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November 17, 2009

**BY HAND DELIVERY AND  
ELECTRONIC FILING**

The Honorable Vincent J. Poppiti  
Fox Rothschild LLP  
Citizens Bank Center  
919 North Market Street, Suite 1300  
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**Re: Advanced Micro Devices, Inc., et al. v. Intel Corporation, et al., C.A. No. 05-441-JJF; In re Intel Corporation, C.A. No. 05-MD-1717-JJF; Phil Paul v. Intel Corp., Cons. C.A. No. 05-485-JJF; Intel's Response to Class Plaintiffs' 11/13/2009 Letter**

Dear Judge Poppiti:

On October 14, 2009, Intel and AMD both filed motions for sanctions (on all appropriate case dockets) related to evidence preservation issues. Though they participated in prior proceedings related to preservation issues, the Class Plaintiffs chose not to join in AMD's motion nor file a motion of their own. On November 12, 2009, in connection with their settlement of all disputes, Intel and AMD jointly submitted a Stipulation and [Proposed] Order to Your Honor withdrawing their respective motions with prejudice.

On November 13, 2009, although they knowingly chose not to participate in the sanctions motion practice, Class Plaintiffs submitted a letter to Your Honor objecting to the Intel-AMD stipulation. Class Plaintiffs request that "any Order that the Court enters dismissing AMD's and Intel's sanctions motions be without prejudice to Class Plaintiffs' right to separately seek sanctions against Intel relating to such production and retention issues." Docket # 2249, 11/13/2009 Class Plaintiffs' Ltr. to Ct, at 1. Class Plaintiffs are not parties to the stipulation, lack standing to object to it and cite no legitimate basis or authority for the Court to revise that agreement or the settlement. Consequently, there is no reason to delay entering the stipulation and [Proposed] Order.

Intel separately objects to Class Plaintiffs' position that they are entitled to pursue, at some future date, a sanctions motion related to document retention. If Class Plaintiffs intended to file a sanctions motion against Intel, they could and should have joined AMD's motion or otherwise requested to participate under the Court-approved briefing schedule. For well over two years, Class Plaintiffs participated in hearings and depositions on Intel's retention issues, and they were served with all related court filings. See Exhibit A (citing examples of Class

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Plaintiffs' participation). Class Plaintiffs were on notice of all relevant issues, had all information necessary to evaluate their options and, indeed, shared a joint prosecution agreement with AMD. Despite these facts, Class Plaintiffs chose not to join AMD's motion or otherwise file their own motion. Class Plaintiffs have offered no excuse, nor can they, why they should be allowed to file a motion for sanctions after declining to participate in the previous motion practice.

The Court has made clear that the various cases at issue were consolidated to promote efficiency and that discovery disputes ought to be resolved in the most timely manner possible. On April 18, 2006, Judge Farnan consolidated for pretrial purposes all indirect purchaser antitrust and related actions against Intel. Docket # 51, 4/18/2006 Order at 4-5. Judge Farnan then ordered that discovery in the consolidated cases "shall be coordinated to the *maximum extent practicable to promote efficiency and eliminate duplication.*" Docket # 79, 5/16/2006 Case Management Order at 3 (emphasis added). In addition, Your Honor ordered in the Procedures for the Handling of Discovery Disputes Before Special Master that "it is in the interest of all parties to streamline the discovery process and to *facilitate the efficient and expeditious resolution of discovery disputes.*" Docket # 222, 6/28/2006 Order, at 2 (emphasis added). Moreover, the Transfer Order issued in this matter on November 3, 2005 by the Judicial Panel on Multidistrict Litigation stated that consolidation of the various Intel matters will "conserve the resources of the parties, their counsel and the judiciary" and "ensures that pretrial proceedings will be conducted in a manner leading to a just and expeditious resolution of the action to the benefit of not just some but all of the litigation's parties." J.P.M.L Docket # 1717, 11/8/05 Order, at 1-2.<sup>1</sup>

At the August 24, 2009 hearing at which Class Plaintiffs were represented by Mr. Athey, Your Honor teed up the discussion of "*any expected motions that deal with issues focused on spoliation and remedy*" :

Let's just put it under that umbrella. And what I am looking to do is either engage you in conversation today about scheduling blocks for the filing of those motions and also engage you in conversation today about what the nature of any hearing on any of those applications would look like and the timing of both.

Docket # 2138, 8/24/2009 Hearing at 6:7-9 (emphasis added).

