

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 AND
FINAL JUDGMENT**

Hon. Jon S. Tigar

1 On the 10th day of May, 2018, a hearing having been held before this Court
2 to 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. No persons filed valid and timely
28 requests for exclusion in accordance with the Preliminary Approval Order.

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
Federal Rules of Civil Procedure, Section 21D(a)(7) of the Exchange Act, 15 U.S.C. § 78u-

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

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

14 6. Plaintiffs and the Class Members hereby release and forever discharge the
15 Released Persons from any and all Released Claims. Plaintiffs and the Class Members are
16 hereby permanently and forever enjoined from prosecuting, attempting to prosecute, or assisting
17 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:

18 a. "Released Claims" means any and all claims, rights, demands, obligations,
19 damages, actions or causes of action, or liabilities whatsoever, of every nature
20 and description, whether known or unknown, whether arising under federal,
21 state, common or foreign law or regulation, that arise out of or relate in any
22 way to the purchase or sale of MagnaChip securities during the Class Period
23 and the acts, facts, statements, or omissions that were or could have been
24 alleged or asserted by Plaintiffs or any member of the Class in the Action or in
25 any other action in any court or, including Unknown Claims, except that
26 expressly excluded from the definition of Released Claims are all claims to
enforce any of the terms of this Stipulation.

27 b. "Released Persons" means Avenue Capital, its present and former parents,
28 subsidiaries, divisions, departments, affiliates (including any investment funds

it manages), stockholders, officers, directors, employees, agents, and any of their advisors, counsel, underwriters, representatives (and the predecessors, successors, insurers, administrators and assigns of each of the foregoing).

7. The Settling Defendant, including any and all of its successors in interest or assigns, hereby releases and forever discharges any and all Released Defendant's Claims, to the extent they relate to the subject matter of this Action or its prosecution thereof, against the 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:

a. "Released Defendant's Claims" means all claims, demands, rights, remedies, liabilities, and causes of action of every nature and description whatsoever, whether based on federal, state, local, statutory, or common law, or any other law, rule, or regulation, including both known and Unknown Claims, that: (i) have been or could have been asserted in the Action by any of the Released Persons or the successors and assigns of any of them, against any of the Plaintiffs or any of their attorneys; and (ii) arise out of or relate in any way to the institution, prosecution, or Settlement of this Action or the Released Claims, including but not limited to all claims for malicious prosecution or sanctions. "Released Defendant's Claims" does not include claims to enforce any of the terms of this Stipulation. "Released Defendant's Claims" does not include claims to enforce any of the terms of this Stipulation.

8. **Bar Order:** subject to the provisions of the Stipulation, all Persons are barred from commencing, prosecuting, or asserting any Barred Claims. All Barred Claims are hereby extinguished, discharged, satisfied, and unenforceable. If any term of this Bar Order is held to be 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:

a. "Barred Claim" means any claim, if any, however styled, whether for indemnification, contribution, or otherwise and whether arising under state, federal or common law, against the Released Persons (including claims asserted by Released Persons against other Released Persons) where the claim is or arises from a Released Claim and the alleged injury to such Person arises

from that Person's alleged liability to the Class or any Class Member, including any claim in which a Person seeks to recover from any of the Released Persons (i) any amounts such person or entity has or might become liable to pay to the Class or any Class Member and/or (ii) any costs, expenses, or attorneys' fees from defending any claim by the Class or any Class Member.

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

- a. will bar the Released Persons from pursuing claims that are outside the scope of or independent of the Released Claims, including but not limited to any claim that any Released Person may have for indemnification related to costs and expenses incurred in responding to discovery requests in the Action; or
- b. will bar or constitute a release of any claim by any of the Released Persons for insurance or reinsurance coverage arising out of, related to, or in connection with this Action or the Released Claims.

