

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

<p>IN RE INTEL CORPORATION MICROPROCESSOR ANTITRUST LITIGATION</p>	<p>MDL Docket No. 05-1717 (JJF)</p>
<p>ADVANCED MICRO DEVICES, INC., a Delaware corporation, and AMD INTERNATIONAL SALES & SERVICE, LTD., a Delaware corporation,</p> <p align="center">Plaintiffs,</p> <p align="center">v.</p> <p>INTEL CORPORATION, a Delaware corporation, and INTEL KABUSHIKI KAISHA, a Japanese corporation</p> <p align="center">Defendants.</p>	<p>C.A. No. 05-441 (JJF)</p> <p>PUBLIC VERSION 619109</p>
<p>PHIL PAUL, on behalf of himself and all others similarly situated,</p> <p align="center">Plaintiffs,</p> <p align="center">v.</p> <p>INTEL CORPORATION,</p> <p align="center">Defendant.</p>	<p>C.A. No. 05-485-JJF</p> <p>CONSOLIDATED ACTION</p>

**DECLARATION OF DONN P. PICKETT IN SUPPORT OF INTEL'S MOTION TO
COMPEL DISCOVERY FROM THIRD-PARTY GLOVER PARK GROUP**

OF COUNSEL:

Robert E. Cooper
Daniel S. Floyd
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 900071
(213) 229-7000

Darren B. Bernhard
HOWREY LLP
1299 Pennsylvania Avenue
N.W. Washington, DC 20004
(202) 783-0800

Donn P. Pickett
BINGHAM McCUTCHEN LLP
Three Embarcadero Center
San Francisco, CA 94111
(415) 393-2000

Richard L. Horwitz (#2246)
W. Harding Drane, Jr. (#1023)
POTTER ANDERSON & CORROON LLP
Hercules Plaza, 6th Floor
1313 N. Market Street
P.O. Box 951
Wilmington, DE 19899-0951
(302) 984-6000
rhorwitz@potteranderson.com
wdrane@potteranderson.com

*Attorneys for Defendants
Intel Corporation and Intel Kabushiki
Kaisha*

I, Donn P. Pickett, declare as follows:

1. I am an attorney at Bingham McCutchen LLP, counsel of record for Intel Corporation and Intel Kabushiki Kaisha ("Intel") in this matter. I am licensed to practice law in the State of California. I have personal knowledge of the matters stated in this declaration and, if called as a witness, could and would testify competently to them.

2. I am submitting this declaration in support of Intel's Motion to Compel Documents and Testimony from Third-Party Glover Park.

3. Attached as Exhibit A is a true and correct copy of Intel's May 30, 2007 subpoena of third-party Glover Park.

4. Attached as Exhibit B is a true and correct copy of AMD and Glover Park's objections, served on June 18, 2007, to Intel's May 30, 2007 subpoena of third-party Glover Park.

5. Attached as Exhibit C is a true and correct copy of Intel's April 8, 2009 subpoena of third-party Glover Park.

6. Attached as Exhibit D is a true and correct copy of AMD and Glover Park's objections, served on April 20, 2009, to Intel's April 8, 2009 subpoena of third-party Glover Park.

7. Attached as Exhibit E is a true and correct copy of Intel's letter to AMD on September 14, 2007.

8. Attached as Exhibit F is a true and correct copy of AMD's letter to Intel on September 27, 2007.

9. Attached as Exhibit G is a true and correct copy of AMD's email to Intel on November 6, 2008.
10. Attached as Exhibit H is a true and correct copy of AMD's email to Intel on December 5, 2008.
11. During the week of March 30, 2009, I left a voicemail for AMD's counsel, Mark Samuels, to discuss the subpoena of Glover Park and to inquire about a deposition.
12. Attached as Exhibit I is a true and correct copy of AMD's email to Intel on May 20, 2009.
13. Attached as Exhibit J is a true and correct copy of Intel's email to AMD on May 22, 2009.
14. Attached as Exhibit K is a true and correct copy of AMD's email to Intel on June 1, 2009.
15. Attached as Exhibit L is a true and correct copy of the parties' December 7, 2007 Stipulation Withdrawing Subpoena Duces Tecum to Potomac Counsel, LLC, DC Navigators, LLC and Public Strategies, LLC and Restricting Future Discovery from Consultants Retained to Influence Governmental Action.
16. Attached as Exhibit M is a true and correct copy of the Court's January 22, 2009 Order Regarding Length and Scope of Intel's Fed. R. Civ. P. 30(b)(6) Notice of Deposition Concerning AMD's Evidence Preservation.
17. Attached as Exhibit N are true and correct copies of deposition exhibits 224, 225, 226, and 558.

18. Attached as Exhibit Q are true and correct copies of documents produced by AMD with the bates-labels AMD-F065-00018451 and AMD-F065-00018484.

19. Attached as Exhibit P are true and correct copies of documents produced by third-party Marie Crane with the bates-labels: MCRANE-704-00024658; MCRANE-704-00025806; and MCRANE-704-00010366.

20. Attached as Exhibit Q are true and correct copies of relevant portions of the deposition transcripts of: Robert Melendres; John Volkmann; and Marc Warshawsky.

21. Attached as Exhibit R are true and correct copies of: *Calvin Klein Trademark Trust v. Wachner et al.*, 198 F.R.D. 53 (S.D.N.Y. 2000); *In re New York Renu with Moistureloc Product Liability Litigation*, 2008 WL 2338552 (May 8, 2008, D.S.C.); and *Whitlow v. Martin*, 2008 WL 2414830 (C.D. Ill. June 12, 2008).

I declare under penalty of perjury that the foregoing is true and correct. Executed June 15, 2009 in San Francisco, California.



Donn P. Pickett

Exhibit A

The subpoena commands the third party to produce documents and things, pursuant to Rule 45, Fed. R. Civ. P., concerning the categories identified in Schedule A attached to the subpoena. The document production will take place within 30 days of service of the subpoena, at the location listed below, or at such alternative dates, times, and/or locations as may be mutually agreed upon by counsel.

The subpoenaed party is:

Name

Glover Park Group
3299 K Street, N.W., Suite 500
Washington, DC 20007

Date/Location of Document Production

June 29, 2007 @ 5:00 p.m.
Howrey LLP
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

OF COUNSEL:

POTTER ANDERSON & CORROON LLP

Robert E. Cooper
Daniel S. Floyd
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, CA 900071
(213) 229-7000

Peter E. Moll
Darren B. Bernhard
Howrey LLP
1299 Pennsylvania Avenue
N.W. Washington, DC 20004
(202) 783-0800

Richard A. Ripley
BINGHAM McCUTCHEN LLP
2020 K Street, N.W.
Washington, DC 20006
Telephone: (202) 373-6000
Facsimile: (202) 373-6001

David M. Balabanian
Christopher B. Hockett
BINGHAM McCUTCHEN LLP
Three Embarcadero Center
San Francisco, CA 94111-4067
Telephone: (415) 393-2000
Facsimile: (415) 393-2268

Dated: May 30, 2007

798379/29282

By: /s/ Richard L. Horwitz
Richard L. Horwitz (#2246)
W. Harding Drane, Jr. (#1023)
Hercules Plaza, 6th Floor
1313 N. Market Street
P.O. Box 951
Wilmington, DE 19899-0951
(302) 984-6000
rhorwitz@potteranderson.com
wdrane@potteranderson.com

Attorneys for Defendants
Intel Corporation and Intel Kabushiki Kaisha

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CERTIFICATE OF SERVICE

I, Richard L. Horwitz, hereby certify that on May 30, 2007, the attached document was hand delivered to the following persons and was electronically filed with the Clerk of the Court using CM/ECF which will send notification of such filing(s) to the following and the document is available for viewing and downloading from CM/ECF:

Jesse A. Finkelstein
Frederick L. Cottrell, III
Chad M. Shandler
Steven J. Fineman
Richards, Layton & Finger
One Rodney Square
920 North King Street
Wilmington, DE 19801

James L. Holzman
J. Clayton Athey
Prickett, Jones & Elliott, P.A.
1310 King Street
P.O. Box 1328
Wilmington, DE 19899

I hereby certify that on May 30, 2007, I have Electronically Mailed the documents to the following non-registered participants:

Charles P. Diamond
Linda J. Smith
O'Melveny & Myers LLP
1999 Avenue of the Stars, 7th Floor
Los Angeles, CA 90067
cdiamond@omm.com
lsmith@omm.com

Mark A. Samuels
O'Melveny & Myers LLP
400 South Hope Street
Los Angeles, CA 90071
msamuels@omm.com

Salem M. Katsh
Laurin B. Grollman
Kasowitz, Benson, Torres & Friedman LLP
1633 Broadway, 22nd Floor
New York, New York 10019
skatsh@kasowitz.com
lgrollman@kasowitz.com

Michael D. Hausfeld
Daniel A. Small
Brent W. Landau
Allyson B. Baker
Cohen, Milstein, Hausfeld & Toll, P.L.L.C.
1100 New York Avenue, N.W.
Suite 500, West Tower
Washington, D.C. 20005
mhausfeld@cmht.com
dsmall@cmht.com
blandau@cmht.com
abaker@cmht.com

Michael P. Lehman
Thomas P. Dove
Alex C. Turan
The Furth Firm LLP
225 Bush Street, 15th Floor
San Francisco, CA 94104
mplehmann@furth.com
tdove@furth.com
aturan@furth.com

Guido Saveri
R. Alexander Saveri
Saveri & Saveri, Inc.
111 Pine Street, Suite 1700
San Francisco, CA 94111
guido@saveri.com
rick@saveri.com

Steve W. Berman
Anthony D. Shapiro
Hagens Berman Sobol Shapiro, LLP
1301 Fifth Avenue, Suite 2900
Seattle, WA 98101
steve@hbssl.com
tony@hbssl.com

By: /s/ Richard L. Horwitz
Richard L. Horwitz (#2246)
W. Harding Drane, Jr. (#1023)
POTTER ANDERSON & CORROON LLP
Hercules Plaza, 6th Floor
1313 N. Market Street
P.O. Box 951
Wilmington, DE 19899-0951
(302) 984-6000
rhorwitz@potteranderson.com
wdrane@potteranderson.com

738395 / 29282

EXHIBIT 1

DAJ 88 (Rev. 12/06) Subpoena in a Civil Case

Issued by the
UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

Advanced Micro Devices, Inc., and
AMD International Sales & Services, Ltd.

