

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

In re NVE CORPORATION SECURITIES )  
LITIGATION ) Case No. 06-574 (MJD/JJG)  
)

**AMENDED CONSOLIDATED CLASS ACTION COMPLAINT**

Lead Plaintiffs Brian G. Beatty ("Beatty"), Shawn Aaron ("Aaron") and Andrew G. Cauley ("Cauley") (collectively the "Beatty Group," "Plaintiffs" or "Lead Plaintiffs"), individually and on behalf of all other persons similarly situated, by their undersigned attorneys, upon personal knowledge as to themselves and their own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through their attorneys, which included, among other things: (i) a review of the public documents and announcements made by Defendants; (ii) Securities and Exchange Commission ("SEC") filings made by Defendants; (iii) an analysis of publicly-available news articles and reports; (iii) press releases issued by Defendants; and (iv) other matters of public record, allege as follows:

**I. NATURE AND SUMMARY OF THE ACTION**

1. This is a class action lawsuit on behalf of purchasers of the common stock of NVE Corporation ("NVE" or the "Company") during the period from May 16, 2003 through April 19, 2005, inclusive (the "Class Period"), seeking to pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act").

2. During the Class Period, Defendants issued a series of false and misleading statements related to development of MRAM, which was touted as having the potential of combining the speed of semiconductor memory with the non-volatility of magnetic disk drives -- and thus could eventually replace conventional memories.

3. NVE licensed its intellectual property (the patents it held on MRAM technology) to other companies, most notably, Cypress Semiconductor Corporation (“Cypress Semiconductor” or “Cypress”) and Motorola, Inc. (“Motorola”). NVE’s agreement with Cypress was key to its development plans and gave immediate credence and legitimacy to the Company and its alleged technology. Pursuant to its non-exclusive, royalty free license agreement with Cypress, each party gained rights to certain of the other party’s patents. Rather than royalties, NVE’s license agreement with Cypress gave NVE the non-exclusive rights to Cypress’ MRAM production designs and intellectual property, as well as the rights to use Cypress’ factories to manufacture MRAM for NVE.

4. Throughout the Class Period, Defendants issued a series of misleading statements that led investors to believe the production and commercialization of MRAM products by Cypress, through its wholly owned subsidiary, Silicon Magnetic Systems (“SMS” or “Silicon Magnetic Systems”), was imminent and that NVE would soon be receiving revenues from its sale of Cypress’ manufactured MRAM products; and that its intellectual property portfolio (consisting of MRAM related patents) was valuable and that it would be receiving royalties from licensing same.

5. However, on February 14, 2005, Cypress Semiconductor announced that the development of anything other than a small niche market for MRAM technology was not economically feasible and that Cypress was divesting its subsidiary, SMS. On this news, the price of the Company’s common stock began to decline from the February 11, 2005 closing price of \$28.36 to the closing price of \$17.04 on April 19, 2005, when the Company finally issued a press release commenting on Cypress Semiconductor’s

announcement and stating that NVE would focus on licensing its MRAM intellectual property and no longer seek to sell MRAM devices. On this news the Company's share price fell an additional 12.85% to close at \$14.85 on April 20, 2005.

6. The statements made by the Defendants during the Class Period concerning Cypress and SMS' MRAM technology were false or misleading. Contrary to the Defendants' statements and suggestions, NVE's MRAM technology did not constitute a breakthrough, was not being used in Cypress and SMS' MRAM technology and Cypress and SMS were many years away (if it were even possible) from developing a production ready MRAM product that could be successfully commercialized. Moreover, Defendants' statements during the Class Period suggesting that its MRAM patents were valuable were false and misleading in that NVE's MRAM patents are immaterial and unenforceable.

## **II. JURISDICTION AND VENUE**

7. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act (15 U. S. C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the Securities and Exchange Commission ("SEC") (17 C. F. R. § 240.10b-5).

8. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1337 and Section 27 of the Exchange Act (15 U. S. C. § 78aa).

9. Venue is proper in this District pursuant to Section 27 of the Exchange Act, and 28 U.S.C. § 1391(b). Many of the acts charged herein, including the preparation and dissemination of materially false and misleading information, occurred

in substantial part in this District. Additionally, NVE maintains its executive offices and principal place of business within this District.

10. In connection with the acts alleged in this complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

### **III. PARTIES**

11. Plaintiffs purchased NVE common stock during the Class Period and were damaged thereby.

12. 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 supposedly represents the next generation of microelectronics. Spintronics differ from conventional electronics in that they use the spin, rather than the charging of electrons to store and transmit applications. NVE licenses its MRAM intellectual property and sells spintronic products, including sensors and couplers.

13. Defendant Daniel A. Baker (“Baker”) served, at all relevant times, as NVE’s President, Chief Executive Officer and a member of its Board of Directors.

14. Defendant James M. Daughton (“Daughton”) is the founder of NVE and served, at all relevant times, as NVE’s Chief Technology Officer and a member of its Board of Directors. During the Class Period Daughton also served on the Board of Directors of Silicon Magnetic Systems, the subsidiary of Cypress Semiconductor that was involved in the development of MRAM products and the key licensee of NVE.

15. Defendant Jeffrey K. Kaszubinski (“Kaszubinski”) served, at all relevant times, as a member of NVE’s Board of Directors. During the Class Period Kaszubinski also served as the President, Chief Executive Officer and a director of Silicon Magnetic Systems.

16. Collectively, Defendants Baker, Daughton and Kaszubinski are hereinafter referred to as the “Individual Defendants.”

17. Because of the Individual Defendants’ positions with the Company and their positions and/or relationships with Cypress and SMS, they had access to the adverse undisclosed information about NVE’s and SMS’ business, operations, products, operational trends, markets and present and future business prospects via access to internal corporate documents (including the Company’s operating plans, budgets and forecasts and reports of actual operations compared thereto), conversations and connections with other corporate officers and employees, attendance at management, Board of Directors meetings and committees thereof and meetings in which the status of progress of NVE’s and SMS’ MRAM project was discussed and via reports and other information provided to them in connection therewith.

18. Individual Defendants, by virtue of their high-level positions with the Company and/or SMS, directly participated in the management of the Company and/or SMS, were directly involved in the day-to-day operations of the Company and/or SMS at the highest levels and were privy to confidential proprietary information concerning the Company and its business, operations, products, growth, financial statements, and financial condition, as alleged herein. Individual Defendants were involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and

information alleged herein, were aware, or recklessly disregarded, that the false and misleading statements were being issued regarding the Company, and approved or ratified these statements, in violation of the federal securities laws.

19. As officers and/or controlling persons of a publicly-held company whose common stock was, and is, registered with the SEC pursuant to the Exchange Act; and is publicly traded on NASDAQ; and is governed by the provisions of the federal securities laws, Individual Defendants had a duty to disseminate promptly, accurate and truthful information with respect to the Company's financial condition and performance, growth, operations, financial statements, business, products, markets, management, earnings and present and future business prospects, and to correct any previously-issued statements that had become materially misleading or untrue, so that the market price of the Company's publicly-traded securities would be based upon truthful and accurate information. Individual Defendants' misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

20. Individual Defendants participated in the drafting, preparation, and/or approval of the various public and shareholder and investor reports and other communications complained of herein and were aware of, or recklessly disregarded, the misstatements contained therein and omissions therefrom, and were aware of their materially false and misleading nature. Because of their Board membership and/or executive and managerial positions with NVE and/or SMS, Individual Defendants had access to the adverse undisclosed information about NVE's business prospects and financial condition and performance as particularized herein and knew (or recklessly disregarded) that these adverse facts rendered the positive representations made by or

about NVE and its business issued or adopted by the Company materially false and misleading.

21. Individual Defendants, because of their positions of control and authority as officers and/or directors of the Company, were able to and did control the content of the various SEC filings, press releases and other public statements pertaining to the Company during the Class Period. Individual Defendants were provided with copies of the documents alleged herein to be misleading prior to or shortly after their issuance and/or had the ability and/or opportunity to prevent their issuance or cause them to be corrected. Accordingly, Individual Defendants are responsible for the accuracy of the public reports and releases detailed herein and are therefore primarily liable for the representations contained therein.

#### **IV. PLAINTIFFS' CLASS ACTION ALLEGATIONS**

22. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise acquired the securities of NVE during the period of May 16, 2003 through April 19, 2005, inclusive, and who were damaged thereby. Excluded from the Class are the Company, the officers and directors of the Company, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which the Company has or had a controlling interest.

23. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs believe that there are hundreds, if not thousands, of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by

NVE or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

24. Plaintiffs' claims are typical of the claims of the members of the Class, as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law as complained of herein.

25. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class and securities litigation.

26. Common questions of law and fact existing as to all members of the Class predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) whether statements made by Defendants to the investing public during the Class Period misrepresented or omitted material facts about the business, business prospects, operations and management of NVE;

(b) whether the federal securities laws were violated by Defendants' acts as alleged herein and whether Defendants' actions harmed the members of the Class; and

(c) to what extent the members of the Class have sustained damages and the proper measure of damages.

27. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of

the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

## V. SUBSTANTIVE ALLEGATIONS

### A. Background; NVE's Intellectual Property Portfolio; Defendants' Relationship with Cypress and SMS; and, Circumstances and Events Concerning Cypress' and SMS' MRAM Project

28. NVE develops and sells devices using "spintronics," a nano-technology which utilizes electron spin rather than electron charge to acquire, store and transmit information. It is also a licensor of spintronic magnetic random access memory technology, commonly referred to as MRAM. According to NVE, MRAM has the potential to revolutionize electronic memory. NVE also manufactures high-performance spintronic products, including sensors and couplers which are used to acquire and transmit data in automated factories.

29. NVE was founded in 1989 primarily as a government contract research company. It has licensed its MRAM intellectual property to others, including most notably Cypress Semiconductor, Honeywell International and Motorola.

30. According to NVE, MRAM uses spintronics to store data, combining the speed of semiconductor memory with the non-volatility of magnetic disk drives. MRAM is inherently non-volatile, meaning the data remains even if power is removed.

31. MRAM has been called the "holy grail" of memory because it has the potential to combine the speed of static random access memory ("SRAM"), the density of dynamic random access memory ("DRAM"), and the non-volatility of flash memory.<sup>1</sup>

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<sup>1</sup> SRAM is a conventional memory that is faster than DRAM but lower density. It is used for high-speed operations such as digital signal processing and cell phones and caches in computers. MRAM has the potential to match the speed of SRAM but with non-volatile and much higher bit density.

32. According to NVE, with MRAM, data is stored in the spin of the electrons in thin metal alloy films, and read with spin-dependent tunnel junctions.<sup>2</sup> Unlike electrical charge, the spin of an electron is inherently permanent. In MRAM, the spin of the electrons is set with tiny bursts of magnetism. NVE claims to have invented several types of unique MRAM memory cells and modes of operation.

33. According to NVE, in the near term, MRAM could replace battery-backed up SRAM in mission critical systems such as military, factory-control, point-of-sale terminals, and gaming electronics. MRAM has the potential advantages of being simpler, lower cost, and more reliable than battery/memory systems.

34. In the medium term, according to NVE, MRAM could find application in cell phones, where it can replace three types of memory and enable embedded designs such as cell phones on chips.

35. Long-term, according to NVE, MRAM could address the market for ubiquitous high-density memory, where it could offer higher speed and non-volatility, enabling a new generation of computers and other products.

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DRAM is the largest-capacity and most common type of conventional memory. MRAM has the potential to match DRAM bit density but would be faster and non-volatile.

Flash memory is the leading conventional non-volatile memory. It is used in cell phones for permanent storage. Versions are used in memory cards and sticks, but these are much too slow for program execution. MRAM has the potential to meet and exceed flash bit density, but with unlimited life and much larger speed.

<sup>2</sup> A spin dependent tunnel junction (SDT) is a spintronic nano-technology device that produces a large change in resistance through a normally insulating layer, depending on the predominate spin in a free layer. This allows electron spin to be sensed as an electrical resistance for interfacing to conventional electronics. SDT devices use a layer as thin as a few atoms. SDT devices are at the heart of MRAM and low-field sensors. It is also known as magnetic tunnel junctions (MTJs) or tunneling magnetic junctions (TMJs).

36. In April 2002, NVE entered into a key Technology Exchange Agreement (the "Agreement") with Cypress. Under the Agreement, Cypress made an equity investment in NVE, the companies gained non-exclusive rights to each other's MRAM intellectual property, and Cypress would assist NVE in defending its intellectual property rights under certain circumstances. Cypress also agreed to manufacture wafers for NVE.

37. As part of the Agreement, Cypress also invested \$6.228 million in NVE in exchange for 3.433 million shares of NVE common stock, with an option to buy up to an additional two million shares for \$3.00 per share, and NVE nominated a Cypress executive, Defendant Kaszubinski, for election to NVE's Board of Directors. With the common stock and options combined, Cypress beneficially owned 24% of the outstanding shares of the Company.

38. In NVE's April 24, 2002 press release announcing the Agreement, Defendant Baker stated, "This alliance solidifies our capital structure, gives us a powerful MRAM ally, and augments our product manufacturing capability."

39. In reports filed with the SEC during the Class Period, NVE stated that it believed that the Cypress partnership significantly strengthened NVE's intellectual property portfolio by giving it rights to large scale MRAM designs as well as rights to interface circuitry needed for large-scale memories. NVE also claimed to have rights to all Cypress MRAM intellectual property existing now and in the future, including MRAM designs and mask works.

40. NVE also disclosed in its SEC filing that it expected to receive royalties under the Motorola and Union Semiconductor Technology Corporation license

agreements if and when those licensees began selling devices using NVE's intellectual property. Both agreements contain royalty limitations, specifically minimum quantities before royalties are paid, and ceilings on the royalties NVE will receive. As a further royalty limitation, the Motorola agreement provides for royalties only on the portion of the die containing NVE MRAM technology.

