed the companies’
24 long-term non-competition strategy and market share allocations.

25 128. Throughout the Class Period, Defendants’ senior executives and sales managers
26 engaged in similar conversations in the United States. For example, HTI’s Johnson and NHK
27 International’s Harvey met in-person on a regular basis for nearly a decade, during which they
28 discussed market demand and customer pricing.

1 129. Officials from Magnecomp and NHK International communicated quarterly about
2 shipments and volumes, including actual results, future projections, and future price information to
3 specific customers. For instance, in a telephone call in June 2006, NHK International's Harvey
4 informed Magnecomp's Martini of NHK Spring's shipment volume and pricing for the following
5 quarter to Western Digital. In August 2008, Harvey and Martini exchanged shipment volume and
6 pricing information and discussed plans to stabilize prices to avoid competing with each other.
7 Other discussions of a similar nature took place between these individuals at least in June 2005,
8 October 2005, January 2006, August 2006, June 2007, November 2007, May 2008, and August
9 2008.

10 130. Magnecomp's Drahos, who previously worked for HTI, also exchanged information
11 about present and future prices, capacities, shipments, market demand, and plans for other
12 customers, including Seagate, with executives and sales personnel from HTI and NHK
13 International. He repeatedly communicated with his prior HTI colleagues to obtain competitively-
14 sensitive sales and pricing information from HTI. For example, in December 2006, Drahos learned
15 HTI's capacity, pricing, and market share for Seagate for specific HDD suspension assembly
16 projects, and conveyed that information to senior executives and sales managers at MPT and
17 Magnecomp including Ong, McHone, Misuta, and Dhawan. At or about the same time, MPT's Ong
18 communicated with an NHK employee about NHK's price target for the same Seagate project.

19 131. From at least 2008 until April 2016, NHK International's Harvey and
20 MPT/Magnecomp's McHone communicated with each other in face-to-face meetings, telephone
21 calls, and by text in the United States. In these communications, they discussed actual and
22 forecasted shipments, capacity, utilization, bids, new program designs, and present and future
23 prices to specific customers. They spoke on the phone at least once per month, and more frequently
24 when customers issued requests for quotations on specific products. A goal of these conversations
25 was to avoid lowering prices for customers.

26 132. Harvey and McHone then shared the information they learned from their
27 competitors with their team members, supervisors, and other executives including individuals with
28 ultimate pricing authority at their respective corporate families in the U.S. and Asia, particularly in

1 Japan and Thailand. Thus, Magnecomp provided competitor information to its corporate parents at
2 MPT and TDK. Similarly, NHK International provided competitor information to its corporate
3 parent NHK Spring and other corporate affiliates including NHK Thailand. The information was
4 often confirmed between contacts among the companies in Asia. For example, on July 8, 2011
5 NHK Spring's Ninomiya reported that "Seagate's comparison of pricing between MPT and NHK
6 coincides with what Skipp [Harvey] confidentially obtained from MPT." Defendants then used the
7 information to make decisions on market share, pricing, production, and capacity.

8 133. Similar conversations took place in Japan and Thailand between executives at TDK,
9 MPT, NHK Spring, and NHK Thailand, with the results being relayed back to the United States.
10 Among the participants in these communications were the recently-indicted NHK Spring
11 executives Hashimoto and Tamura, MPT's Ong, and NHK Spring's Ninomiya. These
12 conversations took place at least four to five times per year, and more often when the companies
13 were responding to customer requests for quotations on specific products. Communications by
14 these sales managers and top management occurred in face-to-face meetings, as well as through
15 telephone calls, emails, and text messages, where Defendants exchanged competitively-sensitive
16 information about customers, bids, capacity, utilization, technology, actual and potential bid prices,
17 and component supplier issues.

18 134. NHK International's Harvey also received sensitive production and pricing
19 information from HTI about both HTI and MPT, which he then shared with his colleagues at NHK
20 Spring. For example, in January 2009, Harvey wrote to NHK Spring's Tamura and Ninomiya:
21 "Had a conversation with my friend at HTI ... he actually called and woke me up this afternoon ...
22 Q4 155m ... Q1 110m ... We both have MPT at ~65m for the Q4 period and I will work to provide
23 these on Monday. He mentioned that they have been meeting on pricing, but have not dropped
24 anything significant due to overall volumes and issues with cost structure."

25 135. SAE also acted as a conduit for the exchange of competitive information among the
26 conspirators. SAE's Tsutsui and NHK Spring's Takei met with each other thirty-nine times
27 between June 2010 and April 2014. During these meetings and other telephone calls, Tsutsui and
28 Takei agreed on how NAT would allocate supplies to Samsung and Toshiba, shared HTI's pricing

1 to Samsung, and discussed plans for Toshiba's business.

2 136. For example, in June 2011, Eddie Lam of NHK Spring (Hong Kong) internally
3 circulated MPT's confidential quarterly business review ("QBR"), which he had obtained from
4 SAE. The QBR included confidential information concerning MPT's quality performance,
5 shipment results, forecasts, and line readiness. Lam's email distributing the material to NHK
6 International's Harvey, Hiroshi Takei, and Kunihiro Saika stated: "It is confidential info as you
7 knew well that why I hope all of them use it carefully and don't tell other I am source for it. Also,
8 please don't ask me how to get this one." In response, Harvey sought to avoid a paper trail but still
9 obtain this type of competitive information, writing, "In the future, please omit my name from the
10 distribution. If you care to discuss this type of information, please call me anytime." When Lam
11 continued to respond, Harvey reiterated, "Please call. ... I would like to discuss why I sent you the
12 prior note."

13 137. In January 2014, at the request of NHK Spring's Ninomiya, Lam obtained detailed
14 HTI and MPT suspension assembly price information for Western Digital from SAE. Lam provided
15 an SAE chart that included company-specific allocation volumes for MPT, HTI, and NHK for
16 several quarters. The chart included unit prices for specific suspension programs. Lam then met
17 with his contact at SAE, confirmed the competitive information in the chart, obtained updated
18 pricing information on certain projects, and reported back to Ninomiya and Takei.

19 138. In January 2016, NHK International's Harvey emailed Ninomiya with MPT's and
20 HTI's pricing information for a specific Western Digital project, which Harvey had obtained from
21 MPT/Magnecomp's McHone. Lam then confirmed MPT's and HTI's pricing and volume
22 allocation for the same Western Digital project with his contact at SAE.

23 139. Over the course of the conspiracy, Defendants' senior executives, directors, and
24 sales managers engaged in dozens of face-to-face meetings with each other. These face-to-face
25 meetings occurred at each other's corporate headquarters, coffee shops, customer events, golf
26 courses, hotels, hunting lodges, and restaurants in China, Hong Kong, Japan, Thailand, California,
27 and elsewhere in the United States.

28 140. Specific face-to-face meetings included:

- 1 a. an April 16, 2004 meeting attended by Ong and Dhawan (MPT) and Tamura and
2 Yamaguchi (NHK Spring) at NHK Spring's headquarters in Yokohama, Japan followed by lunch;
- 3 b. a late 2005 meeting at the Mauna Kea Coffee Lounge at the Tokyo Shinagawa
4 Prince Hotel attended by Ong and McHone (MPT/Magnecomp) and Tamura and Yamaguchi (NHK
5 Spring);
- 6 c. an August 31, 2007 lunch meeting near NHK Spring headquarters in Yokohama,
7 Japan, attended by Kobayashi and Ueda (TDK) and Nagase, Suzuki and Tamura (NHK Spring);
- 8 d. a November 2007 dinner meeting at the Bangkok Intercontinental Hotel attended by
9 Ong and Dhawan (MPT) and Nagase, Tamura, and Futakami (NHK Spring/NHK Thailand);
- 10 e. annual meetings from 2003 to at least 2012 at a South Dakota hunting lodge between
11 Johnson (HTI) and Harvey (NHK International);
- 12 f. a May 28, 2008 meeting and dinner in Japan attended by Amaki, Hashimoto, Honda
13 and Tamamura (NHK Spring) and Kamigama, Kobayashi and Fujihara (TDK);
- 14 g. an August 26, 2009 meeting at TDK headquarters in Tokyo, Japan, attended by
15 Kamigama, Kobayashi and Arimura (TDK) and Honda, Tamura, Hashimoto and Takei (NHK
16 Spring);
- 17 h. an August 3, 2010 meeting at TDK's headquarters in Tokyo, Japan, attended by
18 Amaki, Hashimoto, Honda, and Tamamura (NHK Spring) and Kamigama, Kobayashi, and Fujihara
19 (TDK);
- 20 i. a November 30, 2010 meeting at NHK Spring's headquarters in Yokohama, Japan,
21 attended by Amaki, Hashimoto, Honda and Tamamura (NHK Spring) and Kamigama, Kobayashi,
22 and Fujihara (TDK);
- 23 j. a March 11, 2011 meeting attended by Ong and Dhawan (MPT) and Ninomiya
24 (NHK Spring) at NHK Spring's headquarters in Yokohama, Japan followed by lunch;
- 25 k. a March 22, 2011 business dinner attended by Sasaki, Tamamura, Honda and
26 Hashimoto (NHK Spring) and Sawabe, Kamigama and Kobayashi (TDK);
- 27 l. a June 2011 dinner meeting attended by Arimura (TDK) and Hashimoto, Tamura
28 and Ninomiya (NHK Spring) at a restaurant near NHK Spring's headquarters in Yokohama, Japan;

1 m. a June 29, 2012 meeting attended by Ong (MPT) and Tamura (NHK Spring) at NHK
2 Spring's headquarters in Yokohama;

3 n. a July 13, 2012 meeting attended by Kobayashi (TDK/SAE), Arimura (TDK/TDK
4 Philippines) and Ishiguro (TDK) and Honda, Senkawa, Otake, Mizutani and Takei (NHK Spring)
5 at TDK headquarters in Tokyo, Japan, followed by a dinner at the Yaesu Saryo restaurant;

6 o. an April 13, 2013 meeting attended by Ishiguro (TDK/SAE) and Hashimoto,
7 Ninomiya and Imami (NHK Spring) at the Nadaman Garden restaurant near TDK headquarters in
8 Tokyo, Japan;

9 p. an August 2, 2013 meeting in Asia attended by Ong (MPT) and Hashimoto, Imami
10 and Kajii (NHK Spring);

11 q. a January 22, 2014 meeting attended by Ishiguro (TDK/SAE) and Nagata (TDK)
12 and NHK Spring's Hashimoto, Kajii and Otake (NHK Spring) in Japan;

13 r. a July 22, 2014 meeting attended by Ishiguro (TDK/SAE) and Nagata (TDK) and
14 Otake, Hashimoto, Kajii and Nagai (NHK Spring) in Japan;

15 s. a meeting on Thanksgiving Day in 2015 at a South Dakota hunting lodge between
16 Johnson (HTI) and Harvey (NHK International); and

17 t. a January 2016 meeting attended by Ong and Dhawan (MPT) and Ninomiya (NHK
18 Spring) at a Bangkok restaurant.

19 141. Defendants knew that what they were doing was wrong and sought to conceal their
20 conduct. For example, after meeting with MPT's Albert Ong on November 30, 2010, NHK's
21 Hironori Kajii circulated a memo containing competitive information, which advised recipients that
22 *"Manager T[amura] has said to handle with care."*

23 142. Later that year, an NHK employee wrote to Ninomiya: *"Mr. Tamura instructed me*
24 *'Don't mention Mr. Albert [Ong], since it's a crime' He also directed me 'You must delete*
25 *this email and all other related ones.'* I am sorry to trouble you, but please take care of them. I
26 apologize for my careless conducts." Ninomiya replied to that email: "I understood. From a CSR's
27 perspective, *we would be better off not leaving anything in the emails.*"

28 143. The need for caution continued throughout the conspiracy, with NHK Spring's Kajii

1 reminding his conspirators to, “*please be careful with the handling [of] the information.*”

2 **D. TDK and NHK Spring Further Conspire to Wound and then Eliminate Their**
 3 **Co-Conspirator, HTI**

4 144. In or around 2007, TDK and NHK Spring started discussing how to profit more
 5 from their price-fixing conspiracy. As part of these discussions, TDK and NHK Spring started
 6 plotting against their fellow co-conspirator, HTI. TDK and NHK Spring began to view their co-
 7 conspirator HTI as a common threat, forming a conspiracy within a conspiracy to harm HTI.

8 145. In an August 2007 meeting, after TDK’s acquisition of MPT, TDK’s Kobayashi and
 9 Ueda met with NHK Spring’s Nagase, Suzuki and Tamura and agreed to avoid a price war with
 10 one another and collectively to take market share from HTI as a way to profit more from their
 11 conspiracy.

12 146. In June 2009, NHK Spring’s Hashimoto, who was subsequently indicted by DOJ
 13 for his role in the conspiracy, spoke with TDK’s Kobayashi and agreed that “TDK and NHK should
 14 focus to kick out HTI ASAP.”

15 147. For several years thereafter, TDK/MPT and NHK Spring secretly plotted to gain
 16 market share from their co-conspirator HTI and allocate the additional share between them, all
 17 while maintaining supra-competitive pricing to HDD manufacturers.

18 148. On January 22, 2014, TDK Corp.’s Ishiguro and Nagata met with NHK Spring’s
 19 Otake, Hashimoto and Kajii to continue these discussions. In reporting on the meeting, NHK Spring
 20 observed, “[s]omething needs to be done under mutual cooperation” to better control their co-
 21 conspirator HTI.

22 149. These discussions culminated in an agreement between TDK and NHK Spring that
 23 TDK would acquire HTI in or around July 2014.

24 150. At a meeting on July 22, 2014, senior executives including TDK’s Ishiguro and
 25 Nagata and NHK Spring’s Otake, Hashimoto, Kajii, and Nagai agreed that TDK would acquire
 26 HTI to prevent an HDD manufacturer from acquiring and vertically integrating the company. TDK
 27 confirmed that an acquisition of HTI would be “OK for NHK,” and NHK Spring responded, “Please
 28 go ahead [...] we feel comfortable of [sic] 40% share.” The companies also agreed that that NHK

1 Spring would buy out SAE Magnetics' share of NAT, a joint venture between SAE Magnetics and
 2 NHK Spring, in order to facilitate antitrust clearance of TDK's acquisition of HTI.

3 151. NHK bought out SAE Magnetics' share of NAT and subsumed NAT as a wholly-
 4 owned subsidiary in April 2015.

5 152. TDK then announced its intention to acquire HTI on or about November 2, 2015.

6 153. On or about one day later, NHK Spring's Ninomiya reported that he had received
 7 TDK's legal strategy to obtain antitrust clearance from a "local source." He later wrote: "I can't
 8 say it out loud, but this should make the price easier to control."

9 154. Prior to closing the transaction, TDK/MPT provided updates to NHK Spring on the
 10 status of the HTI acquisition and discussed opportunities for the companies to collaborate post-
 11 merger.

12 155. TDK completed its acquisition of HTI on or about October 6, 2016.

13 **E. NHK Spring Pled Guilty to Conspiring to Fix Prices and Allocate Market**
 14 **Shares for HDD Suspension Assemblies**

15 156. On July 29, 2019, NHK Spring agreed to plead guilty and pay a \$28.5 million fine
 16 for its role in the global conspiracy.³² On September 23, 2019, NHK Spring entered into a Rule 11
 17 plea agreement, and the fine was imposed on December 18, 2019.³³ Judgment was entered against
 18 NHK Spring on December 23, 2019.³⁴

19 157. According to the plea agreement, from May 2008 to April 2016, NHK Spring
 20 engaged in a conspiracy in which Defendants "engaged in discussions and attended meetings with
 21 each other. During these discussions, [Defendants] reached agreements to refrain from competing

22 _____
 23 ³² *Japanese Manufacturer Agrees to Plead Guilty to Fixing Prices for Suspension Assemblies*
 24 *Used in Hard Disk Drives*, DOJ (Jul. 29, 2019), available at
[https://www.justice.gov/opa/pr/japanese-manufacturer-agrees-plead-guilty-fixing-prices-](https://www.justice.gov/opa/pr/japanese-manufacturer-agrees-plead-guilty-fixing-prices-suspension-assemblies-used-hard-disk)
[suspension-assemblies-used-hard-disk.](https://www.justice.gov/opa/pr/japanese-manufacturer-agrees-plead-guilty-fixing-prices-suspension-assemblies-used-hard-disk)

25 ³³ Rule 11 Plea Agreement, *United States v. NHK Spring Co., Ltd.*, No. 2:19-cr-20503 (E.D.
 26 Mich. Sept. 23, 2019); Notice of Criminal Monetary Imposition, *United States v. NHK Spring*
Co., Ltd., No. 2:19-cr-20503 (E.D. Mich. Dec. 18, 2019).

27 ³⁴ Judgment in a Criminal Case, *United States v. NHK Spring Co., Ltd.*, No. 2:19-cr-20503 (E.D.
 28 Mich. Sept. 23, 2019).

1 on prices for, fix the prices of, and allocate their respective market shares for, HDD suspension
 2 assemblies to be sold in the United States and elsewhere. To effectuate these agreements,
 3 employees and officers of [Defendants] exchanged HDD suspension assemblies pricing
 4 information, including anticipated pricing quotes, in the United States and elsewhere. The
 5 [Defendants] relied on their agreements not to compete and used the exchanged pricing information
 6 to inform their negotiations with U.S. and foreign customers that purchased HDD suspension
 7 assemblies and produced hard disk drives for sale, or delivery to, the United States and
 8 elsewhere.”³⁵

9 158. NHK Spring and the DOJ also “agree[d] that, in light of the availability of civil
 10 causes of action, which potentially provide for a recovery of a multiple of actual damages, the
 11 recommended sentence does not include a restitution order for the offense charged in the
 12 Information,” and in this regard, the DOJ expressly referenced the pendency of these indirect
 13 purchaser actions.³⁶

14 159. The cooperation provisions of NHK Spring’s plea agreement apply to “[t]he
 15 defendant and its subsidiaries that are engaged in the production or sale of HDD suspension
 16 assemblies, including but not limited to NHK International Corporation (collectively ‘related
 17 entities’)[.]”³⁷ The “related entities” subject to these cooperation provisions therefore include all of
 18 the NHK Defendants in this action—NHK Spring, NHK International, NHK Thailand, NAT H.K.,
 19 and NAT Dong Guan—as each of those Defendants was engaged in the production or sale of HDD
 20 suspension assemblies.

21 160. The cooperation provisions require “[t]he full, truthful, and continuing cooperation
 22 of the current directors, officers, and employees of the *defendant and its related entities*,” including,
 23 among other things, “*producing in the United States* and at other mutually agreed-upon locations

24 ³⁵ Rule 11 Plea Agreement, *United States v. NHK Spring Co., Ltd.*, No. 2:19-cr-20503 (E.D.
 25 Mich. Sept. 23, 2019).

26 ³⁶ United States’ Sentencing Memorandum at 8, *United States v. NHK Spring Co., Ltd.*, No. 2:19-
 cr-20503 (E.D. Mich. Dec. 5, 2019).

27 ³⁷ Rule 11 Plea Agreement at ¶ 12, *United States v. NHK Spring Co., Ltd.*, No. 2:19-cr-20503
 28 (E.D. Mich. Sept. 23, 2019).

1 all documents, including [non-privileged] claimed personal documents, and other materials,
 2 wherever located,” “making himself or herself available for interview *in the United States* and at
 3 other mutually agreed-upon locations,” and “testifying in grand jury, trial, and other judicial
 4 proceedings *in the United States* fully, truthfully, and under oath, subject to the penalties of
 5 perjury[.]”³⁸

6 161. In exchange for cooperation under the plea agreement and the court’s acceptance of
 7 NHK Spring’s guilty plea and imposition of the recommended sentence, the DOJ “agrees that it
 8 will not bring further criminal charges against the defendant or any of its related entities for any act
 9 or offense committed before the date of signature of this Plea Agreement that was undertaken in
 10 furtherance of an antitrust conspiracy involving the sale of HDD suspension assemblies.”³⁹

11 162. According to the sentencing hearing transcript, NHK Spring “fully and timely
 12 cooperated with the government in connection with this criminal episode.”⁴⁰

13 163. As a result of the conspiracy and subsequent guilty plea, NHK Spring stated that it
 14 “overhauled its antitrust compliance program. It appointed high-level individuals to oversee
 15 compliance in all major geographic regions. It’s utilizing technology to monitor possible
 16 misconduct and it’s taken remedial measures to discipline individuals involved in the offense.”⁴¹

17 **F. Additional Government Investigations**

18 164. In July 2016, the JFTC raided Defendants TDK and NHK Spring based on suspicion
 19 that the two companies and/or their subsidiaries fixed prices for HDD suspension components. On
 20 February 9, 2018, the JFTC issued a cease and desist order to NHK Spring and NAT H.K., found
 21 that they substantially restrained competition in the HDD suspension assemblies market by
 22 agreeing to maintain sales prices, and imposed penalties of ¥714,220,000 on NHK Spring and
 23

24 ³⁸ *Id.* ¶ 13(a), (b) and (f) (emphasis added).

25 ³⁹ *Id.* ¶ 14.

26 ⁴⁰ Sentencing Hearing Transcript at 8:22-23, *United States v. NHK Spring Co., Ltd.*, No. 2:19-cr-20503 (E.D. Mich. Dec. 18, 2019).