V.

Intel Corporation and Intel Kabushiki Kaisha

In RE: Intel Corp Microprocessor Antitrust Litigation

SUBPOENA IN A CIVIL CASE

Case Number: ¹ 05-441-JJF, MDL 05-1717-JJF
United States District Court, District
of Delaware

TO: Glover Park Group
3299 K Street, N.W., Suite 500
Washington, DC 20007

- YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

- YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
---------------------	---------------

- YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

For a description of the documents requested, please see Schedule A attached to this subpoena.

PLACE Howrey, LLP, 1299 Pennsylvania Avenue, N.W., Washington, DC 20004 Attention: Christine Spinella Davis	DATE AND TIME 6/29/2007 5:00 p.m.
--	--------------------------------------

- YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) <i>Laura S. Shores - Attorney for Defendants</i>	DATE 5/30/07
---	-----------------

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
Laura S. Shores, Esq.
Howrey LLP, 1299 Pennsylvania Avenue, N.W., Washington, DC 20004 (202) 783-0800

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

¹ If action is pending in district other than district of issuance, state district under case number.

AD 88 (Rev 12/06) Subpoena in a Civil Case

PROOF OF SERVICE

	DATE			PLACE
SERVED:				
SERVED ON (PRINT NAME)		MANNER OF SERVICE		
SERVED BY (PRINT NAME)		TITLE		

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____ DATE _____ SIGNATURE OF SERVER _____
 _____ ADDRESS OF SERVER _____

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (3)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(D) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena 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 to quash, the person from whom discovery is sought must show that the information sought 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) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation material, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that 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 and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(c) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a comparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

SCHEDULE A

DEFINITIONS

In addition to the definitions set forth in Rule 26 of the Federal Rules of Civil Procedure, the following definitions apply to each of the following requests:

1. The terms "AMD" means Advanced Micro Devices, Inc. and AMD International Sales & Service, Ltd. and any parent, subsidiary or affiliate entities, as well as the owners, partners, officers, directors, employees, agents, and other representatives of Advanced Micro Devices, Inc., and AMD International Sales & Service, Ltd.
2. The term "Intel" means Intel Corporation and Intel Kabushiki Kaisha and any parent, subsidiary or affiliate entities, as well as the owners, partners, officers, directors, employees, agents, and other representatives of Intel Corporation and Intel Kabushiki Kaisha.
3. The term "GPC" means Glover Park Group located at 3299 K Street, N.W., Suite 500, Washington, DC 20007, and any parent, subsidiary or affiliate entities, as well as the owners, partners, officers, directors, employees, agents and other representatives of GPC.
4. The term "Complaint" means the complaint filed by AMD against Intel in the United States District Court for the District of Delaware on June 27, 2005, case number CA 05-441.
5. The term "person" means any natural person or legal entity, including, but not limited to, any corporation, partnership, proprietorship, firm, trust, association, government entity, organization or group of persons.
6. The term "customer" means any actual or potential purchaser of microprocessors or computer systems that incorporate microprocessors, including, but not limited to original equipment manufacturers ("OEMs"), distributors, retailers, dealers,

original design manufacturers ("ODMs"), system builders, distributors, assemblers, and resellers.

7. The term "communication" means the transmittal of information and encompasses every medium of information transmittal, including, but not limited to, oral, written, graphic and electronic communication.

8. The term "document" is synonymous in meaning and equal in scope to the usage of the term in Fed. R. Civ. P. 34(a), including, without limitation, electronic or computerized data compilations. A draft or non-identical copy constitutes a separate document within the meaning of the term.

9. The terms "relate to," "relating to," "related to," and "concerning" mean constituting, pertaining to, making reference to, comprising, evidencing, alluding to, responding to, connected with, commenting on, with respect to, about, regarding, resulting from, embodying, explaining, supporting, discussing, showing, describing, reflecting, analyzing, setting forth, in respect of, having a direct relationship to or in any way being factually, legally or logically connected to, in whole or in part, the stated subject matter.

10. Any term stated in the singular includes the plural and vice versa.

11. "Any" and "each" are understood to include and encompass "all."

12. Whenever the conjunctive is used, it shall also be taken in the disjunctive, and vice versa.

INSTRUCTIONS

The following instructions apply to the document requests below and should be considered as part of each such request:

1. Furnish all responsive documents prepared, generated, created and/or received from April 1, 2000 through the present, and which are in your possession,

custody or control or in the possession, custody or control of your representatives and agents, including all former and current counsel.

2. This document request requires the production of all original documents, all non-identical copies of such documents, all versions of such documents, and any preliminary drafts thereof that are within your possession, custody, or control or in the possession or control of your representatives and agents, including all former and current counsel.

3. This request requires the production of electronic documents. To the extent both identical paper and electronic versions of a document may exist, please produce only the electronic versions of the document at this time. Intel, however, reserves the right to later request the paper version of the document.

4. If any portion of a document is responsive to any request, the entire document must be produced.

5. With respect to any responsive documents which you decline to produce because of a claim of privilege, provide the following information as to each document: the date, author and type of document; the names and job titles of the persons to whom the document was sent; a summary of the content of the document; and a detailed description of the grounds for the claim of privilege.

6. All documents that respond, in whole or in part, to any part of any request herein, should be produced in their entirety, in unredacted form, including all attachments and enclosures, as they are kept in the ordinary course of business. If any information specified in any request appears on any page of any document, all pages of the document should be produced in response to the request. To the extent you redact any document covered by this discovery request, furnish a list specifying: (a) the document and pages redacted; (b) the nature of the material redacted, and (c) the basis of the redaction.

7. The document requests herein shall be deemed continuing Request, and you must supplement your answers promptly if and when you obtain, create, discover, or become aware of additional documents relevant to any of these requests.

DOCUMENTS REQUESTED

1. All documents concerning or relating to any litigation proposed or contemplated by AMD against Intel.

2. All documents concerning or relating to any communications with AMD, the law firm of O'Melveny & Meyers, LLP, and/or any other persons acting on AMD's behalf, concerning or related to any litigation proposed or contemplated by AMD against Intel.

3. All documents concerning or relating to any possible or actual investigation of Intel by the United States or a foreign governmental entity.

4. All documents concerning or relating to any communications with AMD, the law firm of O'Melveny & Meyers, LLP, and/or any other persons acting on AMD's behalf, concerning or relating to any possible or actual investigation of Intel by the United States or a governmental entity.

Exhibit B

GENERAL OBJECTIONS

Glover Park and AMD each assert the following General Objections in response to each and every Request in the subpoena, whether or not they are separately stated in each response:

1. Glover Park and AMD each objects to each and every Request, and to the subpoena in its entirety, on the ground that it is an inappropriate effort to invade the attorney-client privilege and work product privileges and is propounded for improper tactical purposes and not for the purpose of obtaining discoverable information. Glover Park and AMD also each objects to the subpoena as a whole and to each individual Request on the ground that it specifically calls for information that is protected from disclosure by the attorney-client privilege, the attorney work product doctrine, and other applicable privileges and protections. Glover Park will not provide any such privileged or protected information.

2. Glover Park and AMD each objects to each and all of Intel's purported "Instructions" to the extent they purport to impose obligations that are unauthorized by, additional to, or inconsistent with Rules 26 or 45 of the Federal Rules of Civil Procedure or the Local Rules of the United States District Court for the District of Delaware. Glover Park will not comply with any such unauthorized, additional, or inconsistent instructions.

3. Glover Park and AMD each objects to each and every Request to the extent it calls for information that contains or reveals trade secrets or other confidential research, development, commercial, financial, or personnel information, which, if disclosed or disseminated without restriction to Intel or third parties, could adversely impact AMD's or Glover Park's business. Glover Park will not produce any such confidential information except pursuant to the protective order.

4. Glover Park and AMD each objects to each and every Request to the extent it calls for information held subject to contractual or other legal obligations of confidentiality owed to its employees, clients, customers, or other third parties. Glover Park will not produce any such third party confidential information except pursuant to the protective order.

5. Glover Park and AMD each objects to Intel's definition of the word "customer" as vague, ambiguous, and overbroad. Using that definition renders these Requests unduly burdensome, and results in their seeking information that is not relevant to the claim or defense of any party or reasonably calculated to lead to the discovery of admissible evidence.

6. Glover Park and AMD each objects to Intel's definition of the words "relate to," "relating to," "related to" and "concerning," as vague, ambiguous, and overbroad. Using that definition renders these Requests unduly burdensome, and results in their seeking information that is not relevant to the claim or defense of any party or reasonably calculated to lead to the discovery of admissible evidence.

7. Glover Park and AMD each objects to the Requests in that they seek information that is neither relevant to the claims or defenses of a party nor reasonably likely to lead to the discovery of admissible evidence, and information that, even if it were relevant, could be obtained from other sources that would not require the production of information protected by the attorney-client privilege, the work product doctrine, or other applicable privileges and protections.

8. Glover Park and AMD would be willing, and hereby offer, to meet and confer with Intel about Intel's Requests and Glover Park and AMD's objections.

RESPONSES TO REQUESTS

REQUEST NO. 1:

All documents concerning or relating to any litigation proposed or contemplated by AMD against Intel.

RESPONSE TO REQUEST NO. 1:

Glover Park and AMD incorporate their General Objections into this Response. Glover Park and AMD also object to this Request on the ground that it is vague and ambiguous, overbroad, and unduly burdensome. Glover Park and AMD also object to this Request on the ground that it calls for the production of documents and information that is neither relevant to the claims or defenses of a party, nor reasonably likely to lead to the discovery of admissible evidence. Glover Park and AMD further object to this Request on the ground that it seeks information that is protected by the attorney-client privilege, the work product doctrine and other applicable privileges and protections. Glover Park will not produce documents in response to this Request as drafted.