41. With respect to Cypress, NVE disclosed in its SEC filings, signed by the Individual Defendants, that it was highly dependent on Cypress for potential supply of MRAM devices using their designs. It further stated that although NVE had rights to Cypress MRAM designs, mask works, and other intellectual property, it would be difficult for NVE to fabricate devices based on those designs and intellectual property at a foundry other than Cypress' because other potential foundries might not have the needed equipment, and Cypress designs are tailored for their factories. NVE further disclosed that Cypress could cancel its MRAM development program at any time and this would likely eliminate NVE's opportunity to sell devices based on Cypress' designs.

42. In 2002, Cypress formed its subsidiary SMS to pursue MRAM development.

43. As disclosed by NVE in its SEC filings, NVE was dependent on its licensees, particularly Cypress (and its subsidiary SMS) and Motorola, to convert NVE's intellectual property into commercially viable MRAM.

44. In fact, NVE did not, and does not, independently possess the resources or technological processes to accomplish same.

45. According to Confidential Sources who are former Cypress and SMS employees, Cypress entered into the Agreement with NVE with the anticipation that it

would protect Cypress from patent infringement lawsuits from competitors holding similar patents.

46. Confidential Source No. 2 was a project engineering manager (“Project Engineering Manager” or “Confidential Source No. 2”) at both Cypress and SMS from 1998 through 2004. Most of his experience was at Cypress, but he worked at SMS from August 2000 through the end of 2001.

47. Confidential Source No. 2 said that, prior to the formation of SMS, he, and other Cypress employees including Fred Jenne, Jose Arreola and Santosu Kumar were responsible for locating a patent that SMS could work with because SMS was concerned that its MRAM development would infringe on other patents, specifically patents held by Motorola and IBM. He said that NVE was anxious to sign “cross-licensing” agreements and Cypress eventually made arrangements with NVE. He stated that the NVE patent is very broad in its language and does not provide the “technology behind it.” He said that there are several similar patents held by IBM and Motorola and that Cypress was concerned that any work on MRAM would result in a lawsuit.

48. Confidential Source No. 10 served as the Director of Technology Development at SMS (“Confidential Source No. 10” or “Director of Technology Development”). Confidential Source No. 10 joined SMS in 2000 and remained there through its closure in April 2005.

49. Confidential Source No. 10 explained that he was at SMS when it was first formed as a “startup.” According to Confidential Source No. 10, SMS obtained the license on NVE’s intellectual property simply because SMS “needed some patents on

its side to avoid a suit.” He explained that “the only reason for Cypress to invest in [NVE] was so that [Cypress] could rely on the IP to defend ourselves” against any legal action (by companies such as IBM or Motorola) as they worked on MRAM. Confidential Source No. 10 went on to say that the information in the NVE patents was never used by SMS, but was acquired for defensive reasons. He said that the “idea of MRAM” could be attributed to NVE, but that the process was based on work at SMS. When asked if the patents were issued as a “starting point” for the work at SMS, he emphatically denied it and said that the ideas from NVE were never used.

50. Confidential Source No. 10 added that he did not believe that the knowledge and experience offered by NVE and Defendant Daughton was useful. He believed that Daughton worked “to the best of his knowledge and capabilities,” but even that level of knowledge was not entirely useful to SMS personnel. He said that NVE “did not know much” and that SMS would really have no reason to try and get any information from NVE personnel. He said that he “did not have great respect for the NVE guys, technically” and felt that SMS had done all the work on MRAM.

51. Throughout the Class Period, Defendants, through a series of false or misleading statements, led investors to believe that Cypress was close to production of MRAM devices and NVE was close to the commercialization of same. In reality, however, as Defendants knew, NVE’s MRAM intellectual property did not constitute a breakthrough and was not used in Cypress’ and SMS’ MRAM technology, and, if it were even possible, Cypress and SMS were at best many years away from developing a production ready MRAM product that could be successfully commercialized. This was

confirmed by former employees of Cypress, SMS and NVE. Moreover, contrary to Defendants' statements, NVE's MRAM patents were unenforceable and immaterial.

52. On November 8, 1999 NVE filed the application for US Patent 6,275,411 ("Patent 411"). On August 15, 2001 NVE announced the issuance of Patent 411, titled "Spin Dependent Tunneling Memory." NVE stated that Patent 411 covers features used in "many publicly-disclosed development programs by a number of organizations developing magnetoresistive tunnel junction (MTJ) MRAMs." The patent described a memory cell with an MTJ and transistor circuit. On June 26, 2001 NVE filed its application for a continuation of Patent 411.

53. On February 28, 2002 NVE announced the issuance of US Patent 6,349,053 ("Patent 053"), titled "Spin Dependent Tunneling Memory." NVE called Patent 053 a "watershed MRAM patent." In the release NVE claimed that Patent 053 "covers transistor-selected magnetic memory cells, a concept being used by a number of organizations developing MRAM."

54. Patents 411 and 053 form the basis for NVE's claim that it possesses valuable MRAM intellectual property. Patent 411 and Patent 053 have nothing to do with any of the 13 major inventions that are commonly credited with permitting the creation of magnetic (or spin) memory cells. None of NVE's patents cover any chip design, or any magnetic (or spin) memory cell design or even any design to write to, store and read data from a magnetic (or spin) memory cell.

55. The one transistor per bit read addressing-scheme described in Patent 411 and Patent 053 has been used in DRAM since the 1960s. Dr. Robert Dennard, an IBM Fellow, invented the one transistor DRAM in 1966. In the NVE patents, the memory

cell in a DRAM chip is simply and immaterially replaced by a magnetic memory (or spin) cell. Patent 411 and Patent 053 are a simple application of the preexisting DRAM addressing-scheme to an existing non-NVE related MRAM memory cell.

56. NVE's patents do not cover any inventions used to create a magnetic (or spin) memory cell. Using magnetism (or spin) as the memory cell is what makes MRAM chips possible. NVE has no patents on a magnetic (or spin) memory cell.

57. The mere fact that the patent was issued does not in any way assure that a patent is enforceable or exclude challenges based on prior art that NVE did not cite. In fact, any party (not just a patent holder or the owner of the prior art) may submit prior art to the U.S. Patent and Trademark Office ("Office") for inclusion in an existing patent's claims. The Office's Manual of Patent Examining Procedure ("MPEP") specifically states that "Any person at any time may cite to the Office in writing prior art consisting of patents or printed publications which that person believes to have a bearing on the patentability of any claim of a particular patent."

58. NVE's MRAM patents are both preceded by the following patent filings and publications. These publications and patent therefore constitute prior art.

- Motorola, Inc.'s US Patent 6,055,178 ("Patent 178"), which uses a Motorola designed MRAM memory cell and a transistor as a reference memory element, was filed on December 18, 1998, almost 11 months prior to the date of the NVE application and issued on April 25, 2000. The circuit drawn in the Motorola patent clearly anticipates the circuits that NVE describes in its patents. After the filing, Motorola published papers. Even those papers pre-date NVE's patent.
- A Motorola paper, titled "Progress and Outlook for MRAM Technology," was published in the September 1999 IEEE Transactions on Magnetics ("1999 Motorola Paper"). This paper shows a transistor-selected bit-addressable Motorola-designed MRAM cell. The circuits described in NVE's patents and the circuits

described in Motorola's paper, which pre-dates NVE's patent application date by two months, are identical.

- An IBM paper titled, "Magneto-Resistive IC Memory Limitations and Architecture Implication," presented in August 1998, and published in the 1998 International NonVolatile Memory Technology Conference Technical Digest ("1998 IBM Paper") presents an overview of an IBM designed MRAM cell and describes the use of a transistor as a switch. This paper preceded the date of the NVE application file date by nearly 15 months.

59. The two published papers and patent above predate and were publicly available before the filing of NVE's first MRAM patent application.

60. The first use of one transistor to both write and read a single bit dates back to 1966. The invention was patented by IBM in 1968. The invention is now off-patent and in free use in computers worldwide. According to IBM, the single-transistor memory chip set "the stage for development of increasingly dense and cost-effective memory that continues even today at the heart of every succeeding generation of computers." Prior to 1966, six or more transistors were required for the storage of a single bit.

61. In short, contrary to Defendants' misleading suggestions, NVE's MRAM intellectual property is unenforceable and immaterial.

62. With respect to Cypress and SMS' MRAM project, according to former Cypress, SMS and NVE employees, SMS had experienced significant, if not insurmountable difficulties with the development of commercially viable MRAM technology from the initiation of its MRAM project right up to the point when Cypress announced in February 2005 that it was abandoning the SMS' MRAM project and divesting its SMS subsidiary. Moreover, key NVE employees, executives and directors were involved in, and kept abreast of the developments and progress, or lack thereof,

with SMS' MRAM project, including NVE's director and Chief Technology Officer and SMS Director, Defendant Daughton, and SMS CEO and President and NVE director, Defendant Kaszubinski. Thus, Defendants were keenly aware of SMS' continuing problems and difficulties with developing MRAM products that could be commercialized and were aware that Cypress and SMS were also not making significant progress toward developing commercially viable MRAM, if it were even possible.

63. Confidential Source No. 1 worked for Cypress Semiconductor as the Director of Reliability ("Director of Reliability" or "Confidential Source No. 1") through the end of 2003. He said he interacted with personnel from SMS, which had nearby offices, and did a statistical analysis for one of SMS' MRAM projects. He said he believed that MRAM technology was a "long shot" and that it was his opinion that all the MRAM hype was a "scam" by the industry; that the industry relied upon hype that was not real. Confidential Source No. 1 stated that he could have worked exclusively for SMS, but chose not to do so because it did not look like the MRAM project was viable or "doable."

64. Confidential Source No. 1 presented a paper about MRAM technology, "Considerations for the Analysis of a Device as a System," in 2003 for the IERC conference in Portland, Oregon. He said that Cypress' CEO, T. J. Rodgers asked him to prepare the MRAM analysis and that the information on which the analysis was based was received from Defendant Kaszubinski and high ranking SMS employee, Sam Geha. The paper specifically questioned the viability of MRAM technology.<sup>3</sup>

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<sup>3</sup> Although Plaintiff's counsel has not yet obtained a copy of the paper, they have obtained a copy of the abstract of the paper. The abstract provided in part:

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Magnetic RAM (MRAM) technology has been around for decades but has never really entered the marketplace as a competitive technology. Magnetism is reasonably well understood, how to place magnets on a semiconductor device is reasonably well understood, and standard device design for converting stored information as digital signals is reasonably well understood. However, yield of functioning devices in this particular technology has been spotty.

Fundamental questions arise as to whether the technology is manufacturable, if some key technical understanding in controlling the process is missing, or if there is an inherent technical barrier. On this last concern, one of the key performance metrics is the ratio of the resistance of a magnetic tunnel junction's (MTJ ratio in the parallel and anti-parallel state. It would seem that the resistance of each state should be normally distributed, so this statistic is formed as a ratio of normals.

We know from statistical theory that the ratio of an independent normal to a normal with mean 0 is Cauchy distributed. Manufacturing with Cauchy distributed key performance metrics may be extremely difficult to control using the usual SPC concepts. The Cauchy distribution has no meaning and hence no variance. The usual SPC charts rely on the presence of a mean and variance and, generally, the Central Limit theorem is involved to establish control limits.

In the MRAM case, upon examining the outward construction of the device and sensing technology, all would seem well. Magnetic dots are placed as close as physically possible to assure dependence between neighboring dots (which form the active MTJ ratio. For a Cauchy distribution, independence is required. And the MTJ resistance in the parallel and anti-parallel states are nowhere near 0. So it would appear that the conditions for performing a Cauchy distributed key performance statistic has not been met.

The question however lingers: why is the yield so badly behaved? It is possible that the MTJ ratio may still be Cauchy distributed - - or close enough to Cauchy to be a problem for manufacturing control? If it is Cauchy distributed, how can manufacturing be controlled? In addition, how do we need to modify our methods of analyzing DOE data since current analytical methods generally rely on means and variances? And finally, how "close to Cauchy" is close enough for concern about manufacturability.

65. Confidential Source No. 2, the Project Engineering Manager, said that there was fallout from this paper and that Defendant Kaszubinski sent several e-mails indicating the need to discuss the “problems” with the presentation.

66. Confidential Source No. 3 was employed by Cypress from December 2000 through December 2003. During that time, Confidential Source No. 3 was assigned to work as a principal engineer (“Principal Engineer” or “Confidential Source No. 3”). Confidential Source No. 3 stated that the Director of Reliability, Confidential Source No. 1, was his boss at one time during his tenure at Cypress. Confidential Source No. 3 stated that, Confidential Source No. 1, the Director of Reliability, discussed his paper’s finding with Cypress’ CEO, T. J. Rodgers, and that he (Confidential Source No. 3) understood that Rodgers became very concerned with the paper’s findings.

67. Confidential Source No. 12 worked at NVE in Eden Prairie, Minnesota from 2001 through 2004 in the Equipment and Building Maintenance Division. He stated that Defendant Daughton and Russ Beech were two of the NVE employees involved in SMS and Cypress’ MRAM work. He recalled employees at NVE calling MRAM the “technology of the future that will never happen.” This was their “inside joke,” he said, because the process was so difficult and frustrating and not close to fruition.

68. Confidential Source No. 2, the Project Engineering Manager, first met Daughton in August 2000 and continued to have regular contact with both Defendant Daughton and Russ Beech, Cypress and SMS’ technological contacts at NVE.

69. Confidential Source No. 2 said that regular meetings were held at SMS and Defendant Kaszubinski gave weekly progress reports concerning the MRAM project to Cypress' personnel through powerpoint presentations. Confidential Source No. 2 believed that both Defendant Daughton and Cypress CEO, T. J. Rodgers, were present at these presentations. Progress charts and updates including the engineer frustrations were presented at these meetings.

70. Confidential Source No. 2 said that he and others at SMS were skeptical concerning the MRAM yield, the number of viable chips produced from a wafer; and that those people were the ones that either chose to leave SMS or were asked to leave. Confidential Source No. 2 said it was difficult to believe that there was an actual ability to reach the desired yield when SMS employees (who were "experts in the field") expressed their belief that the technology would not work.

