EFiled: Oct 26 2026 02:57PM EDT
Transaction ID 81162515
Case No. 2026-1395-LWW

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CITY OF PONTIAC POLICE AND FIRE RETIREMENT SYSTEM, derivatively on behalf of APPLIED MATERIALS, INC., Plaintiff, vs. GARY DICKERSON, THOMAS J. IANNOTTI, RAMI BORKAR, JUDY BRUNER, ERIC CHEN, ART J. DE GEUS, ALEXANDER KARSNER, SCOTT A. MCGREGOR, STEPHEN FORREST, ADRIANNA C. MA, YVONNE MCGILL, and DENNIS POWELL, Defendants, -and- APPLIED MATERIALS, INC., Nominal Defendant.	C.A. No. 2026-1395-LWW **Public Version:** **Filed on October 26, 2026**

VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT

TABLE OF CONTENTS

Page No.

DEFINED TERMS AND ABBREVIATIONS vi

NATURE OF THE ACTION 2

JURISDICTION AND VENUE 8

PARTIES 9

A. Plaintiff 9

B. Nominal Defendant 9

C. Current-Director Defendants 9

D. Former-Director Defendants 13

E. Non-Defendant Current Directors 14

PLAINTIFF'S 8 *Del.* C. § 220 BOOKS-AND-RECORDS DEMAND 15

SUBSTANTIVE ALLEGATIONS 17

I. BACKGROUND ON THE U.S. EXPORT CONTROL LAWS 17

A. BIS Enforces the Export Administration Regulations 17

B. BIS's "Entity List" Is a "[redacted] Targeting Entities that Threaten U.S. National Security 19

C. BIS Issues "Is-Informed" Letters to Companies "Individually by Specific Notice" When a "License Is Required for Specific Exports" Due to "an Unacceptable Risk" of "Military End Use" 23

D. EAR Violations Can Result in Civil and Criminal Penalties 24

E. BIS's "Know Your Customer Guidance" Cautions Exporters to Inquire Into "Red Flags," Not to "Self-Blind," and, if Concerns Remain After Inquiry, "Appl[y] for a License" 25

F. BIS's "Guidance on Charging and Penalty Determinations" 28

II. BACKGROUND ON AMAT 29

III. BACKGROUND ON SMIC 30

IV. BACKGROUND ON THE"IS-INFORMED" LETTER AND SMIC's ENTITY LIST DESIGNATION 32

A. The U.S. Government Has Long Recognized That China's Military-Civil Fusion Strategy Poses a Threat to U.S. National Security 32

B. In August 2020, Reports Emerged that SMIC Was Manufacturing Semiconductor Chips for the Chinese Military.....34

C. In September 2020, BIS Sent the "Is-Informed" Letter to AMAT Notifying the Company that SMIC Presented an Unacceptable Risk of Diversion to the Chinese Military 37

D. On December 3, 2020, After the Government Declared a National Emergency, DOD Designated SMIC as a "Communist Chinese Military Company" and Prohibited U.S. Investments in SMIC 43

E. On December 18, 2020, BIS Added SMIC to the Entity List.....43

V. AS PART OF AMAT'S $252.5 MILLION SETTLEMENT WITH BIS, THE COMPANY ADMITTED "SENIOR EXECUTIVE LEADERHIP" WAS "COMMITTED" TO SELLING ECCN 3B991 ION IMPLANTERS TO SMIC.....46

A. AMAT's $252.5 Million Settlement Reflects the Company's "Egregious" Violations and Failure to Self-Report 47

VI. BOARD-LEVEL DOCUMENTS SHOW THE BOARD KNEW OR SHOULD HAVE KNOWN THAT AMAT CONTINUED TO SELL UNLICENSED ION IMPLANTERS TO SMIC.....48

A. The Board Knew That [redacted]

B. The Board Knew that [redacted]

C. The Board Was Aware That [redacted]

D. The Board Knew That [redacted]

E. AMAT Sold ~$118 Million of Unlicensed Ion Implanters to SMIC Through the "Dual-Build" Process 59

F. AMAT's CFO Told Investors AMAT Had "Derisked" AMAT's Financial Guidance by "Assuming that the Licenses Do Not Come Through" 63

G. After BIS Banned Unlicensed Sales to SMIC in December 2020, AMAT's Net Sales in China in 2021 Increased to Historic Levels ...64

VII. DEFENDANTS' BREACHES HAVE DAMAGED THE COMPANY 71

A. AMAT Paid $252.5 Million in Civil Penalties 71

B. AMAT Must Perform Annual Audits in 2026 and 2027 Demonstrating Its Export Compliance to BIS 72

C. AMAT Agreed to a Three-Year Suspended Denial of Its U.S. Export Privileges—Subject to Paying the $253 Million Penalty and Successfully Completing Its Annual Audits 73

VIII. DERIVATIVE ALLEGATIONS 74

IX. DEMAND IS FUTILE 75

A. Defendants' Fiduciary Duties Under *Caremark* 75

B. Compliance with U.S. Export Control Laws Was a Mission-Critical Issue for AMAT and the Board 77

C. Numerous Red Flags Should Have Placed Eight Current Board Members on Notice that AMAT Was Continuing to Sell Restricted Technology to SMIC 82

D. Members of the Board's Audit and Strategy and Investment Committees Had Access to Even More Information Concerning the [redacted] 86

1. Audit Committee 86

2. Strategy and Investment Committee 88

E. Eight of the Eleven Current Board Members Faces a Substantial Likelihood of Liability 91

1. Dickerson 91

2. Iannotti 92

3. Borkar 93

4. Bruner 95

5. Chen 98

6. De Geus 99

7. Karsner 101

8. McGregor 103

CLAIMS FOR RELIEF 105
COUNT I.....105
COUNT II 106
PRAYER FOR RELIEF.....107

DEFINED TERMS AND ABBREVIATIONS

Term / Abbreviation	Description
Section 220 or § 220	8 *Del. C.* § 220
AMAT or the Company	Applied Materials, Inc.
AMK	Applied Materials Korea Ltd.
BIS	Bureau of Industry and Security, Department of Commerce
BIS Charging Order	Order Relating to Applied Materials Inc. and Applied Materials Korea issued by BIS on February 11, 2026
BIS Settlement Agreement	Settlement Agreement between AMAT and BIS dated February 11, 2026
CCMC	Communist Chinese Military Company
DOC	Department of Commerce
DOD	Department of Defense
[redacted]	[redacted]
EAR	Export Administration Regulations, 15 C.F.R. parts 730-74
Entity List	15 C.F.R. Pt. 744, Supp. 4
ERM	Enterprise Risk Management
MCF	Military Civil Fusion
MEU	Military End-User
MIIT	PRC's Ministry of Industry and Information Technology
NDAA	National Defense Authorization Act
PCL	Proposed Charging Letter
PLA	People's Liberation Army
PRC	People's Republic of China
SEC	U.S. Securities and Exchange Commission

Term / Abbreviation	Description
§ 220 Demand	Plaintiff's Books-and-Records Demand to AMAT Pursuant to 8 *Del. C.* § 220
SMIC	Semiconductor Manufacturing International Corporation
SOS Report	Report titled "BLUE HERON: Semiconductor Manufacturing International Corporation," by James C. Mulvenon, SOS International, LLC, dated August 20, 2020.
VEU	Validated End-User (15 C.F.R. Pt. 748, Supp. 7)
WFE	Wafer Fabrication Equipment
WMD	Weapon(s) of Mass Destruction

Plaintiff City of Pontiac Police and Fire Retirement System, by and through its undersigned attorneys, submits its Verified Shareholder Derivative Complaint (the "Complaint") against certain current and/or former members of the Board of Directors (the "Board") of Applied Materials, Inc. for their breaches of fiduciary duty by failing to meaningfully monitor and address the Company's admitted violations of U.S. export control laws resulting in AMAT's February 11, 2026 settlement with the Bureau of Industry and Security, the agency within the U.S. Department of Commerce responsible for controlling exports that threaten U.S. national security.

Except for the allegations specifically pertaining to the Plaintiff, which are based upon the Plaintiff's personal knowledge, the allegations in the Complaint are based upon the investigation conducted by Plaintiff's counsel, which included, among other things, a review of the Order Relating to Applied Materials, Inc. and Applied Materials Korea issued by the BIS on February 11, 2026; the Settlement Agreement between AMAT and BIS dated February 11, 2026; the Proposed Charging Letter from BIS to AMAT dated February 11, 2026; AMAT's filings with the U.S. Securities and Exchange Commission; AMAT's internal Board-level documents produced in response to Plaintiff's books-and-record-demand pursuant to Title 8, Section 220 of the Delaware General Corporation Law, 8 *Del. C.* § 220; and AMAT's corporate website, press releases, news reports, U.S. government

reports and publications, reports published by securities analysts, transcripts of AMAT's quarterly earnings calls and investor conferences, and other publicly available materials. Counsel believes discovery will elicit further factual support for Plaintiff's allegations.

NATURE OF THE ACTION

1. Plaintiff brings this action derivatively on behalf of AMAT, a Delaware corporation, against the Individual Defendants for breaching their fiduciary duties of loyalty under Delaware law for failing to oversee a mission-critical compliance issue that has serious, real-world implications for U.S. national security.

2. On February 11, 2026, AMAT agreed to pay a $252.5 million penalty—the second highest in the agency's history and the statutory maximum penalty allowed by law—to BIS for illegally exporting technology to SMIC, China's largest chipmaker, which has well-documented ties to the Chinese military. AMAT's illegal sales occurred over 20 months and violated the U.S. government's express ban on exporting specific equipment—ion implanters classified as "ECCN 3B991" technology—to SMIC because of the "unacceptable risk" that SMIC would divert that technology to the Chinese military.

3. AMAT's settlement with BIS is described in the BIS Charging Order, BIS Settlement Agreement, and PCL, in which AMAT admitted to ***56 violations*** of the Export Administration Regulations. AMAT's detailed admissions confirm that

its violations were not the result of simple negligence or a good faith mistake. Rather, under BIS charging guidelines, AMAT's EAR violations were "egregious," a designation that connotes knowing, reckless, or intentional conduct.

4. By way of background, on September 25, 2020, BIS sent AMAT an "is-informed" letter instructing the Company not to sell restricted "ECCN 3B991" technology to SMIC. On December 3, 2020, BIS placed SMIC on its Entity List, thereby banning ***any*** company from selling ***any*** U.S.-origin products to SMIC without a specific license.

5. Nevertheless, AMAT's "***senior executive leadership***" was "commit[ted]" to selling SMIC the same restricted technology prohibited by the "is-informed" letter and Entity List designation. Through a secret "dual-build plan," AMAT shifted part of the manufacturing process for the ion implanters in question from Massachusetts to South Korea. This elaborate plan was implemented solely to supply one product (ion implanters) to one customer (SMIC), while AMAT continued to ship ion implanters to every other customer directly from the Company's Gloucester, Massachusetts facility, as it had before.

6. The "is-informed" letter was unequivocal and the Company knew it: "***a license was required to export, reexport, or transfer in-county certain items subject to the EAR—including items classified under ECCN 3B991—to SMIC because of an unacceptable risk of diversion to military end use [in China]***." Indeed, the same day the letter was issued AMAT's Global Trade group sent an email to "senior executive leadership" stating that the U.S. government now "***considers SMIC to be a Military End-User under the new Military-End Use rule. Consequently, Applied cannot export, reexport, or conduct in-country transfers of certain U.S. Origin semiconductor [items].***"

7. BIS could not have been more explicit: AMAT was prohibited from selling ECCN 3B991 technology to SMIC without a license. And BIS reinforced these restrictions three months later by placing SMIC on the Entity List, [redacted]

8. While it may seem inconceivable that a U.S.-based company would take steps to purposefully evade regulations designed to protect U.S. national security, the financial motives were significant: SMIC provided a "substantial revenue stream for AMAT," including $112-150 million annually for ion implanters and a total economic impact to AMAT of "more than $1 billion per year."

9. The central question in this shareholder derivative action is: where was the Board in all of this? Defendant Dickerson—AMAT's CEO and a director since

September 2013, and member of "senior executive leadership"—stood by as the Company ignored and actively circumvented the new restrictions for more than 20 months. These and other facts, which AMAT admitted in connection with the BIS Settlement, readily support the inference that Dickerson was among the senior executives aware of the "dual-build plan" and supported its implementation.

10. Seven other current directors—Defendants Iannotti, Borkar, Bruner, Chen, De Geus, Karsner, and McGregor—also served on the Board while the illegal sales took place. Prior to filing suit, Plaintiff sought inspection of the Company's books and records pursuant to 8 *Del. C.* § 220. Although heavily redacted, the documents produced provide a contemporaneous view of the Board's inaction as AMAT continued selling ECCN 3B991 technology to SMIC. They also support the plausible inference that the Board either knew of the "dual-build plan" to continue supplying SMIC with ion implanters or consciously disregarded the likelihood that those sales continued. Either way, the facts support the inference that the Board (1) knowingly supported a business plan that prioritized profits over U.S. national security, or (2) consciously ignored red flags that senior executives were racing through two giant regulatory stop signs—the "is-informed" letter and SMIC's addition to the Entity List. Accordingly, these seven current Board members and Defendant Dickerson—eight of AMAT's eleven current directors—breached their

fiduciary duties of loyalty under Delaware law for exercising their oversight responsibilities in bad faith.

11. ***First***, the § 220 production shows that [redacted] AMAT was unquestionably prohibited from selling ECCN 3B991 technology to SMIC, [redacted]

12. ***Second***, [redacted] Either way, the Board consciously disregarded its obligation to ensure AMAT's compliance with the law.

13. ***Third***, the Board was advised [redacted]

[redacted] Instead, for over a year, AMAT aggressively sold ion implanters to SMIC through the "dual-build plan."

14. ***Fourth***, [redacted]

15. These dire predictions did not materialize, however. During the four fiscal quarters that followed—from March 2021 to April 2022—AMAT reported historic ***increases*** in China sales, a result that coincided with its illegal sales of ion implanters. When the Company eventually stopped selling the equipment to SMIC in July 2022, the impact was dramatic, and its sales in China dropped precipitously.

16. The historic increase in sales in China were also surprising because AMAT management told investors and the Board that it had not obtained the BIS licenses required to sell ion implanters to SMIC. Specifically, in February 2021, AMAT's then-CFO, Daniel Durn, told investors that "we're assuming that the licenses do not come through" and he would be "surprised, [if] licenses come through . . . ." [redacted]

[redacted]

17. In sum, the Board either knew sales to SMIC continued unabated in violation of the EAR or consciously decided not to ask Defendant Dickerson and other senior executives obvious questions that would have revealed those sales, through the "dual-build plan" or otherwise.

18. Plaintiff did not make a pre-suit litigation demand on the Board because, as set forth herein, eight of AMAT's eleven directors—a clear majority—could not have exercised independent business judgment in evaluating a demand. Under Delaware law, a director cannot adequately consider a pre-suit demand if the director faces a substantial likelihood of personal liability—including potential criminal liability for aiding and abetting violations of the EAR—in connection with their prior conduct. Here, eight of the eleven current directors face such liability under *Caremark* and its progeny for either (1) supporting an illegal business plan that prioritized profits over compliance with laws designed to ensure U.S. national security (Count II, *Massey* Claim), or (2) ignoring numerous red flags that the Company was violating positive law (Count I, *Caremark* claim).

JURISDICTION AND VENUE

19. This Court has subject matter jurisdiction pursuant to 10 *Del. C.* § 341 and has personal jurisdiction over Defendants, who are current or former directors

and officers of AMAT, pursuant to 10 *Del. C.* § 3114. This Court also has jurisdiction over Nominal Defendant AMAT, a Delaware corporation, pursuant to 10 *Del. C.* § 3111.

