

NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT (“NOTICE”)

TO: All persons who purchased within the United States a Flash Memory Device manufactured, branded, and/or sold by one of the Defendants between February 1, 2000 and February 7, 2006.

THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ THE COMPLETE NOTICE CAREFULLY.

I. Purpose of this Notice.

There is now pending in the Superior Court of the City and County of San Francisco a class action lawsuit entitled *Vroegh, et al v. Eastman Kodak Company, et al.*, Case No. CGC-04-428953 (the “Litigation”). This Notice explains the nature of the Litigation, general terms of a proposed settlement, and informs you of your legal rights and obligations. Unless otherwise set forth, this Notice incorporates by reference the definitions set forth in the Class Action Settlement Agreement.

Plaintiffs Vroegh and Witthoff (“Plaintiffs”) filed a class action lawsuit against Eastman Kodak Company, Fuji Photo Film U.S.A., Inc., Lexar Media, Inc., PNY Technologies, Inc. and SanDisk Corporation (“Defendants”) on behalf of the Class described above. Plaintiffs allege that in the sale and marketing of the Flash Memory Devices, Defendants overstate the useable storage capacity by approximately 4%. For example, Plaintiffs allege that a 256MB Flash Memory Device had only 244MB of accessible memory. Plaintiffs allege that Defendants marketed the memory capacity of their products by assuming that one megabyte equals one million bytes and one gigabyte equals one billion bytes. Plaintiffs further allege that these assumptions are incorrect, that Defendants failed to inform consumers of their assumptions, and that certain Defendants’ websites expressly told consumers that they were defining megabyte to equal 1,048,576 bytes and gigabyte to equal 1,073,741,824 bytes. Plaintiffs also allege that, undisclosed to consumers, a portion of the represented storage capacity of the Flash Memory Devices was used for formatting or operating the devices. Class Counsel believes that at least eighty million Flash Memory Devices were sold during the Class Period at an average price in excess of \$40.00. Plaintiffs claim that Defendants’ actions constituted false advertising, unfair business practices, breach of contract, fraud, and violations of the California Consumers Legal Remedy Act. Plaintiffs sought restitution, damages, punitive damages, and injunctive relief.

Defendants deny all of Plaintiffs’ allegations; that they engaged in any wrongful, deceptive, or misleading practice; or that they are liable in any manner for the claims alleged in the Litigation. To the contrary, Defendants assert that their marketing and advertising complied in all respects with the law and that no Class Members, including the Plaintiffs, were deceived or have sustained any damages or injuries related to Defendants’ marketing or advertising practices. Defendants contend that, at all times, they have labeled their flash memory storage devices consistent with both industry practice as well as the standards officially sanctioned by the International Electrotechnical Commission (“IEC”) and the Institute for Electrical and Electronics Engineers (“IEEE”). Nonetheless, Defendants have concluded that further conduct of the Litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions of the proposed settlement.

Plaintiffs and Plaintiffs’ Counsel have investigated and evaluated the claims asserted in the Litigation and have determined that the proposed settlement is fair, reasonable and adequate. The proposed Settlement does not call for memory to be added to Class Member’s Flash Memory Devices as this is not technologically possible. The proposed settlement, however, will provide each eligible Class Member with a refund of a portion of the original purchase price equal to or greater than the percentage of allegedly “missing” storage capacity. Alternatively, Class Members will be able to receive a discount on the purchase of new flash storage capacity, where the discounted percentage is generally in excess of twice the percentage of the allegedly “missing” storage capacity. The settlement also requires Defendants to make disclosures in future packaging about the useable capacity of the Flash Memory Devices. Plaintiffs believe that by providing the Class Benefits and changing their practices as set forth in this Agreement, Class Members are made whole for any loss they allegedly suffered in not receiving the memory allegedly promised. Plaintiffs believe that there are many risks to going forward with the Litigation, including the risks of not being able to certify the case as a class action, or of certifying a class but failing to prove liability or damages.

Judge Richard A. Kramer of the Superior Court of the City and County of San Francisco (also referred to as the "Court") has determined that this Litigation should proceed as a class action, for purposes of settlement only, with Plaintiffs as the representatives of the Class, and has granted preliminary approval of the settlement.

II. Class Members.

The Court has conditionally ruled that the Litigation may be maintained on behalf of the following:

All persons who purchased within the United States a Flash Memory Device or Flash Memory Products manufactured, branded, and/or sold by one of the Defendants between February 1, 2000 and February 7, 2006, except Excluded Class Members. Such persons must be the original purchaser for his/her own personal use and not for business use.

