

**A119830**

**IN THE COURT OF APPEAL  
OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT, DIVISION FIVE**

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**SADRUDIN LAIWALA,**  
*Plaintiff and Appellant,*

*vs.*

**HYNIX SEMICONDUCTOR AMERICA, INC., et al.,**  
*Defendants and Respondents.*

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APPEAL FROM THE SUPERIOR COURT FOR ALAMEDA COUNTY  
STEPHEN DOMBRINK, JUDGE • HG07-319146

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**MOTION TO DISMISS AMENDED APPEAL;  
MEMORANDUM OF POINTS AND AUTHORITIES;  
DECLARATION OF DEAN A. BOCHNER; [PROPOSED] ORDER**

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**HYNIX SEMICONDUCTOR AMERICA, INC., DAVID KOCSIS,  
MADHUKAR "DUKE" TALLAM, AND ANIL SAWE**

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**SADRUDIN LAIWALA,**  
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*Defendants and Respondents.*

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**MOTION TO DISMISS AMENDED APPEAL**

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Defendants and respondents Hynix Semiconductor America, Inc., David Kocsis, Madhukar “Duke” Tallam, and Anil Sawe previously moved to dismiss the appeal filed by plaintiff and appellant Sadrudin Laiwala on November 19, 2007. That appeal has been assigned appellate case number A119830. Two days after defendants filed their motion to dismiss, on February 22, 2008, Laiwala filed an “amended notice of appeal.” This second appeal relates to the same trial court orders and judgment that are addressed by the earlier appeal. To date, the second appeal has not been assigned an appellate case number.

Defendants now move to dismiss the second appeal, i.e., the appeal initiated by the amended notice filed on February 22, 2008. This motion is based on the attached memorandum of points and authorities, the attached declaration of Dean A. Bochner and the exhibit attached thereto, and all of the documents filed in support of the motion to dismiss appeal filed by defendants on February 20, 2008.

Dated: March 4, 2008

**HORVITZ & LEVY LLP**  
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DEAN A. BOCHNER  
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Defendants and Respondents  
**HYNIX SEMICONDUCTOR**  
**AMERICA, INC., DAVID KOCSIS,**  
**MADHUKAR "DUKE" TALLAM,**  
**AND ANIL SAWE**

## MEMORANDUM OF POINTS AND AUTHORITIES

### INTRODUCTION

On February 20, 2008, defendants and respondents Hynix Semiconductor America, Inc., David Kocsis, Madhukar “Duke” Tallam, and Anil Sawe moved to dismiss the appeal filed by plaintiff and appellant Sadrudin Laiwala on November 19, 2007. Two days later, on February 22, 2008, Laiwala filed an “amended notice of appeal” in the Alameda County Superior Court. (See Declaration of Dean A. Bochner ¶ 2; exh. A.) The amended notice of appeal relates to the same trial court orders and judgment that Laiwala is appealing in the first appeal he filed on November 19, 2007. (See *ibid.* [amended notice of appeal]; Declaration of Thomas J. LoSavio<sup>1</sup> ¶ 17; exh. P [original notice of appeal].)

Defendants now move to dismiss the appeal filed on February 22, 2008 (hereafter, the “amended appeal”). That appeal should be dismissed for many of the same reasons as the initial appeal as well as the additional reasons discussed below. Because much of the analysis set forth in our earlier motion to dismiss also applies to the amended notice of appeal, in the interest of brevity, we incorporate by reference portions of our earlier motion, where appropriate.

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<sup>1/</sup> The Declaration of Thomas J. LoSavio is attached to the motion to dismiss appeal, filed February 20, 2008.

## FACTS AND PROCEDURAL HISTORY

Our earlier motion to dismiss provides a complete statement of the factual and procedural history relevant to this motion. (See Motion to Dismiss Appeal, filed February 20, 2008 (hereafter, the “First Motion to Dismiss”), pp. 4-6.)

On February 22, 2008, two days after we filed our motion to dismiss, Laiwala filed an “amended notice of appeal” in the Alameda County Superior Court. (See Bochner Decl. ¶ 2; exh. A.) In that document, Laiwala indicated he is appealing from the “Judgement dated 8/29/2007 - susteaining [*sic*] demurrer and granting SLAPP; denied motion 11/8/2007” and “Rehearing.” (*Ibid.*) With one exception, these are the same trial court orders and judgment that Laiwala appealed on November 19, 2007.<sup>2</sup> (LoSavio Decl. ¶ 17; exh. P.)

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<sup>2/</sup> Laiwala’s first notice of appeal did not explicitly identify the order denying the motion for reconsideration. (See LoSavio Decl. ¶ 17; exh. P.) However, as discussed in our earlier motion, that order is not appealable. (See First Motion to Dismiss, pp. 11-14.)

## LEGAL ARGUMENT

### I.

#### THE AMENDED APPEAL FROM THE ANTI-SLAPP ORDER IS UNTIMELY.

The amended appeal from the order granting the anti-SLAPP motion should be dismissed because that appeal is not timely. As we discussed earlier, an order granting an anti-SLAPP motion is separately appealable. (See First Motion to Dismiss, p. 7.) To be timely, Laiwala’s amended appeal from that order had to be filed within 60 days after the superior court clerk mailed the parties a file-stamped copy of the order. (Cal. Rules of Court, rule 8.104(a)(1).) In this case, the clerk mailed the parties a file-stamped copy of the order on August 21, 2007. (See LoSavio Decl. ¶ 6; exh. E, p. 9.) Therefore, the amended notice of appeal had to be filed on or before October 22, 2007.<sup>3</sup> But Laiwala did not file his amended appeal until February 22, 2008—123 days later. (See Bochner Decl. ¶ 2; exh. A.) Rule 8.108(e), which extends the deadline to appeal in limited circumstances, does not apply in this case. (See First Motion to Dismiss, pp. 8-9.)