PARTIES

A. Plaintiff

20. **Plaintiff City of Pontiac Police and Fire Retirement System** ("Plaintiff") is a current stockholder of nominal defendant AMAT. Plaintiff has owned AMAT stock continuously since at least 2013.

B. Nominal Defendant

21. **Nominal Defendant AMAT** is a Delaware corporation with its principal executive offices located at 3050 Bowers Avenue, Santa Clara, California. AMAT's common stock is traded on the NASDAQ exchange under the ticker symbol "AMAT." The Company "researches, develops, designs, manufactures, and services semiconductor equipment for manufacturers that sell into highly competitive and rapidly changing end markets."[1]

C. Current-Director Defendants

22. **Defendant Gary Dickerson** ("Dickerson") has been CEO and a director of AMAT since September 2013 and President since June 2012. AMAT

[1] Applied Materials, Inc., Proxy Statement (Form DEF 14A), at ii (Jan. 28, 2026).

acknowledges that Dickerson is a non-independent director.[2] As President and CEO, Dickerson leads the executive management of the Company.

23. Before joining AMAT, Dickerson served as CEO and a director of Varian Semiconductor Equipment Associates, Inc., a supplier of semiconductor manufacturing equipment, from 2004 until its acquisition by AMAT in November 2011. Varian is the AMAT division in Gloucester, Massachusetts, that manufactures ion implanters, including the ion implanters the Company illegally sold to SMIC and which led to the Company's settlement with BIS and $252.5 million penalty.

24. **Defendant Thomas J. Iannotti** ("Iannotti") has been a director of AMAT since 2005 and Chairman of the Board since March 2017. As Chairman, Iannotti, "along with the rest of [the Board's] independent directors, [is responsible for] ensur[ing] that the Board's time and attention are focused on effective oversight of the matters most critical to [AMAT]."[3] Iannotti has been on the Board's Human Resources and Compensation Committee ("HRC") since December 2005.

25. **Defendant Rami Borkar** ("Borkar") has been a director of AMAT since December 2020. Borkar has been a member of the Board's Strategy and

[2] *Id.* at 13.

[3] *Id.* at 10.

Investment Committee)[4] since December 2020 and a member of the HRC since at least January 2023.

26. **Defendant Judy Bruner** ("Bruner") has been a director of AMAT since July 2016. Bruner has been a member of the Board's Audit Committee ("Audit Committee") since July 2016 and Chair of the Audit Committee since at least January 2021. In addition, Bruner has been a member of the Board's Corporate Governance and Nominating Committee (the "Governance Committee") since March 2017 and was Chair of the Governance Committee from March 2017 to at least January 2025. Relatedly, from 2018 until October 2025, Bruner was a member of the board of directors of Seagate Technology Holdings plc ("Seagate"). In April 2023, BIS fined Seagate $300 million—the largest penalty in BIS history—for illegally selling U.S. technology to the Chinese company Huawei Technologies Co., Ltd. in violation of U.S. export control laws.[5]

27. **Defendant Eric Chen** ("Chen") has been a director of AMAT since November 2015. Chen has been a member of the Strategy Committee since

[4] Prior to March 2020, AMAT had separate committees for Strategy and Investment. Applied Materials, Inc., Proxy Statement (Form DEF 14A), at 14 (Jan. 28, 2021).

[5] *BIS Imposes $300 Million Penalty Against Seagate Technology LLC Related To Shipments To Huawei*, BIS Press Release (Apr. 19, 2023), https://www.bis.gov/node/20250 (noting that BIS's "$300 million civil penalty against Seagate . . . represents the largest standalone administrative penalty in BIS history").

November 2015, a member of the Strategy and Investment Committee since March 2020, and a member of the HRC since at least January 2017.

28. **Defendant Aart J. De Geus** ("De Geus") has been a director of AMAT since July 2007. De Geus has been a member of the Governance Committee since 2026, a member of the Strategy Committee since at least January 2013, and Chair of the Strategy Committee from at least January 2016 until January 2020. Additionally, De Geus was a member of the Investment Committee since at least January 2013 and a member of the Strategy Committee and Investment Committee since March 2020.

29. **Defendant Alexander "Andy" Karsner** ("Karsner") has been a director of AMAT since 2008. Karsner has been a member of the Governance Committee since at least January 2014 and a member of the HRC since at least January 2016.

30. **Defendant Scott A. McGregor** ("McGregor") has been a director of AMAT since January 2018. McGregor has been a member of the Audit Committee since March 2018, a member of the Strategy Committee since at least January 2019, a member of the Strategy and Investment Committee since March 2020, and Chair of the Strategy and Investment Committee since at least January 2021.

31. Defendants Dickerson, Iannotti, Borkar, Bruner, Chen, De Geus, Karsner, and McGregor are referred to herein collectively as "Current-Director Defendants."

D. Former-Director Defendants

32. **Defendant Stephen Forrest** ("Forrest") was a director of AMAT from June 2008 to March 2021 and served on the Audit Committee from March 2017 to March 2021.

33. **Defendant Adrianna C. Ma** ("Ma") was a director of AMAT from December 2015 to March 2023. Ma served on the Audit Committee from December 2015 to at least January 2022, the Governance Committee from at least January 2018 to January 2020, and the Strategy and Investment Committee from at least January 2021 to at least January 2022 and as Chair of the Investment Committee from at least January 2018 to January 2020.

34. **Defendant Yvonne McGill** ("McGill") was a director of AMAT from July 2019 to September 2025. McGill served on the Audit Committee from July 2019 to September 2025 and the Governance Committee from at least January 2021 to January 2025.

35. **Defendant Dennis Powell** ("Powell") was a director of AMAT from September 2007 to March 2020. Powell served on the Audit Committee from at least January 2009 to March 2020 and as Chair of the Audit Committee from at least

January 2009 to March 2020. In addition, Powell served on the Governance Committee from at least January 2009 to March 2020.

36. Defendants Forrest, Ma, McGill, and Powell are referred to herein collectively as "Former-Director Defendants."

37. Together, the Current-Director Defendants and the Former-Director Defendants are referred to herein as "Defendants."

E. Non-Defendant Current Directors

38. **Non-Defendant Jim Anderson** ("Anderson") has been a director of AMAT since July 2025 and a member of the Strategy and Investment Committee since July 2025.

39. **Non-Defendant Kevin March** ("March") has been a director of AMAT since October 2022. March has been a member of the Audit Committee since October 2022, a member of the Governance Committee since 2025, and Chair of the Governance Committee since 2026.

40. **Non-Defendant Akash Palkiwala** ("Palkiwala") has been a director of AMAT since August 2026 and a member of the Audit Committee since August 2026.

41. Together, Anderson, March, and Palkiwala are referred to herein as the "Non-Defendant Current Directors."

42. Together, the Current-Director Defendants and the Non-Defendant Current Directors are referred to herein as the "Demand Board."

PLAINTIFF'S 8 *DEL.* C. § 220 BOOKS-AND-RECORDS DEMAND

43. As part of Plaintiff's pre-suit investigation, Plaintiff demanded to inspect AMAT's books and records pursuant to 8 *Del. C.* § 220.

44. On April 8, 2026, Plaintiff served AMAT with its § 220 Demand seeking to inspect books and records relating to, *inter alia*, the Company's sales and export of products to SMIC; compliance with U.S. export control laws and regulations, including but not limited to the EAR and the Company's settlement with BIS; and any inquiries concerning AMAT's oversight of such matters.[6]

45. In response to Plaintiff's § 220 Demand, [redacted]

[6] Ex. 1 [redacted]

[7] Ex. 2 [redacted]

[redacted]

46. [redacted]

47. [redacted]

48. [redacted]

SUBSTANTIVE ALLEGATIONS

I. BACKGROUND ON THE U.S. EXPORT CONTROL LAWS

A. BIS Enforces the Export Administration Regulations

49. BIS is the federal agency within DOC that is responsible for safeguarding national security by ensuring effective control of sensitive exports. BIS's "paramount concern is the security of the United States," and its mission is to protect U.S. security, including its national, economic, cyber, and homeland security.[8]

50. To accomplish its mission, BIS implements and enforces the EAR, which regulate the export, reexport, and transfer of sensitive technologies that could compromise U.S. national security if acquired by certain foreign entities.[9]

51. The EAR also includes the "Entity List," which is a list of foreign persons and entities subject to export restrictions and license requirements independent of, and in addition to, those imposed elsewhere in the EAR. The Entity List identifies entities as to which BIS has determined "there is reasonable cause to believe, based on specific and articulable facts, that the entity . . . has been involved, is involved, or poses a significant risk of being or becoming involved in activities

[8] *See* https://www.bis.gov/guiding-principles.

[9] "No person may engage in any transaction or take any other action prohibited by or contrary to or refrain from engaging in any transaction or take any other action required by . . . the [EAR], or any order, license or authorization issued thereunder." 15 C.F.R. § 764.2(a).

that are contrary to the national security or foreign policy interests of the United States."[10]

52. BIS first published the Entity List in February 1997 to inform the public of entities that posed an increased risk of diverting exports and reexports to overseas programs involving WMD such as nuclear, chemical, and biological weapons. Since then, then grounds for inclusion on the Entity List have expanded to encompass activities sanctioned by the State Department and activities contrary to U.S. national security and/or foreign policy interests. For example, in August 2020, BIS added 14 entities in Russia and elsewhere to the Entity List based on their proliferation activities in support of Russia's WMD programs and chemical-weapons activities. As BIS has explained, "[t]he Entity List identifies foreign parties that . . . present a greater risk of diversion to [WMD] programs, terrorism, or other activities contrary to U.S. national security and/or foreign policy interests. By publicly listing such parties, the Entity List is an important tool to prevent unauthorized trade in items subject to the EAR."[11]

[10] *See* 15 C.F.R. § 744.11 (b).

[11] Press Release, U.S. Dep't of Just., *Four Companies and Five Individuals Indicted for Illegally Exporting Technology to Iran* (Apr. 17, 2015), https://www.justice.gov/archives/opa/pr/four-companies-and-five-individuals-indicted-illegally-exporting-technology-iran.

53. To enforce the EAR, BIS may notify a person that a license is required for a specific export, reexport, or in-country transfer if BIS determines there is an unacceptable risk that the item will be used in or diverted to "military end use" activities in China and certain other countries.[12] This notification, commonly known as an "is-informed" letter, is a regulatory device BIS created in 2007 specifically to address and deter MEU activities in China.[13]

B. BIS's "Entity List" Is a [redacted] Targeting Entities that Threaten U.S. National Security

54. BIS's Entity List identifies businesses, research institutions, government and private organizations to which U.S. firms cannot sell items subject to the EAR to without first obtaining a special (and difficult-to-obtain) license from BIS. The purpose of the Entity List is to prevent these entities from obtaining and using U.S. technology for objectives contrary to U.S. national security or foreign-policy interests.

55. When DOC first announced the Entity List in 1997, its focus was on restricting access to nuclear technology. That year, the Bureau of Export

[12] *See* 15 C.F.R. § 744.21(b) (version effective Dec. 23, 2020 to Mar. 7, 2021) (authorizing BIS to issue a "specific notice" (i.e., an "is-informed" letter) informing parties "that a license is required" to export "any item because there is an unacceptable risk of use in or diversion to a 'military end use' or 'military end user' in China, Russia, or Venezuela").

[13] *See* 15 C.F.R. § 744.21(b).

Administration, BIS's predecessor, added three PRC-based entities, including one widely recognized as critical to the PRC's development of nuclear weapons.[14]

56. Due to the national-security implications of Entity List violations, investigations into those violations, including AMAT's sales to SMIC, are often conducted by Homeland Security Investigations, the principal investigative arm of the Department of Homeland Security.[15]

57. As BIS explained in 2017, an "End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List" when entities are determined to be involved in activities contrary to the national security or foreign policy interests of the United States.[16]

---

[14] *See* Revision to the Export Administration Regulations: Additions to the Entity List, 62 Fed. Reg. 35334, 35334 (June 30, 1997); *see also* Liza Lin & Dan Strumpf Dan, *China's Top Nuclear-Weapons Lab Used American Computer Chips Decades After Ban*, THE WALL STREET JOURNAL (Jan. 29, 2023) ("The [China Academy of Engineering Physics] . . . was one of the first Chinese institutions put on the U.S. blacklist, known as the entity list, because of its nuclear work.").

[15] *See* Press Release, U.S. Dep't of Com., Bureau of Indus. & Sec., *Applied Materials to Pay $252 Million Penalty to BIS for Illegally Exporting Semiconductor Manufacturing Equipment* (Feb. 11, 2026), https://www.bis.gov/press-release/applied-materials-pay-252-million-penalty-bis-illegally-exporting-semiconductor-manufacturing-equipment ("This case was investigated by BIS's Office of Export Enforcement, Boston Field Office and Homeland Security Investigations."); *see also* U.S. Immigr. & Customs Enf't, *Homeland Security Investigations*, https://www.ice.gov/hsi (last updated Apr. 30, 2026).

[16] Addition of Certain Entities to the Entity List, 82 Fed. Reg. 60304-01 (Dec. 20, 2017).

58. In recent years, DOC has placed numerous China-based companies on the Entity List because they developed products for Chinese military end users.

59. "Items subject to the EAR" include "[a]ll items in the United States" and "[a]ll U.S. origin items wherever located[.]"[17] "The term 'dual use' is often used to describe the types of items subject to the EAR. A 'dual-use' item is one that has civil applications as well as terrorism and military or weapons of mass destruction (WMD)-related applications."[18]

60. Items subject to the EAR are classified under ECCN numbers listed on the Commerce Control List.[19] The ion implanters that AMAT sold to SMIC in violation of the EAR were classified as "ECCN 3B991."[20]

61. "Exports" are defined broadly as "[a]n actual shipment or transmission out of the United States, including the sending or taking of an item out of the United States, in any manner."[21] An item that "will transit through a country or countries to a destination identified in the EAR" is deemed exported to that destination.[22]

---

[17] 15 C.F.R. § 734.3(a)(1)-(2).

[18] 15 C.F.R. § 730.3.

[19] 15 C.F.R. § 774, Supp. 1.

[20] Ex. 3 (PCL) at 2.

[21] 15 C.F.R. §734.13(a).

[22] 15 C.F.R. §734.13(c).

62. ***"Reexports"*** are defined broadly as the ***"[a]n actual shipment or transmission of an item subject to the EAR from one foreign country to another[.]"***[23] "The reexport of an item subject to the EAR that will transit through a country or countries to a destination identified in the EAR is deemed to be a reexport to that destination."[24]

63. In addition to the general prohibition against knowingly exporting technologies for military end users or military end use, DOC may require a U.S. exporter to obtain a license to export restricted U.S. technology to a specific China-based firm. DOC may notify suppliers of this requirement in two ways. First, DOC may directly inform a U.S. exporter that exports to a specific China firm presents an unacceptable risk of diversion to military end use by issuing an "is-informed" letter, as BIS did with respect to SMIC.[25] Second, DOC may place the company on the Entity List, as BIS also did with respect to SMIC.

64. [redacted]

[23] 15 C.F.R. § 734.14(a).

[24] 15 C.F.R. § 734.14(c).

[25] 15 C.F.R. § 744.21(b).

