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8 [Additional Captions on Signature Page]

9 *Attorney for Plaintiff Robert Johnson*

10 **UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

11 ROBERT JOHNSON, Individually and on
12 Behalf of All Others Similarly Situated,

13 Plaintiff,

14 vs.

15 MICROSEMI CORPORATION, JAMES
16 J. PETERSON, DENNIS R. LEIBEL,
17 KIMBERLY E. ALEX, THOMAS R.
18 ANDERSON, WILLIAM E. BENDUSH,
19 RICHARD M. BEYER, PAUL F.
20 FOLINO, WILLIAM L. HEALEY, and
MATTHEW E. MASSENGILL,

21 Defendants.

Case No.: 8:18-cv-00698

**CLASS ACTION COMPLAINT
FOR VIOLATIONS OF
SECTIONS 14(A) AND 20(A) OF
THE SECURITIES EXCHANGE
ACT OF 1934**

JURY TRIAL DEMANDED

1 Plaintiff Robert Johnson (“Plaintiff”), by his undersigned attorneys, alleges
2 upon personal knowledge with respect to himself, and information and belief based
3 upon, *inter alia*, the investigation of counsel as to all other allegations herein, as
4 follows:

5 **NATURE OF THE ACTION**

6 1. This action is brought as a class action by Plaintiff on behalf of himself
7 and the other public holders of the common stock of Microsemi Corporation
8 (“Microsemi” or the “Company”) against the Company and the members of the
9 Company’s board of directors (collectively, the “Board” or “Individual Defendants,”
10 and together with Microsemi, the “Defendants”) for their violations of Sections 14(a)
11 and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C.
12 §§ 78n(a), 78t(a), SEC Rule 14a-9, 17 C.F.R. 240.14a-9, and Regulation G, 17
13 C.F.R. § 244.100 in connection with the proposed merger (“Proposed Merger”)
14 between Microsemi and Microchip Technology Incorporated (“Microchip”).

15 2. On March 1, 2018, the Board caused the Company to enter into an
16 Agreement and Plan of Merger (the “Merger Agreement”) pursuant to which
17 Company shareholders will receive \$68.78 per share in cash for each share of
18 Company common stock they own (the “Merger Consideration”), a deal with a total
19 equity value of about \$8.35 billion.

20 3. On April 19, 2018, in order to convince Microsemi shareholders to vote
21 in favor of the Proposed Merger, the Board authorized the filing of a materially
22 incomplete and misleading Definitive Proxy Statement (the “Proxy”) with the
23 Securities and Exchange Commission (“SEC”), in violation of Sections 14(a) and
24 20(a) of the Exchange Act. The materially incomplete and misleading Proxy
25 independently violates both Regulation G (17 C.F.R. § 244.100) and SEC Rule 14a-
26 9 (17 C.F.R. 240.14a-9), each of which constitutes a violation of Section 14(a) and
27

1 20(a) of the Exchange Act.

2 4. While touting the fairness of the Merger Consideration to the
3 Company's shareholders in the Proxy, Defendants have failed to disclose certain
4 material information that is necessary for shareholders to properly assess the fairness
5 of the Proposed Merger, thereby violating SEC rules and regulations and rendering
6 certain statements in the Proxy materially incomplete and misleading.

7 5. In particular, the Proxy contains materially incomplete and misleading
8 information concerning the financial projections for the Company that were prepared
9 by the Company and relied upon by the Board in recommending that Company
10 shareholders vote in favor of the Proposed Merger.

11 6. It is imperative that the material information that has been omitted from
12 the Proxy is disclosed prior to the forthcoming shareholder vote on May 22, 2018 in
13 order to allow the Company's shareholders to make an informed decision regarding
14 the Proposed Merger.

15 7. For these reasons, and as set forth in detail herein, Plaintiff asserts
16 claims against Defendants for violations of Sections 14(a) and 20(a) of the Exchange
17 Act, based on Defendants' violations of: (i) Regulation G (17 C.F.R. § 244.100); and
18 (ii) Rule 14a-9 (17 C.F.R. 240.14a-9). Plaintiff seeks to enjoin Defendants from
19 holding the shareholder vote on the Proposed Merger and taking any steps to
20 consummate the Proposed Merger unless, and until, the material information
21 discussed below is disclosed to Microsemi shareholders sufficiently in advance of
22 the vote on the Proposed Merger or, in the event the Proposed Merger is
23 consummated, to recover damages resulting from the Defendants' violations of the
24 Exchange Act.

