

1 MARK C. MOLUMPY (#168009)
mmolumpy@cpmlegal.com
2 MATTHEW K. EDLING (#250940)
medling@cpmlegal.com
3 **COTCHETT, PITRE & McCARTHY, LLP**
840 Malcolm Road, Suite 200
4 Burlingame, CA 94010
Telephone: (650) 697-6000
5 Fax: (650) 697-0577

6 JASON M. LEVITON, ESQ.
jason@blockesq.com
7 **BLOCK & LEVITON LLP**
155 Federal Street, Suite 1303
8 Boston, Massachusetts 02110
T. 617.398.5600
9 F. 617.507.6020

10 *Attorneys for Plaintiff*
Louisiana Municipal Police Employees
11 *Retirement System*

12 **IN THE SUPERIOR COURT OF CALIFORNIA**
13 **IN AND FOR THE COUNTY OF SANTA CLARA**

14
15 LOUISIANA MUNICIPAL POLICE
EMPLOYEES' RETIREMENT SYSTEM,
16 Individually and On Behalf of All Others
Similarly Situated,

17 Plaintiff,

18 v.

19 RICHARD S. HILL, NEIL R. BONKE,
20 YOUSSEF A. EL-MANSY, GLEN G.
POSSLEY, ANN D. RHOADS, KRISHNA
21 SARASWAT, WILLIAM R. SPIVEY,
DELBERT A. WHITAKER, NOVELLUS
22 SYSTEMS, INC., LAM RESEARCH CORP.,
BLMS INC., and DOES 1-10, inclusive,

23 Defendants.
24
25
26
27
28

ENDORSED
FILED

2011 DEC 20 P 3: 03

David H. Yamasaki, Clerk of the Superior Court
County of Santa Clara, California
By _____ Deputy Clerk

T. Mai

CASE NO. 111CV215303

CLASS ACTION COMPLAINT

Jury Trial Demanded

CLASS ACTION COMPLAINT

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RELIEF REQUESTED13

1 Plaintiff Louisiana Municipal Police Employees' Retirement System, by and through its
2 attorneys, alleges upon personal knowledge as to itself and its own facts, and upon information
3 and belief as to all other matters, based upon the investigation conducted by and through its
4 attorneys, which included, *inter alia*, a review of documents filed by Defendants (defined
5 below) with the United States Securities and Exchange Commission (the "SEC"), news reports,
6 press releases and other publicly available documents, as follows:

7 **SUMMARY OF THE ACTION**

8 1. Plaintiff brings this action on behalf of itself and as a class action on behalf of
9 the shareholders of Novellus Systems, Inc. ("Novellus" or the "Company") against Novellus's
10 Board of Directors ("Director Defendants") for breaches of fiduciary duty arising from their
11 attempt to sell the Company to Lam Research Corp. ("Lam Research"). As detailed herein, this
12 proposed acquisition (the "Acquisition") is for inadequate consideration and was arrived at
13 through an unfair process which did not properly safeguard the interests of Novellus's
14 shareholders.

15 2. It has been the law in California that directors have a fiduciary relationship and a
16 duty to act in the best interests of all shareholders, including minority shareholders. *Remillard*
17 *Brick Co. v. Remillard-Danhini* (1952) 109 Cal. App. 2d 405; *Jones v. H.F. Ahmanson & Co.*
18 (1969) 1 Cal.3d 93. As the California Supreme Court stated:

19 The extensive reach of the duty of controlling shareholders and
20 directors to the corporation and its other shareholders was described by the
21 Court of Appeal in *Remillard Brick . . .*, where, quoting from the opinion
22 of the United State Supreme Court in *Pepper v. Litton*, 308 U.S. 295 . . .
23 the court held: "A director is a fiduciary . . . Their powers are powers of
24 trust. [Citation.]" . . . "He cannot by the intervention of a corporate entity
25 violate the ancient precept against serving two masters . . . He cannot
26 utilize his inside information and his strategic position for his own
27 preferment. . . . He cannot use his powers for his personal advantage and
28 to the detriment of the stockholders and creditors no matter how absolute
in terms that power may be and no matter how meticulous he is to satisfy
technical requirements." In *Remillard*, the Court of Appeal clearly
indicated that the fiduciary obligations of the directors and shareholders
are neither limited to specific statutory duties and avoidance of fraudulent
practices nor are they owed solely to the corporation to the exclusion of
other shareholders.

