

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

| | | |
|--|---|------------------------------|
| MARK BOARDMAN, On Behalf of |) | Civ. No. |
| Himself and All Others Similarly Situated, |) | |
| |) | <u>CLASS ACTION</u> |
| Plaintiff, |) | |
| |) | COMPLAINT FOR VIOLATION OF |
| vs. |) | THE FEDERAL SECURITIES LAWS |
| |) | |
| NVE CORPORATION, DANIEL A. |) | |
| BAKER and JAMES M. DAUGHTON, |) | |
| |) | |
| Defendants. |) | |
| <hr style="width:45%; margin-left:0"/> |) | <u>DEMAND FOR JURY TRIAL</u> |

SUMMARY AND OVERVIEW

1. This is a securities class action on behalf of all purchasers of the common stock of NVE Corporation (“NVE” or the “Company”) between May 22, 2003 and February 11, 2005 (the “Class Period”), against NVE and certain of its officers and directors for violations of the Securities Exchange Act of 1934 (the “1934 Act”).

2. NVE engages in the development and sale of spintronics devices. Spintronics is a nanotechnology that utilizes electron spin rather than electron charge to acquire, store, and transmit information. It offers sensor products that detect the presence of a magnet or metal to determine position or speed, and couplers, which transmit digital data at high speed and are used for factory and industrial networks. The Company also licenses its spintronic Magnetoresistive Random Access Memory (“MRAM”) technology to other companies, including Cypress Semiconductor Corp. (“Cypress”). During the Class Period, NVE claimed that Cypress was using its alleged “watershed” MRAM patent and that NVE would

purportedly receive royalties from its licensing of its MRAM intellectual property to Cypress and other companies.

3. Then, on February 14, 2005, before the market opened, Cypress announced its intention to divest Silicon Magnetic Systems, a subsidiary Cypress had founded to commercialize MRAMs. On this news, the price of the Company's shares fell, losing close to 50% in value in the weeks that followed.

4. The true facts, which were known by each of the defendants but concealed from the investing public during the Class Period, were as follows:

(a) Cypress's MRAM product does not use the technology NVE claimed to own and/or have rights to. Moreover, defendants materially overhyped the significance of the Cypress relationship, as Cypress was not required to pay NVE a licensing or like fee even if Cypress were to create an economically viable MRAM product.

(b) NVE's MRAM patents are immaterial and unenforceable.

(c) The Company's June 21, 2004 press release claiming the significance of its receipt of patent 6,744,086 was of little consequence. In fact, the patent application was several years old and the patent had been granted a month earlier. Rather, defendants were timing the announcement to stave off a decline in the Company's shares.

(d) NVE did not invent/develop the idea of using one transistor to read every magnetic memory cell in an MRAM chip. In fact, the idea to use just one transistor per memory cell is over 38 years old and was invented by International Business Machines Corp. ("IBM").

(e) The Company's January 31, 2005 announcement that Cypress's MRAM products are covered by NVE's technology agreement with Cypress, which caused NVE's stock to reach \$33 per share in pre-market trading after NVE's announcement, was materially misleading. In fact, Cypress was not required to (and did not) pay NVE any royalty payments under its "technology agreement." Moreover, under the agreement NVE was to actually purchase wafers from Cypress and then package and test the chips to resell them to customers who could just as easily buy them from Cypress. Thus, the commercial economic significance of the January 31, 2005 announcement was grossly overstated.

5. As a result of the defendants' false statements, NVE stock traded at inflated levels during the Class Period, whereby the individuals named as defendants herein sold more than \$8.4 million worth of their own shares.

JURISDICTION AND VENUE

6. Jurisdiction is conferred by §27 of the 1934 Act. The claims asserted herein arise under §§10(b) and 20(a) of the 1934 Act and Rule 10b-5.

7. (a) Venue is proper in this District pursuant to §27 of the 1934 Act. Many of the false and misleading statements were made in or issued from this District.

(b) NVE's executive offices are located at 11409 Valley View Road, Eden Prairie, Minnesota, where the day-to-day operations of the Company are directed and managed.

THE PARTIES

8. Plaintiff Mark Boardman, as set forth in the accompanying certification incorporated by reference herein, purchased NVE common stock during the Class Period and was damaged thereby.