[26] Ex. 4 [redacted]

C. BIS Issues "Is-Informed" Letters to Companies "Individually by Specific Notice" When a "License Is Required for Specific Exports" Due to "an Unacceptable Risk" of "Military End Use"

65. U.S. export regulations, known as the EAR, authorize BIS to issue "is-informed" letters notifying companies "individually by specific notice" that "a license is required for specific exports, reexports, or transfers (in-country) of any item because there is an unacceptable risk of use in or diversion to a 'military end use'" in China.[27]

66. The BIS "is-informed" letter process originated with BIS's June 19, 2007 military-end-use rule for China, which "establishe[d] a control, based on knowledge of a 'military end-use,' on exports and reexports to the PRC of certain items on the Commerce Control List (CCL) that otherwise do not require a license to the PRC."[28]

67. A company that receives an "is-informed" letter is formally notified by BIS that a license is required for specific transactions because of U.S. national-security or foreign-policy concerns, including concerns related to WMD, military

[27] 15 C.F.R. § 744.21(b).

[28] Revisions and Clarification of Export and Reexport Controls for the People's Republic of China (PRC); New Authorization Validated End-User; Revision of Import Certificate and PRC End-User Statement Requirements, 72 Fed. Reg. 33646-01 (June 19, 2007).

end uses or end users, or involvement in other activities contrary to U.S. national security or foreign policy interests.[29]

68. Each "is-informed" letter specifies the scope of the items or U.S.-person activities subject to a license requirement, the license review policy that BIS will apply in reviewing such license applications, and the process for submitting such license applications to BIS.[30]

69. A recipient of an "is-informed" letter who engages in a transaction covered by the letter without the required license violates the EAR. From an enforcement perspective, noncompliance with an "is-informed" letter is treated the same as noncompliance with any other license requirement under the EAR and is subject to penalties.[31]

D. EAR Violations Can Result in Civil and Criminal Penalties

70. Violations of the EAR may be subject to both civil and criminal penalties.[32] Criminal penalties can include a fine of up to $1 million per violation,

[29] *See* U.S. Dep't of Com., Bureau of Indus. & Sec., *Guidance to Industry on BIS Actions Identifying Transaction Parties of Diversion Risk* (July 10, 2024), https://www.bis.gov/media/documents/guidance-complying-bis-letters-identifying-transaction-parties-diversion-risk-v8.pdf.

[30] *Id.*

[31] *Id.*

[32] *See* U.S. Dep't of Com., Bureau of Indus. & Sec., *Penalties*, https://www.bis.gov/enforcement/penalties.

up to 20 years of imprisonment, or both.[33] Civil penalties can include a fine of not more than $300,000 or an amount twice the value of the transaction, and denial of the violator's export privileges.[34]

E. BIS's "Know Your Customer Guidance" Cautions Exporters to Inquire Into "Red Flags," Not to "Self-Blind," and, if Concerns Remain After Inquiry, "Appl[y] for a License"

71. BIS's "Know Your Customer" guidance advises exporters to be aware of and inquire into any "red flags" and warns that they may not "***self-blind***" to adverse information: "An affirmative policy of steps to avoid 'bad' information would not insulate a company from liability, and it would usually be considered an aggravating factor in an enforcement proceeding."[35] BIS also further cautions that "[e]mployees need to know how to handle 'red flags'" because "[k]nowledge

[33] *See* 50 U.S.C. § 4819(b) ("A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids and abets" a violation of the EAR "(1) shall be fined not more than $1,000,000; and (2) in the case of the individual, shall be imprisoned for not more than 20 years, or both."); *see also* 15 C.F.R. § 764.3(b) ("Whoever willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids and abets in the commission of [a violation of the EAR] shall be fined not more than $1,000,000, and . . . shall be imprisoned for not more than 20 years, or both.").

[34] *See* 50 U.S.C. § 4819(c) ("civil penalties" for violations of the EAR include "[a] fine of not more than $300,000 or an amount that is twice the value of the transaction that is the basis of the violation with respect to which the penalty is imposed, whichever is greater"; "[r]evocation of a license issued . . . to the person"; and "[a] prohibition on the person's ability to export, reexport, or in-country transfer any items controlled under" the EAR); *see also* 15 C.F.R. § 764.3(a) ("Violations of . . . the EAR, or any order, license or authorization issued thereunder are subject to the administrative sanctions described in this section" including "[a] civil monetary penalty," and "[d]enial of export privileges.").

[35] *See* 15 C.F.R. Pt. 732, Supp. 3 (effective June 27, 2014 to Nov. 16, 2023) (BIS's "Know Your Customer" Guidance and Red Flags).

possessed by an employee of a company can be imputed to a firm so as to make it liable for a violation":[36]

> Various requirements of the EAR are dependent upon a person's knowledge of the end-use, end-user, ultimate destination, or other facts relating to a transaction or activity. These provisions include the nonproliferation-related "catch-all" sections and the prohibition against proceeding with a transaction with knowledge that a violation of the EAR has occurred or is about to occur.
>
> (a) BIS provides the following guidance on how individuals and firms should act under this knowledge standard. This guidance does not change or interpret the EAR.
>
> ***(1) Decide whether there are "red flags".*** Take into account any abnormal circumstances in a transaction that indicate that the export may be destined for an inappropriate end-use, end-user, or destination. Such circumstances are referred to as "red flags". Included among examples of red flags are orders for items that are inconsistent with the needs of the purchaser, a customer declining installation and testing when included in the sales price or when normally requested, or requests for equipment configurations that are incompatible with the stated destination (e.g., 120 volts in a country with 220 volts). Commerce has developed lists of such red flags that are not all-inclusive but are intended to illustrate the types of circumstances that should cause reasonable suspicion that a transaction will violate the EAR.
>
> ***(2) If there are "red flags", inquire.*** If there are no "red flags" in the information that comes to your firm, you should be able to proceed with a transaction in reliance on information you have received. That is, absent "red flags" (or an express requirement in the EAR), there is no affirmative duty upon exporters to inquire, verify, or otherwise "go behind" the customer's representations. However, when "red flags" are raised in information that comes to your firm, you have a duty to check out the suspicious circumstances and inquire about the end-use, end-

[36] *Id.*

user, or ultimate country of destination. The duty to check out "red flags" is not confined to the use of License Exceptions affected by the "know" or "reason to know" language in the EAR. Applicants for licenses are required by part 748 of the EAR to obtain documentary evidence concerning the transaction, and misrepresentation or concealment of material facts is prohibited, both in the licensing process and in all export control documents. You can rely upon representations from your customer and repeat them in the documents you file unless red flags oblige you to take verification steps.

(3) Do not self-blind. Do not cut off the flow of information that comes to your firm in the normal course of business. For example, do not instruct the sales force to tell potential customers to refrain from discussing the actual end-use, end-user, and ultimate country of destination for the product your firm is seeking to sell. Do not put on blinders that prevent the learning of relevant information. An affirmative policy of steps to avoid "bad" information would not insulate a company from liability, and it would usually be considered an aggravating factor in an enforcement proceeding.

(4) Employees need to know how to handle "red flags". Knowledge possessed by an employee of a company can be imputed to a firm so as to make it liable for a violation. This makes it important for firms to establish clear policies and effective compliance procedures to ensure that such knowledge about transactions can be evaluated by responsible senior officials. Failure to do so could be regarded as a form of self-blinding.

(5) Reevaluate all the information after the inquiry. The purpose of this inquiry and reevaluation is to determine whether the "red flags" can be explained or justified. If they can, you may proceed with the transaction. If the "red flags" cannot be explained or justified and you proceed, you run the risk of having had "knowledge" that would make your action a violation of the EAR.

(6) Refrain from the transaction or advise BIS and wait. If you continue to have reasons for concern after your inquiry, then you should either refrain from the transaction or submit all the relevant information to BIS in the form of an application for a license or in such other form as BIS may specify.

> (b) Industry has an important role to play in preventing exports and reexports contrary to the national security and foreign policy interests of the United States. BIS will continue to work in partnership with industry to make this front line of defense effective, while minimizing the regulatory burden on exporters. If you have any question about whether you have encountered a "red flag", you may contact the Office of Export Enforcement at 1–800–424–2980 or the Office of Exporter Services at (202) 482–4532.

F. BIS's "Guidance on Charging and Penalty Determinations"

72. According to BIS's "Guidance on Charging and Penalty Determinations," export-control violations resulting from "simple negligence or carelessness" or a "good-faith misinterpretation" are "frequently [ ] addressed with a no action determination letter or . . . a warning letter."[37] By contrast, ***penalties are increased in "egregious" cases resulting from "willful or reckless violation of law," "concealment," "management involvement," or "actual knowledge***."[38] "Many apparent violations are isolated occurrences, the result of a good-faith misinterpretation, or involve no more than simple negligence or carelessness. In such instances, the matter is frequently addressed with a no action determination letter or, if deemed necessary, a warning letter." In contrast, in "egregious" cases BIS may adjust the size of the penalty upwards due to such "aggravating factors" as "willful or reckless violation of law"; "willfulness"; "recklessness/gross

[37] 15 C.F.R. Pt. 766, Supp. 1.

[38] *Id.* (emphasis added).

negligence"; "concealment"; a "pattern of conduct"; "prior notice"; "management involvement"; "awareness of conduct at issue"; "actual knowledge"; and "reason to know."

73. Here, BIS imposed a $252.5 million penalty on AMAT, twice the value of the underlying transactions and the maximum civil penalty allowed by statute.[39] Significantly, a "statutory maximum civil penalty" is unavailable *unless* the violations constituted an "***egregious"*** case and "the apparent violation [came] to [the BIS Office of Export Enforcement's] attention ***by means other than a voluntary self-disclosure***[.]"[40] Indeed, in contrast to what occurred here, where the offending party voluntarily self-discloses the violation and cooperates with the government's investigation, the resulting monetary penalty may be only a fraction of the value of the illegal exports.[41]

II. BACKGROUND ON AMAT

74. AMAT is a semiconductor-manufacturing-equipment company headquartered in Santa Clara, California, and incorporated in Delaware. "During

[39] *Id.* at § IV.B.

[40] 15 C.F.R. Pt. 766, Supp. 1 § IV.B(2)(a)(iv) (emphasis added).

[41] *See* Press Release, U.S. Dep't of Com., Bureau of Indus. & Sec., *Robert Bosch GmbH (Bosch) To Pay $36 Million Penalty to BIS for Violations Pertaining to Shipments to Huawei* (June 17, 2026), https://www.bis.gov/press-release/robert-bosch-gmbh-bosch-pay-36-million-penalty-bis-violations-pertaining-shipments-huawei (company that illegally exported items valued at $72,369,361, but "filed a Voluntary Self-Disclosure and cooperated with the investigation," the resulting civil penalty was $36,184,680).

fiscal year 2022, AMAT had $25.8 billion in annual revenue" and roughly "$110 billion in market capital."[42] The Company is a world leader in the design, development, production, and distribution of manufacturing materials to produce integrated circuits and other semiconductor materials. In 2020 and 2021, approximately 90% of AMAT's revenue was from exports[43] and approximately one-third was from sales to China.[44]

III. BACKGROUND ON SMIC

75. SMIC (also known as 中芯国际 or Zhongxin International) is China's largest and most advanced semiconductor foundry operator, or chipmaker.

76. SMIC is a partially state-owned, publicly traded semiconductor foundry whose principal place of business and operational headquarters are in Shanghai, China. Its shares are listed on both the Hong Kong and Shanghai stock exchanges.[45]

[42] Ex. 5 (BIS Charging Order) at 2.

[43] *Id.*

[44] *See infra* ¶ 146.

[45] Ex. 3 (PCL) at 3.

77. Beginning in 2007, SMIC maintained "Validated End-User" status with BIS.[46] In 2016, however, SMIC requested that BIS remove it from the list of VEUs, thereby ending the facility inspections and compliance reviews associated with that status. The U.S. government's inspections were designed to confirm that SMIC's products were used only for civilian purposes and not diverted to military end uses.

78. AMAT has sold semiconductor-related products to SMIC since SMIC's founding in 2000. "Between 2016 and 2020, SMIC purchased 180 semiconductor manufacturing tools from AMAT, with a total purchase price of approximately $1.4 billion."[47]

79. SMIC considered AMAT its "'most important business partner and ally in the semiconductor industry.'"[48] Because of their close business ties, AMAT "faced tremendous pressure to continue to sell ion implanters to SMIC."[49] In fact, losing SMIC's ion implanter business "meant losing $112-150 million in annual revenue, and losing all of SMIC's business meant a total negative economic impact

[46] A VEU is a foreign entity that BIS has previously approved to receive specified U.S. technologies without the need for individual export licenses. *See* 15 C.F.R. § 748.15. The regulations governing VEUs state that items exported to VEUs located in the China may only be used for civilian purposes. *See* 15 C.F.R. § 748.15(d)(1). In addition, VEUs must submit to U.S. government inspection.

[47] Ex. 3 (PCL) at 6.

[48] *Id.*

[49] *Id.* at 9.

of more than $1 billion per year for AMAT."[50] AMAT also recognized that "a shift to a substitute supplier would not be merely temporary, it would result in the permanent loss of AMAT jobs from the loss of sales,"[51] [redacted] "[52]

IV. BACKGROUND ON THE "IS-INFORMED" LETTER AND SMIC'S ENTITY LIST DESIGNATION

A. The U.S. Government Has Long Recognized That China's Military-Civil Fusion Strategy Poses a Threat to U.S. National Security

80. The U.S. Government has long expressed concern that the close relationship among Chinese technology companies, the PRC, and the Chinese military pose a threat to U.S. national security.

81. In 2011, DOD's Annual Report to Congress concerning China's military stated that "China's defense industry has benefited from integration with a rapidly expanding civilian economy and science and technology sector, particularly elements that have access to foreign technology."[53] The report further noted that "[i]nformation technology companies in particular . . . maintain close ties to the

[50] *Id.* at 10.

[51] *Id.*

[52] Ex. 6 [redacted]

[53] Office of the Sec'y of Def., *Annual Rep. to Cong.: Mil. and Sec. Devs. Involving the People's Republic of China*, 42 (2011), https://china.usc.edu/sites/default/files/article/attachments/2011_CMPR_Final.pdf.

PLA," the primary armed forces of the PLC.[54] Consistent with those concerns, the report explained that "[d]eveloping innovative dual-use technology and an industrial base that serves both military and civilian needs is a high priority for China's leadership."[55]

82. In 2020, DOD told Congress that "[t]he PRC pursues its Military-Civil Fusion (MCF) Strategy to fuse . . . China's defense industrial base and its civilian technology and industrial base" and that "in practice, MCF means there is not a clear line between the PRC's civilian and military economies, raising due diligence costs for U.S. and global entities that do not desire to contribute to the PRC's military modernization."[56] The report further explained that "China's MCF strategy includes objectives to develop and acquire advanced dual-use technology for military purposes" and to "us[e] cutting-edge civilian technology for military applications."[57]

[54] *Id.*

[55] *Id.*

[56] Office of the Sec'y of Def., *Annual Rep. to Cong.: Mil and Sec. Devs. Involving the People's Republic of China*, 18-19 (2020), https://media.defense.gov/2020/Sep/01/2002488689/-1/-1/1/2020-DOD-CHINA-MILITARY-POWER-REPORT-FINAL.PDF.

[57] *Id.* at 18-19.

83. The U.S.-China Economic and Security Review Commission[58] likewise has warned that "[t]he Chinese government's military–civil fusion policy aims to spur innovation and economic growth through an array of policies . . . while leveraging the fruits of civilian innovation for China's defense sector."[59]

B. In August 2020, Reports Emerged that SMIC Was Manufacturing Semiconductor Chips for the Chinese Military

84. On August 20, 2020, a U.S. defense contractor, SOS International, provided senior U.S. government officials with a report titled "BLUE HERON: Semiconductor Manufacturing International Corporation."[60]

85. The SOS Report revealed evidence that SMIC manufactured chips for the PRC's People's Liberation Army.[61] According to the report, PLA researchers

---

[58] The U.S.-China Economic and Security Review Commission is a legislative branch commission that Congress created in 2000 "to monitor, investigate, and report to Congress on the national security implications of the bilateral trade and economic relationship between the United States and the People's Republic of China [PRC]." 22 U.S.C. § 7002(b)(2).