25 **JURISDICTION AND VENUE**

26 8. This Court has subject matter jurisdiction pursuant to Section 27 of the
27

1 Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331 (federal question
2 jurisdiction) as Plaintiff alleges violations of Section 14(a) and 20(a) of the
3 Exchange Act.

4 9. Personal jurisdiction exists over each Defendant either because the
5 Defendant conducts business in or maintains operations in this District, or is an
6 individual who is either present in this District for jurisdictional purposes or has
7 sufficient minimum contacts with this District as to render the exercise of
8 jurisdiction over Defendant by this Court permissible under traditional notions of
9 fair play and substantial justice.

10 10. Venue is proper in this District under Section 27 of the Exchange Act,
11 15 U.S.C. § 78aa, as well as under 28 U.S.C. § 1391, because Microsemi is
12 headquartered in this District.

13 PARTIES

14 11. Plaintiff is, and at all relevant times has been, a holder of Microsemi
15 common stock.

16 12. Defendant Microsemi is incorporated in Delaware and maintains its
17 principal executive offices at One Enterprise, Aliso Viejo, California 92656. The
18 Company's common stock trades on the Nasdaq GS under the ticker symbol
19 "MSCC."

20 13. Individual Defendant James J. Peterson has served as Chairman of the
21 Board since November 2013 and Chief Executive Officer since 2000.

22 14. Individual Defendant Dennis R. Leibel has served as Lead Independent
23 Director of the Company since November 2013 and as an Independent Director since
24 2002.

25 15. Individual Defendant Kimberly E. Alexy has served as an Independent
26 Director of the Company since 2016.

1 16. Individual Defendant Thomas R. Anderson has served as an
2 Independent Director of the Company since 2002.

3 17. Individual Defendant William E. Bendush has served as an Independent
4 Director of the Company since 2003.

5 18. Individual Defendant Richard M. Beyer has served as an Independent
6 Director of the Company since 2017.

7 19. Individual Defendant Paul F. Folino has served as an Independent
8 Director of the Company since 2004.

9 20. Individual Defendant William L. Healey has served as an Independent
10 Director of the Company since 2003.

11 21. Individual Defendant Matthew E. Massengill has served as an
12 Independent Director of the Company since 2006.

13 22. The Individual Defendants referred to in paragraphs 13-21 are
14 collectively referred to herein as the “Individual Defendants” and/or the “Board.”

15 **CLASS ACTION ALLEGATIONS**

16 23. Plaintiff brings this class action pursuant to Fed. R. Civ. P. 23 on behalf
17 of himself and the other public shareholders of Microsemi (the “Class”). Excluded
18 from the Class are Defendants herein and any person, firm, trust, corporation, or
19 other entity related to or affiliated with any Defendant.

20 24. This action is properly maintainable as a class action because:

21 a. The Class is so numerous that joinder of all members is
22 impracticable. As of April 10, 2018, there were approximately 117,956,110
23 shares of Microsemi common stock outstanding. The actual number of public
24 shareholders of Microsemi will be ascertained through discovery;

to individual members of the Class, which would establish incompatible standards of conduct for the party opposing the Class;

f. Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole; and

g. A class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

SUBSTANTIVE ALLEGATIONS

I. The Proposed Merger

25. Microsemi offers semiconductor and system solutions for aerospace & defense, communications, data center and industrial markets. The Company's products include high-performance and radiation-hardened analog mixed-signal integrated circuits, FPGAs, SoCs and ASICs; power management products; timing and synchronization devices and precise time solutions, setting the world's standard for time; voice processing devices; RF solutions; discrete components; enterprise storage and communication solutions; security technologies and scalable anti-tamper products; Ethernet solutions; Power-over-Ethernet ICs and midspans; as well as custom design capabilities and services.