10. Plaintiffs' Counsel are awarded attorneys' fees in the amount of \$ 1,550,000.00 and expenses, including experts' fees and expenses, in the amount of \$ 795,401.42, such amounts to be paid from out of the Gross Settlement Fund ten (10) calendar days following the entry of this Order. Class Counsel shall thereafter be solely responsible for allocating the Attorneys' Fees and Expenses among other Plaintiffs' Counsel in a manner in which Class Counsel in good faith believe reflects the contributions of such counsel to the initiation, prosecution, and resolution of the Action. If, and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the foregoing Attorneys' Fees and Expense award is overturned or lowered, or if the Settlement is terminated or is not approved by the Court, or if there is an appeal and any order approving the Settlement does not become Final and binding upon the Class, then, within thirty (30) business days after receiving notice from Settling Defendant's Counsel of such an order from a court of appropriate jurisdiction, each Plaintiffs' Counsel law firm shall refund to the Gross Settlement Fund such fees and expenses previously paid to them from the Gross Settlement Fund plus interest thereon at the same rate as earned on the Gross Settlement Fund in an amount consistent with such reversal or modification. Each Plaintiffs' Counsel law firm receiving attorneys' fees and

1 litigation costs and expenses, as a condition of receiving such fees and expenses, on behalf of
2 itself and each partner and/or shareholder of it, (including the law firm and its partners and/or
3 shareholders) shall be subject to the jurisdiction of the Court for the purpose of enforcing this
4 Stipulation, and each shall be liable for repayment of the attorneys' fees and litigation costs and
5 expenses allocated to it, including all amounts paid as referral fees to other law firms, as well as
6 accrued interest thereon. Upon application of Avenue Capital or its Counsel, the Court may
7 summarily issue orders, including, without limitation, judgments and attachment orders and may
8 make appropriate findings of or sanctions for contempt against any of Plaintiffs' Counsel law
9 firm or any of its partners and/or shareholders should such Plaintiffs' Counsel law firm fail
timely to repay fees and expenses pursuant to this Paragraph 11.

10 11. Class Representatives are awarded the sum of \$ 1,500.00 each, as
11 reasonable costs and expenses directly relating to the representation of the Class as provided in
12 15 U.S.C. § 78u-4(a)(4), such amounts to be paid from the Gross Settlement Fund upon the
13 Effective Date of the Settlement.

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

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

18 14. Neither this Order and Final Judgment, the Preliminary Approval Order, the
19 Stipulation (including the exhibits and Supplemental Agreement thereto), the Memorandum of
20 Understanding between the Settling Parties dated May 12, 2017 (the "MOU"), nor any of the
21 negotiations, documents or proceedings connected with them shall be:

- 22 a. referred to or used against the Released Persons or against the Plaintiffs or the
23 Class as evidence of wrongdoing by anyone;
- 24 b. construed against the Released Persons or against the Plaintiffs or the Class as
25 an admission or concession that the consideration to be given hereunder
26 represents the amount which could be or would have been recovered after
27 trial;
- 28 c. construed as, or received in evidence as, an admission, concession or
presumption against the Class or any of them, that any of their claims are

1 without merit or that damages recoverable under the Complaint would not
2 have exceeded the Settlement Amount; or

- 3 d. used or construed as an admission of any fault, liability or wrongdoing by any
4 person or entity, or offered or received in evidence as an admission,
5 concession, presumption or inference against any of the Released Persons in
6 any proceeding other than such proceedings as may be necessary to
7 consummate or enforce the Stipulation.

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

17 16. Exclusive jurisdiction is hereby retained over the Settling Parties for all matters
18 relating to the Action, including the administration, interpretation, effectuation or enforcement of
19 the Stipulations, or Settlement and this Order and Final Judgment, and including any application
20 for fees and expenses incurred in connection with administering and distributing the Settlement
21 proceeds to the Class Members.

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

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

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

20. In the event that the Settlement does not become Final and effective in accordance

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

11 21. In the event the Settlement does not become Final and effective in accordance
 12 with the terms and conditions set forth in the Stipulation, the Escrow Agent shall refund the
 13 Gross Settlement Fund, less amounts already expended for Notice and Administration Expenses
 14 pursuant to the terms of the Stipulation (provided that any deductions from the refund for
 15 expenses and costs related to Notice and Administration Expenses shall be deducted from
 16 Avenue Capital's proportional share of the contributions to the Settlement Amount), to Avenue
 17 Capital within ten (10) business days thereafter. At the request of the Settling Defendant or
 18 Plaintiffs, the Escrow Agent or the Escrow Agent's designee shall apply for any tax refund owed
 19 to the Gross Settlement Fund and pay the percentage of the proceeds of the tax refund, after
 20 deduction of any fees and expenses incurred in connection with such application(s) for refund, to
 Avenue Capital.

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

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 25 Dated: May 17, 2018

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 27 HON. JON S. TIGAR
 28 UNITED STATES DISTRICT JUDGE