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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA

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

9 Plaintiffs,

10 v.

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

21 Defendants.

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

CLASS ACTION

**[PROPOSED] ORDER AND
FINAL JUDGMENT**

Hon. Jon S. Tigar

1 On the ____ day of ____, 2018, a hearing having been held before this Court to
2 determine, among other things: (1) whether the terms and conditions of the Stipulation and
3 Agreement of Settlement dated June 14, 2017 (the “Stipulation”) are fair, reasonable, and
4 adequate for the settlement of all claims asserted by the Class previously certified by this Court
5 on December 22, 2016 against Settling Defendant Avenue Capital Management II, L.P. and (2)
6 whether to approve the proposed Plan of Allocation as a fair and reasonable method to allocate
7 the Net Settlement Fund among the Class Members; and

8 The Court having considered all matters submitted to it at the hearing and otherwise; and

9 It appearing that the Notice substantially in the form approved by the Court in the Court’s
10 Order Preliminarily Approving Settlement and Providing For Notice (“Preliminary Approval
11 Order”) was mailed to all reasonably identifiable potential Class Members; and

12 It appearing that the Summary Notice substantially in the form approved by the Court in
13 the Preliminary Approval Order was published in accordance with the Preliminary Approval
14 Order and the specifications of the Court;

15 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUGED AND DECREED
16 THAT:

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

19 2. The Court has jurisdiction over the subject matter of the Action, Plaintiffs, all
20 Class Members, and the Settling Defendant.

21 3. Excluded from the Class are all current and former defendants, Avenue Capital’s
22 present and former parents, subsidiaries, divisions, departments, affiliates (including any
23 investment funds it manages), stockholders, officers, directors, employees, agents, and any of
24 their advisors, counsel, underwriters, representatives (and the predecessors, successors, insurers,
25 administrators and assigns of each of the foregoing), MagnaChip’s officers and directors during
26 the Class Period, and all such excluded Persons’ immediate families, legal representatives, heirs,
27 parents, wholly-owned subsidiaries, successors, and assigns. Also excluded are those persons
28 who filed valid and timely requests for exclusion in accordance with this Order, as set forth in
Exhibit A hereto.

 4. The Court hereby finds that the forms and methods of notifying the Class of the
Settlement and its terms and conditions met the requirements of due process and Rule 23 of the

1 Federal Rules of Civil Procedure, Section 21D(a)(7) of the Exchange Act, 15 U.S.C. § 78u-
2 4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995; constituted the best
3 notice practicable under the circumstances; and constituted due and sufficient notice to all
4 persons and entities entitled thereto of these proceedings and the matters set forth herein,
5 including the Settlement and Plan of Allocation, to all Persons entitled to such notice. No Class
6 Member is relieved from the terms of the Settlement, including the releases provided for therein,
7 based upon the contention or proof that such Class Member failed to receive actual or adequate
8 notice. A full opportunity has been offered to Class Members to object to the proposed
9 Settlement and to participate in the hearing thereon. The Court further finds that the notice
10 provisions of the Class Action Fairness Act, 28 U.S.C. § 1715, were fully discharged and that the
11 statutory waiting period has elapsed. Thus, it is hereby determined that all members of the Class
12 are bound by this Order and Final Judgment, except those persons listed on Exhibit A to this
Order and Final Judgment.

13 5. The Settlement is approved as fair, reasonable and adequate, and in the best
14 interests of the Class. Plaintiffs and the Settling Defendant are directed to consummate the
15 Settlement in accordance with the terms and provisions of the Stipulation.

