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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 CITY AND COUNTY OF SAN FRANCISCO

17 RAMBUS INC.,
18 Plaintiff,
19 v.
20 MICRON TECHNOLOGY, INC., et al.,
21 Defendants.

CASE NO. 04-431105

**RAMBUS'S MEMORANDUM OF POINTS
AND AUTHORITIES IN OPPOSITION TO
HYNIX'S MOTION FOR SUMMARY
JUDGMENT BASED ON FAILURE OF
PROOF AS TO ALLEGED ILLEGAL
AGREEMENT**

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1 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

2 Rambus alleges in this action that Hynix and its co-defendants participated in an unlawful
3 conspiracy to restrict production and fix the price of RDRAM memory devices. Complaint ¶¶ 1,
4 95, 101-104. Rambus further alleges that “[a]s a direct result of Defendants’ unlawful
5 combination and conspiracy, Defendants’ alternative memory chip designs have become the *de*
6 *facto* industry standards, and Rambus’s memory chip design has been relegated to a niche role.”
7 *Id.*, ¶ 12. Because Rambus was entitled to receive a royalty on the sale of such devices,
8 Defendants’ conduct “has had a dramatic adverse effect on the royalties Rambus has collected
9 and will collect. . . .” *Id.*, ¶ 104.

10 Hynix has moved for summary judgment on Rambus’s claims against it on two grounds:
11 (1) that Rambus supposedly “cannot prove an illegal agreement” involving Hynix; and (2) that
12 Rambus supposedly has “fail[ed] to quantify the duration and extent of the alleged price
13 manipulation and output restriction.” Hynix Notice of Motion at 1-2. Hynix’s motion is
14 meritless and should be denied, for two principal reasons:

- 15 • Hynix has failed to address the material evidence showing the existence of an
16 illegal agreement, and thus has failed to meet its threshold burden under *Aguilar v.*
17 *Atlantic Richfield Co.*, 25 Cal.4th 826 (2001).
18 • The presence of direct evidence of conspiracy, and the existence of numerous
19 disputed issues of fact, require that Hynix’s motion be denied.

20 **II. STATEMENT OF FACTS**

21 Rambus will prove at trial that Hynix played a pivotal role in the Defendants’ concerted
22 efforts to prevent RDRAM’s adoption as the mainstream memory standard. Rambus has
23 separately submitted its responses to Hynix’s Separate Statement of Undisputed Facts. As these
24 responses demonstrate, most of Hynix’s “undisputed” material facts are subject to genuine
25 dispute. Hynix’s motion and its Separate Statement also fail to address the substantial evidence
26 of Hynix’s participation in unlawful conspiratorial conduct that caused RDRAM to become a
27 “niche” product. Some of that evidence is presented below:

- 28 1. In late November 1999, Intel released its “Camino” and “Carmel” chipsets that

1 enabled RDRAM memory to be used with Intel's Pentium III processors. See Rambus's Separate
2 Statement in Opposition to Hynix's Motion for Summary Judgment – Additional Facts (“RSS-
3 AF”), ¶ 48.

4 2. [REDACTED]

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED] See Rambus's Separate Statement of Facts in Opposition to Hynix's Motion for
9 Summary Judgment (“RSS”), ¶ 22.

10 3. The Defendants were aware in December 1999 and January 2000 that Dell, IBM
11 and Compaq had launched new computer products that included RDRAM memory and that those
12 companies were experiencing a surge in demand for their RDRAM-based product lines. RSS-AF,
13 ¶¶ 51, 55. In a February 16, 2000 email, for example, a Micron sales representative reported that
14 he had “just talked to someone at Samsung who said that Compaq is pressing hard for Rambus
15 support” and that Compaq had made a “sooner than expected technology switch (towards
16 Rambus) based on the apparent success Dell is having.” RSS-AF, ¶ 59.

17 4. Hynix was well aware in this time period that Dell and other computer
18 manufacturers required lower DRAM pricing in order to ramp their new product lines. [REDACTED]

19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED] RSS, ¶ 14; Hamilton Decl., ex. 48.