9. Defendant NVE is a corporation organized under the laws of the State of Minnesota with its principal executive offices located at 11409 Valley View Road, Eden Prairie, Minnesota. NVE describes itself as a leader in the practical commercialization of spintronics, a nanotechnology that may represent the next generation of microelectronics. NVE licenses its MRAM intellectual property and sells spintronic products, including sensors and couplers. It sells its products through manufacturers' representatives and distributors primarily in the United States.

10. Defendant Daniel A. Baker ("Baker") served, at all relevant times, as NVE's President, Chief Executive Officer ("CEO") and a member of its Board of Directors.

11. Defendant James M. Daughton ("Daughton") served, at all relevant times, as NVE's Chief Technology Officer ("CTO") and a member of its Board of Directors.

12. Collectively, defendants Baker and Daughton are hereinafter referred to as the "Individual Defendants." The Individual Defendants, because of their positions with the Company, possessed the power and authority to control the contents of NVE's quarterly reports, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, *i.e.*, the market. Each defendant was provided with copies of the Company's reports and press releases alleged herein to be misleading prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or cause them to

be corrected. Because of their positions and access to material non-public information available to them but not to the public, each of these defendants knew that the adverse facts specified herein had not been disclosed to and were being concealed from the public and that the positive representations which were being made were then materially false and misleading. The Individual Defendants are liable for the false statements pleaded herein at ¶¶19-20, 23, 25 and 27-30, as those statements were each “group-published” information, the result of the collective actions of the Individual Defendants.

SCIENTER

13. In addition to the above-described involvement, each Individual Defendant had knowledge of NVE’s problems and was motivated to conceal such problems. Baker and Daughton, as CEO and CTO, were responsible for reporting and communications with the market. Many of the internal reports showing NVE’s forecasted and actual growth were based on technological assumptions prepared under Daughton’s direction. Defendants Baker and Daughton, as CEO and CTO, were responsible for the financial results and press releases issued by the Company associated with their MRAM technology. Each Individual Defendant sought to demonstrate that he could lead the Company successfully and generate the growth expected by the market.

14. Defendants were motivated to engage in the fraudulent practices alleged herein in order to obtain insider trading proceeds of more than \$8.4 million.

INSIDER TRADING

15. During the Class Period, while in possession of material undisclosed adverse information, the Individual Defendants sold shares of their personally owned NVE stock as follows:

| Defendant | Date | Shares | Price | Proceeds |
|---------------|-----------|-----------------------|-----------|---------------------------|
| BAKER | 1/28/2004 | 39,000 | \$58.33 | \$2,274,870 |
| | 1/30/2004 | 26,000 | \$56.24 | \$1,462,240 |
| | | 65,000 | | \$3,737,110 |
| DAUGHTON | 7/22/2003 | 2,900 | \$27.16 | \$78,764 |
| | 7/23/2003 | 200 | \$26.00 | \$5,200 |
| | 7/24/2003 | 1,900 | \$24.16 | \$45,904 |
| | 7/25/2003 | 500 | \$21.99 | \$10,995 |
| | 7/28/2003 | 10,200 | \$22.03 | \$224,706 |
| | 7/29/2003 | 6,000 | \$22.08 | \$132,480 |
| | 7/31/2003 | 10,000 | \$22.14 | \$221,400 |
| | 8/01/2003 | 14,700 | \$23.07 | \$339,129 |
| | 8/04/2003 | 9,900 | \$22.45 | \$222,255 |
| | 8/05/2003 | 1,300 | \$22.41 | \$29,133 |
| | 8/14/2003 | 5,600 | \$18.00 | \$100,800 |
| | 8/15/2003 | 2,000 | \$18.50 | \$37,000 |
| | 8/18/2003 | 1,000 | \$19.25 | \$19,250 |
| | 8/19/2003 | 5,000 | \$19.30 | \$96,500 |
| | 8/20/2003 | 9,500 | \$19.81 | \$188,195 |
| | 8/22/2003 | 55,000 | \$24.08 | \$1,324,400 |
| | 8/25/2003 | 65,000 | \$21.67 | \$1,408,550 |
| 5/21/2004 | 10,000 | \$27.33 | \$273,300 | |
| | | 210,700 | | \$4,757,961 |
| Total: | | <u>275,700</u> | | <u>\$8,495,071</u> |

FRAUDULENT SCHEME AND COURSE OF BUSINESS

16. Each defendant is liable for (i) making false statements, *or* (ii) failing to disclose adverse facts known to him about NVE. Defendants' fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of NVE common stock was a success, as it (i) deceived the investing public regarding NVE's prospects and business; (ii) artificially inflated the price of NVE common stock; (iii) allowed defendants to obtain larger bonuses which were directly tied to the performance of NVE shares; (iv) allowed defendants

to arrange to sell and actually sell in excess of \$8.4 million worth of NVE stock at artificially inflated prices; and (v) caused plaintiff and other members of the Class to purchase NVE common stock at inflated prices.