[59] *See* U.S.-China Economic & Security Review Comm'n, 2018 Annual Report, Chap. 3 § 2 – Emerging Technologies and Military-Civil Fusion: Artificial Intelligence, New Materials, and New Energy ("U.S. China Comm'n 2018 Rpt."), https://www.uscc.gov/sites/default/files/2019-11/Chapter%203%20Section%202%20-%20Emerging%20Technologies%20and%20Military-Civil%20Fusion%20-%20Artificial%20Intelligence,%20New%20Materials,%20and%20New%20Energy.pdf.

[60] James Mulvenon, the author of the SOS Report, has been retained by the U.S. Department of Justice as an expert on matters related to Chinese industrial espionage on three separate occasions. Mr. Mulvenon submitted expert reports in *United States v. Xu*, No. 18-CR-43 (S.D. Ohio); *United States v. Zhang*, No. 15-CR-00106 (N.D. Cal.); and *United States v. Shi*, No. 17-CR-00110 (D.D.C.).

[61] SOS Int'l, *BLUE HERON: Semiconductor Mfg. Int'l Corp.*, at 3 (Aug. 2020). blue_heron_smic_footnoted.pdfblue_heron_smic_footnoted.pdf

operated universities designing chips specifically configured to be built at SMIC foundries.[62] Because of the nature of the manufacturing process, if someone designs a chip for SMIC foundries, no other manufacturer can use that design and manufacture chips.[63] Therefore, PLA researchers would only design chips for SMIC foundries if SMIC was actually willing to manufacture those chips.[64]

86. The SOS Report also stated that military universities under the control of the PRC Ministry of Industry and Information Technology use SMIC chips in their research.[65]

87. MIIT oversees a substantial portion of the PRC's defense-related research, is responsible for implementing technology and laws involved in domestic mass surveillance, and oversees China's defense industry through the State Administration for Science, Technology and Industry for National Defense.

88. According to a filing by the U.S. Government in *Xiaomi Corporation v. U.S. Department of Defense*, the MIIT helps manage the Chinese Communist Party's MCF strategy.[66] According to the State Department, the goal of MCF "is to

[62] *Id.* at 6.

[63] *Id.* at 6-7.

[64] *Id.*

[65] *Id.* at 10.

[66] Ex. A to Decl. of Andrew J. Pahutski at 1, *Xiaomi Corp. v. U.S. Dep't of Def.*, No. 21-cv-00280-RC (D.D.C. Feb. 26, 2021), ECF No. 16-1.

enable the PRC to develop the most technologically advanced military in the world."[67] Therefore, "a key part of MCF is the elimination of barriers between China's civilian research and commercial sectors, and its military and defense industrial sectors." The Communist Party implements this strategy in part "by acquiring and diverting the world's cutting-edge technologies – including through theft – in order to achieve military dominance."[68]

89. The SOS Report also revealed close ties between the Chinese Communist Party and SMIC, including personal connections between SMIC senior executives and communist party members.[69]

90. On September 6, 2020, *The Wall Street Journal* reported that "U.S. agencies are in discussions to determine whether [SMIC] should be added to the Commerce Department's 'entity list,' a step that would require companies to go through a difficult layer of review before exporting any U.S. technology to SMIC, said a spokeswoman for the Defense Department, which is taking part in the

[67] Ex. B to Decl. Of Andrew J. Pahutski at 1, *Xiaomi Corp. v. U.S. Dep't of Def.*, No. 21-cv-00280-RC (D.D.C. Feb. 26, 2021), ECF No. 16-1.

[68] *Id.*

[69] SOS Int'l, *BLUE HERON: Semiconductor Mfg. Int'l Corp.*, at 25-27 (Aug. 2020). blue_heron_smic_footnoted.pdfblue_heron_smic_footnoted.pdf.

effort."[70] The SOS Report, which "circulated widely among [U.S.] officials involved in the review," found that "SMIC aids China's defense establishment."[71]

C. In September 2020, BIS Sent the "Is-Informed" Letter to AMAT Notifying the Company that SMIC Presented an Unacceptable Risk of Diversion to the Chinese Military

91. On September 25, 2020, pursuant to Section 744.21(b) of the EAR,[72] BIS sent an "is-informed" letter to AMAT and other U.S. companies involved in the computer chip industry.[73] The "is-informed" letter "notif[ied] AMAT that a license was required to export, reexport, or transfer in-country certain items subject to the EAR—***including items classified under ECCN 3B991 [i.e., ion implanters]—to SMIC because of an unacceptable risk of diversion to a military end use in the People's Republic of China***."[74]

92. The next day, *The New York Times* reported on BIS's "is-informed" letter, writing that "[i]n a letter on Friday, the Department of Commerce told American companies in the chip industry that they must first acquire a license to sell technology to SMIC and its subsidiaries. The department said it was taking the

---

[70] Dan Strumpf, *U.S. Weighs Export Controls on China's Top Chip Maker*, Wall St. J. (Sept. 6, 2020), https://www.wsj.com/politics/national-security/u-s-weighs-export-controls-on-chinas-top-chip-maker-11599324489.

[71] *Id.*

[72] 15 C.F.R. § 744.21(b).

[73] Ex. 3 (PCL) at 8.

[74] *Id.* (emphasis added).

action after a review in which it determined that the Chinese company 'may pose an unacceptable risk of diversion to a military end use in the [PRC].'"[75] The article further noted that ***"[t]he Pentagon . . . has expressed concerns that SMIC, whose major shareholders include several Chinese state entities, has ties with the Chinese military***."[76] In addition, a BIS spokesperson stated that "[BIS] was 'constantly monitoring and assessing any potential threats to U.S. national security and foreign policy interests' and would 'take appropriate action as warranted.'"[77] BIS's action appeared to have been influenced by "[a] research report by the U.S. defense contractor SOS International that has been widely circulated within the Trump administration says that researchers at universities associated with the Chinese military appear to have made extensive use of SMIC's processes and technologies in their research and that other SMIC customers probably have ties to the Chinese defense industry."[78]

93. Also on September 26, 2020, the *Financial Times* published an article reporting that "[o]n Friday, the US [DOC] told companies that exports to [SMIC] posed an 'unacceptable risk' of being diverted to 'military end use', according to a

---

[75] Ana Swanson & Raymond Zhong, *U.S. Places Restrictions on China's Leading Chip Maker*, N.Y. TIMES (Sept. 26, 20220), https://www.nytimes.com/2020/09/26/technology/trump-china-smic-blacklist.html.

[76] *Id.* (emphasis added).

[77] *Id.*

[78] *Id.*

copy of the letter seen by the *Financial Times*. The move threatens to cut off China's biggest chipmaker from crucial US software and chipmaking equipment. Companies now require licenses to export such products to SMIC. . . . ***According to US government sources, the proposal to blacklist SMIC had been made by the Pentagon because it was worried the company was enabling the technological advancement of China's military***."[79]

94. That same day, *The Washington Post* published an article stating, "[t]he Commerce Department on Friday notified U.S. companies that they will now need a license to export certain technology to [SMIC], according to a copy of the agency's letter reviewed by *The Washington Post*."[80] The article quoted BIS's letter: "The Commerce Department 'has determined that ***exports to SMIC or its subsidiaries, including those listed above, may pose an unacceptable risk of diversion to a military end use in the [PRC] pending the U.S. government's review of SMIC and its subsidiaries***[.]'"[81]

---

[79] Yuan Yang, Kathrin Hille & Qianer Liu, *China's biggest chipmaker SMIC hit by US sanctions*, FIN. TIMES (Sept. 26, 2020), https://www.ft.com/content/7325dcea-e327-4054-9b24-7a12a6a2cac6 (emphasis added).

[80] Jeanne Whalen, *U.S. restricts tech exports to China's biggest semiconductor manufacturer in escalation of trade tensions*, WASH. POST (Sept. 26, 2020), https://www.washingtonpost.com/technology/2020/09/26/us-restricts-exports-chinas-smic/ (emphasis added).

[81] *Id.* (emphasis added).

95. *Reuters* also reported on September 26, 2020 that "[t]he United States has imposed restrictions on exports to China's biggest chip maker SMIC after concluding there is an 'unacceptable risk' equipment supplied to it could be used for military purposes. Suppliers of certain equipment to [SMIC] will now have to apply for individual export licenses, according to a letter from [DOC] dated Friday and seen by Reuters."[82] The article further stated that "SMIC's new designation is not as severe as being blacklisted, which makes it difficult to get any export license approved," and noted that "[t]he Pentagon earlier this month, . . . said it was working with other agencies to determine whether to blacklist SMIC for its purported links to the Chinese military."[83] *Reuters* also reported that, as a result of BIS's action, "U.S. companies including . . . Applied Materials[,] which supply chipmaking equipment, may now need to get licenses to ship certain goods to SMIC."[84]

96. On September 28, 2020, *The Wall Street Journal* reported that the U.S. government had imposed export controls on SMIC under the headline "U.S. Sets Export Controls on China's Top Chip Maker: ***Commerce Department letter says***

---

[82] *U.S. tightens exports to China's chipmaker SMIC, citing risk of military use*, REUTERS (Sept. 26, 2020), https://www.reuters.com/world/china/us-tightens-exports-chinas-chipmaker-smic-citing-risk-military-use-2020-09-26/.

[83] *Id.*

[84] *Id.*

exports to SMIC risk being used for Chinese military activities."[85] Although AMAT "didn't respond to a request for comment," the article reported that BIS had informed "told U.S. computer-chip companies that they must obtain licenses before exporting certain technology" to SMIC because those exports "risk being used for Chinese military activities":[86]

> [DOC] has told U.S. computer-chip companies that they must obtain licenses before exporting certain technology to China's largest manufacturer of semiconductors, a blow to China's efforts to compete in advanced technology.
>
> The department laid out the requirement in a letter to the computer-chip industry Friday. The letter, a copy of which was reviewed by The Wall Street Journal, says exports to [SMIC] or its subsidiaries risk being used for Chinese military activities.
>
> The U.S. action threatens to cut off SMIC from equipment used to manufacture chips. . . .
>
> * * *
>
> ***[DOC's] latest restriction is likely to fall heaviest on U.S. makers of equipment used in the manufacture and testing of semiconductors***. American companies account for 45% of the global market for chip-manufacturing equipment, according to industry group SEMI. ***They include companies such as . . . [AMAT]*** A spokeswoman for . . . ***[AMAT] didn't respond to a request for comment***.
>
> * * *

[85] Dan Strumpf, *U.S. Sets Export Controls on China's Top Chip Maker*, WALL ST. J. (Sept. 28, 2020), https://www.wsj.com/politics/national-security/u-s-sets-export-controls-on-chinas-top-chip-maker-11601118353 (emphasis added).

[86] *Id.*

> [DOC] in its letter said exports to SMIC "may pose an unacceptable risk of diversion to a military end use in the [PRC]." It said suppliers "must submit an application for an individually-validated license prior to exporting, reexporting or transferring in-country" certain sensitive technologies.[87]

97. On September 27, 2020, analysts at Evercore ISI published a report titled "SMIC Considered Military End User by DOC – Our Thoughts," which stated that "***we heard from the US DOC that SMIC is now considered a military end user and now requires a license to ship to from the US – effective immediately***."[88] The report further stated that "each equipment/software supplier to SMIC will now require a license to offer product/services to SMIC," explained that the measure was intended "to halt shipments [to SMIC]," and noted that "[a]s for [a] potential silver lining – SMIC was not placed on the entity list."[89]

98. On September 28, 2020, *Bloomberg News* reported that, as a result of BIS's is-informed letter, "U.S. firms [would be] required to seek [a] license to export products to SMIC, and SMIC's stock price had declined.[90]

---

[87] *Id.* (emphasis added).

[88] C.J. Muse, Matthew Prisco, Kevin Feeney, & Sean Grant, *SMIC Considered Military End User by DOC – Our Thoughts*, EVERCORE ISI (Sept. 27, 2020) (emphasis added).

[89] *Id.*

[90] *China's Largest Chipmaker Sinks After U.S. Restrictions*, BLOOMBERG NEWS (Sept. 28, 2020), https://www.bloomberg.com/news/articles/2020-09-28/china-s-largest-chipmaker-sinks-after-u-s-imposes-restrictions.

D. On December 3, 2020, After the Government Declared a National Emergency, DOD Designated SMIC as a "Communist Chinese Military Company" and Prohibited U.S. Investments in SMIC

99. On November 12, 2020, President Trump issued Executive Order No. 13959 ("E.O. 13959"),[91] declaring a national emergency to address the threat posed by companies linked to the Chinese military and prohibiting U.S. persons from investing in any "Communist Chinese military company."[92]

100. On December 3, 2020, DOD designated SMIC as a CCMC.[93] As a result of that designation, SMIC became subject to the restrictions imposed by E.O. 13959, including limitations on U.S. investments in CCMCs.

E. On December 18, 2020, BIS Added SMIC to the Entity List

101. On December 18, 2020, BIS added SMIC to the Entity List "as a result of China's military-civil fusion (MCF) doctrine and evidence of activities between

---

[92] E.O. 13959, Addressing the Threat From Securities Investments That Finance Communist Chinese Military Companies, 85 Fed. Reg. 73185.

[93] *See* Dep't of Def., *Qualifying Entities Prepared in Response to Section 1237 of the National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261)* (Dec. 3, 2020), https://www.thompsonhinesmartrade.com/2020/12/additional-chinese-military-companies-listed-under-section-1237-and-subject-to-investment-ban/ https://media.defense.gov/2020/Dec/03/2002545864/-1/-1/1/TRANCHE-4-QUALIFYING-ENTITIES.PDF.

SMIC and entities of concern in the Chinese military industrial complex."[94] "The Entity List designation limits SMIC's ability to acquire certain U.S. technology by requiring exporters, reexporters, and in-country transferors of such technology to apply for a license to sell to the company."[95] By adding SMIC to the Entity List, BIS imposed a "[l]icensure [r]equirement" for "[a]ll items subject to the EAR."[96] Items subject to the EAR include, among other things, (1) items classified under an ECCN, such as the ion implanters at issue here; (2) "[a]ll items in the United States;" and (3) "[a]ll U.S. origin items wherever located[.]"[97] The SMIC Entity List designation was the most explicit action to date specifically identifying Chinese access to advanced-node semiconductors as a national security threat. In identifying Chinese access to advanced-node semiconductors as a national security threat, BIS differentiated between advanced-node chips and older designs, commonly known as "mature nodes" or "legacy chips."

---

[94] *See* Addition of Entities to the Entity List, Revision of Entry on the Entity List, and Removal of Entities From the Entity List, 85 Fed. Reg. 83416-01 (Dec. 22, 2020) ("This rule is effective December 18, 2020."). *See also* Commerce Adds China's SMIC to the Entity List, Restricting Access to Key Enabling U.S. Technology (Dec. 18, 2020), https://2017-2021.commerce.gov/news/press-releases/2020/12/commerce-adds-chinas-smic-entity-list-restricting-access-key-enabling.html.

[95] *Id.*

[96] *Id.*

[97] 15 C.F.R. § 734.3(a)(1)-(2).