Jones, 1 Cal.3d at pp. 108-109 (emphasis added).

1 the exercise of jurisdiction by the courts of California permissible under traditional notions of
2 fair play and substantial justice.

3 10. Venue is proper in this Court because: (i) Novellus is incorporated in the State
4 of California; and (ii) one or more of the Defendants either resides in or maintains executive
5 offices in this County.

6 **PARTIES**

7 **Plaintiff**

8 11. Plaintiff Louisiana Municipal Police Employees' Retirement System is, and at all
9 relevant times, has been a holder of Novellus common stock.

10 **Defendants**

11 12. Defendant Novellus is a California corporation that maintains its corporate
12 headquarters in San Jose, California.

13 13. Defendant Richard S. Hill has been the Company's Chief Executive Officer and
14 a Director since 1993. Mr. Hill has served as Chairman of the Company's Board of Directors
15 Board since 1996. Mr. Hill is a resident of California.

16 14. Defendant Neil R. Bonke has served as a Director of the Company since April
17 2004. Mr. Bonke is a resident of Santa Clara County, California.

18 15. Defendant Youseff A. El-Mansy has served as a Director of the Company since
19 April 2004.

20 16. Defendant Glen G. Possley has served as Director of the Company since July
21 1991. Mr. Possley is a resident of Santa Clara County, California.

22 17. Defendant Ann D. Rhoads has served as a Director of the Company since
23 February 2003. Ms. Rhoads is a resident of California.

24 18. Defendant Krishna Saraswat has served as a Director of the Company since
25 February 2011. Mr. Saraswat is a resident of Santa Clara County, California.

26 19. Defendant William R. Spivey has served as a Director of the Company since
27 May 1998.

1 20. Defendant Delbert A. Whitaker has served as a Director of the Company since
2 March 2002.

3 21. Defendants Hill, Bonke, El-Mansy, Possley, Rhodes, Saraswat, Spivey and
4 Whitaker are collectively referred to herein as the "Director Defendants."

5 22. Each of the Director Defendants was a member of Novellus's Board of Directors
6 at all pertinent times and participated in the decisions and conduct alleged herein. By reason of
7 their positions, each Director Defendant had, and continues to have, an obligation to determine
8 whether the Acquisition is in the best interest of the Company's shareholders and maximizes
9 shareholder value.

10 23. Each Director Defendant herein is sued individually, as a conspirator and aider
11 and abettor, as well as in their capacity as an officer and/or director of the Company, and the
12 liability of each arises from the fact that he or she has engaged in all or part of the unlawful acts,
13 plans, schemes, or transactions complained of herein.

14 24. Defendant Lam Research is a Delaware corporation that maintains its corporate
15 headquarters in Fremont, California. Lam Research has been a major supplier of wafer
16 fabrication equipment and services to the semiconductor industry for more than 30 years.

17 25. Defendant BLMS, Inc. (the "Merger Subsidiary") is a California corporation and
18 a wholly-owned subsidiary of Lam Research. As part of the Acquisition, the Merger Subsidiary
19 will merge with Novellus.

20 26. Lam Research and the Merger Subsidiary (collectively, the "Acquisition
21 Companies"), aided and abetted Defendants' breach of fiduciary duties to Novellus's
22 shareholders.

23 **Doe Defendants**

24 27. Except as described herein, Plaintiff is ignorant of the true names of the
25 defendants sued as Does 1 through 10 and the nature of their wrongful conduct. Therefore,
26 plaintiff sues these Doe Defendants by such fictitious names. Plaintiff will seek leave of Court
27 to amend this complaint to allege their true names, capacities, and wrongful conduct when
28 ascertained. Plaintiff alleges that each of the Doe Defendants is responsible in some manner for

1 the acts and occurrences alleged herein, and that the damages were caused by such Doe
2 Defendants.