26. On March 1, 2018, Microsemi and Microchip issued a joint press release announcing the Agreement, which states in pertinent part:

CHANDLER, Ariz. and ALISO VIEJO, Calif., March 01, 2018 (GLOBE NEWSWIRE) -- Microchip Technology Incorporated (NASDAQ:MCHP), a leading provider of microcontroller, mixed-signal, analog and Flash-IP solutions, and Microsemi Corporation (NASDAQ:MSCC), a leading provider of semiconductor solutions differentiated by power, security, reliability and performance, today announced that the two companies have signed a definitive agreement pursuant to which Microchip will acquire Microsemi for \$68.78 per share in cash. The acquisition price represents a total equity value of about \$8.35 billion, and a total enterprise value of about \$10.15 billion, after

1 accounting for Microsemi's cash and investments, net of
2 debt, on its balance sheet at December 31, 2017.

3 "We are delighted to welcome Microsemi to become part of
4 the Microchip team and look forward to closing the
5 transaction and working together to realize the benefits of a
6 combined team pursuing a unified strategy. Even as we
7 execute a very successful Microchip 2.0 strategy that is
8 enabling organic revenue growth in the mid to high single
9 digits, Microchip continues to view accretive acquisitions as
10 a key strategy to deliver incremental growth and stockholder
11 value. The Microsemi acquisition is the latest chapter of this
12 strategy and will add further operational and customer scale
13 to Microchip," said Steve Sanghi, Chairman and CEO of
14 Microchip.

15 "Microchip and Microsemi have a strong tradition of
16 delivering innovative solutions to demanding customers and
17 markets, thus creating highly valued and long-lasting
18 revenue streams. Joining forces and combining our
19 complementary product portfolios and end market exposure
20 will offer our customers a richer set of solution options to
21 enable innovative and competitive products for the markets
22 they serve," said Ganesh Moorthy, President and COO of
23 Microchip.

24 "This transaction represents a compelling opportunity for
25 Microsemi stockholders, employees and customers by
26 combining the leading embedded control market position of
27 Microchip Technology with the world class power, security,
28 reliability and performance solutions from Microsemi," said
James J. Peterson, Chairman and CEO of Microsemi. "We
are delighted to become part of Microchip Technology, a
premier company in the semiconductor industry."

27 27. The Merger Consideration appears inadequate in light of the
28 Company's recent financial performance and prospects for future growth. For
instance, the Company has reported positive Sales Growth, Gross Income Growth,
double-digit Net Operating Cash Flow from Sales every year since 2014, with
double-digit EBITDA Growth every year since 2015.

28 28. In sum, it appears that Microsemi is well-positioned for financial
growth, and that the Merger Consideration fails to adequately compensate the
Company's shareholders. It is imperative that Defendants disclose the material
information they have omitted from the Proxy, discussed in detail below, so that the

1 Company's shareholders can properly assess the fairness of the Merger
2 Consideration for themselves and make an informed decision concerning whether or
3 not to vote in favor of the Proposed Merger.

4 **II. The Materially Incomplete and Misleading Proxy**

5 29. On April 19, 2018, Defendants caused the Proxy to be filed with the
6 SEC in connection with the Proposed Merger. The Proxy solicits the Company's
7 shareholders to vote in favor of the Proposed Merger. Defendants were obligated to
8 carefully review the Proxy before it was filed with the SEC and disseminated to the
9 Company's shareholders to ensure that it did not contain any material
10 misrepresentations or omissions. However, the Proxy misrepresents and/or omits
11 both required and material information that is necessary for the Company's
12 shareholders to make an informed decision concerning whether to vote in favor of
13 the Proposed Merger, in violation of Sections 14(a) and 20(a) of the Exchange Act.

14 ***The Materiality of Financial Projections***

15 30. A company's financial projections are material information a board relies
16 on to determine whether to approve a merger transaction and recommend that
17 shareholders vote to approve the transaction. Here, the financial forecasts were relied
18 on to approve the Merger Agreement and recommend the Proposed Merger to
19 shareholders. The Proxy discloses that the financial projections above were prepared
20 by the Company's management and provided to the Board "in connection with
21 Microsemi's evaluation of strategic alternatives[.]" Proxy at 41.