102. Not surprisingly, SMIC's designation on the Entity List was immediately and widely reported by the news media. For example, on December 18, 2020, *The Wall Street Journal* published an article titled "U.S. Blacklists China's Top Chip Maker, Escalating Tech Fight."[98] The article reported that "[t]he Trump administration is adding China's largest manufacturer of computing chips to an export blacklist, restricting the company's access to high-end technology over its alleged links to the Chinese military. [SMIC] will be added alongside more than 60 other Chinese institutions to the entity list, the Commerce Department said. The designation restricts companies from exporting U.S.-origin technology to the listed firms without a license . . . ."[99] The article also noted that "[t]he effects of SMIC's blacklisting will likely be felt by the handful of U.S. companies that dominate the market for chip manufacturing and testing equipment," including AMAT.[100]

103. Also on December 18, 2020, *Reuters* published an article titled "U.S adding China chipmaker SMIC to economic blacklist, Ross confirms,"[101] and *CNBC*

---

[98] Dan Strumpf, *U.S. Blacklists China's Top Chip Maker, Escalating Tech Fight*, WALL ST. J. (Dec. 18, 2020), https://www.wsj.com/politics/national-security/u-s-blacklists-chinas-top-chip-maker-escalating-tech-fight-11608274932.

[99] *Id.*

[100] *Id.*

[101] *U.S adding China chipmaker SMIC to economic blacklist, Ross confirms*, REUTERS (Dec. 18, 2020), https://www.reuters.com/world/china/us-adding-china-chipmaker-smic-economic-blacklist-ross-confirms-2020-12-18/.

published an article titled "U.S. blacklists dozens of Chinese firms including SMIC, DJI."[102]

V. AS PART OF AMAT'S $252.5 MILLION SETTLEMENT WITH BIS, THE COMPANY ADMITTED "SENIOR EXECUTIVE LEADERHIP" WAS "COMMITTED" TO SELLING ECCN 3B991 ION IMPLANTERS TO SMIC

104. In connection with the Company's settlement with BIS, AMAT has admitted that "[b]oth companies [i.e., AMAT and SMIC] were 'committed' at the ***senior executive leadership level*** to the dual-build plan," and that "AMAT leadership placed a 'high priority' internally on the implementation of the dual-build process in South Korea."[103]

105. Also, as part of the Company's dual-build policy, it "implemented automated system blocks in its export compliance system on shipments to SMIC, and would manually override the system block in its export compliance system . . . . That shipment would then be released, and the SMIC order would ultimately be fulfilled."[104]

---

[102] *U.S. blacklists dozens of Chinese firms including SMIC, DJI*, CNBC (Dec. 18, 2020), https://www.cnbc.com/2020/12/18/us-adds-chinese-drone-company-dji-to-economic-blacklist-.html.

[103] *Id.* (emphasis added).

[104] *Id*. at 10.

A. AMAT's $252.5 Million Settlement Reflects the Company's "Egregious" Violations and Failure to Self-Report

106. Far from "simple negligence or carelessness" or a "good-faith misinterpretation" of the EAR, circumstances that BIS guidance states "frequently may be addressed with a no action determination letter or . . . a warning letter," Defendants' decision to continue selling to SMIC appears to have been the product of willful misconduct, or at the very least, an egregious and reckless disregard of U.S. export-control restrictions. Indeed, BIS's "Guidance on Charging and Penalty Determinations" confirms that AMAT's violations were "an egregious case" involving "aggravating factors" and were not revealed through AMAT's "voluntary self-disclosure."[105]

107. Analysts covering the Company at this time also indicated that AMAT's conduct, if true, would amount to "a blatant violation of the explicit rules" on export controls. For example, on November 17, 2023, Needham & Co. analyst Charles Shi, Ph.D. published a report stating that "the article [concerning the BIS's investigation] says AMAT shipped tools first to its subsidiary in South Korea, which then forwarded those tools to SMIC in China. ***We know that this squarely fits in Commerce's definition of 'reexport,' which is explicitly banned under the 2020 export control rules targeting Huawei and SMIC. We would be surprised if AMAT***

[105] 15 C.F.R. Pt. 766, Supp. 1 § IV.B(2)(a)(iv).

actually resorted to reexport in order to deliver restricted tools to SMIC, because this would not be seen by regulators as merely exploiting loopholes but a blatant violation of the explicit rules."[106]

VI. BOARD-LEVEL DOCUMENTS SHOW THE BOARD KNEW OR SHOULD HAVE KNOWN THAT AMAT CONTINUED TO SELL UNLICENSED ION IMPLANTERS TO SMIC

A. The Board Knew That [redacted]

108. On September 25, 2020, BIS sent AMAT's senior executive leadership the "is-informed" letter notifying the Company that it must obtain a license from BIS to export, reexport, or transfer products to SMIC due to an unacceptable risk those products would be provided to military-end users in China.[107]

109. The next day, September 26, 2020, *The New York Times*, *The Wall Street Journal*, *Financial Times*, *Reuters*, and other news media reported that AMAT had received the "is-informed" letter notifying the Company that it must first acquire a license to sell technology classified as ECCN 3B991 to SMIC due to the

[106] Charles Shi, "*No Cliff" in 2024; Reiterate Buy*, at 3-4, NEEDHAM & CO. (Nov. 17, 2023).

[107] Ex. 3 (PCL) at 8.

"unacceptable risk of diversion to a military end use in [China]."[108] *See supra* Section IV.C.

110. [redacted] That conclusion is supported by: [redacted]

111. [redacted]

[108] Ana Swanson & Raymond Zhong, *U.S. Places Restrictions on China's Leading Chip Maker*, N.Y. TIMES (Sept. 26, 20220), https://www.nytimes.com/2020/09/26/technology/trump-china-smic-blacklist.html. *See also supra* ¶ 92.

[109] Ex. 7 ([redacted]).

[110] *Id.*

[111] Ex. 4 ([redacted] (emphasis and highlighting in original).

[redacted]



112. [redacted]

113. In light of these and other internal documents and widely disseminated press reports concerning the "is-informed" letter and [redacted] Defendants cannot seriously dispute that they were aware AMAT was prohibited from selling ECCN 3B991 technology to SMIC without a license.

[112] *Id.* at 980; *see also* Ex. 6 ([redacted]

[113] Ex. 4 ([redacted]

B. The Board Knew that [redacted]

114. [redacted]

[redacted]

[redacted]

[

115. Similarly, the Company has admitted that, by late 2020, AMAT was aware that, if BIS did not approve licenses authorizing sales to SMIC in a timely manner, or at all, it would lose SMIC's business.[115]

116. On December 18, 2020, [redacted] SMIC was added to the Entity List.

C. The Board Was Aware That [redacted]

117. After the Board learned of the "is-informed" letter, [redacted] For example, [redacted]

[redacted]

[115] Ex. 3 (PCL) at 9.

[116] Ex. 8 ([redacted]

118. [redacted] Moreover, when considered alongside the facts recited in the BIS Charging Order, BIS Settlement Agreement, and PCL, including that AMAT's "senior executive leadership" was committed to and placed a "high priority" on implementation of the "dual-build plan," [redacted]

119. Additionally, [redacted]

[117] *Id.*; *see also* Ex. 9 ([redacted] Ex. 10 (referencing [redacted] Ex. 11 [redacted]

[redacted] The update emphasized [redacted] and noted that AMAT [redacted]

120. [redacted]

[redacted]

[redacted]

[redacted]

[118] Ex. 9 ([redacted]

[119] *Id.* (emphasis added).

[120] Ex. 8 ([redacted]

[121] *Id.*

121. In other words, despite the September 2020 "is-informed" letter notifying AMAT that a license was required to ship ECCN 3B991 technology to SMIC,[122] [redacted] The PCL further confirms that AMAT's approach was, in fact, [redacted] under the "Schedule of Violations" AMAT admitted to violating the EAR as early as November 8, 2020, [redacted][124]

D. The Board Knew That [redacted]

122. [redacted] The presentation explained [redacted]

[122] [redacted] Ex. 4 [redacted]

[123] Ex. 8 [redacted]

[124] Ex. 3 (PCL) at 18.

[125] Ex. 4 ([redacted].

[126] *Id.*

123. The presentation told the Board that [redacted]

[redacted]

124. [redacted]

[redacted]

[127] *Id.*

[redacted]

[redacted][128]

[redacted]

125. [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[128] Ex. 4 [redacted]

[129] *Id.*

126. It is axiomatic that [redacted] If AMAT had stopped (or intended to stop) selling unlicensed equipment to SMIC, [redacted]

127. Indeed, [redacted] was to address the U.S. government's concerns, stated in BIS's "is-informed" letter, that "there is an unacceptable risk of use in or diversion to a 'military end use' or 'military end user' in China[.]"[130] [redacted]

[130] 15 C.F.R. § 744.21(b); *see also* Ex. 3 (PCL) at 8 (BIS's "is-informed" letter "notif[ied] AMAT that a license was required to export, reexport, or transfer in-country certain items subject to the EAR—including items classified under ECCN 3B991—to SMIC because of an unacceptable risk of diversion to a military end use in [China].").

[redacted]

E. AMAT Sold ~$118 Million of Unlicensed Ion Implanters to SMIC Through the "Dual-Build" Process

128. On March 23, 2021—[redacted] (discussed above)—AMAT began selling unlicensed ion implanters to SMIC under the guise of the Company's "dual-build" process—a "high priority" for AMAT's "senior executive leadership" that illegally routed ion implanters classified as ECCN 3B991 to SMIC through South Korea. AMAT's dual-build process was unique to *only one product* (AMAT's ion implanters) and *only one customer* (SMIC). For all other customers, AMAT shipped ion implanters directly from AMAT's facility in Massachusetts.

[131] Ex. 4 ([redacted]

[132] *See* 15 C.F.R. § 744.21(b) (prohibiting unlicensed sales of "any item" in violation of a BIS is-informed letter issued due to "an unacceptable risk" of MEU diversion in China); *see also* 85 Fed. Reg. 83416-01 (adding SMIC to Entity List and making any exports to SMIC subject to a "[l]icense [r]equirement" for "[a]ll items subject to the EAR").

[133] *Id.*

129. In the spring 2020, however, AMAT had begun preparing for the possibility that SMIC and certain other customers would eventually become subject to military end-user restrictions and preventing AMAT exports, reexports, and transfers.[134] Indeed, AMAT's "Global Trade Group acknowledged that [AMAT's ion implanters contained] U.S.-origin MEU-controlled parts [that] 'would not be able to ship . . . from ***any*** other global location[.]'"[135] Yet, AMAT designed a "dual-build" process whereby the Company's ion implanting equipment would be partly manufactured in Gloucester, Massachusetts, and completed in AMK, AMAT's subsidiary in South Korea, where the ordered product would be "further assembled and/or tested" and shipped (i.e., reexported) to SMIC.[136]

130. Following receipt of the "is-informed" letter, [redacted] AMAT's Global Trade Group advised the Company's senior executive leadership in an email with the subject line, "SMIC Now a Restricted Military End-User": "[t]he [DOC] informed us today that it now considers SMIC to be a Military End-User under the new Military End-Use rule. Consequently, Applied cannot export, reexport, or conduct in-country transfers of certain U.S. Origin semiconductor [items.]"[137]

---

[134] Ex. 3 (PCL) at 7.

[135] *Id.* at 10 (emphasis added).

[136] *Id.* at 7.

[137] *Id.* at 8.

131. The following day, on September 26, 2020, a managing director for the AMAT division operating its Gloucester, Massachusetts plant, acknowledged receipt of the "is-informed" letter and instructed employees "***suffice to say, we need to go into hyper drive on [South] Korea***"—a clear reference to the dual-build process.[138]

132. Indeed, as the PCL explained, "[the Company] faced tremendous pressure to continue to sell ion implanters to SMIC."[139] Losing the business would amount to losses of $112-150 million and losing all SMIC business would lead to a total negative economic impact of more than $1 billion per year.[140] AMAT was also cognizant that foreign competitors could quickly produce most of the items AMAT sold to SMIC and if SMIC switched to a substitute supplier, AMAT would experience a sizable job losses.[141]

133. On December 18, 2020, BIS placed SMIC on its Entity List, a designation unequivocally restricting the export, reexport, or in-country transfer of items (commodities, software, technology) to listed parties in the interest of U.S.

[138] *Id.* at 8.

[139] *Id.* at 10.

[140] *Id.* at 10.

[141] *Id.* at 9-10.

national security.[142] This created a licensure requirement for "[a]ll items subject to the EAR," including any product or technology classified with an ECCN. BIS placed SMIC on the Entity List as a result of China's military civil-fusion doctrine and evidence of activities between SMIC and entities of concern in the Chinese military industrial complex.[143]

134. Significantly, the "dual build plan" was *only* intended to serve SMIC: "[AMAT] continued to ship ion implanting equipment to all other customers from the Gloucester facility and expanded production capabilities of the Gloucester facility during this time period."[144]

135. For its part, AMAT's attempted utilization of a "substantial transformation" test—a customs law doctrine used to determine country of origin for tariff purposes, not mentioned in the EAR—to justify its actions was wholly

[142] *See* 15 C.F.R. Pt. 744, Supp. 4 (Entity List); *see also* 85 Fed. Reg. 83420 (Dec. 22, 2020).

[143] Ex. 5 (BIS Charging Order); *see also* Addition of Entities to the Entity List, Revision of Entry on the Entity List, and Removal of Entities from the Entity List, 85 Fed. Reg. 83416 (Dec. 22, 2020).

[144] Ex. 3 (PCL) at 8 n.10.

unsupported and rejected by BIS as unfounded.[145] As AMAT has now admitted, "despite AMAT's Global Trade Group's incorrect assessment, 'substantial transformation' does not appear anywhere in the EAR and is not the correct test for determining whether an item is subject to the EAR because it is an item of U.S. origin."[146]

F. AMAT's CFO Told Investors AMAT Had "Derisked" AMAT's Financial Guidance by "Assuming that the Licenses Do Not Come Through"

136. On December 10, 2020, AMAT's then-CFO, Daniel Durn, attended the Barclays Global Technology, Media and Telecommunications Conference. At the conference, an analyst asked, "I do want to ask you by region, obviously, China has been very strong . . . You've removed most of SMIC out of your numbers. So just perspective on the strength of China, even without SMIC in your numbers and the sustainability of that region as you look to the next year." Mr. Durn answered, "***And so as you pointed out, 2 months into our most recent quarter, there was a licensing***

[145] *See* Ex. 12 (BIS Settlement Agreement) at 10. "Substantial transformation" is a concept used in customs law to determine a product's "country of origin" for purposes of "marking of articles" (e.g., "Made in China") pursuant to 19 U.S.C.A. § 1304; determining customs duties by the U.S. Customs and Border Protection pursuant to 19 U.S.C.A. § 1499; and determining a product's country of origin when making government procurement decisions pursuant to the "Buy American Act," 41 U.S.C. §§ 8301-8305. Importantly, however, "'substantial transformation' does not appear anywhere in the EAR and is not the correct test for determining whether an item is subject to the EAR because it is an item of U.S. origin."

[146] Ex. 3 (PCL) at 10.

requirement imposed on SMIC. Our Q4 revenues, Q1 guide would have been greater absent those licensing requirements. Where, for the purpose of the guide, we're assuming that the licenses do not come through. So you can see how we have derisked our view into Q1. If we're surprised, licenses come through, then you'll see upside to the numbers that we've put out there."