27 ⁴¹ Sentencing Hearing Transcript at 8:24-9:4, *United States v. NHK Spring Co., Ltd.*, No. 2:19-cr-20503 (E.D. Mich. Dec. 18, 2019).
 28

1 ¥361,940,000 on NAT H.K. The JFTC did not impose any penalties on TDK, SAE, and MPT,
2 which had jointly filed for a penalty reduction under the JFTC's leniency policy.

3 165. The JFTC determined that NAT H.K. manufactured and sold HDD suspension
4 assemblies according to NHK Spring's business policies, and that SAE and MPT manufactured and
5 sold suspension assemblies according to TDK's business policies. According to the JFTC's
6 findings, NHK, NAT H.K., TDK, SAE, and MPT coordinated with each other to maintain market
7 share and profit, and agreed to maintain sales prices of HDD suspension assemblies sold to HDD
8 manufacturers and sellers. The JFTC found that these five companies confirmed with each other
9 price quotes and sales prices to be submitted in response to requests for quotations from Japanese
10 HDD manufactures and sellers. According to the JFTC, these same companies exchanged
11 information with each other about demand forecast, sales price, and price quotes to be submitted in
12 response to requests for quotations from HDD manufacturers and sellers outside of Japan.

13 166. Concurrently with the JFTC investigation, the DOJ opened an investigation
14 regarding HDD suspension assemblies. On July 26, 2016, Defendant HTI received a letter from the
15 DOJ requesting documents relating to the investigation and expressed its intent to cooperate. At the
16 time HTI received the DOJ's letter, TDK's pending acquisition of HTI was under review by the
17 U.S. Federal Trade Commission. That same day, the JFTC and DOJ performed an on-site inspection
18 of an NHK company.⁴²

19 167. In April 2018, Brazil's antitrust authority, the Administrative Counsel for Economic
20 Defense ("CADE"), launched an investigation into the HDD suspension assembly cartel. CADE
21 reported that the conspiratorial conduct among TDK, HTI, SAE, NHK Spring, and MPT began as
22 early as 2003 and continued until at least 2016.

23 168. CADE reported that it has "compelling evidence of the perpetration of antitrust
24 conduct consisting of (i) [p]rice fixing in response to customer quotation orders; (ii) [m]arket
25 division and (iii) [s]haring of commercial and competitively sensitive information." This
26 conspiratorial conduct was "rendered feasible by way of meetings and bilateral exchanges of

27 ⁴² NHK Spring 2018 Consolidated Financial Statements at 20, *available at*
28 <https://www.nhkspg.co.jp/eng/ir/pdf/Annual%20Report%202018.pdf>.

1 emails.”⁴³

2 169. CADE’s analysis noted “there were various exchanges of sensitive information
3 between the competitors of the global market of suspension assemblies. ... Sharing of commercial
4 and competitively sensitive information included but was not limited to information on (iii.1)
5 [c]urrent, potential and proposed prices, for suspension assemblies, (iii.2) [p]rivate customer
6 bidding processes, (iii.3) [a]llocation of customer volumes, (iii.4) [m]anufacturing capacity of each
7 company, and (iii.5) [u]ser fees for each company, for the purposes of stabilizing prices and
8 reducing competition in sales of suspension assemblies.”⁴⁴

9 170. Based on the existence of such “strong evidence,” CADE found that “this exchange
10 of commercially sensitive information rendered the establishment of strategic long-term relations
11 feasible between the competitors, based on the elimination or softening of the price war or price
12 competition, which meant avoiding aggressive price competition in private bidding processes and
13 quotations, and in the division of the world market of suspension assemblies.”⁴⁵

14 171. Exchange of pricing and production strategy information “may favor collusion to
15 the extent that companies better coordinate” their prices and production conditions. CADE noted
16 that in this case, the information was not public and the exchanges occurred directly between
17 competitors and “exercised a direct influence on the strategies adopted by the companies
18 participating in the Cartel.”⁴⁶

19 172. These exchanges “included recent, current and future data, not shared within other
20 circles, with a view to permitting the companies to align their operations within the market based
21 on the commercially sensitive information shared.”⁴⁷ To accomplish this, the Defendants provided
22 highly detailed information.⁴⁸

23 ⁴³ Administrative Council for Economic Defense, Technical Report No. 4/2018 of the General
24 Superintendent’s Office (SEI No. 0459666) ¶¶ 5, 6 (“CADE Report”).

25 ⁴⁴ *Id.* ¶ 27 (emphasis omitted); *see also id.* ¶ 5.

26 ⁴⁵ *Id.* ¶ 28 (emphasis omitted).

27 ⁴⁶ *Id.* ¶ 29.

28 ⁴⁷ *Id.* ¶ 30 (emphasis omitted).

⁴⁸ *Id.*

173. CADE concluded that it had uncovered “robust evidence of violations” of the competition laws in Brazil.⁴⁹

174. CADE indicated that anticompetitive practices were conducted by at least 38 of Defendants’ present and former directors, senior executives, senior managers, sales managers, including individuals with pricing authority. The individuals identified by CADE include: Akihiro Honda; Akihiko Negishi; Albert Ong Kim Guan (“Albert Ong”); Arun Dhawan; Atsuo Kobayashi; Giichi Nagata; Hajime Sawabe; Hidetomo Nishi; Hironori Kajii; Hiroyuki Tamura; Hitoshi Hashimoto; Isamu Ninomiya; Keith David Johnson; Kazuhiko Otake; Kazumi Tamamura; Keiichi Suzuki; Ken Martini; Kenichiro Arimura; Kenji Sasaki; Koji Inada; Lo Kwok Fai (“Frankie Lo”); Masaru Koda; Masato Ishikawa; Richard Michael McHone; Shigeki Kimura; Shigenao Ishiguro; Skipp Harvey; Stephen Andrew Misuta; Takehiko Amaki; Takehiro Kamigama; Tetsuya Ueda; Thiti Makarabhiromya; Todd Drahos; Toshimi Hamada; Tsutomu Yamaguchi; Wing Sun Clarence Lo (“Clarence Lo”); Yew Ah Ming; and Yuichi Nagase.⁵⁰

175. On February 13, 2020, the DOJ indicted two NHK Spring senior executives, Hitoshi Hashimoto and Hiroyuki Tamura, for their roles in the HDD suspension assembly price-fixing conspiracy. According to the indictment, Hashimoto, Tamura, and their co-conspirators engaged in the following conduct for the purpose of forming and carrying out the conspiracy:

a. attended meetings and engaged in other communications concerning their sales of, pricing of, and market shares for HDD suspension assemblies to be sold in the United States and elsewhere;

b. agreed during those meetings and communications to refrain from competing on prices for and stabilize, maintain, and fix the prices of HDD suspension assemblies to be sold in the United States and elsewhere;

c. agreed during those meetings and communications to allocate their respective market shares for HDD suspension assemblies to be sold in the United States and elsewhere;

⁴⁹ *Id.* ¶ 37.

⁵⁰ *Id.* ¶ 90.

d. discussed and exchanged HDD suspension assemblies pricing information, including anticipated pricing quotes, in the United States and elsewhere;

e. communicated with sales employees in the United States and elsewhere and directed those employees to exchange HDD suspension assemblies pricing information, including anticipated pricing quotes, in the United States and elsewhere;

f. relied on their agreements not to compete and used the exchanged pricing information to inform their negotiations with the U.S. and foreign customers that purchased HDD suspension assemblies and produced hard disk drives for sale in, or delivery to, the United States and elsewhere;

g. sold HDD suspension assemblies in, or for delivery to, the United States and elsewhere at collusive and noncompetitive prices; and

h. accepted payment for HDD suspension assemblies sold in, or for delivery to, the United States and elsewhere at collusive and noncompetitive prices.⁵¹

G. The Structure and Characteristics of the HDD Suspension Assembly Market Support the Alleged Conspiracy

176. Like other electronic product markets that have been the subject of antitrust investigations (cathode ray tubes, lithium ion batteries, and capacitors), the HDD suspension assemblies market has all the hallmark features that make it susceptible to collusion. Together, these characteristics support the ability of the cartel to increase prices of Suspension Assemblies above competitive levels. Some of the relevant characteristics include: the existence of barriers to entry, the lack of an alternative source of supply of Suspension Assemblies, and regular meetings and interactions that allowed Defendants to exchange information, come to agreements, and monitor cheating.

1. The HDD Suspension Assemblies Market Has High Barriers to Entry

177. A collusive arrangement that raises product prices above competitive levels would, under basic economic principles, attract new entrants to the market seeking to benefit from the

⁵¹ Indictment at ¶ 8, *United States v. Hitoshi Hashimoto and Hiroyuki Tamura*, No. 3:20-cr-00070-JD (N.D. Cal. Feb. 13, 2020).

1 supra-competitive pricing. Where, however, there are significant barriers to entry, new entrants are
 2 much less likely to enter the market. Thus, barriers to entry help facilitate the formation and
 3 maintenance of cartels.

4 178. This is particularly true here where manufacturing HDD suspension assemblies
 5 requires the ability to produce precision assemblies in sufficient volume. As Defendant HTI
 6 conceded, “We believe that the number of entities that have the technical capability and capacity
 7 for producing precision suspension assemblies or components in large volumes will remain
 8 small.”⁵²

9 179. Moreover, increased demand for other types of data storage technology, such as
 10 those that utilize flash memory, limit opportunities for new entrants to the HDD suspension
 11 assembly market, which caters to hard disk drives.⁵³

12 180. In addition, heavy capital investments are required in order to enter the market. For
 13 example, HTI noted that it spent nearly \$50 million between 2012 and 2014 on research and
 14 development.⁵⁴

15 181. Defendants also own the majority of the patents for HDD suspension assemblies.
 16 These patents place a significant and costly burden on potential new entrants, which must avoid
 17 infringing on the patents when entering the market with a new product. In connection with the
 18 conspiracy, Defendants discussed using their joint intellectual property to preclude entry by at least
 19 one upstart competitor.

20 **2. The HDD Suspension Assemblies Market is Highly Concentrated**

21 182. Price fixing is when participants in a market band together to artificially set the price
 22 of some good or service. When a price-fixing conspiracy is successful, the consumer has no choice
 23 but to accept the higher prices or lower quality goods. The more concentrated the market, the easier

24 ⁵² *Hutchinson Shares Extend Slide on Continued FTC Antitrust Review*, THESTREET (Jan. 5,
 25 2016), available at <https://www.thestreet.com/story/13412469/1/hustchinson-shares-keep-falling-on-extended-ftc-antitrust-review.html>.

26 ⁵³ *Id.*

27 ⁵⁴ See HTI Form 10-K for fiscal year ending September 28, 2014, available at
 28 http://www.annualreports.com/HostedData/AnnualReportArchive/h/NASDAQ_HTCH_2014.pdf.

1 it is for the market participants to come together to set prices. The Suspension Assembly market is
2 highly concentrated, with Defendants holding a lion's share of the market.

3 183. A process of market consolidation of the HDD suspension assembly market began
4 in the 1990s. By the mid-1990s, the market had already become concentrated with HTI becoming
5 the main producer of HDD suspension assemblies, holding at least a 65% market share and
6 generating approximately \$450 million per year in revenue.⁵⁵

7 184. Over the past two decades, this trend has been further aggravated by two factors: (a)
8 further consolidation among HDD suspension assembly manufacturers, and (b) the vertical
9 integration of companies like TDK that formerly depended on independent component suppliers in
10 their manufacturing of HDD suspension assemblies.

11 185. In recent years, market consolidation has continued to the point where globally,
12 there are now only two major suppliers of HDD suspension assemblies: TDK and NHK Spring.

13 186. Defendants knew that this consolidation of the HDD suspension assembly market
14 would enable them to increase prices rather than expand market share. As one senior executive of
15 MPT explained: "Once we are down to 2 suppliers, then we need to concentrate on margin more
16 and less on volume."

17 187. In 2004, HTI held a 63% share of the HDD suspension assembly market and MPT
18 held 18%.⁵⁶

19 188. In 2005, three companies—HTI, NHK Spring, and MPT—collectively controlled
20 approximately 97% of the global HDD suspension assembly market. HTI held a 55% market share,
21 NHK Spring held a 22% market share, and MPT, created through the merger 2005 merger between
22 the Data Storage Division of Magnecomp International Ltd. and KR Precision Public Company,⁵⁷

23
24 ⁵⁵ Hutchinson Technology Incorporated, 5th Annual Technology Conference PowerPoint,
25 available at http://media.corporate-ir.net/media_files/irol/61/61195/presentations/htch_51403.pdf
(last visited Oct. 10, 2019).

26 ⁵⁶ Chris Prystay, *Why Disk-Drive Parts Makers in Singapore Look Attractive*, Wall Street Journal,
Jan. 6, 2004, available at <https://www.wsj.com/articles/SB107332640744760100>.

27 ⁵⁷ News Release, KR Precision PCL, *KR Precision Implements New Management Structure and*
28 *Appoints New Director*, available at <http://www.idema.org/wp-content/downloads/1171.doc>.

1 held a 20% market share.⁵⁸

2 189. In 2007, TDK announced its acquisition of a majority share of MPT. TDK acquired
3 a formerly independent HDD suspension assembly manufacturer in 2007 and had fully integrated
4 that acquisition by 2009.

5 190. By 2012, TDK, NHK Spring, and HTI collectively controlled 96% of the global
6 market.⁵⁹

7 191. In November 2015, TDK announced its acquisition of HTI. The acquisition was
8 completed in October 2016. Following the acquisition, TDK's market share grew to 55-60%, and
9 TDK noted that NHK Spring was its only competitor in the global market for HDD suspension
10 assemblies.⁶⁰ Prior to the acquisition, HTI had gone through its own process of consolidation and
11 was a principal supplier of HDD suspension assemblies to Western Digital (headquartered in San
12 Jose, CA); Seagate (Cupertino, CA); and SAE/TKD (Tokyo, Japan). That HTI business is now
13 contained within the TDK family.

14 3. Market Concentration on the "Buy" Side

15 192. In the 1980s, the HDD market was quite competitive with more than 20 suppliers.
16 But by 2005, there were only five major producers left in the market: Western Digital Corporation
17 ("Western Digital"), Seagate Technology, LLC ("Seagate"), Toshiba Electronics & Device Storage
18 Corporation ("Toshiba"), Hitachi Global Storage Technologies ("Hitachi"), and Samsung
19 Electronics Co. ("Samsung").⁶¹ By 2012, that number dwindled to three, as Seagate acquired
20 Samsung's HDD business in 2011 and Western Digital acquired Hitachi's HDD business in 2012.

21 193. Figure 5 below identifies the relative market shares of Seagate, Western Digital, and
22 Toshiba for 15 quarters during 2012-16:

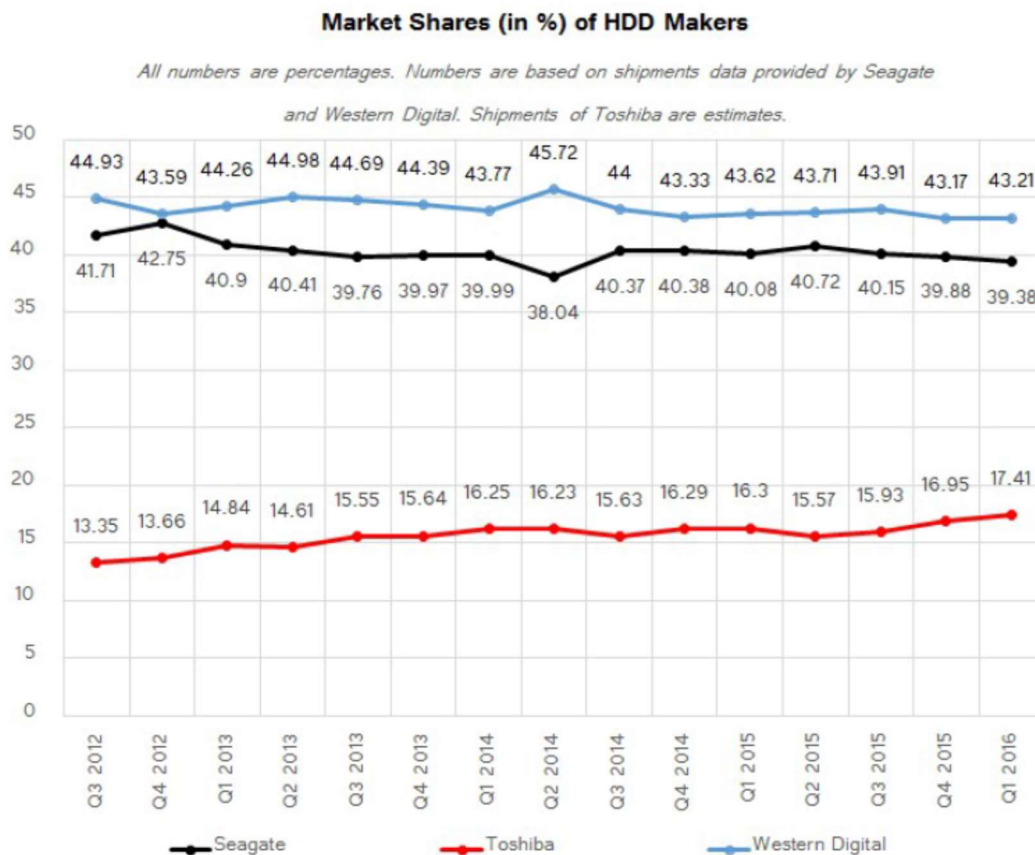
23 ⁵⁸ MPT, Form 56-1, Part 3, *Business Operation of MPT and its Subsidiaries*, at 10.

24 ⁵⁹ Dr. R. Castellano, *The Dynamics of the HDD Industry and Its Impact on CMP*, at 9, *available*
25 *at* <https://pdfs.semanticscholar.org/c293/573aec70fec1d3abcd79f1e86bcd005c044.pdf>

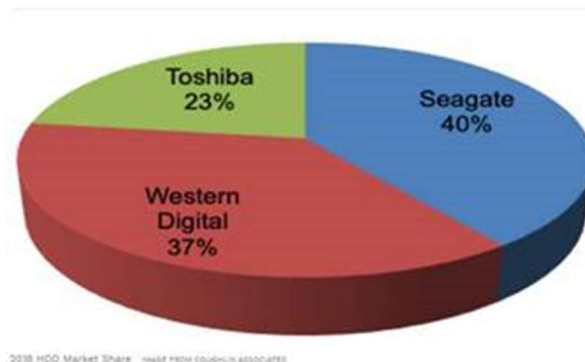
26 ⁶⁰ TDK Annual Report 2017, at 45.

27 ⁶¹ My Data Recovery Lab, *Consolidation of Hard Disk Drive Makers (Part 5) – Into The Future*,
28 (March 3, 2015), *available at* <https://mydatarecoverylab.com/consolidation-of-hard-disk-drive-makers-part-5-into-the-future/>.

(Figure 5)



194. As of 2017, estimated market shares for Seagate, Western Digital, and Toshiba were approximately 40%, 37%, and 23% respectively.⁶²

(Figure 6)⁶³

⁶² *HDD Growth in Nearline Markets*, Forbes (Feb. 5, 2018), available at <https://www.forbes.com/sites/tomcoughlin/2018/02/05/hdd-growth-in-nearline-markets/#6c4e88292997>.

⁶³ Tom Coughlin, *2018 Hard Disk Drive Results*, Forbes (Feb. 4, 2019), available at

1 195. All else equal, large buyers possess market power to negotiate lower prices from
2 sellers. Price-fixing conspiracies limit that market power. The existence of a small number of large
3 buyers made it easier for Defendants to exchange pricing information and otherwise create,
4 facilitate, and enforce market-allocation agreements.

5 196. For instance, beginning in April 2009, Toshiba procured supplies from SAE, NHK
6 Spring, MPT, and NAT. While NHK Spring, MPT, and NAT directly sold HDD suspension
7 assemblies, SAE procured HDD suspension assemblies (generally from its affiliate MPT) and
8 incorporated them into other HDD components. Toshiba negotiated price directly with NHK Spring
9 for purchases from NHK Spring and NAT, and the price with MPT for purchases from MPT and
10 SAE. As NHK knew, “MPT decides [SAE’s Suspension Organization’s] suspension price and SAE
11 does not get involved in the decisions.” During this period, Defendants coordinated and agreed
12 upon their prices to Toshiba.

13 197. Because of the limited number of customers in the market, the conspiracy alleged
14 herein enabled Defendants to coordinate and agree upon pricing. As an example, in March 2009,
15 Magnecomp and MPT communicated with their affiliate SAE to obtain information about NHK
16 Spring’s pricing to Hitachi. In December 2010, recently-indicted NHK Spring executive Hiroyuki
17 Tamura informed a senior executive of MPT that NHK Spring would follow SAE’s pricing to
18 Samsung and Toshiba. The following month, NHK Spring and SAE met to discuss pricing to
19 Toshiba.

20 198. The limited number of customers also facilitated Defendants’ allocation agreements.
21 As an example, in or about April 2008, MPT held strategy meetings with SAE to allocate customers.
22 MPT agreed not to quote pricing for a particular HDD suspension assembly project directly to
23 Samsung or Western Digital, instead allowing SAE to quote pricing for components that
24 incorporated MPT’s HDD suspension assemblies to those customers.

25 **4. Homogeneity of Products and Inelasticity of Demand**

26 199. HDD suspension assemblies are commodity-like products that are interchangeable

27 <https://www.forbes.com/sites/tomcoughlin/2019/02/04/2018-hard-disk-drive->
28 [results/#d1ba69045a76](https://www.forbes.com/sites/tomcoughlin/2019/02/04/2018-hard-disk-drive-results/#d1ba69045a76).

