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June 19, 2009

VIA eFILING AND HAND DELIVERY

REDACTED PUBLIC VERSION

The Honorable Vincent J. Poppiti
Special Master
Fox Rothschild LLP
919 North Market Street, Suite 1300
P.O. Box 2323
Wilmington, DE 19899-2323

Re: **DM No. _____**
In re Intel Corp. Microprocessor Antitrust Litigation, MDL No. 05-1717-JJF;
Advanced Micro Devices, Inc., et al. v. Intel Corp., et al., C.A. No. 05-441-JJF;
Phil Paul v. Intel Corp., Consolidated C.A. No. 05-485-JJF

Dear Judge Poppiti:

Class Plaintiffs respectfully submit this reply letter brief in further support of their request to compel Dell Corporation ("Dell") to complete its production of certain transactional data.

Dell argues in its opposition that it should not be required to "make a third production" of sales data in response to Class Plaintiffs' subpoena and consistent with its agreement to produce [REDACTED] Dell Opposition at 1. Class Plaintiffs are, however, only asking for what Dell agreed to produce and for what Class Plaintiffs already paid for: a correct production of Dell's [REDACTED]

From the very beginning of the parties' protracted discussions with Dell about its production of transactional data, Dell framed the discussion in terms of its production of a sample of six days of sales data that it provided to the parties in mid-2007. That sample data consisted of [REDACTED]

Based on the way in which Dell generated the sample data, the discussions Class Plaintiffs engaged in with Dell about the quantity of data that would be produced were always framed in terms of "days of sales data."¹ Those "days" were based on [REDACTED]

¹ See, e.g., Jan. 5, 2009 email from Judith Zahid to Thomas Jackson, Ex. 2 to the June 11, 2009 Declaration of Judith A. Zahid (the "Zahid Decl.") ([REDACTED]); Feb. 13,

██████████, as in the initial six-day sample. Dell even concedes that its discussions with Class Plaintiffs were for ██████████ June 17, 2009 Declaration of Christopher S. Maynard, ¶4 (D.I. 1916 in 05-MD-1717). On March 9, 2009, when Dell and Class Plaintiffs ultimately agreed that Dell would ██████████

Notwithstanding that discussions between Class Plaintiffs and Dell had centered on the sample data production, Dell has twice produced data that is both inconsistent and incompatible with the sample data. Without providing notice to Class Plaintiffs that it was changing the manner in which it was compiling the transactional data, Dell generated its productions of ██████████

As the data from the deficient second production reflect (Exhibit 14),

Absent from Dell's opposition submission is any assertion that Dell provided notice to Class Plaintiffs that it was changing the manner in which it was ██████████ from the way in which it generated the initial six sample days. Class Plaintiffs' economic experts were only able to discover Dell's error once they loaded and began an analysis of the data in early June 2009. To the extent there was any delay in Class Plaintiffs' discovery that the data were defective, that delay was caused by Dell. Class Plaintiffs' economics experts did not process the April 3, 2009 data production because Dell had failed to produce numerous data fields that were part of the initial six-day sample, making it inconsistent with earlier-produced data. Likewise, Class Plaintiffs' economics experts did not process the April 28 data production until Dell provided answers to certain questions about the data in late May 2009. Had Dell exercised reasonable care in making its productions conform to the initial sample data and had Dell responded to Class Plaintiffs' questions about the second production promptly, Class Plaintiffs could no doubt have brought these production deficiencies to Dell's attention sooner.


For the foregoing reasons, Class Plaintiffs respectfully request that the Court order Dell to make an immediate corrected production of ██████████

2009 email from Judith Zahid to Thomas Jackson, Ex. 6 to Zahid Decl. (██████████)

² A sample of Dell's second production containing ██████████ is attached to the Supp. Zahid Decl. as Exhibit 14.

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Respectfully submitted,



J. Clayton Athey
(DE Bar ID # 4378)

JCA/ms

Enclosures

cc: Clerk of the Court (By electronic filing and hand delivery)
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