REQUEST NO. 2:

All documents concerning or relating to any communications with AMD, the law firm of O'Melveny & Meyers LLP, and/or any other persons acting on AMD's behalf, concerning or related to any litigation proposed or contemplated by AMD against Intel.

RESPONSE TO REQUEST NO. 2:

Glover Park and AMD incorporate their General Objections into this Response. Glover Park and AMD also object to this Request on the ground that it is vague and ambiguous, overbroad, and unduly burdensome. Glover Park and AMD also object to this Request on the

ground that it calls for the production of documents and information that is neither relevant to the claims or defenses of a party, nor reasonably likely to lead to the discovery of admissible evidence. Glover Park and AMD further object to this Request on the ground that it seeks information that is protected by the attorney-client privilege, the work product doctrine and other applicable privileges and protections. Glover Park will not produce documents in response to this Request as drafted.

RESPONSE TO REQUEST NO. 3:

All documents concerning or relating to any possible or actual investigation of Intel by the United States or a foreign governmental entity.

RESPONSE TO REQUEST NO. 3:

Glover Park and AMD incorporate their General Objections into this Response. Glover Park and AMD also object to this Request on the ground that it is vague and ambiguous, overbroad, and unduly burdensome. Glover Park and AMD also object to this Request on the ground that it calls for the production of documents and information that is neither relevant to the claims or defenses of a party, nor reasonably likely to lead to the discovery of admissible evidence. Glover Park and AMD further object to this Request on the ground that it seeks information that is protected by the attorney-client privilege, the work product doctrine and other applicable privileges and protections. Glover Park will not produce documents in response to this Request as drafted.

REQUEST NO. 4:

All documents concerning or relating to any communications with AMD, the law firm of O'Melveny & Meyers, LLP, and/or any other persons acting on AMD's behalf, concerning or

relating to any possible or actual investigation of Intel by the United States or a governmental entity.

RESPONSE TO REQUEST NO. 4:

Glover Park and AMD incorporate their General Objections into this Response. Glover Park and AMD also object to this Request on the ground that it is vague and ambiguous, overbroad, and unduly burdensome. Glover Park and AMD also object to this Request on the ground that it calls for the production of documents and information that is neither relevant to the claims or defenses of a party, nor reasonably likely to lead to the discovery of admissible evidence. Glover Park and AMD further object to this Request on the ground that it seeks information that is protected by the attorney-client privilege, the work product doctrine and other applicable privileges and protections. Glover Park will not produce documents in response to this Request as drafted.

OF COUNSEL:

Charles P. Diamond, Esq.
cdiamond@omm.com
Linda J. Smith, Esq.
lsmith@omm.com
O'Melveny & Myers LLP
1999 Avenue of the Stars, 7th Floor
Los Angeles, CA 90067
(310) 246-6800

Mark A. Samuels, Esq.
msamuels@omm.com
O'Melveny & Myers LLP
400 South Hope Street
Los Angeles, CA 90071
213-430-6340

Dated: June 18, 2007

/s/Frederick L. Cottrell, III

Jesse A. Finkelstein (#1090)
Frederick L. Cottrell, III (#2555)
Chad M. Shandler (#3796)
Steven J. Fineman (#4025)
Richards, Layton & Finger, P.A.
One Rodney Square
P.O. Box 551
Wilmington, Delaware 19899
(302) 651-7700
Finkelstein@rlf.com
Cottrell@rlf.com
Shandler@rlf.com
Fineman@rlf.com
Attorneys for Plaintiffs Advanced Micro
Devices, Inc. and AMD International Sales &
Service, Ltd.

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of June, 2007, true and correct copies of the foregoing were caused to be served on counsel of record at the following addresses as indicated:

VIA HAND DELIVERY

Richard L. Horwitz, Esquire
Potter Anderson & Corroon LLP
1313 North Market Street
P. O. Box 951
Wilmington, DE 19899

James L. Holzman, Esquire
Prickett, Jones & Elliott, P.A.
1310 King Street
P.O. Box 1328
Wilmington, DE 19899-1328

VIA FEDERAL EXPRESS

Darren B. Bernhard, Esquire
Howrey LLP
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004-2402

Daniel A. Small, Esquire
Cohen Milstein, Hausfeld
& Toll, L.L.C.
1100 New York Avenue, N.W.
Suite 500 - West Tower
Washington, DC 20005

Robert E. Cooper, Esquire
Daniel S. Floyd, Esquire
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, California 90071-3197

/s/Frederick L. Cottrell, III
Frederick L. Cottrell, III (#2555)
Cottrell@rlf.com

Exhibit C

Issued by the
UNITED STATES DISTRICT COURT
 DISTRICT OF COLUMBIA

Advanced Micro Devices, Inc., and
 AMD International Sales & Services, Ltd.

V.

Intel Corporation and Intel Kabushiki Kaisha

In RE: Intel Corp Microprocessor Antitrust Litigation

SUBPOENA IN A CIVIL CASE

Case Number: 05-441-JJF, MDL 05-1717-JJF
 United States District Court, District
 of Delaware

TO: Glover Park Group
 3299 K Street, N.W., Suite 500
 Washington, DC 20007

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION Howrey LLP, 1299 Pennsylvania Avenue, N.W. Washington, D.C. 20004	DATE AND TIME
	April 21, 2009 @ 10:00 a.m.

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

For a description of the supplemental documents requested, please see Schedule B attached to this subpoena.

PLACE Howrey LLP, 1299 Pennsylvania Avenue, N.W., Washington, DC 20004 Attention: Christine Spinella Davis	DATE AND TIME
	April 21, 2009 @ 10:00 a.m.

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify, Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) <i>Thomas J. Dillickrath, Esq.</i> Partner	DATE April 8, 2009
---	-----------------------

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
 Thomas J. Dillickrath, Esq.
 Howrey LLP, 1299 Pennsylvania Avenue, N.W., Washington, DC 20004 (202) 783-0800

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

¹ If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

DATE	PLACE
SERVED:	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on	SIGNATURE OF SERVER
DATE	ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
 - (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;
 - (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or
 - (iv) subjects a person to undue burden.
- (B) If a subpoena
- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
 - (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
 - (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(D) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena 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 to quash, the person from whom discovery is sought must show that the information sought 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) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that 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 and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(c) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (i) of subparagraph (c)(3)(A).

EXHIBIT A

SCHEDULE A

DEFINITIONS AND INSTRUCTIONS

In addition to the definitions set forth in Rule 26 of the Federal Rules of Civil Procedure, the following definitions apply to each of the following requests:

1. The terms "AMD" means Advanced Micro Devices, Inc. and AMD International Sales & Service, Ltd. and any parent, subsidiary or affiliate entities, as well as the owners, partners, officers, directors, employees, agents, and other representatives of Advanced Micro Devices, Inc., and AMD International Sales & Service, Ltd.
2. The term "Intel" means Intel Corporation and Intel Kabushiki Kaisha and any parent, subsidiary or affiliate entities, as well as the owners, partners, officers, directors, employees, agents, and other representatives of Intel Corporation and Intel Kabushiki Kaisha.
3. The term "GPG" means Glover Park Group located at 3299 K Street, N.W., Suite 500, Washington, DC 20007, and any parent, subsidiary or affiliate entities, as well as the owners, partners, officers, directors, employees, agents and other representatives of GPC.
4. The term "x86 Microprocessors" means microprocessors that run the Microsoft Windows and Linux families of operating systems.
5. The term "Complaint" means the complaint filed by AMD against Intel in the United States District Court for the District of Delaware on June 27, 2005, case number CA 05-441.
6. The term "Service" means any work related to public relations, media relations, strategic messaging, corporate communications, advocacy and/or focus groups.

7. The term "person" means any natural person or legal entity, including, but not limited to, any corporation, partnership, proprietorship, firm, trust, association, government entity, organization or group of persons.

8. The term "customer" means any actual or potential purchaser of microprocessors or computer systems that incorporate microprocessors, including, but not limited to original equipment manufacturers ("OEMs"), distributors, retailers, dealers, original design manufacturers ("ODMs"), system builders, distributors, assemblers, and resellers.

9. The term "communication" means the transmittal of information and encompasses every medium of information transmittal, including, but not limited to, oral, written, graphic and electronic communication.

10. The term "document" is synonymous in meaning and equal in scope to the usage of the term in Fed. R. Civ. P. 34(a), including, without limitation, electronic or computerized data compilations. A draft or non-identical copy constitutes a separate document within the meaning of the term.

11. The terms "relate to," "relating to," "related to," and "concerning" mean constituting, pertaining to, making reference to, comprising, evidencing, alluding to, responding to, connected with, commenting on, with respect to, about, regarding, resulting from, embodying, explaining, supporting, discussing, showing, describing, reflecting, analyzing, setting forth, in respect of, having a direct relationship to or in any way being factually, legally or logically connected to, in whole or in part, the stated subject matter.

12. Any term stated in the singular includes the plural and vice versa.

13. "Any" and "each" are understood to include and encompass "all."

14. Whenever the conjunctive is used, it shall also be taken in the disjunctive, and vice versa.

DEPOSITION TOPICS

1. Any Services provided by Glover Park at the request of, on behalf of, or related to AMD from July 1, 2004 through February 28, 2005, including without limitation Services related to the following subject matter:

- a. Intel;
- b. Project Slingshot;
- c. "Fair and open competition" in the market for x86 Microprocessors, as referenced during the deposition of Ms. Beth Ozmun on March 6, 2009; and
- d. The project or program referred to as "Break Free."

2. From July 1, 2004 through February 28, 2005, Glover Park's knowledge of any facts that form the basis of any claims against Intel related to the market for x86 microprocessors, and/or any litigation proposed or contemplated by AMD against Intel.