3 **FURTHER SUBSTANTIVE ALLEGATIONS**

4 **A. Background**

5 28. Founded in 1984, Novellus manufactures, markets and services advanced
6 deposition, surface preparation and chemical mechanical planarization equipment for advanced
7 integrated circuits. The Company's products are designed for high-volume production of
8 advanced, leading-edge semiconductor devices at the lowest possible cost.

9 29. Novellus describes itself as the "backbone of the tech revolution" and is one of
10 the top ten semiconductor equipment companies in the world, with its systems being essential to
11 producing the chips that power devices such as cell phones, computers, MP3 players and
12 HDTVs. Novellus has approximately 2,400 employees worldwide, with subsidiaries in 15
13 countries, including China, India, Japan and Taiwan.

14 **B. The Acquisition**

15 30. After the close of the markets on December 14, 2011, Novellus and Lam
16 Research issued a joint press release, announcing that Lam Research would acquire Novellus
17 pursuant to the Agreement and Plan of Merger (the "Merger Agreement") among Lam
18 Research, the Merger Subsidiary and Novellus.

19 31. According to the Merger Agreement, the Merger Subsidiary will merge with
20 Novellus, at which time the separate corporate existence of the Merger Subsidiary will cease to
21 exist and Novellus will be combined with Lam Research. The newly formed company
22 (hereinafter referred to as the "Surviving Corporation") will retain the name Lam Research.

23 32. The Merger Agreement calls for an all-stock deal valued at approximately \$3.3
24 billion. Upon closing, Lam Research and Novellus stock holders will own approximately 59
25 percent and 41 percent, respectively, of the Surviving Corporation.

26 33. The Novellus shareholders will receive the equivalent of \$44.42 per share at an
27 exchange rate of 1.125 shares of Lam Research for each Novellus share. In addition, Lam
28

1 Research announced a \$1.6 billion common stock repurchase program. This new program will
2 be funded from the Surviving Corporation's on-share cash and on-shore cash generation.

3 34. The proposed transaction provides grossly inadequate consideration to
4 Novellus's shareholders. Indeed, the offering price of \$44.42 per share offers a premium to
5 Novellus's shareholders of only 28 percent over the Company's closing stock price of \$35.52
6 on December 14, 2011 (the last day of trading before the Acquisition was announced). In stark
7 contrast, Bloomberg reports the average premium on acquisitions valued at more than \$250.0
8 million during the last five years has been 56 percent – nearly double the meager premium
9 offered to Novellus shareholders. In fact, Novellus traded as high as \$41.69 per share as
10 recently as March 2011.

11 35. In addition, Novellus reported in October 2011 that it had \$736.6 million in cash,
12 cash equivalents and short term investments. If Lam Research's \$3.3 billion Acquisition offer
13 is discounted by this \$736.6 million in liquid assets (which will be in control of the Lam
14 Research after the sale), then the proposed sale price is effectively only \$34.51 per share (or
15 about \$2.56 billion net), which is \$1.01 less than its closing price on December 14, 2011.

16 36. Moreover, Novellus has strong fundamentals which further highlight the serious
17 concerns with the \$44.42 offering price. Novellus is routinely lauded by industry analysts, with
18 the S&P giving Novellus a positive 4 STARS (out of 5) "buy" rating as recently as December 5,
19 2011. Furthermore, the financial publication "The Street" has given the Company 5 STARS
20 (out of 5) for its positive historical price movement, with Novellus outperforming 90 percent of
21 the companies covered by The Street.

22 37. Clearly, Novellus was on an upward trajectory in the months before the
23 announcement of the Acquisition. For example, On April 27, 2011, Director Defendant Richard
24 S. Hill ("Hill") reported to the Company's investors that Novellus had "another solid quarter of
25 strong results in revenue, earnings and cash flow **Our confidence in the long-term**
26 **growth potential for the industry and Novellus in particular remains bullish despite recent**
27 **near term global instabilities. Novellus is well positioned for long-term growth as we**
28

1 continue to strengthen our ability to support the increasing technical challenges of our
2 customers.” (Emphasis added).