137. On February 11, 2021, during AMAT's Q1 2021 earnings call, another analyst asked Mr. Durn, "what's your assumption around domestic China? And does your WFE outlook for this year include the assumption that we don't see any license from customers that are required by the government right now?" Mr. Durn responded, "from a licensing standpoint, just given where we sit in the process, ***we think it's prudent to forecast and guide revenue and market sizing, assuming the licenses do not come through***."[147]

G. After BIS Banned Unlicensed Sales to SMIC in December 2020, AMAT's Net Sales in China in 2021 *Increased* to Historic Levels

138. As noted above, AMAT has admitted that losing SMIC's ion implanter business "meant losing $112-150 million in annual revenue, and losing all of

[147] On October 1, 2021, AMAT announced that Mr. Durn would resign as CFO on October 15, 2021 (i.e., with two-weeks' notice) and that AMAT's former CFO, Bob Halliday, would become interim CFO. Mr. Durn's abrupt resignation (without a permanent successor) occurred amidst AMAT's illegal sales to SMIC.

SMIC's business meant a total negative economic impact of more than $1 billion per year for AMAT."[148]

139. [redacted] Indeed, "[t]he potential impact of losing SMIC's business was [so] significant" that "AMAT considered whether its ***sales to SMIC might 'bleed out'*** if the BIS licenses were not granted in time to prevent SMIC from changing its supply lines to AMAT's foreign competitors,"[149] [redacted][150]

[redacted]

[148] Ex. 3 (PCL) at 10.

[149] *Id.* at 9.

[150] Ex. 6 ([redacted]

140. The regulatory environment that AMAT feared would lead to a "'bleed out' scenario" quickly became reality: SMIC was put on the Entity List on December 18, 2020 and BIS never granted AMAT a license to sell ECCN 3B991 to SMIC.[151] And as noted above, AMAT's CFO told investors in December 2020 and February 2021 that the Company was "assuming that the [SMIC] licenses do not come through" and would "[be] surprised [if those] licenses come through." *See supra* ¶¶ 136-37. Thus, the Board had every reason to expect that AMAT's "sales to SMIC [would] 'bleed out.'"

141. While AMAT predicted a "'bleed out' scenario," AMAT's own published financial results show exactly the opposite: rather than lose business in China, the percentage of AMAT's net sales in China ***increased*** during FY 2021 and reached ***record levels,*** a result that was consistent with the "upside to the numbers" that former CFO Durn said could occur, if "licenses come through." *See supra* ¶¶ 136-37; *see infra* ¶ 146.

142. Durn also acknowledged during a "Special Call" in April 2021 with analysts "with respect to the current environment, there's places we need licenses. And as you would imagine, being fully compliant with the laws in all these geographies we operate in, we'll – ***we intend to get those licenses***."

[151] Ex. 3 (PCL) at 5 ("[I]tems classified under ECCN 3B991 required a BIS license pursuant to Section 744.21 of the EAR, which AMAT did not obtain.").

143. [redacted] What is more, when AMAT finally stopped selling to SMIC in July 2022, AMAT's sales in China significantly ***decreased***, further indicating that AMAT never got the licenses it needed to continuing selling to SMIC.

144. The charts below show AMAT's (i) Total Net Sales (All Regions); (ii) China Net Sales (% of Total); and (iii) United States Net Sales (% of Total) for each fiscal quarter and full fiscal year during 2020, 2021, and 2022.

145. According to the PCL, AMAT's illegal sales to SMIC occurred from November 8, 2020 to July 18, 2022. As the chart below indicates, every fiscal quarter in 2021, AMAT's total net sales in China were higher than the corresponding fiscal quarter in 2020. In other words, amidst dim prospects for BIS licenses, the Company miraculously experienced ***year-over-year increases*** in sales to China.[152]

146. Moreover, AMAT's total net sales in China (and the percentage of net sales from China) reached a ***high point*** in Q3 2021 ($2.251 (36%)) (when AMAT's

[152] *Compare, e.g.*, Q1 2021 ($1.383 billion) *with* Q1 2020 ($1.272 billion).

illegal sales were ongoing) and reached a ***low point*** in Q4 2022 ($1.337 (20%)) (the first full quarter after AMAT's illegal sales had stopped).[153]

Net Sales (Billions)	**2020 Fiscal Quarters and Full Year (FY) (Date Ended)**				
	Q1 2020 (1/26/20)	**Q2 2020 (4/26/20)**	**Q3 2020 (7/26/20)**	**Q4 2020 (10/25/20)**	**FY 2020 (10/25/20)**
Total (All Regions)	$4.162	$3.957	$4.395	$4.688	$17.202
China (% of Total)	$1.272 (31%)	$1.138 (29%)	$1.470 (33%)	$1.576 (34%)	$5.456 ***(32%)***

Net Sales (Billions)	**2021 Fiscal Quarters and Full Year (FY) (Date Ended)**				
	Q1 2021 (1/31/21)	**Q2 2021 (5/2/21)**	**Q3 2021 (8/1/21)**	**Q4 2021 (10/31/21)**	**FY 2021 (10/31/21)**
Total (All Regions)	$5.162	$5.582	$6.196	$6.123	$23.063
China (% of Total)	$1.383 (27%)	$1.844 (33%)	***$2.251 (36%)***	***$2.057 (34%)***	$7.535 ***(33%)***
Net Sales (Billions)	**2022 Fiscal Quarters and Full Year (FY) (Date Ended)**				
	Q1 2022 (1/30/22)	**Q2 2022 (5/1/22)**	**Q3 2022 (7/31/22)**	**Q4 2022 (10/30/22)**	**FY 2022 (10/30/22)**
Total (All Regions)	$6.271	$6.245	$6.520	$6.749	$25.785
China (% of Total)	$1.987 (32%)	$2.133 (34%)	***$1.797 (28%)***	***$1.337 (20%)***	$7.254 ***(28%)***

147. In sum, [redacted] following the "is-informed" letter, the addition of SMIC to the Entity List, and the denial of a license to sell ECCN 3991 ion implanters to SMIC, AMAT's sales in China continued

[153] AMAT's net sales data in the charts below are taken from the Company's Forms 10-Q and 10-K from fiscal 2020, 2021, and 2022.

uninterrupted and even grew in FY 2021—a clear red flag to the Board that AMAT had likely not stopped selling to SMIC.

148. Moreover, when AMAT's net sales from China abruptly stopped during fiscal Q3 2022 (when the illegal sales ended), analysts took note. For example, during the August 18, 2022 Q4 2022 earnings call, an analyst asked: "When I look at the revenue from China, it came down to about 7 percentage points quarter-over-quarter. I think that's more than some of your peers. Can you walk us through the dynamics there?" In response, AMAT's CFO, Brice Hill, equivocated as to the causes (except to expressly deny any "change" due to "trade" regulations): "So it's just the ins and outs of having different-sized deliveries in the quarter. It happened to be a quarter overall that was a little smaller than the prior quarter. So we would point to display [i.e., computer monitor manufacturing equipment] and then just general ups and downs for the rest of the change. And just to reiterate, no change on the -- ***no change because of the trade rules like we said before***." To reiterate, this statement occurred the month after the last illegal sale.

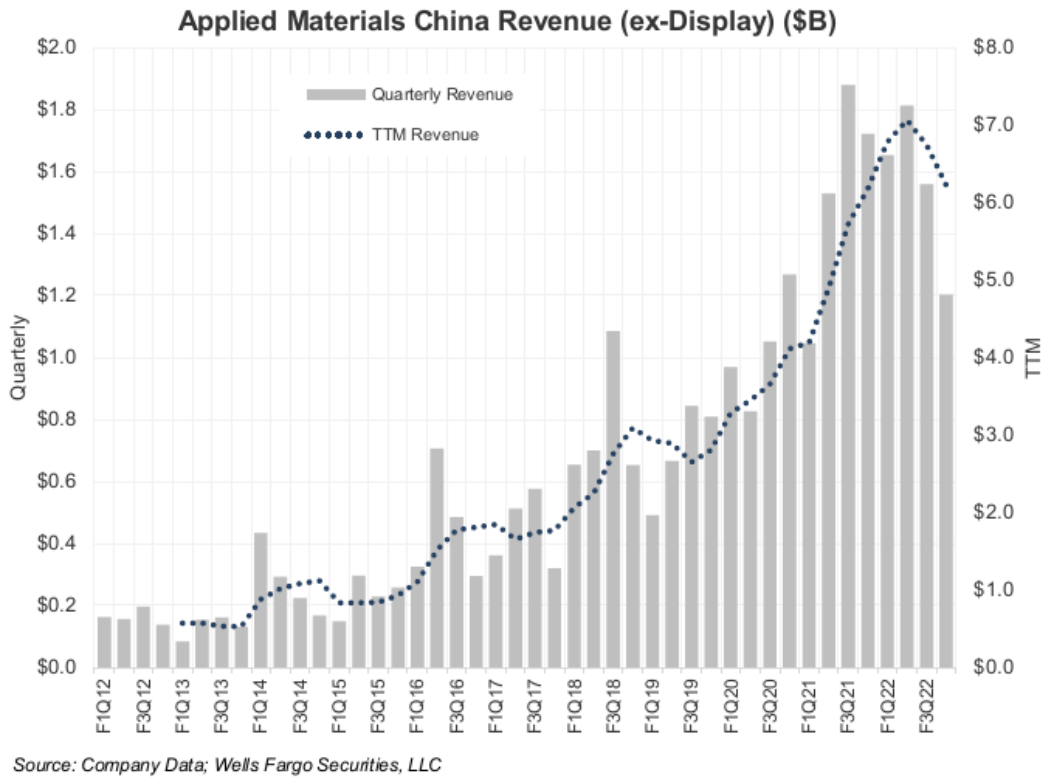
149. Likewise, the fact that AMAT's sales in China declined in Q4 2022 to only $1.337 billion (or 20% of total revenue) further underscores how AMAT's discontinuation of its illegal sales coincided with a substantial drop in sales in China, which did not escape analysts' notice. For example, on December 19, 2022, analysts at Wells Fargo Securities published a report noting that AMAT's fiscal Q4 2022

revenues from China, excluding revenues from its "Display" (i.e., computer monitor) business, were down 30% year-over-year, down 23% quarter-over-quarter, and "marked the lowest quarter since F1Q21":[154]

> **China Revenue Breakdown: Semi System + AGS Revenue -30% Y/Y & -23% Q/Q.**
>
> Consistently accounting for more than 30% of segment revenue, AMAT reported China accounted for 54% or $135 million of Display & Adjacent revenue during the October quarter (vs. 72% in F3Q22); -60% y/y and ***-43% q/q***. We would find AMAT's China revenue, ex-Display, at $1.2 billion in the October quarter, down 30% y/y (; -23% q/q; vs. -20% y/y F3Q22) and ***marked the lowest quarter since F1Q21***; see charts below.

150. The Wells Fargo report illustrated AMAT's sharp decline in revenue from China with the following graph:

[154] Joe Quatrochi, Aaron Rakers, Jake Wilhelm & Michael Tsvetanov, *AMAT: 10-K Highlights Record TSMC Rev in F4Q22, China (ex-Display) Rev. -30% Y/Y, Inventory Breakdown, & More*, WELLS FARGO SEC. (Dec. 19, 2002).



Source: Company Data; Wells Fargo Securities, LLC

VII. DEFENDANTS' BREACHES HAVE DAMAGED THE COMPANY

A. AMAT Paid $252.5 Million in Civil Penalties

151. On February 11, 2026, BIS issued a press release announcing that it had reached a settlement with AMAT requiring the Company to pay a $252.5 million civil monetary penalty. In the press release, Jeffrey Kessler, Secretary of Commerce for Industry and Security, stated that "[BIS] is strongly committed to safeguarding sensitive American technologies and deterring wrongdoers. ***When companies export their products around the world, they must follow the law or face stiff penalties***." ***AMAT's $252.5 million penalty is the second-highest penalty ever***

imposed in BIS history.[155] The value of merchandise illegally shipped was approximately $126 million, with the penalty of $252 million reflecting ***double*** such transaction value, the maximum allowed by statute.[156] As a result of its settlement with BIS, on February 12, 2026, AMAT reported that it had recorded a charge of $253 million.[157]

B. AMAT Must Perform Annual Audits in 2026 and 2027 Demonstrating Its Export Compliance to BIS

152. As a part of the Settlement Agreement with AMAT, BIS ordered AMAT to complete two internal audits of its export controls compliance program. The first audit is due to the BIS Boston Field Office on July 1, 2027, and the second is due on July 1, 2028, to the BIS Boston Field Office.[158] The BIS Charging Order explained AMAT's audits will cover compliance with U.S. export control laws (including recordkeeping requirements), with respect to all exports, reexports, or transfers (in country) of semiconductor manufacturing equipment to or within China

[155] Press Release, U.S. Dep't of Com., Bureau of Indus. and Sec., *AMAT to Pay $252 Million Penalty to BIS for Illegally Exporting Semiconductor Manufacturing Equipment* (Feb. 11, 2026), https://media.bis.gov/sites/default/files/documents/AMATtoPay252MillionPenaltytoBISforIllegallyExportingSemiconductorManufacturingEquipment.pdf.

[156] Id.

[157] Applied Materials, Inc., Current Report (Form 8-K), at 10 (Feb. 12, 2026).

[158] Ex. 5 (BIS Charging Order) at 15.

subject to the EAR. Further, the audits are to be in "substantial compliance" with the Export Compliance Program (ECP) sample created by BIS.[159]

C. AMAT Agreed to a Three-Year Suspended Denial of Its U.S. Export Privileges—Subject to Paying the $253 Million Penalty and Successfully Completing Its Annual Audits

153. In AMAT's settlement with BIS, the Company agreed to a three-year suspended "denial of its export privileges," which would be unsuspended (and take full effect) if AMAT fails to pay its $252.5 million civil penalty or fails to successfully complete its two annual audits and demonstrate export compliance to BIS.[160]

154. Analysts quickly appreciated the grave implications of AMAT's settlement with BIS. On April 18, 2026, analysts at Marktfeld commented on AMAT's "Q1 2026 . . . 10-Q filing" by noting that AMAT's "settlement agreement" with BIS required the Company "to pay a material sum to resolve an inquiry into

[159] *See* BIS Sample Audit Module (Jan. 2017), https://media.bis.gov/learn-support/export-compliance-programs/export-compliance-toolkit.

[160] Ex. 12 (BIS Settlement Agreement) at 15 ("For a period of three (3) years from the date of the Order, AMAT shall be made subject to a denial of its export privileges under the Regulations ("denial"). As authorized by Section 766.18(c) of the Regulations, such denial shall be suspended during this three-year period and shall thereafter be waived, provided that AMAT has made full and timely payment in accordance with Paragraph 2.a above and has timely completed and submitted the audits in Paragraph 2.b. If, during the three-year period of the Order, AMAT does not make full and timely payment or has not timely completed and submitted the audits, the suspension may be modified or revoked by BIS and a denial order (including a three-year denial period) activated against AMAT. If the suspension is modified or revoked, the activation order may also revoke any BIS licenses in which AMAT has an interest at the time of the activation order.").

certain China customer shipments and export controls compliance, and . . . includes a suspended denial order that would prohibit Applied from exporting certain products outside the U.S. if its terms are not met."[161] The report concluded: "This adds a new compliance-linked vulnerability: any future export controls violation could trigger the denial order and materially restrict Applied's global business."[162]

VIII. DERIVATIVE ALLEGATIONS

155. Plaintiff brings this action derivatively in the right and for the benefit of AMAT to redress injuries suffered by the Company as a direct result of the breaches of fiduciary duty and other breaches by Defendants.

156. Plaintiff has owned AMAT stock continuously during the time of the wrongful course of conduct by the Defendants alleged herein and continues to hold AMAT stock.

157. Plaintiff will adequately and fairly represent the interests of AMAT and its stockholders in enforcing and prosecuting the Company's rights.

