

1 William V. Reiss (*pro hac vice*)
2 **ROBINS KAPLAN LLP**
3 1325 Avenue of Americas, Suite 2601
4 New York, NY 10019
5 Telephone: (212) 980-7400
6 Facsimile: (212) 980-7499
7 wreiss@robinskaplan.com

8 Christopher T. Micheletti (SBN 136446)
9 **ZELLE LLP**
10 555 12th Street, Suite 1230
11 Oakland, CA 94607
12 Telephone: (415) 693-0700
13 Facsimile: (415) 693-0770
14 cmicheletti@zellelaw.com

15 *Interim Co-Lead Class Counsel for End-User*
16 *Plaintiffs*

17 (Additional Counsel on Signature Page)

18 **UNITED STATES DISTRICT COURT**

19 **NORTHERN DISTRICT OF CALIFORNIA**

20 IN RE: HARD DISK DRIVE SUSPENSION
21 ASSEMBLIES ANTITRUST LITIGATION

22 Case No. 19-md-02918-MMC

23 MDL No. 2918

24 This Document Relates to:
25 ALL END-USER ACTIONS

26 **END-USER PLAINTIFFS' FOURTH**
27 **AMENDED CONSOLIDATED CLASS**
28 **ACTION COMPLAINT**

JURY TRIAL DEMANDED

Hon. Maxine M. Chesney

TABLE OF CONTENTS

1		
2		
3	I.	NATURE OF THE ACTION 1
4	II.	JURISDICTION AND VENUE 5
5	III.	THE PARTIES..... 7
6		A. Plaintiffs 7
7		B. TDK Defendants 17
8		C. NHK Defendants 18
9	IV.	AGENTS AND CO-CONSPIRATORS 20
10	V.	INTERSTATE TRADE AND COMMERCE..... 21
11	VI.	FACTUAL ALLEGATIONS..... 23
12		A. The HDD Suspension Assembly Industry 23
13		B. The End-Products at Issue: Standalone Storage Devices and Computers 28
14		C. The Nature of the Conspiracy 30
15		D. TDK and NHK Spring Further Conspire to Wound and then Eliminate Their Co-Conspirator, HTI..... 41
16		E. NHK Spring Pled Guilty to Conspiring to Fix Prices and Allocate Market Shares for HDD Suspension Assemblies 42
17		F. Additional Government Investigations 44
18		G. The Structure and Characteristics of the HDD Suspension Assembly Market Support the Alleged Conspiracy..... 48
19		1. The HDD Suspension Assemblies Market Has High Barriers to Entry..... 48
20		2. The HDD Suspension Assemblies Market is Highly Concentrated 49
21		3. Market Concentration on the “Buy” Side 51
22		4. Homogeneity of Products and Inelasticity of Demand 53
23		5. Market Maturity and Declining Demand 54
24		6. Defendants Maintained Close Business Relationships 56
25		H. Distribution Chain/Sale to Plaintiffs and the End-Users They Represent..... 57
26		I. The Markets for Suspension Assemblies, HDDs, and Products Incorporating HDDs..... 58
27	VII.	THE INFLATED PRICES OF SUSPENSION ASSEMBLIES WERE PASSED THROUGH TO PLAINTIFFS AND THE END-USERS THEY REPRESENT..... 59
28		A. Suspension Assemblies Are Commodity-Like Products That Are Physically Traceable Throughout the Distribution Chain..... 59

1 B. Increased Costs Will Be Passed-through to Customers in
Competitive Markets..... 60

2 1. The Markets for Manufacturing and Sales of Standalone
3 Storage Devices and Computers with HDDs are Highly
4 Competitive at Each Level of the Distribution Chain..... 61

5 2. Economic and Legal Literature Indicates that Unlawful
6 Overcharges on a Component Will Be Passed-through in
7 Prices for Products Containing that Component..... 67

8 3. The Precise HDD Suspension Assembly Overcharge Passed
9 Through to the Products End-Users Purchased Can Be
10 Measured with Regression Analysis 68

11 VIII. CLASS ACTION ALLEGATIONS 71

12 IX. PLAINTIFFS’ CLAIMS ARE TIMELY 73

13 A. Defendants Have Engaged in a Continuing Violation. 73

14 B. The Discovery Rule Tolled the Statute of Limitations. 73

15 C. Fraudulent Concealment Tolled the Statute of Limitations. 74

16 D. The DOJ’s Criminal Proceedings Suspended the Statute of
17 Limitations. 76

18 X. VIOLATIONS ALLEGED 76

19 FIRST CLAIM FOR RELIEF Violation of State Antitrust Statutes (on
20 behalf of Plaintiffs and the Classes)..... 76

21 SECOND CLAIM FOR RELIEF 94

22 THIRD CLAIM FOR RELIEF Unjust Enrichment (on behalf of
23 Plaintiffs and members of the Classes) 113

24 XI. PRAYER FOR RELIEF 113

25 XII. DEMAND FOR JURY TRIAL..... 115

26

27

28

1 Plaintiffs, on behalf of themselves and all others similarly situated (the “Classes” as defined
2 below), upon personal knowledge as to the facts pertaining to themselves and upon information
3 and belief based on the investigation of counsel as to all other matters, bring suit against TDK
4 Corporation (“TDK”), Magnecomp Precision Technology Public Co. Ltd. (“MPT”), Magnecomp
5 Corporation (“Magnecomp”), SAE Magnetics (H.K.) Ltd. (“SAE”), Hutchinson Technology Inc.
6 (“HTI”), NHK Spring Co., Ltd. (“NHK Spring”), NHK International Corporation (“NHK
7 International”), NHK Spring (Thailand) Co., Ltd. (“NHK Thailand”), NAT Peripheral (Dong
8 Guan) Co., Ltd. (“NAT Dong Guan”), and NAT Peripheral (H.K.) Co., Ltd. (“NAT H.K.”) for
9 damages and other relief pursuant to state antitrust, unfair competition, and consumer protection
10 laws, and the laws of unjust enrichment, demand a trial by jury, and allege as follows:

11 I. NATURE OF THE ACTION

12 1. This lawsuit arises out of a global conspiracy among Defendants and their co-
13 conspirators to fix prices of, and allocate market shares for, hard disk drive (“HDD”) suspension
14 assemblies. HDD suspension assemblies are indispensable components of HDDs, which use
15 magnetism to store information electronically. HDDs containing HDD suspension assemblies are
16 sold both as stand-alone storage devices and incorporated into a variety of electronics.

17 2. The fact of the price-fixing conspiracy is not in doubt. On July 29, 2019, the U.S.
18 Department of Justice (“DOJ”) announced that NHK Spring agreed to plead guilty and pay a \$28.5
19 million fine for its role in the conspiracy.¹ On September 23, 2019, NHK Spring pled guilty.²

20 3. According to the plea agreement, Defendants “engaged in discussions and attended
21 meetings with each other. During these discussions, [Defendants] reached agreements to refrain
22 from competing on prices for, fix the prices of, and allocate their respective market shares for, HDD

23 ¹ *Japanese Manufacturer Agrees to Plead Guilty to Fixing Prices for Suspension Assemblies*
24 *Used in Hard Disk Drives*, DOJ (Jul. 29, 2019), available at
25 [https://www.justice.gov/opa/pr/japanese-manufacturer-agrees-plead-guilty-fixing-prices-](https://www.justice.gov/opa/pr/japanese-manufacturer-agrees-plead-guilty-fixing-prices-suspension-assemblies-used-hard-disk)
26 [suspension-assemblies-used-hard-disk](https://www.justice.gov/opa/pr/japanese-manufacturer-agrees-plead-guilty-fixing-prices-suspension-assemblies-used-hard-disk); Information at 2-3, *United States v. NHK Spring Co., Ltd.*,
27 No. 2:19-cr-20503 (E.D. Mich. Sept. 23, 2019).

28 ² Rule 11 Plea Agreement, *United States v. NHK Spring Co., Ltd.*, No. 2:19-cr-20503 (E.D. Mich. Sept. 23, 2019); Notice of Criminal Monetary Imposition, *United States v. NHK Spring Co., Ltd.*, No. 2:19-cr-20503 (E.D. Mich. Dec. 18, 2019).

1 suspension assemblies to be sold in the United States and elsewhere. To effectuate these
2 agreements, employees and officers of [Defendants] exchanged HDD suspension assemblies
3 pricing information, including anticipated pricing quotes, in the United States and elsewhere. The
4 [Defendants] relied on their agreements not to compete and used the exchanged pricing information
5 to inform their negotiations with U.S. and foreign customers that purchased HDD suspension
6 assemblies and produced hard disk drives for sale, or delivery to, the United States and elsewhere.”³

7 4. On February 13, 2020, the DOJ indicted Hitoshi Hashimoto and Hiroyuki Tamura
8 for their roles in the “conspiracy to suppress and eliminate competition by agreeing to stabilize,
9 maintain, and fix prices for HDD suspension assemblies sold in the United States and elsewhere.”
10 Both were general managers of NHK Spring’s disk drive suspension and component sales
11 department, who were involved in the sale and pricing of NHK Spring’s HDD suspension
12 assemblies.

13 5. Defendants’ conspiracy has also drawn the attention of antitrust regulators abroad.
14 On February 9, 2018, the Japanese Fair Trade Commission (“JFTC”) issued a cease and desist order
15 to Defendants NHK Spring and NAT H.K., found that they substantially restrained competition in
16 the HDD suspension assemblies market by agreeing to maintain sales prices, and imposed fines of
17 ¥1076.16 million yen. The JFTC’s cease and desist order identified cartel activity by Defendants
18 NHK Spring, NAT HK, TDK, MPT, and SAE.

19 6. In April 2018, Brazilian antitrust authorities launched an investigation into
20 allegations that TDK, HTI, MPT, SAE, and NHK Spring colluded from 2003 to May 2016 to fix
21 prices of HDD suspension assemblies. The Taiwan Fair Trade Commission and the Competition
22 and Consumer Commission of Singapore also have investigated the cartel.

23 7. This conspiracy went to the highest levels of these companies including the
24 President and CEO of TDK, the President and CEO of MPT, the Vice Chairman of SAE, the
25 President and CEO of NHK Spring, the President of NAT, as well as other senior directors, board
26 members, vice presidents and other top management personnel.

27 ³ Rule 11 Plea Agreement, *United States v. NHK Spring Co., Ltd.*, No. 2:19-cr-20503 (E.D. Mich.
28 Sept. 23, 2019).

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.