3 38. Similarly, on July 11, 2011, Novellus reported that it had “continue[d] to
4 generate a pipeline of products targeted to our customers’ needs with the right mix of
5 technology and productivity, which has resulted in consistent market share gains in both our
6 core semiconductor business and the new market opportunities in advanced wafer level
7 packaging We intend to drive further gains and revenue growth with the emergence
8 of 3D NAND and advanced logic applications, all of which are essential building blocks
9 required to enable the growth in cloud computing and storage.”

10 39. On October 26, 2011, the Company reported better than expected financial
11 results for its third quarter of fiscal year 2011 that beat analyst projections. More specifically,
12 Novellus reported adjusted earnings per share (EPS) of \$0.71 for the quarter, beating analyst
13 estimates of an adjusted EPS of only \$0.68 for the same period.

14 40. Similarly, in October 2011, Hill informed the Company’s investors that he was
15 “optimistic that the underlying demand for technology products will enable us to profitably ride
16 through this period of uncertainty We remain confident that our investments in Novellus’
17 core products and our investments in new technologies to support the enabling processing
18 trends in 3-dimensional NAND, advanced logic, and advanced packaging are the right
19 technologies at the right time. We believe this will allow us to drive revenue growth and
20 profitability for the long term.” Indeed, Hill’s optimism would prove to be prophetic. The
21 Company’s share price had risen from \$26.22 on October 3, 2011 to \$37.07 on December 7,
22 2011.

23 41. Thus, the acquisition will represent a windfall for Lam Research. Lam Research
24 is acquiring Novellus when the Company is developing new technologies and is poised for
25 growth, and at discount to its intrinsic value. As such, Defendants are unfairly depriving
26 Novellus’s shareholders of the true value of their investment by agreeing to sell the Company
27 for inadequate consideration.

1 42. In addition to the foregoing, the Acquisition is the fruit of an unfair sale and
2 negotiation process. There is no indication that an adequate pre-market auction check was
3 conducted before Defendants entered into the Acquisition. Compounding the lack of market
4 check, Defendants agreed to terms which all but guarantee that there would be no competing
5 bids and no way to truly test the market value of Novellus's shares.

6 43. For example, the Merger Agreement includes a "no shop" clause that prohibits
7 Defendants from soliciting alternative proposals from any other parties. In the event of an
8 unsolicited, superior proposal, the Merger Agreement gives Lam Research so-called "matching
9 rights," allowing it to renegotiate the Merger agreement to match any unsolicited competing
10 proposal. The "matching rights" provision disincentives any competing offers because of the
11 intrinsic advantage Lam Research has over every other potential bidder.

12 44. The Merger Agreement also includes a \$120.0 million termination fee should
13 Novellus accept a third-party offer for the Company. This termination fee represents about 3.3
14 percent of the total acquisition price (about 4.6 percent after offsetting the Company's cash and
15 liquid assets) and will act as a strong deterrent to any unsolicited bids for Novellus.

16 45. Further bringing the legitimacy of the sale process into question, there will be
17 four new board seats created by the Surviving Corporation which will be filled pursuant to a
18 joint vote of the Lam Research and Novellus directors, making it all but inevitable that certain
19 Director Defendants will remain with the Surviving Corporation. This arrangement aligns the
20 interest of the Director Defendants with that of the Surviving Corporation (their possible future
21 employers) and effectively puts them on both sides of the Acquisition – *i.e.*, having a potential
22 interest in the financial position of the Surviving Corporation while negotiating on behalf of
23 Novellus's shareholders.

24 46. The Director Defendants' conflict of interest is particularly evident with regards
25 to Defendant Hill, who has entered into a Voting Agreement with Lam Research, guaranteeing
26 to vote all of his Novellus shares in favor of the Acquisition irrespective of whether Novellus
27 receives a superior, competing offer prior to the Acquisition's closing, making it unreasonable
28

1 to assume that he can fulfill his fiduciary duties to Novellus shareholders should such an offer
2 materialize.

3 47. Taken together, these various provisions render it unreasonable to expect that the
4 Director Defendants have fulfilled, or are even capable of fulfilling, their fiduciary obligations
5 to Novellus shareholders. The terms of the Acquisition are unfair and should be rejected as the
6 result of the Director Defendants' breach of their fiduciary obligations.

