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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

KEITH THOMAS, RICHARD HAYES, HERB  
SMITH, and OKLAHOMA POLICE PENSION  
& RETIREMENT SYSTEM,

Plaintiffs,

v.

MAGNACHIP SEMICONDUCTOR CORP.  
SANG PARK, TAE YOUNG HWANG,  
MARGARET SAKAI, R. DOUGLAS NORBY,  
ILBOK LEE, NADER TAVAKOLI, RANDAL  
KLEIN, MICHAEL ELKINS, AVENUE  
CAPITAL MANAGEMENT II, L.P.,  
BARCLAYS CAPITAL INC., DEUTSCHE  
BANK SECURITIES INC., CITIGROUP  
GLOBAL MARKETS INC., UBS SECURITIES  
LLC and NEEDHAM & COMPANY, LLC,

Defendants.

Case No: 3:14-cv-01160-JST

CLASS ACTION

**~~PROPOSED~~ ORDER  
PRELIMINARILY APPROVING  
SETTLEMENT AND  
PROVIDING FOR NOTICE**

HON. JON S. TIGAR

1 WHEREAS, (i) Class Representatives Keith Thomas (“Thomas”) and Herb Smith  
2 (“Smith”) and the plaintiff Class certified by the Court on December 22, 2016 (Dkt. No. 286)  
3 (collectively, “Plaintiffs”), and (ii) defendant Avenue Capital Management II, L.P. (“Avenue  
4 Capital” or the “Settling Defendant”)<sup>1</sup> have agreed to settlement of all claims asserted in this  
5 Action against the Released Persons;

6 WHEREAS, that Settlement was entered into through a Stipulation and Agreement of  
7 Settlement, dated June 14, 2017 (the “Stipulation”), which is subject to review under Rule 23 of  
8 the Federal Rules of Civil Procedure, and which, together with the exhibits thereto, sets forth the  
9 terms and conditions for the proposed Settlement of the claims alleged in the Complaint filed in  
10 the Action on the merits and with prejudice; and

11 WHEREAS, this Court having read and considered the Stipulation, the proposed “Notice  
12 of Pendency and Proposed Settlement of Class Action” (“Notice”), the proposed “Summary  
13 Notice of Pendency and Proposed Settlement of Class Action” (“Summary Notice”), the  
14 proposed Plan of Allocation for the distribution of the Net Settlement Fund among Class  
15 Members, the proposed form of the Proof of Claim and Release (“Proof of Claim”), the proposed  
16 form of the Order and Final Judgment, Plaintiffs’ Unopposed Motion and Second Renewed  
17 Motion for Preliminary Approval of Class Action Settlement, Plaintiffs’ Memorandum of Points  
18 And Authorities in support thereof, and all other submissions made relating to the proposed  
19 Settlement, and finding that substantial and sufficient grounds exist for entering this Order;

20 NOW, THEREFORE, IT IS HEREBY ORDERED that:

21 1. Unless indicated otherwise, capitalized terms used herein have the same meanings  
22 defined in the Stipulation.

23 2. A hearing (the “Settlement Hearing”) pursuant to Federal Rule of Civil Procedure  
24 23(e) is hereby scheduled to be held before the Court on May 10, 2018, at 2:30 p.m. for the  
25 following purposes:

26 \_\_\_\_\_  
27 <sup>1</sup> Plaintiffs and Avenue Capital are collectively referred to as the “Settling Parties.”  
28

- a. to determine whether the Settlement is fair, reasonable, and adequate, and should be approved by the Court;
- b. to finally determine whether the Order and Final Judgment as provided under the Stipulation should be entered, dismissing the Complaint on the merits and with prejudice, and to determine whether the release by the Class of the Released Persons as set forth in the Stipulation, should be ordered, along with a permanent injunction barring efforts to bring any Released Claims extinguished by the Settlement;
- c. to finally determine whether the proposed Plan of Allocation for the distribution of the Net Settlement Fund is fair and reasonable and should be approved by the Court;
- d. to consider the application of Plaintiffs' Counsel for an award of Attorneys' Fees and Expenses, and for an Award to Plaintiffs;
- e. to consider Class Members' objections to the Settlement, whether submitted previously in writing or presented orally at the Settlement Hearing by Class Members (or by counsel on their behalf); and
- f. to rule upon such other matters as the Court may deem appropriate.

