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## VIA ELECTRONIC FILING AND HAND DELIVERY

Special Master Vincent J. Poppiti  
Blank Rome LLP  
1201 Market Street, Suite 800  
Wilmington, DE 19801

REDACTED  
PUBLIC VERSION

Re: In re Intel Corporation, C.A. Nos. 05-md-1717, 05-441 and 05-485

Dear Special Master Poppiti:

We submit this letter brief with respect to Dell Inc.'s ("Dell") production of certain transactional data relating to its U.S. sales of computers utilizing x86 microprocessors. As Dell has stated in its previous submissions to this Court, in submitting this letter brief, Dell is not admitting that it is subject to the jurisdiction of this Court with respect to any issues that may arise.

### Statement of the Issue in Dispute

Whether Dell should be forced to make a third production of certain detailed sales data where it has already made a replacement production at Class Plaintiffs' insistence and where Class Plaintiffs have substantially all of the data requested. Further, whether Dell should be forced to make this third production where Class Plaintiffs rejected Dell's offer to re-pull two days of data—July 15 and November 15, 2006—because Class Plaintiffs refused to specify its request in a formal, detailed letter, which Dell sought so as to avoid yet another dispute.

### Argument

Class Plaintiffs are absolutely correct that after extensive negotiations, Dell agreed to pull and produce [REDACTED]

But Class Plaintiffs are wrong to suggest that Dell failed to fulfill that agreement. In fact, Dell produced the data not once, but twice already. Nevertheless, Class Plaintiffs came back to Dell nearly six weeks after receiving the last production demanding an immediate replacement production for two days of data. After some effort to clarify the nature of the issue, Dell asked Class Plaintiffs to specify its request in a formal, detailed letter in an attempt to avoid any further confusion or unnecessary expenditure of time and effort. Class Plaintiffs initially agreed to do so, but then decided shortly thereafter to file this motion instead. Dell did not refuse, and has not refused, to re-pull the two days of data if Class Plaintiffs made a specific request in writing.

**A. Background**

Though Dell is a non-party to this MDL proceeding, the burden placed on Dell to date has been tremendous. Dell has produced 86 gigabytes of information (nearly 450,000 documents), has provided a corporate representative to testify on certain “transactional” (i.e., pricing) data, has produced [REDACTED] and has produced [REDACTED]. Additionally, 8 current and former employees, including CEO Michael Dell and the former CEO, Kevin Rollins, were deposed over 17 days.

**B. Dell Has Complied Twice with the Data Production Agreement with Class Plaintiffs**

In addition to these voluminous productions and extensive deposition testimony, Class Plaintiffs sought detailed daily transactional sales data from Dell. In the summer of 2007, Dell provided [REDACTED]. These sales data pulls are quite large, often containing millions of lines of data. Nearly 18 months later, and after a Rule 30(b)(6) deposition of Dell designed to obviate the need to produce any additional data, Class Plaintiffs started negotiations with Dell for a substantially larger production [REDACTED]. See Exh. 2 to Class Plaintiffs’ Ltr Brief. At that time, Class Plaintiffs sought only to ensure that [REDACTED]. Id.

The negotiations continued, and the number of days was reduced so as to limit the cost to Class Plaintiffs. On March 9, 2009, Dell and Class Plaintiffs agreed to [REDACTED]. See Exh. 8 to Class Plaintiffs’ Ltr Brief. Dell asked Class Plaintiffs to [REDACTED]. Id. Dell did so in an effort to avoid any confusion or doubt as to the nature and extent of data it would produce. The next day, Class Plaintiffs provided [REDACTED]. See Exh. 9 to Class Plaintiffs’ Ltr Brief. On the basis of that agreement, Dell began pulling the data, which, because of the volume, took several weeks. The data was produced to Class Plaintiffs on April 2, 2009. Exh. 1.<sup>1</sup>

On April 6, 2009, Class Plaintiffs notified Dell of a perceived deficiency in the data production. See Exh. 10 to Class Plaintiffs’ Ltr Brief. Class Plaintiffs claimed that the data was produced [REDACTED]. Id. Despite the fact that the March 10 agreement failed to [REDACTED] Dell agreed to re-pull and re-produce [REDACTED]. Id. Dell informed Class Plaintiffs that it would not be re-pulling the data a third time.

Re-pulling data with the new level of detail took a tremendous amount of time and effort on Dell’s part. [REDACTED]. Exh. 2. Dell produced the re-pulled data to Class Plaintiffs on April 27, 2009.

<sup>1</sup> Reference to “Exh. \_\_\_” are to the exhibits to the Declaration of Christopher S. Maynard, filed herewith as Exh. A.



Exh. 3. Once Dell asked for justifications for the request to re-pull the data, Class Plaintiffs never responded other than to allege bad faith in Dell's refusal to immediately, and without question, re-pull the data. Class Plaintiffs demanded that all 14 days be re-pulled, which seems purely punitive. Exh. 4.

In actuality, Class Plaintiffs have no need for the additional data so strong that it outweighs the burden to Dell in pulling—for the third time—

**D. Class Plaintiffs Refused to Provide Detailed Specifications for a Third Data Pull**

Notwithstanding that Class Plaintiffs already have substantially all the data they requested, Dell offered to But before doing so, Dell requested that Class Plaintiffs provide a detailed, formal letter specifying exactly what it wanted re-pulled. Exh. 5. This was necessary since the previous two pulls had been done based on email exchanges, and Class Plaintiffs had claimed that both pulls had been done improperly. Initially, Class Plaintiffs agreed to provide the detailed, formal letter. Id. But Class Plaintiffs reversed course and chose to file this motion instead and sought sanctions against Dell in doing so.

**Conclusion**

Dell has complied with its agreement with Class Plaintiffs to pull and produce detailed sales data. Dell should not be forced to provide any additional data. Nevertheless, Dell remains willing to if Class Plaintiffs will provide a detailed, formal letter specifying how it wants the pull done. There is no justification for suggesting that Dell should be required to

Respectfully,

*/s/ Lauren E. Maguire*

Lauren E. Maguire

LEM/nml  
Attachment

cc: Adam L. Balick, Esquire (by hand; w/attachment)  
Frederick L. Cottrell, III, Esquire (by hand; w/attachment)  
Richard L. Horwitz, Esquire (by hand; w/attachment)  
James L. Holzman, Esquire (by hand; w/attachment)  
J. Clayton Athey, Esquire (by hand; w/attachment)

**EXHIBIT A AND  
EXHIBITS 1 - 5 HAVE  
BEEN REDACTED IN  
THEIR ENTIRETY**