16 6. Plaintiffs and the Class Members hereby release and forever discharge the
17 Released Persons from any and all Released Claims. Plaintiffs and the Class Members are
18 hereby permanently and forever enjoined from prosecuting, attempting to prosecute, or assisting
19 others in the prosecution of the Released Claims against the Released Persons, as set forth in the
Stipulation. For purposes of this Order and Final Judgment:

- 20 a. “Released Claims” means any and all claims, rights, demands, obligations,
21 damages, actions or causes of action, or liabilities whatsoever, of every nature
22 and description, whether known or unknown, whether arising under federal,
23 state, common or foreign law or regulation, that arise out of or relate in any
24 way to the purchase or sale of MagnaChip securities during the Class Period
25 and the acts, facts, statements, or omissions that were or could have been
26 alleged or asserted by Plaintiffs or any member of the Class in the Action or in
27 any other action in any court or, including Unknown Claims, except that
28 expressly excluded from the definition of Released Claims are: (i) all claims
of any Person listed on Exhibit A hereto, to the extent that the Court grants

1 any such request; and (ii) all claims to enforce any of the terms of this
2 Stipulation.

- 3 b. “Released Persons” means Avenue Capital, its present and former parents,
4 subsidiaries, divisions, departments, affiliates (including any investment funds
5 it manages), stockholders, officers, directors, employees, agents, and any of
6 their advisors, counsel, underwriters, representatives (and the predecessors,
7 successors, insurers, administrators and assigns of each of the foregoing).

8 7. The Settling Defendant, including any and all of its successors in interest or
9 assigns, hereby releases and forever discharges any and all Released Defendant’s Claims, to the
10 extent they relate to the subject matter of this Action or its prosecution thereof, against the
11 Plaintiffs and Class Representatives, any of the Class Members, and any of their counsel,
including Class Counsel. For purposes of this Order and Final Judgment:

- 12 a. “Released Defendant’s Claims” means all claims, demands, rights, remedies,
13 liabilities, and causes of action of every nature and description whatsoever,
14 whether based on federal, state, local, statutory, or common law, or any other
15 law, rule, or regulation, including both known and Unknown Claims, that: (i)
16 have been or could have been asserted in the Action by any of the Released
17 Persons or the successors and assigns of any of them, against any of the
18 Plaintiffs or any of their attorneys; and (ii) arise out of or relate in any way to
19 the institution, prosecution, or Settlement of this Action or the Released
20 Claims, including but not limited to all claims for malicious prosecution or
21 sanctions. “Released Defendant’s Claims” does not include claims to enforce
22 any of the terms of this Stipulation. “Released Defendant’s Claims” does not
23 include claims to enforce any of the terms of this Stipulation or any claims by
24 the Released Persons against any Person listed on Exhibit A hereto.

25 8. **Bar Order:** subject to the provisions of the Stipulation, all Persons are barred
26 from commencing, prosecuting, or asserting any Barred Claims. All Barred Claims are hereby
27 extinguished, discharged, satisfied, and unenforceable. If any term of this Bar Order is held to be
28 unenforceable after the date of entry, such provision shall be substituted with such other
provision as may be necessary to afford all Released Persons the fullest protection permitted by
law from any Barred Claim. For purposes of this Order and Final Judgment:

1 a. "Barred Claim" means any claim, if any, however styled, whether for
2 indemnification, contribution, or otherwise and whether arising under state,
3 federal or common law, against the Released Persons (including claims
4 asserted by Released Persons against other Released Persons) where the claim
5 is or arises from a Released Claim and the alleged injury to such Person arises
6 from that Person's alleged liability to the Class or any Class Member,
7 including any claim in which a Person seeks to recover from any of the
8 Released Persons (i) any amounts such person or entity has or might become
9 liable to pay to the Class or any Class Member and/or (ii) any costs, expenses,
10 or attorneys' fees from defending any claim by the Class or any Class
11 Member.

12 9. Notwithstanding the foregoing Paragraph 8, nothing in this Order and Final
13 Judgment:

- 14 a. will bar the Released Persons from pursuing claims that are outside the scope
15 of or independent of the Released Claims, including but not limited to any
16 claim that any Released Person may have for indemnification related to costs
17 and expenses incurred in responding to discovery requests in the Action;
- 18 b. will bar or constitute a release of any claim by any of the Released Persons for
19 insurance or reinsurance coverage arising out of, related to, or in connection
20 with this Action or the Released Claims; or
- 21 c. shall prevent any Person listed on Exhibit A hereto from pursuing any claim
22 against any Released Person; if any such Person pursues any such claim
23 against any Released Person, nothing in this Order and Final Judgment or in
24 the Stipulation shall operate to preclude such Released Person from (i)
25 asserting any claim of any kind against such Person, including any Released
26 Defendant's Claim (ii) or seeking contribution or indemnity from any Person,
27 including any other Released Person, in respect of the claim made by a
28 Person listed on Exhibit A.