71. Confidential Source No. 2 said employees started to doubt that the MRAM technology was going to work because there seemed to be no real improvements in the technology after SMS had been working on it for about a year. According to Confidential Source No. , SMS shifted its focus to the development of a new shape and design for the cell and in 2003 (about 1½ years prior to SMS' being divested), the design failed and SMS was "back at square one."

72. Confidential Source No. 2 left SMS in 2001. He stated that because he questioned the MRAM technology, as well as the validity of the reports and information disseminated by Defendants Kaszubinski and Daughton, he was told by Kaszubinski that he was "not part of the team" and would be sent back to Cypress.

73. Confidential Source No. 3, the Principal Engineer, periodically interacted with Defendant Kaszubinski during his time at Cypress, December 2000 through December 2003.

74. Confidential Source No. 3 stated that the prevailing thought at SMS was that MRAM was a difficult technology and not working at that time. He further stated his belief then, as well as now, was that there may be a market for MRAM, but that it would be difficult to reach because it is such a difficult technology. He stated that, although he believed that marketable MRAM was not impossible, it would take “a lot of work and time to develop.”

75. Confidential Source No. 3 stated that he believed that Defendant Daughton was a consultant at SMS and was assisting SMS in using the NVE technology. According to Confidential Source No. 3, during mid to late 2002, Defendant Daughton was often at SMS. During that time, he said, there was open talk among SMS employees that Daughton’s technology (i.e., that of NVE) would not work. He said that this talk was present among SMS employees throughout his tenure there. He stated that Defendant Kaszubinski “might have” and that he, Confidential Source No. 3 “wouldn’t be surprised if he [Kaszubinski] did” indicate doubt with regard to NVE’s technology.

76. Confidential Source No. 4 was a statistician (“Statistician” or “Confidential Source No. 4”) who worked for approximately 6 months as a member of SMS’ technical staff in San Jose, California. He left SMS in April, 2004. Confidential Source No.4’s supervisor was Sam Geha, who reported directly to SMS’ President, Kaszubinski. Confidential Source No. 4 had regular daily contact with both men and progress

meetings were held at the beginning and the end of every day. According to Confidential Source No. 4, SMS management met regularly (once per month) with Cypress executives, including T. J. Rodgers, Cypress' Chief Executive Officer, Tony Alavez, Vice President of the Memory Group, and Chris "Seims", Vice President of Sales.

77. Confidential Source No. 4 stated that "the NVE IP didn't constitute a breakthrough," and he believed that it was simply licensed to help SMS get started on the MRAM technology.

78. By the time Confidential Source No. 4 left SMS in April 2004, he said SMS had experienced continuing problems with various engineering issues concerning the MRAM process and that SMS and Cypress seemed to be frustrated with the technology because the progress was not going as quickly as initially anticipated.

79. Confidential Source No. 6 was an engineer at Cypress and SMS ("Engineer" or "Confidential Source No. 6") from about 2000 through November 2005. She worked at SMS from mid 2002 through its closure in February, 2005 and her title was "Device Group Lead." She reported to Fred Jenne, and then to Sam Geha after Jenne left SMS in 2004.

80. Confidential Source No. 6 stated that, throughout her time at SMS she had daily interaction with her supervisors and with Defendant Kaszubinski. She related that she attended daily meetings every afternoon in which the day's activities were reviewed. She said that her interaction with Kaszubinski increased in 2004 and 2005 as she was working more on the design problems with MRAM. She further related that Defendant Daughton was at SMS approximately one time per quarter.

81. Confidential Source No. 6 said that when she initially started at Cypress she worked on a feasibility study with Jose Arreola and Fred Jenne. Thereafter, SMS was formed and she started to work on SMS' MRAM project. According to Confidential Source No. 6, she started to do "backend work" with the devices and initially there were good results with the device structure and memory cells. However, when SMS began work on the MRAM product (the 256K memory chip) in 2002, she said, they ran into problems. She said there was difficulty in getting the product to give a reliable yield percentage. The devices, she said, would appear to be good and hold memory, then they would inexplicably crash. She said they could not make the process accurate enough to yield a high enough percentage of chips that were reliable and could conceivably be marketed into a commercially viable product.

82. Confidential Source No. 6 stated that they were about to publish their findings when the "dots" (memory) began to go bad, and they ran into design issues that caused them to go back to the drawing board. She related that SMS was essentially, with respect to MRAM, back at square one at some point in 2003. She said that in 2003 and 2004, Fred Jenne tried to solve the problem using different memory cell architectures -- SMS, she said, had been using one process (2T and 2MTJ) and they tried another (3T and 2MTJ) -- but this did not work and they continued to have the "blinky bits" problem. She further related that during her last year at SMS (2004-2005) they tried to increase the redundancy within the device design in order to increase the yield.

83. With all of the problems at SMS in 2004 and 2005, Confidential Source No. 6 said, there were collective thoughts that Cypress might stop funding the MRAM

project. For several weeks (possibly months) prior to Cypress' announcement that it was divesting SMS, she said, SMS employees had been concerned about SMS' future and looking into the possibility of finding other employment.

84. Confidential Source No. 7 worked at SMS as a Process Development Engineer ("Process Development Engineer" or "Confidential Source No. 7") for about 18 months, until August 2003. He worked in the Wet Process Area, with a focus on the electro-plated shield for the MRAM die. He reported to Sam Geha.

85. According to Confidential Source No. 7, Geha and Defendant Kaszubinski were highly visible at SMS. He said that Defendant Daughton was at SMS on a quarterly or half-year basis during his time at SMS and reconfirmed that Daughton attended meetings where SMS reported to Cypress and its CEO, T. J. Rodgers.

86. According to Confidential Source No. 7, when he joined SMS in 2002 there was a positive feeling about MRAM. Development of MRAM, however, he said, proceeded poorly and SMS seemed to be "burning money."

87. Confidential Source No. 7 participated in the daily operations meetings - - as did all of the engineers. He said the engineers were aware of the issues and problems with the design, in particular the "blinky bits." He explained that when they would test the data placed on the memory, it was supposed to stay in one spot on the device. However, because of the design, the data would not stay where it was supposed to, and it was dubbed "blinky." He said this happened about half way through his tenure at SMS (i.e., mid to late 2002) and this led to questions about the ability to obtain a good yield. He further explained that there was a "breakeven" point for the number of chips (also called "die") that could be produced from each wafer. SMS, he

related, was “burning money” since fewer than 80%-90% of the die produced from one wafer were deemed “good.” He explained that SMS needed to be sure that the chips would perform in the hands of customers, and that even a handful of chips that did not work would be problematic for business. Therefore, he related, there was extreme paranoia at SMS when SMS was only seeing marginal yields.

88. Confidential Source No. 7 said that around Christmas 2004 he heard from then current SMS employees that “things were going south” and that SMS may be shutting down operations. He indicated that Andrella Rey, Helen Chung, Chang Ju Choi, and Benjamin Schwarz may have all been SMS employees at that time. He further related that Fred Jenne -- who held a handful of MRAM patents -- left SMS prior to its closing.

89. Confidential Source No. 8 was an engineer for SMS from late 2001 through early 2005 and held the official title of “Manager of Cell Development” (“Manager of Cell Development” or “Confidential Source No. 8.”). His supervisor was Sam Geha, who reported to SMS CEO, Defendant Kaszubinski. According to Confidential Source No. 8, there were 20 or 30 people employed by SMS while he was there and that most of the employees participated in the daily meetings held by Defendant Kaszubinski. His official “end date” with SMS was in March 2005, however, his last day at SMS was actually January 18, 2005, nearly one month prior to the announcement of SMS’s divestiture. He and two other employees, he said, were given a compensation package to leave SMS at such time.

90. Confidential Source No. 8 described his job as conducting experiments in dealing with problems in the MRAM chips. He confirmed that he worked on the “blinky

bits” problem but refused to provide additional details with regard to the technology because he signed a non-disclosure agreement when he left SMS and is concerned about litigation if he discloses what may be considered proprietary information.

91. Confidential Source No. 11 was employed at NVE as the National Sales Manager for Isolated Product (“Confidential Source No. 11” or “National Sales Manager”) from July 2001 through April 2005. Initially he reported to John Meyer and then directly to Defendant Baker. He said that his interaction with Cypress and SMS was generally limited to his contact with Defendant Kaszubinski at NVE Board meetings and staff meetings. He indicated that most of the directors in upper management of NVE, including Defendant Baker, Defendant Daughton, and Defendant Kaszubinski, were present at both the quarterly board meetings and the regular staff meetings that were held every few weeks. During the meetings, he said, Defendant Kaszubinski would routinely provide an update with regard to work being done at SMS. He recalled Kaszubinski saying things about the new wafers, as well as the status and progress of developments.

92. Confidential Source No. 11 said that he knew there had been problems with SMS’ MRAM technology. He also said the technical aspects of the MRAM progress was discussed in meetings with the engineers and Defendants Kaszubinski, Daughton and Baker.

93. Confidential Source No. 9 was a business administrator and accounting manager at NVE until she was laid off on October 15, 2001. After she left the Company, she learned that MRAM testing at Cypress was not going well.

94. Confidential Source No. 10, the Director of Technology Development at SMS, oversaw the daily operations at SMS, including the process, integration, and memory development of the non-volatile MRAM technology, and reported directly to Defendant Kaszubinski. According to Confidential Source No. 10, he and Defendant Kaszubinski held twice daily status meetings. He stated that all SMS employees attended the morning meetings and most attended the afternoon meetings. The purpose of the meetings, he said, was in large part to review the testing results for the day and various issues related to the deployment of the MRAM technology. Confidential Source No. 10 was also in charge of the weekly and sometimes bi-weekly presentations made to Cypress' CEO, T. J. Rodgers. The purpose of these presentations was to keep Rodgers updated on the progress of MRAM.

95. Confidential Source No. 10 was also in regular contact with NVE personnel, most often Defendant Daughton. He said that Daughton was on the SMS Board of Directors and was at the SMS facilities at least several times per quarter - - sometimes once per month. Confidential Source No. 10 also had limited contact with NVE employees, Jim Deak, Art Pohm, and Cathy Nordman. He said that he met Defendant Baker on a few occasions.

96. Confidential Source No. 10 stated that the process for developing MRAM was started at SMS at the time he joined SMS in 2002 and that it was slow going - - it took a year to get it "just to wiggle." He further indicated that, although he believed that the technology would eventually work, he did not think it was the "holy grail" that NVE said it was. He believed, he said, that NVE executives were all getting rich from their overvalued stock.

97. Confidential Source No. 10 confirmed that there was a point in the second half of 2003 where SMS was “back at square one” with respect to MRAM. The problem, he said, was that SMS needed to use a different, larger type of cell.

98. The real problem SMS faced, Confidential Source No. 10 said, was the lack of reliability of its MRAM technology. He explained that the “blinky bits” problem would occur after running through several million “cycles.” All of a sudden, he said, the memory would become “blinky.” He said that towards the end of his time at SMS, after 2 years of work, SMS was able to yield approximately 70% die from one wafer. Confidential Source No. 10, said that it took about two years (i.e., from 2002 to 2004) for SMS to work up to the 70% yield. Even then, he said, die were tested for millions of cycles. He said, “we wanted to make money with it.” He described the testing period toward the end of his tenure at SMS in which they had run 16 million cycles and there was no sign of the chip going “blinky.” He said that with the reliability problems SMS was having it may have worked one more cycle and then blinked. He further explained that the feeling at SMS was that the product was not reliable for commercial production - - SMS did not want to have it fail in the hands of the consumer.

99. Confidential Source No. 10 confirmed, as stated in the February 14, 2005 press release, that SMS sent “proof of concept” samples out to several customers (Defendant Daughton also received some of the samples). These were sent sometime between November 2004 and January 2005, he said. He further stated that SMS had received positive feedback from several of the samples. The problem, he continued, was that when customers tested the samples, they only ran tens of thousands of cycles, which was not sufficient to encounter the known problems. According to Confidential

Source No. 10 the “blinky bits” problem did not occur until millions of cycles were run. He said that all of the statements made by Cypress were based upon these short cycles. He said that “we could have fooled them,” but added that the charade would only have lasted so long before the reliability problems would have come to light.

100. According to Confidential Source No. 10, the decision to close SMS was made by its Board of Directors, including Defendants Kaszubinski and Daughton. He indicated that it simply “didn’t make sense for Cypress to spend more money on it.” He further reiterated that NVE stock was believed to be “overvalued during the Class Period.”

**B. False and Misleading Statements During the Class Period**

101. The Class Period begins on May 16, 2003. On that date, the Company filed its Annual Report with the SEC on Form 10-KSB signed by, among others, Defendants Kaszubinski, Baker and Daughton. The Form 10-KSB, provided in part:

**MRAM INTELLECTUAL PROPERTY**

Magnetic Random Access Memory (commonly referred to as MRAM) uses spintronics to store data, combining the speed of semiconductor memory with the nonvolatility of magnetic disk drives. MRAM is inherently nonvolatile, meaning the data remains even if power is removed.

The advantages that MRAM has over other solid-state nonvolatile memory technologies are its ability to write fast (less than 100 billionths of a second) and indefinitely (competing nonvolatile memory technologies will wear out with continuous writing. Near-term applications that could potentially use these properties include factory controls, cell phones, personal digital assistants, and cameras. In the longer term, MRAM could replace conventional memories in computers.

Electrons have two stable spins, often called “spin up” and “spin down.” In MRAM, data is stored in the spin of the electrons in thin metal alloy films, and read with tiny spintronic sensors. Unlike

electrical charge, which is inherently unstable, the spin of an electron is permanent until it is changed. In MRAMs, the spin of the electrons is set with tiny bursts of magnetism. We have invented several types of MRAM memory cells and modes of operation.

**In addition to our own intellectual property relating to MRAM we have a license to use Honeywell MRAM technology and certain Cypress and Motorola intellectual property. Cypress has announced a goal of the first production MRAM devices in calendar 2003; Motorola has announced a goal of producing MRAM samples in 2003. If MRAM products are produced under our license agreements, we could potentially earn significant royalty revenues.**

\* \* \*

## **OUR STRATEGY**

\* \* \*

Deploy MRAM intellectual property through manufacturing partnerships

Because of the large capital investment required to make large-scale memories, our strategy is to use manufacturing partnerships to capitalize on our MRAM intellectual property.