BACKGROUND

17. NVE engages in the development and sale of spintronics devices. Spintronics is a nanotechnology that utilizes electron spin rather than electron charge to acquire, store, and transmit information. It offers sensor products that detect the presence of a magnet or metal to determine position or speed, and couplers, which transmit digital data at high speed and are used for factory and industrial networks. The Company also licenses its spintronic MRAM technology. In 2002, Cypress made an equity investment in NVE at the equivalent of \$4.85 per share. This allowed NVE to claim that Cypress was using its alleged “watershed” MRAM patent. Cypress in fact was not using the 38-year-old idea NVE claimed to hold a patent on.

18. NVE did not develop MRAM. Defendants knew that the MRAM patent had been shown to be little more than an old off-patent invention by IBM in use since the 1960s. NVE was a defunct work-for-hire research shop before it was merged with the empty shell of another defunct but public company. However, defendants sought to reap millions by engaging in a scheme to inflate the value of their personal NVE holdings.¹

¹ Though not named as a defendant herein, Cypress, a major NVE shareholder, sold more than \$23 million worth of NVE shares prior to disclosure of the adverse facts described herein at ¶4.

**DEFENDANTS' FALSE AND MISLEADING
STATEMENTS ISSUED DURING THE CLASS PERIOD**

19. On May 22, 2003, the Company issued a press release entitled "NVE Wins Government MRAM Contract," which stated, in part, as follows:

NVE Corporation announced today that it has been awarded a contract by the Office of Naval Research to develop advanced Magnetic Random Access Memory ("MRAM"). The contract represents a continuation of NVE's government MRAM funding, which began several years ago and has resulted in several important advances in the race to develop a manufacturable MRAM chip. The funding for the initial contract phase is approximately \$435,000.

Magnetic Random Access Memory ("MRAM") uses "spintronics," electrons' spin rather than their charge to store data. MRAM has the potential of combining the speed of semiconductor memory with the nonvolatility of magnetic disk drives, and could eventually replace conventional memories. MRAM is inherently nonvolatile, meaning the data remain even when power is removed.

Commenting on the award, Daniel A. Baker, Ph.D., NVE's president and CEO, said: "This contract further strengthens our MRAM intellectual property portfolio, which is already one of the best in the industry."

NVE has licensed MRAM intellectual property to several companies. *Current NVE licensees include Cypress Semiconductor Corporation, Honeywell International, Union Semiconductor Technology Corporation, and Motorola, Inc.*

Jeffrey K. Kaszubinski, president and CEO of Cypress' Silicon Magnetic Systems subsidiary company, calls MRAM "the Holy Grail" of memory. "MRAM is going to find applications everywhere," Kaszubinski commented. "Once it hits mainstream production, it will attack every established memory market."

20. On August 4, 2003, the Company issued a press release entitled "NVE Wins Government Contract to Develop Magneto-Thermal MRAM: Technology promises one-gigabyte low-power non-volatile memory," which stated, in part, as follows:

NVE Corporation announced today that it has been awarded a contract by the Defense Advanced Research Projects Agency (DARPA), administered by the U.S. Army Aviation and Missile Command, to develop magneto-thermal

Magnetic Random Access Memory (MRAM). The contract is for \$750,000 over two years and represents a continuation of NVE's government funding to advance and commercialize MRAM.

* * *

Magneto-thermal MRAM would use a combination of magnetic fields and ultra-fast heating from electrical current pulses to shrink the stability-limited cell size and reduce the energy required to write data. The project is to be compatible with a chip capacity of one gigabit with 100-nanometer lithography, which would allow MRAM to be fabricated at bit densities comparable to Dynamic Random Access Memory (DRAM). DRAM is currently most common and largest capacity semiconductor memory type.

“For MRAM to supplant DRAM in mainstream applications, both cell size and write current need to be reduced,” commented NVE President and Chief Executive Officer Daniel A. Baker, Ph.D. “Magneto-thermal MRAM addresses both issues, strengthening the promise of MRAM as the ideal memory. This contract will help bolster our intellectual property portfolio in this important area.”

