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November 20, 2009

By Hand & CM/ECF

The Honorable Vincent J. Poppiti
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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' 11/19/2009 Letter

Dear Judge Poppiti:

This responds to Class Plaintiffs' letter dated November 19, 2009. We write to clarify certain issues raised in their letter and to again request that Your Honor approve the Stipulation and [Proposed] Order as jointly submitted by Intel and AMD. The Stipulation is an important component of the settlement reached by Intel and AMD, and a necessary step towards final resolution of the parties' disputes.

First, Class Plaintiffs admit they "did not formally join AMD's sanctions motion," yet argue their rights were reserved when AMD – *a separate party* – filed a timely motion under the Court-approved schedule. Docket # 2255 (11/19/2009 Class Plaintiffs' Ltr. at 2). Class Plaintiffs cite no authority – because there is none – permitting a party (here, a putative class) to hold its place in line in motion practice without filing or joining the pending motion, or even advising the Court that it intended to do so at some unspecified, later date. Class Plaintiffs apparently regret their own failure to join what was plainly designed as a *coordinated* briefing schedule, but that is no basis to rewrite the stipulation jointly proposed by the parties who did in fact participate.

Second, contrary to Class Plaintiffs' suggestion, Intel does not argue that they "should be bound" by the stipulation. 11/19/2009 Class Plaintiffs' Ltr. at 2. Class Plaintiffs waived their right to file a retention-related sanctions motion, not because of any stipulation between Intel and AMD, but rather because Class Plaintiffs did not file such a motion (or join AMD's motion) at the appropriate time.

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Third, Class Plaintiffs state they are “currently evaluating the spoliation issue” and that Intel will not be prejudiced if Class Plaintiffs are permitted to file another motion “[a]s the class litigation proceeds.” 11/19/2009 Class Plaintiffs’ Ltr. at 2. Considering Class Plaintiffs have admittedly not even decided whether to file a motion, their request is premature at best. In any event, Class Plaintiffs’ position is wrong and patently unfair. Intel has already spent an enormous amount of time and resources on the retention-related motion practice, which was discussed at length at hearings attended by, and in papers served on, Class Counsel. Indeed, Class Plaintiffs even joined certain retention-related discovery requests, so obviously were able to participate if and when they chose to. *See, e.g.*, Class Plaintiffs’ 5/16/07 Rule 30(b)(6) Notice re Remediation (05-1717, Docket #476).¹ Under Class Plaintiffs’ theory of selective consolidation, they could sit back and watch the motion practice and, after the Court issued a decision, file a separate motion – an obvious “second bite” – to try to address shortcomings in AMD’s motion, fill evidentiary gaps and otherwise tailor their motion to respond to the Court’s decision. That process is unfair and unworkable, was never contemplated or discussed, and is obviously contrary to the letter and spirit of this *consolidated, coordinated* action.

In sum, Class Plaintiffs are not parties to the stipulation and should not be allowed to rewrite or block it. Class Plaintiffs’ failure to file or join the motion practice, *not* the stipulation, results in waiver. Intel therefore requests that Your Honor execute the Stipulation and [Proposed] Order in its current form, and either rule that Class Plaintiffs are *not* permitted to file a retention-related sanctions motion, or else defer judgment on this separate issue until it is ripe – namely, if and when Class Plaintiffs decide to file such a motion. Intel is available to address these issues via teleconference if Your Honor deems that is necessary.

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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¹ Class Plaintiffs have also joined certain motions filed by AMD throughout this case, indicating their decision *not* to join AMD’s sanctions motion was just that: a decision. *See, e.g.* 12/28/07 Joint Motion to Compel Document Preservation Discovery (05-1717, Docket #685); 1/15/09 Joint Motion to Compel (05-1717, Docket # 1493).