7 **IRREPARABLE HARM**

8 48. Plaintiff has no adequate remedy at law. Only through the exercise of the
9 Court's equitable power will Novellus's shareholders be protected from the irreparable injury
10 that would arise from losing the opportunity to maximize the value of their investments in
11 Novellus. Absent equitable relief from the Court, Novellus's shareholders will be deprived of
12 the ability to sell their shares at a substantial premium to another potential suitor of Novellus.

13 **CLASS ACTION ALLEGATIONS**

14 49. Plaintiff, a shareholder in the Company, brings this action as a class action
15 pursuant to Section 382 of the California Code of Civil Procedures on behalf of itself and all
16 shareholders of Novellus (except Defendants herein, and any person, firm, trust, corporation or
17 other entity related to or affiliated with any of the Defendants) who are or will be deprived of
18 the opportunity to maximize the value for their shares of Novellus as a result of the breaches of
19 fiduciary duty and other misconduct complained of herein.

20 50. This action is properly maintainable as a class action.

21 51. A class action is superior to other available methods of fair and efficient
22 adjudication of this controversy.

23 52. The Class is so numerous that joinder of all members is impracticable. As of
24 August 26, 2011, Novellus had approximately 66.5 million shares of common stock
25 outstanding. Consequently, the number of Class members is believed to be in the thousands and
26 are likely scattered across the United States. Moreover, damages suffered by individual Class
27 members may be small, making it overly expensive and burdensome for individual Class
28 members to pursue redress on their own.

1 53. There are questions of law and fact which are common to all Class members and
2 which predominate over any questions affecting only individuals, including:

- 3 a. whether the Director Defendants fulfilled, or are capable of fulfilling,
4 their fiduciary duties to the Plaintiff and the Class;
- 5 b. whether the Director Defendants have breached and continue to breach
6 their fiduciary duties to obtain the best price practicable under the
7 circumstances for the benefit of the Novellus shareholders; and
- 8 c. whether the Class is entitled to injunctive relief and/or damages.

9 54. Plaintiff's claims and defenses are typical of the claims and defenses of other
10 Class members and Plaintiff has no interests that are antagonistic or adverse to the interest of
11 other class members. Plaintiff will fairly and adequately protect the interest of the Class.

12 55. Plaintiff is committed to prosecuting this action and has retained competent
13 counsel experienced in litigation of this nature.

14 56. Defendants have acted in a manner that affects Plaintiff and all members of the
15 Class alike, thereby making appropriate injunctive relief and/or corresponding declaratory relief
16 with respect to the Class as a whole.

17 57. The prosecution of separate actions by individual members of the Class would
18 create a risk of inconsistent or varying adjudications with respect to individual members of the
19 Class, which would establish incompatible standards of conduct for Defendants; or
20 adjudications with respect to individual members of the Class would, as a practical matter, be
21 dispositive of the interest of other members or substantially impair or impede their ability to
22 protect their interests.

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1 CAUSES OF ACTION

2 **COUNT I**

3 **(Breach of Fiduciary Duty Against Novellus and the Director Defendants)**

4 58. Plaintiff repeats and realleges each and every allegation above as if set forth in
5 full herein.

6 59. Novellus and the Director Defendants have at all times been fiduciaries of
7 Novellus shareholders. Such Defendants owed and continue to owe Plaintiff and the Class the
8 utmost fiduciary duties of due care, good faith, fair dealing and undivided loyalty.

9 60. By the acts, transactions, and courses of conduct alleged herein, Novellus and the
10 Director Defendants have breached and continue to breach their fiduciary duties to the
11 Company's shareholders. Such Defendants, individually and as a part of a common plan and
12 scheme and/or aiding and abetting one another in breach of their fiduciary duties, are attempting
13 to deprive plaintiff and the Class of the true value of their investment in the Company.

14 61. Defendants have further breached their fiduciary duties and continue to breach
15 their fiduciary duties by, *inter alia*, entering into the Acquisition without regard to the fairness
16 of the transaction or the paltry premium being offered to Novellus shareholders. In particular,
17 Defendants have violated their fiduciary duties by, among other things: (i) failing to take steps
18 to maximize the value of Novellus stock; (ii) avoiding any competitive bidding that may have
19 created greater value for Novellus shareholders; and (iii) maintaining an interest in the
20 composition in the Surviving Corporation's Board of Directors while negotiating on behalf of
21 the Company's shareholders.