22 31. When soliciting proxies from shareholders, a company must furnish the
23 information found in Schedule 14A (codified as 17 C.F.R. § 240.14a-101). Item 14 of
24 Schedule 14A sets forth the information a company must disclose when soliciting
25 proxies regarding mergers and acquisitions. In regards to financial information,
26 companies are required to disclose "financial information required by Article 11 of
27

1 Regulation S-X[,]" which includes Item 10 of Regulation S-K. *See* Item 14(7)(b)(11)
2 of 17 C.F.R. § 240.14a-101.

3 32. Under Item 10 of Regulation S-K, companies are encouraged to disclose
4 "management's projections of future economic performance that have a reasonable
5 basis and are presented in an appropriate format." 17 C.F.R. § 229.10(b). Although
6 the SEC recognizes the usefulness of disclosing projected financial metrics, the SEC
7 cautions companies to "take care to assure that the choice of items projected is not
8 susceptible of misleading inferences through selective projection of only favorable
9 items." *Id.*

10 33. In order to facilitate investor understanding of the Company's financial
11 projections, the SEC provides companies with certain factors "to be considered in
12 formulating and disclosing such projections[,]" including:

13 (i) When management chooses to include its projections in a Commission
14 filing, ***the disclosures accompanying the projections should facilitate***
15 ***investor understanding of the basis for and limitations of projections.*** In
16 this regard investors should be cautioned against attributing undue
17 certainty to management's assessment, and the Commission believes that
18 investors would be aided by a statement indicating management's
19 intention regarding the furnishing of updated projections. ***The***
Commission also believes that investor understanding would be
enhanced by disclosure of the assumptions which in management's
opinion are most significant to the projections or are the key factors
upon which the financial results of the enterprise depend and
encourages disclosure of assumptions in a manner that will provide a
framework for analysis of the projection.

20 (ii) Management also should consider whether disclosure of the accuracy
21 or inaccuracy of previous projections would provide investors with
22 important insights into the limitations of projections. In this regard,
23 ***consideration should be given to presenting the projections in a format***
that will facilitate subsequent analysis of the reasons for differences
between actual and forecast results. An important benefit may arise from
24 the systematic analysis of variances between projected and actual results
on a continuing basis, since such disclosure may highlight for investors
the most significant risk and profit-sensitive areas in a business operation.

25 17 C.F.R. § 229.10(b)(3) (emphasis added).

26 34. As discussed further below, the financial projections here do not
27
28

1 provide Microsemi's shareholders with a materially complete understanding of the
 2 assumptions and key factors, which shareholders would find material since the
 3 Board's recommendation that shareholders vote in favor of the Proposed Merger
 4 was based, in part, on the following:

- 5 • current information regarding (i) Microsemi's business, prospects, financial condition, operations, technology, products, services, management, competitive position and strategic business goals and objectives, (ii) general economic, industry and financial market conditions, and (iii) opportunities and competitive factors within Microsemi's industry; . . .
- 6
- 7
- 8
- 9 • the prospects and likelihood of realizing superior benefits for Microsemi through remaining an independent company, risks associated with remaining an independent company, and possible alternative business strategies; . . .
- 10
- 11
- 12 • the two processes of considering strategic alternatives and contacting potential strategic parties regarding a potential business combination transaction with Microsemi that Microsemi had engaged in over the past two years and results of and conclusions drawn from those processes[.]
- 13
- 14

15 Proxy 38.

16 ***The Financial Projections are Materially Incomplete***

17 35. The Proxy discloses certain financial projections for the Company on
 18 pages 41-44. However, the Proxy fails to provide material information concerning
 19 the projections, which were developed by the Company's management and relied
 20 upon by the Board in recommending that the shareholders vote in favor of the
 21 Proposed Merger. Proxy 38.

22 36. Specifically, the Proxy provides values for non-GAAP measures: (1)
 23 Non-GAAP Gross Profit; (2) EBITDA; (3) Non-GAAP Operating Income; (4) Non-
 24 GAAP Diluted Earnings Per Share under the December 2017 management
 25 projections and January 2018 management projections; and (5) Unlevered Free Cash
 26 Flow derived from the January 2018 management projections, but fails to provide
 27

1 line items or reconciliation for any of these metrics. Proxy 41-44.