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<sup>3/</sup> Because the sixtieth day was Saturday, October 20, 2007, the filing deadline was extended to Monday, October 22. (See Code Civ. Proc., §§ 12a, subd. (a), 135; Govt. Code, § 6700, subd. (a).) Our earlier motion to dismiss erroneously identified October 20 as the deadline. (See First Motion to Dismiss, p. 8.) However, this error does not affect the outcome; both appeals were filed long after October 22, 2007.



Because the amended appeal from the order granting the anti-SLAPP motion is untimely, the Court should dismiss that appeal.

## II.

### THE AMENDED APPEAL FROM THE JUDGMENT IS UNTIMELY AND MOOT.

The amended appeal from the judgment should be dismissed because that appeal is not timely. Defendants served notice of entry of judgment on September 11, 2007. (See LoSavio Decl. ¶ 9; exh. H.) Assuming Laiwala's time to appeal from the judgment was extended by the filing of the motion to vacate the judgment, Laiwala was required to appeal within 30 days after the superior court mailed its order denying the motion to vacate. (See Cal. Rules of Court, rule 8.108(c)(1).)

On November 9, 2008, the superior court clerk sent Laiwala's lawyer, Bruce Zelis, the order denying the motion to vacate. (See LoSavio Decl. ¶ 16; exh. O.) Therefore, to be timely, the notice of appeal from the judgment had to be filed on or before December 10, 2007.<sup>4</sup> (See Cal. Rules of Court, rule 8.108(c)(1).) But Laiwala did not file his amended notice of appeal until February 22, 2008—74 days later. Therefore, the amended appeal from the judgment is untimely

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<sup>4/</sup> Because the thirtieth day was Sunday, December 9, 2007, the filing deadline was extended to Monday, December 10, 2007. (See Code Civ. Proc., §§ 12a, subd. (a), 135; Govt. Code, § 6700, subd. (a).)

and the Court should dismiss that appeal. (See Cal. Rules of Court, rule 8.104(b).) The Court should also dismiss that appeal because it is moot. (See First Motion to Dismiss, pp. 9-10.)

### III.

#### **THE ORDER DENYING RECONSIDERATION IS NOT APPEALABLE.**

Assuming Laiwala appealed from the order denying reconsideration,<sup>5</sup> the Court should dismiss the amended appeal from that order because the order is not appealable. (See First Motion to Dismiss, pp. 10-14.)

### IV.

#### **THE ORDER DENYING THE MOTION TO VACATE IS NOT APPEALABLE AND THE APPEAL FROM THAT ORDER IS MOOT.**

Finally, assuming Laiwala appealed from the order denying his motion to vacate,<sup>6</sup> the Court should dismiss the amended appeal from

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<sup>5/</sup> The amended notice of appeal contains a handwritten notation that says, "Rehearing." (Bochner Decl. ¶ 2; exh. A.) The notice also says, "denied motion 11/8/2007." (*Ibid.*) We assume these references relate to the order denying reconsideration.

<sup>6/</sup> Unlike Laiwala's first notice of appeal, which identifies the  
(continued...)

the order because that appeal is moot and because that order is not appealable. (See First Motion to Dismiss, pp. 14-16.)

### CONCLUSION

For the foregoing reasons, the Court should dismiss the amended appeal.

Dated: March 4, 2008

**HORVITZ & LEVY LLP**  
JEREMY B. ROSEN  
DEAN A. BOCHNER  
**LOW, BALL & LYNCH**  
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6/ (...continued)

"Motion to Vacate/Set Aside Denied" (LoSavio Decl. ¶ 17; exh. P), the amended notice of appeal contains no explicit reference to the order denying the motion to vacate (Bochner Decl. ¶ 2; exh. A). We assume the reference to "denied motion 11/8/2007" in the amended notice of appeal relates to the order denying the motion to vacate.

**DECLARATION OF DEAN A. BOCHNER**

I, DEAN A. BOCHNER, declare as follows:

1. I am an attorney licensed to practice law in the State of California and an associate with the law firm of Horvitz & Levy LLP. Horvitz & Levy LLP represents defendants and respondents Hynix Semiconductor America, Inc., David Kocsis, Madhukar "Duke" Tallam, and Anil Sawe in this appeal.

2. Attached hereto as Exhibit A is a true and correct copy of the Amended Notice of Appeal, which indicates it was filed in the Alameda County Superior Court on February 22, 2008.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on March 4, 2008, in Encino, California.

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Dean A. Bochner

**[PROPOSED] ORDER**

GOOD CAUSE APPEARING, the appeal filed on February 22, 2008 in *Laiwala v. Hynix Semiconductor America, Inc., et al.*, Case No. \_\_\_\_\_, is dismissed.

DATED: \_\_\_\_\_, 2008

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PRESIDING JUSTICE