3. The Court reserves the right to approve the Settlement with such modifications as may be agreed upon or consented to by the Settling Parties and without further notice to the Class where to do so would not impair Class Members' rights in a manner inconsistent with Rule 23 and due process of law. The Court further reserves the right to enter its Order and Final Judgment approving the Settlement and dismissing the Complaint, on the merits and with prejudice, regardless of whether it has approved the Plan of Allocation or awarded Attorneys' Fees and Expenses or made an Award to Plaintiffs.

4. The Court approves the form, substance and requirements of (a) the Notice, (b) the Summary Notice, and (c) the Proof of Claim, all of which are exhibits to the Stipulation.

1           5.       Class Counsel has the authority to enter into the Stipulation on behalf of the Class  
2 and is authorized to act on behalf of the Class with respect to all acts or consents required by or  
3 that may be given pursuant to the Stipulation or such other acts that are reasonably necessary to  
4 consummate the Settlement.

5           6.       Strategic Claims Services is appointed and approved as the Claims Administrator  
6 for the Settlement.

7           7.       Class Counsel is authorized to establish a Notice and Administration Escrow  
8 Account (as defined in the Stipulation) of \$250,000 (Two Hundred Fifty Thousand Dollars) in  
9 accordance with the provisions of the Stipulation, to be used for reasonable out-of-pocket costs  
10 in connection with providing notice of the Settlement to the Class, for administering the  
11 Settlement and distributing payments therefrom, and for other reasonable out-of-pocket  
12 administrative expenses. After the Effective Date, additional amounts may be transferred from  
13 the Gross Settlement Fund to the Notice and Administration Escrow Account. All funds held in  
14 the Notice and Administration Escrow Account shall be deemed to be *in custodia legis* and shall  
15 remain subject to the jurisdiction of this Court until such time as the funds shall be distributed or  
16 returned to the Gross Settlement Fund pursuant to the Stipulation and/or further order of the  
17 Court.

18           8.       Class Counsel is authorized to establish a Settlement Escrow Account (as defined  
19 in the Stipulation) for the remainder of the \$6,200,000.00 (Six Million Two Hundred Thousand  
20 Dollars and Zero Cents) in accordance with the provisions of the Stipulation. All funds held in  
21 the Settlement Escrow Account shall be deemed to be *in custodia legis* and shall remain subject  
22 to the jurisdiction of this Court until such time as the funds shall be distributed or returned  
23 pursuant to the Stipulation and/or further order of the Court.

24           9.       The Claims Administrator is authorized and directed to prepare any tax returns  
25 and any other tax reporting forms for, or in respect of, the Gross Settlement Fund, to pay from  
26 the Gross Settlement Fund any Taxes and Tax Expenses owed with respect to the Gross  
27 Settlement Fund, and otherwise to perform all obligations with respect to Taxes and Tax  
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1 Expenses and any reporting or filings in respect thereof without further order of this Court in a  
2 manner consistent with the provisions of the Stipulation.

3 10. In light of the fact that all reasonably identified Class Members were already  
4 provided notice via both first-class mail and publication of the settlement website administered  
5 by the Claims Administrator, [www.strategicclaims.net/MagnaChip](http://www.strategicclaims.net/MagnaChip), in connection with the  
6 previous settlement in this Action, the Court approves the following plan of notice for this  
7 Settlement: (a) Class Counsel, through the Claims Administrator, shall cause the Summary  
8 Notice, substantially in the form annexed hereto, to be mailed, by first class mail, postage  
9 prepaid, within fourteen (14) calendar days of the entry of this Order, to all Class Members who  
10 can be identified with reasonable effort by the Claims Administrator, advising them of the  
11 Settlement and of the availability of documentation on the settlement website; (b) Class Counsel,  
12 through the Claims Administrator, shall cause the publication of the Summary Notice at least  
13 twice within twenty-one (21) calendar days of the entry of this Order, via a newswire with broad,  
14 national distribution; (c) Class Counsel, through the Claims Administrator, shall email the Notice  
15 to all Class Members for whom the Claims Administrator has email addresses, as the result of  
16 the previous settlement administration; and (d) Class Counsel, through the Claims Administrator,  
17 shall make the Notice, Summary Notice, Proof of Claim, Stipulation, Preliminary Approval  
18 Order and (Proposed) Final Approval Order available on the settlement website.