"Flash Memory Device(s)" or "Flash Memory Product(s)" mean any removable digital storage media or integrated digital storage devices that incorporate flash memory technology, including without limitation flash memory cards, CompactFlash cards, SmartMedia cards, MultiMedia cards, SecureDigital (or SD) cards, xD-picture cards or USB memory, Memory Sticks®, USB drives, thumb drives, JumpDrives™, flash drives, or digital cameras that contain integrated flash memory cards or come bundled with such flash memory cards.

Excluded from the Class are Defendants, their directors, officers, and employees; Judge Kramer and his immediate family; Antonio Piazza and his immediate family; and all persons who timely and validly request exclusion from the Class in compliance with the requirements of this Notice. Non-excluded persons and entities that fall within the above definition are referred to as "Class Members."

III. Settlement Benefit For Class Members.

A. If this settlement is finally approved by the Court, Defendants will include language that is reasonably calculated to inform consumers that the useable storage capacity of their Flash Memory Devices may be less than the stated amount of storage on the packaging of their Flash Memory Devices. Such language also shall appear in the product descriptions for Flash Memory Devices on Defendants' Websites and Defendants' Online Stores. Suggested examples of that language and a more detailed description of the disclosure requirements dictated by this settlement can be found in Section 5 of the Settlement Agreement.

B. Subject to the claims process and limitations set forth in the Agreement, if this settlement is finally approved by the Court, Defendants will provide to Class Members one of the following ("Class Benefit") for each Flash Memory Device purchased:

1. A cash refund equal to five percent (5%) of the purchase price of each Flash Memory Device purchased during the Refund Class Period ("Refund"); or
2. For up to one Flash Memory Device purchased during the Discount Class Period from each Defendant, a discount of ten percent (10%) off a future online purchase from Defendants' Online Stores Flash Memory Device ("Discount").

Please note the following: (i) The Discount need not be provided on purchases of Flash Memory Devices as to which Lexar, PNY and SanDisk were contractually or legally prohibited from providing such discounts as of December 6, 2005, which are: Lexar's LockTight flash memory cards, Lexar's ActiveMemory flash memory cards, and Lexar's Professional Series flash memory cards. (ii) For any digital camera purchased from Defendants FujiFilm or Kodak during the Refund Purchase Period that included Digital Camera Bundled Flash Memory, the Refund shall apply not against the purchase price of the digital camera but only against the value of the Digital Camera Bundled Flash Memory. Exclusively for purposes of this Settlement, each Digital Camera Bundled Flash Memory is deemed to have had a purchase price of \$20.00.

IV. Claims Process and Deadline.

A. Claims Process.

1. To receive the Refund, each Class Member must accurately complete and submit the Downloadable Claim Form available on <http://www.flash-settlement.com> ("Settlement Website"). Class Members must then print and mail the completed Downloadable Claim Form to the Claims Administrator, along with an original or copy of a valid receipt or the equivalent proof of purchase from a merchant or financial institution specifying the Flash Memory Device purchased, brand, the price paid, date of purchase and the merchant from whom the Flash Memory Device was purchased.
2. To receive the Discount, Class Members must complete the Online Claim Form on the Settlement Website. The Online Claim Form will require the Class Member, under penalty of perjury, to specify the Flash Memory Device purchased, the price paid, date of purchase and the merchant from whom the Flash Memory Device was purchased. Upon completing the Online Claim Form, the Class Member will receive one Discount code for each prior purchase of a Flash Memory Device during the Discount Purchase Period, limited to one Discount code per Defendant whose Flash Memory Devices were purchased. Each Discount code can be used only once, towards a single purchase of a Flash Memory Device at Defendants' Online Stores, and cannot be combined with any other offer. The Discount and the Refund are mutually exclusive.

B. **Claims Deadline.** The Downloadable Claim Form and/or Online Claim Form must be completed no later than one hundred and fifty (150) days after Notice Date or thirty (30) days after Final Approval, whichever is later. Class Members who do not complete a Claim Form by that date will not be eligible to receive the Class Benefit.