**In April 2002 we entered into a technology exchange agreement with Cypress. Cypress has announced plans to have the world's first production MRAMs by the end of calendar year 2003. We will not receive royalties from Cypress, but have gained rights to certain intellectual property, and Cypress agreed to manufacture MRAMs for us. These devices might be sold in niche markets where NVE has a strong presence such as factory automation or military applications.**

Alternatively, we may private-label Cypress-manufactured MRAMs for other companies. Such a private-label strategy could provide us with a higher per-device profit than license royalties.

(emphasis added).

102. The statements made by Defendants in paragraph 101, above, concerning Cypress' having announced plans to produce MRAM by the end of 2003 were materially

misleading, as Defendants' knew, for the reasons set forth in paragraphs 51, 62-100, above. As Defendants knew, and particularly Defendants Kaszubinski and Daughton, through their hands on involvement and direct participation in SMS' MRAM development, Cypress and SMS were at best years away from developing commercial production of MRAM that could be successfully commercialized by Cypress, NVE or anyone else.

103. As related by Confidential Source No. 3, the Principal Engineer, the prevailing thought at SMS during the time period these statements were made was that MRAM was not working. He further explained that the belief then, as well as now, was that a marketable MRAM, while not impossible, would be difficult to reach because it was such difficult technology. Moreover, as further related by Confidential Source No. 3 throughout his tenure at SMS (which ended in December 2003) there was open talk among employees at SMS that the MRAM technology would not work. Indeed, as related by former NVE employee, Confidential Source No. 12, the "inside joke" at NVE was that MRAM was the "technology of the future that will never happen." Moreover, Confidential Source No. 7, the Process Development Engineer, said that the "blinky bits" problems began in mid to late 2002 leading to serious concerns about the reliability of the yield from the wafers. As alleged herein, numerous Confidential Sources confirmed the "blinky bits" problem was not corrected throughout the Class Period. As related by Confidential Source No. 10, the Director of Technology Development, it was the "blinky bits" problems that SMS had worked for years to correct that ultimately led to Cypress abandoning MRAM and SMS's demise.

104. With respect to NVE's intellectual property, the statements made in paragraph 101 were materially misleading because Defendants failed to disclose the facts set forth in paragraphs 52-61, above.

105. On May 22, 2003, the Company issued a press release<sup>4</sup> entitled "NVE Wins Government MRAM Contract" which stated, in part, as follows:

NVE Corporation (NasdaqSC: NVEC) 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 non-volatility 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.

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<sup>4</sup> Confidential Source No. 5, was a Process Development Engineer (the "Process Development Engineer" or "Confidential Source No. 5"). He said he believed Defendant Baker wrote the Company's press releases. Confidential Source No. 11, the National Sales Manager, confirmed that Defendant Baker was the author of most of NVE's press releases. He characterized Defendant Baker as a "spin doctor." He said he was aware that people had taken issue with how Baker's press releases had read and with what he was saying about MRAM.

**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."**

(Emphasis added.)

106. The statements made in paragraph 105, above, concerning NVE's intellectual property portfolio were materially misleading because Defendants failed to disclose the facts set forth in paragraphs 52-61, above.

107. 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 (NasdaqSC:NVEC) 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.**

(Emphasis added.)

108. The statements made by the Company in paragraph 107, above, were materially misleading, as Defendants knew, for the reasons set forth in paragraphs 51, 62-100, 102 and 103 and paragraphs 92-93, above.

109. On August 25, 2003, the Company announced the sale by Defendant Daughton of 213,700 shares of NVE common stock, or 49.9% of his NVE holdings at the time. The sales were for prices as high as \$27.16 per share and took place on the open market between July 22, 2003 and August 25, 2003. These sales brought Defendant Daughton almost \$4.5 million. He had not previously sold NVE stock.

110. According to the August 4, 2003 press release announcing Daughton's sales, Daughton "said he sold the shares for estate planning purposes." However, Confidential Source No. 2, the Project Engineering Manager, said Daughton told him that he [Daughton] was getting ready to retire and wanted his children and grandchildren to enjoy the proceeds of the sale while he was still alive. Thus, Daughton, who was 66 years old at the time, was aware that the Company's anticipated payoff from MRAM, if even possible, was still many years away.

111. On September 4, 2003, the Minneapolis Star Tribune published an article titled "Investors betting on Minnesota memory maker." The article was posted on NVE's website. The article, in which Defendant Baker was quoted, stated in part:

Investors believe little NVE Corp. is at the commercial doorstep of The Next Big Thing.

They've bid up the stock by 350 percent this summer, making NVE the hottest publicly traded stock in Minnesota over the last month. That's even after the shares fell by more than a fifth to a \$32.15 close on Wednesday on a volume of more than 3.2 million shares as short sellers moved on what they believe is an overpriced stock.

The shares had risen 4.7 percent Tuesday to a record \$40.20 per share close on 20 times normal volume of nearly 2 million shares.

The company, which lost money last year, made 7 cents per share on revenue of \$2.82 million in the first fiscal quarter ended June 30.

The original investors, including Norwest Venture Partners, Motorola and Cypress Semiconductor, put up most of \$12 million in the mid-1990s for a company that now boasts a market value of \$135 million.

NVE is a leader in the development of magnetic random access memory, or MRAM, which promises to be faster than current computing technology, use less energy and retain what's on your PC screen or your cell phone even if the power cuts out. That makes MRAM potentially worth billions to the semiconductor manufacturing industry, and tens of millions for NVE, which has a lock on a lot of the early-stage technology and applications.

"These guys have a significant amount of intellectual property surrounding the MRAM space and they have licensed partnerships with all the leaders: Motorola, Honeywell International and Cypress Semiconductor," said Chad Bennett, a technology analyst at Miller Johnson Steichen Kinnard. "Investors are looking for a play on MRAM through NVE. There's a huge difference between the concept and economically manufacturing the chip. But from a patent portfolio standpoint, NVE is the leader and MRAM technology is moving toward commercialization over the next year-plus."

NVE stock has surged amid several recent developments, including:

- A statement by a Cypress Semiconductor executive in August that the company will begin prototype manufacturing later this year and full-scale production in 2004. Production will be guided by an NVE-patented design.

- Last month, Tobin Smith, editor of ChangeWave Investing, told his readers that NVE is the leader in MRAM through its nanotechnology-based technique that uses an electron's spin rather than its charge to store data. MRAM has the potential to combine the speed of turbocharged semiconductor memory with the non-volatility of magnetic disk drives to eventually replace current memory technology.

"It's 100 times faster, 100 times denser and it's not volatile," Smith said. "That means it's always on and you don't have to boot up anything."

Boosters contend that nanotechnology, the use of building materials much smaller than today's micro-materials, will enable high-technology manufacturers within a few years to manipulate atoms in a way that will make possible the production of semiconductors and other materials that are many times faster and stronger at a fraction of today's size.

- The federal government just made the latest of several grants that now total several million dollars to NVE to further its development of "spintronics."

NVE was founded as a private research company, Nonvolatile Electronics, in 1989 by James Daughton in 1989. Daughton, 66, is a former senior researcher and executive at Honeywell and IBM. Daughton served as chairman and chief executive until January 2001, and is still a NVE technical adviser and director. Last week the company announced that he had sold about half his 430,000-share stake in August in planned sales at prices that ranged from \$18 to \$22, for a total of about \$4.5 million.

Daughton was succeeded as CEO in 2001 by Daniel Baker, an electrical engineer and MBA out of the University of Minnesota. Baker, 45, formerly worked in executive positions with the former Minntech Corp. and Percom Data Corp.

In an interview this week, Baker said MRAM is still several times more expensive to produce than conventional semiconductor memory, but it won't require battery backup power, as is necessary now in many applications.

That makes the comparisons much better.

**"We have two major manufacturing partnerships -- with Cypress, which will make the memory chips in their Bloomington facility, and we've licensed our intellectual property to Motorola," Baker said. "They've both produced prototypes. Neither has sampled commercial devices yet. Cypress has said they are very close to sampling the first MRAM devices."**

(Emphasis added).

112. The statements made by Defendant Baker and the Company in paragraph 111, above were materially misleading, as Defendants' knew, for the reasons set forth in paragraphs 51, 62-100, above.

113. On September 8, 2003, the Minneapolis-St. Paul Business Journal reported on the market's enthusiasm about NVE. The article was posted on NVE's website. The article titled "NVE's memory has investors swooning, Company's technology called the 'Holy Grail' in computer memory for use in small electronics," quoted Defendant Baker and stated in part:

NVE Corp., a Honeywell spinoff that has developed a way to use spinning electronics to store data, has spent the summer setting its investor's heads spinning as well.

The Eden Prairie company, which had less than \$10 million in revenue last year, has seen its stock price soar from about \$6 in May to a high of nearly \$45 this week. The stock dropped sharply in midweek, but even so is up more than 300 percent over the past year amid investor interest in its core technology: a new type of computer memory that could replace many commonly used standards in small electronic devices.

NVE (short for nonvolatile electronics) has developed a type of computer memory called MRAM, or magnetic random access memory, that's as fast as conventional computer RAM but as stable as a computer hard drive.

Cypress Semiconductor Corp. of San Jose, Calif., a partner and investor in NVE, has said it hopes to roll out the industry's first MRAM devices by the end of the year at its fabrication plant in

Bloomington. It will beat a similar project by IBM Corp. to market by more than a year.

**“It’s taken a while, but it seems to be getting fairly close to fruition,” said Daniel Baker, NVE’s CEO.**

The progress has likely spurred the recent investor interest in NVE, said Chad Bennett, senior equity analyst at Miller Johnson Steichen Kinnard in Minneapolis. Bennett doesn’t cover NVE but has followed the company informally for more than a year.

“The reality of MRAM actually becoming a tangible product has really come around in the past three months,” Bennett said. “IF anybody is looking to get into the space, they’ll be looking at NVE. ... If the technology develops like people think it will, this company won’t stand alone very long” before attracting suitors.

The stock climb is burst of endorsement for NVE, which since 1990 has mostly pursued government research.

That business is profitable, but the company has had to maneuver to keep its place in the market. The thinly-traded firm orchestrated a reverse split last year to keep its stock price above \$5 per share.

Its MRAM development could be the payoff of long years of work. The company’s technology is based on a process it call “spintronics,” which alters the spin of electrons at the atomic level to store data.

Conventional types of computer memory use the charge of an electron (that is, the presence or absence of a charge) to do the same thing, but such charge-based memory doesn’t last long. Other types of memory are available, but have their own problems. A cell phone uses at least three different types of memory chips - - one to handle complicated processing, another to handle basic tasks and a third to store phone numbers when the handset is turned off.

MRAM’s supporters say the technology could replace all three types. **“This technology really is one of those things that come across once in lifetime,” Baker said.**

“MRAM has the potential to be all things to all people: Stable, fast and cheap to produce,” said Jason Sam, an analyst with Los Angeles-based Seidler Cos. who doesn’t follow NVE but has tracked the company’s technology.

T. J. Rogers, CEO of Cypress, was more direct. "This is the Holy Grail of memory," he said.

The key for NVE, which will make its own products but hopes to see most of its business through licensing deals with Cypress and Motorola, will be in making sure the technology catches hold.

\* \* \*

(Emphasis added).

114. The statements made by Defendant Baker and the Company in paragraph 113, above, were materially false and misleading as Defendants knew, for the reasons set forth in paragraphs 51, 62-100, 102 and 103, above. At the time these statements were made, MRAM production by Cypress was no where near fruition; and as related by numerous Confidential Sources, including Confidential Sources Nos. 10, 20, and 6, the Director of Technology, Project Engineer and Engineer, respectively, Cypress and SMS were at this time "back at square one" with MRAM. Moreover, as related by Confidential Source No. 4, the statistician, "the NVE IP did not constitute a breakthrough." Moreover, NVE's MRAM patents are immaterial and unenforceable.

115. On October 21, 2003, NVE announced its financial results for its second fiscal quarter ending September 30, 2003. Total revenue for the quarter ended September 30, 2003 was \$2.86M compared to \$2.35M for the prior-year quarter, an increase of 22%. Commercial product sales for the current quarter increased 107% over the prior-year quarter to \$1.27M from \$613,000. Net income for the current quarter was \$406,476 or \$.09 per diluted share, compared to \$160,296 or \$.04 per share for the prior-year quarter. With respect to MRAM the press release stated:

"We continue to support commercialization of our MRAM technology," [Defendant] Baker added, "**and NVE licensees**

**Cypress Semiconductor Corporation and Motorola, Inc. expect to introduce MRAM's in the next year."**

**The Company revised its guidance to \$0.17 to \$0.35 per diluted share net income for the fiscal year ending March 31, 2004. The lower end of the guidance range allows for possible start-up expenditures associated with the commercialization, marketing, and selling of Cypress-built MRAMs.**

(Emphasis added).

116. Following this announcement the price of NVE shares increased 10.14% from its closing price of \$34.68 on October 21, 2003 to close at \$38.20 on October 22, 2003.

117. The statements made in paragraph 115, above, were materially misleading, as Defendants knew, for the reasons set forth in paragraphs 51, 62-100, and paragraphs 102-103, above. As related by Confidential Sources Nos. 10, 20 and 6, during the third and fourth quarter of 2003, SMS was "back at square one" with respect to MRAM. Moreover, as related by Confidential Source No. 3, the Principal Engineer, the prevailing thought at SMS was that MRAM was not working at that time and that while achieving marketable MRAM was not impossible, it would be difficult to reach and would take "a lot of work." There simply was no reasonable basis for the Company's suggestion in paragraph 115 above, that NVE might begin commercialization of MRAM prior to March 31, 2004.