EXHIBIT B

SCHEDULE B

DEFINITIONS

In addition to the definitions set forth in Rule 26 of the Federal Rules of Civil Procedure, the following definitions apply to each of the following requests:

1. The terms "AMD" means Advanced Micro Devices, Inc. and AMD International Sales & Service, Ltd. and any parent, subsidiary or affiliate entities, as well as the owners, partners, officers, directors, employees, agents, and other representatives of Advanced Micro Devices, Inc., and AMD International Sales & Service, Ltd.
2. The term "Intel" means Intel Corporation and Intel Kabushiki Kaisha and any parent, subsidiary or affiliate entities, as well as the owners, partners, officers, directors, employees, agents, and other representatives of Intel Corporation and Intel Kabushiki Kaisha.
3. The term "GPG" means Glover Park Group located at 3299 K Street, N.W., Suite 500, Washington, DC 20007, and any parent, subsidiary or affiliate entities, as well as the owners, partners, officers, directors, employees, agents and other representatives of GPC.
4. The term "x86 Microprocessors" means microprocessors that run the Microsoft Windows and Linux families of operating systems.
5. The term "Complaint" means the complaint filed by AMD against Intel in the United States District Court for the District of Delaware on June 27, 2005, case number CA 05-441.
6. The term "Service" means any work related to public relations, media relations, strategic messaging, corporate communications, advocacy and/or focus groups.

7. The term "person" means any natural person or legal entity, including, but not limited to, any corporation, partnership, proprietorship, firm, trust, association, government entity, organization or group of persons.

8. The term "customer" means any actual or potential purchaser of microprocessors or computer systems that incorporate microprocessors, including, but not limited to original equipment manufacturers ("OEMs"), distributors, retailers, dealers, original design manufacturers ("ODMs"), system builders, distributors, assemblers, and resellers.

9. The term "communication" means the transmittal of information and encompasses every medium of information transmittal, including, but not limited to, oral, written, graphic and electronic communication.

10. The term "document" is synonymous in meaning and equal in scope to the usage of the term in Fed. R. Civ. P. 34(a), including, without limitation, electronic or computerized data compilations. A draft or non-identical copy constitutes a separate document within the meaning of the term.

11. The terms "relate to," "relating to," "related to," and "concerning" mean constituting, pertaining to, making reference to, comprising, evidencing, alluding to, responding to, connected with, commenting on, with respect to, about, regarding, resulting from, embodying, explaining, supporting, discussing, showing, describing, reflecting, analyzing, setting forth, in respect of, having a direct relationship to or in any way being factually, legally or logically connected to, in whole or in part, the stated subject matter.

12. Any term stated in the singular includes the plural and vice versa.

13. "Any" and "each" are understood to include and encompass "all."

14. Whenever the conjunctive is used, it shall also be taken in the disjunctive, and vice versa.

INSTRUCTIONS

The following instructions apply to the document requests below and should be considered as part of each such request:

1. Furnish all responsive documents prepared, generated, created and/or received from June 1, 2004 through May 1, 2005, and which are in your possession, custody or control or in the possession, custody or control of your representatives and agents, including all former and current counsel.
2. This document request requires the production of all original documents, all non-identical copies of such documents, all versions of such documents, and any preliminary drafts thereof that are within your possession, custody, or control or in the possession or control of your representatives and agents, including all former and current counsel.
3. This request requires the production of electronic documents. To the extent both identical paper and electronic versions of a document may exist, please produce only the electronic versions of the document at this time. Intel, however, reserves the right to later request the paper version of the document.
4. If any portion of a document is responsive to any request, the entire document must be produced.
5. With respect to any responsive documents which you decline to produce because of a claim of privilege, provide the following information as to each document: the date, author and type of document; the names and job titles of the persons to whom the document was sent; a summary of the content of the document; and a detailed description of the grounds for the claim of privilege.
6. All documents that respond, in whole or in part, to any part of any request herein, should be produced in their entirety, in unredacted form, including all attachments and enclosures, as they are kept in the ordinary course of business. If any information specified in any request appears on any page of any document, all pages of the document

should be produced in response to the request. To the extent you redact any document covered by this discovery request, furnish a list specifying: (a) the document and pages redacted; (b) the nature of the material redacted, and (c) the basis of the redaction.

7. The document requests herein shall be deemed continuing Request, and you must supplement your answers promptly if and when you obtain, create, discover, or become aware of additional documents relevant to any of these requests.

SUPPLEMENTAL DOCUMENTS REQUESTED

5. All documents concerning or relating to any Services provided by Glover Park for or on behalf of AMD, including without limitation Services related to public relations, strategic messaging and/or communications.

6. All documents concerning or relating to any Services provided by Glover Park for or on behalf of O'Melveny and Myers LLP, including without limitation Services related to AMD and/or Intel.

7. All documents concerning or relating to Intel's conduct in the market for x86 Microprocessors.

8. All documents concerning or relating to fair and open competition in the market for x86 Microprocessors.

Exhibit D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ADVANCED MICRO DEVICES, INC., a)
Delaware corporation, and AMD)
INTERNATIONAL SALES & SERVICE,) Civil Action No. 05-441 JJF
LTD., a Delaware corporation,)
)
Plaintiffs,)
)
vs.)
)
INTEL CORPORATION, a Delaware)
corporation, and INTEL KABUSHIKI)
KAISHA, a Japanese corporation,)
)
Defendants.)

IN RE:)
) Civil Action No. 05-MD-1717-JJF
INTEL CORPORATION)

**OBJECTIONS OF THIRD PARTY GLOVER PARK GROUP AND OF PLAINTIFFS
ADVANCED MICRO DEVICES, INC. AND AMD INTERNATIONAL SALES &
SERVICE, LTD. TO INTEL CORPORATION'S AND INTEL KABUSHIKI KAISHA'S
SUBPOENA ISSUED TO GLOVER PARK GROUP**

Pursuant to the Federal Rules of Civil Procedure, including Rules 26 and 45, and the Local Rules of the United States District Court for the District of Delaware, third party Glover Park Group ("Glover Park") and plaintiffs Advanced Micro Devices, Inc., and AMD International Sales & Service, Ltd. (collectively, "AMD"),¹ each on its own behalf and

¹ In the subpoena, AMD is defined to include, among other things, its "agents, and other representatives" and AMD asserts these objections on their behalf, including on behalf of its counsel, O'Melveny & Myers LLP. To avoid doubt, O'Melveny & Myers LLP also separately objects to the testimony and production of material sought by this subpoena, including to the extent such testimony and material is protected from disclosure by the attorney-client privilege, the attorney-work product doctrine, and other applicable privileges or protections.

together, hereby object to the subpoena served upon Glover Park by defendants Intel Corporation and Intel Kabushiki Kaisha (collectively, "Intel").

GENERAL OBJECTIONS

Glover Park and AMD each assert the following General Objections in response to each and every Deposition Topic ("Topic") and Document Request ("Request") in the subpoena, whether or not they are separately stated in each response:

1. Glover Park and AMD each objects to each and every Topic and Request to the extent it calls for the production of documents and information protected from disclosure by the attorney-client privilege or any other applicable privilege or protection. Indeed, the subpoena in its entirety appears to have been served for entirely improper and harassment purposes, and not for the purpose of obtaining any legitimate discoverable information. In any event, Glover Park will not provide or produce any such privileged or otherwise protected information.

2. Glover Park and AMD each objects to the subpoena in its entirety on the ground that it violates the parties' Stipulation Withdrawing Subpoenas Duces Tecum to Potomac Counsel, LLC, DC Navigators, LLC and Public Strategies, LLC and Restricting Future Discovery from Consultants Retained to Influence Government Action dated December 7, 2007 (hereafter, the "December 7, 2007 Stipulation"), wherein Intel and AMD "agree[d] not to serve or enforce subpoenas on any similar consulting firm retained by or on behalf of the other calling for the production of documents or testimony related to activities designed to influence government or agency action."

3. Glover Park and AMD each objects to the subpoena in its entirety on the ground that it is an improper attempt to circumvent the Special Master's orders regarding the scope of Intel's discovery into AMD's document preservation activities.

4. Glover Park and AMD each objects to the subpoena and the Requests set forth therein on the ground that it constitutes a second subpoena served by Intel on the same third party and calls for substantially the same documents, and is therefore unduly burdensome, oppressive and harassing. Intel's prior subpoena was timely responded to, and Glover Park's meet and confer agreement was complied with; this subpoena therefore represents an attempt to circumvent the parties' previous meet-and-confer process and negotiated agreements reached concerning Glover Park's responses to Intel's first subpoena.

5. Glover Park and AMD each objects to the subpoena and the Topics set forth therein on the ground that, in violation of Federal Rule of Civil Procedure 30(b)(6), Intel has failed, as required, to "describe with reasonable particularity the matters set forth for examination." Instead, each of the Topic set forth by Intel is vague, ambiguous, overbroad and unintelligible. As such, attempting to prepare and produce a witness or witnesses to testify in response to Intel's improper Topics would impose undue burden and expense on Glover Park and AMD. Glover Park and AMD object to Intel's subpoena and Topics on these grounds.

6. Glover Park and AMD each objects to the subpoena in its entirety on the ground that Intel has unilaterally imposed unreasonable deadlines by which Glover Park and AMD purportedly must respond to the subpoena. Intel served the subpoena on April 9, 2009, noticed the deposition for April 21, 2009, and set the time for production of documents as thirty days after service of the subpoena. Providing only twelve days' notice for deposition and only thirty days to collect, review and produce documents (both in hard copy and electronic format) is an attempt by Intel to impose undue burden and expense on Glover Park and AMD in the context of this litigation. Neither Glover Park nor AMD will be bound, therefore, by the time deadlines for response set forth by Intel in its subpoena but, instead, will respond to the

subpoena, if at all, only at reasonable times that hereafter may be agreed to by and among counsel for Intel and counsel for Glover Park and AMD.

7. Glover Park and AMD each objects to each and all of Intel's purported "Definitions and Instructions" set forth in Schedule A and the "Definitions" and "Instructions" set forth in Schedule B of Intel's subpoena on the grounds and to the extent that they purport to impose obligations that are unauthorized by, additional to, or inconsistent with Rules 26 or 45 of the Federal Rules of Civil Procedure or the Local Rules of the United States District Court for the District of Delaware. Glover Park and AMD will not comply with or be bound by any such unauthorized, additional, or inconsistent Definitions and Instructions.