1 at the design stage among products of the same type and across manufacturers. One Defendant's
 2 product for a particular application is substitutable for another Defendant's during the design stage.
 3 Because of the commodity-like nature of the products, suspension assembly manufacturers
 4 typically did not have sole-source agreements with HDD manufacturers, except for certain legacy
 5 programs. Forming and sustaining a cartel when the product in question is commodity-like makes
 6 it easier to agree on prices to charge and to monitor those prices once an agreement is formed.

7 200. "Elasticity" describes the sensitivity of supply and demand to changes in one or the
 8 other such that demand is "inelastic" if an increase in the price of a product results in only a small
 9 decline in the quantity sold of that product, if any, such that customers have nowhere to turn for
 10 alternative, cheaper products of similar quality and so continue to purchase despite a price increase.

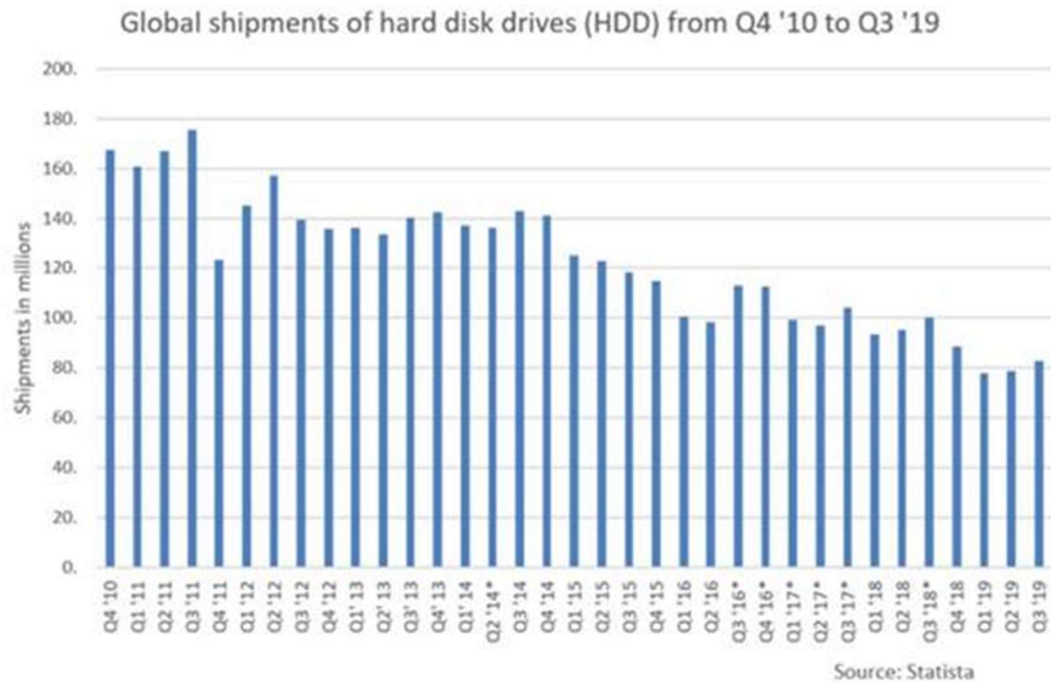
11 201. For a cartel to profit from raising prices above competitive levels, demand must be
 12 relatively inelastic at competitive prices. Otherwise, increased prices would result in declining
 13 sales, revenues and profits, as customers purchased substitute products or declined to buy
 14 altogether. Inelastic demand is a market characteristic that facilitates collusion, allowing producers
 15 to raise their prices without triggering customer substitution and lost sales revenue.

16 202. Demand for HDD suspension assemblies is highly inelastic because there are no
 17 close substitutes for these products. In addition, customers must purchase HDD suspension
 18 assemblies as an essential part of an HDD, or a product containing an HDD, even if the prices are
 19 at supra-competitive level.

20 5. Market Maturity and Declining Demand

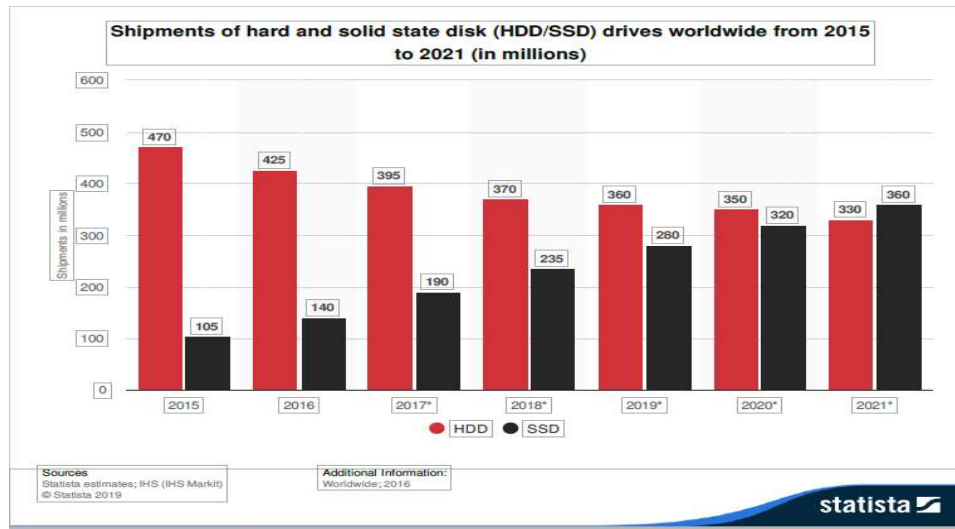
21 203. There is declining demand in the HDD suspension assembly market, characterized
 22 by slim profit margins, which creates a motivation to collude. Demand for HDDs and therefore for
 23 suspension assemblies experienced a general downward trend during the Class Period.⁶⁴ This
 24 makes the formation of an effective collusive arrangement more likely because it provides a greater
 25 incentive for firms to avoid price competition.

26 _____
 27 ⁶⁴ *Global shipments of hard disk drives (HDD) from 4th quarter 2010 to 3rd quarter 2019 (in*
 28 *millions)*, STATISTA, available at <https://www.statista.com/statistics/275336/global-shipment-figures-for-hard-disk-drives-from-4th-quarter-2010/> (last visited Dec. 27, 2019).

(Figure 7)⁶⁵

204. In addition, increased demand for other types of data storage technology, such as those that utilize solid state storage or flash memory, has limited growth opportunities for HDD-based storage.

⁶⁵ Global shipments of hard disk drives (HDD) from 4th quarter 2010 to 3rd quarter 2019 (in millions), STATISTA, available at <https://www.statista.com/statistics/275336/global-shipment-figures-for-hard-disk-drives-from-4th-quarter-2010/> (last visited Dec. 27, 2019).

(Figure 8)⁶⁶

6. Defendants Maintained Close Business Relationships

205. For example, until March 2015, TDK and NHK Spring—two of the only three major competitors in the suspension assembly market—maintained a joint venture to manufacture suspension assemblies.⁶⁷ Specifically, TDK’s wholly owned subsidiary SAE and NHK Spring operated a joint venture, NAT, to manufacture HDD suspension assemblies.⁶⁸ While operating as a joint venture, NAT served as a vehicle to facilitate communications between and among Defendants. As the majority owner of NAT, NHK Spring was also able to, and did, communicate NAT’s sales plans to MPT.

⁶⁶ *Shipments of hard and solid (HDD/SSD) drives worldwide from 2015 to 2021 (in millions)*, STATISTA, available at <https://www.statista.com/statistics/285474/hdds-and-ssds-in-pcs-global-shipments-2012-2017/> (last visited Jan. 7, 2020).

⁶⁷ TDK Press Release, *TDK Subsidiary dissolve Joint Venture of HDD Suspension Manufacturing Company* (Apr. 1, 2014), available at https://www.tdk.com/corp/en/news_center/press/201504011768.htm.

⁶⁸ See *TDK Subsidiary Dissolve Joint Venture of HDD Suspension Manufacturing Company*, available at https://www.tdk.com/corp/en/news_center/press/201504011768.htm; Hutchinson 2012 Form 10-K, at 4 (“Our principal competitors for suspension assemblies are Nihon Hatsujo Kabusikigaisha (‘NHK’), Magnecomp Precision Technology Public Company Limited (‘MPT’), a subsidiary of TDK Corporation, and NAT Peripheral (H.K.) Co., Ltd. (a joint venture of NHK and TDK Corporation).”).

206. Throughout the Class Period, SAE was also one of HTI's top three customers.⁶⁹ In addition, Defendants also cross-licensed each other's products, including HDD suspension assemblies.⁷⁰

207. Opportunities to effectuate the conspiracy also took place at meetings and social events of IDEMA, the International Disk Drive Equipment & Materials Association, to which NHK Spring, SAE, and TDK all belong. IDEMA has two operating subsidiaries, one in Japan and another in the United States. Among other things, IDEMA sponsors Diskcon industry conferences, such as the one held in Japan in July, 2010 and those held or to be held in the United States in October, 2011 and October of this year. One of the asserted benefits to belonging to IDEMA is that it offers "unique networking opportunities for all industry participants."

H. Distribution Chain/Sale to Plaintiffs and the End-Users They Represent

208. The distribution chain for HDD suspension assemblies is simple and highly competitive.

209. Defendants sold the vast majority of HDD suspension assemblies that were used in Standalone Storage Devices and Computers to a handful of HDD manufacturers (i.e., Seagate, Western Digital, Toshiba). HDD manufacturers incorporated the suspension assemblies into HDDs. Some HDDs were sold as bare HDDs (i.e., an HDD that has not been incorporated into another product), while others were incorporated into storage devices or computers by a small number of OEMs. These finished goods were then sold to end-users either directly or via distributors or resellers.

210. Most HDDs only travel through a few levels of a straightforward distribution chain: HDD makers, firms that use HDDs as inputs for finished goods, and firms that distribute and resell finished goods. Relatively few firms account for the majority of HDD and finished goods

⁶⁹ See, e.g., Hutchinson 2008 Form 10-K, at 5, 2012 Form 10-K, at 4, and 2015 Form 10-K, at 4. In 2015, Hutchinson's three largest customers were Western Digital, Seagate, and SAE Magnetics, representing 52%, 27%, and 16% of net sales, respectively.

⁷⁰ See *Hutchinson, Magnecomp Drop Lawsuits, Cooperate*, Minneapolis/St. Paul Business Journal (Dec. 3, 2001), available at <https://www.bizjournals.com/twincities/stories/2001/12/03/daily8.html>.

1 manufacturing.

2 211. During the Class Period, end-users purchased HDDs either directly from HDD
3 manufacturers (e.g., Western Digital) or from resellers (e.g., Best Buy, Newegg). End-users also
4 purchased Computers and other storage devices either from finished product OEMs (e.g., Dell,
5 Apple) or from resellers (e.g., Best Buy, Newegg).

6 **I. The Markets for Suspension Assemblies, HDDs, and Products Incorporating**
7 **HDDs**

8 212. The markets for HDDs and HDD suspension assemblies are inextricably linked and
9 intertwined because the market for HDD suspension assemblies exists to serve the HDD market.
10 Without the HDDs, the HDD suspension assemblies have little to no value because they have no
11 independent utility. Similarly, HDDs cannot read and write data without suspension assemblies.

12 213. Defendants recognize that the market for suspension assemblies and the markets for
13 HDD and the various finished product applications are inseparable in that one would not exist
14 without the other. For this reason, Defendants monitored the demand and prices for HDDs,
15 computers, and other finished production applications. For example, MPT subscribed to the
16 quarterly reports of HDD shipments prepared by Techno Systems Research Co., Ltd. from at least
17 2008 to at least 2016. The quarterly reports list HDD OEM trends by application type and storage
18 size, HDD Average Selling Price (ASP) in U.S. dollars, shipment trends, and HDD makers' profits
19 & loss results. Key players in the conspiracy, including Albert Ong, Rick McHone, Steve Misuta,
20 and Arun Dhawan, routinely used such reports to inform their business strategies.

21 214. Defendants also travelled to the United States to visit OEMs that incorporate HDDs
22 into finished products for end-use markets. For example, an NHK "June 2016 US Trip Report"
23 indicates that NHK employees had meetings with HP, Dell, and NetApp to "get HDD Users'
24 situation."⁷¹

25 215. Defendants also used industry reports and internal analyses to track the street, or
26 retail, prices of HDDs.⁷² Notably, Defendants monitored demand and pricing for Standalone

27 ⁷¹ NHKS-M-00004748 at slide 2; *see also id.* at slide 6 (showing enterprise OEM prices for HDDs).

28 ⁷² *See, e.g.,* NHKI-M-00097042 at 047 (July 2015 presentation by NHK Disk Drive Suspension & Component Sales showing external HDD retail prices in 2013-2015 based on "US BestBuy retail

Storage Devices and HDDs used in Computers and other applications.⁷³ Active street price monitoring underscores that Defendants are aware of the connection between the price charged to direct purchasers and the amount paid by end-users.

VII. THE INFLATED PRICES OF SUSPENSION ASSEMBLIES WERE PASSED THROUGH TO PLAINTIFFS AND THE END-USERS THEY REPRESENT

216. Defendants' conspiracy to fix prices of, and allocate market shares for, suspension assemblies harmed Plaintiffs and the End-User Classes because they paid higher prices for Standalone Storage Devices and Computers than they would have in the absence of Defendants' conspiracy.

217. Suspension assemblies are critical components of an HDD. Multiple suspension assemblies (up to 12) are used in every HDD. As the number of platters and storage capacity of an HDD increase, the number of and cost of suspension assemblies used therein increases as well. According to Seagate, suspension assemblies are either the highest cost components, or one of the highest cost components in an HDD. Suspension assemblies comprise approximately 5-10% or more—up to 15% in some instances—of the cost of an HDD.

218. HDDs and the suspension assemblies used in them are also critical components of Computers. As the storage capacity and cost of an HDD used in a computer increases, the cost of the computer increases. HDDs are one of the highest cost components in a computer, and are therefore a significant cost component of Computers.

A. Suspension Assemblies Are Commodity-Like Products That Are Physically Traceable Throughout the Distribution Chain

219. Suspension assemblies are commodity-like products with functionally equivalent

prices), 043(showing production volumes of desktop and laptop PCs), and 045 (showing OEM HDD pricing trends).

⁷³ See, e.g., NHKI-M-00096374 (May 9, 2016 PowerPoint presentation by NHK to Western Digital in San Jose analyzing demand and shipment volume for nearline, desktops, mobile devices, and servers and showing numbers of Suspension Assemblies per finished product, as well as mobile OEM HDD prices); TDKHDD000209143 (Industry report by IDC titled "Worldwide Hard Disk Drive Forecast Update, 2015-2019" showing shipment volumes of PCs, enterprise systems, personal storage devices, video surveillance systems, and consumer electronic products that use HDDs and listing ASPs for HDDs used in desktop PCs, enterprise systems, personal storage devices, consumer electronics, and video surveillance systems from 2014 through 2019).

1 products available from Defendants. Defendants manufacture suspension assemblies pursuant to
2 standard specifications. HDD manufacturers generally source suspension assemblies from multiple
3 Defendants. It is common for multiple suppliers of suspension assemblies to be qualified for a
4 specific HDD project. The commodity nature of suspension assemblies, and in particular the
5 interchangeability of suspension assemblies between Defendants made it easier for Defendants to
6 agree on prices and also increased the likelihood of the pass-through of the overcharges caused by
7 the collusion through the distribution chain.

8 220. When suspension assemblies are purchased as part of a Standalone Storage Device
9 or a Computer, they are distinct, physically discrete components of the disk drive that do not
10 undergo physical alterations as they move through the distribution chain. They are also identifiable
11 by specific, discrete part numbers that permit tracing to Defendants. Each suspension assembly is
12 marked with an English letter identifying the manufacturer: “M” for MPT; “H” for HTI; and “N”
13 for NHK. As a result, suspension assemblies are physically traceable throughout the distribution
14 chain from Defendants to Plaintiffs and members of the Classes.

15 221. Just as suspension assemblies can be physically traced through the supply chain, so
16 can any costs attributable to suspension assemblies in a Standalone Storage Device or Computer be
17 traced through the chain of distribution to Plaintiffs and members of the Classes.

18 **B. Increased Costs Will Be Passed-through to Customers in Competitive Markets**

19 222. When a firm’s costs increase due to an overcharge or increasing raw materials costs,
20 the firm will tend to pass-through the cost increase by raising its price. Otherwise, it would lose
21 money on each sale and be driven out of business. Similarly, when a firm’s costs decrease, for
22 example due to improved production efficiency or decreasing energy costs, the firm will tend to
23 pass-through the cost decrease by lowering its price. Otherwise, competitors would be able to
24 undercut its prices, taking market share.

25 223. Economic theory predicts that pass-through occurs at each stage of the
26 manufacturing and distribution process. When the manufacturer faces an industry-wide, non-
27 transitory increase in the cost of inputs, it increases its prices. Similarly, when the distributor (and
28 all its competitors) pays a higher price for the product, it also increases its prices. This process

continues throughout the entire distribution chain.

224. The economic necessity of passing through cost changes increases with the degree of competition a firm faces. Economic theory shows that pass-through is likely to be close to 100% in markets that are highly competitive, as are the levels of the HDD distribution chain. In a highly competitive market, all businesses will set their prices slightly above their costs, resulting in narrow profit margins. If they did not, they would go out of business in the long run either by setting prices too low and losing money on every sale, or setting prices too high and losing business to competitors.

225. Given the highly competitive nature at each level of the distribution chain, economic theory predicts that the prices for Standalone Storage Devices and Computers (i.e., the amount class members pay) increase when suspension assembly prices (i.e. the amount HDD manufacturers pay) increase.

1. The Markets for Manufacturing and Sales of Standalone Storage Devices and Computers with HDDs are Highly Competitive at Each Level of the Distribution Chain

226. Manufacturing of HDDs and finished goods containing them is characterized by intense competition between a small number of companies.

227. Profit margin data for HDD manufacturers show a high degree of price competition.

228. Industry observers characterize price competition among HDD manufacturers during the class period as “fierce.” As Professor Eli Noam (Paul Garrett Professor of Public Policy and Business Responsibility at the Columbia Business School) explained: “The hard disk market has been dominated by a shifting handful of firms providing devices to computer manufacturers with fickle requirements. ... Price competition is fierce, especially since most sales are to a handful of computer makers who themselves are engaged in energetic competition.”⁷⁴

⁷⁴ Noam, Eli M., 2009, Media Ownership and Concentration in America, Oxford University Press, https://books.google.com/books?id=Kd_1STqyGFcC&pg=PA201&lpg=PA201&dq=HDD+manufacturer+seagate+toshiba++western+market+share+2005&source=bl&ots=5tanMzAi5w&sig=ACfU3U35EWAXhTDUq8tZUNrCy-2bHucH5A&hl=en&sa=X&ved=2ahUKEwjItlyD2LXPahXJQc0KHezvBhYQ6AEwCXoECAkQAQ#v=onepage&q&f=false, p. 200.

229. In their peer-reviewed article on the HDD industry, Professors Peter Gourevitch, Roger E. Bohn, and David G. McKendrick of University of California at San Diego concluded that “Hard disk drives are ‘high-tech commodities,’ with intense technological development yet low product differentiation and fierce price competition.”⁷⁵

230. Similarly, Professors Mitsuru Igami and Kosuke Uetake of Yale University conclude in a peer-reviewed article: “HDDs are also one of the simplest products in terms of economics because they are completely undifferentiated product according to Peter Knight, former vice president of Conner Peripherals and Seagate Technology, and former president of Conner Technology.”⁷⁶

231. With respect to the personal computers (PC) market, a report by Standard & Poor’s notes that “price competition has been the hallmark of the PC market. One reason is that PCs have become more commodity-like with the standardization of their primary components.”⁷⁷

232. HDD manufacturers acknowledge that the industry is intensely price competitive and describe a long-term trend of price erosion. According to Seagate, “Our competitors have historically offered new or existing products at lower prices as part of a strategy to gain or retain market share and customers, and we expect these practices to continue. Even during periods when demand for disc drives is growing, our industry is price competitive and vendors experience price erosion over the life of a product. ... We expect that price erosion in our industry will continue for the foreseeable future.”⁷⁸ Seagate also explains: “We compete primarily with manufacturers of hard drives used in the enterprise, client compute and client non-compute applications. ... The markets

⁷⁵ Gourevitch, P., Bohn, R., and McKendrick, D. (2000), Globalization of Production: Insights from the Hard Disk Drive Industry. World Development, vol. 28, pp. 301-319, at 302.

⁷⁶ Igami, M. and Uetake, K. (2019), Mergers, Innovation, and Entry-Exit Dynamics: Consolidation of the Hard Disk Drive Industry, 1996–2016, The Review of Economic Studies, vol. 87 no. 6, at 2682.

⁷⁷ Duque, S. (2010), Standard & Poor’s Industry Surveys: Computers, Hardware – October 28, 2010.

⁷⁸ Seagate Technology, August 1, 2005, Seagate Form 10-K, <https://d18rn0p25nwr6d.cloudfront.net/CIK-0001137789/b2d97347-69a2-4a32-a1f4-43ca47dc9620.pdf>, at 10-11.

1 that we participate in are highly competitive.”⁷⁹ Western Digital similarly acknowledges that, “[t]he
2 hard disk drive industry is intensely competitive, with hard disk drive suppliers competing for sales
3 to a limited number of major customers.”⁸⁰

4 233. Similarly, the OEM and retail markets for Standalone Storage Devices and
5 Computers are subject to vigorous price competition.