NVE has licensed MRAM intellectual property to several companies. Current NVE licensees include Cypress Semiconductor Corporation, Honeywell International, Union Semiconductor Technology Corporation, and Motorola, Inc. Cypress and Motorola both demonstrated prototype MRAMs in the past year, and both announced plans for product introductions this calendar year. NVE has an agreement for Motorola to pay NVE royalties, and a contract for Cypress to manufacture MRAMs for NVE.

21. In response to the May and August 2003 statements, the Company's shares soared to as high as \$45 per share and the Company's officers and directors, and even a major shareholder, unloaded millions of dollars worth of the Company's shares at artificially inflated prices, including defendant Daughton, who, between July 22 and August 25, 2003, sold 200,700 shares of NVE stock at \$18.00-\$27.16 per share.

22. On September 5, 2003, *Bloomberg* published a story entitled “Cypress Semiconductor Sells Part of Its Stake in NVE Corp.,” which stated in part, as follows:

Cypress Semiconductor Corp. said it sold a portion of its investment in NVE Corp. for \$23.4 million to raise money for research and development.

Cypress disclosed in a filing with the Securities and Exchange Commission that it sold 686,849 NVE shares, the San Jose, California-based company said in statement distributed by *Business Wire*.

23. On November 20, 2003, the Company issued a press release entitled “NVE Wins Government Contract to Develop New Type of High-Density MRAM: New magneto-thermal technology promises non-volatile DRAM replacement,” which stated, in part, as follows:

NVE Corporation announced today that it has been awarded a contract by the Defense Threat Reduction Agency (DTRA) to develop a new type of magneto-thermal Magnetic Random Access Memory (MRAM). The contract is for approximately \$500,000 over two years and has a goal of showing the design feasibility of a one-gigabit (one billion bits of information) chip.

The contract announced today is in addition to a \$750,000 magneto-thermal MRAM contract announced August 4, 2003 from the Defense Advanced Research Projects Agency (DARPA) administered by the U.S. Army Aviation and Missile Command.

* * *

NVE has a number of U.S. and foreign patents on MRAM, including U.S. Patent number 6,535,416 for magneto-thermal MRAM. The area of research of the new contract is also covered by several U.S. Patent applications including number 20030007398.

* * *

NVE’s licensees are leading the race to commercialize MRAM. Motorola recently announced it has delivered samples of the world’s first four-megabit MRAM chips, and Cypress reported achieving economic yields and demonstrated MRAM prototypes. NVE has an agreement for Motorola to pay NVE royalties, and a contract for Cypress to manufacture MRAMs for NVE.

24. On January 28, 2004 and January 30, 2004, defendant Baker sold 65,000 shares of NVE stock at \$56.24-\$58.33 per share.

25. On March 19, 2004, the Company issued a press release entitled “NVE Corporation Provides MRAM Update,” which stated, in part, as follows:

NVE Corporation is providing the following update on the status of its MRAM partnerships.

- Cypress Semiconductor has made working MRAM using NVE intellectual property. Ralph Schmitt, Cypress Semiconductor's Executive Vice President of Sales and Marketing, said "we feel very confident that we are close to having a production-ready product." Under a technology exchange agreement, NVE has rights to Cypress Semiconductor's MRAM designs, rights to modify such designs, and rights to have MRAM manufactured at Cypress Semiconductor's foundry.
- Motorola, Inc. has said it expects to begin MRAM production by late 2004. NVE believes that the MRAMs Motorola has described publicly contain NVE's intellectual property. NVE expects to receive royalties if Motorola's production devices contain NVE's intellectual property.
- NVE plans to further monetize its MRAM intellectual property with additional license agreements.

26. On May 21, 2004, defendant Daughton sold 10,000 shares of NVE stock for \$27.33 per share.

27. On June 21, 2004, the Company issued a press release entitled "NVE Granted Patent on MRAM Innovation: Spin momentum memory cells could allow ultra-dense MRAM," which stated, in part, as follows:

NVE Corporation announced that the U.S. Patent and Trademark Office issued the company a patent for an innovative type of MRAM. Patent number 6,744,086, entitled "Current Switched Magnetoresistive Memory Cell," was granted in June and concerns spin-momentum magnetic memory cells. The patent also relates to thermally-assisted spin-momentum writing.