118. On November 13, 2003, NVE issued a press release entitled "NVE Achieves Record Tunnel Junction Magneto resistance, New design could improve MRAM manufacturability and speed." The press release stated in part:

EDEN PRAIRIE, Minn.--November 13, 2003--NVE Corporation (NasdaqSC: NVEC) today announced today that it has achieved record spin-dependent tunneling (SDT) junction magneto

resistance. Using unique materials, the company reported more than a 70% change in tunneling magneto resistance (TMR) between two stable states at room temperature, which is the highest value ever reported.

Tunnel junctions, also known as magnetic tunnel junctions (MTJs) or tunneling magnetic junctions (TMJs), allow the esoteric property of electron spin to be sensed as electrical resistance for interface to conventional electronics.

Tunnel junctions are used in a revolutionary new type of memory called magnetic random access memory or MRAM. MRAMs use electron spin to encode data, and are fabricated using nanotechnology. 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 memory. It could therefore replace all three types of conventional semiconductor memory.

"This accomplishment is a credit to the ingenuity of our development team," commented NVE President and Chief Executive Officer Daniel A. Baker, Ph.D. "It strengthens our intellectual property portfolio and could improve MRAM manufacturability and speed."

NVE is scheduled to present details of this unique design at the Joint IEEE Magnetism and Magnetic Materials / INTERMAG Conference on January 6, 2004. Proceedings will be published in the Journal of Applied Physics and the IEEE Transactions on Magnetism.

NVE has a number of U. S. and foreign patents on spintronics, tunnel junctions, and MRAM. The company has licensed its MRAM intellectual property to several companies, including Motorola, Inc., Cypress Semiconductor Corporation, Honeywell International, and Union Semiconductor Technology Corporation.

**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.**

NVE's development in this area was funded by contracts from the National Science Foundation, the Missile Defense Agency, and the U. S. Army Research Laboratory.

(emphasis added).

119. Following this announcement, the Company's share price increased 52% from its November 21, 2003 closing price of \$40.33 to close at \$43.00 on November 14, 2003. NVE's share price fell back 1.51% on the next trading day, November 17, 2003, then increased an additional 11.5% to close at \$47.20 on November 18, 2003.

120. The statements made in paragraph 118, above, were materially false and misleading, as Defendants knew, for the reasons set forth in paragraphs 51, 61-100, 102 and 103, above. At the time these statements were made, as Defendants knew, and as related by Confidential Source No. 6, the Engineer, SMS could not make the MRAM process accurate enough to yield a sufficient percentage of chips that were reliable and could conceivably be marketed into commercially viable product. As related by Confidential Source No. 7, the Process Development Engineer, there was a breakeven point for the number of chips that could be produced from each wafer. The Company, Confidential Source No. 7 related, was "burning money" if fewer than 80%-90% of the chips from one wafer were deemed "good." At the time that SMS was divested in February 2005, as related by Confidential Source No. 10, the Director of Technology Development, the Company was then only achieving a 70% yield.

121. The statements made in paragraph 118, above, with respect to NVE's intellectual property portfolio were false and misleading because Defendants' failed to disclose the facts set forth in paragraphs 52-61, above.

122. 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 (NasdaqSC: NVEC) 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.

The company has licensed its MRAM intellectual property to several companies, including Motorola, Inc., Cypress Semiconductor Corporation and Union Semiconductor Technology Corporation.

**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.**

(Emphasis added.)

123. Following this news, the Company's share price rose 5.49% from its closing price of \$46.45 on November 20, 2003 to close at \$49.00 on November 21, 2003.

124. The statements made in paragraph 122, above concerning NVE's patents were materially misleading because Defendants failed to disclose the facts set forth in paragraphs 52-61, above.

125. The statements made by the Company in paragraph 122, above, were materially false and misleading, as Defendants' knew, for the reasons set forth in paragraphs 51, 62-100 and paragraph 117, above.

126. On November 21, 2003, Defendant Baker was interviewed by Rita Maloney on Minneapolis radio station KCCO. A copy of the transcript of the interview which aired on November 21, 2003, and was posted on the Company's website, provided as follows:

**Maloney:** Gary Oldman says you spin it around, and it makes memory.

So we'll see if we can understand all that by the end of this interview. I am joined by the president and CEO of NVE Corporation--Daniel Baker is joining me here on KCCO Business Focus.

Dan, welcome; good to talk to you.

**Baker:** Good morning, Rita.

**Maloney:** Now did Gary get that right? You spin it around and it makes memory?

**Baker:** He did. He did get it right. Actually, we use the spin of electrons in our products--rather than their charge--to store and transmit information, and that's unique.

**Maloney:** So you develop this at NVE? You developed this technology?

**Baker:** Yes we did. We pride ourselves on making spintronics practical. It's a property of electrons that's been known for some time, but until relatively recently nobody had been able to figure out a way to make devices that take advantage of this property.

**Maloney:** So you use memory for what? Would this be, like, computer memory as an example?

**Baker:** It could be. Right now, it's memory that's under development. The memory that the results from this technology is called MRAM. It's a new type of memory. It's been called the Holy Grail because it combines all of the best attributes of existing types of memory: the speed of SRAM, the density or capacity of DRAM and the non-volatility of Flash, meaning that the data stays put when the power is removed.

**Maloney:** Amazing. Now tell me, how long NVE Corporation has been in development of this?

**Baker:** The company was founded in 1989. Our original name was "Nonvolatile Electronics," which captured our mission of making MRAM, and actually it's been under development prior to that. Jim Daughton, our founder, and Art Pohm were working on this technology prior to that. Jim ran Honeywell's SSEC operation here in the Twin Cities, and this has been a dream of his, and many of our employees, for many, many years.

**Maloney:** Is this MRAM... is it being used today anywhere?

**Baker:** Not yet. Motorola just announced late last month that they were beginning to sample it. Motorola has licensed our intellectual property. And Cypress Semiconductor is also working on it, and they demonstrated prototypes, but it's not yet available in production.

**Maloney:** I'm speaking with the president and CEO of NVE Corporation. Daniel Baker is joining me on the KCCO Business Focus. Daniel Baker is joining me on KCCO Business Focus. So it's spintronics, or the spinning of electrons, that creates this MRAM, or this memory. Tell me what this could this possibly mean to us in the future.

**Baker:** Well it could truly revolutionize a lot of the devices that we use every day:

You could envision ultra-miniature cell phones, because the various types of memory that we need now in a cell phone could be combined into one that would be very small; use much less power. So you could see something like Dick Tracy watch phones.

We can envision cell phones in places where they won't fit now--you can imagine a dog collar that the call to when the dog if the dog runs away, and because the memory would be small and wouldn't use a lot of power, it could be on standby mode for long time.

And it could eliminate boot-up cycles and crashes in computers that are the bane of our lives caused by having to transfer data back and forth between nonvolatile memory and working memory.

**Maloney:** Yes, in fact I was going to ask you about that, because you know, especially after 9/11, we all learned about this back up, and we would get everything completely, in every business, backed up. Would it eliminate that? Would it cut that need to back up? How would that work?

**Baker:** Yes it would, because the data, the working memory in the computer is in DRAM, and of course that goes away when the power is removed. And that's what causes a memory crash. And with MRAM, the data would be inherently persistent in the working memory, and that would certainly reduce the need (or eliminate the need) for backups.

The military is particularly interested in this type of memory, because, first of all it's inherently nonvolatile, meaning that the data doesn't have to be backed up or is less susceptible to data loss, and also it's very, very rugged memory. It can survive extremes of radiation and other abuse, and that's obviously very important for military applications in a post-9/11 world.

**Maloney:** Dan, I'm going to ask you a question that might be an easy one to answer or difficult one, I don't know. But what are we looking at? Ten years down the line? Five years down the line? Fifty years down the line?

**Baker:** Well, hopefully much sooner than that. Motorola has said that they hope to be in production with this type of memory by late 2004, and Cypress has the schedule to get samples--they have an internal deadline--of March 31, 2004.

**And we are seeing samples and prototypes of devices. Cypress recently demonstrated prototypes. So they're not available yet, but hopefully in the not-too-distant future.** Motorola's also announced plans to show a cell phone-on-a-chip architecture, and that would be in the second half of 2004, so it's getting pretty close.

**Maloney:** Just a couple of housekeeping moves: you're a public company traded on the NASDAQ, correct?

**Baker:** That's correct.

**Maloney:** "NVEC," the ticker. Where does NVE Corporation call home?

**Baker:** We're based here in Eden Prairie, in what we call "Silicon Prairie."

**Maloney:** Silicon Prairie?

And can give me an estimate on the number of employees you have there?

**Baker:** We have approximately 70 employees, including ten Ph.D.'s.

**Maloney:** And can give me an idea of how you look going forward? You sound very optimistic about this MRAM.

**Baker:** Well, we are very optimistic—

We have licensed our technology to industry leaders including Motorola and Cypress as I mentioned.

We also have a license agreement with Agilent on another product type of product;

and we've been profitable for a while, and we plan to continue to be profitable;

and our sales are growing rapidly: our commercial product sales have doubled year-over-year in each of the past two quarters, so we're pleased with that;

and we see a bright future ahead of us as well.

**Maloney:** Daniel Baker, president and CEO of NVE Corporation, we appreciate your time.

**Baker:** My pleasure, Rita.

(emphasis added).

127. On November 25, 2003, the second trading day after this interview, NVE's share price rose an additional 11% to close at \$54.00 on November 25, 2003.

128. The statements made by Defendant Baker and the Company in paragraph 126, above, were materially false and misleading, as Defendants knew, for the reasons set forth in paragraphs 51, 62-100, paragraphs 102 and 103 and paragraph 117.

129. On January 20, 2004, NVE issued a press release announcing financial results for its third fiscal quarter ended December 31, 2003. With respect to MRAM, the Company stated:

"We continue to be extremely pleased with our quarterly results, commented President and Chief Executive Officer Daniel A. Baker, Ph.D. "We notched our third consecutive quarter of triple-digit year-over-year growth in product sales. **Furthermore, together with our licensees, we made remarkable progress toward the commercialization of our MRAM intellectual property.**"

**The company narrowed its guidance to a range of \$0.30 to \$0.37 per diluted share net income for the fiscal year ending March 31, 2004 compared to \$0.15 for the fiscal year ending March 31, 2003.** The company had previously issued guidance of a range of \$0.17 to \$0.35 per diluted share net income. **The lower end of the earnings guidance range allows for possible start-up expenditures associated with the commercialization, marketing, and selling of Cypress-built MRAMs.** The company expects to make such expenditures, however, only if Cypress is successful in producing commercial MRAM. The company expects total revenues of \$11.5 to \$12 million compared to \$9.45 million in the prior year.

(Emphasis added).

130. The statements made in paragraph 129, above concerning the commercialization of Cypress built MRAM, were materially false and misleading, as the Defendants knew, for the reasons set forth in paragraphs 51, 62-100 and paragraph 117, above.

131. On January 4, 2004, the Twin Cities Business Monthly published an article entitled "NVE Named one of Forty 'Companies to Watch in '04.'" The magazine observed:

News that San Jose-based Cypress Semiconductor's Bloomington facility would be producing prototype MRAM chips boosted NVE's stock price (Nasdaq: NVEC) from below \$7 last May to \$54 in November.

132. On January 28, 2004, Defendant Baker exercised options to acquire 60,000 shares of NVE common stock for \$6.578 per share. On January 28, 2004 and January 30, 2004, with the price of NVE's stock artificially inflated by Defendants' false and misleading statements, Defendant Baker sold 39,000 NVE shares at \$58.33 per share and 26,000 NVE shares at \$56.24 per share, respectively for total proceeds of \$3,737,110. He had not previously sold NVE stock. These transactions left Baker holding only 7,885 NVE shares.

133. On March 7, 2004, Dave Beal of the St. Paul Pioneer Press wrote an article entitled "PICKS OF THE LIST DAVE BEAL SAYS THE PP OFFERS A DEEP POD FROM WHICH TO CHOOSE HIS 10 FAVORITES" reported on the excitement surrounding NVE and provided in part:

Want to tune in to one of the most exciting dramas unfolding in the high-tech community here?

Then dial up the buzz being created by tiny NVE and its MRAM chip. Last spring, NVE's stock began soaring after it had

languished in the \$5 to \$10 range since becoming public in 2000. In January, the stock scraped \$70 before receding to \$36. Then it rose again to nearly \$43, enough to earn NVE a place in the Pioneer Press 100.

The Eden Prairie company, working with licensees Cypress Semiconductor and Motorola, is commercializing a new memory chip that combines the speed of random access memory with the durability of hard-drive storage. Speculation about when it will reach the market has heightened the frenzy over the stock.

Chief technology officer James Daughton started NVE in 1989, after running Honeywell's semiconductor center here. He figured out how to commercialize "spintronics" - - the spin of electrons to store and transmit information more productively.

In 1991, a plan to move to Texas was aborted after financing for the move collapsed.

NVE remains a big secret to many in the Twin Cities. Despite the stock's surge, it still has no analyst coverage.

Says CEO Dan Baker: "I just couldn't believe there was a company with this much going for it was that unknown."

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

NVE Corporation (NasdaqSC: NVEC) 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.

(emphasis added).

135. On this news, the price of the Company's stock price closed at \$47.70 on March 19, 2004, up \$6.30, or 15%, from its previous day closing price of \$41.40, on very heavy volume.

136. On March 23, 2004, the Minneapolis-St. Paul Tribune reported on NVE and its March 19, 2004 announcement in an article titled "Short sales smack NVE skeptics rip Eden Prairie tech company":

Short-sellers – those professional skeptics who profit when a company's stock drops – have been swarming NVE Corp., which was among the hottest of Minnesota stocks in 2003.

The Eden Prairie based microelectronics firm ran from \$5.75 a year ago to nearly \$70 per share a few weeks ago amid hope that there will be a big payoff for shareholders from intellectual property it has developed. NVE has licensed its technology to Cypress Semiconductor and Motorola as those two tech heavyweights move toward expected commercialization of "magnetic random access memory" (MRAM).

The new memory technology, using next-generation "nanotechnology" (in which NVE says it is a leader) promises to be faster than current technology, use less energy and retain what's on the PC screen or cell phone even if the power fails.