6 234. The OEMs and retailers have very thin net margins. They are therefore at the mercy
7 of their component costs, such that increases in the price of Suspension Assemblies lead to quick,
8 corresponding price increases at the OEM and retail levels for HDD and HDD-incorporating
9 products.

10 235. Enterprise HDD storage systems are manufactured by a limited number of
11 companies including BlueArc, Cisco Systems, Dot Hill, EMC, Isilon, LSI, NetApp, Seagate, Sun
12 Microsystems/Oracle, Western Digital, and Xyratex. These companies acknowledge that HDDs are
13 the largest cost components of, and indispensable to, their products. According to Dot Hill, “[h]ard
14 disk drives are a critical component in our AssuredSAN storage array products and can represent
15 30-70% of the cost of such products.”⁸¹ BlueArc notes that, “[t]he largest component of our cost of
16 product revenue is disk drives and disk arrays that we integrate into and sell with our storage
17 systems.”⁸² EMC states, “[a]mong the most important components that we use are disk drives, high
18 density memory components and power supplies.”⁸³

19 236. These manufacturers also recognize the intense price competition for enterprise
20 HDD storage systems. According to NetApp: “We derive a significant portion of our sales from
21 the resale of disk drives as components of our storage systems, and the resale market for hard disk

22 ⁷⁹ Seagate Technology, August 5, 2016, Form 10-K Seagate,
23 <https://d18rn0p25nwr6d.cloudfront.net/CIK-0001137789/00e81fd7-bd56-46ea-89ef-7eb546784769.pdf>, at 12.

24 ⁸⁰ Western Digital Corporation, September 13, 2005, Western Digital Corp Form 10-K,
25 <https://www.sec.gov/Archives/edgar/data/106040/000095013705011286/a12474e10vk.htm>, at 9-10.

26 ⁸¹ <https://www.sec.gov/Archives/edgar/data/1042783/000119312512117255/d280931d10k.htm>,
p. 62.

27 ⁸² <https://www.sec.gov/Archives/edgar/data/1139023/000119312511210940/ds1a.htm>, pp. 20-21.

28 ⁸³ <https://www.sec.gov/Archives/edgar/data/790070/000119312506045961/d10k.htm>, p. 6.

1 drives is highly competitive and subject to intense pricing pressures.”⁸⁴ Dot Hill states, “The storage
 2 market is intensely competitive and is characterized by rapidly changing technology[.]”⁸⁵ LSI
 3 agrees that, “[t]he market for our storage systems products is highly competitive, rapidly evolving
 4 and subject to changing technology, customer needs and new product introductions.”⁸⁶ Xyratex
 5 explains that, “[t]he market for network and storage systems and storage infrastructure products is
 6 competitive, and we expect this competition to increase.”⁸⁷ The company also, “derive[s] a
 7 significant proportion of our sales from the sale of disk drives as components of our enterprise
 8 storage systems and the market is highly competitive and subject to intense pricing pressures.”⁸⁸

9 237. Enterprise HDD storage systems manufacturers acknowledge that they pass
 10 increases and decreases in component prices through to customers. NetApp is clear: “Disks are a
 11 significant component of our storage systems. ... To the extent that disk prices increase or decrease,
 12 we intend to pass along those price increases or decreases to our customers while working to
 13 maintain relatively constant profit margins on our disk drives.”⁸⁹ Dot Hill also states that, “Pricing
 14 pressures exist in the data storage market[.] ... Decreases in component prices are customarily
 15 passed on to customers by storage companies through a continuing decrease in price of storage
 16 hardware systems.”⁹⁰

17 238. Manufacturers of enterprise HDD storage systems are not alone in experiencing
 18 intense price competition. The same is true of Computer OEMs. Acer, Apple, Dell, Gateway,

19 _____
 20 ⁸⁴ <https://www.sec.gov/Archives/edgar/data/1002047/000095013406013059/f21341e10vk.htm>, p.
 21 23.

22 ⁸⁵ [https://www.sec.gov/Archives/edgar/data/1042783/000104278315000017/hill-
 23 20141231x10k.htm](https://www.sec.gov/Archives/edgar/data/1042783/000104278315000017/hill-20141231x10k.htm), p. 16.

24 ⁸⁶ <https://www.sec.gov/Archives/edgar/data/703360/000095012311019787/f57362e10vk.htm>, pp.
 25 8-9.

26 ⁸⁷ <https://www.sec.gov/Archives/edgar/data/1284823/000104746906002205/a2167443z20-f.htm>,
 27 p. 37.

28 ⁸⁸ <https://www.sec.gov/Archives/edgar/data/1284823/000104746912001462/a2207352z20-f.htm>,
 p. 8.

⁸⁹ <https://www.sec.gov/Archives/edgar/data/1002047/000119312512275547/d328654d10k.htm>,
 p. 52.

⁹⁰ <https://www.sec.gov/Archives/edgar/data/1042783/000093639206000221/a18083e10vk.htm>,
 pp. 19-20.

1 Hewlett-Packard, Lenovo, and Toshiba accounted for between 69% and 81% of Computer sales in
 2 the United States for each year of the Class Period. Profit margin data for these OEMs show highly
 3 competitive industry where component price increases are passed-through to purchasers.

4 239. OEMs track even the smallest costs for their Computers, because even the smallest
 5 costs matter collectively. OEMs then set prices based on the total cost of manufacturing their
 6 devices. Because OEMs track costs and use simple rules to set prices, even the smallest price
 7 increases will be passed-through to customers.

8 240. Computer OEMs characterize competition during the Class Period as tough,
 9 aggressive, severe, intense, and fierce:

- 10 • Acer: “The IT industry has reached saturation level and profits are diminishing,
 11 there is tough competition between local and foreign brands.”⁹¹
- 12 • Apple: “The market for personal computers and related software and peripheral
 13 products is highly competitive. ... Over the past several years, price competition in
 14 the market for personal computers has been particularly intense. The Company’s
 15 competitors who sell personal computers based on other operating systems have
 16 aggressively cut prices and lowered their product margins to gain or maintain market
 17 share.”⁹²
- 18 • Lenovo: “The Group operates in a highly competitive industry which faces rapid
 19 changes in market trends, consumer preferences and constantly evolving
 20 technological advances in hardware performance, software features and
 21 functionality. It faces aggressive product and price competition from competitors.”⁹³
- 22 • Toshiba: “The business areas of energy and electronics, the Group’s main business
 23 areas, require highly advanced technology for their operation. At the same time, the
 24

25 ⁹¹[https://static.acer.com/up/Resource/AcerGroup/Investor_Relations/Annual_Reports/20170407/a](https://static.acer.com/up/Resource/AcerGroup/Investor_Relations/Annual_Reports/20170407/annual_reports_2005.pdf)
 26 [nnual_reports_2005.pdf](https://static.acer.com/up/Resource/AcerGroup/Investor_Relations/Annual_Reports/20170407/annual_reports_2005.pdf), p. 29.

27 ⁹² https://www.sec.gov/Archives/edgar/data/320193/000110465905058421/a05-20674_110k.htm,
 28 p. 13.

⁹³ https://investor.lenovo.com/en/publications/reports/ar_1617.pdf, p. 22.

1 Group faces fierce global competition.”⁹⁴

2 241. The primary Computer distributors include Arrow Electronics, Avnet, D&H,
3 Ingram Micro, Synnex, and Tech Data. These companies also operate on a low-margin basis, pass-
4 through cost increases to their customers, and recognize the highly-competitive nature of the
5 market. Arrow explains, “The company operates in a highly competitive environment, both in the
6 United States and internationally.”⁹⁵ Avnet states, “The electronic components industry continues
7 to be extremely competitive.”⁹⁶ According to Ingram Micro, “We continually experience intense
8 competition across all markets for our products and services.”⁹⁷ And Synnex recognizes that, “The
9 market for IT products and services is generally characterized by declining unit prices and short
10 product life cycles. Our overall business is also highly competitive on the basis of price.”⁹⁸

11 242. Major resellers of Standalone Storage Devices and Computers publicly state that
12 they face enormous price competition as well:

- 13 • Amazon: “The worldwide marketplace in which we compete is evolving rapidly and
14 intensely competitive, and we face a broad array of competitors from many different
15 industry sectors around the world.”⁹⁹
- 16 • Best Buy: “While we constantly strive to offer consumers the best value, the retail
17 sector is highly competitive. Price is of great importance to most customers, and
18 price transparency and comparability continues to increase, particularly as a result
19 of digital technology.”¹⁰⁰

20
21 ⁹⁴ https://www.toshiba.co.jp/about/ir/en/finance/ar/ar2012/tar2012e_fr.pdf, p. 13.

22 ⁹⁵ <https://www.sec.gov/Archives/edgar/data/7536/000177547420000003/arw1231201910-k.htm>,
p. 5.

23 ⁹⁶ <https://www.sec.gov/Archives/edgar/data/8858/000000885820000025/avt-20200627x10k.htm>,
p. 5.

24 ⁹⁷ <https://www.sec.gov/Archives/edgar/data/1018003/000101800316000071/im201510k.htm>, pp.
17-18.

25 ⁹⁸ https://www.sec.gov/Archives/edgar/data/1177394/000156459020002467/snx-10k_20191130.htm, p. 28.

26 ⁹⁹ <https://www.sec.gov/Archives/edgar/data/1018724/000101872420000004/amzn-20191231x10k.htm>, p. 4.

27 ¹⁰⁰ <https://www.sec.gov/Archives/edgar/data/764478/000076447820000017/bby->

- Office Depot: “We operate in a highly competitive environment. Our Business Solutions and Retail Divisions compete with office supply stores, wholesale clubs, discount stores, mass merchandisers, online retailers, food and drug stores, computer and electronics superstores and direct marketing companies.”¹⁰¹
- Staples: “Our top priority is to continue to improve the service and value we offer customers in a highly competitive industry.”¹⁰²
- Walmart: “We face strong competition from other retailers and wholesale club operators which could materially adversely affect our financial performance.”¹⁰³

2. Economic and Legal Literature Indicates that Unlawful Overcharges on a Component Will Be Passed-through in Prices for Products Containing that Component

243. The economic and legal literature has recognized that unlawful overcharges in a component normally result in higher prices for products containing that price-fixed component. Two antitrust scholars—Professors Robert G. Harris (Professor Emeritus and former Chair of the Business and Public Policy Group at the Haas School of Business at the University of California at Berkeley) and the late Lawrence A. Sullivan (Professor of Law Emeritus at Southwestern Law School and author of the Handbook of the Law of Antitrust)—have observed that “in a multiple-level chain of distribution, passing on monopoly overcharges is not the exception: it is the rule.”¹⁰⁴

244. As Professor Jeffrey K. MacKie-Mason (Arthur W. Burks Professor for Information and Computer Science and Professor of Economics and Public Policy at the University of Michigan), an expert who presented evidence in a number of indirect purchaser cases involving Microsoft Corporation, said (in a passage quoted in the judicial decision in that case granting class

20200201x10k.htm, p. 7.

¹⁰¹ https://www.sec.gov/Archives/edgar/data/800240/000156459020006770/odp-10k_20191228.htm, p. 8.

¹⁰² <https://www.sec.gov/Archives/edgar/data/791519/000079151917000020/spls10-k01282017.htm>, p. 1.

¹⁰³ <https://www.sec.gov/Archives/edgar/data/104169/000010416920000011/wmtform10-kx1312020.htm>, p. 14.

¹⁰⁴ Robert G. Harris & Lawrence A. Sullivan, *Passing on the Monopoly Overcharge: A Comprehensive Policy Analysis*, 128 U. PA. L. REV. 268, 275 (1979).

certification):

As is well known in economic theory and practice, at least some of the overcharge will be passed on by distributors to end consumers. When the distribution markets are highly competitive, as they are here, all or nearly the entire overcharge will be passed on through to ultimate consumers Both of Microsoft's experts also agree upon the economic phenomenon of cost pass through, and how it works in competitive markets. This general phenomenon of cost pass through is well established in antitrust laws and economics as well.¹⁰⁵

3. The Precise HDD Suspension Assembly Overcharge Passed Through to the Products End-Users Purchased Can Be Measured with Regression Analysis

245. The precise amount of the overcharge impacting the prices of products containing HDD suspension assemblies can be measured and quantified. Commonly used and well-accepted economic models can be used to measure both the extent and the amount of the supra-competitive charge passed through each level in the chain of distribution. Thus, the economic harm to Plaintiffs and class members can be quantified.

246. First, it is well established that producers of a product will pass through variable cost increases (as opposed to increases in fixed costs) to avoid lost profits.¹⁰⁶ Here, HDD suspension assemblies were important variable costs for HDD producers.¹⁰⁷ Second, it is well established that producers of a product will pass through cost increases in inelastic markets.¹⁰⁸ Here, the markets for HDDs were inelastic. Demand in the market for HDDs was derived from consumer demand for Standalone Storage Devices and Computers. Sellers of HDDs could therefore pass through cost

¹⁰⁵ Order re: Class Certification at 13-14, *Coordination Proceedings Special Title (Rule 1550(b)) Microsoft I-V Cases*, No. J.C.C.P. No. 4106, (Cal. Sup. Ct. Aug. 29, 2000).

¹⁰⁶ See, e.g., European Commission, Guidelines for national courts on how to estimate the share of overcharge which was passed on to the indirect purchaser (July 1, 2019) ("Guidelines"), at 17-18, available at https://ec.europa.eu/competition/antitrust/actionsdamages/quantification_en.html. Variable costs are those that change with the level of output, e.g. raw materials. Fixed costs are those that stay constant whatever the quantity of goods or services produced, e.g. rent. Economic theory recognizes that sellers ordinarily take variable costs into account in making price-setting decisions. *Id.* at 45.

¹⁰⁷ See, e.g., Seagate 2015 Annual Report, at 24 (identifying suspension assemblies as among handful of "particularly important" cost components for HDDs).

¹⁰⁸ Guidelines at 17-18. An inelastic market is one in which prices do not significantly affect consumer demand for a product.

1 increases without fear of losing sales. Similarly, OEMs could pass through cost increases without
 2 fear of losing sales. Third, it is well established that where, as here, there is an industry-wide
 3 overcharge, competing purchasers will generally pass through overcharges.¹⁰⁹ Here, the markets
 4 for HDDs were highly competitive. In addition, Defendants' conduct was not directed at just one
 5 HDD purchaser. Defendants sought to, and did, extract an industrywide overcharge. As a result,
 6 HDD manufacturers passed through the market-wide overcharges they paid for HDD suspension
 7 assemblies, and Finished Product manufacturers passed the market-wide overcharges they paid for
 8 HDDs through to their customers. Finally, it is established that firms are more likely to pass through
 9 non-transitory price increases. Here, the alleged conspiracy increased prices for HDD suspension
 10 assemblies over at least a thirteen-year period. These were not transitory increases.

11 247. Economists have developed techniques to isolate and understand the relationship
 12 between one "explanatory" variable and a "dependent" variable in those cases when changes in the
 13 dependent variable are explained by changes in a multitude of variables, even when all such
 14 variables may be changing simultaneously. That analysis—called regression analysis—is
 15 commonly used in the business world, academia, and in litigation to determine the impact of a price
 16 increase on one cost in a product (or service) that is an assemblage of costs. Thus, it is possible to
 17 isolate and identify only the impact of an increase in the price of HDD suspension assemblies on
 18 prices for products containing HDD suspension assemblies even though such products contain a
 19 number of other components whose prices may be changing over time. A regression model can
 20 explain how variation in the price of HDD suspension assemblies affects changes in the price of
 21 assembled products, such as Standalone Storage Devices and Computers. In such models, the price
 22 of HDD suspension assemblies would be treated as an independent or explanatory variable. The

23 ¹⁰⁹ Guidelines at 17-18. In a hypothetical scenario in which a cartel targets just one purchaser, that
 24 purchaser would have to decide whether consumers would switch to its competitors in response to
 25 a price increase passed on by that purchaser. By contrast, when the overcharge is imposed on all
 26 purchasers, they all bear similar cost increases which makes it more attractive for each of those
 27 purchasers to pass-through those increased costs. *Id.*; see also George Kosicki and Miles B. Cahill,
 28 *Economics of cost pass through and damages in indirect purchaser antitrust cases*, The Antitrust
 Bulletin, Vol. 51, No.3/Fall 2006 at 623 ("When all firms in an industry experience a cost increase
 and start to increase prices, the reduction in quantity suffered by any particular firm will be less
 than if it had to raise price in an environment where all other competitor prices are constant.").

1 model can isolate how changes in the price of HDD suspension assemblies impact the price of
 2 products containing HDD suspension assemblies while controlling for the impact of other price-
 3 determining factors. Such models can estimate pass-through rates for each participant at every level
 4 of the distribution chain.

5 248. To the extent that distributors and retailers selling to End-Users or to others in the
 6 distribution chain price their sales as their cost plus a fixed markup, this will create an additional
 7 reason for pass-through to exceed 100 percent through these channels.¹¹⁰ Further, because retailers
 8 ultimately compete with direct sales to purchasers by OEM manufacturers, competitive forces
 9 would likely work to equalize end-purchaser prices between channels, after controlling for the value
 10 of differences in support across different distribution channels. This would tend to push the total
 11 pass-through rate in end-purchaser pricing above 100 percent, since manufacturers could not
 12 sustain a pricing policy to distributors that did not cover their costs, and an additional fixed markup
 13 on top of distributor cost would result in a total pass-through rate to final consumers in excess of
 14 100 percent.

15 249. As a result, the inflated prices of HDD suspension assemblies from Defendants'
 16 anticompetitive practices have been passed on to the Plaintiffs and members of the proposed End-
 17 User Classes by direct-purchaser manufacturers, distributors, and resellers.

18 250. Thus, Plaintiffs and members of the proposed End-User Classes have been forced
 19 to pay supra-competitive prices for Standalone Storage Devices and Computers. These inflated
 20 prices have been passed on to them by direct purchaser manufactures, distributors, and resellers,
 21 injuring Plaintiffs and End-Users in a manner that is traceable through every level of the distribution
 22 chain to the supra-competitive prices for Suspension Assemblies caused by Defendants' collusion.
 23 This is an antitrust injury of the type that the antitrust laws were meant to punish and prevent.

24
 25
 26 ¹¹⁰ For example, if a wholesaler prices its product at manufacturer sales price plus 10 percent, and
 27 a retailer prices its product at wholesale plus 10 percent, the total pass through to the final consumer
 28 will be 121 percent (i.e., 110 percent times 110 percent) of manufacturer sales price. Certain
 distributor costs, like the costs of holding inventory, and "shrinkage," may be approximately
 proportional to the value of the products held, and thus be one factor creating this pricing policy.

VIII. CLASS ACTION ALLEGATIONS

251. Plaintiffs bring this action on behalf of themselves and as a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure seeking damages pursuant to state antitrust, unfair competition, and consumer protection laws as well as common law unjust enrichment on behalf of the following classes (the “Classes”):

All persons and entities who, during the Class Period, in the Indirect Purchaser States¹¹¹ purchased Standalone Storage Devices or Computers, not for resale, which included HDD suspension assemblies that were manufactured or sold by Defendants, any current or former subsidiary of Defendants, or any co-conspirator of Defendants.

252. In the alternative, Plaintiffs bring this action on behalf of themselves and as a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure seeking damages pursuant to state antitrust, unfair competition, and consumer protection laws as well as common law unjust enrichment on behalf of the following classes:

All persons and entities who, during the Class Period, in the Indirect Purchaser States purchased Standalone Storage Devices, not for resale, which included HDD suspension assemblies that were manufactured or sold by Defendants, any current or former subsidiary of Defendants, or any co-conspirator of Defendants.

253. Excluded from the Classes are Defendants, their parent companies, subsidiaries and affiliates, any co-conspirators, federal governmental entities and instrumentalities of the federal government, states and their subdivisions, agencies and instrumentalities, and persons who purchased HDD suspension assemblies directly or for resale.

254. While Plaintiffs do not know the exact number of members of the Classes, Plaintiffs believe there are (at least) thousands of members in each Class.

255. Common questions of law and fact exist as to all members of the Classes. This is particularly true given the nature of Defendants’ conspiracy, which was generally applicable to all members of the Classes, thereby making appropriate relief with respect to the Classes as a whole. Such questions of law and fact common to the Classes include, but are not limited to:

a. Whether Defendants and their co-conspirators engaged in a combination and

¹¹¹ The Indirect Purchaser States are the states listed in the First and Second Claims for Relief.

1 conspiracy among themselves to fix, raise, maintain or stabilize the prices of HDD suspension
2 assemblies sold in the United States;

3 b. The identity of the participants of the alleged conspiracy;

4 c. The duration of the alleged conspiracy and the acts carried out by Defendants and
5 their co-conspirators in furtherance of the conspiracy;

6 d. Whether the alleged conspiracy violated state antitrust, unfair competition, and/or
7 consumer protection laws;

8 e. Whether Defendants unjustly enriched themselves to the detriment of Plaintiffs and
9 members of the Classes, thereby entitling Plaintiffs and members of the Classes to disgorgement
10 of all benefits derived by Defendants;

11 f. Whether the conduct of Defendants and their co-conspirators, as alleged in this
12 Complaint, caused injury to the business or property of Plaintiffs and members of the Classes;

13 g. The effect of the alleged conspiracy on the prices of HDD suspension assemblies
14 sold in the United States during the Class Period;

15 h. Whether Plaintiffs and members of the Classes had any reason to know or suspect
16 the conspiracy, or any means to discover the conspiracy;

17 i. Whether Defendants and their co-conspirators fraudulently concealed the
18 conspiracy's existence from Plaintiffs and members of the Classes; and

19 j. The appropriate class-wide measure of damages for the Classes.