8. Without limiting any of the foregoing objections, Glover Park and AMD each objects to Intel's definition of the word "Service" as vague and ambiguous, overbroad and unintelligible. Using that definition renders these Topics and Requests unduly burdensome, and results in their seeking information that is not relevant to the claim or defense of any party or reasonably calculated to lead to the discovery of admissible evidence.

9. Without limiting any of the foregoing objections, Glover Park and AMD each objects to Intel's definition of the word "customer" as vague and ambiguous, overbroad and unintelligible. Using that definition renders these Topics and Requests unduly burdensome, and results in their seeking information that is not relevant to the claim or defense of any party or reasonably calculated to lead to the discovery of admissible evidence.

10. Without limiting any of the foregoing objections, Glover Park and AMD each objects to Intel's definition of the words "relate to," "relating to," "related to" and "concerning," as vague and ambiguous, overbroad and unintelligible. Using that definition renders these Topics and Requests unduly burdensome, and results in their seeking information that is not

relevant to the claim or defense of any party or reasonably calculated to lead to the discovery of admissible evidence.

11. Without limiting any of the foregoing objections, Glover Park and AMD each objects to each and every Request and to Instruction No. 5 set forth in Schedule B of Intel's subpoena that purports to require Glover Park to provide a log with regard to each and every document as to which a claim of privilege is asserted. By this instruction, Intel seeks to and would impose undue burden and expense on Glover Park and AMD, and attempts to evade prior stipulations and court orders regarding the preparation of privilege logs. In addition, Glover Park and AMD object to every Request and this Instruction No. 5 on the ground that Intel has imposed it not to serve any legitimate purpose but, rather, in order to harass and oppress Glover Park and AMD. Accordingly, Glover Park and AMD will not comply with or be bound by this Instruction.

12. Glover Park and AMD each objects to each and every Topic and Request to the extent it calls for information that contains or reveals trade secrets or other confidential research, development, commercial, financial, or personnel information, which, if disclosed or disseminated without restriction to Intel or third parties, could adversely impact AMD's or Glover Park's business. Glover Park will not produce any such confidential information except pursuant to the Protective Order.

13. Glover Park and AMD each objects to each and every Topic and Request to the extent it calls for information held subject to contractual or other legal obligations of confidentiality owed to its employees, clients, customers, or other third parties. Glover Park will not produce any such third party confidential information except pursuant to the Protective Order.

14. Glover Park and AMD each objects to the Topics and Requests in that they seek information that is neither relevant to the claims or defenses of a party nor reasonably likely to

lead to the discovery of admissible evidence, and information that, even if it were relevant, could be obtained from other sources that would not require the production of information protected by applicable privileges and protections.

15. Glover Park and AMD would be willing, and hereby offer, to meet and confer with Intel about Intel's Topics and Requests and Glover Park and AMD's objections.

RESPONSES TO DEPOSITION TOPICS

TOPIC NO. 1:

Any Services provided by provided by Glover Park at the request of, on behalf of, or related to AMD from July 1, 2004 through February 28, 2005, including without limitation Services related to the following subject matter:

- a. Intel;
- b. Project Slingshot;
- c. "Fair and open competition" in the market for x86 Microprocessors, as referenced during the deposition of Ms. Beth Ozmun on March 6, 2009; and
- d. The project or program referred to as "Break Free."

RESPONSE TO TOPIC NO. 1:

Glover Park and AMD incorporate their General Objections into this Response as though fully set forth herein. Glover Park and AMD also object to this Topic on the ground that it violates the provisions and requirements of the December 7, 2007 Stipulation. Glover Park and AMD also object to this Topic on the ground that it constitutes an improper attempt by Intel to

circumvent the Special Master's January 22, 2009 Order regarding Intel's Prior 30(b)(6) Deposition Notice and other orders regarding the scope of Intel's discovery into AMD's document preservation. Glover Park and AMD also object to this Topic to the extent that it seeks information that is protected by the attorney-client privilege or any other applicable privilege or protections. Glover Park and AMD also object to this Topic on the ground that it is vague and ambiguous, overbroad, and unduly burdensome. Glover Park and AMD also object to this Topic on the ground that it does not "describe with reasonable particularity the matters for examination" in violation of Federal Rule of Civil Procedure 30(b)(6). Glover Park and AMD also object to this Topic on the ground that the subject matters for testimony purported to be set forth are inappropriate topics for deposition, in that no single witness or set of witnesses reasonably could be identified, prepared or produced to testify regarding such topics as drafted. Glover Park and AMD also object to this Topic on the ground that it calls for testimony that is neither relevant to the claims or defenses of a party, nor reasonably likely to lead to the discovery of admissible evidence. Glover Park will not produce a witness in response to this Topic as drafted.

TOPIC NO. 2:

From July 1, 2004 through February 28, 2005, Glover Park's knowledge of any facts that form the basis of any claims against Intel related to the market for x86 microprocessors, and/or any litigation proposed or contemplated by AMD against Intel.

RESPONSE TO TOPIC NO. 2:

Glover Park and AMD incorporate their General Objections into this Response as though fully set forth herein. Glover Park and AMD also object to this Topic on the ground that it

violates the provisions and requirements of the December 7, 2007 Stipulation. Glover Park and AMD also object to this Topic on the ground that it constitutes an improper attempt by Intel to circumvent the Special Master's January 22, 2009 Order regarding Intel's Prior 30(b)(6) Deposition Notice and other orders regarding the scope of Intel's discovery into AMD's document preservation. Glover Park and AMD also object to this Topic to the extent that it seeks information that is protected by the attorney-client privilege or any other applicable privilege or protections. Glover Park and AMD also object to this Topic on the ground that it is vague and ambiguous, overbroad, and unduly burdensome. Glover Park and AMD also object to this Topic on the ground that it does not "describe with reasonable particularity the matters for examination" in violation of Federal Rule of Civil Procedure 30(b)(6). Glover Park and AMD also object to this Topic on the ground that the subject matters for testimony purported to be set forth are inappropriate topics for deposition, in that no single witness or set of witnesses reasonably could be identified, prepared or produced to testify regarding such topics as drafted. Glover Park and AMD also object to this Topic on the ground that it calls for testimony that is neither relevant to the claims or defenses of a party, nor reasonably likely to lead to the discovery of admissible evidence. Glover Park will not produce a witness in response to this Topic as drafted.

RESPONSES TO SUPPLEMENTAL DOCUMENT REQUESTS

REQUEST NO. 5:

All documents concerning or relating to any Services provided by Glover Park for or on behalf of AMD, including without limitation Services related to public relations, strategic messaging and/or communications.

RESPONSE TO REQUEST NO. 5:

Glover Park and AMD incorporate their General Objections into this Response as though fully set forth herein. Glover Park and AMD also object to this Request on the ground that it violates the provisions and requirements of the December 7, 2007 Stipulation. Glover Park and AMD also object to this Request on the ground that it constitutes an improper attempt by Intel to circumvent the Special Master's January 22, 2009 Order regarding Intel's Prior 30(b)(6) Deposition Notice and other orders regarding the scope of Intel's discovery into AMD's document preservation. Glover Park and AMD also object to this Request to the extent that it seeks information that is protected by the attorney-client privilege or any other applicable privilege or protections. Glover Park and AMD also object to this Request on the ground that it imposes undue burden and is oppressive in that it is substantially similar to document requests propounded by Intel in its first subpoena to Glover Park in 2007, and to which Glover Park and AMD previously responded with objections interposed. This latest subpoena to Glover Park is an attempt by Intel to circumvent the results of the parties' previous meet-and-confer process and negotiated agreements reached concerning Glover Park's responses to Intel's first subpoena. Glover Park and AMD also object to this Request on the ground that it is vague and ambiguous, overbroad, and unduly burdensome. Glover Park and AMD also object to this Request on the ground that it calls for the production of documents and information that are neither relevant to the claims or defenses of a party, nor reasonably likely to lead to the discovery of admissible evidence. Glover Park will not produce documents in response to this Request as drafted.

REQUEST NO. 6:

All documents concerning or relating to any Services provided by Glover Park for or on behalf of O'Melveny & Myers LLP, including without limitation Services related to AMD and/or Intel.

RESPONSE TO REQUEST NO. 6:

Glover Park and AMD incorporate their General Objections into this Response as though fully set forth herein. Glover Park and AMD also object to this Request on the ground that it violates the provisions and requirements of the December 7, 2007 Stipulation. Glover Park and AMD also object to this Request on the ground that it constitutes an improper attempt by Intel to circumvent the Special Master's January 22, 2009 Order regarding Intel's Prior 30(b)(6) Deposition Notice and other orders regarding the scope of Intel's discovery into AMD's document preservation. Glover Park and AMD also object to this Request to the extent that it seeks information that is protected by the attorney-client privilege or any other applicable privilege or protections. Glover Park and AMD also object to this Request on the ground that it imposes undue burden and is oppressive in that it is substantially similar to document requests propounded by Intel in its first subpoena to Glover Park in 2007, and to which Glover Park and AMD previously responded with objections interposed. This latest subpoena to Glover Park is an attempt by Intel to circumvent the results of the parties' previous meet-and-confer process and negotiated agreements reached concerning Glover Park's responses to Intel's first subpoena. Glover Park and AMD also object to this Request on the ground that it is vague and ambiguous, overbroad, and unduly burdensome. Glover Park and AMD also object to this Request on the ground that it calls for the production of documents and information that are neither relevant to the claims or defenses of a party, nor reasonably

likely to lead to the discovery of admissible evidence. Glover Park will not produce documents in response to this Request as drafted.

RESPONSE TO REQUEST NO. 7:

All documents concerning or relating to Intel's conduct in the market for x86 Microprocessors.