2 37. The Proxy defines “Non-GAAP Gross Profit” as excluding “inventory
3 write-offs from restructuring activities and manufacturing profit in acquired
4 inventory,” but never provides values for the line items nor a reconciliation to its
5 most comparable GAAP equivalent. Proxy 42, 43.

6 38. EBITDA is defined in the Proxy as “starting with Non-GAAP
7 Operating Income and adding back depreciation,” but does not provide the value of
8 depreciation or any of the line items comprising Non-GAAP Operating Income (as
9 set forth below) and does not provide a reconciliation of EBITDA to its most
10 comparable GAAP equivalent. Proxy 42, 43.

11 39. The Proxy provides values for “Non-GAAP Operating Income” and
12 calculates it as excluding “inventory write-offs from restructuring activities,
13 manufacturing profit in acquired inventory, stock-based compensation expense,
14 amortization of intangible assets, acquisition and divestiture related costs, facility
15 consolidation and equipment charges and restructuring, severance and other special
16 charges,” but does not provide the values of these line items or a reconciliation of
17 Non-GAAP Operating Income to its most comparable GAAP equivalent. Proxy 42,
18 43.

19 40. The Proxy defines “Non-GAAP Diluted Earnings Per Share” as
20 excluding “inventory write-offs from restructuring activities, manufacturing profit
21 in acquired inventory, stock-based compensation expense, amortization of
22 intangible assets, acquisition and divestiture related costs, facility consolidation and
23 equipment charges, restructuring, severance and other special charges, gain on
24 divestiture, credit facility issuance and debt extinguishment costs, gain from facility
25 sale, fair value change in foreign tax liabilities and income tax effects on non-GAAP
26 adjustments,” but omits the values of the line items or a reconciliation of the measure
27

1 to its GAAP equivalent. Proxy 42, 43.

2 41. For the January 2018 projections, the Proxy discloses for the
3 projections for “Unlevered Free Cash Flow” (“UFCF”), which is defined as “a non-
4 GAAP financial measure calculated by starting with Non-GAAP Operating Income
5 (as shown in the table above) and subtracting cash taxes paid, capital expenditures
6 and investment in working capital and then adding back depreciation expense” but
7 fails to provide the values of the line items or a reconciliation to its most comparable
8 GAAP equivalent. Proxy 44.

9 ***The Financial Projections Violate Regulation G.***

10 42. The SEC has acknowledged that potential “misleading inferences” are
11 exacerbated when the disclosed information contains non-GAAP financial measures¹
12 and adopted Regulation G² “to ensure that investors and others are not misled by the
13 use of non-GAAP financial measures.”³ More specifically, the company must disclose
14 the most directly comparable GAAP financial measure **and** a reconciliation (by
15 schedule or other clearly understandable method) of the differences between the non-
16 GAAP financial measure disclosed or released with the most comparable financial
17 measure or measures calculated and presented in accordance with GAAP. 17 C.F.R. §
18 244.100. This is because the SEC believes “this reconciliation will help investors . . .
19 to better evaluate the non-GAAP financial measures . . . [and] more accurately evaluate
20 companies’ securities and, in turn, result in a more accurate pricing of securities.”⁴

21 43. Moreover, the SEC has publicly stated that the use of non-GAAP
22

23 ¹ Non-GAAP financial measures are numerical measures of future financial performance
24 that exclude amounts or are adjusted to effectively exclude amounts that are included in the most
directly comparable GAAP measure. 17 C.F.R. §244.101(a)(1).

25 ² Item 10 of Regulations S-K and S-B were amended to reflect the requirements of
Regulation G.

26 ³ United States Securities and Exchange Commission, *Final Rule: Conditions for Use of*
Non-GAAP Financial Measures (2002), available at [https://www.sec.gov/rules/final/33-](https://www.sec.gov/rules/final/33-8176.htm)
8176.htm.