20 256. Plaintiffs' claims are typical of the claims of members of the Classes, and Plaintiffs
21 will fairly and adequately protect the interests of the Classes. Plaintiffs and all members of the
22 Classes are similarly affected by Defendants' wrongful conduct in that they paid artificially inflated
23 prices for HDD suspension assemblies purchased indirectly from Defendants and/or their co-
24 conspirators.

25 257. Plaintiffs' claims arise out of the same common course of conduct giving rise to the
26 claims of the other members of the Classes. Plaintiffs' interests are coincident with, and not
27 antagonistic to, those of the other members of the Classes. Plaintiffs are represented by counsel
28 who are competent and experienced in the prosecution of antitrust and class action litigation.

1 258. The questions of law and fact common to members of the Classes predominate over
 2 any questions affecting only individual members, including legal and factual issues relating to
 3 liability and damages.

4 259. Class action treatment is a superior method for the fair and efficient adjudication of
 5 the controversy, in that, among other things, such treatment will permit a large number of similarly
 6 situated persons to prosecute their common claims in a single forum simultaneously, efficiently and
 7 without the unnecessary duplication of evidence, effort and expense that numerous individual
 8 actions would engender. The benefits of proceeding through the class mechanism, including
 9 providing injured persons or entities with a method for obtaining redress for claims that might not
 10 be practicable to pursue individually, substantially outweigh any difficulties that may arise in the
 11 management of this class action.

12 260. The prosecution of separate actions by individual members of the Classes would
 13 create a risk of inconsistent or varying adjudications, establishing incompatible standards of
 14 conduct for Defendants.

15 **IX. PLAINTIFFS' CLAIMS ARE TIMELY**

16 **A. Defendants Have Engaged in a Continuing Violation.**

17 261. This Complaint alleges a continuing course of unlawful conduct by which
 18 Defendants have inflicted continuing and accumulating harm within the applicable statutes of
 19 limitations.

20 262. Each time Defendants engaged in an unlawful act complained of here, Defendants
 21 undertook an overt act that has inflicted harm on Plaintiffs and other members of the Classes.

22 263. For these reasons, the statutes of limitations have been tolled with respect to the
 23 claims of Plaintiffs and members of the Classes asserted in this Complaint.

24 **B. The Discovery Rule Tolloed the Statute of Limitations.**

25 264. The discovery rule tolled any statute of limitations otherwise applicable to any
 26 claims asserted in this Complaint.

27 265. Plaintiffs and members of the Classes did not discover, and could not have
 28 discovered through the exercise of reasonable diligence, that Defendants entered into a combination

1 and conspiracy to fix prices of, and allocate markets for, HDD suspension assemblies, until July
2 29, 2019, when the DOJ filed criminal charges against NHK Spring for violating Section 1 of the
3 Sherman Act.

4 266. Plaintiffs and members of the Classes had no knowledge of the combination or
5 conspiracy alleged herein, or of facts sufficient to place them on inquiry notice of the claims set
6 forth herein.

7 267. Plaintiffs and members of the Classes are consumers who purchased HDDs for their
8 own use and not for resale. Defendants' conspiracy was elaborate and well-concealed. No
9 information concerning the conspiracy was in the public domain or available to Plaintiffs and
10 members of the Classes. Moreover, Plaintiffs and members of the Classes had no direct contact or
11 interaction with Defendants and had no means from which they could have discovered that
12 Defendants were engaged in the conspiracy combination and conspiracy alleged herein.

13 **C. Fraudulent Concealment Tolled the Statute of Limitations.**

14 268. Defendants' fraudulent concealment tolled the statute of limitations on the claims
15 asserted by Plaintiffs and the Classes.

16 269. Under the fraudulent concealment doctrine, the claims of Plaintiffs and members of
17 the Classes alleged in this Complaint did or will only accrue upon discovery of the Defendants'
18 conspiracy to fix prices of, and allocate markets for, HDD suspension assemblies, as a result of
19 Defendants' concealment of the material facts.

20 270. Plaintiffs and members of the Classes were kept ignorant by Defendants of crucial
21 information required for the prosecution of their claims, without any fault or lack of diligence on
22 their part. Plaintiffs and members of the Classes did not discover, and could not discover through
23 the exercise of reasonable diligence, the existence of the alleged conspiracy alleged.

24 271. Plaintiffs and members of the Classes were unaware of Defendants' unlawful
25 conduct, and did not know that they were paying supra-competitive prices for HDD suspension
26 assemblies throughout the United States during the Class Period. No information, actual or
27 constructive, was ever made available to Plaintiffs and members of the Classes that they were being
28 injured by Defendants' unlawful conduct.

1 272. To the contrary, during the Class Period, Defendants fraudulently concealed their
2 anticompetitive conduct by publicly touting policies to comply with international fair competition
3 laws. For example, in a set of guidelines published on NHK Spring's website, the company stated:

4 Compliance with competition law

5 We shall comply with competition laws of respective country or
6 region (Anti-Monopoly Act, Act against Delay in Payment of
7 Subcontract Proceeds, Etc. to Subcontractors, etc. in Japan), and
8 shall not commit any act such as private monopolization, restriction
of transactions (cartel, bid rigging, etc.), unfair transaction method
and abuse of superior bargaining position.

9 273. Similarly, TDK's Code of Conduct provides:

10 Maintenance and promotion of fair, transparent and free
11 competition

12 It is the TDK Group's basic policy to participate in fair, transparent,
13 and free competition and to carry out appropriate activities in
14 compliance with the competition laws in each country. These laws
are intended to preserve fair and vigorous competition and to prohibit
15 business practices that interfere with competition. For example, the
16 TDK Group shall not engage in cartel acts such as agreeing with
competitors on prices, production volumes (production plans), sales
17 areas, and the like, which are illegal acts and behavior that damages
the reputation of the company. The TDK Group and TDK members
18 shall at all times comply with the letter and spirit of these laws. In
addition, in pursuing profits in the course of carrying out corporate
19 activities, TDK members shall always seek to conduct themselves
with integrity and corporate ethics in mind.

20 274. By its very nature, Defendants' and their co-conspirators' anticompetitive
21 conspiracy was inherently self-concealing. HDD suspension assemblies are not exempt from
22 antitrust regulation and, thus, Plaintiffs and members of the Classes reasonably considered the HDD
23 suspension assemblies industry to be a competitive industry. Accordingly, a reasonable person
24 under the circumstances would not have been alerted to begin to investigate the legitimacy of
25 Defendants' prices for HDD suspension assemblies.

26 275. Defendants actively concealed their conduct. Emails and memoranda containing
27 information from competitors advised recipients to "*handle with care*," "*delete this email and all*
28

1 *other related ones,” “we would be better off not leaving anything in the emails,” “please be*
 2 *careful with the handling [of] the information.”* They also instructed participants in the conspiracy
 3 to avoid mentioning their co-conspirators, *“since it’s a crime.”*

4 276. Because the alleged conspiracy was self-concealing and affirmatively concealed by
 5 Defendants and their co-conspirators, Plaintiffs and members of the Classes had no knowledge of
 6 the alleged conspiracy, or of any facts or information that would have caused a reasonably diligent
 7 person to investigate whether a conspiracy existed until July 29, 2019, when the DOJ filed criminal
 8 charges against NHK Spring for violating Section 1 of the Sherman Act.

9 277. For these reasons, the statute of limitations applicable to Plaintiffs’ and the Classes’
 10 claims was tolled and did not begin to run.

11 **D. The DOJ’s Criminal Proceedings Suspended the Statute of Limitations.**

12 278. Criminal proceedings instituted by the DOJ against NHK Spring and against Hitoshi
 13 Hashimoto and Hiroyuki Tamura also have suspended the running of the statute of limitations
 14 pursuant to Section 5(i) of the Clayton Act, 15 U.S.C. § 16(i). Each of those actions is a “criminal
 15 proceeding ... instituted by the United States to prevent, restrain, or punish violations of” the
 16 Sherman Act. Plaintiffs’ claims are “based in whole or in part on [the] matter complained of” in
 17 the criminal proceedings. Under Section 5(i), the statute of limitations is “suspended during the
 18 pendency” of the criminal proceedings “and for one year thereafter[.]”

19 **X. VIOLATIONS ALLEGED**

20 **FIRST CLAIM FOR RELIEF**

21 **Violation of State Antitrust Statutes (on behalf of Plaintiffs and the Classes)**

22 279. Plaintiffs assert these state law claims on behalf of the Classes.

23 280. Plaintiffs incorporate by reference the allegations in the preceding paragraphs.

24 281. During the Class Period, Defendants and their co-conspirators engaged in a
 25 continuing contract, combination or conspiracy with respect to the sale of HDD suspension
 26 assemblies in unreasonable restraint of trade and commerce and in violation of the various state
 27 antitrust and other statutes set forth below.

28 282. The contract, combination, or conspiracy consisted of an agreement among

1 Defendants and their co-conspirators to fix, raise, inflate, stabilize, and/or maintain at artificially
2 supra-competitive levels the prices for HDD suspension assemblies and to allocate customers for
3 these products in the United States.

4 283. In formulating and effectuating this conspiracy, Defendants and their co-
5 conspirators performed acts in furtherance of the combination and conspiracy, including:
6 participating in meetings and conversations among themselves in the United States and elsewhere
7 during which they exchanged pricing information and agreed to price HDD suspension assemblies
8 at certain levels, and otherwise to fix, increase, inflate, maintain, or stabilize effective prices paid
9 by Plaintiffs and members of the Classes with respect to HDD suspension assemblies sold in the
10 United States; allocating customers and markets for HDD suspension assemblies sold in, or for
11 delivery to, the United States in furtherance of their agreements; and participating in meetings and
12 conversations among themselves in the United States and elsewhere to implement, adhere to, and
13 police the unlawful agreements they reached.

14 284. Defendants and their co-conspirators engaged in the actions described above for the
15 purpose of carrying out their unlawful agreements to fix, maintain, increase, or stabilize prices and
16 to allocate customers with respect to HDD suspension assemblies.

17 285. Defendants' anticompetitive acts described above were knowing and willful and
18 constitute violations or flagrant violations of the following state antitrust statutes.

19 286. Plaintiff Jonathan Rizzo ("**Arizona Plaintiff**") incorporates and realleges each and
20 every allegation set forth in the preceding paragraphs of this Complaint and further alleges as
21 follows:

22 a. Defendants entered into an unlawful agreement in restraint of trade in violation of
23 the **Arizona** Revised Statutes, §§ 44-1401, *et seq.*

24 b. Defendants' combinations or conspiracies had the following effects: (1) HDD
25 suspension assemblies price competition was restrained, suppressed, and eliminated throughout
26 Arizona; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized at
27 artificially high levels throughout Arizona; (3) Arizona Plaintiff and members of the Arizona Class
28 were deprived of free and open competition; and (4) Arizona Plaintiffs and members of the Arizona

1 Class paid supra-competitive, artificially inflated prices for HDD suspension assemblies.

2 b. During the Class Period, Defendants' illegal conduct substantially affected Arizona
3 commerce.

4 c. As a direct and proximate result of Defendants' unlawful conduct, Arizona Plaintiff
5 and members of the Arizona Class were injured in their business and property and are threatened
6 with further injury.

7 d. Accordingly, Arizona Plaintiff and members of the Arizona Class seek all forms of
8 relief available under Ariz. Rev. Stat. §§ 44-1401, *et seq.*

9 287. Plaintiffs Joanna Katcher, Rhonda Glover, James Walnum, and Timothy A. St. Cyr.
10 ("California Plaintiffs") incorporate and reallege each and every allegation set forth in the
11 preceding paragraphs of this Complaint and further allege as follows:

12 a. Defendants entered into an unlawful agreement in restraint of trade in violation of
13 the **California Cartwright Act**, California Business and Professions Code, §§ 16700, *et seq.*

14 b. During the Class Period, Defendants and their co-conspirators entered into and
15 engaged in a continuing unlawful trust in restraint of the trade and commerce described above in
16 violation of Section 16720, California Business and Professions Code. Each Defendant has acted
17 in violation of Section 16720 to fix, raise, stabilize, and maintain prices of, and allocate markets
18 for, HDD suspension assemblies at supra-competitive levels.

19 b. The aforesaid violations of Section 16720, California Business and Professions
20 Code, consisted, without limitation, of a continuing unlawful trust and concert of action among
21 Defendants and their co-conspirators, the substantial terms of which were to fix, raise, maintain,
22 and stabilize the prices of, and to allocate markets for, HDD suspension assemblies.

23 c. For the purpose of forming and effectuating the unlawful trust, Defendants and their
24 co-conspirators have done those things which they combined and conspired to do, including but
25 not limited to the acts, practices and course of conduct set forth above and the following: (1) fixing,
26 raising, stabilizing, and pegging the price of HDD suspension assemblies; and (2) allocating among
27 themselves the production of HDD suspension assemblies.

28 d. The combination and conspiracy alleged herein has had, *inter alia*, the following

1 effects: (1) price competition in the sale of HDD suspension assemblies has been restrained,
2 suppressed, and/or eliminated in the State of California; (2) prices for HDD suspension assemblies
3 sold by Defendants and their co-conspirators have been fixed, raised, stabilized, and pegged at
4 artificially high, non-competitive levels in the State of California and throughout the United States;
5 and (3) those who purchased HDD suspension assemblies have been deprived of the benefit of free
6 and open competition.

7 e. As a direct and proximate result of Defendants' unlawful conduct, California
8 Plaintiffs and members of the California Class were injured in their business and property in that
9 they paid more for HDD suspension assemblies than they otherwise would have paid in the absence
10 of Defendants' unlawful conduct. As a result of Defendants' violation of the Cartwright Act,
11 California Plaintiffs and members of the California Class seek treble damages and their cost of suit,
12 including a reasonable attorney's fee, pursuant to Section 16750(a) of the California Business and
13 Professions Code.

14 288. Plaintiffs John Hinshaw and David Lietz ("**DC Plaintiffs**") incorporate and reallege
15 each and every allegation set forth in the preceding paragraphs of this Complaint and further alleges
16 as follows:

17 a. Defendants entered into an unlawful agreement in restraint of trade in violation of
18 the **District of Columbia** Code Annotated §§ 28-4501, *et seq.*

19 b. Defendants' combinations or conspiracies had the following effects: (1) HDD
20 suspension assemblies price competition was restrained, suppressed, and eliminated throughout the
21 District of Columbia; (2) HDD suspension assemblies prices were raised, fixed, maintained and
22 stabilized at artificially high levels throughout the District of Columbia; (3) DC Plaintiffs and
23 members of the District of Columbia Class were deprived of free and open competition; and (4)
24 DC Plaintiffs and members of the District of Columbia Class paid supra-competitive, artificially
25 inflated prices for HDD suspension assemblies.

26 c. During the Class Period, Defendants' illegal conduct substantially affected District
27 of Columbia commerce.

28 d. As a direct and proximate result of Defendants' unlawful conduct, DC Plaintiffs and

1 members of the District of Columbia Class were injured in their business and property and are
2 threatened with further injury.

3 e. Accordingly, DC Plaintiffs and members of the DC Class seek all forms of relief
4 available under District of Columbia Code Ann. §§ 28-4501, *et seq.*

5 289. Plaintiff Harley Oda (“**Hawaii Plaintiff**”) incorporates and realleges each and every
6 allegation set forth in the preceding paragraphs of this Complaint and further alleges as follows:

7 a. Defendants entered into an unlawful agreement in restraint of trade in violation of
8 the **Hawaii** Antitrust Act, Haw. Rev. Stat. § 480-4.

9 b. Defendants’ combinations or conspiracies had the following effects: (1) HDD
10 suspension assemblies price competition was restrained, suppressed, and eliminated throughout
11 Hawaii; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized at
12 artificially high levels throughout Hawaii; (3) Hawaii Plaintiff and members of the Hawaii Class
13 were deprived of free and open competition; and (4) Hawaii Plaintiff and members of the Hawaii
14 Class paid supra-competitive, artificially inflated prices for HDD suspension assemblies.

15 c. During the Class Period, Defendants’ illegal conduct substantially affected Hawaii
16 commerce.

17 d. As a direct and proximate result of Defendants’ unlawful conduct, Hawaii Plaintiff
18 and members of the Hawaii Class were injured in their business and property and are threatened
19 with further injury.

20 e. Accordingly, Hawaii Plaintiff and members of the Hawaii Class seek all forms of
21 relief available under the Hawaii Antitrust Act.

22 290. Plaintiff Benjamin Allen (“**Iowa Plaintiff**”) incorporates and realleges each and
23 every allegation set forth in the preceding paragraphs of this Complaint and further alleges as
24 follows:

25 a. Defendants entered into an unlawful agreement in restraint of trade in violation of
26 the **Iowa** Code §§ 553.1, *et seq.*

27 b. Defendants’ combinations or conspiracies had the following effects: (1) HDD
28 suspension assemblies price competition was restrained, suppressed, and eliminated throughout

1 Iowa; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized at
 2 artificially high levels throughout Iowa; (3) Iowa Plaintiff and members of the Iowa Class were
 3 deprived of free and open competition; and (4) Iowa Plaintiff and members of the Iowa Class paid
 4 supra-competitive, artificially inflated prices for HDD suspension assemblies.

5 c. During the Class Period, Defendants' illegal conduct substantially affected Iowa
 6 commerce.

7 d. As a direct and proximate result of Defendants' unlawful conduct, Iowa Plaintiff
 8 and members of the Iowa Class were injured in their business and property and are threatened with
 9 further injury.

10 e. Accordingly, Iowa Plaintiff and members of the Iowa Class seek all forms of relief
 11 available under Iowa Code §§ 553.1, *et seq.*

12 291. Plaintiffs Jeeyoon Lee and John R. Shannon III ("**Kansas Plaintiffs**") incorporate
 13 and reallege each and every allegation set forth in the preceding paragraphs of this Complaint and
 14 further alleges as follows:

15 a. Defendants entered into an unlawful agreement in restraint of trade in violation of
 16 the **Kansas** Statutes Annotated, §§ 50-101, *et seq.*

17 b. Defendants' combinations or conspiracies had the following effects: (1) HDD
 18 suspension assemblies price competition was restrained, suppressed, and eliminated throughout
 19 Kansas; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized at
 20 artificially high levels throughout Kansas; (3) Kansas Plaintiffs and members of the Kansas Class
 21 were deprived of free and open competition; and (4) Kansas Plaintiffs and members of the Kansas
 22 Class paid supra-competitive, artificially inflated prices for HDD suspension assemblies.

23 c. During the Class Period, Defendants' illegal conduct substantially affected Kansas
 24 commerce.

25 d. As a direct and proximate result of Defendants' unlawful conduct, Kansas Plaintiffs
 26 and members of the Kansas Class were injured in their business and property and are threatened
 27 with further injury.

28 e. Accordingly, Kansas Plaintiffs and members of the Kansas Class seek all forms of

1 relief available under Kansas Stat. Ann. §§ 50-101, *et seq.*

2 292. Plaintiffs Nate Coffin and James Marean (“**Maine Plaintiffs**”) incorporate and
3 reallege each and every allegation set forth in the preceding paragraphs of this Complaint and
4 further alleges as follows:

5 a. Defendants entered into an unlawful agreement in restraint of trade in violation of
6 the **Maine** Revised Statutes, Maine Rev. Stat. Ann. tit. 10, §§ 1101, *et seq.*

7 b. Defendants’ combinations or conspiracies had the following effects: (1) HDD
8 suspension assemblies price competition was restrained, suppressed, and eliminated throughout
9 Maine; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized at
10 artificially high levels throughout Maine; (3) Maine Plaintiffs and members of the Maine Class
11 were deprived of free and open competition; and (4) Maine Plaintiffs and members of the Maine
12 Class paid supra-competitive, artificially inflated prices for HDD suspension assemblies.

13 b. During the Class Period, Defendants’ illegal conduct substantially affected Maine
14 commerce.

15 c. As a direct and proximate result of Defendants’ unlawful conduct, Maine Plaintiffs
16 and members of the Maine Class were injured in their business and property and are threatened
17 with further injury.

18 d. Accordingly, Maine Plaintiffs and members of the Maine Class seek all relief
19 available under Maine Rev. Stat. Ann. tit. 10, §§ 1101, *et seq.*

20 293. Plaintiffs Yitah Wu and Jordan Leff (“**Michigan Plaintiffs**”) incorporate and
21 reallege each and every allegation set forth in the preceding paragraphs of this Complaint and
22 further alleges as follows:

23 a. Defendants entered into an unlawful agreement in restraint of trade in violation of
24 the **Michigan** Compiled Laws Annotated §§ 445.771, *et seq.*

25 b. Defendants’ combinations or conspiracies had the following effects: (1) HDD
26 suspension assemblies price competition was restrained, suppressed, and eliminated throughout
27 Michigan; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized at
28 artificially high levels throughout Michigan; (3) Michigan Plaintiffs and members of the Michigan

1 Class were deprived of free and open competition; and (4) Michigan Plaintiffs and members of the
 2 Michigan Class paid supra-competitive, artificially inflated prices for HDD suspension assemblies.