10. Plaintiffs' Counsel are awarded attorneys' fees in the amount of
\$ _____ and expenses, including experts' fees and expenses, in the amount of
\$ _____, such amounts to be paid from out of the Gross Settlement Fund ten (10)

1 calendar days following the entry of this Order. Class Counsel shall thereafter be solely
2 responsible for allocating the Attorneys' Fees and Expenses among other Plaintiffs' Counsel in a
3 manner in which Class Counsel in good faith believe reflects the contributions of such counsel to
4 the initiation, prosecution, and resolution of the Action. If, and when, as a result of any appeal
5 and/or further proceedings on remand, or successful collateral attack, the foregoing Attorneys'
6 Fees and Expense award is overturned or lowered, or if the Settlement is terminated or is not
7 approved by the Court, or if there is an appeal and any order approving the Settlement does not
8 become Final and binding upon the Class, then, within thirty (30) business days after receiving
9 notice from Settling Defendant's Counsel of such an order from a court of appropriate
10 jurisdiction, each Plaintiffs' Counsel law firm shall refund to the Gross Settlement Fund such
11 fees and expenses previously paid to them from the Gross Settlement Fund plus interest thereon
12 at the same rate as earned on the Gross Settlement Fund in an amount consistent with such
13 reversal or modification. Each Plaintiffs' Counsel law firm receiving attorneys' fees and
14 litigation costs and expenses, as a condition of receiving such fees and expenses, on behalf of
15 itself and each partner and/or shareholder of it, (including the law firm and its partners and/or
16 shareholders) shall be subject to the jurisdiction of the Court for the purpose of enforcing this
17 Stipulation, and each shall be liable for repayment of the attorneys' fees and litigation costs and
18 expenses allocated to it, including all amounts paid as referral fees to other law firms, as well as
19 accrued interest thereon. Upon application of Avenue Capital or its Counsel, the Court may
20 summarily issue orders, including, without limitation, judgments and attachment orders and may
21 make appropriate findings of or sanctions for contempt against any of Plaintiffs' Counsel law
22 firm or any of its partners and/or shareholders should such Plaintiffs' Counsel law firm fail
23 timely to repay fees and expenses pursuant to this Paragraph 11.

22 11. Class Representatives are awarded the sum of \$ _____ each, as
23 reasonable costs and expenses directly relating to the representation of the Class as provided in
24 15 U.S.C. § 78u-4(a)(4), such amounts to be paid from the Gross Settlement Fund upon the
25 Effective Date of the Settlement.

26 12. The Court hereby finds that the proposed Plan of Allocation is a fair and
27 reasonable method to allocate the Net Settlement Fund among Class Members.

28 13. The Court finds that all parties and their counsel have complied with each
requirement of Rule 11 of the Federal Rules of Civil Procedure as to all proceedings herein.

1 14. Neither this Order and Final Judgment, the Preliminary Approval Order, the
2 Stipulation (including the exhibits and Supplemental Agreement thereto), the Memorandum of
3 Understanding between the Settling Parties dated May 12, 2017 (the “MOU”), nor any of the
4 negotiations, documents or proceedings connected with them shall be:

- 5 a. referred to or used against the Released Persons or against the Plaintiffs or the
6 Class as evidence of wrongdoing by anyone;
- 7 b. construed against the Released Persons or against the Plaintiffs or the Class as
8 an admission or concession that the consideration to be given hereunder
9 represents the amount which could be or would have been recovered after
10 trial;
- 11 c. construed as, or received in evidence as, an admission, concession or
12 presumption against the Class or any of them, that any of their claims are
13 without merit or that damages recoverable under the Complaint would not
14 have exceeded the Settlement Amount; or
- 15 d. used or construed as an admission of any fault, liability or wrongdoing by any
16 person or entity, or offered or received in evidence as an admission,
17 concession, presumption or inference against any of the Released Persons in
18 any proceeding other than such proceedings as may be necessary to
19 consummate or enforce the Stipulation.

