UNITED STATES DISTRICT COURT

for the
Southern District of Florida

IN RE INTEL CORPORATION
MICROPROCESSOR ANTITRUST LITIGATION

PHIL PAUL, on **behalf of himself** and all others similarly situated, *Plaintiff* v. INTEL CORPORATION, *Defendant*	)))))))	MDL No. **05-1717-JJF** Civil Action No. **Consol.** C.A. No. **05-485-JJF** **(If the action is pending in another district, state where:** District of Delaware

SUBPOENA TO TESTIFY AT A DEPOSITION
OR TO PRODUCE DOCUMENTS IN A CIVIL ACTION

To:
Office Depot, Inc.
6600 North Military Trail
Boca **Raton,** FL 33496

☒ *Testimony:* **YOU ARE COMMANDED to** appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment: **See Schedule A attached.**

Place: **Greenberg Traurig, P.A.** 5100 Town Center Circle **#400** Boca **Raton,** FL 33486	Date and Time: May 28, 2009 at **9:00** a.m.

The deposition will be recorded by this method: **stenographic and videographic means**

☐ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

The provisions of Fed. R. Civ. P. **45(c),** relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: April 28, 2009

CLERK OF COURT

OR

_____
Signature of Clerk or Deputy Clerk

~~Laina M. Herbert~~
Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing *(name of party)* _____
Class Plaintiffs _____ **,** who issues or requests this subpoena, are:

Laina M. Herbert **(#4717),** Prickett, Jones & Elliott, P.A.
1310 King Street, P.O. Box 1328, Wilmington, DE **19899-1328**   (302) 888-6500
LMHerbert@prickett.com

Civil Action No.   **MDL No. 05-1717-JJF; Consol. C.A. 05-485-JJF**

PROOF OF SERVICE
(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____

was received by me on *(date)* _____

◻ I personally served the subpoena on the individual at *(place)* _____

_____ on *(date)* _____ ; or

◻ I left the subpoena at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

◻ I served the subpoena on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

◻ I returned the subpoena unexecuted because _____ ; or

◻ Other *(specify):*

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law: in the amount of

$ _____

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00

I declare under penalty of perjury that this information is true.

Date: _____   _____
                                        Server's signature

                                        _____
                                        Printed name and title

                                        _____
                                        Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) *Avoiding Undue Burden or Expense; Sanctions. A* party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required. A* person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections. A* person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena*

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form *for Producing Electronically Stored Information Not Specified. If* a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld. A* person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

Schedule A

DEFINITIONS AND INSTRUCTIONS

1. The term **"MICROPROCESSOR"** means general purpose microprocessors using the **x86** instruction set (*e.g.*, Sempron, Athlon, **Turion,** Opteron, Celeron, **Pentium,** Core, Core Duo, and Xeon).

2. The term **"OFFICE DEPOT"** refers to OFFICE DEPOT, INC. and any of its controlled present or former subsidiaries, parents, and predecessor or successor companies, including, but not limited to TECH DEPOT.

3. The term **"COMPUTER SYSTEM"** means any product that utilizes a MICROPROCESSOR including, without limitation, desktop computers, notebook computers and workstations.

4. The term **"PURCHASE DATA"** refers to the data files produced by OFFICE DEPOT in this litigation that reflect OFFICE DEPOT's purchases of **x86** microprocessors and **x86** computer systems.

5. The term **"SALES DATA"** refers to the data files produced by OFFICE DEPOT in this litigation that reflect OFFICE DEPOT's sales of **x86** microprocessors and **x86** computer systems.

6. The term **"REBATE DATA"** refers to the data files produced by OFFICE DEPOT in this litigation and entitled:

    i. AMD Intel Computer rebates 2000 - 2008.xls
    ii. Book2.xls

7. The term **"TECH DEPOT DATA"** refers to the data files produced by OFFICE DEPOT in this litigation and entitled:

    i. Purchase.Sales Data 2005-2008.xls
    ii. Purchase.sales data 2000 - 2003.xls
    iii. 2000 - 2001 data.xls
    iv. 2001-2003 data.xls
    v. 2005 - 2008 data.xls
    vi. TD_Cat1_04.xls

8. The term **"LOOKUP TABLE** refers to the data files produced by OFFICE DEPOT in this litigation and entitled:

    i. Sku File.txt
    ii. Sku File.xls
    iii. Fiscal to Calendar Date Look-up.xls
    iv. TD_Cat1_04.xls ("key" tab)

9. The relevant time period for these topics is January 1, 2000 to the present.

DEPOSITION TOPICS

1. The recordation, compilation, storage, and production of the data produced by OFFICE DEPOT in connection with this litigation, including the system(s) in which that data was stored.