158. Plaintiff has not made a demand on the AMAT Board to institute this action because such a demand would be futile for the reasons set forth herein and below.

---

[161] Michail Paraskevopoulos, *Applied Materials, Inc. AI Impact Review – Q1 2026*, MARKTFELD, at 3 (Apr. 18, 2026).

[162] *Id.*

IX. DEMAND IS FUTILE

A. Defendants' Fiduciary Duties Under *Caremark*

159. Due to their role as directors and officers of AMAT and because of their ability to control AMAT's business and corporate affairs, Defendants at all relevant times owed fiduciary duties to AMAT and its stockholders, including the duties of care, loyalty, candor, and good faith.

160. Under *Caremark* and its progeny, a board of directors of a Delaware corporation have specific fiduciary duties to: (a) implement an information and reporting system and controls of compliance; and (b) oversee and monitor the operations of that information and reporting system. Under the second prong of *Caremark*, directors and officers breach their fiduciary duty of loyalty if, having implemented a reporting and information system and controls, they consciously failed to monitor or oversee its operations thus disabling themselves from being informed of risks (i.e., "red flags") or problems requiring their attention.

161. The *Caremark* duty is especially heightened with respect to the oversight and monitoring of fraudulent or criminal conduct, as opposed to other, more general business risks. As the Delaware Court of Chancery has stated, "[d]irectors should, indeed must under Delaware law, ensure that reasonable information and reporting systems exist that would put them on notice of fraudulent or criminal conduct within the company. Such oversight programs allow directors

to intervene and prevent frauds or other wrongdoing that could expose the company to risk of loss as a result of such conduct."[163]

162. As noted above, it is an axiomatic tenet of Delaware corporate law that Delaware corporations may only pursue "lawful business" by "lawful acts."[164] "Delaware law does not charter law breakers. Delaware law allows corporations to pursue diverse means to make a profit, subject to a critical statutory floor, which is the requirement that Delaware corporations only pursue 'lawful business' by 'lawful acts.' As a result, a fiduciary of a Delaware corporation cannot be loyal to a Delaware corporation by knowingly causing it to seek profit by violating the law."[165]

163. In addition to a heightened duty of oversight with respect to criminal or fraudulent conduct, Delaware corporations must have a system specifically designed to monitor areas of their business that pose "mission-critical" compliance risks—i.e., particular legal or regulatory requirements central to the corporation's operations, such that violating those legal or regulatory requirements could effectively dismantle their business operations.

164. Here, legal and regulatory export controls were one of the most significant risks AMAT faced. Compliance with the EAR was unquestionably

---

[163] *In re Citigroup Inc. S'holder Derivative Litig.*, 964 A.2d 106, 131 (Del. Ch. 2009).

[164] 8 Del. C. §§ 101(b), 102(a)(3).

[165] *In re Massey Energy Co. Derivative & Class Action Litig.*, 2011 WL 2176479, at *20 (Del. Ch. May 31, 2011) (quoting 8 *Del. C.* §§ 101(b), 102).

critical. Defendants understood AMAT was at a heightened risk for running afoul of these requirements because of explicit notification and communication from BIS advising the Company (and the Board) that it was prohibited from exporting unlicensed items to SMIC.

165. Accordingly, Defendants were required to be especially vigilant to ensure that proper systems were in place to detect and prevent illegal sales to SMIC after the Company received the "is-informed" letter (informing AMAT that a license was required to export or reexport items to SMIC due to "an unacceptable risk of diversion to a military end use in [China]")[166] and were notified that SMIC was added to the Entity List. Yet, after receiving the letter and learning of SMIC's Entity List designation, AMAT violated the EAR on ***fifty-six occasions*** by shipping restricted technology to SMIC between November 2020 and July 2022 valued at more than $118 million.

B. Compliance with U.S. Export Control Laws Was a Mission-Critical Issue for AMAT and the Board

166. Compliance with U.S. export control laws and regulations designed to protect the U.S. national security is a mission-critical compliance issue for AMAT, including its Board, which manufactures and sells advanced technology in China that can be used against U.S. military and national security interests. As detailed

[166] Ex. 3 (PCL) at 8.

above, these were priority issues for lawmakers and regulators. [redacted]

[redacted]

[redacted] For example:

- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]

[167] Ex. 8 ([redacted]

[168] Ex. 6 ([redacted]

[169] Ex. 9 ([redacted]

[170] Ex. 6 ([redacted]

[redacted]

- [redacted]

[171] *Id.* (bold in original).

[172] Ex. 11 [redacted]

167. The importance of AMAT's compliance with export control laws and regulations was also routinely discussed under the "Risk Disclosures" in the Company's SEC filings:[173]

> Recently the [DOC] has promulgated several rules and interpretations expanding export license requirements for U.S. companies that sell certain products to entities in China whose actions or functions are intended to support military end uses, eliminated certain export license exceptions that applied to exports of certain items to China, ***and added certain Chinese companies, including one of the Company's customers, to its "entity list." These rules and interpretations require us to obtain additional export licenses to supply certain of our products to such customer in China***.

168. In light of the above, it is inconceivable that the Board did not consider compliance with export controls laws and regulations a mission-critical issue for AMAT that required regular and meaningful oversight by the Board. And because it was a mission-critical compliance issue, AMAT's directors had a duty to ensure the Company had controls in place to verify AMAT was complying with laws and regulations related to export controls, including the EAR's military end user and Entity List export restrictions. Additionally, the Board had a duty to take action in response to red flag warnings of potential violations. As set forth below, at least eight of the current eleven Board members failed in those duties by ignoring numerous red flags that AMAT continued selling unlicensed ECCN 3B991 technology to SMIC despite explicit restrictions imposed by regulators.

[173] Applied Materials, Inc., Quarterly Report (Form 10-Q), at 58 (Jan. 31, 2021).

169. AMAT's compliance with export-control laws was also mission-critical because noncompliance placed AMAT's export privileges at risk. As noted above, AMAT is currently subject to a three-year suspended "denial of its export privileges," under which the denial of AMAT's export privileges may be activated if AMAT fails to pay its $252.5 million civil penalty, complete the required annual audits, or maintain export compliance.[174]

170. If AMAT's export privileges are denied, the consequences would be devastating to the Company's continued operations because only a small percentage of AMAT's net sales are generated domestically in the United States. Specifically, AMAT's net sales to U.S. customers generated 9% of the Company's total (worldwide) net sales in FY 2020, 9% of total net sales in FY 2021, and 12% of total net sales in FY 2022. Thus, during 2020-20202, AMAT generated between 88% and 91% of its total net sales by exporting its products to customers abroad. In other words, if AMAT's export privileges were revoked, the Company would lose between 88% and 91% of its revenues. AMAT's domestic (U.S.) and total (worldwide) net sales are detailed in the chart below.

Net Sales (Billions)	**2020 Fiscal Quarters and Full Year (FY) (Date Ended)**				
	Q1 2020 (1/26/20)	**Q2 2020 (4/26/20)**	**Q3 2020 (7/26/20)**	**Q4 2020 (10/25/20)**	**FY 2020 (10/25/20)**
Total (All Regions)	$4.162	$3.957	$4.395	$4.688	$17.202

[174] *See supra* ¶ 153; *see also* Ex. 12 (BIS Settlement Agreement) at 15.

United States (% of Total)	$0.441 (11%)	$0.331 (8%)	$0.399 (9%)	$0.448 (10%)	$1.619 **(9%)**

Net Sales (Billions)	**2021 Fiscal Quarters and Full Year (FY) (Date Ended)**				
	Q1 2021 (1/31/21)	**Q2 2021 (5/2/21)**	**Q3 2021 (8/1/21)**	**Q4 2021 (10/31/21)**	**FY 2021 (10/31/21)**
Total (All Regions)	$5.162	$5.582	$6.196	$6.123	$23.063
United States (% of Total)	$0.343 (7%)	$0.489 (9%)	$0.533 (9%)	$0.673 (11%)	$2.038 **(9%)**

Net Sales (Billions)	**2022 Fiscal Quarters and Full Year (FY) (Date Ended)**				
	Q1 2022 (1/30/22)	**Q2 2022 (5/1/22)**	**Q3 2022 (7/31/22)**	**Q4 2022 (10/30/22)**	**FY 2022 (10/30/22)**
Total (All Regions)	$6.271	$6.245	$6.520	$6.749	$25.785
United States (% of Total)	$0.847 (14%)	$0.702 (11%)	$0.725 (11%)	$0.830 (12%)	$3.104 **(12%)**

C. Numerous Red Flags Should Have Placed Eight Current Board Members on Notice that AMAT Was Continuing to Sell Restricted Technology to SMIC

171. Eight current Board members—Defendants Dickerson, Iannotti, Borkar, Bruner, Chen, De Geus, Karsner, and McGregor—served on the Board while (i) AMAT illegally sold unlicensed ion implanters (technology classified as ECCN 3B991) to SMIC between November 2020 and July 2022; and (ii) numerous red flag warnings indicated those illegal sales were likely continuing despite the "is-informed" letter which restricted sales to SMIC (particularly technology classified

as ECCN 3B991) due to "an unacceptable risk of diversion to a military end use in [China]."[175] These red flags include the following.

172. ***First***, the full Board was [redacted] *See supra* Section VI.A.

173. ***Second***, [redacted]

174. ***Third***, following BIS's "is-informed" letter and SMIC's Entity List designation, [redacted]

[175] Ex. 3 (PCL) at 8.

[176] Ex. 8 [redacted]

[177] *Id.*

[redacted]

[redacted]"[178]

175. As explained above (*supra* ¶¶ 117-18), the far more plausible inference is that [redacted] "dual-build plan" whereby AMAT transferred part of the manufacturing process for ion implanters—*only intended for sales to SMIC*—to the Company's South Korea facility. Because the Board was likely aware that [redacted] was the "dual-build plan," directors at that time would have been aware that the purpose of the "dual-build plan" was to continue sales of restricted U.S. technology to SMIC.

176. Thus, the existence of the "dual-build plan" was itself a red flag warning to Defendants Dickerson, Iannotti, Borkar, Bruner, Chen, De Geus, Karsner, and McGregor that AMAT was taking affirmative steps to continue selling ion implanters to SMIC notwithstanding recently imposed U.S. export restrictions. Those ion implanters were classified under ECCN 3B991, the same export-control number identified in BIS's "is-informed" letter, and the "dual-build" plan was

[178] *See* Ex. 9 ([redacted]; Ex. 10 [redacted]

designed exclusively to facilitate sales of those products to SMIC. Despite this red flag, the Board took no action to stop the continued sales. Instead, it did nothing for more than 20 months, until the Company received a federal subpoena.[179]

177. ***Fourth***, [redacted] Yet, illegal sales to SMIC continued for more than a year.

178. ***Fifth***, AMAT's former CFO, Daniel Durn, told investors in December 2020 and February 2021 that the Company was "assuming that the [SMIC] licenses do not come through" and would "[be] surprised [if those] licenses come through." Ultimately, [redacted] *See*

[179] *See supra* ¶ 9.

supra ¶¶ 143-45. This should have alerted the Board that sales to SMIC likely continued despite the trade restrictions.

D. Members of the Board's Audit and Strategy and Investment Committees Had Access to Even More Information Concerning the [redacted]

1. Audit Committee

179. According to its charter dated June 12, 2020, the Audit Committee was responsible for "[o]versee[ing] and review[ing] periodically with management, legal counsel, the head of Ethics and Compliance, and other experts, as appropriate, the programs and policies of the Company designed to ensure compliance with applicable laws and regulations and with the Company's ethical standards, and the results of these compliance efforts." In other words, aside from the Board's general duty to review top risks for the Company, the Audit Committee had oversight over legal and regulatory compliance, which necessarily included compliance with export control laws and regulations.

180. The Audit Committee was also responsible for overseeing AMAT's ERM process. The Audit Committee's charter states that the committee members:

> Oversee financial-related risks and the Company's enterprise risk management [ERM] program, including risk assessment, major risk exposures and the steps management has taken to monitor and mitigate those exposures, but excluding the enterprise risks over which other Board committees have oversight responsibility.

181. Thus, the Audit Committee was responsible for "monitor[ing] and "mitigat[ing]" "major risk exposures." [redacted] This means that after BIS sent AMAT the "is-informed" letter and added SMIC to the Entity List, the Audit Committee should have been on heightened alert to ensure that AMAT was not continuing to sell ECCN 3B991 technology (or any other restricted or U.S.-origin technology) to SMIC without a BIS license.

182. Between November 2020 and July 2022, Defendants Bruner, Forrest, Ma, McGill, and McGregor served on AMAT's Audit Committee.[180] Throughout this period, Bruner was the Chair. Defendants Bruner and McGregor still serve on the Board.

183. Because Bruner and McGregor served on the Audit Committee during the 20 months that AMAT sold ECCN 3B991 technology to SMIC, they are disabled from considering a demand because they face a substantial likelihood of liability for not taking action in the face of numerous red flags, including [redacted]

[180] Forrest served on the Audit Committee until March 2021 and Ma served on the Audit Committee until at least January 2022.

[redacted]

2. Strategy and Investment Committee

184. According to AMAT's Corporate Governance Guidelines, the Strategy and Investment Committee is responsible for "assist[ing] the Board in overseeing the strategic and investment priorities of the Company and support[ing] management in its efforts to foster growth through innovation . . . [t]he committee provides advice and counsel to management regarding the Company's strategy and growth initiatives and in the development of the Company's short- and long-term strategic and business plans."

185. [redacted]

The same [redacted] acknowledged that [redacted]

[181] Ex. 6 [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

186. Thus, the Strategy and Investment Committee was responsible for overseeing the risks presented by the [redacted] including "Company strategy . . . in the development of the Company's short- and long- term strategic plan." This necessarily would have included [redacted] after BIS sent AMAT the "is-informed" letter and added SMIC to the Entity List (*see supra* ¶¶ 117-18), thereby placing the Strategy and Investment Committee on notice of those plans. In other words, the

[182] *Id.*

Strategy and Investment Committee should have been aware of the [redacted]

187. Between November 2020 and July 2022, Defendants Borkar, Chen, De Geus, Ma, and McGregor served on the Strategy and Investment Committee.[183] Defendants De Geus, Ma, and McGregor chaired the strategy and investment committees during this period.

188. The Current-Director Defendants, Borkar, Chen, De Geus, and McGregor, still serve on the Board. Because Borkar, Chen, De Geus, and McGregor served on the Strategy and Investment Committee during the 20 month period that AMAT sold ECCN 3B991 technology to SMIC, they are disabled from considering a demand because they face a substantial likelihood of liability for not taking action in the face of numerous red flags, including (1) [redacted] (2) [redacted] and (3) [redacted]

[183] Borkar served on the SIC since December 2020 and Ma served on the SIC at least between January 2021 to January 2022.

[redacted] *See supra* ¶¶ 117-18, 123-27, 143-45.

E. Eight of the Eleven Current Board Members Faces a Substantial Likelihood of Liability

1. Dickerson

189. Defendant Dickerson has been AMAT's CEO and a member of the Board since 2013. As CEO, Dickerson is not independent from AMAT, which AMAT has admitted in each annual Proxy Statement.

190. As CEO, Dickerson is responsible for "setting [AMAT's] strategic direction and the day-to-day leadership of our business." In its $252 million settlement with BIS, AMAT admitted in January 2021, the Company's "senior executive leadership" was "committed" to the "dual-build plan" and placed a "high priority" on its implementation. Thus, Dickerson was aware of recent U.S. trade restrictions on SMIC and was in all likelihood "committed" to the "dual-build plan," a process designed to circumvent U.S. law. As a result, Dickerson faces a substantial likelihood of liability for failing to oversee the affairs of AMAT in good faith. Significantly, this includes the potential for personal criminal liability for aiding and abetting repeated violations of the EAR. *Supra* n.31. Indeed, the BIS Settlement Agreement makes clear that it does not "bind, constrain, or otherwise limit any action by any other agency or department of the U.S. Government with respect to the facts

and circumstances addressed herein."[184] Thus, Dickerson in disabled from considering a litigation demand.