A recent paper by researchers from both the Center for Nanoscale Systems (CNS) at Cornell University and NVE reported that spin momentum produces spin orientation using less current than present methods. The invention therefore has the potential to significantly reduce MRAM write currents with lithographic feature sizes of less than 100 nanometers. This could enable MRAM cell densities comparable to those of DRAM or Flash. The findings were based on tests of "nanopillar" MRAM structures fabricated by CNS using material from NVE.

MRAM (Magnetic Random Access Memory) is a revolutionary type of memory fabricated using nanotechnology which uses electron spins to encode data. MRAM has been called the “holy grail” of memory because it has the potential to combine the speed of SRAM, the density of DRAM, and the non-volatility of Flash.

“This patent significantly strengthens our MRAM intellectual property portfolio,” commented NVE Founder and Chief Technology Officer James M. Daughton, Ph.D. “Spin momentum technology should help MRAM reach its potential as a dense, mainstream memory technology.”

28. On August 17, 2004, the Company issued a press release entitled “NVE Notified of Patent Grant for Key MRAM Structure,” which stated, in part, as follows:

NVE Corporation announced that it has been notified by the U.S. Patent and Trademark Office of the expected grant of a key MRAM patent. NVE has been notified that the patent, entitled “Antiparallel Magnetoresistive Memory Cells,” will be issued today. The patent is number 6,777,730 and is the grant of the application published by the U.S. Patent and Trademark Office under number 20030048676.

The patent covers data storage and retrieval in switchable synthetic antiferromagnet memory cells based on an antiparallel “sandwich” structure. The invention improves cell stability, reducing the tendency of neighboring bits to be disturbed in an MRAM array.

* * *

“This is a key patent,” commented NVE Founder and Chief Technology Officer James M. Daughton, Ph.D. “It applies to some current MRAM designs and strengthens our MRAM intellectual property portfolio.”

29. On January 19, 2005, the Company issued a press release entitled “NVE Corporation Reports Third Quarter Fiscal 2005 Results,” which stated, in part, as follows:

NVE Corporation today announced financial results for the three months ended December 31, 2004.

Net income for the third quarter was \$375,172, compared with net income of \$577,156 for the prior-year quarter. Earnings per share were \$0.08 per share, compared to \$0.12 per share for the prior year quarter. Revenue was \$2.56 million, compared to \$3.12 million for the prior-year quarter, a decrease of 18 percent.

* * *

“We are satisfied with our financial results in light of industry conditions,” said Daniel A. Baker, Ph.D., NVE’s president and chief executive officer. “We reported a solid profit in the third quarter despite a decline in revenues due to an anticipated sales reduction with St. Jude Medical and an industry-wide inventory glut. We expect new sensors and couplers, as well as MRAM devices and royalties, to drive future growth.”

30. On January 31, 2005, the Company issued a press release entitled “NVE Technology Agreement With Cypress Results in MRAM Samples,” which stated, in part, as follows:

NVE Corporation today confirmed that Magnetoresistive Random Access Memory (MRAM) alpha samples recently announced by Cypress Semiconductor Corporation are covered by NVE’s technology agreement with Cypress.

MRAM is a revolutionary memory that uses electron spin to store data. On January 27, 2005 Cypress announced it had provided fully functional 256-kilobit alpha samples.

NVE President and CEO Daniel A. Baker, Ph.D., said: “These are remarkable devices, and we congratulate the talented Cypress team led by Jeff Kaszubinski on an impressive accomplishment.”

“We see MRAM as the answer to a critical need in semiconductor memory applications—a single-chip, fast write, low power, fail safe, high-reliability nonvolatile memory,” commented Jeffrey K. Kaszubinski, president and CEO of Cypress’ Silicon Magnetic Systems subsidiary company. “The technology developed by NVE Founder Dr. James Daughton and others at NVE was important to us in reaching this milestone.”

31. However, on February 14, 2005, before the market opened, Cypress announced that it would be divesting its subsidiary founded to commercialize MRAMs. Cypress’s press release announcing this divestiture stated as follows:

Cypress Semiconductor Corp. today announced its intention to divest Silicon Magnetic Systems (SMS), a subsidiary company founded to commercialize Magnetic Random Access Memories (MRAMs). Cypress CEO T.J. Rodgers said, “After a three-year effort, Cypress sampled fully functional MRAMs to

seven key OEM customers in January. Three of those customers are still in the validation phase of their assessment and four of them have already confirmed with us that they have found the product fully functional, as we announced in our quarterly earnings conference call on January 27.”