V. Dismissal of Litigation, Entry of Judgment and Release of Claims.

If the Court approves the proposed settlement, it will enter a judgment that will dismiss the Litigation on the merits and with prejudice as to all Class Members. All Class Members who do not validly and timely request to be excluded from the proposed settlement shall be forever barred from prosecuting their own lawsuits and shall be deemed to have fully, finally and forever irrevocably released Defendants and each of their past or present officers, directors, employees, agents, designees, servants, sureties, attorneys, parents, associates, controlling or principal shareholders, general or limited partnerships, subsidiaries, divisions, affiliates, insurers, heirs, and all successors or predecessors in interest, assigns or legal representatives from any and all liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts, liens, contracts, agreements, damages, restitution, disgorgement, costs, attorneys' fees, losses, expenses, obligations or demands, of any kind whatsoever, whether in arbitration, administrative, or judicial proceedings, whether as individual claims or as claims asserted on a class basis or on behalf of the general public, whether known or unknown, suspected or unsuspected, threatened, asserted or unasserted, actual or contingent, liquidated or unliquidated, whether under federal statutory law, federal common law or federal regulation, or the statutory or common laws or regulations of any and all states or subdivisions, that any Class Member has or may claim to have against such persons which are based upon, arise out of, or in any way relate to any of the acts, omissions or other conduct that has been alleged or could have been alleged or is otherwise referred to in the Litigation, including, but not limited to all claims relating to any advertisement, promotion, packaging, labeling, or other communication of the capacity of any Flash Memory Device, or any use of the binary or decimal system in making claims or representations related to any Flash Memory Device (including, by way of illustration and not by limitation, references to capacity, useable space, or quantities of pictures or other data that can be stored on Flash Memory Devices). All Class Members shall be deemed to have waived any and all provisions, rights, and benefits conferred by section 1542 of the California Civil Code or any comparable statutory or common law provision of any other jurisdiction with respect to the Released Claims. Section 1542 reads as follows:

CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE: A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

All Class Members expressly acknowledge that they are waiving the protections of Section 1542 and of any comparable statutory or common law provision of any jurisdiction.

VI. Attorneys' Fees and Costs.

From the inception of this lawsuit, Plaintiffs' Counsel have not received payments for their services, nor have they been reimbursed for any out-of-pocket expenses. If the Court approves the settlement, Plaintiffs' Counsel will ask the Court to award, and Defendants have agreed to pay, and not contest the reasonableness of, an award of fees and costs up to \$2,400,000. Additionally, Plaintiffs' Counsel will ask the Court to award Plaintiffs Vroegh and Witthoff \$1,000 each for their time and effort related to the Litigation, and Defendants have agreed not to contest the reasonableness of the award. Finally, Defendants have agreed to administer the settlement including the class notice, claim forms, and provisions of the Class Benefit, and have agreed to bear their own costs associated therewith.

Any award of attorneys' fees, costs, and any payment to the Plaintiffs will be paid separately from, and will not reduce, the Class Benefit provided under the settlement. Class Members will not be personally liable for any attorneys' fees, costs or payment to the Plaintiffs.

VII. Rights and Options of Class Members.

A. Remain a Class Member.

1. If you do not request exclusion from the Class, you will remain a Class Member. Your interests in connection with the proposed settlement will be represented by Plaintiffs and Plaintiffs' Counsel. You will not be charged for the services or expenses of Plaintiff's Counsel. You must comply with the Claims Process and Deadline requirements described above in Section VI in order to receive the Class Benefit.

Plaintiffs' and Defendants' Counsel include the following attorneys and law firms:

GUTRIDE SAFIER LLP
Adam Gutride, Esq.
Seth A. Safier, Esq.
835 Douglass Street
San Francisco, CA 94114

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(PNY Technologies, Inc.)

WILSON SONSINI GOODRICH & ROSATI, PC
Keith E. Eggleton, Esq.
650 Page Mill Road
Palo Alto, CA 94304
(SanDisk Corporation)

Counsel for Defendants

2. If the settlement is approved by the Court and the judgment becomes final, you will be entitled to the Class Benefits described in Section III, above. If the settlement is not granted final approval or the judgment does not become final, the certification of the Class will be vacated and the Litigation will continue as if no proposed settlement has been reached.

3. As a Class Member, you will be bound by any judgment or other disposition of the Litigation, even if you do not submit a claim or take advantage of any of the Class Benefit. Furthermore, you and your heirs, executors, administrators, representatives, agents, partners, successors, and assigns will be deemed to have agreed to the terms of the settlement and the release set forth in Section V, above.