2. The manner in which the data produced by OFFICE DEPOT is maintained and prepared in the ordinary course of business.

3. Identification and instruction as to the correction of any read-in errors found in the SALESPURCHASEITECH DEPOT DATA.

4. The data that OFFICE DEPOT produced in this litigation, including the definitions for all data fields, abbreviations or codes reflected as values in any data fields, the provision of formulas for all calculated fields, product identification, and the interaction among the datasets produced, including but not limited to:

    a. Your knowledge of the SALES DATA, how it relates to the PURCHASE, REBATE, TECH DEPOT, and LOOKUP TABLES DATA, and how it may link to the PURCHASE, REBATE, TECH DEPOT and LOOKUP TABLES DATA.

    b. Your knowledge of the TECH DEPOT DATA, how it relates to the SALES, PURCHASE, REBATE and LOOKUP TABLES DATA, and how it may link to the SALES, PURCHASE, REBATE and LOOKUP TABLES DATA.

    c. Your knowledge of the PURCHASE DATA, how it relates to the SALES, REBATE, TECH DEPOT, LOOKUP TABLES DATA, and how it may link to the SALES, REBATE, TECH DEPOT, and LOOKUP TABLES DATA.

5. An explanation of what an individual row in the SALESPURCHASEITECH DEPOT DATA represents.

6. Identifying products in the SALESIPURCHASEITECH DEPOT DATA that are Custom-To-Order ("CTO), Built-To-Order ("BTO"), open box, or refurbished x86 COMPUTER SYSTEMS or x86 MICROPROCESSORS.

7. Identifying bundled products, specifically x86 COMPUTER SYSTEMS or x86 MICROPROCESSORS that are bundled with other products, in the SALESIPURCHASEITECHDEPOT DATA.

8. Identifying the universe of files that represent OFFICE DEPOT's SALES and PURCHASES DATA of x86 based COMPUTER SYSTEMS and x86 MICROPROCESSORS.

    a. Additionally, identifying the universe of US-based sales of x86 based COMPUTER SYSTEMS and x86 MICROPROCESSORS made by OFFICE DEPOT in the SALES/TECH DEPOT DATA.

9. Explanation of the net acquisition cost of a product to OFFICE DEPOT.

10. Explanation of the net sale price of a product sold by OFFICE DEPOT.

11. Explanation for incidents in the TECH DEPOTPURCHASE and TECH DEPOT/SALES DATA where multiple costs are associated with the same product on the same day.

12. Explanation of how rebates are captured and appropriately accounted for in the SALES/PURCHASE/TECH DEPOT DATA and identification of those adjustments in the data.

13. Identification in the SALES/PURCHASE/TECH DEPOT DATA of internal sales or transfers, product returns, credits and debits.

14. Explanation of OFFICE DEPOT's policy on sales at a loss (*e.g.*, sales where the net price is less than the net cost).

15. Description of the consumer rebates offered by OFFICE DEPOT and interpretation of the rebates in the SALES/TECH DEPOT DATA; including identification of rebates related to x86 MICROPROCESSORS and x86 based COMPUTER SYSTEMS.

16. Description of the vendor rebates received by OFFICE DEPOT and interpretation of the rebates in the REBATE DATA; including identification of rebates related to x86 MICROPROCESSORS and x86 based COMPUTER SYSTEMS.

17. Identifying the net rebate amount for the vendor rebates received by OFFICE DEPOT in the REBATE DATA.

18. Interpretation of and definitions for the values of different variables in the LOOKUP TABLES as well as how variables in the LOOKUP TABLES relate to other variables (both in the LOOKUP TABLES and in other data sets).