RESPONSE TO REQUEST NO. 7:

Glover Park and AMD incorporate their General Objections into this Response as though fully set forth herein. Glover Park and AMD also object to this Request on the ground that it violates the provisions and requirements of the December 7, 2007 Stipulation. Glover Park and AMD also object to this Request on the ground that it constitutes an improper attempt by Intel to circumvent the Special Master's January 22, 2009 Order regarding Intel's Prior 30(b)(6) Deposition Notice and other orders regarding the scope of Intel's discovery into AMD's document preservation. Glover Park and AMD also object to this Request to the extent that it seeks information that is protected by the attorney-client privilege or any other applicable privilege or protections. Glover Park and AMD also object to this Request on the ground that it imposes undue burden and is oppressive in that it is substantially similar to document requests propounded by Intel in its first subpoena to Glover Park in 2007, and to which Glover Park and AMD previously responded with objections interposed. This latest subpoena to Glover Park is an attempt by Intel to circumvent the results of the parties' previous meet-and-confer process and negotiated agreements reached concerning Glover Park's responses to Intel's first subpoena. Glover Park and AMD also object to this Request on the ground that it is vague and ambiguous, overbroad, and unduly burdensome. Glover Park

and AMD also object to this Request on the ground that it calls for the production of documents and information that are neither relevant to the claims or defenses of a party, nor reasonably likely to lead to the discovery of admissible evidence. Glover Park will not produce documents in response to this Request as drafted.

REQUEST NO. 8:

All documents concerning or relating to open and fair competition in the market for x86 Microprocessors.

RESPONSE TO REQUEST NO. 8:

Glover Park and AMD incorporate their General Objections into this Response as though fully set forth herein. Glover Park and AMD also object to this Request on the ground that it violates the provisions and requirements of the December 7, 2007 Stipulation. Glover Park and AMD also object to this Request on the ground that it constitutes an improper attempt by Intel to circumvent the Special Master's January 22, 2009 Order regarding Intel's Prior 30(b)(6) Deposition Notice and other orders regarding the scope of Intel's discovery into AMD's document preservation. Glover Park and AMD also object to this Request to the extent that it seeks information that is protected by the attorney-client privilege or any other applicable privilege or protections. Glover Park and AMD also object to this Request on the ground that it imposes undue burden and is oppressive in that it is substantially similar to document requests propounded by Intel in its first subpoena to Glover Park in 2007, and to which Glover Park and AMD previously responded with objections interposed. This latest subpoena to Glover Park is an attempt by Intel to circumvent the results of the parties' previous meet-and-confer process and negotiated agreements reached concerning Glover

Park's responses to Intel's first subpoena. Glover Park and AMD also object to this Request on the ground that it is vague and ambiguous, overbroad, and unduly burdensome. Glover Park and AMD also object to this Request on the ground that it calls for the production of documents and information that are neither relevant to the claims or defenses of a party, nor reasonably likely to lead to the discovery of admissible evidence. Glover Park will not produce documents in response to this Request as drafted.

OF COUNSEL:

Charles P. Diamond, Esq.
cdiamond@omm.com
Linda J. Smith, Esq.
lsmith@omm.com
O'Melveny & Myers LLP
1999 Avenue of the Stars, 7th Floor
Los Angeles, CA 90067
(310) 246-6800

Mark A. Samuels, Esq.
msamuels@omm.com
O'Melveny & Myers LLP
400 South Hope Street
Los Angeles, CA 90071
213-430-6340

Dated: April 20, 2009

/s/ Chad M. Shandler

Frederick L. Cottrell, III (#2555)
Chad M. Shandler (#3796)
Steven J. Fineman (#4025)
Richards, Layton & Finger, P.A.
One Rodney Square
P.O. Box 551
Wilmington, Delaware 19899
(302) 651-7700
Cottrell@rlf.com
Shandler@rlf.com
Fineman@rlf.com
Attorneys for Plaintiffs Advanced Micro
Devices, Inc. and AMD International Sales &
Service, Ltd.

CERTIFICATE OF SERVICE

I hereby certify that on the April 20, 2009 true and correct copies of the foregoing were caused to be served on counsel of record at the following addresses as indicated:

BY HAND DELIVERY

Richard L. Horwitz, Esquire
Potter Anderson & Corroon LLP
1313 North Market Street
P. O. Box 951
Wilmington, DE 19899

BY FEDERAL EXPRESS

Robert E. Cooper, Esquire
Daniel S. Floyd, Esquire
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, California 90071-3197

BY HAND DELIVERY

James L. Holzman, Esquire
Prickett, Jones & Elliott, P.A.
1310 King Street
P.O. Box 1328
Wilmington, DE 19899-1328

BY FEDERAL EXPRESS

Darren B. Bernhard, Esquire
Howrey LLP
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004-2402

BY FEDERAL EXPRESS

Daniel A. Small, Esquire
Cohen Milstein, Hausfeld & Toll, L.L.C.
1100 New York Avenue, N.W.
Suite 500 - West Tower
Washington, DC 20005

/s/ Chad M. Shandler

Chad M. Shandler (#3796)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ADVANCED MICRO DEVICES, INC., a)
Delaware corporation, and AMD)
INTERNATIONAL SALES & SERVICE,) C. A. No. 05-441 JJF
LTD., a Delaware corporation,)
)
Plaintiffs,)
)
vs.)
)
INTEL CORPORATION, a Delaware)
corporation, and INTEL KABUSHIKI)
KAISHA, a Japanese corporation,)
)
Defendants.)

IN RE:)
) C. A. No. 05-MDL-1717-JJF
INTEL CORPORATION MICROPROCESSOR)
ANTITRUST LITIGATION)

NOTICE OF SERVICE

PLEASE TAKE NOTICE that true and correct copies of Objections of Third Party Glover Park Group and of Plaintiffs Advanced Micro Devices, Inc. and AMD International Sales & Service, Ltd. to Intel Corporation's and Intel Kabushiki Kaisha's Subpoena Issued to Glover Park Group were caused to be served on April 20, 2009 on counsel of record in the manner indicated:

BY HAND DELIVERY

Richard L. Horwitz, Esquire
Potter Anderson & Corroon LLP
1313 North Market Street
P. O. Box 951
Wilmington, DE 19899

BY FEDERAL EXPRESS

Darren B. Bernhard, Esquire
Howrey LLP
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004-2402

BY FEDERAL EXPRESS

Robert E. Cooper, Esquire
Daniel S. Floyd, Esquire
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, California 90071-3197

BY HAND DELIVERY

James L. Holzman, Esquire
Prickett, Jones & Elliott, P.A.
1310 King Street
P.O. Box 1328
Wilmington, DE 19899-1328

BY FEDERAL EXPRESS

Daniel A. Small, Esquire
Cohen Milstein, Hausfeld & Toll, L.L.C.
1100 New York Avenue, N.W.
Suite 500 - West Tower
Washington, DC 20005

Of Counsel:

Charles P. Diamond
Linda J. Smith
O'Melveny & Myers, LLP
1999 Avenue of the Stars
7th Floor
Los Angeles, CA 90067-6035
(310) 553-6700

Mark A. Samuels
O'Melveny & Myers, LLP
400 South Hope Street
Los Angeles, 90071
(213) 430-6340

Dated: April 20, 2009

/s/ Chad M. Shandler

Frederick L. Cottrell, III (#2555)
Chad M. Shandler (#3796)
Steven J. Fineman (#4025)
Richards, Layton & Finger, P.A.
One Rodney Square
P.O. Box 551
Wilmington, Delaware 19899
(302) 651-7700
Cottrell@rlf.com
Shandler@rlf.com
Fineman@rlf.com
Attorneys for Plaintiffs Advanced Micro
Devices, Inc. and AMD International Sales &
Service, Ltd.

Exhibit E

GIBSON, DUNN & CRUTCHER LLP

LAWYERS

A REGISTERED LIMITED LIABILITY PARTNERSHIP
INCLUDING PROFESSIONAL CORPORATIONS

333 South Grand Avenue Los Angeles, California 90071-3197

(213) 229-7000

www.gibsondunn.com

DFloyd@gibsondunn.com

September 14, 2007

Direct Dial
(213) 229-7148

Fax No.
(213) 229-6148

Client No.
T 42376-00764

Linda J. Smith
O'Melveny & Myers LLP
1999 Avenue of the Stars
7th Floor
Los Angeles, CA 90067

Re: *AMD v. Intel*

Dear Linda:

I'm writing this letter to raise a few new discovery issues that we need to address, as well as finally resolve the issues you most recently addressed in your July 30, 2007 letter to Peter Moll. I've personally dug into all the correspondence, and have some follow-up items. I think we should arrange a face to face meet and confer, and would be free the last few days of next week or the week after.

Privilege Review and Logs

As part of the ongoing discussions we've had with Chuck and your team on modifying the document production obligations of the parties, we agreed to a standstill on the privilege logs, with the agreement that the issues would then be addressed separately. Given that we appear to be finalizing a definitive agreement, we wanted to get this process rolling. On the table so far are reductions in the number of custodians from which logs need to be prepared, as well as our proposals concerning changing some of the protocols concerning log preparation. We also have a few issues arising from Kenyon Wooley's letter addressing our questions concerning AMD's logs, which we believe can be wrapped in and resolved in any overall discussion.

Intel's Meet and Confer Regarding AMD's Document Responses

The issues concerning the harvest dates and timing of production are being addressed in the overall discussions. Your July 30, 2007 letter expressed some frustration that you have fully

GIBSON, DUNN & CRUTCHER LLP

Linda J. Smith
September 14, 2007
Page 2

addressed Intel's issues, but having looked closely at the correspondence, there are some issues that remain that we need to clarify. First, let me start with what I believe is clear from your correspondence: to the extent AMD made objections to requests, but nevertheless agreed to produce documents, you have indicated that your production is complete, i.e., you have not withheld documents based on the objections (other than for privilege). We accept that representation, and do not need a further formal response. Notwithstanding that explanation, two issues remain: (1) requests where AMD indicated it was objecting and not producing documents; and (2) requests AMD designated as corporate requests.

1. "Complete Objections"

There are several requests where AMD made "complete" objections and did not indicate that it was intending to produce any documents. For example, these include Requests 193, relating to communications with breakfree@amd.com, and Request No. 206, which includes communications between AMD and McKinsey & Company. Paragraph 10 of the Stipulation and Order Regarding Document Production addresses where a party has refused to produce any documents. Additional requests that fit into this category include 161, 162, 168, 169, 195, 203 and 207. We need to know whether custodians were designated to address these requests, and any others where a "complete" objection was made, and whether responsive documents contained in the files of the designated custodians have been produced.