Rodgers continued, “It is seemingly contradictory that we would sell the MRAM business at its moment of first success. The fact is that a series of events and discoveries has led to our conclusion that this move is best for Cypress’s shareholders.

“The product Cypress has sampled is a 256-kbit MRAM that is pin-for-pin compatible with a Static Random Access Memory (SRAM) product Cypress sold by the tens of millions for over 15 years. We know that some of our 256-kbit SRAMs are purchased by companies that package them with batteries to provide a so-called battery-backup SRAM, which holds data during a power interruption. These battery-backup SRAMs – and related products with non-volatile SRAM properties – are used in equipment such as cellular basestations and mass-storage systems that must restart properly after a power interruption. The market for these non-volatile SRAMs is approximately \$40 million per year. Our strategy was to commercialize our MRAM technology first in these niche, battery-backup MRAM markets, and then to grow by adding to our product portfolio.”

Rodgers continued, “The second phase of our MRAM plan was to create a family of high-density MRAMs, ranging from four to 64 megabits in density. This segment of the MRAM market is much larger than the battery-backup SRAM market, partly because it offers the potential to take market share from the multibillion-dollar standard SRAM market, if the MRAM bit cost can be reduced to parity with the SRAM bit cost. Our battery-backup MRAM cell utilizes three transistors and two magnetic tunnel junctions (3T-2MTJ) per bit. In higher-density MRAMs, economic viability can be achieved only by switching to the simpler and denser 1T-1MTJ cell. The 1T-1MTJ cell is more difficult to design and manufacture than the 3T-2MTJ cell, which was invented at Cypress to solve the design and manufacturing problems that have prevented the commercialization of MRAM, despite over a decade of work by some of the world’s most prominent semiconductor companies.

“Based on our latest calculations at Cypress, we no longer believe that the 1T-1MTJ MRAM technology will be able to successfully attack the SRAM market, leaving MRAM as a niche technology with higher bit pricing than that of SRAM. While a niche MRAM business could be a profitable addition to Cypress’s portfolio of products, we currently have more attractive places to invest than in the capital-intensive MRAM business. For example, our revenue from our SunPower solar cell operation this quarter is expected

to be \$10 million, with a growth rate far exceeding our best expectations for the MRAM business.”

Rodgers continued, “This decision has been particularly hard for me, because I have been deeply involved with the team and technology since we started working on MRAMs. Without exception, this is the finest technical team that I have worked with in my career. They have managed to bring a working product to the marketplace three years with a team of only 28 people, including administration, marketing and finance.”

Rodgers concluded, “We therefore have made the tough choice to sell our SMS subsidiary and to remove it from Cypress’s books by the end of the first quarter.”

32. On this news, the price of the Company’s shares fell, losing close to 50% in value in the weeks that followed.

33. The true facts, which were known by each of the defendants but concealed from the investing public during the Class Period, were as follows:

(a) Cypress’s MRAM product does not use the technology NVE claimed to own and/or have rights to. Moreover, defendants materially overhyped the significance of the Cypress relationship, as Cypress was not required to pay NVE a licensing or like fee even if Cypress were to create an economically viable MRAM product.

(b) NVE’s MRAM patents are immaterial and unenforceable.

(c) The Company’s June 21, 2004 press release claiming the significance of its receipt of patent 6,744,086 was of little consequence. In fact, the patent application was several years old and the patent had been granted a month earlier. Rather, defendants were timing the announcement to stave off a decline in the Company’s shares.

(d) NVE did not invent/develop the idea of using one transistor to read every magnetic memory cell in an MRAM chip. In fact, the idea to use just one transistor per memory cell is over 38 years old and was invented by IBM.

(e) The Company's January 31, 2005 announcement that Cypress's MRAM products are covered by NVE's technology agreement with Cypress, which caused NVE's stock to reach \$33 per share in pre-market trading after NVE's announcement, was materially misleading. In fact, Cypress was not required to (and did not) pay NVE any royalty payments under its "technology agreement." Moreover, under the agreement NVE was to actually purchase wafers from Cypress and then package and test the chips to resell them to customers who could just as easily buy them from Cypress. Thus, the commercial economic significance of the January 31, 2005 announcement was grossly overstated.