3 c. During the Class Period, Defendants' illegal conduct substantially affected
 4 Michigan commerce.

5 d. As a direct and proximate result of Defendants' unlawful conduct, Michigan
 6 Plaintiffs and members of the Michigan Class were injured in their business and property and are
 7 threatened with further injury.

8 e. Accordingly, Michigan Plaintiffs and members of the Michigan Class seek all relief
 9 available under Michigan Comp. Laws Ann. §§ 445.771, *et seq.*

10 294. Plaintiffs Chad Klebs, Pamela Uglem, and Andrew Syverson ("**Minnesota**
 11 **Plaintiffs**") incorporate and reallege each and every allegation set forth in the preceding paragraphs
 12 of this Complaint and further allege as follows:

13 a. Defendants entered into an unlawful agreement in restraint of trade in violation of
 14 the **Minnesota** Annotated Statutes §§ 325D.49, *et seq.*

15 b. Defendants' combinations or conspiracies had the following effects: (1) HDD
 16 suspension assemblies price competition was restrained, suppressed, and eliminated throughout
 17 Minnesota; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized at
 18 artificially high levels throughout Minnesota; (3) Minnesota Plaintiffs and members of the
 19 Minnesota Class were deprived of free and open competition; and (4) Minnesota Plaintiffs and
 20 members of the Minnesota Class paid supra-competitive, artificially inflated prices for HDD
 21 suspension assemblies.

22 c. During the Class Period, Defendants' illegal conduct substantially affected
 23 Minnesota commerce.

24 d. As a direct and proximate result of Defendants' unlawful conduct, Minnesota
 25 Plaintiffs and members of the Minnesota Class were injured in their business and property and are
 26 threatened with further injury.

27 e. Accordingly, Minnesota Plaintiffs and members of the Minnesota Class seek all
 28 relief available under Minnesota Stat. §§ 325D.49, *et seq.*

295. Plaintiff Leslie Working (“**Nebraska Plaintiff**”) incorporates and realleges each and every allegation set forth in the preceding paragraphs of this Complaint and further alleges as follows:

a. Defendants entered into an unlawful agreement in restraint of trade in violation of the **Nebraska** Revised Statutes §§ 59-801, *et seq.*

b. Defendants’ combinations or conspiracies had the following effects: (1) HDD suspension assemblies price competition was restrained, suppressed, and eliminated throughout Nebraska; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized at artificially high levels throughout Nebraska; (3) Nebraska Plaintiff and members of the Nebraska Class were deprived of free and open competition; and (4) Nebraska Plaintiff and members of the Nebraska Class paid supra-competitive, artificially inflated prices for HDD suspension assemblies.

c. During the Class Period, Defendants’ illegal conduct substantially affected Nebraska commerce.

d. As a direct and proximate result of Defendants’ unlawful conduct, Nebraska Plaintiff and members of the Nebraska Class were injured in their business and property and are threatened with further injury.

e. Accordingly, Nebraska Plaintiff and members of the Nebraska Class seek all relief available under Nebraska Revised Statutes §§ 59-801, *et seq.*

296. Plaintiff Michelle Felich and Gregory Painter (“**Nevada Plaintiffs**”) incorporate and reallege each and every allegation set forth in the preceding paragraphs of this Complaint and further alleges as follows:

a. Defendants entered into an unlawful agreement in restraint of trade in violation of the **Nevada** Revised Statutes Annotated §§ 598A.010, *et seq.*

b. Defendants’ combinations or conspiracies had the following effects: (1) HDD suspension assemblies price competition was restrained, suppressed, and eliminated throughout Nevada; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized at artificially high levels throughout Nevada; (3) Nevada Plaintiffs and members of the Nevada Class were deprived of free and open competition; and (4) Nevada Plaintiffs and members of the Nevada

1 Class paid supra-competitive, artificially inflated prices for HDD suspension assemblies.

2 c. During the Class Period, Defendants' illegal conduct substantially affected Nevada
3 commerce.

4 d. As a direct and proximate result of Defendants' unlawful conduct, Nevada Plaintiffs
5 and members of the Nevada Class were injured in their business and property and are threatened
6 with further injury.

7 e. Accordingly, Nevada Plaintiffs and members of the Nevada Class seek all relief
8 available under Nevada Rev. Stat. Ann. §§ 598A.010, *et seq.*

9 297. Plaintiffs Sara Steffen and Matthew Landry ("**New Hampshire Plaintiffs**")
10 incorporate and reallege each and every allegation set forth in the preceding paragraphs of this
11 Complaint and further alleges as follows:

12 a. Defendants entered into an unlawful agreement in restraint of trade in violation of
13 the **New Hampshire** Revised Statutes §§ 356:1, *et seq.*

14 b. Defendants' combinations or conspiracies had the following effects: (1) HDD
15 suspension assemblies price competition was restrained, suppressed, and eliminated throughout
16 New Hampshire; (2) HDD suspension assemblies prices were raised, fixed, maintained and
17 stabilized at artificially high levels throughout New Hampshire; (3) New Hampshire Plaintiffs and
18 members of the New Hampshire Class were deprived of free and open competition; and (4) New
19 Hampshire Plaintiffs and members of the New Hampshire Class paid supra-competitive, artificially
20 inflated prices for HDD suspension assemblies.

21 c. During the Class Period, Defendants' illegal conduct substantially affected New
22 Hampshire commerce.

23 d. As a direct and proximate result of Defendants' unlawful conduct, New Hampshire
24 Plaintiffs and members of the New Hampshire Class were injured in their business and property
25 and are threatened with further injury.

26 e. Accordingly, New Hampshire Plaintiffs and members of the New Hampshire Class
27 seek all relief available under New Hampshire Rev. Stat. Ann. §§ 356:1, *et seq.*

28 298. Plaintiff Christina Cordova ("**New Mexico Plaintiff**") incorporates and realleges

each and every allegation set forth in the preceding paragraphs of this Complaint and further alleges as follows:

a. Defendants entered into an unlawful agreement in restraint of trade in violation of the **New Mexico** Statutes Annotated §§ 57-1-1, et seq.

b. Defendants' combinations or conspiracies had the following effects: (1) HDD suspension assemblies price competition was restrained, suppressed, and eliminated throughout New Mexico; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized at artificially high levels throughout New Mexico; (3) New Mexico Plaintiff and members of the New Mexico Class were deprived of free and open competition; and (4) New Mexico Plaintiff and members of the New Mexico Class paid supra-competitive, artificially inflated prices for HDD suspension assemblies.

c. During the Class Period, Defendants' illegal conduct substantially affected New Mexico commerce.

d. As a direct and proximate result of Defendants' unlawful conduct, New Mexico Plaintiff and members of the New Mexico Class were injured in their business and property and are threatened with further injury.

e. Accordingly, New Mexico Plaintiff and members of the New Mexico Class seek all relief available under New Mexico Stat. Ann. §§ 57-1-1, et seq.

299. Plaintiffs Vincent Cimino and Anthony Cimino ("**New York Plaintiffs**") incorporate and reallege each and every allegation set forth in the preceding paragraphs of this Complaint and further allege as follows:

a. Defendants entered into an unlawful agreement in restraint of trade in violation of the **New York** General Business Laws §§ 340, et seq.

b. Defendants' combinations or conspiracies had the following effects: (1) HDD suspension assemblies price competition was restrained, suppressed, and eliminated throughout New York; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized at artificially high levels throughout New York; (3) New York Plaintiffs and members of the New York Class were deprived of free and open competition; and (4) New York Plaintiffs and members

1 of the New York Class paid supra-competitive, artificially inflated prices for HDD suspension
2 assemblies when they purchased HDDs containing HDD suspension assemblies.

3 c. During the Class Period, Defendants' illegal conduct substantially affected New
4 York commerce.

5 d. As a direct and proximate result of Defendants' unlawful conduct, New York
6 Plaintiffs and members of the New York Class were injured in their business and property and are
7 threatened with further injury.

8 e. The conduct set forth above is a *per se* violation of the Act. Accordingly, New York
9 Plaintiffs and members of the New York Class seek all relief available under New York Gen. Bus.
10 Law §§ 340, *et seq.*

11 300. Plaintiff Thomas Leon Meltzer ("**North Carolina Plaintiff**") incorporates and
12 realleges each and every allegation set forth in the preceding paragraphs of this Complaint and
13 further alleges as follows:

14 a. Defendants entered into an unlawful agreement in restraint of trade in violation of
15 the **North Carolina** General Statutes §§ 75-1, *et seq.*

16 b. Defendants' combinations or conspiracies had the following effects: (1) HDD
17 suspension assemblies price competition was restrained, suppressed, and eliminated throughout
18 North Carolina; (2) HDD suspension assemblies prices were raised, fixed, maintained and
19 stabilized at artificially high levels throughout North Carolina; (3) North Carolina Plaintiff and
20 members of the North Carolina Class were deprived of free and open competition; and (4) North
21 Carolina Plaintiff and members of the North Carolina Class paid supra-competitive, artificially
22 inflated prices for HDD suspension assemblies.

23 c. During the Class Period, Defendants' illegal conduct substantially affected North
24 Carolina commerce.

25 d. As a direct and proximate result of Defendants' unlawful conduct, North Carolina
26 Plaintiff and members of the North Carolina Class were injured in their business and property and
27 are threatened with further injury.

28 e. Accordingly, North Carolina Plaintiff and members of the North Carolina Class seek

1 all relief available under North Carolina Gen. Stat. §§ 75-1, *et seq.*

2 301. Plaintiff Matthew Carlson, Chad Nodland, and Ashely Boswell (“**North Dakota**
3 **Plaintiffs**”) incorporate and reallege each and every allegation set forth in the preceding paragraphs
4 of this Complaint and further alleges as follows:

5 a. Defendants entered into an unlawful agreement in restraint of trade in violation of
6 the **North Dakota** Century Code §§ 51-08.1-01, *et seq.*

7 b. Defendants’ combinations or conspiracies had the following effects: (1) HDD
8 suspension assemblies price competition was restrained, suppressed, and eliminated throughout
9 North Dakota; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized
10 at artificially high levels throughout North Dakota; (3) North Dakota Plaintiffs and members of the
11 North Dakota Class were deprived of free and open competition; and (4) North Dakota Plaintiffs
12 and members of the North Dakota Class paid supra-competitive, artificially inflated prices for HDD
13 suspension assemblies.

14 c. During the Class Period, Defendants’ illegal conduct had a substantial effect on
15 North Dakota commerce.

16 d. As a direct and proximate result of Defendants’ unlawful conduct, North Dakota
17 Plaintiffs and members of the North Dakota Class were injured in their business and property and
18 are threatened with further injury.

19 e. Accordingly, North Dakota Plaintiffs and members of the North Dakota Class seek
20 all relief available under North Dakota Cent. Code §§ 51-08.1-01, *et seq.*

21 302. Plaintiff David Anderson (“**Oregon Plaintiff**”) incorporates and realleges each and
22 every allegation set forth in the preceding paragraphs of this Complaint and further alleges as
23 follows:

24 a. Defendants entered into an unlawful agreement in restraint of trade in violation of
25 the **Oregon** Revised Statutes §§ 646.705, *et seq.*

26 b. Defendants’ combinations or conspiracies had the following effects: (1) HDD
27 suspension assemblies price competition was restrained, suppressed, and eliminated throughout
28 Oregon; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized at

1 artificially high levels throughout Oregon; (3) Oregon Plaintiff and members of the Oregon Class
2 were deprived of free and open competition; and (4) Oregon Plaintiff and members of the Oregon
3 Class paid supra-competitive, artificially inflated prices for HDD suspension assemblies.

4 c. During the Class Period, Defendants' illegal conduct had a substantial effect on
5 Oregon commerce.

6 d. As a direct and proximate result of Defendants' unlawful conduct, Oregon Plaintiff
7 and members of the Oregon Class were injured in their business and property and are threatened
8 with further injury.

9 e. Accordingly, Oregon Plaintiff and members of the Oregon Class seek all relief
10 available under Oregon Revised Statutes §§ 646.705, *et seq.*

11 303. Plaintiff Angela Gardner ("**Rhode Island Plaintiff**") incorporates and realleges
12 each and every allegation set forth in the preceding paragraphs of this Complaint and further alleges
13 as follows:

14 a. Defendants entered into an unlawful agreement in restraint of trade in violation of
15 the **Rhode Island** Antitrust Act, R.I. Gen. Laws §§ 6-36-1, *et seq.*

16 b. Defendants' combinations or conspiracies had the following effects: (1) HDD
17 suspension assemblies price competition was restrained, suppressed, and eliminated throughout
18 Rhode Island; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized
19 at artificially high levels throughout Rhode Island; (3) Rhode Island Plaintiff and members of the
20 Rhode Island Class were deprived of free and open competition; and (4) Rhode Island Plaintiff and
21 members of the Rhode Island Class paid supra-competitive, artificially inflated prices for HDD
22 suspension assemblies.

23 c. During the Class Period, Defendants' illegal conduct had a substantial effect on
24 Rhode Island commerce.

25 d. As a direct and proximate result of Defendants' unlawful conduct, Rhode Island
26 Plaintiff and members of the Rhode Island Class were injured in their business and property and
27 are threatened with further injury.

28 e. Accordingly, Rhode Island Plaintiff and members of the Rhode Island Class seek

1 all relief available under R.I. Gen. Laws §§ 6-36-1, *et seq.*

2 304. Plaintiff Ann Marie Putzier (“**South Dakota Plaintiff**”) incorporates and realleges
3 each and every allegation set forth in the preceding paragraphs of this Complaint and further alleges
4 as follows:

5 a. Defendants entered into an unlawful agreement in restraint of trade in violation of
6 the **South Dakota** Codified Laws §§ 37-1-3.1, *et seq.*

7 b. Defendants’ combinations or conspiracies had the following effects: (1) HDD
8 suspension assemblies price competition was restrained, suppressed, and eliminated throughout
9 South Dakota; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized
10 at artificially high levels throughout South Dakota; (3) South Dakota Plaintiff and members of the
11 South Dakota Class were deprived of free and open competition; and (4) South Dakota Plaintiff
12 and members of the South Dakota Class paid supra-competitive, artificially inflated prices for HDD
13 suspension assemblies.

14 c. During the Class Period, Defendants’ illegal conduct had a substantial effect on
15 South Dakota commerce.

16 d. As a direct and proximate result of Defendants’ unlawful conduct, South Dakota
17 Plaintiff and members of the South Dakota Class were injured in their business and property and
18 are threatened with further injury.

19 e. Accordingly, South Dakota Plaintiff and members of the South Dakota Class seek
20 all relief available under S.D. Codified Laws Ann. §§ 37-1, *et seq.*

21 305. Plaintiffs Alex Nicholson and Yvonne Psychal (“**Tennessee Plaintiffs**”)
22 incorporate and reallege each and every allegation set forth in the preceding paragraphs of this
23 Complaint and further allege as follows:

24 a. Defendants entered into an unlawful agreement in restraint of trade in violation of
25 the **Tennessee** Code Annotated §§ 47-25-101, *et seq.*

26 b. Defendants’ combinations or conspiracies had the following effects: (1) HDD
27 suspension assemblies price competition was restrained, suppressed, and eliminated throughout
28 Tennessee; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized at

1 artificially high levels throughout Tennessee; (3) Tennessee Plaintiffs and members of the
2 Tennessee Class were deprived of free and open competition; and (4) Tennessee Plaintiffs and
3 members of the Tennessee Class paid supra-competitive, artificially inflated prices for HDD
4 suspension assemblies.

5 c. During the Class Period, Defendants' illegal conduct had a substantial effect on
6 Tennessee commerce.

7 d. As a direct and proximate result of Defendants' unlawful conduct, Tennessee
8 Plaintiffs and members of the Tennessee Class were injured in their business and property and are
9 threatened with further injury.

10 e. Accordingly, Tennessee Plaintiffs and members of the Tennessee Class seek all
11 relief available under Tennessee Code Ann. §§ 47-25-101, *et seq.*

12 306. Plaintiffs Doug Fuller, Nicole Laird and Samuel Bringham ("Utah Plaintiffs")
13 incorporate and reallege each and every allegation set forth in the preceding paragraphs of this
14 Complaint and further allege as follows:

15 a. Defendants entered into an unlawful agreement in restraint of trade in violation of
16 the **Utah** Code Annotated §§ 76-10-3101, *et seq.*

17 b. Defendants' combinations or conspiracies had the following effects: (1) HDD
18 suspension assemblies price competition was restrained, suppressed, and eliminated throughout
19 Utah; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized at
20 artificially high levels throughout Utah; (3) Utah Plaintiffs and members of the Utah Class were
21 deprived of free and open competition; and (4) Utah Plaintiffs and members of the Utah Class paid
22 supra-competitive, artificially inflated prices for HDD suspension assemblies.

23 c. During the Class Period, Defendants' illegal conduct had a substantial effect on Utah
24 commerce.

25 d. As a direct and proximate result of Defendants' unlawful conduct, Utah Plaintiffs
26 and members of the Utah Class were injured in their business and property and are threatened with
27 further injury.

28 e. Accordingly, Utah Plaintiffs and members of the Utah Class seek all relief available

1 under Utah Code Annotated §§ 76-10-3101, *et seq.*

2 307. Plaintiff Jonathan Lewis (“**Vermont Plaintiff**”) incorporates and realleges each and
3 every allegation set forth in the preceding paragraphs of this Complaint and further alleges as
4 follows:

5 a. Defendants entered into an unlawful agreement in restraint of trade in violation of
6 the **Vermont** Stat. Ann. 9 §§ 2453, *et seq.*

7 b. Defendants’ combinations or conspiracies had the following effects: (1) HDD
8 suspension assemblies price competition was restrained, suppressed, and eliminated throughout
9 Vermont; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized at
10 artificially high levels throughout Vermont; (3) Vermont Plaintiff and members of the Vermont
11 Class were deprived of free and open competition; and (4) Vermont Plaintiff and members of the
12 Vermont Class paid supra-competitive, artificially inflated prices for HDD suspension assemblies.

13 c. During the Class Period, Defendants’ illegal conduct had a substantial effect on
14 Vermont commerce.

15 d. As a direct and proximate result of Defendants’ unlawful conduct, Vermont Plaintiff
16 and members of the Vermont Class were injured in their business and property and are threatened
17 with further injury.

18 e. Accordingly, Vermont Plaintiff and members of the Vermont Class seek all relief
19 available under Vermont Stat. Ann. 9 §§ 2453, *et seq.*

20 308. Plaintiff Larry Steele (“**West Virginia Plaintiff**”) incorporates and realleges each
21 and every allegation set forth in the preceding paragraphs of this Complaint and further alleges as
22 follows:

23 a. Defendants entered into an unlawful agreement in restraint of trade in violation of
24 the **West Virginia** Code §§ 47-18-1, *et seq.*

25 b. Defendants’ combinations or conspiracies had the following effects: (1) HDD
26 suspension assemblies price competition was restrained, suppressed, and eliminated throughout
27 West Virginia; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized
28 at artificially high levels throughout West Virginia; (3) West Virginia Plaintiff and members of the

1 West Virginia Class were deprived of free and open competition; and (4) West Virginia Plaintiff
2 and members of the West Virginia Class paid supra-competitive, artificially inflated prices for HDD
3 suspension assemblies.

4 c. During the Class Period, Defendants' illegal conduct had a substantial effect on
5 West Virginia commerce.

6 d. As a direct and proximate result of Defendants' unlawful conduct, West Virginia
7 Plaintiff and members of the West Virginia Class were injured in their business and property and
8 are threatened with further injury.

9 e. Accordingly, West Virginia Plaintiff and members of the West Virginia Class seek
10 all relief available under West Virginia Code §§ 47-18-1, *et seq.*

11 309. Plaintiff Seth Swanson ("**Wisconsin Plaintiff**") incorporates and realleges each and
12 every allegation set forth in the preceding paragraphs of this Complaint and further alleges as
13 follows:

14 a. Defendants entered into an unlawful agreement in restraint of trade in violation of
15 the **Wisconsin** Statutes §§ 133.01, *et seq.*

16 b. Defendants' combinations or conspiracies had the following effects: (1) HDD
17 suspension assemblies price competition was restrained, suppressed, and eliminated throughout
18 Wisconsin; (2) HDD suspension assemblies prices were raised, fixed, maintained and stabilized at
19 artificially high levels throughout Wisconsin; (3) Wisconsin Plaintiff and members of the
20 Wisconsin Class were deprived of free and open competition; and (4) Wisconsin Plaintiff and
21 members of the Wisconsin Class paid supra-competitive, artificially inflated prices for HDD
22 suspension assemblies.

23 c. During the Class Period, Defendants' illegal conduct had a substantial effect on
24 Wisconsin commerce.

25 d. As a direct and proximate result of Defendants' unlawful conduct, Wisconsin
26 Plaintiff and members of the Wisconsin Class were injured in their business and property and are
27 threatened with further injury.

28 e. Accordingly, Wisconsin Plaintiff and members of the Wisconsin Class seek all relief

1 available under Wisconsin Stat. §§ 133.01, *et seq.*

2 310. Plaintiffs and members of the Class in each of the above states were injured in their
3 business and property by Defendants' unlawful combination, contract, conspiracy and agreement.
4 Plaintiffs and members of the Class have paid more for HDD suspension assemblies than they
5 otherwise would have paid in the absence of Defendants' unlawful conduct. This injury is of the
6 type the antitrust laws of the above states were designed to prevent and flows from that which
7 makes Defendants' conduct unlawful.