27 ⁴ *Id.*

1 financial measures can be misleading.⁵ Former SEC Chairwoman Mary Jo White
 2 has stated that the frequent use by publicly traded companies of unique company-
 3 specific non-GAAP financial measures (as Microsemi included in the Proxy here),
 4 implicates the centerpiece of the SEC's disclosures regime:

5 In too many cases, the non-GAAP information, which is meant to
 6 supplement the GAAP information, has become the key message to
 7 investors, crowding out and effectively supplanting the GAAP
 8 presentation. Jim Schnurr, our Chief Accountant, Mark Kronforst, our
 9 Chief Accountant in the Division of Corporation Finance and I, along with
 10 other members of the staff, have spoken out frequently about our concerns
 11 to raise the awareness of boards, management and investors. And last
 12 month, the staff issued guidance addressing a number of troublesome
 13 practices *which can make non-GAAP disclosures misleading*: the lack of
 14 equal or greater prominence for GAAP measures; exclusion of normal,
 15 recurring cash operating expenses; individually tailored non-GAAP
 16 revenues; lack of consistency; cherry-picking; and the use of cash per
 17 share data. I strongly urge companies to carefully consider this guidance
 18 and revisit their approach to non-GAAP disclosures. I also urge again, as
 19 I did last December, that appropriate controls be considered and that audit
 20 committees carefully oversee their company's use of non-GAAP
 21 measures and disclosures.⁶

22 44. Compliance with Regulation G is mandatory under Section 14(a), and
 23 non-compliance constitutes a violation of Section 14(a). Thus, in order to bring the
 24 Proxy into compliance with Regulation G, Defendants must provide a reconciliation of
 25

26 ⁵ See, e.g., Nicolas Grabar and Sandra Flow, *Non-GAAP Financial Measures: The SEC's*
 27 *Evolving Views*, Harvard Law School Forum on Corporate Governance and Financial Regulation
 (June 24, 2016), <https://corpgov.law.harvard.edu/2016/06/24/non-gaap-financial-measures-the-secs-evolving-views/>; Gretchen Morgenson, *Fantasy Math Is Helping Companies Spin Losses Into Profits*, N.Y. Times, Apr. 22, 2016, http://www.nytimes.com/2016/04/24/business/fantasy-math-is-helping-companies-spin-losses-into-profits.html?_r=0.

⁶ Mary Jo White, *Keynote Address, International Corporate Governance Network Annual Conference: Focusing the Lens of Disclosure to Set the Path Forward on Board Diversity, Non-GAAP, and Sustainability* (June 27, 2016), <https://www.sec.gov/news/speech/chair-white-icgn-speech.html> (emphasis added) (footnotes omitted).

1 the non-GAAP financial measures to their respective most comparable GAAP financial
2 measures.

3 ***The Financial Projections are Materially Misleading and Violate SEC Rule***
4 ***14a-9.***

5 45. In addition to the Proxy's violation of Regulation G, the lack of
6 reconciliation, or at the very least the line items utilized in calculating the non-GAAP
7 measures renders the financial projections disclosed materially misleading as
8 shareholders are unable to understand the differences between the non-GAAP
9 measures and their respective most comparable GAAP financial measures.

10 46. Such projections are necessary to make the non-GAAP projections
11 included in the Proxy not misleading. Indeed, Defendants acknowledge the misleading
12 nature of non-GAAP projections, as Microsemi shareholders are cautioned: "Non-
13 GAAP financial measures are not prepared in accordance with GAAP and should be
14 considered as a supplement to, not a substitute for, or superior to, the corresponding
15 measures calculated in accordance with GAAP." Proxy 42.

16 47. As such, in order to cure the materially misleading nature of the
17 projections under SEC Rule 14a-9 as a result of the omitted information on pages 41-
18 44, Defendants must provide a reconciliation table of the non-GAAP financial
19 measures to the most comparable GAAP measures.

20 48. In sum, the Proxy independently violates both: (i) Regulation G, which
21 requires a presentation and reconciliation of any non-GAAP financial measure to its
22 most directly comparable GAAP equivalent; and (ii) Rule 14a-9, since the material
23 omitted information renders certain statements, discussed above, materially
24 incomplete and misleading. As the Proxy independently contravenes the SEC rules
25 and regulations, Defendants violated Section 14(a) and Section 20(a) of the
26 Exchange Act by filing the Proxy to garner votes in support of the Proposed Merger
27

1 from Microsemi shareholders.