24 5. The Defendants chose collusion, not competition, in response to customer
25 demands for lower prices. A February 8, 2000 email by Hynix sales representative Charles Byrd,
26 for example, reported that he had learned *from Samsung* that Infineon “apparently did a stupid
27 thing on RDRAM pricing” to Compaq by offering a “lower price” than Samsung. RSS-AF, ¶ 60.
28 Infineon's “stupid” mistake was in “quot[ing] pricing without first checking with” Samsung. *Id.*

1 The Samsung employee also told Hynix's Byrd that unlike Infineon, NEC had "checked with"
2 Samsung and was "in line with [Samsung] pricing." *Id.*

3 6. In April 2000, Hynix's Byrd prepared a chart showing DRAM supplier prices for
4 six RDRAM modules. Byrd reported that Samsung had established a "reference price" for
5 RDRAM that Samsung "does not want anyone to go below." RSS-AF, ¶ 63. Hynix and
6 Samsung held regular meetings in this time period to discuss the respective companies' "Rambus
7 status" and RDRAM "production plan." RSS-AF, ¶ 62.

8 7. In May 2000, Dell informed Hynix and other DRAM manufacturers that RDRAM
9 prices were too high and that unless the manufacturers provided Dell with future RDRAM price
10 projections that showed substantial declines, Dell would alter its future product roadmap to
11 include more SDRAM and DDR and less RDRAM. RSS-AF, ¶¶ 65-66. As a Dell manager put it
12 in May 2000, Dell's "message to [DRAM suppliers] is drop prices or we will continue to decrease
13 our RDRAM forecasts and we will architect next generation systems around DDR." RSS, ¶ 14;
14 Hamilton Decl., exs. 55, 236.

15 8. After receiving Dell's price targets, [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED] RSS-AF, ¶ 69.

19 On June 7, 2000, a Hynix Vice President sent separate emails to an Infineon executive and five
20 Micron executives informing them that Hynix would not meet Dell's price targets and asking
21 them to join Hynix in sending Dell a message that it should reconsider its RDRAM support.
22 RSS-AF, ¶ 71.¹

23 9. As a result of this conduct, the DRAM suppliers collectively refused to meet
24 Dell's RDRAM price targets. [REDACTED]

25 [REDACTED]

26 [REDACTED]

27

28 ¹ The suggested joint message was that Dell should "get your head out of your xxxx" with
respect to RDRAM. *Id.*

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RSS-AF, ¶ 73.

10. In late 2000, Intel launched its new Pentium 4 chipset, which was optimized to take advantage of the enormous bandwidth offered by RDRAM. RSS-AF, ¶ 76.

11. The defendants continued in 2001 to share information about their RDRAM pricing and production plans. RSS-AF, ¶¶ 78-79.

[REDACTED]

12. [REDACTED]

[REDACTED]

RSS-AF, ¶ 83.²

13. [REDACTED]

[REDACTED]

[REDACTED] RSS, ¶ 17; Hamilton Decl., ex. 78.

14. In this same time period, the Defendants were working in concert to provide low DDR prices and low DDR price projections to OEMs to create the artificial impression that DDR would be less expensive than RDRAM. As a Micron sales executive explained in a June 5, 2001 email, “[w]e want DDR to explode into the market-place so have actually been requesting Infineon, Samsung and Hynix to lower their DDR pricing to help it become a standard (and drive

² [REDACTED] RSS-AF, ¶ 81.

1 Rambus away completely).” RSS, ¶ 1; Hamilton Decl., ex. 268.

2 15. Hynix Vice President Tabrizi [REDACTED]

3 [REDACTED] RSS, ¶ 14.

4 16. By the end of 2002, DDR, not RDRAM, had won the “standards battle” described
5 in Hynix’s pending motion. Hynix Motion at 1:20. Hynix acknowledges that RDRAM prices
6 were a substantial factor in RDRAM’s failure to become the dominant DRAM standard, although
7 Hynix attributes those high prices to purportedly high RDRAM manufacturing costs. *Id.* at 1:20-
8 21; 4:15-16.