But the short-sellers have beaten the stock down to under \$50 per share this month amid heavy trading. They charge that NVE's MRAM intellectual property isn't worth much and point to big insider sales as indicating that the folks closest to the crown jewels must agree.

\* \* \*

According to Thomson Equity Strategies, CEO Dan Baker, a three-year veteran, in late January bought 70,000 shares he had under options for \$6.58 and sold 65,000 of them at around \$57 per share, grossing \$3.7 million, and leaving him with only 7,885 shares.

Baker, 46, a veteran technologist and corporate executive who holds a doctorate in engineering, said he remains bullish on his company. "I believe in our prospects," Baker said in an interview Monday. "I couldn't work here otherwise."

\* \* \*

Last summer and fall, Chairman James Daughton, who founded NVE in 1989, sold more than 200,000 shares, grossing more than \$4 million. And Norwest Equity Partners, the venture-capital firm, sold out its decade-old stake at prices ranging from \$20 to \$38 per share, grossing more than \$40 million last summer and fall.

\* \* \*

Cypress Semiconductor, another early-stage investor, also sold \$23.4 million worth of stock late last year, the proceeds of which will be used for "continuing MRAM development."

The stock of NVE has fallen since January, to under \$40 per share early last week. On Wednesday, Baker and an executive of Cypress held a telephone conference call for investors that was upbeat. And a newsletter, the Forbes/Wolf Nanotech Report, has written some positive things about the promise for NVE and its relationship with Cypress and Motorola.

That caused [short seller] Asensio to issue public statements on his Web site and elsewhere that "NVEC possesses no valuable MRAM technology," backed up by three pages of attack and explanation that's available at [www.asensio.com](http://www.asensio.com).

**But NVE finished up for the week – the first time in several weeks – after NVE put out a summary of the conference call that said Cypress is nearing a "production-ready product," quoting Cypress Executive Vice President Ralph Schmitt.**

"We think there's a bright future for our products and our technology," Baker said. "We try to be open about the risks in our public filings."

(emphasis added).

137. The statements made in paragraph 134, above, were materially misleading, as Defendants' knew, for the reasons set forth in paragraphs 51, 62-100,

above. As related by Confidential Source No. 4, the statistician, by the time he left SMS in April 2004, SMS had experienced problems with various engineering issues concerning the MRAM process and SMS and Cypress were disappointed with the technology because the progress was not going as quickly as initially anticipated. Moreover, throughout this time period, as related by numerous Confidential Sources, including Confidential Source No. 6, "blinky bits" problems and difficulties with achieving an economically viable yield were continuing. With all of the problems at SMS in 2004 and 2005, she said, there were collective thoughts at SMS that Cypress might stop funding the MRAM project.

138. On April 28, 2004, NVE issued a press release announcing its financial results for the fourth quarter and fiscal year ended March 31, 2004. Total revenue for fiscal 2004 was \$12.0M compared to \$9.45M the prior year, an increase of 27%. Product sales increased 115% over the prior year. For fiscal 2004 the company reported net income of \$2.11M, including a net income tax benefit of \$122,022 from reduction of the valuation allowance relating to deferred tax assets. This compared to net income of \$646,850 in fiscal 2003. Earnings per share were \$0.45 per diluted share compared to \$0.15 per share for the prior year. With respect to MRAM, the Company stated:

"We are very pleased with our results for the past year," commented President and Chief Executive Officer Daniel A. Baker, Ph.D. **"Product sales grew very rapidly and our partners made significant strides toward production-ready MRAM."**

NVE is a leader in the practical commercialization of spintronics, a nanotechnology which many experts believe represents the next generation of microelectronics. NVE licenses its MRAM intellectual property and sells spintronics products including sensors and couplers to revolutionize data sensing and transmission.

(Emphasis added).

139. On this news, NVE's share price increased 3.44% to close at \$37.89 on April 29, 2004.

140. The statements made by Defendant Baker in paragraph 138, above, was materially misleading, as Defendants knew, for the reasons set forth in paragraphs 51, 62-100 and paragraph 137, above.

141. On May 27, 2004, the Company filed its Annual Report for the year ending December 31, 2003 with the SEC on Form 10-KSB. The Form 10-KSB, which was signed by, among others, Defendants Daughton, Kaszubinski and Baker, provided in part:

**Our Strategy**

Our goal is to become the leading developer of practical spintronics technology and devices. We plan to do that through entering into new MRAM manufacturing partnerships, pursuing additional MRAM license agreements, expanding commercial product sales, and building intellectual property.

***Monetize MRAM Intellectual Property Through Manufacturing Partnerships***

Because of the large capital investment required to make large-scale memories, our strategy is to use manufacturing partnerships to monetize our MRAM intellectual property.

We expect to receive royalties, subject to certain terms and conditions, after Motorola goes into production, which is currently expected to occur in late 2004. Motorola has announced plans for stand-alone MRAM, as well as systems on chips for cellphones and other applications, which could contain embedded MRAM.

Rather than royalties, our agreement with Cypress gives us rights to their production designs and intellectual property, as well as rights to use Cypress factories to manufacture MRAMs for us. We plan to sell these devices in niche markets where we have a strong

presence such as factory automation or military applications. We expect sales into such high value-added niches to command premium prices.

\* \* \*

### ***MRAM Products and Markets***

MRAM uses spintronics to store data, combining the speed of semiconductor memory with the nonvolatility of magnetic disk drives. MRAM is inherently nonvolatile, meaning the data remains even if power is removed.

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 nonvolatility of flash memory.

Data is stored in the spin of the electrons in thin metal alloy films, and read with spin-dependent tunnel junctions. Unlike electrical charge, the spin of an electron is inherently permanent. In MRAMs, the spin of the electrons is set with tiny bursts of magnetism. We have invented several types of MRAM memory cells and modes of operation.

In the near-term, MRAM could replace battery-backed-up SRAMs in mission critical systems such as military, factory control, point-of-sale terminals, and gaming electronics. MRAM has the potential advantages of being simpler, lower cost, and more reliable than battery/memory systems.

In the medium term, MRAM could find application in cellphones, where it can replace three types of memory and enable embedded designs such as cellphones on chips.

Long term, MRAM could address the market for ubiquitous high-density memory, where it could offer higher speed and nonvolatility, enabling a new generation of computers and other products.

\* \* \*

### **New Product Status**

We have announced and begun sampling several new products, including spintronic angle sensors, rotational speed sensors, low-power couplers, and five-channel couplers for factory and industrial markets.

In October 2003 Motorola announced it was sampling a 4-megabit MRAM. Motorola has said it expects to begin MRAM pilot production by late 2004. We believe that if Motorola commercializes devices described in their technical papers, they would use our intellectual property and we would therefore be due royalties.

**Cypress has released preliminary data sheets for 64 kilobit and 256 kilobit MRAMs which are pin-for-pin replacements for their SRAM. In March 2004, Cypress reported it had made working MRAM and was close to production-ready product.**

\* \* \*

### **Outlook**

We expect commercial product revenues to continue to grow in fiscal 2005. **We plan to continue our business strategy, including the support of a planned ramp-up in shipments to Agilent, new products, and possible sales of MRAM as a result of our technology agreement with Cypress.**

Sales to St. Jude Medical began to drop off in early calendar year 2004 as some of their purchases in calendar year 2003 were to fill supply pipelines related to their expanded use of our products. We hope to replace those revenues with new sales to Agilent, sensors, couplers, or MRAM.

Gross profit margins could decrease in fiscal 2005 as competitive pressures could force us to decrease our selling prices.

Research and development expenses increased in the latter half of fiscal 2004. We expect expenses to continue at higher levels in fiscal 2005 as we develop new products.

**We have been profitable for eight consecutive quarters and expect to be profitable in fiscal 2005, however we expect expenses to increase in fiscal 2005 if we rollout MRAM manufactured under our technology agreement with Cypress.** We may also increase expenditures relating to pursuing additional MRAM license agreements. Our legal expenses relating to enforcing our MRAM intellectual property may also increase. These additional expenses could lead to operating losses.

Our growth has required expanding our manufacturing capacity. We have purchased several new pieces of production equipment in the past year. We plan to purchase additional production equipment and expand our clean-room factory in the coming year to support continued growth in product sales, to reduce labor costs and to increase manufacturing yields.

(Emphasis added).

142. The statements by the Defendants in paragraph 141, above, were materially false and misleading, as Defendants' knew, for the reasons set forth in paragraphs 51, 62-100, and paragraph 137, above. There was simply no reasonable basis for Defendants' suggestion that NVE might commercialize MRAM during fiscal year 2005.

143. 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 (NasdaqSC: NVEC) 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.

\* \* \*

"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."

144. On this news, the Company's share price increased 41.15% to close at \$36.43.

145. The statements made in paragraph 143, above, concerning NVE's intellectual property was materially misleading because Defendants' failed to disclose the facts set forth in paragraphs 52-61, above. The significance of NVE's 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. Other Defendants were timing the announcement to stave off a decline in the Company's shares.

146. On July 20, 2004, the Company issued a press release announcing its financial results for the fiscal first quarter ended June 30, 2004. With respect to MRAM, the Company stated:

"We expect to be profitable in the upcoming quarters **but we may post lower net income compared to last year's quarters due to higher research and development expenses; expenses associated with rolling out MRAM manufactured under our technology agreement with Cypress Semiconductor;** and expenses associated with license procurement and enforcement in the current fiscal year," added Baker. "These expenditures will enable NVE's continued growth and strengthen our intellectual property position."

NVE is a leader in the practical commercialization of spintronics, a nanotechnology which many experts believe represents the next generation of microelectronics. NVE licenses its MRAM intellectual property and sells spintronic products including sensors and couplers to revolutionize data sensing and transmission.

(Emphasis added).

147. The statements made in paragraph 146, above, were materially false and misleading as Defendants' knew for the reasons set forth in paragraphs 51, 62-100 and paragraph 137, above.

148. 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 (NasdaqSC: NVEC) 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 Magneto-resistive 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."

149. On this news, the Company's share price increased 18.07% to close at \$37.38 pm August 17, 2004.

150. The statements made in paragraph 148, above, were materially misleading because the Defendants failed to disclose the facts set forth in paragraph 52-61, above.

151. On September 1, 2004, NVE announced that Stephens, Inc. initiated research coverage of the Company.

152. On November 22, 2004, The Motley Fool (www.fool.com) published an article on NVE entitled "NVE's Nanotrap Only Snares Speculators." This article stated, in part, as follows:

NVE's stock is sizzling hot. This nano-ostensible company is hell-bent on convincing the world it holds the keys -- licensable keys -- to a high-profile memory technology for PCs, cell phones, and other gadgets. This technology, it says, is sitting on the plates of two big eaters: Motorola and Cypress Semiconductor. But the devil is in the details on this one, and after you read Jeff Young's tell-all, you'll be wondering if NVE spells nothing more than No Visible Earnings with regard to its supposed licenses that have the market drooling.

\* \* \*

Large tech outfits such as Motorola (NYSE: MOT) and Cypress Semiconductor (NYSE: CY) have signed license agreements with NVE. Proponents think Motorola will pay NVE a royalty on every MRAM chip it makes and that NVE will be able to resell some MRAM chips once Cypress starts production. Ergo, NVE must hold the keys to the Grail.

\* \* \*

The highlight of what NVE calls its "watershed" MRAM patents is something known as a "one-transistor-per-bit read addressing scheme." This invention relates to the electrical circuitry supporting a memory cell, but has nothing specific to do with MRAM. Further, the claim is based on so much prior art that it's meaningless and unenforceable. The DRAM in your PC has relied on this approach for decades. Motorola did license technology from NVE in 1995, but this was before NVE even had these patents. Motorola pays NVE no fees today and has no reason to pay NVE royalties in the future. Meanwhile, **Cypress Semi appears no closer than it has been to producing a commercially viable MRAM-based product.** No other company with a major MRAM development program has licensed NVE's patents.

\* \* \*

What about Cypress?

Next we have Cypress Semi, which signed a royalty-free license with NVE in April 2002 in conjunction with a \$6.2 million purchase

of stock and warrants amounting to 24% of NVE. Cypress CEO T. J. Rodgers had said in May 2002 that Cypress would be sampling its MRAM chips by August, with chips in production by year-end. That didn't happen. In September 2003, Cypress announced its MRAM product would be delayed again. The chipmaker also disclosed it had sold all of its 686,849 shares of NVE, retaining only its stock purchase warrants.

This past August, Rodgers predicted that Cypress would sample its 256Kbit chip by year-end and generate revenues by the first quarter of 2005. But the specs show Cypress still doesn't have a commercially viable product. Contrary to the norms of semiconductor development, Cypress' MRAM memory cell has now doubled in size to a non-nano 24 microns. This chip is many times larger and more expensive to make than the higher capacity Motorola/Freescale 1.55-micron chip or 1.42-micron chip under development by Infineon and IBM. **Cypress continues to experience "soft error" issues that cause data to be lost or corrupted, forcing it to add massive amounts of redundant circuitry. But even that hasn't solved the problem. Manufacturing yields also remain terrible.** Even worse, the Cypress chip uses 5 volts, whereas most current memory chips and competitors' MRAM chips use 3.6 volts or less. **Cypress also employs a 3-transistor-per-bit design that doesn't even appear to use the alleged invention in NVE's "watershed" patents.** Cypress looks poised to produce a chip so big, expensive, and electronically unsuitable, relative to current standards, that its product will have an extremely limited commercial market, if any.

So NVE's key MRAM patents seem irrelevant, its potential royalty-paying licensee appears not to be using NVE's intellectual property, and its other licensee can't produce a commercially viable chip. NVE's MRAM efforts are worthless today, and they seem to have no demonstrable future value.

(Emphasis added.)

153. The next day, on November 23, 2004, NVE's President and CEO, Defendant Baker, was interviewed by MRAM-Info.com. The transcript of the interview was published on the internet at MRAM-Info.com and posted on NVE's website. In this interview, Defendant Baker strongly disagreed with the Motley Fool writer's characterizations and conclusions. In the interview, Defendant Baker stated, in part:

Q: Daniel, thanks for taking the time for this Q&A with us. Let's start with the latest Motley Fool report ("NVE's Nanotrap Only Snares Speculators")... Can you give us your answer to the Fool's article in your own words?