22 62. The proposed transaction is wrongful, unfair and harmful to Novellus's public
23 stockholders, the Class members, and presents an attempt by Defendants to benefit themselves
24 at the expense of and to the detriment of the stockholders of the Company. The proposed
25 transaction will deny plaintiff and other Class members their rights to share appropriately in the
26 true value of the Company's assets and future growth in profits and earnings, while usurping the
27 same for the benefit of Lam Research at an unfair and inadequate price.
28

1 63. The Director Defendants have further breached their fiduciary duties to
2 maximize stockholder value and have not fully informed themselves about whether greater
3 value can be achieved through the sale of the Company to a third party in a manner designed to
4 obtain the highest possible price for Novellus's public shareholders.

5 64. The terms of the transaction as proposed are unfair to the Class, and the
6 unfairness is compounded by the disparity between the knowledge and information possessed
7 by the Director Defendants by virtue of their positions of control and that possessed by
8 Novellus's public shareholders.

9 65. Defendants owe fundamental fiduciary obligations to Novellus's shareholders to
10 take all necessary and appropriate steps to maximize the value of their shares. The Director
11 Defendants have the responsibility to act independently so that the interests of the Company's
12 public shareholders will be protected. Further, the directors of Novellus must adequately ensure
13 that no conflict of interest exists between the Director Defendant's own interests and their
14 fiduciary obligations to maximize stockholder value or, if such conflicts exist, to ensure that all
15 such conflicts will be resolved in the best interests of the Company's stockholders.

16 66. Defendants breached their fiduciary and other common law duties owed to
17 plaintiff and other member of the Class and are acting to the detriment of the Class.

18 67. Plaintiff seeks preliminary and permanent injunctive relief and declaratory relief
19 preventing Defendants from inequitably and unlawfully depriving plaintiff and the Class of their
20 rights to realize a full and fair value for their stock at a premium over the market price and to
21 compel Defendants to carry out their fiduciary duties to maximize shareholder value.

22 68. Only through the exercise of this Court's equitable powers can plaintiff and the
23 Class be fully protected from the immediate and irreparable injury which Defendants' actions
24 threaten to inflict.

25 69. Unless enjoined by the Court, Defendants will continue to breach their fiduciary
26 duties owed to plaintiff and the members of the Class and will not only prevent the sale of
27 Novellus at a substantial premium, but facilitate the sale at an unfair price to a pre-ordained
28 buyer, all to the irreparable harm of plaintiff and other members of the Class.

1 foregoing, during the pendency of this action, from taking any action to
2 consummate the Acquisition until such time as Defendants have fully complied
3 with their duties to maximize shareholder value;

4 C. Preliminary and permanently enjoining Defendants from entering into any
5 contractual agreements or acquisitions which would inhibit Defendants' ability
6 to maximize shareholder value;


7 D. Awarding Plaintiff and the Class appropriate compensatory damages, together
8 with pre- and post-judgment interest;

9 E. Awarding Plaintiff the costs, expenses and disbursements of this action,
10 including attorneys' and experts' fees and, if applicable, pre-judgment and post-
11 judgment interest; and

12 F. Awarding Plaintiff and the Class such other relief as this Court deems just,
13 equitable and proper.

14 Dated: December 20, 2011

COTCHETT, PITRE & McCARTHY, LLP


15
16 MARK C. MOLUMPHY (#168009)
mmolumphy@spmlegal.com
17 MATTHEW K. EDLING (#250940)
medling@cpmlegal.com
18 840 Malcolm Road, Suite 200
Burlingame, CA 94010
19 Telephone: (650) 697-6000
Facsimile: (650) 697-0577

BLOCK & LEVITON LLP

20
21 Jeffrey C. Block
Jason M. Leviton
22 Mark A. Delaney
155 Federal Street
23 Boston, MA 02110
Telephone: (617) 398-5600
24 Facsimile: (617) 507-6020

25 *Counsel for Louisiana Municipal Police*
26 *Employees' Retirement System*
27
28