9 **III. ARGUMENT**

10 **A. Hynix Has Not Met Its Initial Burden Under Aguilar**

11 Under *Aguilar*, a moving defendant must “make a *prima facie* showing of the
12 nonexistence of any triable issue of material fact. . . .” *Aguilar*, 25 Cal.4th at 850, 24 P.3d at 510.
13 If the defendant makes this showing, the burden of production (but not the burden of persuasion)
14 shifts to the plaintiff. *Id.* Unlike federal law, California law requires that in order for a defendant
15 to shift the burden of production, it must do more than simply “point out through argument” that
16 the plaintiff lacks the necessary evidence. *Id.* at 854. Instead, a moving defendant must “present
17 evidence that the plaintiff does not possess and cannot reasonably obtain, [the] needed evidence
18” *Id.* at 855. In addition, in order to make a *prima facie* showing that a plaintiff does not
19 possess the necessary evidence on an essential element of its claim, a defendant “must set forth
20 all the material evidence on point, not just the evidence favorable to it.” Weil & Brown, Cal.
21 Practice Guide: Civil Procedure Before Trial (The Rutter Group 2008) (“Weil & Brown”),
22 ¶ 10:245.16 (emphasis in original).

23 Hynix asserts that it has met its initial burden under *Aguilar* by supposedly showing that:
24 (1) the Defendants’ RDRAM output and pricing practices were “not parallel;” (2) Hynix’s
25 witnesses “have denied that Hynix participated in any anti-RDRAM conspiracy;” and (3) Hynix’s
26 witnesses have testified “that Hynix’s pricing and output decisions were made for independent
27 business reasons.” Hynix Mem. at 8:1-9:28. As set out below, Hynix has not met its initial
28

1 burden, and its motion should be denied.

2 **1. Hynix's Cursory Description Of The Defendants' Conduct**
3 **Ignores Numerous Examples Of Parallel Conduct With Respect**
4 **To Output And Price And Thus Does Not Shift The Burden Of**
5 **Production**

6 Under *Aguilar*, Hynix cannot shift the burden of production to Rambus merely by arguing
7 that "[t]he absence of parallel conduct shows that the defendants did not conspire." Hynix Mem.
8 at 8:2-3. Instead, Hynix must address "all" the material evidence of the Defendants' parallel
9 conduct, including the evidence of such conduct described in Rambus's interrogatory responses.
10 Weil & Brown, ¶¶ 10:95.10, 10:242; 10:244-245.

11 Hynix did not meet this burden. Citing its expert's conclusions, Hynix asserts that "at
12 times," the defendants charged different prices for RDRAM and that over an eight-year period,
13 their *total* RDRAM output varied. Hynix Mem. at 8:5-12. But that cursory description ignores
14 numerous specific examples of parallel conduct with respect to both RDRAM output and
15 RDRAM pricing. For example, Hynix entirely fails to address Rambus's evidence that in
16 October 1999, Hynix and Micron *reached an agreement* to suspend their efforts to bring RDRAM
17 to market. Hynix's Vice President of Worldwide Sales and Marketing, Farhad Tabrizi, prepared a
18 draft press release in October 1999 announcing Hynix's intention to halt "all production of and
19 investment in" its RDRAM program, in response to a delay in the launch of Intel's Camino
20 chipset. RSS, ¶¶ 14, 17; Hamilton Decl., exs. 34-35; RSS-AF, ¶ 46. Mr. Tabrizi then forwarded
21 the Hynix press release, *in draft form*, to two Micron executives and asked for *Micron's*
22 comments. *Id.* Mr. Tabrizi has testified that he sent the draft press release to Micron because he
23 "wanted to see if they can make the same announcement." *Id.* In fact, that same day, a Micron
24 executive wrote back to Tabrizi with edits to Hynix's draft release, and he confirmed that Micron
25 "will be giving a similar message" about its RDRAM plans. *Id.*