19 11. Class Counsel, through the Claims Administrator, shall also make all reasonable  
20 efforts to give notice to nominee owners such as brokerage firms and other persons or entities  
21 who purchased MagnaChip Securities during the Class Period. Such nominee purchasers are  
22 directed to forward copies of the Summary Notice to their beneficial owners or to provide the  
23 Claims Administrator with lists of the names and addresses of the beneficial owners and the  
24 Claims Administrator is ordered to send the Summary Notice promptly to such beneficial  
25 owners. Additional copies of the Summary Notice shall be made available to any record holder  
26 requesting same for the purpose of distribution to beneficial owners, and such record holders  
27 shall be reimbursed from the Gross Settlement Fund, upon receipt by the Claims Administrator  
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1 of proper documentation, for the reasonable expense of sending the Summary Notice to  
2 beneficial owners. A nominee's failure to transmit the Summary Notice to a beneficial owner  
3 shall not impact whether that beneficial owner is considered a Class Member. Nothing in this  
4 Order creates any duties, liabilities, obligations, responsibilities, or rights as between any  
5 nominee and any beneficial owner that do not already otherwise exist in contract or by law.

6 12. The Claims Administrator shall, ~~at or before~~ no later than twenty-one days before  
7 the Settlement Hearing, serve upon the Defendant's Counsel, and file with the Court, proof of  
8 mailing, both to Class Members and to nominees.

9 13. The forms and methods set forth herein of notifying the Class of the Settlement  
10 and its terms and conditions meet the requirements of due process and Rule 23 of the Federal  
11 Rules of Civil Procedure, Section 21D(a)(7) of the Exchange Act, 15 U.S.C. 78u-4(a)(7), as  
12 amended by the Private Securities Litigation Reform Act of 1995; constitute the best notice  
13 practicable under the circumstances; and constitute due and sufficient notice to all persons and  
14 entities entitled thereto. No Class Member will be relieved from the terms of the Settlement,  
15 including the releases provided for therein, based upon the contention or proof that such Class  
16 Member failed to receive actual or adequate notice.

17 14. In order to be entitled to participate in recovery from the Net Settlement Fund  
18 after the Effective Date:

19 A. Class Members who previously submitted a valid Proof of Claim to the Claims  
20 Administrator in connection with the previous settlement in this action need not take any action;  
21 and

22 B. Each class Member who did not previously submit a Proof of Claim to the Claims  
23 Administrator in connection with the previous settlement in this action shall take the following  
24 action and be subject to the following conditions:

25 a. A properly completed and executed Proof of Claim must be submitted to the  
26 Claims Administrator, at the Post Office Box indicated in the Notice,  
27 postmarked no later than thirty (30) calendar days from the date of the  
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1 Settlement Hearing. Such deadline may be further extended by Order of the  
2 Court. Each Proof of Claim shall be deemed to have been submitted when  
3 legibly postmarked (if properly addressed and mailed by first-class mail)  
4 provided such Proof of Claim is actually received before the filing of a motion  
5 for an Order of the Court approving distribution of the Net Settlement Fund.  
6 Any Proof of Claim submitted in any other manner shall be deemed to have  
7 been submitted when it was actually received by the Administrator at the  
8 address designated in the Notice.

9 b. The Proof of Claim submitted by each Class Member must satisfy the  
10 following conditions: (i) it must be properly filled out, signed and submitted  
11 in a timely manner in accordance with the provisions of the preceding  
12 subparagraph; (ii) it must be accompanied by adequate supporting  
13 documentation for the transactions reported therein, in the form of broker  
14 confirmation slips, broker account statements, an authorized statement from  
15 the broker containing the transactional information found in a broker  
16 confirmation slip, or such other documentation as is deemed adequate by the  
17 Claims Administrator or Class Counsel; (iii) if the person executing the Proof  
18 of Claim is acting in a representative capacity, a certification of his current  
19 authority to act on behalf of the Class Member must be provided with the  
20 Proof of Claim; and (iv) the Proof of Claim must be complete and contain no  
21 material deletions or modifications of any of the printed matter contained  
22 therein and must be signed under penalty of perjury.

23 c. Once the Claims Administrator has considered a timely submitted Proof of  
24 Claim, it shall determine whether such claim is valid, deficient or rejected.  
25 For each claim determined to be either deficient or rejected, the Claims  
26 Administrator shall send a deficiency letter or rejection letter as appropriate,  
27 describing the basis on which the claim was so determined. Persons who  
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1           timely submit a Proof of Claim that is deficient or otherwise rejected shall be  
2           afforded a reasonable time (at least seven (7) calendar days) to cure such  
3           deficiency if it shall appear that such deficiency may be cured.

4           d. For the filing of and all determinations concerning their Proof of Claim, each  
5           Class Member shall submit to the jurisdiction of the Court.