A: **We strongly disagree with the characterizations and conclusions about NVE drawn by the reporter.**

- **Our MRAM patents are viable and valuable;**
- **Our licensing agreements have strong potential;**
- **MRAM has the potential to revolutionize memory design and NVE is in a good position to capitalize on the commercialization of MRAM technology.**

Q: So *do* you have a 'watershed' patent on MRAM? Will you be able to defend this patent?

A: Our patents are a matter of public record. We're also on record in a recent SEC filing saying that we know of no practical alternative design being pursued by potential MRAM suppliers that could be sold in commercial quantities in the foreseeable future.

\* \* \*

Q: Can you give some updates on Cypress's MRAM? NVE will have rights to re-sell Cypress's MRAM (This is not a pure licensing/royalties deal). Have you started to approach customers? Which markets will you be targeting?

A: **Cypress has indicated they have made working MRAM and that they expect to sample devices by the end of the year.** The first NVE products will be 64 kb to 256 kb MRAMs targeted at mission-critical replacements for battery backed-up semiconductor memories. That's a high value-added application in markets we're strong in: industrial/process control and military. **We've started to approach potential customers.**

Q: Who do you think will be first with real production of MRAM? Cypress or Freescale? Can you comment on the differences between the two companies MRAM projects? (Such as size, techniques and target markets)

A: **Cypress and Freescale are both very capable; I wouldn't want to make predict who will be first.** Cypress is initially targeting drop-in replacements for low-power SRAMs, so their design tradeoffs would tend toward low power rather than the highest speed, and lower density.

\* \* \*

Q: Can you give us your own, prediction about MRAM timeline? End of 2004 should see sampling by both Cypress & Freescale of small (64K-256K) modules. When will we see true production? When will we see a 32MB MRAM module? When will we see a H/D replacement (>10GB) of stacked MRAM modules?

A: **Cypress has said they expect to see production in early 2005;** Freescale has said 2005. As far as the rate of density increase, Motorola has demonstrated a six-month cycle. That compares to about a two-year cycle for conventional memories, meaning density doubles roughly every two years.

**Q: When can we expect products with NVE's MRAM to reach the market?**

A: **The next milestone is working samples based on our joint designs with Cypress, which Cypress has said will be this year. We hope to introduce products at roughly the same time as Cypress.**

\* \* \*

Q: I'm personally holding shares in NVE. There has been a lot of discussion in the chat rooms about NVE lately. The watershed patents, the selling of stocks by insiders, lack of news, etc. Can you address your shareholders on these issues?

A: I'm very impressed with how well-informed and savvy our shareholders are. Most understand that intellectual property companies need to be careful what they disclose to avoid violating confidentiality or compromising their negotiating positions. I know it can be frustrating for some shareholders, and we try to be as forthcoming as we can.

**We believe passionately in NVE's future.** There have been some transactions by some of our management for diversification, tax, and estate planning purposes, but it is important to know that each of our officers retain significant exposure to the company's stock price. I have increased my stock holdings this year in addition to maintaining a significant option stake.

(Emphasis added.)

154. The statements made by Defendant Baker and the Company in paragraph 153, above, were materially false and misleading, as Defendants' knew, for the reasons

set forth in paragraphs 51, 62-90, paragraphs 52-61, above. First, the Motley Fool article's statement that Cypress appears no closer than it has been to producing a commercially viable MRAM-based product, which Baker disputed, was true and correct. Contrary to the situation suggested by Baker's statements, SMS' MRAM project was going very badly.

155. As related by Confidential Source No. 6, during 2004 and 2005, there were collective thoughts at SMS that Cypress might stop funding the MRAM project. For several weeks (possibly months) prior to Cypress' announcement in February 2005, that it was divesting SMS, she said, SMS employees had been concerned about SMS' future and looking into the possibility of finding other employment. Moreover, the problem with the yield and "blinky bits" was continuing. As related by Confidential Source No. 10, the Director of Technology Development, it had taken two years - - from 2002 to 2004, just to work up to an approximately 70% yield. According to Confidential Source No. 7, the Process Development Engineer, with fewer than 80%-90% yield of chips per wafer, the Company was "burning money." There was simply no reasonable basis for Baker's and the Company's suggestion that the Company might commercialize MRAM by early 2005.

156. On November 23, 2004, the day following the Motley Fool article, NVE's share price fell 14.78% to close at \$30.90.

157. 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 (NasdaqSC: NVEC) 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.**"

\* \* \*

#### Outlook

We expect selling, general and administrative expenses to increase as we prepare to rollout MRAM manufactured under our technology agreement with Cypress Semiconductor Corporation.

\* \* \*

While we currently have no material commitments for capital expenditures, we may purchase additional capital equipment needed to package and test MRAM from wafers manufactured under our technology agreement with Cypress.

(Emphasis added.)

158. The statements made by the Company and Defendant Baker in paragraph 157, above, were materially false and misleading as Defendants' knew, for the reasons set forth in paragraphs 51, 62-90 and paragraphs 154-55, above. There was simply no reasonable basis for the Company's and Baker's statement that the sale of MRAM devices would drive future growth of the Company.

159. 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."**

(Emphasis added.)

160. On this news, the Company's share price rose 8.47% to close at \$30.85 on very heavy trading volume.

161. The statements made by the Company and Defendants Baker and Kaszubinski in paragraph 159, above, were materially false and misleading as Defendants' knew for the reasons set forth in paragraphs 51, 62-100 and 154-55. By this time, as related by Confidential Source No. 10, Defendants were aware that SMS would not be able to produce a commercially viable MRAM product. As stated by Confidential Source No. 10, it was the lack of reliability of its MRAM technology that was the big issue. He explained that the "blinky bits" problem would occur after running through several million 'cycles.' All of a sudden, he said, the memory would become "blinky." Confidential Source No. 10 said that it took about two years from 2002 to 2004

for SMS to work up to the 70% yield. Even then, he said, die were tested for millions of cycles. He said, "we wanted to make money with it." He further explained that the feeling SMS was that the product was not reliable enough to commercialize - - SMS did not want to have it fail in the hands of the consumer. He explained that it simply "didn't make sense for Cypress to spend more money on it."

162. Moreover, as related by Confidential Source No.7 by at least Christmas 2004, SMS believed "things [at SMS] were going south." And as related by Confidential Source No. 6, by this time SMS's employees were concerned about SMS' future and were looking into the possibility of other employment. Finally, as indicated by Confidential Source No. 8, by this time SMS was reducing its workforce.

163. On that same day, January 31, 2004, the Minneapolis/St. Paul Business Journal in an article entitled, "NVE unveils new chip, stock climbs," reported on Cypress and NVE's recent announcements:

Shares of NVE Corp. shot up nearly 10 percent Monday after a technology partner of the Eden Prairie company unveiled a pioneering new type of memory chip.

NVE, of Eden Prairie, has worked for years on developing a memory chip called MRAM, called magnetic random access memory. MRAM is intended to be as fast as conventional computer RAM but as stable as a computer hard drive, meaning that it keeps data in storage even if power is turned off.

164. However, on February 14, 2005, just two weeks later, and approximately three months after Defendant Baker's interview with MRAM-Info.com, Cypress Semiconductor Corp. ("Cypress") announced that it would divest its subsidiary founded to commercialize MRAM. Cypress' press release announcing this divestiture stated, as follows:

Cypress Semiconductor Corp. (NYSE: CY) 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 base stations 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 in 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."

(Emphasis added.)

165. On this news, NVE's stock price fell 8.41% to close at \$25.98 on February 14, 2005, the first trading day following the disclosure and an additional 6.53% to close at \$24.28 on February 15, 2005.

166. Confidential Source No. 10 confirmed that, as stated in the February 14, 2005 press release, SMS sent "proof of concept" samples out to several customers (Defendant Daughton also received some of the samples). These were sent sometime between November 2004 and January 2005, he said. He further explained that SMS had received positive feedback from several of the samples. The problem, he continued, was that when customers tested the samples, they only ran tens of thousands of cycles. The "blinky bits" problem, he said, did not occur until millions of cycles were run. He said that all of the statements made by Cypress were based upon

these shorter cycles. He said, "we could have fooled them," but added that the charade would only have lasted so long before the reliability problems would have come to light.

167. According to Confidential Source No. 10, the decision to close SMS was made by its Board of Directors, including Defendants Kaszubinski and Daughton.

168. As the market reacted to the disappointing news announced by Cypress on February 14, 2005, the price of the Company's common stock continued to decline from the February 11, 2005 closing price of \$28.36 to close at \$17.04 on April 19, 2005, when the Company finally issued a press release commenting on the Cypress Semiconductor announcement.

169. On April 19, 2005, NVE issued a press release entitled "NVE Comments on its MRAM Strategy" in which the Company commented on the announcement by Cypress that Cypress had discontinued its efforts to develop 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."

170. Following this announcement, the Company's share price fell an additional 12.85% to close at \$14.85 on April 20, 2005.

171. On this same day, the Company announced the resignation of Defendant Kaszubinski from NVE's Board of Directors, effective April 18, 2005. Defendant Kaszubinski had been a member of the Board of Directors since July 2002, and was also President and Chief Executive Officer of Silicon Magnetic Systems, the newly-divested Cypress subsidiary founded to commercialize MRAM. As President and CEO of Silicon, Kaszubinski had also been the leader of Cypress' MRAM efforts.

172. Finally, on April 21, 2005, Cypress issued a press release further commenting its decision to divest SMS. The press release provided in pertinent part:

Cypress announced the divestiture of Silicon Magnetic Systems (SMS), a subsidiary founded to commercial Magnetic Random Access Memories (MRAMs). SMS' 256-kilobit MRAMs were demonstrated to work in customer systems. However, SMS believes that the classic FeCo/Al<sub>2</sub>O<sub>3</sub>/FeCo/Ru/FeCo/PtMn magnetic dot has fundamental write and reliability problems that are solvable only at the cost of an uneconomically large cell size. The cost reduction due to SMS divestiture will be fully realized in the second quarter.

173. To date, NVE has yet to develop or market a MRAM product and its much hyped relationships with Cypress and Motorola have all but disappeared. On March 6, 2006, the Minneapolis-St. Paul Tribune published an article entitled "Where GIANT means tiny: The computer chip of the future could be taking shape in Minnesota, but NVE Corp. is running into obstacles in trying to realize its goal." The article stated in part:

Just off Interstate Hwy. 494 in Eden Prairie, Daniel Baker and a small group of NVE Corp. workers are trying to design the universal computer memory chip of the future.

So far no one, including IBM, Toshiba, NEC and Sony, Has been able to do it.

Analysts say the chip NVE is working on – called MRAM (magnetoresistive random-access memory) – has the potential to replace all current types of computer memory, including fast memory chips (SRAM), high-capacity memory chips (DRAM) and non-volatile memories (hard-disk drives and flash-memory chips).

The reward for developing such a universal memory chip would be staggering. The annual market for all types of computer memory is \$50 billion, says iSuppli, a California research firm. By 2020, the annual market is expected to be \$125 billion.

“This a revolutionary technology,” said Baker, NVE’s president and chief executive.

Unfortunately, it’s a very slow revolution. NVE was founded in 1989 as Nonvolatile Electronics but after years of development work the firm and its semiconductor industry partners have not been able to produce a commercially viable MRAM chip.

(NVE relies on manufacturing partners because it can’t afford its own \$1 billion semiconductor factory to make MRAM chips.)

The reason MRAM development has taken so long is that the chips must be manufactured to very exacting dimensions in order to work, Baker said.

“They require extremely thin layers of material, about five atoms thick,” Baker said. “You need to put down this very thin layer very consistently, and until recently it was a severe technical challenge.”

NVE has done its best to compensate for the MRAM delays by launching a related business. It has achieved profitability by manufacturing less-complicated spintronic chips that act as sensors and couplers inside St. Jude Medical heart pacemakers and implantable defibrillators, Starkey hearing aid and factory automation equipment.

\* \* \*

For some analysts, the success of the low-end spintronics chips doesn’t obscure NVE’s failure thus far to commercialize the MRAM chip.

“The passing of another quarter without significant news on commercial MRAM development is what really matters,” said J. Andrew Braswell, analyst with Newbridge Securities Corp. in Fort Lauderdale, Fla. “NVE is profitable on their base business of building spintronics chips, and the percentage of growth in revenue from product sales is decent. But that base business is not going to support their stock valuation.”

The MRAM delays have reduced interest in NVE’s stock. Conventional analyst coverage of NVE appears to have ceased, leaving only small firms that follow nanotechnology to track its progress.

NVE’s stock has dropped to around \$17 a share from the \$60 range in late 2003 and early 2004. For most of 2005, the stock was at or below \$20 a share. Its closing price Friday was \$17.47.

To make matters more difficult for NVE, there is some evidence that its MRAM plans may have slipped off track because of the loss or pending loss of its MRAM partnerships with chip-manufacturing firms Cypress Semiconductor and Motorola. Last year, Cypress backed away from the arrangement with NVE when it sold its MRAM business, and the status of the Motorola deal is in doubt.

“We don’t expect Cypress to make MRAM devices,” Baker said. The deal with Motorola “likely terminated in December 2005” as a result of Motorola’s spinoff of Freescale, its semiconductor operation. Freescale has said it will produce MRAM chips in 2006, but “the question is whether it would use our technology,” Baker said.

Baker, who holds a doctorate in engineering and came to the company in 2001, declined to estimate how long it might take NVE to be part of producing a commercial MRAM chip.

“We don’t give quarterly guidance or projections,” Baker said.

However, NVE holds key spintronics patents, which means that it will collect royalties no matter who actually builds the first commercial MRAM chips, Baker said.

But analysts say that isn’t necessarily true.

“Nobody is going to know [the strength of the NVE patents] until someone starts making money off of MRAM and the patent

attorneys get involved,” Braswell said. “IBM, for example, has a fair amount of intellectual property in that area.”