2. Corporate Requests

A number of the categories we raised in our April 6, 2007 meet and confer letter were "corporate" requests - 19-22, 27, 51-53, 70-71, and 99. I do not believe that either party has made their "corporate" productions yet, and so we need to understand whether the limitations set forth in your responses will be applied when you ultimately produce from the corporate files, or whether you will accept any of our proposals concerning those requests. Our understanding otherwise is that to the extent responsive documents to the above requests are contained in custodian files, they are being produced. Let me know if that understanding is incorrect. This raises an overall issue, which is that we need to work through the corporate requests on both sides and reach closure on the scope of data and non-data corporate production, and need to wrap up the ongoing discussions between Jeff Fowler and Tom Dillickrath relating to share drives. I understand from Chuck that Mike Maddigan will be working on the corporate requests, and am obviously happy to work with him on those.

Glover Park Subpoena

We understand that you are objecting to the subpoena on privilege and work product grounds, and believe that no privilege log is required pursuant to paragraph (1) of our Stipulation Regarding the Preparation of Privilege Logs. The stipulation, however, does not prevent a party (or either of us) from challenging the privilege assertions. We would request that you provide us

GIBSON, DUNN & CRUTCHER LLP

Linda J. Smith
September 14, 2007
Page 3

with the following information to allow us to evaluate the assertion of privilege: (1) the date range of otherwise responsive documents for which privilege or work production protection is being claimed; (2) in general the purpose and scope of Glover Park's retention; and (3) the identity of the retaining party. This should not be burdensome, but will give us the basic information necessary to evaluate the privilege and work product assertions. In addition, given Glover Park's role as we understand it, we would expect there would be responsive communications with third parties that would not be subject to any claim of privilege, and that you invite a meet and confer on those communications. We would like to put that on the agenda for discussion.

ERS Subpoena

We would also like to meet and confer on your objections to the ERS subpoena. While you did not provide a particularized basis, our position is that AMD has waived any privilege, work product, FRCP 26(b)(4)(B) and/or protection under the parties' expert stipulation when it requisitioned and broadcast a report, the purpose of which seems to be to part of a public relations campaign directly related to the lawsuit, as it purports to quantify the "harm" from what your expert characterizes as an unlawful "monopoly." An integral part of the protections afforded by the various doctrines, rules and stipulation above is that confidentiality be maintained to preserve a privilege for the work of a consulting expert. No one questions the ability of both parties to have consulting experts, free from discovery except in extraordinary circumstances, but when a report purporting to quantify Intel's alleged "monopoly profits" is announced in a press release, and that report is referred to by AMD publicly as supporting its claims, Intel believes the report and the underlying work is subject to discovery.

Rule 26

I wanted to clarify what our concerns are concerning the Rule 26 disclosure. We think the parties should agree to a timetable to update the disclosures. Our concern is two-fold: that AMD listed only a handful of third party witnesses, notwithstanding the many companies it has identified in its complaint and discovery responses, and our concern that the listing of the AMD related witnesses at this point are too broad and with boilerplate descriptions. A simple way to address the issue without having to fight about the adequacy of either party's initial efforts would be to select a date to supplement the disclosures under Rule 26(e), so the parties could rely upon the disclosures for purposes of deposition selection.

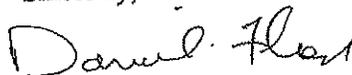
One final note. While it is probably inevitable in a case of this magnitude and complexity that the rhetoric in correspondence begins to escalate, we have, over the life of this case, managed to negotiate and resolve a large number of issues. Indeed, the stipulation the parties are now finalizing represents significant work and compromises on both sides. We seek

GIBSON, DUNN & CRUTCHER LLP

Linda J. Smith
September 14, 2007
Page 4

to resolve these issues in the spirit of that agreement, – not to unnecessarily burden either party, but to address some issues we think are important and to clarify other points so we can move forward to complete these massive productions. I look forward to hearing from you.

Sincerely,



Daniel S. Floyd

DSF/dsf

Document2

Exhibit F



O'MELVENY & MYERS LLP

BEIJING
BRUSSELS
HONG KONG
LONDON
LOS ANGELES
NEWPORT BEACH

1999 Avenue of the Stars
Los Angeles, California 90067-6035
TELEPHONE (310) 553-6700
FACSIMILE (310) 246-6779
www.omm.com

NEW YORK
SAN FRANCISCO
SHANGHAI
SILICON VALLEY
TOKYO
WASHINGTON, D.C.

CUR FILE NUMBER
008.346.163

WRITER'S DIRECT DIAL
(310) 246-6801

WRITER'S E-MAIL ADDRESS
lsmith@omm.com

September 27, 2007

VIA E-MAIL & U.S. MAIL

Daniel S. Floyd, Esq.
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, California 90071-3197

Re: **AMD v. Intel**

Dear Dan:

As with all else in this highly complex case, it is not easy to even write a letter that says "this letter is in response to your letter of X date." So here goes: This letter responds to your letter of September 14th responding to my letter of July 30th and the recently agreed to Case Management Order #3 entered on September 18, 2007 by Special Master Poppiti and So Ordered on September 19th by United States District Court Judge Farnan, plus the additional discussions that have taken place between you and Mike and between you and me.

I will address the issues in the order set forth in your letter:

Privilege Review and Logs

Pursuant to Case Management Order #3, paragraph 6, the parties have agreed to negotiate in good faith to arrive at significant modifications in approach, timing and number of privilege logs that will be required in the future. You and I have agreed to meet and confer on privilege log protocols on Monday, October 8, 2007.

Intel's Meet and Confer Regarding AMD's Document Responses

We confirm that to the extent AMD made objections to Intel's First, Second, and Third Requests for Production but nevertheless agreed to produce documents, AMD made a complete production notwithstanding those objections (other than for privilege).

Your September 14 letter raised several questions about AMD's responses to certain of Intel's document requests -- specifically, those requests to which AMD asserted objections and did not agree to produce documents. First, you asked whether AMD designated custodians to address those requests. The answer is that AMD did not separately designate custodians whom it

would not otherwise have designated solely for the purpose of responding to those requests. Second, you inquired whether documents responsive to those requests were produced from the files of custodians designated for those requests. Because no custodians were designated specifically for the purpose of responding to those requests, the answer is no. Whether AMD produced documents responsive to these requests from the files of custodians designated for other purposes, however, depends upon the particular request. For example, we produced documents from designated custodians' files that we believe would be responsive to a reasonable interpretation of Requests 161, 162, and 168. We would be pleased to discuss these requests, our interpretation of them, and what we have produced in response to them, further with you. We also would like you to provide the same information you have requested with respect to Intel's responses to AMD's document requests and look forward to discussing Intel's objections to AMD's requests at the same time.

Your September 14 letter also discusses "corporate requests" and asks us to confirm that AMD has been producing documents responsive to corporate requests from custodian files. We can confirm that AMD has been doing so, consistent with the terms of the parties' agreed-upon document production protocol. Please confirm that Intel has as well. We also agree with your suggestion that we need to reach closure as soon as possible on production from databases and shared drives, as well as on any remaining issues regarding the corporate requests. I understand that you and Mike Maddigan are planning on meeting tomorrow on these issues.

Glover Park Subpoena

In your September 14 letter, you also asked for information that you contend would help you evaluate AMD's privilege objections to the subpoena Intel issued to Glover Park. In response to your questions: (1) Glover Park was retained by O'Melveny & Myers LLP as of January 1, 2005; (2) AMD is asserting privilege with respect to documents from November 1, 2004, when Glover Park began working on AMD's behalf, through the present; and (3) the general purpose and scope of Glover Park's retention is to provide such services as O'Melveny & Myers LLP may require, including assisting in the testing and development of litigation and jury themes, preparing both AMD's legal and company spokespeople and written materials concerning the litigation; and providing expertise to help make this dispute understandable to legal and non-legal audiences. While we are not entirely sure what you mean when you refer to "responsive communications with third parties that would not be subject to any claim of privilege," we would indeed, as your letter anticipates, be willing to meet and confer with you regarding inquiry about those communications. We suggest that you and Mike address this issue as well.

ERS Subpoena

As pertains to Requests 257 and 258, Dr. Williams and the ERS Group are economic consultants retained by O'Melveny and Myers to assist counsel in understanding certain economic matters, including Intel's economic profitability. Intel's requests invade the attorney-client and work product privileges in seeking the premature and non-reciprocal disclosure of

expert information in a manner and time that is inconsistent with the Amended Stipulation and Protective Order as entered by the Court on May 11, 2007, and with FRCP 26(a)(2)(B). Nor has AMD's public reference to certain of Dr. Williams's findings resulted in any override of these controlling provisions. Waiver is not the issue. The federal rules do not permit a party to conduct discovery for the purpose of publicly rebutting expert opinions its adversary may have injected into the public debate. Neither Dr. Williams nor ERS Group has as yet been designated as an expert witness by any party, and their opinion, whether or not publicly referenced, is presently immaterial to this action. Any ultimate materiality--together with Intel's concomitant right to inquire--will only ripen if and when Intel finds itself having to refute their opinion in this litigation. That will happen, if at all, only after the parties exchange their respective expert reports.

Rule 26

In your letter you write: "I wanted to clarify what our concerns are concerning the Rule 26 disclosure. We think the parties should agree to a timetable to update the disclosures. Our concern is two-fold: that AMD listed only a handful of third party witnesses, notwithstanding the many companies it has identified in its complaint and discovery responses, and our concern that the listing of the AMD related witnesses at this point are too broad and with boilerplate descriptions. A simple way to address the issue without having to fight about the adequacy of either party's initial efforts would be to select a date to supplement the disclosures under Rule 26(e), so the parties could rely upon the disclosures for purposes of deposition selection."

This is very puzzling to us given both the language of Rule 26(e) and the lengthy history of this case. The language of Rule 26(e) which addresses "Supplementation of Disclosures and Responses" provides that:

"A party is under a duty to supplement at appropriate intervals its disclosures under subdivision (a) if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing."