2. Iannotti

191. Defendant Iannotti has been a Board member since 2005 and Chairman of the Board since 2017. As Chairman, Iannotti is responsible for ensuring the Board's time and attention is focused on effective oversight of the "matters most critical to Applied." By any measure, this included ensuring that AMAT complied with BIS's "is-informed" letter and [redacted]

192. Like other Board members at the time, Iannotti was either (i) aware of the "dual-build plan" or (ii) consciously disregarded red flag warnings that AMAT's unlicensed sales to SMIC continued. Those red flags included: (1) BIS's "is-informed" letter, which expressly notified AMAT not to sell ECCN 3B991 technology to SMIC; (2) the [redacted] (3) [redacted] (4) [redacted] and (5) [redacted]

[184] Ex. 12 (BIS Settlement Agreement) at 18.

[redacted]

193. Because Iannotti was either (i) aware of the "dual-build plan," or (ii) consciously disregarded violations of positive law occurring at AMAT during his tenure on the Board, Iannotti faces a substantial likelihood of liability for failing to oversee the affairs of AMAT in good faith. Thus, Iannotti is disabled from considering a litigation demand.

3. Borkar

194. Defendant Borkar has been a Board member and on the Strategy and Investment Committee since December 2020.

195. Like other Board members, Defendant Borkar was either (i) aware of the "dual-build plan" or (ii) consciously disregarded red flag warnings that AMAT's unlicensed sales to SMIC continued. Those red flags included: (1) BIS's "is-informed" letter, which expressly notified AMAT not to sell ECCN 3B991 technology to SMIC; (2) the [redacted] (3) [redacted] (4) [redacted] and (5) [redacted]

[redacted]

196. Defendant Borkar's service on the Strategy and Investment Committee should have provided even more red flag warnings that AMAT was pursuing the "dual-build plan" to supply SMIC with restricted technology, as Board-level documents state that the Strategy and Investment Committee was the committee responsible for overseeing [redacted] The committee's responsibilities also included "Company strategy . . . in the development of the Company's short- and long- term strategic plan." This necessarily would have included [redacted]

197. Because Borkar was either (i) aware of the "dual-build plan" (through full Board meetings or her oversight of the [redacted] while on the Strategy and Investment Committee) or (ii) consciously disregarded violations of positive law occurring at AMAT during her tenure on the Board, Borkar faces a substantial likelihood of liability for failing to oversee the affairs of AMAT in good faith. Significantly, this includes the potential for personal criminal liability for aiding and abetting repeated violations of the EAR. *Supra* n.31. Indeed, the BIS Settlement Agreement makes clear that it does not "bind, constrain, or otherwise limit any action

by any other agency or department of the U.S. Government with respect to the facts and circumstances addressed herein."[185] Thus, Borkar is disabled from considering a litigation demand.

4. Bruner

198. Defendant Bruner has been a Board member and on the Audit Committee since 2016, and has been the Chair of the Audit Committee since at least January 2021.

199. Like other Board members at the time, Defendant Bruner was either (i) aware of the "dual-build plan" or (ii) consciously disregarded red flag warnings that AMAT's unlicensed sales to SMIC continued. Those red flags included: (1) BIS's "is-informed" letter, which expressly notified AMAT not to sell ECCN 3B991 technology to SMIC; (2) the [redacted] (3) [redacted] (4) [redacted] and (5) [redacted]

[185] *Id.*

200. Bruner's service on the Audit Committee should have provided even more red flag warnings that AMAT was pursuing the [redacted]

201. The Audit Committee also had oversight over legal and regulatory compliance at a time when the Company was engaging in "egregious" violations of export controls laws by supplying SMIC with restricted U.S. technology through the "dual build plan." As the Board members most responsible for legal and regulatory compliance, the Audit Committee been should have been asking tough questions about whether continued sales to SMIC were legal, or alternatively, if they were unaware that illegal sales continued, ask about the steps the Company was taking to ensure that AMAT was complying with the recent restrictions. Because the illegal sales took place for nearly two years, it stands to reason that the Audit Committee was either aware of the continued sales and did nothing, or consciously disregarded that such sales were occurring.

202. It is also worth noting that, at the same time Bruner was serving as Chair of the Audit Committee, she also served on the board of directors of Seagate, a technology company that in April 2023 announced the largest financial penalty BIS history, $300 million, for selling restricted technology Huawei, a Chinse company that was added to the Entity List. Thus, Defendant Bruner has the distinction of serving on the boards of two technology companies with the two largest fines in BIS history.

203. Because Bruner was either (i) aware of the "dual-build plan" (through full Board meetings or work on the Audit Committee) or (ii) consciously disregarded violations of positive law occurring at AMAT during her tenure on the Board, Bruner faces a substantial likelihood of liability for failing to oversee the affairs of AMAT in good faith. Significantly, this includes the potential for personal criminal liability for aiding and abetting repeated violations of the EAR. *Supra* n.31. Indeed, the BIS Settlement Agreement makes clear that it does not "bind, constrain, or otherwise limit any action by any other agency or department of the U.S. Government with respect to the facts and circumstances addressed herein."[186] Thus, Bruner is disabled from considering a litigation demand.

[186] *Id.*

5. Chen

204. Defendant Chen has been a Board member and on the Strategy and Investment Committee since 2015.

205. Like other Board members at the time, Defendant Chen was either (i) aware of the "dual-build plan" or (ii) consciously disregarded red flag warnings that AMAT's unlicensed sales to SMIC continued. Those red flags included: (1) BIS's "is-informed" letter, which expressly notified AMAT not to sell ECCN 3B991 technology to SMIC; (2) the [redacted] (3) [redacted] (4) [redacted] and (5) [redacted]

206. Defendant Chen's service on the Strategy and Investment Committee should have provided even more red flags warnings that AMAT was pursuing the "dual build plan" to supply SMIC with restricted U.S. technology, as Board-level documents state that the Strategy and Investment Committee was responsible for overseeing risks presented by [redacted]

[redacted] The committee's responsibilities also included "Company strategy . . . in the development of the Company's short- and long- term strategic plan." This necessarily would have included [redacted] BIS sent AMAT the "is-informed" letter and added SMIC to the Entity List.

207. Because Chen was either (i) aware of the "dual-build plan" (through full Board meetings or [redacted] or (ii) consciously disregarded violations of positive law occurring at AMAT during his tenure on the Board, Chen faces a substantial likelihood of liability for failing to oversee the affairs of AMAT in good faith. Significantly, this includes the potential for personal criminal liability for aiding and abetting repeated violations of the EAR. *Supra* n.31. Indeed, the BIS Settlement Agreement makes clear that it does not "bind, constrain, or otherwise limit any action by any other agency or department of the U.S. Government with respect to the facts and circumstances addressed herein."[187] Thus, Chen is disabled from considering a litigation demand.

6. De Geus

208. De Geus has been a Board member since 2007 and a member of the Strategy and Investment Committee since at least January 2013.

[187] *Id.*

209. Like other Board members at the time, Defendant De Geus was either (i) aware of the "dual-build plan" or (ii) consciously disregarded red flag warnings that AMAT's unlicensed sales to SMIC continued. Those red flags included: (1) BIS's "is-informed" letter, which expressly notified AMAT not to sell ECCN 3B991 technology to SMIC; (2) the [redacted] (3) [redacted] (4) [redacted] and (5) [redacted]

210. De Geus's service on the Strategy and Investment Committee should have provided even more red flags warnings that AMAT was pursuing the "dual-build plan" to supply SMIC with restricted U.S. technology, as Board-level documents state that the Strategy and Investment Committee was the Board-level committee responsible for overseeing the risks presented by [redacted] The committee's responsibilities also included "Company strategy . . . in the development of the Company's short- and long- term strategic plan." This necessarily would have

included [redacted] following receipt of the "is-informed" letter and [redacted]

211. Because De Geus was either (i) aware of the "dual-build plan" (through full Board meetings or [redacted]) or (ii) consciously disregarded violations of positive law occurring at AMAT during his tenure on the Board, De Geus faces a substantial likelihood of liability for failing to oversee the affairs of AMAT in good faith. Significantly, this includes the potential for personal criminal liability for aiding and abetting repeated violations of the EAR. *Supra* n.31. Indeed, the BIS Settlement Agreement makes clear that it does not "bind, constrain, or otherwise limit any action by any other agency or department of the U.S. Government with respect to the facts and circumstances addressed herein."[188] Thus, De Gues is disabled from considering a litigation demand.

7. Karsner

212. Defendant Karsner has been a Board member since 2008.

213. Like other Board members at the time, Defendant Karsner was either (i) aware of the "dual-build plan" or (ii) consciously disregarded red flag warnings that AMAT's unlicensed sales to SMIC continued. Those red flags included: (1) BIS's "is-informed" letter, which expressly notified AMAT not to sell ECCN

[188] *Id.*

3B991 technology to SMIC; (2) the [redacted] (3) [redacted] (4) [redacted] and (5) [redacted]

214. Because Karsner was either (i) aware of the "dual-build plan" through full Board meetings or (ii) consciously disregarded violations of positive law occurring at AMAT during his tenure on the Board, Karsner faces a substantial likelihood of liability for failing to oversee the affairs of AMAT in good faith. Significantly, this includes the potential for personal criminal liability for aiding and abetting repeated violations of the EAR. *Supra* n.31. Indeed, the BIS Settlement Agreement makes clear that it does not "bind, constrain, or otherwise limit any action by any other agency or department of the U.S. Government with respect to the facts and circumstances addressed herein."[189] Thus, Karsner is disabled from considering a litigation demand.

[189] *Id.*

8. McGregor

215. Defendant McGregor has been a Board member since 2018, a member of the Strategy and Investment Committee since 2020, and has served as Chair of the Strategy and Investment Committee since at least January 2021.

216. Like other Board members at the time, Defendant McGregor was either (i) aware of the "dual-build plan" or (ii) consciously disregarded red flag warnings that AMAT's unlicensed sales to SMIC continued. Those red flags included: (1) BIS's "is-informed" letter, which expressly notified AMAT not to sell ECCN 3B991 technology to SMIC; (2) the [redacted]; (3) [redacted] (4) [redacted] and (5) [redacted]

217. McGregor's service on the Strategy and Investment Committee should have provided even more red flags warnings that AMAT was pursuing the "dual build plan" to supply SMIC with restricted U.S. technology, as Board-level documents state that the Strategy and Investment Committee was responsible for

overseeing the risks presented by the [redacted] The committee's responsibilities also included "Company strategy . . . in the development of the Company's short- and long- term strategic plan." This necessarily would have included [redacted] following receipt of the "is-informed" and [redacted]

218. Because McGregor was either (i) aware of the "dual-build plan" (through full Board meetings or [redacted] or (ii) consciously disregarded violations of positive law occurring at AMAT during his tenure on the Board, McGregor faces a substantial likelihood of liability for failing to oversee the affairs of AMAT in good faith. Significantly, this includes the potential for personal criminal liability for aiding and abetting repeated violations of the EAR. *Supra* n.31. Indeed, the BIS Settlement Agreement makes clear that it does not "bind, constrain, or otherwise limit any action by any other agency or department of the U.S. Government with respect to the facts and circumstances addressed herein."[190] Thus, McGregor is disabled from considering a litigation demand.

[190] *Id.*

CLAIMS FOR RELIEF

COUNT I

Breach of Fiduciary Duty: *Caremark* Claim (Against All Defendants)

219. Plaintiff repeats and realleges all of the preceding allegations as if fully set forth herein.

220. As AMAT's Directors and Officers, Defendants owed a fiduciary duty of loyalty requiring them to act in good faith to monitor corporate operations and respond to red flags indicating misconduct or risk.

221. The fiduciary duties these directors and officers owed to AMAT included, without limitation, required Defendants to:

a. Review and evaluate reports and information presented to the Board and its committees;

b. Investigate credible indications of wrongdoing or compliance failures;

c. Take corrective action in response to known risks; and

d. Ensure that the Company operated within legal and regulatory bounds.

222. As detailed herein, Defendants received numerous red flags that would have put the Board on notice that AMAT knowingly caused or allowed AMAT to violate U.S. export regulations, including the EAR, by exporting and reexporting restricted U.S.-origin, ECCN 3B991 ion implanters to SMIC despite BIS's "is-informed" letter to AMAT and BIS's placement of SMIC on the Entity List.

223. Despite this knowledge, Defendants consciously disregarded the red flags described herein by failing to take meaningful action to address or remediate the underlying issues.

224. Defendants' sustained failure to act in the face of known risks constitutes bad faith and a breach of their fiduciary duty of loyalty under *Caremark*.

COUNT II

Breach of Fiduciary Duty: *Massey* Claim (Against All Defendants)

225. Plaintiff repeats and realleges all of the preceding allegations as if fully set forth herein.

226. As AMAT Directors and Officers, Defendants owed fiduciary duties of loyalty and good faith, including a duty not to cause or permit the Company to violate U.S. law. This duty required Defendants to:

a. Ensure that AMAT complied with applicable export laws and regulations, including the EAR;

b. Refrain from authorizing or permitting unlawful conduct;

c. Act to stop known violations of law; and

d. Prioritize legal compliance over short-term financial performance.

227. Defendants either affirmatively approved such unlawful conduct or consciously permitted it to continue despite knowing of its illegality;

228. Such conduct constitutes bad faith and is not protected by the business judgment rule and therefore represents a breach of Defendant's fiduciary duty of loyalty under *Massey*.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

A. An order declaring that Plaintiff may maintain this action on behalf of AMAT and that Plaintiff is an adequate representative of the Company;

B. An order declaring that Defendants have breached their fiduciary duties to AMAT;

C. An order determining and awarding AMAT the damages the Company has sustained because of the breaches of fiduciary duty and violations of law set forth above by all Defendants, jointly and severally, together with pre-judgment and post-judgment interest thereon;

D. An order directing AMAT to take all necessary actions to reform and improve its corporate governance, internal controls, and policies by implementing a Board-level reporting and information system—and by regularly monitoring that system—to ensure that (i) all of AMAT's policies, procedures, and processes comply with U.S. export control regulations applicable to sales in China, including but not limited to the EAR;

E. An order against all Defendants and in favor of the Company for extraordinary equitable and injunctive relief as permitted by law and/or equity as this Court deems just and appropriate;

F. Awarding Plaintiff's costs and disbursements for this action, including reasonable attorneys' fees and expenses; and

G. Granting such other relief as this Court deems just and appropriate.

Dated: October 20, 2026

GRANT & EISENHOFER P.A.

/s/ Christine M. Mackintosh
Michael J. Barry (#4368)
Christine M. Mackintosh (#5085)
123 Justison Street
Wilmington, DE 19801
Tel: (302) 622-7000
mbarry@gelaw.com
cmackintosh@gelaw.com

Attorneys for Plaintiff

Of Counsel:

MOTLEY RICE LLC
Marlon E. Kimpson
William S. Norton
Joshua C. Littlejohn
Vanessa A. Davis
Cameran M. Gilliam
28 Bridgeside Blvd.
Mt. Pleasant, SC 29464
Tel: (843) 216-9000
mkimpson@motleyrice.com
bnorton@motleyrice.com
jlittlejohn@motleyrice.com
vdavis@motleyrice.com
cgilliam@motleyrice.com