6           15. All Class Members who did not previously submit a Proof of Claim to the Claims  
7           Administrator in connection with the previous settlement in this action and who do not submit  
8           valid and timely Proofs of Claim will be forever barred from receiving any payments from the  
9           Net Settlement Fund, but will in all other respects be subject to and bound by the provisions of  
10          the Stipulation and the Order and Final Judgment, if entered.

11          16. Class Members shall be bound by all determinations and judgments in the Action,  
12          whether favorable or unfavorable, unless such persons request exclusion from the Class in a  
13          timely and proper manner, as hereinafter provided. A Class Member wishing to make such  
14          request shall mail it, so that it is received no later than twenty-one (21) calendar days prior to the  
15          Settlement Hearing or April 19, 2018, to MagnaChip Semiconductor Corp. Securities Litigation,  
16          c/o Strategic Claims Services (Claims Administrator), P.O. Box 230, 600 North Jackson Street,  
17          Suite 3, Media, PA 19063. Such request for exclusion shall clearly indicate the name and  
18          address and phone number (if any) of the person seeking exclusion, state that the sender  
19          specifically requests to be excluded from the Class, and must be signed by such person. Such  
20          persons requesting exclusion are also required to specify all their purchases and sales of  
21          MagnaChip Securities during the Class Period, including the date, number of shares and price of  
22          the shares purchased or sold. The request for exclusion shall not be effective unless it provides  
23          the required information, is legible, and is made within the time stated above, or the exclusion is  
24          otherwise accepted by the Court. Class Counsel may contact any person or entity filing a request  
25          for exclusion, or their attorney if one is designated, to discuss the exclusion.

26          17. Class Members requesting exclusion from the Class shall not be entitled to  
27          receive any payment out of the Net Settlement Fund.



1           18.     The Court will consider comments and/or objections to the Settlement, the Plan of  
2 Allocation, or the application for Attorneys' Fees and Expenses and any Award to Plaintiffs only  
3 if such comments or objections and any supporting papers are filed at least twenty (21) calendar  
4 days prior to the Settlement Hearing with the Clerk of the Court, U.S. District Court, Northern  
5 District of California, 450 Golden Gate Avenue, San Francisco, California 94102. Attendance at  
6 the Settlement Hearing is not necessary.

7           19.     Any Class Member who does not object in the manner prescribed above shall be  
8 deemed to have waived all such objections and shall forever be foreclosed from making any  
9 objection to the fairness, adequacy or reasonableness of the Settlement, the Order and Final  
10 Judgment to be entered approving the Settlement, the Plan of Allocation, or the application for  
11 an award of Attorneys' Fees and Expenses and a payment to Plaintiffs.

12           20.     The Court reserves the right to adjourn the Settlement Hearing or any  
13 adjournment thereof without any further notice other than entry of an Order on the Court's  
14 docket, and to approve the Settlement without further notice to the Class.

15           21.     All papers in support of the Settlement, the Plan of Allocation and any application  
16 for Attorneys' Fees or Expenses or an Award to Plaintiffs shall be filed and served thirty-five  
17 (35) calendar days before the Settlement Hearing.

18           22.     Any submissions filed in response to any objections or in further support of the  
19 Settlement, the Plan of Allocation and any application for Attorneys' Fees or Expenses or an  
20 Award to Plaintiffs shall be filed no later than fourteen (14) calendar days prior to the Settlement  
21 Hearing.

22           23.     Until and unless otherwise ordered by the Court, all proceedings in the Action  
23 against all Released Persons are hereby stayed, except for proceedings necessary to carry out or  
24 enforce the terms and conditions of the Stipulation. Pending final determination of whether the  
25 Settlement should be approved, Plaintiffs, all Class Members, and each of them, and anyone  
26 acting or purporting to act for any of them, shall be enjoined from prosecuting, attempting to  
27 prosecute, or assisting others in the prosecution of, any Released Claims against all Released  
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1 Persons in this Court or any other court or forum.

2 a. "Released Claims" means any and all claims, rights, demands, obligations,  
3 damages, actions or causes of action, or liabilities whatsoever, of every nature  
4 and description, whether known or unknown, whether arising under federal,  
5 state, common or foreign law or regulation, that arise out of or relate in any  
6 way to the purchase or sale of MagnaChip securities during the Class Period  
7 and the acts, facts, statements, or omissions that were or could have been  
8 alleged or asserted by Plaintiffs or any member of the Class in the Action or in  
9 any other action in any court or, including Unknown Claims, except that  
10 expressly excluded from the definition of Released Claims are: (i) all claims  
11 of any Person who submits a request for exclusion from the Settlement, to the  
12 extent that the Court grants any such request; and (ii) all claims to enforce any  
13 of the terms of this Stipulation.

