

UNITED STATES DISTRICT COURT

for the District of Arizona

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: Insight Enterprises, Inc. 1305 West Auto Drive Tempe, Arizona 85284

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.

Table with 2 columns: Place (Snell & Wilmer, One Arizona Center, 400 East Van Buren, Suite 1900, Phoenix, Arizona 85004-2202) and Date and Time (June 9, 2009 at 9:00 a.m.)

The deposition will be recorded by this method: stenographic 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: 6/3/09

CLERK OF COURT

Signature of Clerk or Deputy Clerk

OR

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; C.A. 05-441-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 "INSIGHT" refers to Insight Enterprises, Inc. and any of its controlled present or former subsidiaries, parents, and predecessor or successor companies.
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 INSIGHT in this litigation that reflect INSIGHT's purchases of x86 MICROPROCESSORS and x86 COMPUTER SYSTEMS.
5. The term "SALES DATA" refers to the data files produced by INSIGHT in this litigation that reflect INSIGHT's sales of x86 MICROPROCESSORS and x86 COMPUTER SYSTEMS.
6. The term "VENDOR REBATE DATA" refers to the data files produced by INSIGHT in this litigation that reflect (i) any payment, subsidy, rebate, discount received by INSIGHT from a vendor, manufacturer, Intel or AMD in connection with INSIGHT's purchase of x86 MICROPROCESSORS and/or x86 COMPUTER SYSTEMS.
7. The term "MATERIAL MASTER DATA" refers to the Access database table (and data contained therein) produced by INSIGHT, titled Material Master, and contained within the electronic file with the filename "Submittal for Intel.mdb."
8. The relevant time period for these topics is January 1, 2000 to the present.

### DEPOSITION TOPICS FOR INSIGHT

1. The data that INSIGHT produced in this litigation, including the definitions for all data fields, abbreviations or codes reflected as values in any data fields, and the interaction among the datasets produced, including but not limited to:
  - a. Knowledge of the SALES DATA, how it relates to the PURCHASE DATA, VENDOR REBATE DATA and MATERIAL MASTER DATA, and how to

link it to the PURCHASE DATA, VENDOR REBATE DATA and MATERIAL MASTER DATA.

2. The recordation, storage, and production of the data produced by INSIGHT in connection with this litigation, including the system in which that data was stored.

3. Whether the data produced by INSIGHT in this litigation constitutes a business record of INSIGHT, as that term is used in Fed. R. Evid. 803(6), including:

- a. whether it is INSIGHT'S regular practice to prepare such data for use in its business;
- b. whether it is INSIGHT'S regular practice to prepare such data at or near the date of the date(s) of the transactions and payments recorded therein;
- c. whether it is INSIGHT'S regular practice to retain and maintain records in the ordinary course of INSIGHT'S business; and
- d. whether the data produced by Insight came from INSIGHT'S business files.

#### **PURCHASE DATA**

4. Identifying custom-to-order ("CTO") and built-to-order ("BTO") or other custom COMPUTER SYSTEM products in the PURCHASE DATA.

5. Identifying COMPUTER SYSTEMS and distinguishing them from other products (*e.g.*, peripherals, processors, components, etc.).

6. A precise definition of the Unit\_Price field.

7. Determining the net acquisition cost (to INSIGHT) of a product (net of all rebates, discounts, and credits at the time of purchase and after).

8. The extent to which vendor rebates are captured in the PURCHASE DATA and how to identify those adjustments in the data.

9. Observable patterns in the data (*e.g.*, when Unit\_Price is equal to zero and Qty is not).

10. Identification of transaction type (*i.e.*, purchase, credit, debit, return, etc.) in the PURCHASE DATA.

11. Identification of internal sales or transfers.

### SALES DATA

12. Identification of sales of custom-to-order (“CTO”) and built-to-order (“BTO”) or other custom COMPUTER SYSTEM products.

13. Identification of sales of COMPUTER SYSTEMS as distinguished from other products (*e.g.*, peripherals, processors, components, etc.).

14. Determination of the net price paid by the customer for a given sale (net of all rebates, discounts, and credits at the time of sale and after).

15. A precise definition of the Unit\_Price field.

16. To what extent consumer rebates are captured in the SALES DATA and how to identify and incorporate those rebates.

17. Identifying the customer type in the SALES DATA.

18. Identifying key characteristics of processors sold in COMPUTER SYSTEMS (*i.e.*, brand and model, speed, cache, and FSB).

19. Identifying internal sales or transfers in the SALES DATA.

20. The availability of various customer-related data (*e.g.*, sold-to customer information).

21. Identification of open-box or refurbished products in the event INSIGHT sells such products

22. INSIGHT's policy on sales at a loss (*e.g.*, sales where the unit price is less than the unit cost).
23. Identification of product returns, credits and debits in the SALES DATA.
24. The existence of multiple costs associated with the same product on the same day.
25. Regarding observable patterns in the data (*e.g.*, when Unit\_Cost is zero and Quantity is not).
26. Why certain products have no purchase record (*i.e.*, products appear in the SALES DATA but not anywhere in the PURCHASE DATA).

#### VENDOR REBATE DATA

27. Description and interpretation of the rebates contained in the VENDOR REBATE DATA.
28. The types of vendor rebates INSIGHT receives in general.
29. Relationship between the VENDOR REBATE DATA and other data sets.
30. Interpretation of the values of different variables included in the VENDOR REBATE DATA.
31. How variables in the VENDOR REBATE DATA relate to other variables (both in the VENDOR REBATE DATA and in other data sets).
32. A precise definition of the Actual field.
33. The types of rebates, adjustments and programs included in the VENDOR REBATE DATA.
34. Identification of rebates related to processors or COMPUTER SYSTEMS.
35. Specific values that appear in the Supplier field.

## **MATERIAL MASTER DATA**

36. Interpretation of the values of different variables included in the MATERIAL MASTER DATA.

37. Interpretation of variables in the MATERIAL MASTER DATA as it relates to other variables in the other data sets.

38. Identification of key characteristics of processors sold in COMPUTER SYSTEMS, specifically brand and model, speed, cache, and FSB.

39. Why certain products appear in the PURCHASE DATA but not in the MATERIAL MASTER DATA.

40. Identification of refurbished and open-box products in the MATERIAL MASTER DATA.

41. How to appropriately and correctly use the supplied MATERIAL MASTER DATA.

### **Topics Regarding Rebates and How These Are Tracked in The Various Datasets.**

42. To what extent customer rebates are captured in the SALES DATA and how to identify those rebates.

43. How to potentially link customer rebates to their original transactions in the SALES DATA.

44. The types of rebates INSIGHT offers to its customers in the ordinary course of business.

45. Whether INSIGHT offers any post-transactional rebates (e.g., Mail-In Rebates) and whether data on such rebates exist.