26 This is not just evidence of "parallel conduct"; it is direct evidence of an *agreement* to
27 suspend RDRAM production efforts and to send the same message about that decision to
28

1 customers.³ The coordination of production decisions by putative competitors is classic cartel
2 behavior. *Aguilar*, 25 Cal.4th at 851 (noting that the Cartwright Act “makes a conspiracy among
3 competitors to restrict output and/or raise prices unlawful *per se* without regard to any of its
4 effects. . .”). Under *Aguilar*, Hynix was required in its opening brief or Separate Statement to
5 address this evidence of parallel conduct by, for example, submitting declarations by
6 knowledgeable Hynix and Micron officers explaining that their October 1999 decision(s) to
7 suspend RDRAM production efforts were made independently, based on legitimate business
8 considerations. *Id.* at 861. Because Hynix did not do so, it has failed to meet its initial burden of
9 production under *Aguilar* with respect to the Defendants’ RDRAM output decisions.

10 Hynix similarly ignores – and offers no pro-competitive explanation for – evidence
11 showing parallel conduct and agreements with respect to RDRAM pricing. Although Hynix
12 points to its experts’ analysis of average prices, Hynix is well aware that this case involves far
13 more than allegations of parallel average prices. Instead, this case involves competition for
14 “design wins” and “roadmap slots” that is driven in large part by the expectations of computer
15 manufacturers and Intel about future DRAM prices. RSS, ¶ 13; Hamilton Decl., exs. 89, 109 and
16 159.⁴ Those expectations are in turn driven by projections provided to OEMs and Intel by the
17 DRAM suppliers. *Id.* By working in concert to present artificially high or low pricing
18 expectations, DRAM suppliers can “tip” the DRAM selection process. *Id.* An expert’s

19
20 ³ As discussed in section IIIB, *infra*, the presence of direct evidence of an agreement is alone
21 sufficient to bar summary judgment in a price fixing case. Moreover, it has been widely
22 recognized that at the summary judgment stage, “[t]he most important evidence will generally be
23 non-economic evidence ‘that there was an actual, manifest agreement not to compete.’” *In re*
24 *Flat Glass Antitrust Litig.*, 385 F.3d 350, 361 (3d Cir. 2004) (“*Flat Glass*”), quoting *In re High*
25 *Fructose Corn Syrup Antitrust Litig.*, 295 F.3d 651, 661 (7th Cir. 2002).

26 ⁴ In this respect, competition is similar to that in the market for baseband chips, as described in a
27 recent opinion by the Court of Appeals for the Federal Circuit:

28 “[t]he market for baseband chips is unlike the typical market for consumer goods
where competitors compete for each consumer sale, and the competition is
instantaneous and on-going Competition for sales is not on a unit-by-unit
basis, but rather competition is characterized by competing for ‘design wins’ for
the development and production of [products] which will embody the proposed
chip. . . .”

Broadcom Corp. v. Qualcomm Inc., 543 F.3d 683, 702 (Fed. Cir. 2008) (quoting unpublished
District Court opinion).

1 calculations of average RDRAM prices paid by a large group of customers says nothing at all
2 about whether price *projections* to particular OEMs were competitively set.

3 There is substantial evidence of collusion with respect to the Defendants' RDRAM price
4 projections. As noted above, Dell, the world's largest computer manufacturer, told the
5 Defendants in May 2000 that it would reduce its RDRAM usage, and switch to other types of
6 DRAMs, if the Defendants' RDRAM price *projections* did not reflect substantial future price
7 decreases. RSS, ¶¶ 14, 17; RSS-AF, ¶ 65. Instead of engaging in price competition at Dell,
8 however, the Defendants worked together to ensure that their price projections were inflated.
9 Hynix, Samsung and Micron had a series of meetings and telephone calls in which they discussed
10 Dell's price targets. RSS ¶¶ 14, 17; RSS-AF, ¶¶ 67-72. In June 2000, Hynix Vice President
11 Tabrizi sent emails to executives at Infineon and Micron that made it clear that Hynix would not
12 meet Dell's price targets for RDRAM and proposed that the companies jointly send a message to
13 Dell and Intel to "get your head out of your ****" with respect to RDRAM. RSS, ¶¶ 14, 17;
14 RSS-AF, ¶ 71. Two days later, on June 9, 2000, [REDACTED]

15 [REDACTED]
16 [REDACTED] RSS-AF, ¶ 73.