8 311. In addition, Defendants have profited significantly from the aforesaid conspiracy.
9 Defendants' profits derived from their anticompetitive conduct come at the expense and detriment
10 of Plaintiffs and members of the Class.

11 312. Accordingly, Plaintiffs and members of the Class in each of the above jurisdictions
12 seek damages (including statutory damages where applicable), to be trebled or otherwise increased
13 as permitted by a particular jurisdiction's antitrust law, and costs of suit, including reasonable
14 attorneys' fees, to the extent permitted by the above state laws.

15 **SECOND CLAIM FOR RELIEF**
16 **Violation of State Consumer Protection Statutes**
(on behalf of Plaintiffs and the Classes)

17 313. Plaintiffs assert these state law claims on behalf of the Classes.

18 314. Plaintiffs incorporate by reference the allegations in the preceding paragraphs.

19 315. Defendants engaged in unfair competition or unfair, unconscionable, deceptive or
20 fraudulent acts or practices in violation of the state consumer protection and unfair competition
21 statutes listed below.

22 316. Plaintiff Dustin Lancaster ("**Arkansas Plaintiff**") incorporates and realleges each
23 and every allegation set forth in the preceding paragraphs of this Complaint and further alleges as
24 follows:

25 a. Defendants have engaged in deceptive and unconscionable acts or practices in
26 violation of the **Arkansas** Code Annotated, § 4-88-101, *et seq.*

27 b. Defendants knowingly agreed to, and did in fact, act in restraint of trade or
28 commerce by affecting, fixing, controlling, and/or maintaining at non-competitive and artificially

1 inflated levels, the prices at which HDD suspension assemblies were sold, distributed, or obtained
 2 in Arkansas and took efforts to conceal their agreements from Arkansas Plaintiff and members of
 3 the Arkansas Class.

4 c. The aforementioned conduct on the part of Defendants constituted
 5 “unconscionable” and “deceptive” acts or practices in violation of Arkansas Code Annotated, § 4-
 6 88-107(a)(10).

7 d. Defendants’ unlawful conduct had the following effects: (1) HDD suspension
 8 assemblies price competition was restrained, suppressed, and eliminated throughout Arkansas; (2)
 9 HDD suspension assemblies prices were raised, fixed, maintained, and stabilized at artificially high
 10 levels throughout Arkansas; (3) Arkansas Plaintiff and members of the Arkansas Class were
 11 deprived of free and open competition; and (4) Arkansas Plaintiff and members of the Arkansas
 12 Class paid supra-competitive, artificially inflated prices for HDD suspension assemblies.

13 e. During the Class Period, Defendants’ illegal conduct substantially affected
 14 Arkansas commerce and consumers.

15 f. As a direct and proximate result of the unlawful conduct of Defendants, Arkansas
 16 Plaintiff and members of the Arkansas Class were injured in their business and property and are
 17 threatened with further injury.

18 g. Accordingly, Arkansas Plaintiff and members of the Arkansas Class seek all relief
 19 available under that statute.

20 317. **California Plaintiffs** incorporate and reallege each and every allegation set forth in
 21 the preceding paragraphs of this Complaint and further allege as follows:

22 a. Defendants have engaged in unfair competition or unfair, unconscionable, deceptive
 23 or fraudulent acts or practices in violation of **California** Business and Professions Code § 17200,
 24 *et seq.*

25 b. During the Class Period, Defendants marketed, sold, or distributed HDD suspension
 26 assemblies in California, and committed and continue to commit acts of unfair competition, as
 27 defined by Sections 17200, *et seq.* of the California Business and Professions Code, by engaging
 28 in the acts and practices specified above.

1 c. This claim is instituted pursuant to Sections 17203 and 17204 of the California
2 Business and Professions Code, to obtain restitution from these Defendants for acts, as alleged
3 herein, that violated Section 17200 of the California Business and Professions Code, commonly
4 known as the Unfair Competition Law (the “UCL”).

5 d. Defendants’ conduct as alleged herein violates the UCL. The acts, omissions,
6 misrepresentations, practices and non-disclosures of Defendants, as alleged herein, constituted a
7 common, continuous, and continuing course of conduct of unfair competition by means of unfair,
8 unlawful, and/or fraudulent business acts or practices within the meaning of the UCL., including,
9 but not limited to, the following: (1) the violations of Section 1 of the Sherman Act, as set forth
10 above; (2) the violations of Section 16720, *et seq.*, of the California Business and Professions Code,
11 set forth above.

12 e. Defendants’ acts, omissions, misrepresentations, practices, and non-disclosures, as
13 described above, whether or not in violation of Section 16720, *et seq.*, of the California Business
14 and Professions Code, and whether or not concerted or independent acts, are otherwise unfair,
15 unconscionable, unlawful or fraudulent.

16 f. Defendants’ acts or practices are unfair to consumers of HDD suspension assemblies
17 (or products containing them) in California within the meaning of Section 17200, California
18 Business and Professions Code.

19 g. Defendants’ acts and practices are fraudulent or deceptive within the meaning of
20 Section 17200 of the California Business and Professions Code.

21 h. California Plaintiffs and members of the California Class are entitled to full
22 restitution and/or disgorgement of all revenues, earnings, profits, compensation, and benefits that
23 were obtained by Defendants as a result of such business acts or practices.

24 i. The illegal conduct alleged herein is continuing and there is no indication that
25 Defendants will not continue such activity into the future.

26 j. The unlawful and unfair business practices of Defendants, each of them, have caused
27 and continue to cause California Plaintiffs and members of the California Class to pay supra-
28 competitive and artificially-inflated prices for HDD suspension assemblies (or products containing

1 them). California Plaintiffs and members of the California Class suffered injury in fact and lost
2 money or property as a result of such unfair competition.

3 k. As alleged in this Complaint, Defendants and their co-conspirators have been
4 unjustly enriched as a result of their wrongful conduct and by Defendants' unfair competition.
5 California Plaintiffs and members of the California Class are accordingly entitled to equitable relief
6 including restitution and/or disgorgement of all revenues, earnings, profits, compensation, and
7 benefits that were obtained by Defendants as a result of such business practices, pursuant to the
8 California Business and Professions Code, Sections 17203 and 17204.

9 318. **DC Plaintiffs** incorporate and reallege each and every allegation set forth in the
10 preceding paragraphs of this Complaint and further alleges as follows:

11 a. Defendants have engaged in unfair competition or unfair, unconscionable, or
12 deceptive acts or practices in violation of **District of Columbia** Code § 28-3901, *et seq.*

13 b. DC Plaintiffs and members of the District of Columbia Class purchased HDD
14 suspension assemblies for personal, family, or household purposes.

15 c. Defendants agreed to, and did in fact, act in restraint of trade or commerce by
16 affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the
17 prices at which HDD suspension assemblies were sold, distributed or obtained in the District of
18 Columbia.

19 d. The foregoing conduct constitutes "unlawful trade practices," within the meaning of
20 D.C. Code § 28-3904. DC Plaintiffs were not aware of Defendants' price-fixing conspiracy and
21 was therefore unaware that she was being unfairly and illegally overcharged. There was a gross
22 disparity of bargaining power between the parties with respect to the price charged by Defendants
23 for HDD suspension assemblies. Defendants had the sole power to set that price and DC Plaintiffs
24 had no power to negotiate a lower price. Moreover, DC Plaintiffs lacked any meaningful choice in
25 purchasing HDD suspension assemblies because they were unaware of the unlawful overcharge
26 and there was no alternative source of supply through which DC Plaintiffs could avoid the
27 overcharges. Defendants' conduct with regard to sales of HDD suspension assemblies, including
28 their illegal conspiracy to secretly fix the price of HDD suspension assemblies at supra-competitive

1 levels and overcharge consumers, was substantively unconscionable because it was one-sided and
 2 unfairly benefited Defendants at the expense of DC Plaintiffs and the public. Defendants took
 3 grossly unfair advantage of DC Plaintiffs. The suppression of competition that has resulted from
 4 Defendants' conspiracy has ultimately resulted in unconscionably higher prices for consumers so
 5 that there was a gross disparity between the price paid and the value received for HDD suspension
 6 assemblies.

7 e. Defendants' unlawful conduct had the following effects: (1) HDD suspension
 8 assemblies price competition was restrained, suppressed, and eliminated throughout the District of
 9 Columbia; (2) HDD suspension assemblies prices were raised, fixed, maintained, and stabilized at
 10 artificially high levels throughout the District of Columbia; (3) DC Plaintiffs and members of the
 11 District of Columbia Class were deprived of free and open competition; and (4) DC Plaintiffs and
 12 members of the District of Columbia Class paid supra-competitive, artificially inflated prices for
 13 HDD suspension assemblies.

14 f. As a direct and proximate result of Defendants' unlawful conduct, DC Plaintiffs and
 15 members of the District of Columbia Class were injured and are threatened with further injury.
 16 Accordingly, DC Plaintiffs and members of the District of Columbia Class seek all relief available
 17 under that statute.

18 319. Plaintiffs Jeffrey Greenfield and Ted Ingber ("**Florida Plaintiffs**") incorporate and
 19 reallege each and every allegation set forth in the preceding paragraphs of this Complaint and
 20 further allege as follows:

21 a. Defendants have engaged in unfair competition or unfair, unconscionable, or
 22 deceptive acts or practices in violation of the **Florida** Deceptive and Unfair Trade Practices Act,
 23 Fla. Stat. §§ 501.201, *et seq.*

24 b. Defendants agreed to, and did in fact, act in restraint of trade or commerce by
 25 affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the
 26 prices at which HDD suspension assemblies were sold, distributed or obtained in Florida.

27 c. Defendants concealed, suppressed, and omitted to disclose materials facts to Florida
 28 Plaintiff and members of the Florida Class concerning Defendants' unlawful activities and

1 artificially inflated prices for HDD suspension assemblies. The concealed, suppressed, and omitted
 2 facts would have been important to Florida Plaintiffs and members of the Florida Class as they
 3 related to the cost of HDD suspension assemblies they purchased.

4 d. Defendants misrepresented the real cause of price increases and/or the absence of
 5 price reductions in HDD suspension assemblies by making public statements that were not in
 6 accord with the facts.

7 e. Defendants' statements and conduct concerning the price of HDD suspension
 8 assemblies were deceptive as they had the tendency or capacity to mislead Florida Plaintiffs and
 9 members of the Florida Class to believe that they were purchasing HDD suspension assemblies at
 10 prices established by a free and fair market.

11 f. Defendants' unlawful conduct had the following effects: (1) HDD suspension
 12 assemblies price competition was restrained, suppressed, and eliminated throughout Florida; (2)
 13 HDD suspension assemblies prices were raised, fixed, maintained, and stabilized at artificially high
 14 levels throughout Florida; (3) Florida Plaintiffs and members of the Florida Class were deprived of
 15 free and open competition; and (4) Florida Plaintiffs and members of the Florida Class paid supra-
 16 competitive, artificially inflated prices for HDD suspension assemblies.

17 g. During the Class Period, Defendants' illegal conduct substantially affected Florida
 18 commerce and consumers.

19 h. As a direct and proximate result of Defendants' unlawful conduct, Florida Plaintiffs
 20 and members of the Florida Class were injured and are threatened with further injury. Accordingly,
 21 Florida Plaintiff and members of the Florida Class seek all relief available under that statute.

22 320. **Hawaii Plaintiff** incorporates and realleges each and every allegation set forth in
 23 the preceding paragraphs of this Complaint and further alleges as follows:

24 a. Defendants have engaged in "unfair methods of competition and unfair or deceptive
 25 acts or practices in the conduct of any trade or commerce" within the meaning of **Hawaii** Rev. Stat.
 26 § 480-2. Defendants agreed to, and did in fact, act in restraint of trade or commerce by affecting,
 27 fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the prices at
 28 which HDD suspension assemblies were sold, distributed or obtained in Hawaii.

1 b. Hawaii Plaintiff and members of the Hawaii Class purchased HDD suspension
2 assemblies for personal, family, or household purposes.

3 c. Defendants' unlawful conduct had the following effects: (1) HDD suspension
4 assemblies price competition was restrained, suppressed, and eliminated throughout Hawaii; (2)
5 HDD suspension assemblies prices were raised, fixed, maintained, and stabilized at artificially high
6 levels throughout Hawaii; (3) Hawaii Plaintiff and members of the Hawaii Class were deprived of
7 free and open competition; and (4) Hawaii Plaintiff and members of the Hawaii Class paid supra-
8 competitive, artificially inflated prices for HDD suspension assemblies.

9 d. During the Class Period, Defendants' illegal conduct substantially affected Hawaii
10 commerce and consumers.

11 e. As a direct and proximate result of Defendants' unlawful conduct, Hawaii Plaintiff
12 and members of the Hawaii Class were injured and are threatened with further injury. Accordingly,
13 Hawaii Plaintiffs and members of the Hawaii Class seek all relief available under the statute.

14 321. Plaintiffs Martin Gasman and Brian Fahey ("**Massachusetts Plaintiffs**")
15 incorporate and reallege each and every allegation set forth in the preceding paragraphs of this
16 Complaint and further alleges as follows:

17 a. Defendants have engaged in unfair competition or unfair, unconscionable, or
18 deceptive acts or practices in violation of **Massachusetts** G.L. c. 93A, §2.

19 b. Defendants were engaged in trade or commerce as defined by G.L. c. 93A.

20 c. Defendants agreed to, and did in fact, act in restraint of trade or commerce in a
21 market which includes Massachusetts, by affecting, fixing, controlling and/or maintaining at
22 artificial and non-competitive levels, the prices at which HDD suspension assemblies were sold,
23 distributed, or obtained in Massachusetts and took efforts to conceal their agreements from
24 Massachusetts Plaintiffs and members of the Massachusetts Class.

25 d. Defendants' unlawful conduct had the following effects: (1) HDD suspension
26 assemblies price competition was restrained, suppressed, and eliminated throughout Massachusetts;
27 (2) HDD suspension assemblies prices were raised, fixed, maintained, and stabilized at artificially
28 high levels throughout Massachusetts; (3) Massachusetts Plaintiffs and members of the

1 Massachusetts Class were deprived of free and open competition; and (4) Massachusetts Plaintiffs
 2 and members of the Massachusetts Class paid supra-competitive, artificially inflated prices for
 3 HDD suspension assemblies.

4 e. During the Class Period, Defendants' illegal conduct substantially affected
 5 Michigan commerce and consumers.

6 f. As a direct and proximate result of Defendants' unlawful conduct, Massachusetts
 7 Plaintiff and members of the Massachusetts Class were injured and are threatened with further
 8 injury.

9 g. Certain of Defendants have or will be served with a demand letter in accordance
 10 with G.L. c. 93A, § 9, or, upon information and belief, such service of a demand letter was
 11 unnecessary due to the defendant not maintaining a place of business within the Commonwealth of
 12 Massachusetts or not keeping assets within the Commonwealth.

13 h. Defendants' and their co-conspirators' violations of Chapter 93A were knowing or
 14 willful, entitling Massachusetts Plaintiffs and members of the Massachusetts Class to multiple
 15 damages.

16 322. **Minnesota Plaintiffs** incorporate and reallege each and every allegation set forth in
 17 the preceding paragraphs of this Complaint and further allege as follows:

18 a. Defendants have engaged in unfair competition or unfair, unconscionable, or
 19 deceptive acts or practices in violation of the **Minnesota** Consumer Fraud Act, Minn. Stat. §
 20 325F.68, *et seq.*

21 b. Defendants engaged in the conduct described in this Complaint in connection with
 22 the sale of HDD suspension assemblies in trade or commerce in a market that includes Minnesota.

23 c. Defendants and their co-conspirators agreed to, and did in fact affect, fix, control,
 24 and/or maintain, at artificial and non-competitive levels, the prices at which HDD suspension
 25 assemblies were sold, distributed, or obtained in Minnesota, which conduct constituted unfair
 26 practices in that it was unlawful under federal and state law, violated public policy, was unethical,
 27 oppressive and unscrupulous, and caused substantial injury to Minnesota Plaintiffs and members
 28 of the Minnesota Class.

1 d. Defendants concealed, suppressed, and omitted to disclose material facts to
 2 Minnesota Plaintiffs and members of the Minnesota Class concerning Defendants' unlawful
 3 activities and artificially inflated prices for HDD suspension assemblies. The concealed,
 4 suppressed, and omitted facts would have been important to Minnesota Plaintiffs and members of
 5 the Minnesota Class as they related to the cost of HDD suspension assemblies they purchased.

6 e. Defendants misrepresented the real cause of price increases and/or the absence of
 7 price reductions in HDD suspension assemblies by making public statements that were not in
 8 accord with the facts.

9 f. Defendants' statements and conduct concerning the price of HDD suspension
 10 assemblies were deceptive as they had the tendency or capacity to mislead Minnesota Plaintiffs and
 11 members of the Minnesota Class to believe that they were purchasing HDD suspension assemblies
 12 at prices established by a free and fair market.

13 g. Defendants' unlawful conduct had the following effects: (1) HDD suspension
 14 assemblies price competition was restrained, suppressed, and eliminated throughout Minnesota; (2)
 15 HDD suspension assemblies prices were raised, fixed, maintained, and stabilized at artificially high
 16 levels throughout Minnesota; (3) Minnesota Plaintiffs and members of the Minnesota Class were
 17 deprived of free and open competition; and (4) Minnesota Plaintiffs and members of the Minnesota
 18 Class paid supra-competitive, artificially inflated prices for HDD suspension assemblies.

19 h. As a direct and proximate result of the above-described unlawful practices,
 20 Minnesota Plaintiffs and members of the Minnesota Class suffered ascertainable loss of money or
 21 property. Accordingly, Minnesota Plaintiffs and members of the Minnesota Class seek all relief
 22 available under the Minnesota Consumer Fraud Act.

23 323. Plaintiffs Joseph Mattingly and Richard Jones ("**Montana Plaintiffs**") incorporate
 24 and reallege each and every allegation set forth in the preceding paragraphs of this Complaint and
 25 further allege as follows:

26 a. Defendants have engaged in unfair competition or unfair, unconscionable, or
 27 deceptive acts or practices in violation of the **Montana** Consumer Protection Act of 1973, Mont.
 28 Code, §§ 30-14-101, *et seq.*

b. Montana Plaintiffs and members of the Montana Class purchased HDD suspension assemblies for personal, family, or household purposes.

c. Defendants' unlawful conduct had the following effects: (1) HDD suspension assemblies price competition was restrained, suppressed, and eliminated throughout Montana; (2) HDD suspension assemblies prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Montana; (3) Montana Plaintiffs and members of the Montana Class were deprived of free and open competition; and (4) Montana Plaintiffs and members of the Montana Class paid supra-competitive, artificially inflated prices for HDD suspension assemblies.

d. During the Class Period, Defendants' illegal conduct substantially affected Montana commerce and consumers.

e. As a direct and proximate result of Defendants' unlawful conduct, Montana Plaintiffs and members of the Montana Class were injured and are threatened with further injury. Accordingly, Montana Plaintiffs and members of the Montana Class seek all relief available under that statute.

324. **Nebraska Plaintiff** incorporates and realleges each and every allegation set forth in the preceding paragraphs of this Complaint and further alleges as follows:

a. Defendants have engaged in unfair methods competition and unfair or deceptive acts or practices in the conduct of trade or commerce in violation of the **Nebraska** Consumer Protection Act, Neb. Rev. Stat. § 59-1602, *et seq.*

b. Defendants' unlawful conduct had the following effects: (1) HDD suspension assemblies price competition was restrained, suppressed, and eliminated throughout Nebraska; (2) HDD suspension assemblies prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Nebraska; (3) Nebraska Plaintiff and members of the Nebraska Class were deprived of free and open competition; and (4) Nebraska Plaintiff and members of the Nebraska Class paid supra-competitive, artificially inflated prices for HDD suspension assemblies.

c. During the Class Period, Defendants' illegal conduct substantially affected Nebraska commerce and consumers.

d. As a direct and proximate result of Defendants' unlawful conduct, Nebraska

1 Plaintiff and members of the Nebraska Class were injured and are threatened with further injury.
2 Accordingly, Nebraska Plaintiff and members of the Nebraska Class seek all relief available under
3 that statute.

4 325. **Nevada Plaintiffs** incorporate and reallege each and every allegation set forth in the
5 preceding paragraphs of this Complaint and further alleges as follows:

6 a. Defendants have engaged in deceptive trade practices in violation of the **Nevada**
7 Deceptive Trade Practices Act, Nev. Rev. Stat. § 598.0903, *et seq.*

8 b. Defendants engaged in the conduct described herein in connection with the sale of
9 HDD suspension assemblies in trade or commerce in a market that includes Nevada.

10 c. Defendants and their co-conspirators agreed to, and did in fact affect, fix, control,
11 and/or maintain, at artificial and non-competitive levels, the prices at which HDD suspension
12 assemblies were sold, distributed or obtained in Nevada, which conduct constituted unfair practices
13 in that it was unlawful under federal and state law, violated public policy, was unethical, oppressive
14 and unscrupulous, and caused substantial injury to Nevada Plaintiffs and members of the Nevada
15 Class.

16 d. Defendants concealed, suppressed, and omitted to disclose material facts to Nevada
17 Plaintiff and members of the Nevada Class concerning Defendants' unlawful activities and
18 artificially inflated prices for HDD suspension assemblies. The concealed, suppressed, and omitted
19 facts would have been important to Nevada Plaintiffs and members of the Nevada Class as they
20 related to the cost of HDD suspension assemblies they purchased.