14 b. "Released Persons" means Avenue Capital, its present and former parents,  
15 subsidiaries, divisions, departments, affiliates (including any investment funds  
16 it manages), stockholders, officers, directors, employees, agents, and any of  
17 their advisors, counsel, underwriters, representatives (and the predecessors,  
18 successors, insurers, administrators and assigns of each of the foregoing).

19 24. In the event the Settlement is not consummated pursuant to the terms of the  
20 Stipulation, then the Stipulation, except as otherwise provided in Section L.6 therein, including  
21 any amendment(s) thereto, and this Order, except for Paragraphs 25-26 and 28-29, shall be null  
22 and void, of no further force or effect, and all Settling Parties shall be deemed to have reverted  
23 *nunc pro tunc* to their respective status prior to the execution of the Memorandum of  
24 Understanding between the Settling Parties dated May 12, 2017 ("MOU"), and the Settling  
25 Parties shall proceed in all respects as if the MOU and the Stipulation had not been executed and  
26 the related orders had not been entered, without prejudice in any way from the negotiation, fact,  
27 or terms of the Settlement, and preserving all of their respective claims and defenses in the  
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1 Action, and shall revert to their respective positions in the Action.

2 25. In the event the Settlement is not consummated pursuant to the terms of the  
3 Stipulation, the Escrow Agent shall refund the Gross Settlement Fund, less amounts already  
4 expended for Notice and Administration Expenses pursuant to the terms of the Stipulation, to  
5 Avenue Capital within ten (10) business days thereafter. At the request of the Settling Defendant  
6 or Plaintiffs, the Escrow Agent or the Escrow Agent's designee shall apply for any tax refund  
7 owed to the Gross Settlement Fund and pay the percentage of the proceeds of the tax refund,  
8 after deduction of any fees and expenses incurred in connection with such application(s) for  
9 refund, to Avenue Capital

10 26. Neither the MOU, the Stipulation (including the exhibits and Supplemental  
11 Agreement thereto), this Order, nor the fact of the Settlement, is an admission or concession by  
12 the Released Persons of any liability or wrongdoing whatsoever and shall not constitute a finding  
13 of the validity or invalidity of any factual allegation or any claims in the Action or of any  
14 liability or wrongdoing by any of the Released Persons. The MOU, the Stipulation, this Order,  
15 the fact of settlement, the settlement proceedings, the settlement negotiations, and any related  
16 documents, shall not be used or construed as an admission of any factual allegation, fault,  
17 liability, or wrongdoing by any person or entity, and shall in no event be offered or received in  
18 evidence as an admission, concession, presumption, or inference against any party in any action  
19 or proceeding of any nature, or otherwise referred to or used in any manner in or before any  
20 court or other tribunal, except in such proceeding as may be necessary to enforce the Stipulation.


21 27. Notwithstanding the foregoing Paragraph 26, the Settling Parties and other  
22 Released Persons may file or refer to this Order, the Stipulation, Order and Final Judgment,  
23 and/or any Claim Form: (a) to effectuate the liability protections granted hereunder or  
24 thereunder, including without limitation, to support a defense or counterclaim based on  
25 principles of *res judicata*, collateral estoppel, release, good-faith settlement, judgment bar or  
26 reduction, or any theory of claim preclusion or issue preclusion or similar defense or  
27 counterclaim; (b) to obtain a judgment reduction under applicable law; (c) to enforce any  
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1 applicable insurance policies and any agreements relating thereto; or (d) to enforce the terms of  
2 the Stipulation and/or the Order and Final Judgment.

3 28. The Court retains exclusive jurisdiction over the action to consider all further  
4 matters arising out of, or relating to, the Settlement, including by way of illustration and not  
5 limitation, any dispute concerning any Proof of Claim filed by any Class Member and any future  
6 requests by one or more of the Parties that the Order and Final Judgment and/or the permanent  
7 injunction set forth in the Stipulation be enforced.

8 29. The Court's orders entered during this Action relating to the confidentiality of  
9 information shall survive this Settlement.

10 Dated: January 22, 2018

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12 HON. JON S. TIGAR  
13 UNITED STATES DISTRICT JUDGE  
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