20 15. Notwithstanding the foregoing Paragraph 14, the Settling Parties and other
21 Released Persons may file or refer to this Order and Final Judgment, the Stipulation, Preliminary
22 Approval Order, and/or any Claim Form: (a) to effectuate the liability protections granted
23 hereunder or thereunder, including without limitation, to support a defense or counterclaim based
24 on principles of *res judicata*, collateral estoppel, release, good-faith settlement, judgment bar or
25 reduction, or any theory of claim preclusion or issue preclusion or similar defense or
26 counterclaim; (b) to obtain a judgment reduction under applicable law; (c) to enforce any
27 applicable insurance policies and any agreements relating thereto; or (d) to enforce the terms of
28 the Stipulation and/or this Order and Final Judgment.

 16. Exclusive jurisdiction is hereby retained over the Settling Parties for all matters
relating to the Action, including the administration, interpretation, effectuation or enforcement of

1 the Stipulations, or Settlement and this Order and Final Judgment, and including any application
2 for fees and expenses incurred in connection with administering and distributing the Settlement
3 proceeds to the Class Members.

4 17. Without further order of the Court, the Settling Parties may agree to reasonable
5 extensions of time to carry out any of the provisions in the Stipulation.

6 18. There is no just reason for delay in the entry of this Order and Final Judgment and
7 immediate entry by the Clerk of the Court is directed pursuant to Rule 54(b) of the Federal Rules
8 of Civil Procedure.

9 19. The finality of this Order and Final Judgment shall not be affected, in any manner,
10 by any appeal concerning the Attorneys' Fees and Expenses awarded herein, the Award to
11 Plaintiffs, or the Plan of Allocation.

12 20. In the event that the Settlement does not become Final and effective in accordance
13 with the terms and conditions set forth in the Stipulation, then the Stipulation, except as
14 otherwise provided in Section L.6 therein, including any amendment(s) thereto, the Preliminary
15 Approval Order, except for Paragraphs 25-26 and 28-29 thereof, and this Order and Final
16 Judgment, except for Paragraphs 11, 14, and 20-22 shall be rendered null and void of no further
17 force or effect, and all Settling Parties shall be deemed to have reverted *nunc pro tunc* to their
18 respective status prior to the execution of the MOU, and the Settling Parties shall proceed in all
19 respects as if the MOU and the Stipulation had not been executed and the related orders had not
20 been entered, without prejudice in any way from the negotiation, fact, or terms of the Settlement,
21 and preserving all of their respective claims and defenses in the Action, and shall revert to their
22 respective positions in the Action.

23 21. In the event the Settlement does not become Final and effective in accordance
24 with the terms and conditions set forth in the Stipulation, the Escrow Agent shall refund the
25 Gross Settlement Fund, less amounts already expended for Notice and Administration Expenses
26 pursuant to the terms of the Stipulation (provided that any deductions from the refund for
27 expenses and costs related to Notice and Administration Expenses shall be deducted from
28 Avenue Capital's proportional share of the contributions to the Settlement Amount), to Avenue
Capital within ten (10) business days thereafter. At the request of the Settling Defendant or
Plaintiffs, the Escrow Agent or the Escrow Agent's designee shall apply for any tax refund owed

1 to the Gross Settlement Fund and pay the percentage of the proceeds of the tax refund, after
2 deduction of any fees and expenses incurred in connection with such application(s) for refund, to
3 Avenue Capital.

4 22. The Court's orders entered during this Action relating to the confidentiality of
5 information shall survive this Settlement.

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8 Dated: _____, 2018

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10 _____
11 HON. JON S. TIGAR
12 UNITED STATES DISTRICT JUDGE
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