21 e. Defendants misrepresented the real cause of price increases and/or the absence of
22 price reductions in HDD suspension assemblies by making public statements that were not in
23 accord with the facts.

24 f. Defendants' statements and conduct concerning the price of HDD suspension
25 assemblies were deceptive as they had the tendency or capacity to mislead Nevada Plaintiffs and
26 members of the Nevada Class to believe that they were purchasing HDD suspension assemblies at
27 prices established by a free and fair market.

28 g. Defendants' unlawful conduct had the following effects: (1) HDD suspension

1 assemblies price competition was restrained, suppressed, and eliminated throughout Nevada; (2)
2 HDD suspension assemblies prices were raised, fixed, maintained, and stabilized at artificially high
3 levels throughout Nevada; (3) Nevada Plaintiffs and members of the Nevada Class were deprived
4 of free and open competition; and (4) Nevada Plaintiffs and members of the Nevada Class paid
5 supra-competitive, artificially inflated prices for HDD suspension assemblies. As a direct and
6 proximate result of the above-described unlawful practices, Nevada Plaintiffs and members of the
7 Nevada Class suffered ascertainable loss of money or property. Accordingly, Nevada Plaintiffs and
8 members of the Nevada Class seek all relief available under Nev. Rev. Stat. § 598.0993.

9 326. **New York Plaintiffs** incorporate and reallege each and every allegation set forth in
10 the preceding paragraphs of this Complaint and further allege as follows:

11 a. Defendants have engaged in unfair competition or unfair, unconscionable, or
12 deceptive acts or practices in violation of **New York** Gen. Bus. Law § 349, *et seq.*

13 b. Defendants agreed to, and did in fact, act in restraint of trade or commerce by
14 affecting, fixing, controlling and/or maintaining, at artificial and non-competitive levels, the prices
15 at which HDD suspension assemblies were sold, distributed or obtained in New York and took
16 efforts to conceal their agreements from New York Plaintiffs and members of the New York Class.

17 c. Defendants and their co-conspirators made public statements about the prices of
18 HDD suspension assemblies and products containing HDD suspension assemblies that Defendants
19 knew would be seen by New York consumers; such statements either omitted material information
20 that rendered the statements that they made materially misleading or affirmatively misrepresented
21 the real cause of price increases for HDD suspension assemblies and products containing HDD
22 suspension assemblies; and Defendants alone possessed material information that was relevant to
23 consumers, but failed to provide the information.

24 d. Because of Defendants' unlawful trade practices in New York, New York Plaintiffs
25 and members of the New York Class who indirectly purchased HDD suspension assemblies were
26 misled to believe that they were paying a fair price for HDD suspension assemblies or the price
27 increases for HDD suspension assemblies were for valid business reasons; and similarly situated
28 consumers were potentially affected by Defendants' conspiracy.

1 e. Defendants knew that their unlawful trade practices with respect to pricing HDD
2 suspension assemblies would have an impact on New York consumers and not just Defendants'
3 direct customers.

4 f. Defendants knew that their unlawful trade practices with respect to pricing HDD
5 suspension assemblies would have a broad impact, causing consumer class members who indirectly
6 purchased HDD suspension assemblies to be injured by paying more for HDD suspension
7 assemblies than they would have paid in the absence of Defendants' unlawful trade acts and
8 practices.

9 g. The conduct of Defendants described herein constitutes consumer-oriented
10 deceptive acts or practices within the meaning of N.Y. Gen. Bus. Law § 349, which resulted in
11 consumer injury and broad adverse impact on the public at large, and harmed the public interest of
12 New York State in an honest marketplace in which economic activity is conducted in a competitive
13 manner.

14 h. Defendants' unlawful conduct had the following effects: (1) HDD suspension
15 assemblies price competition was restrained, suppressed, and eliminated throughout New York; (2)
16 HDD suspension assemblies prices were raised, fixed, maintained, and stabilized at artificially high
17 levels throughout New York; (3) New York Plaintiffs and members of the New York Class were
18 deprived of free and open competition; and (4) New York Plaintiffs and members of the New York
19 Class paid supra-competitive, artificially inflated prices for HDD suspension assemblies.

20 i. During the Class Period, Defendants marketed, sold, or distributed HDD suspension
21 assemblies in New York, and Defendants' illegal conduct substantially affected New York
22 commerce and consumers.

23 j. During the Class Period, each Defendant, directly, or indirectly and through
24 affiliates, dominated and controlled, manufactured, sold and/or distributed HDD suspension
25 assemblies in New York.

26 k. New York Plaintiffs and members of the New York Class seek all relief available
27 pursuant to N.Y. Gen. Bus. Law § 349(h).

28 327. **North Carolina Plaintiff** incorporates and realleges each and every allegation set

1 forth in the preceding paragraphs of this Complaint and further alleges as follows:

2 a. Defendants have engaged in unfair competition or unfair, unconscionable, or
3 deceptive acts or practices in violation of **North Carolina** Gen. Stat. § 75-1.1, *et seq.*

4 b. Defendants agreed to, and did in fact, act in restraint of trade or commerce by
5 affecting, fixing, controlling and/or maintaining, at artificial and non-competitive levels, the prices
6 at which HDD suspension assemblies were sold, distributed or obtained in North Carolina and took
7 efforts to conceal their agreements from North Carolina Plaintiff and members of the North
8 Carolina Class.

9 c. Defendants' price-fixing conspiracy could not have succeeded absent deceptive
10 conduct by Defendants to cover up their illegal acts. Secrecy was integral to the formation,
11 implementation and maintenance of Defendants' price-fixing conspiracy. Defendants committed
12 inherently deceptive and self-concealing actions, of which North Carolina Plaintiff could not
13 possibly have been aware. Defendants and their co-conspirators publicly provided pre-textual and
14 false justifications regarding their price increases. Defendants' public statements concerning the
15 price of HDD suspension assemblies created the illusion of competitive pricing controlled by
16 market forces rather than supra-competitive pricing driven by Defendants' illegal conspiracy.
17 Moreover, Defendants deceptively concealed their unlawful activities by mutually agreeing not to
18 divulge the existence of the conspiracy to outsiders, conducting meetings and conversations in
19 secret, confining the plan to a small group of higher-level officials at each company and avoiding
20 the creation of documents which would reveal the antitrust violations.

21 d. The conduct of Defendants described herein constitutes consumer-oriented
22 deceptive acts or practices within the meaning of North Carolina law, which resulted in consumer
23 injury and broad adverse impact on the public at large, and harmed the public interest of North
24 Carolina consumers in an honest marketplace in which economic activity is conducted in a
25 competitive manner.

26 e. Defendants' unlawful conduct had the following effects: (1) HDD suspension
27 assemblies price competition was restrained, suppressed, and eliminated throughout North
28 Carolina; (2) HDD suspension assemblies prices were raised, fixed, maintained, and stabilized at

1 artificially high levels throughout North Carolina; (3) North Carolina Plaintiff and members of the
2 North Carolina Class were deprived of free and open competition; and (4) North Carolina Plaintiff
3 and members of the North Carolina Class paid supra-competitive, artificially inflated prices for
4 HDD suspension assemblies.

5 f. During the Class Period, Defendants' marketed, sold, or distributed HDD
6 suspension assemblies in North Carolina, and Defendants' illegal conduct substantially affected
7 North Carolina commerce and consumers.

8 g. During the Class Period, each Defendant, directly, or indirectly and through
9 affiliates, dominated and controlled, manufactured, sold and/or distributed HDD suspension
10 assemblies in North Carolina.

11 h. North Carolina Plaintiff and members of the North Carolina Class seek actual
12 damages for their injuries caused by these violations in an amount to be determined at trial and are
13 threatened with further injury and seek all relief available under that statute.

14 328. **North Dakota Plaintiffs** incorporate and reallege each and every allegation set forth
15 in the preceding paragraphs of this Complaint and further alleges as follows:

16 a. Defendants have engaged in unfair competition or unfair, unconscionable, or
17 deceptive acts or practices in violation of the **North Dakota** Unfair Trade Practices Law, N.D.
18 Cent. Code § 51-10, *et seq.*

19 b. Defendants engaged in the conduct described in this Complaint in connection with
20 the sale of HDD suspension assemblies in trade or commerce in a market that includes North
21 Dakota.

22 c. Defendants and their co-conspirators agreed to, and did in fact affect, fix, control,
23 and/or maintain, at artificial and non-competitive levels, the prices at which HDD suspension
24 assemblies were sold, distributed, or obtained in North Dakota, which conduct constituted a
25 fraudulent or deceptive act or practice and caused substantial injury to North Dakota Plaintiffs and
26 members of the North Dakota Class.

27 d. Defendants concealed, suppressed, and omitted to disclose materials facts to North
28 Dakota Plaintiffs and members of the North Dakota Class concerning Defendants' unlawful

1 activities and artificially inflated prices for HDD suspension assemblies. The concealed,
2 suppressed, and omitted facts would have been important to North Dakota Plaintiffs and members
3 of the North Dakota Class as they related to the cost of HDD suspension assemblies they purchased.

4 e. Defendants misrepresented the real cause of price increases and/or the absence of
5 price reductions in HDD suspension assemblies by making public statements that were not in
6 accord with the facts.

7 f. Defendants' statements and conduct concerning the price of HDD suspension
8 assemblies were deceptive as they had the tendency or capacity to mislead North Dakota Plaintiffs
9 and members of the North Dakota Class to believe that they were purchasing HDD suspension
10 assemblies at prices established by a free and fair market.

11 g. Defendants' unlawful conduct had the following effects: (1) HDD suspension
12 assemblies price competition was restrained, suppressed, and eliminated throughout North Dakota;
13 (2) HDD suspension assemblies prices were raised, fixed, maintained, and stabilized at artificially
14 high levels throughout North Dakota; (3) North Dakota Plaintiffs and members of the North Dakota
15 Class were deprived of free and open competition; and (4) North Dakota Plaintiffs and members of
16 the North Dakota Class paid supra-competitive, artificially inflated prices for HDD suspension
17 assemblies.

18 h. As a direct and proximate result of the above-described unlawful practices, North
19 Dakota Plaintiffs and members of the North Dakota Class suffered ascertainable loss of money or
20 property. Accordingly, North Dakota Plaintiffs and members of the North Dakota Class seek all
21 relief available under N.D. Cent. Code § 51-10-06.

22 329. **Rhode Island Plaintiff** incorporates and realleges each and every allegation set
23 forth in the preceding paragraphs of this Complaint and further alleges as follows:

24 a. Defendants have engaged in unfair competition or unfair, unconscionable, or
25 deceptive acts or practices in violation of the **Rhode Island** Unfair Trade Practice and Consumer
26 Protection Act, R.I. Gen. Laws §§ 6-13.1-1, *et seq.*

27 b. Members of this Class purchased HDD suspension assemblies for personal, family,
28 or household purposes.

1 c. Defendants agreed to, and did in fact, act in restraint of trade or commerce in a
2 market that includes Rhode Island, by affecting, fixing, controlling, and/or maintaining, at artificial
3 and non-competitive levels, the prices at which HDD suspension assemblies were sold, distributed,
4 or obtained in Rhode Island.

5 d. Defendants deliberately failed to disclose material facts to Rhode Island Plaintiff
6 and members of the Rhode Island Class concerning Defendants' unlawful activities and artificially
7 inflated prices for HDD suspension assemblies. Defendants owed a duty to disclose such facts, and
8 considering the relative lack of sophistication of the average, non-business consumer, Defendants
9 breached that duty by their silence. Defendants misrepresented to all consumers during the Class
10 Period that Defendants' prices for HDD suspension assemblies were competitive and fair.

11 e. Defendants' unlawful conduct had the following effects: (1) HDD suspension
12 assemblies price competition was restrained, suppressed, and eliminated throughout Rhode Island;
13 (2) HDD suspension assemblies prices were raised, fixed, maintained, and stabilized at artificially
14 high levels throughout Rhode Island; (3) Rhode Island Plaintiff and members of the Rhode Island
15 Class were deprived of free and open competition; and (4) Rhode Island Plaintiff and members of
16 the Rhode Island Class paid supra-competitive, artificially inflated prices for HDD suspension
17 assemblies.

18 f. As a direct and proximate result of Defendants' violations of law, Rhode Island
19 Plaintiff and members of the Rhode Island Class suffered an ascertainable loss of money or property
20 as a result of Defendants' use or employment of unconscionable and deceptive commercial
21 practices as set forth above. That loss was caused by Defendants' willful and deceptive conduct, as
22 described herein.

23 g. Defendants' deception, including their affirmative misrepresentations and
24 omissions concerning the price of HDD suspension assemblies, likely misled all consumers acting
25 reasonably under the circumstances to believe that they were purchasing HDD suspension
26 assemblies at prices set by a free and fair market. Defendants' affirmative misrepresentations and
27 omissions constitute information important to Rhode Island Plaintiff and members of the Rhode
28 Island Class as they related to the cost of HDD suspension assemblies they purchased.

1 h. Accordingly, Rhode Island Plaintiff and members of the Rhode Island Class seek
2 all relief available under that statute.

3 330. Plaintiffs Sara Speziale-Phillips and Tracy Nurzynski (“**South Carolina**
4 **Plaintiffs**”) incorporate and reallege each and every allegation set forth in the preceding paragraphs
5 of this Complaint and further alleges as follows:

6 a. Defendants have engaged in unfair competition or unfair, unconscionable, or
7 deceptive acts or practices in violation of **South Carolina** Unfair Trade Practices Act, S.C. Code
8 Ann. §§ 39-5-10, *et seq.*

9 b. Defendants’ combinations or conspiracies had the following effects: (1) HDD
10 suspension assemblies price competition was restrained, suppressed, and eliminated throughout
11 South Carolina; (2) HDD suspension assemblies prices were raised, fixed, maintained, and
12 stabilized at artificially high levels throughout South Carolina; (3) South Carolina Plaintiffs and
13 members of the South Carolina Class were deprived of free and open competition; and (4) South
14 Carolina Plaintiffs and members of the South Carolina Class paid supra-competitive, artificially
15 inflated prices for HDD suspension assemblies.

16 c. During the Class Period, Defendants’ illegal conduct had a substantial effect on
17 South Carolina commerce.

18 d. As a direct and proximate result of Defendants’ unlawful conduct, South Carolina
19 Plaintiffs and members of the South Carolina Class were injured in their business and property and
20 are threatened with further injury. Accordingly, South Carolina Plaintiffs and the members of the
21 South Carolina Class seek all relief available under that statute.

22 331. **Vermont Plaintiff** incorporates and realleges each and every allegation set forth in
23 the preceding paragraphs of this Complaint and further alleges as follows:

24 a. Defendants have engaged in unfair competition or unfair, unconscionable, or
25 deceptive acts or practices in violation of the **Vermont** Consumer Fraud Act, Vt. Stat. Ann. tit. 9 §
26 2451, *et seq.*:

27 b. Defendants and their co-conspirators agreed to, and did in fact, act in restraint of
28 trade or commerce in a market that includes Vermont by affecting, fixing, controlling, and/or

1 maintaining, at artificial and non-competitive levels, the prices at which HDD suspension
2 assemblies were sold, distributed, or obtained in Vermont.

3 c. Defendants deliberately failed to disclose material facts to Vermont Plaintiff and
4 members of the Vermont Class concerning their unlawful activities and artificially inflated prices
5 for HDD suspension assemblies. Defendants owed a duty to disclose such facts, and considering
6 the relative lack of sophistication of the average, non-business purchaser, Defendants breached that
7 duty by their silence. Defendants misrepresented to all purchasers during the Class Period that their
8 prices for HDD suspension assemblies were competitive and fair.

9 d. Defendants' unlawful conduct had the following effects: (1) HDD suspension
10 assemblies price competition was restrained, suppressed, and eliminated throughout Vermont; (2)
11 HDD suspension assemblies prices were raised, fixed, maintained, and stabilized at artificially high
12 levels throughout Vermont; (3) Vermont Plaintiff and members of the Vermont Class were
13 deprived of free and open competition; and (4) Vermont Plaintiff and members of the Vermont
14 Class paid supra-competitive, artificially inflated prices for HDD suspension assemblies.

15 e. As a direct and proximate result of Defendants' violations of law, Vermont Plaintiff
16 and members of the Vermont Class suffered an ascertainable loss of money or property as a result
17 of Defendants' use or employment of unconscionable and deceptive commercial practices as set
18 forth above. That loss was caused by Defendants' willful and deceptive conduct, as described
19 herein.

20 f. Defendants' deception, including their omissions concerning the price of HDD
21 suspension assemblies, likely misled all purchasers acting reasonably under the circumstances to
22 believe that they were purchasing HDD suspension assemblies at prices born by a free and fair
23 market. Defendants' misleading conduct and unconscionable activities constitutes unfair
24 competition or unfair or deceptive acts or practices in violation of 9 Vermont § 2451, *et seq.*, and,
25 accordingly, Vermont Plaintiff and members of the Vermont Class seek all relief available under
26 that statute.

THIRD CLAIM FOR RELIEF
Unjust Enrichment
(on behalf of Plaintiffs and members of the Classes)

332. Plaintiffs incorporate by reference the allegations in the preceding paragraphs.

333. Plaintiffs bring this claim under the unjust enrichment laws of the following states: Arkansas, Arizona, Hawaii, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, West Virginia, Wisconsin, and District of Columbia.

334. As a result of their unlawful conduct described above, Defendants have and will continue to be unjustly enriched. Defendants have been unjustly enriched by the receipt of, at a minimum, unlawfully inflated prices and unlawful profits on sales of HDD suspension assemblies.

335. Defendants have benefited from their unlawful acts and it would be inequitable for Defendants to be permitted to retain any of the ill-gotten gains resulting from the overpayments made by Plaintiffs and members of the Classes for HDD suspension assemblies.

336. Plaintiffs and members of the Classes are entitled to the amount of Defendants' ill-gotten gains resulting from their unlawful, unjust, and inequitable conduct. Plaintiffs and members of the Classes are entitled to the establishment of a constructive trust consisting of all ill-gotten gains from which Plaintiffs and members of the Classes may make claims on a pro rata basis.

337. Pursuit of any remedies against the firms from which Plaintiffs and members of the Classes purchased HDDs containing HDD suspension assemblies subject to Defendants' conspiracy would have been futile.

XI. PRAYER FOR RELIEF

Accordingly, Plaintiffs respectfully request that:

338. The Court determine that this action may be maintained as a class action under Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure, and direct that reasonable notice of this action, as provided by Rule 23(c)(2) of the Federal Rules of Civil Procedure, be given to each and every member of the Classes;

1 339. That the unlawful conduct, contract, conspiracy, or combination alleged herein be
2 adjudged and decreed:

3 a. An unlawful combination, trust, agreement, understanding and/or concert of action
4 in violation of the state antitrust and unfair competition and consumer protection laws as set forth
5 herein; and

6 b. Acts of unjust enrichment by Defendants as set forth herein.

7 340. Plaintiffs and members of the Classes recover damages including umbrella damages
8 as appropriate, to the maximum extent allowed under such laws, and that a joint and several
9 judgment in favor of Plaintiffs and members of the Classes be entered against Defendants in an
10 amount to be trebled to the extent such laws permit;

11 341. Plaintiffs and members of the Classes recover damages, to the maximum extent
12 allowed by such laws, in the form of restitution and/or disgorgement of profits unlawfully gained
13 from them;

14 342. Defendants, their affiliates, successors, transferees, assignees and other officers,
15 directors, partners, agents and employees thereof, and all other persons acting or claiming to act on
16 their behalf or in concert with them, be permanently enjoined and restrained from in any manner
17 continuing, maintaining or renewing the conduct, contract, conspiracy, or combination alleged
18 herein, or from entering into any other contract, conspiracy, or combination having a similar
19 purpose or effect, and from adopting or following any practice, plan, program, or device having a
20 similar purpose or effect;

21 343. Plaintiffs and members of the Classes be awarded restitution, including
22 disgorgement of profits Defendants obtained as a result of their acts of unfair competition and acts
23 of unjust enrichment;

24 344. Plaintiffs and members of the Classes be awarded pre- and post- judgment interest
25 as provided by law, and that such interest be awarded at the highest legal rate from and after the
26 date of service of this Complaint;

27 345. Plaintiffs and members of the Classes recover their costs of suit, including
28 reasonable attorneys' fees, as provided by law; and

346. Plaintiffs and members of the Classes have such other and further relief as the case may require and the Court may deem just and proper.

XII. DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury, pursuant to Federal Rule of Civil Procedure 38(b), of all issues so triable.

Dated: October 28, 2022

/s/ William V. Reiss

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14 **ATTORNEY ATTESTATION**

15 I, Christopher T. Micheletti, hereby attest, pursuant to Civil Local Rule 5-1(i)(3) of the
16 Northern District of California, that the concurrence to the filing of this document has been obtained
17 from each signatory hereto.

18 /s/ Christopher T. Micheletti

19 Christopher T. Micheletti

CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2022, I electronically filed the foregoing document entitled **END-USER PLAINTIFFS' FOURTH AMENDED CONSOLIDATED CLASS ACTION COMPLAINT** with the Clerk of the Court for the United States District Court, Northern District of California using the CM/ECF system and served a copy of same upon all counsel of record via the Court's electronic filing system.

/s/ Christopher T. Micheletti

Christopher T. Micheletti