B. Opt-Out of the Settlement. You have the right to opt-out of the settlement. If you opt-out of the settlement, you will not be bound by or subject to any judgment or settlement of the Litigation. If you opt-out, however, you will also not be entitled to receive the Class Benefit. If you wish to opt-out, you must, submit a written, signed request to opt-out, by postage-paid, first class mail, stating (1) your name, address, and telephone number, (2) a reference to this Litigation (i.e., *Vroegh, et al v. Eastman Kodak Company, et al.*, Case No. CGC-04-428953), (3) a statement that you purchased one or more Flash Memory Device(s), including the brand, (4) identify the approximate date of purchase during the Class Period and (5) a statement that you wish to opt-out of the Class. Requests to opt-out must be sent to Flash Memory Opt-Out, P.O. Box #210340, San Francisco, CA 94121-0340 and post-marked no later than July 26, 2006. If you do not submit a timely opt-out request that complies with these requirements, your opt-out request will be deemed invalid and you will not be excluded from the Class.

C. **Intervene In The Litigation And/Or Object to the Settlement.** You have the right to intervene in the Litigation and/or object to, or comment on, the proposed settlement, award of attorneys' fees, cost or payment to the Plaintiffs as set forth in Section IX, below.

IX. Final Settlement Hearing and Settlement Objections.

A. On August 16, 2006 at 1:30 p.m., a public hearing will be held before Judge Richard A. Kramer of the Superior Court of California, County of San Francisco, located at 400 McAllister Street, San Francisco, CA 94102, Department 304 ("Settlement Hearing"). The Settlement Hearing will determine: (1) whether the proposed settlement of the Litigation as set forth in the Class Action Settlement Agreement is just, fair, reasonable, and adequate for the Class and should be granted final approval; (2) whether certification of the Class should be made final; (3) whether the Court should enter the proposed judgment dismissing the Litigation with prejudice; (4) whether the Court should award Plaintiffs' Counsel attorneys' fees and costs in the amount set forth in the Class Action Settlement Agreement; and (5) whether the Court should award each Plaintiff \$1,000 for their time and effort in the Litigation. You are not required to attend the Settlement Hearing.

B. **Objection Procedure and Deadline.**

1. If you are a Class Member, you have the right to intervene in or object to the settlement. To do so, you **must** submit a written statement setting forth: (1) your name, address, and telephone number, (2) reference to this Litigation (i.e., *Vroegh, et al v. Eastman Kodak Company, et al.*, Case No. CGC-04-428953), (3) identify the Flash Memory Device(s) that you purchased, including the brand, (4) identify the approximate date of purchase, and (5) your objection/intervention, notice of intent to appear, and comments and supporting arguments to:

Clerk of the Court
Superior Court of California, County of San Francisco
Room 103
400 McAllister Street
San Francisco, CA 94102

You must also deliver identical copies of your written submission to Plaintiffs' Counsel and all of Defendants' Counsel at the addresses set forth above. Your written objection or request to intervene must be received by the Court and by Plaintiffs' Counsel and Defendants' Counsel (**and not merely postmarked**) by July 26, 2006. Your submission to the Court must include a certification that you have personally delivered identical copies to Plaintiffs' Counsel and all of Defendants' Counsel, or that you have mailed such copies by postage prepaid first-class mail to Plaintiffs' Counsel and all of Defendants' Counsel on or before July 21, 2006. You cannot object or request to intervene if you have opted out of the class. Only those that remain in the Class may object to the settlement or request to intervene.

You also have a right to hire an attorney at your own expense to assist you or to represent you.

2. You may also attend the Final Settlement Hearing either in person or through an attorney retained by you at your own expense.

X. Additional Information and Important Dates.

A. **Additional Information.** The description of the Litigation set forth in this Notice is general and does not cover all of the issues and proceedings thus far. If you have additional questions you can contact Plaintiff's Counsel. To see the complete file including the individual terms of the settlement in the Litigation, you should visit the Clerk of the San Francisco Superior Court, Room 103, 400 McAllister Street, San Francisco, California 94102. The Clerk will make the file relating to the Litigation available to you for inspection and copying at your own expense.

B. Deadlines and Dates to Remember.

- **July 26, 2006 is the deadline to Opt-Out of the settlement.**
- **July 26, 2006 is the deadline for Intervention/Objection.**
- **August 16, 2006 at 1:30 p.m. is the Settlement Hearing Date.**
- **November 16, 2006, or 30 days after Final Approval, whichever is later, is the deadline to complete the Class Benefit Claim Process.**

Dated: 4-19-06

By: 
HONORABLE JUDGE RICHARD A. KRAMER