17 Hynix's failure in its motion and Separate Statement to address this evidence of parallel
18 conduct with respect to Dell's RDRAM price targets is fatal to its motion. This is particularly
19 true given that Hynix suggests in its Statement of Facts that it was "the Camino delays and the
20 lack of any performance advantage" that caused Dell to experience "lower than forecasted sales"
21 of its RDRAM-based systems. Hynix Motion at 3:12-17. Hynix also failed to address other
22 evidence of price collusion cited in Rambus's interrogatory responses. *See, e.g.*, RSS, ¶¶ 14, 17.
23 Hynix has thus failed to satisfy its threshold burden under *Aguilar*.

24 **2. Hynix's Conclusory Denials Of Wrongdoing Do Not Shift The**
25 **Burden Of Production**

26 Despite its failure to address specific examples of collusion, Hynix claims to have met its
27 initial burden of production by citing the purported testimony of six Hynix employees that they
28 did not know of, and had not entered into, agreements to fix RDRAM prices or restrict output.

1 Hynix Motion at 8:1; 8:22-9:3. Conclusory denials of wrongdoing do not, however, satisfy
2 Hynix's initial burden under *Aguilar*, for several reasons. First, as explained in Rambus's
3 response to Hynix's Separate Statement, the questions asked of the Hynix deponents often did not
4 cover *both* price and output. RSS, ¶ 14. Second, conclusory denials are simply insufficient, as
5 the *Aguilar* court made clear in describing why the defendants' declarations in that case *were*
6 sufficient to shift the burden of production:

7 "The declarations in question, it must be emphasized, generally stated
8 on personal knowledge how the companies made their capacity,
9 production, and pricing decisions about CARB gasoline. Hence, *they*
10 *did more than baldly assert that they made them independently, and*
11 *did more than baldly deny that they made them collusively with each*
12 *other."*

13 *Aguilar*, 25 Cal.4th at 861 (emphasis added).

14 The requirement that Hynix's witnesses provide more than just bald denials is particularly
15 acute here given that, as Hynix acknowledges, several of the executives in question pled guilty to
16 DRAM price fixing. Hynix's representation that its executives' guilty pleas "excluded
17 RDRAM," Hynix Motion at 9 n.46, is simply false. The Plea Agreements in question, which
18 Hynix did not provide to the Court, did *not* exclude RDRAM and instead referred to the price
19 fixing of "DRAM," which is defined in a way that *includes*, not *excludes*, RDRAM. RSS, ¶¶ 14-
20 15; Hamilton Decl., exs. 192, 279, 290, 291.⁵

21 3. Mr. Tabrizi's Statement About Profit Maximization Does Not 22 Address The Evidence Of Collusion Or Parallel Conduct

23 Hynix also tells the Court that "Hynix executives" have explained Hynix's pricing and
24 output decisions. Hynix Motion at 9:4. However, Hynix points in its motion and Separate
25 Statement to testimony by only *one* such witness, Farhad Tabrizi. Hynix Mem. at 9:11-15; Hynix

26 ⁵ It is true, as Hynix points out, that Hynix's own corporate plea agreement explicitly excluded
27 RDRAM from the definition of "DRAM." Basileo Decl., ex. 28. That exclusion does not support
28 an inference that Hynix did not engage in price fixing with respect to RDRAM, for the reasons set
out in Mr. Bienert's expert report. RSS, ¶ 15. For example, the Hynix guilty plea required that
Hynix cooperate in the Department of Justice's "ongoing investigation" into RDRAM price fixing.
Id. Moreover, the guilty pleas of Hynix's executives came *after* Hynix itself had pled guilty, and
as noted above, they did not include the same restrictive definition of "DRAM." RSS, ¶¶ 14-15.