POST CLASS PERIOD REVELATIONS

34. On April 19, 2005, NVE issued a press release, entitled "NVE Comments on its MRAM Strategy," in response to Cypress's February 14, 2005 announcement wherein the Company commented on the announcement by Cypress that it was divesting itself from MRAM. The press release stated as follows:

NVE Corporation today commented on its MRAM strategy after being informed recently by Cypress Semiconductor Corporation that Cypress has discontinued its efforts to develop Magnetoresistive Random Access Memory (MRAM) and plans to sell the assets of its MRAM subsidiary.

NVE President and CEO Daniel A. Baker Ph.D., said: "Cypress demonstrated 256-kilobit MRAMs working in customers' systems, which was an important accomplishment. There is a large market for MRAM, however the market for Cypress' low-density designs is limited. Furthermore, for us to monetize our intellectual property in the Cypress designs, we would have to sell MRAM in competition with our technology licensees."

"We believe that NVE is well-positioned with critical intellectual property covering a broad range of near-term and long-term MRAM designs," continued Baker. "Our MRAM strategy, therefore, will be to focus on an intellectual property business model, providing technology to enable revolutionary memory design rather than both providing technology and selling devices."

LOSS CAUSATION/ECONOMIC LOSS

35. During the Class Period, as detailed herein, defendants engaged in a scheme to deceive the market and a course of conduct that artificially inflated NVE's stock price and operated as a fraud or deceit on Class Period purchasers of NVE stock by misrepresenting the Company's business and prospects. Later, however, when defendants' prior misrepresentations and fraudulent conduct were disclosed and became apparent to the market, NVE stock fell precipitously as the prior artificial inflation came out of NVE's stock price. As a result of their purchases of NVE stock during the Class Period, plaintiff and other members of the Class suffered economic loss, *i.e.*, damages under the federal securities laws.

COUNT I

For Violation of §10(b) of the 1934 Act and Rule 10b-5 Against All Defendants

36. Plaintiff incorporates ¶¶1-35 by reference.

37. During the Class Period, defendants disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

38. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

- (a) Employed devices, schemes, and artifices to defraud;

(b) Made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) Engaged in acts, practices, and a course of business that operated as a fraud or deceit upon plaintiff and others similarly situated in connection with their purchases of NVE common stock during the Class Period.

39. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for NVE common stock. Plaintiff and the Class would not have purchased NVE common stock at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by defendants' misleading statements.

40. As a direct and proximate result of these defendants' wrongful conduct, plaintiff and the other members of the Class suffered damages in connection with their purchases of NVE common stock during the Class Period.

COUNT II

For Violation of §20(a) of the 1934 Act Against All Defendants

41. Plaintiff incorporates ¶¶1-40 by reference.

42. The Individual Defendants acted as controlling persons of NVE within the meaning of §20(a) of the 1934 Act. By reason of their positions as officers and/or directors of NVE, and their ownership of NVE stock, the Individual Defendants had the power and authority to cause NVE to engage in the wrongful conduct complained of herein. NVE

controlled each of the Individual Defendants and all of its employees. By reason of such conduct, the Individual Defendants and NVE are liable pursuant to §20(a) of the 1934 Act.

CLASS ACTION ALLEGATIONS

43. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased NVE common stock on the open market during the Class Period (the “Class”). Excluded from the Class are defendants.

44. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. NVE had more than 4.5 million shares of stock outstanding, owned by hundreds if not thousands of persons.

45. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class which predominate over questions which may affect individual Class members include:

- (a) Whether the 1934 Act was violated by defendants;
- (b) Whether defendants omitted and/or misrepresented material facts;
- (c) Whether defendants’ statements omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;
- (d) Whether defendants knew or deliberately disregarded that their statements were false and misleading;
- (e) Whether the price of NVE common stock was artificially inflated; and

(f) The extent of damage sustained by Class members and the appropriate measure of damages.

46. Plaintiff's claims are typical of those of the Class because plaintiff and the Class sustained damages from defendants' wrongful conduct.

47. Plaintiff will adequately protect the interests of the Class and has retained counsel who are experienced in class action securities litigation. Plaintiff has no interests which conflict with those of the Class.

48. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment as follows:

- A. Declaring this action to be a proper class action pursuant to FRCP 23;
- B. Awarding plaintiff and the members of the Class damages, including interest;
- C. Awarding plaintiff reasonable costs and attorneys' fees; and
- D. Awarding such equitable/injunctive or other relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: March 6, 2006

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