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<sup>1</sup> The purpose of consolidation is well-settled and the Class Plaintiffs' request runs counter to it. See, e.g., *In re Nissan Motor Corp. Antitrust Litigation*, 385 F.Supp. 1253, 1255 (Jud. Pan.Mult.Lit. 1974) ("one of the purposes of coordinated or consolidated pretrial proceedings is to streamline the efforts of the parties and witnesses, their counsel and the judiciary in order to effectuate an overall savings of costs and a minimum of inconvenience to all concerned"); *Barcelo v. Brown* 78 F.R.D. 531, 536 (D.C. Puerto Rico 1978) ("The paramount objective of consolidation is the accomplishment of great convenience and economy in the administration of justice. The rule seeks to avoid overlapping duplication in motion practice, pretrial and trial procedures occasioned by competing counsel representing different Plaintiffs.")

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Despite this guidance, Class Plaintiffs did not state any intent to file a sanctions motion until their letter of November 13, 2009. To allow Class Plaintiffs to file such a motion now (or later) would reward their knowing silence and delay, undermine the very purpose behind consolidation, ignore Your Honor's request and expectation for consolidated briefing on these issues, and would severely prejudice Intel after it litigated these issues for well over two years and invested substantial time and resources to resolve them once and for all.<sup>2</sup> Intel hereby reserves all rights to object to any future attempt by Class Plaintiffs to pursue a motion it could have filed long ago.

Accordingly, Your Honor should enter the stipulation and reject Class Plaintiffs' tardy effort to join motion practice which has now come and gone.

Respectfully,

*/s/ W. Harding Drane, Jr.*

W. Harding Drane, Jr. (I.D. No. 1023)

WHD:cet

cc: Clerk of Court (via Hand Delivery)

Counsel of Record (via CM/ECF & Electronic Mail)

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<sup>2</sup> Class Plaintiffs were apparently content to ride AMD's coattails, undertaking no effort while Intel (and AMD) expended tremendous time, energy, and resources on retention-related discovery and their respective sanctions motions. By the time of the settlement, Intel's effort to respond to AMD's motion was well-advanced, at substantial expense. Any motion by Class Plaintiffs would obviously require a new and different response, based on the evidence, arguments, and requested remedies at issue. Such duplication of effort is contrary to the goals of pre-trial consolidation and this Court's own clear guidance to the parties.

# Exhibit A

**Examples of Class Plaintiffs' Participation in Retention Related Hearings and Depositions**

<b>Date</b>	<b>Topic</b>	<b>Class Plaintiffs' Representative</b>
3/5/07	Hearing re Intel retention issues	Small, Holzman, Dove, Landau, Fimmel
4/9/07	Hearing re Friedberg's appointment	Holzman, Small, Landau
4/26/07	Hearing re 30(b)(6) depositions concerning retention, and retention related document productions	Athey, Landau, Small
5/3/07	Hearing re 30(b)(6) depositions concerning retention, and retention related document productions	Holzman, Small
5/15/07	Hearing re redacted version of remediation plan	Athey, Small, Bolan
5/24/07	Hearing re preservation of retention-related materials	Landau, Holzman
6/14/07	Hearing re bifurcation order, and retention related production cutoffs	Athey, Landau
6/29/07	Deposition of Malcolm Harkins	Lehman
1/3/08	Hearing re Weil interview notes	Holzman, Landau
2/1/08	Hearing re Weil interview notes	Holzman
2/19/08	Deposition of Roy Batista	King
2/20/08	Deposition of Malcolm Harkins	King
2/26/08	Hearing re counsel's instructions at retention related 30(b)(6) deposition	Holzman, Athey, Lehman
3/19/08	Deposition of Perry Olson	King
9/11/08	Hearing re Intel's retention related discovery requests	Athey
12/12/08	Hearing re histograms	Holzman
1/9/09	Hearing re Intel's retention related 30(b)(6) deposition requests	Athey
1/23/09	Hearing re paragraph 8 summaries	Athey, Herbert
6/15/09	Hearing re Intel's motion to compel further retention related deposition testimony	Herbert
7/20/09	Hearing re Intel's document requests re Glover Park	Athey, Corbett
8/6/09	Hearing re Intel's responses to AMD's retention related document requests	Athey
8/24/09	Hearing re briefing schedule for retention related sanctions motions	Athey
9/4/09	Hearing re briefing schedule for retention related sanctions motions	Athey
9/29/09	Deposition of Bruce Sewell	Woerner