Mark DeVoss, an analyst at iSuppli, agreed. “NVE got there first with the patents, but I think a lot of people are trying to figure out how to engineer around those patents,” he said. “Memory chips are low-margin products, and no one wants to give a portion of the revenue back to a guy with a patent.”

As a result, NVE’s future is clouded, and even seemingly innocuous information is closely guarded. Baker declined to say how many employees NVE has, saying that will be disclosed after the fiscal year ends later this month. Last March, the firm had 64 employees.

**VI. APPLICABILITY OF PRESUMPTION OF RELIANCE:  
Fraud- On- The- Market Doctrine**

174. At all relevant times, the market for NVE’s securities was an efficient market for the following reasons, among others:

(a) NVE’s stock met the requirements for listing, and was listed and actively traded on the NASDAQ, a highly efficient and automated market;

(b) As a regulated issuer, NVE filed periodic public reports with the SEC and the NASDAQ;

(c) NVE regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and

(d) NVE was followed by several securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

175. As a result of the foregoing, the market for NVE's securities promptly digested current information regarding NVE from all publicly available sources and reflected such information in NVE's stock price. Under these circumstances, all purchasers of NVE's securities during the Class Period suffered similar injury through their purchase of NVE's securities at artificially inflated prices and a presumption of reliance applies.

#### **VII. NO SAFE HARBOR**

176. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this complaint as the statements were not forward-looking statements or otherwise covered by the statutory safe harbor or the bespeaks caution doctrine.

#### **VIII. ADDITIONAL ALLEGATIONS OF SCIENTER**

177. In addition to the above-described involvement, each Individual Defendant had knowledge of NVE's problems and was motivated to conceal such problems. Each Defendant is liable for (i) making false statements, or (ii) failing to disclose adverse facts known to it or him about NVE.

178. Defendants' fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of NVE stock, during the Class Period was a success, as it (i) deceived the investing public regarding NVE's prospects and business; (ii) artificially inflated the price of NVE's common stock; and (iii) caused Plaintiffs and other members of the Class to purchase NVE common stock at artificially inflated prices.

179. Defendant Baker was motivated to commit the wrongdoing alleged herein in order to sell NVE stock at artificially inflated prices. During the Class Period,

Defendant Baker sold a total of **65,000** shares of NVE common stock at artificially inflated prices, for proceeds of **\$3,737,110**, as particularized in the following table:

**Daniel A. Baker**

<b>Transaction Date</b>	<b>Number of Shares</b>	<b>\$ Price</b>	<b>\$ Value</b>
01/28/2004	39,000	58.33	\$2,274,870.00
01/30/2004	26,000	56.24	\$1,462,240
180. <b>TOTAL</b>	<b>65,000</b>		<b>\$3,737,110.00</b>

180. Following these sales, Baker held on 7,885 NVE shares.

181. Defendant Daughton was motivated to commit the wrongdoing alleged herein in order to sell NVE stock at artificially inflated prices. During the Class Period, Defendant Daughton sold a total of **223,700** shares of NVE common stock at artificially inflated prices, for proceeds of **\$5,025,891.00**, as particularized in the following table:

**James Daughton**

<b>Transaction Date</b>	<b>Number of Shares</b>	<b>\$ Price</b>	<b>\$ Value</b>
07/22/2003	2,900	\$27.16	\$ 78,764.00
07/23/2003	200	26.00	5,200.00
07/24/2003	1,900	24.16	45,904.00
07/25/2003	500	21.99	10,995.00
07/28/2003	10,200	22.03	224,706.00
07/29/2003	6,000	22.08	132,480.00
07/31/2003	10,000	22.14	221,400.00
08/01/2003	14,700	23.07	339,129.00
08/04/2003	9,900	22.45	222,255.00
08/05/2003	1,300	22.41	29,133.00
08/14/2003	5,600	18.00	100,800.00
08/15/2003	2,000	18.50	37,000.00
08/18/2003	1,000	19.25	19,250.00
08/19/2003	5,000	19.30	96,500.00
08/20/2003	9,500	19.81	188,195.00
08/21/2003	13,000	20.61	267,930.00
08/22/2003	55,000	24.08	1,324,400.00
08/25/2003	65,000	21.67	1,408,550.00
05/21/2004	10,000	27.33	273,300.00

<b>TOTAL</b>	<b>223,700</b>	<b>\$5,025,891.00</b>
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182. Daughton's stock sales in July and August 2003 represented 49.9% of his NVE holdings at the time. He had not previously sold NVE stock.

### **IX. CAUSATION AND ECONOMIC LOSS**

183. During the Class Period, as detailed herein, Defendants engaged in a scheme to deceive the market and artificially inflate NVE's stock price by misrepresenting the Company's financial results. Ultimately, however, when Defendants' prior misrepresentations and fraudulent conduct were revealed, the stock price of NVE shares declined precipitously - - evidence that the prior artificial inflation in the price of NVE shares was eradicated. As a result of their purchases of NVE stock during the Class Period, Plaintiffs and other members of the Class suffered economic losses, *i.e.*, damages under the federal securities laws.

184. Defendants improperly issued a series of false and misleading statements that led investors to believe the production and economic viability of MRAM products by Cypress through its subsidiary SMS was imminent and that NVE would soon be receiving revenues from its sale of MRAM products. Thus, Defendants knowingly presented a misleading image of NVE's business and future growth. During the Class Period, Defendants repeatedly emphasized the short and long term potential of MRAM, and consistently maintained that the wide-scale development and sale of MRAM products was economically feasible. These claims caused and maintained the artificial inflation in NVE's stock price throughout the Class Period until the truth about the Company was ultimately revealed to investors.

185. Defendants' false and materially misleading statements had the intended effect of causing NVE's shares to trade at artificially inflated levels throughout the Class Period - - reaching a Class Period high of \$66.80 per share on January 16, 2004.

186. On February 14, 2005, however, it was revealed that Cypress would be divesting its subsidiary founded to commercialize MRAMs. It was further disclosed that the market for MRAM would never be more than a niche market. This two prong negative disclosure had an immediate, adverse impact on the price of NVE shares. The decline in stock price continued until April 19, 2005, when NVE issued a press release stating that its new MRAM strategy was to focus on an intellectual property business model. And at that point, the Company's share price fell another 12%.

187. These revelations also evidenced Defendants' prior falsification of NVE's business prospects due to Defendants' false statements. As investors and the market ultimately learned, the Company's business prospects, including its prospects for Cypress to commercially manufacture MRAM product had knowingly been materially overstated. As this adverse information became known to investors, the prior artificial inflation began to be eliminated from NVE's share price and Plaintiffs and other members of the Class were damaged as a result of the related share price decline.

188. As a direct result of Defendants' statement on February 14, 2005, NVE's stock price collapsed from a February 11, 2005 closing price of \$28.36 to a closing price of \$17.04 on April 19, 2005, when the Company finally issued a press release commenting on the Cypress Semiconductor announcement. This was a decline of approximately 40% on very heavy trading volume on February 14, 2005 of over 1.1 million shares, over 3 times the average daily trading volume. This dramatic share price

decline eradicated much of the artificial inflation from NVE's share price, causing real economic loss to investors who purchased this stock during the Class Period. In sum, as the truth about Defendants' fraud and deceptive course of conduct became known to investors, and as the artificial inflation in the price of NVE shares was eliminated, Plaintiffs and the other members of the Class were damaged, suffering an economic loss of at least \$11.00 per share.

189. The decline in NVE stock price at the end of the Class Period was a direct result of the nature and extent of Defendants' fraud being revealed to investors and to the market. The timing and magnitude of NVE's stock price decline negates any inference that the losses suffered by Plaintiffs and the other members of the Class were caused by changed market conditions, macroeconomic or industry factors or even Company-specific facts unrelated to Defendants' fraudulent conduct. During the same period in which the NVE's share price fell 40% as a result of Defendants' fraud being revealed, the Standard & Poor's 500 securities index was relatively unchanged. The economic loss, *i.e.* damages suffered by Plaintiffs and other members of the Class, was a direct result of Defendants' fraudulent scheme to artificially inflate the price of NVE's stock and the subsequent significant decline in the value of the Company's shares when Defendants' prior misstatements and other fraudulent conduct was revealed. Attached hereto as Exhibit A is a graph comparing the performance of NVE's stock immediately following the February 14, 2006, with that of the securities markets.

**FIRST CLAIM FOR RELIEF**

**Against All Defendants for Violation of Section 10(b) of the Exchange Act and  
Rule 10b-5 Promulgated Thereunder**

190. Plaintiffs repeat and restate each and every allegation contained above as if fully set forth herein.

191. During the Class Period, NVE and Individual Defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public, including plaintiff and other Class members, as alleged herein; (ii) artificially inflate and maintain the market price of NVE's securities; and (iii) cause Plaintiffs and other members of the Class to purchase NVE's securities at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, these Defendants took the actions set forth herein.

192. The Defendants named in this claim: (i) employed devices, schemes, and artifices to defraud; (ii) made untrue statements of material fact and/ or omitted to state material facts necessary to make the statements not misleading; and (iii) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to maintain artificially high market prices for NVE's securities in violation of Section 10(b) of the Exchange Act and SEC Rule 10b-5.

193. In addition to the duties of full disclosure imposed on Defendants as a result of the making of affirmative statements and reports to the investing public, the Defendants named in this claim had a duty to promptly disseminate truthful information that would be material to investors in compliance with the integrated disclosure provisions of the SEC as embodied in SEC Regulations S-X (17 C. F. R. Sections

210.01 et seq.) and S-K (17 C. F. R. Sections 229.10 et seq.) and other SEC regulations, including accurate and truthful information with respect to the Company's operations, financial condition and earnings so that the market price of the Company's securities would be based on truthful, complete and accurate information.

194. NVE, and Individual Defendants directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about its business, operations and future prospects as specified herein.

195. NVE and Individual Defendants employed devices, schemes and artifices to defraud while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of NVE's value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about NVE and its business operations and future prospects in light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of NVE's securities during the Class Period.

196. These Defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing NVE's operating condition and future business prospects from the investing public and supporting the artificially inflated price of its securities.

197. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price of NVE's securities was artificially inflated during the Class Period. In ignorance of the fact that market prices of NVE's publicly-traded securities were artificially inflated, and relying directly or indirectly on the false and misleading statements made by these Defendants, or upon the integrity of the market in which the securities trade, and/or on the absence of material adverse information that was known to or recklessly disregarded by Defendants but not disclosed in public statements by Defendants during the Class Period, Plaintiffs and other members of the Class acquired NVE securities during the Class Period at artificially high prices and were damaged thereby.

198. At the time of said misrepresentations and omissions, Plaintiffs and other members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiffs and the other members of the Class and the marketplace known of the true financial condition and business prospects of NVE, which were not disclosed by the Defendants named in this Claim, Plaintiffs and other members of the Class would not have purchased or otherwise acquired their NVE securities, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.

199. By virtue of the foregoing, the Defendants named in this Claim have violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

200. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's securities during the Class Period.

**SECOND CLAIM FOR RELIEF**

**Against the Individual Defendants for Violations of Section 20(a) of  
The Exchange Act,**

201. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

202. Individual Defendants acted as controlling persons of NVE within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, and their ownership and contractual rights, participation in, knowledge and/or awareness of the Company's operations and/or intimate knowledge of the false press releases and reports filed by the Company with the SEC and disseminated to the investing public, Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which Plaintiffs contend are false and misleading. Individual Defendants were provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by Plaintiffs to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

203. In particular, Defendants Baker and Daughton had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, are presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

204. As set forth above, NVE and Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue

of their positions as controlling persons, Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Individual Defendants' wrongful conduct, Plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period, in an amount to be established at trial.

**JURY TRIAL DEMANDED**

Plaintiffs hereby demand a trial by jury.

**WHEREFORE**, Plaintiffs pray for relief and judgment, as follows:

(a) Determining that this action is a proper class action and certifying Plaintiffs as class representatives under Rule 23 of the Federal Rules of Civil Procedure;

(b) Awarding compensatory damages in favor of Plaintiffs and the other Class members against Defendants for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

(c) Awarding Plaintiffs and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(d) Such other and further relief as the Court may deem just and proper.

Dated: September 18, 2006

Respectfully submitted,

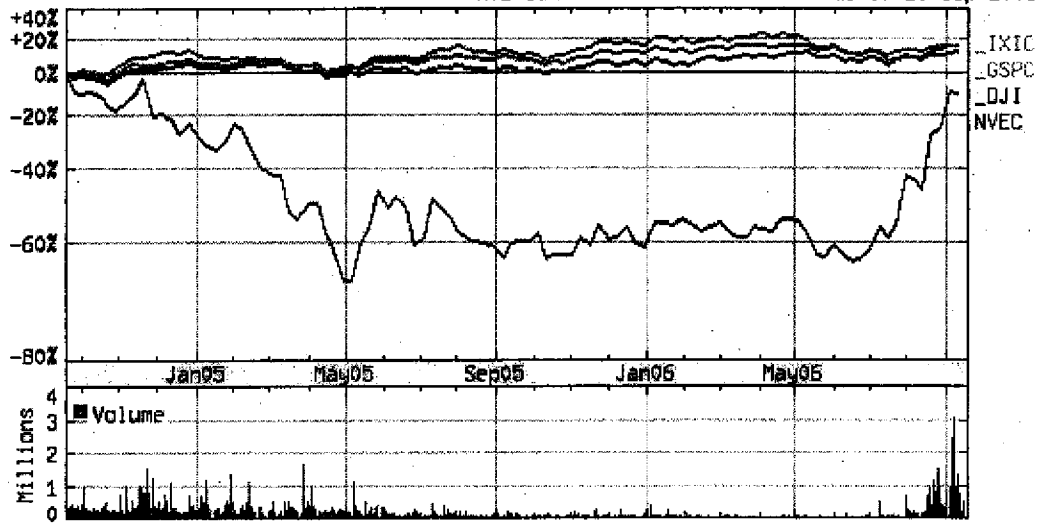
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# **EXHIBIT A**

NVE CORP

as of 15-Sep-2006



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