2 49. Absent disclosure of the foregoing material information prior to the
3 special shareholder meeting to vote on the Proposed Merger, Plaintiff and the other
4 members of the Class will be unable to make a fully-informed decision regarding
5 whether to vote in favor of the Proposed Merger, and they are thus threatened with
6 irreparable harm, warranting the injunctive relief sought herein.

7 **COUNT I**

8 **(Against All Defendants for Violations of Section 14(a) of the Exchange Act**
9 **and 17 C.F.R. § 244.100 Promulgated Thereunder)**

10 50. Plaintiff incorporates each and every allegation set forth above as if
11 fully set forth herein.

12 51. Section 14(a)(1) of the Exchange Act makes it “unlawful for any
13 person, by the use of the mails or by any means or instrumentality of interstate
14 commerce or of any facility of a national securities exchange or otherwise, in
15 contravention of such rules and regulations as the Commission may prescribe as
16 necessary or appropriate in the public interest or for the protection of investors, to
17 solicit or to permit the use of his name to solicit any proxy or consent or authorization
18 in respect of any security (other than an exempted security) registered pursuant to
19 section 12 of this title [15 USCS § 78l].” 15 U.S.C. § 78n(a)(1).

20 52. As set forth above, the Proxy omits information required by SEC
21 Regulation G, 17 C.F.R. § 244.100, which independently violates Section 14(a).
22 SEC Regulation G, among other things, requires an issuer that chooses to disclose a
23 non-GAAP measure to provide a presentation of the “most directly comparable”
24 GAAP measure, and a reconciliation “by schedule or other clearly understandable
25 method” of the non-GAAP measure to the “most directly comparable” GAAP
26 measure. 17 C.F.R. § 244.100(a).

53. The failure to reconcile the numerous non-GAAP financial measures included in the Proxy violates Regulation G and constitutes a violation of Section 14(a).

COUNT II

(Against All Defendants for Violations of Section 14(a) of the Exchange Act and Rule 14a-9 Promulgated Thereunder)

54. Plaintiff incorporates each and every allegation set forth above as if fully set forth herein.

55. SEC Rule 14a-9 prohibits the solicitation of shareholder votes in Proxy communications that contain “any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading[.]” 17 C.F.R. § 240.14a-9.

56. Regulation G similarly prohibits the solicitation of shareholder votes by “mak[ing] public a non-GAAP financial measure that, taken together with the information accompanying that measure . . . contains an untrue statement of a material fact or *omits to state a material fact necessary in order to make the presentation of the non-GAAP financial measure . . . not misleading.*” 17 C.F.R. § 244.100(b) (emphasis added).

57. Defendants have issued the Proxy with the intention of soliciting shareholder support for the Proposed Merger. Each of the Defendants reviewed and authorized the dissemination of the Proxy, which fails to provide critical information regarding, amongst other things, the financial projections for the Company.

58. In so doing, Defendants made untrue statements of fact and/or omitted material facts necessary to make the statements made not misleading. Each of the Individual Defendants, by virtue of their roles as directors and/or officers, were

1 aware of the omitted information but failed to disclose such information in violation
2 of Section 14(a). The Individual Defendants were therefore negligent, as they had
3 reasonable grounds to believe material facts existed that were misstated or omitted
4 from the Proxy, but nonetheless failed to obtain and disclose such information to
5 shareholders although they could have done so without extraordinary effort.

6 59. The Individual Defendants knew or were negligent in not knowing that
7 the Proxy is materially misleading and omits material facts that are necessary to
8 render it not misleading. The Individual Defendants undoubtedly reviewed and
9 relied upon the omitted information identified above in connection with their
10 decision to approve and recommend the Proposed Merger.

11 60. The Individual Defendants knew or were negligent in not knowing that
12 the material information identified above has been omitted from the Proxy, rendering
13 the sections of the Proxy identified above to be materially incomplete and
14 misleading.

15 61. The Individual Defendants were, at the very least, negligent in
16 preparing and reviewing the Proxy. The preparation of a Proxy statement by
17 corporate insiders containing materially false or misleading statements or omitting a
18 material fact constitutes negligence. The Individual Defendants were negligent in
19 choosing to omit material information from the Proxy or failing to notice the material
20 omissions in the Proxy upon reviewing it, which they were required to do carefully
21 as the Company's directors. Indeed, the Individual Defendants were intricately
22 involved in the process leading up to the signing of the Agreement and the
23 preparation of the Company's financial projections.

24 62. Microsemi is also deemed negligent as a result of the Individual
25 Defendants' negligence in preparing and reviewing the Proxy.

26 63. The misrepresentations and omissions in the Proxy are material to
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1 Plaintiff and the Class, who will be deprived of their right to cast an informed vote
2 if such misrepresentations and omissions are not corrected prior to the vote on the
3 Proposed Merger.

4 64. Plaintiff and the Class have no adequate remedy at law. Only through
5 the exercise of this Court's equitable powers can Plaintiff and the Class be fully
6 protected from the immediate and irreparable injury that Defendants' actions
7 threaten to inflict.

8 **COUNT III**

9 **(Against the Individual Defendants for Violations**
10 **of Section 20(a) of the Exchange Act)**

11 65. Plaintiff incorporates each and every allegation set forth above as if
12 fully set forth herein.

13 66. The Individual Defendants acted as controlling persons of Microsemi
14 within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue
15 of their positions as officers and/or directors of Microsemi, and participation in
16 and/or awareness of the Company's operations and/or intimate knowledge of the
17 incomplete and misleading statements contained in the Proxy filed with the SEC,
18 they had the power to influence and control and did influence and control, directly
19 or indirectly, the decision making of the Company, including the content and
20 dissemination of the various statements that Plaintiff contends are materially
21 incomplete and misleading.

22 67. Each of the Individual Defendants was provided with or had unlimited
23 access to copies of the Proxy and other statements alleged by Plaintiff to be
24 misleading prior to and/or shortly after these statements were issued and had the
25 ability to prevent the issuance of the statements or cause the statements to be
26 corrected.

1 68. In particular, each of the Individual Defendants had direct and
2 supervisory involvement in the day-to-day operations of the Company, and,
3 therefore, is presumed to have had the power to control or influence the particular
4 transactions giving rise to the Exchange Act violations alleged herein, and exercised
5 the same. The Proxy at issue contains the unanimous recommendation of each of
6 the Individual Defendants to approve the Proposed Merger. They were thus directly
7 involved in preparing the Proxy.

8 69. In addition, as described herein and set forth at length in the Proxy, the
9 Individual Defendants were involved in negotiating, reviewing, and approving the
10 Agreement. The Proxy purports to describe the various issues and information that
11 the Individual Defendants reviewed and considered. The Individual Defendants
12 participated in drafting and/or gave their input on the content of those descriptions.

13 70. By virtue of the foregoing, the Individual Defendants have violated
14 Section 20(a) of the Exchange Act.

15 71. As set forth above, the Individual Defendants had the ability to exercise
16 control over and did control a person or persons who have each violated Section
17 14(a) and Rule 14a-9 by their acts and omissions as alleged herein. By virtue of
18 their positions as controlling persons, these Defendants are liable pursuant to Section
19 20(a) of the Exchange Act. As a direct and proximate result of Individual
20 Defendants' conduct, Plaintiff and the Class will be irreparably harmed.

21 72. Plaintiff and the Class have no adequate remedy at law. Only through
22 the exercise of this Court's equitable powers can Plaintiff and the Class be fully
23 protected from the immediate and irreparable injury that Defendants' actions
24 threaten to inflict.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment and relief as follows:

A. Declaring that this action is properly maintainable as a Class Action and certifying Plaintiff as Class Representative and his counsel as Class Counsel;

B. Enjoining Defendants and all persons acting in concert with them from proceeding with the shareholder vote on the Proposed Merger or consummating the Proposed Merger, unless and until the Company discloses the material information discussed above which has been omitted from the Proxy;

C. Directing Defendants to account to Plaintiff and the Class for all damages sustained as a result of their wrongdoing;

D. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' and expert fees and expenses; and

E. Granting such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: April 24, 2018

Respectfully submitted,

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