In this case, we negotiated the Custodian Stipulation and Order, which provided for each party's identification of the Master Custodians pursuant to an articulated (and highly negotiated) standard requiring the representation by both parties that "After reasonable investigation, AMD/Intel hereby represents that the individuals below are believed to comprise all of its and its subsidiaries' personnel in possession of an appreciable quantity of non-privileged, material, non-duplicative documents and things." It goes on to address former employees and to set out a four-pronged test for the 20% Party-Designated Production Custodians consisting of:

"The Party-Designated Production Custodian List shall constitute a representation by the party that the individual custodians are believed in good faith to include: (i) the most important custodians with knowledge of the issues framed by the pleadings; (ii) the custodians believed

likely to have the most non-privileged, non-duplicative documents responsive to the other party's Initial Document Requests; (iii) the custodians whose files, taken together, constitute a comprehensive response to the other party's Initial Document Requests; and (iv) all persons whom the party then reasonably believes likely to be called by the party as a witness at trial."

The Custodian Stipulation and Order further sets out an informal discovery process pursuant to which Intel and AMD exchanged both organization charts and 100s of pages of responses to two separate rounds of requests plus follow ups including detailed descriptions of each custodian's job responsibilities. See, for example, Intel's request which asks:

AMD ACCOUNT TEAMS//SALES & MARKETING GROUP

1. For each of the following accounts – Acer, Alienware Corporation, Appro International, Asus Computer International, Averatec, Dell, Egenera, Fujitsu, Fujitsu-Siemens, Gateway, Hewlett-Packard, Hitachi, IBM, Lenovo, LG, MPC Computers, MSI Computer Corp., NEC, NEC-CI, Network Appliance, Rackable Systems, Samsung, Solectron, Sharp, Sony, Sun Microsystems, Supermicro Computers, Toshiba, Trigem, ASI, Avnet, Bell Microproducts, D&H Distributing, Epox International, Foxconn, Hon Hai Precision, Ingram Micro, Intcomex, Mitex, Supercom, Synnex, Tech Data, Tyan, Aldi, Best Buy, Circuit City, CompUSA, Costco, Dixon's (DSG), Fry's, MediaMarkt, Office Depot, Office Max, Toys R Us, Vobis, Wal-Mart, Staples, Time Computers, Carrefour Conforama (PPRP), Yakamo – please answer the following questions:¹

¹ To date, AMD has provided the following information regarding its account teams: Barton Arnold ("works on the IBM account"); Donna Becker (Manager, Microsoft Alliance Marketing); James Beggans (HP Sales Development Manager); Christopher Calandro (Global Account Manager, Gateway); Jerome Carpentier ("he focuses on working with HP, IBM, and Sun"); Brian Casto (IBM Sales Development Manager); Walter Cataldo (Account Executive); Ted Donnelly (IBM Global Account Manager); James Elder (Account Exec., WW Avnet); Anne Flaig (Director, Sales for HP; Director, Sun); Jeff Fonseca (Senior Sales Rep. – Sony); Bradley Fryer (Channel Sales Manager – Fry's, Costco, Future Shop, Best Buy Canada, Amazon.com, Walmart); Jcff Hartz (Channel Sales Manager – Walmart, Sam's Club, Radio Shack, CompUSA, Office Depot, and Tiger Direct); Yoshimi Ikeda ("responsible for the Hitachi account in 2003 and also had a previous relationship with Toshiba"); Masato Ishii (Regional Sales Manager – Sony, Toshiba, Hitachi, PCS, NEC); Takayuki Kuroshima (Regional Sales Manager – Japan tier one OEM accounts); JD Lau ("manages the Lenovo account in China"); Makato Matsunaga ("worked on the Fujitsu account, among others"); Takamichi Miyamoto (FSE NEC); Tetsuji Murai ("worked on the Toshiba account"); Ken Oberman ("at various times had responsibility for the Averatec, Acer, Fujitsu, Sony, Sun Micro, and Toshiba accounts"); Naoko Ohgimi (Customer Support Engineer – Fujitsu); Gerard Poulizac (Regional Sales Manager – HP EMEA, NEC-CI); Derek Reaves (Distribution Business Manager – Avnet); Tom Rogers (Channel Sales Manager – Bcst Buy, Office Max, Micro Center); Claudia Santos (Business Development, Regional Manager – Toshiba, Sun, HP, IBM, Positive, Procomp, Novadata, Itautec, Semp); Takeshi Shimizu (FSE – IBM, Sun and Cray (Japan)); Masahide Shuyama (Sales Manager – NEC); Kelly Talbot (Channel Sales Manager – Circuit City, Staples, Business Depot, Hartco); Adam Tarnowski (Senior Account Manager – Appro, Rackable); Dwight Tausz (Global Account

- a. Who is the current Account Manager or person at AMD with primary responsibility for managing the account? How long have they been in this role? What are their primary duties and responsibilities in this role? To whom do they report?
- b. Since January 1, 2000, what other individuals have served as Account Manager or had primary responsibility for managing the account? For each, please identify the time period during which they held this position, their responsibilities (if different from above), the person they reported to, and their current position.
- c. Since January 1, 2000, what other individuals have been assigned to the account or account team with responsibilities that included directly dealing with customers? For each, please identify the position held, their primary responsibilities, the time period during which they held the position, the person they reported to, and their current position.
- d. For the period January 1, 2000 to present, what individual or individuals at AMD had primary responsibility for negotiating directly with the account regarding the sale of AMD microprocessors or products incorporating AMD microprocessors? Please identify the time period during which each individual was in this role.
- e. For the period January 1, 2000 to present, what individual or individuals at AMD had primary responsibility for dealing or negotiating with the account with respect to any type of marketing or promotional program?

In addition to the footnote, AMD responded to this request with a 71 page spreadsheet response, which was then followed-up by further Intel requests and AMD submissions.

The Custodian Stipulation and Order established corporate requests, and a protocol for Adverse-Party Production Custodians and Free Throw Custodians. Intel altered its Master Custodian and 20% Party-Designated Custodian list to delete Intel custodians after the decision on Intel's Motion to Dismiss based on the Foreign Trade Antitrust Improvements Act and put them back on the lists after the decision on AMD's Motion to Compel. The Custodian Stipulation and Order has been the basis on which both parties have conducted document production since the middle of May 2006. The parties have laboriously worked to revise certain of these protocols (but not the manner and designation of the custodians) in Case Management Order #3. It is hard to imagine a case where the disclosure of the party witnesses and their roles and responsibilities is more complete than this one.

Manager – IBM, Lenovo); Chris Towne (Corporate Distribution Business Manager – ASI, Bell Microproducts); Keisuke Toyooka (Sales Manager – Sony); Renato Urani (Account Manager – Acer); Jeff Venditte (Sr. Sales Account Manager – HP); Lanzhi Wang (OEM Account Manager – China OEMs); Alan Windler (responsible for Gateway account).

O'MELVENY & MYERS LLP

Daniel S. Floyd, Esq.,
September 27, 2007 - Page 6

With respect to third parties, we have jointly -- with AMD taking the lead -- proceeded on a custodian by individual custodian basis to identify (and narrow) the list of key custodians for each of the subpoenaed third parties. Again, it is hard to imagine a case where the disclosure of third party witnesses is more robust than this one.

Accordingly, we do not believe that Rule 26(e) supplementation is required. That said, both parties have an interest once we commence the deposition phase of discovery and have made our way through the majority of the deposition process in making sure that the witnesses each party intends to call at trial have been identified and an opportunity provided for the other side to depose those witnesses.

I look forward to discussing these matters with you.

Very truly yours,



Linda J. Smith
of O'Melveny & Myers LLP

LJS:deb

Exhibit G

From: Diamond, Chuck [mailto:CDiamond@OMM.com]
Sent: Thursday, November 06, 2008 12:49 PM
To: Floyd, Daniel S.
Subject: Glover Park Subpoena

Dan, Glover Park Group has asked that I obtain a letter formally withdrawing the document subpoena Intel served on that organization in the Spring of 2007. As you will recall, you agreed to stand down in exchange for a representation (1) that O'Melveny hired Glover Park in early 2005, and (2) that Glover had no documents dated prior to its retention by O'Melveny concerning litigation by AMD against Intel.

For Glover's purposes, a reply to this email should suffice.

Thanks,
Chuck

Charles P. Diamond
O'Melveny & Myers LLP
310-246-6789 (Office)
310-621-5843 (Cell)

This message and any attached documents contain information from the law firm

of O'Melveny & Myers LLP that may be confidential and/or privileged. If you are not the intended recipient, you may not read, copy, distribute, or use this information. If you have received this transmission in error, please notify the sender immediately by reply e-mail and then delete this message.

Exhibit H

From: Diamond, Chuck [mailto:CDiamond@OMM.com]
Sent: Friday, December 05, 2008 8:44 AM
To: Floyd, Daniel S.
Subject: Glover Park Subpoena

Dan, when do you think you'll have a decision on this?

Charles P. Diamond
O'Melveny & Myers LLP
310-246-6789 (Office)
310-621-5843 (Cell)

This message and any attached documents contain information from the law firm of O'Melveny & Myers LLP that may be confidential and/or privileged. If you are not the intended recipient, you may not read, copy, distribute, or use this information. If you have received this transmission in error, please notify the sender immediately by reply e-mail and then delete this message.

6/10/2009

This message may contain confidential and privileged information. If it has been sent to you in error, please reply to advise the sender of the error and then immediately delete this message.

6/10/2009

Exhibit I

From: Samuels, Mark
To: Rocca, Brian
Cc: Herron, David
Sent: Wed May 20 08:52:37 2009
Subject: AMD v. Intel - Glover Park

Brian, please forgive the delay in getting back to you concerning the Glover Park subpoena. As you may know, Beth Ozmun's husband passed away ten days ago and she was inaccessible to us. After conferring with Glover Park and AMD, we are prepared to represent to Intel, in exchange for withdrawal of the subpoenas directed to Glover Park, that all of Glover Park's activities during the relevant timeframe were in relation to AMD's activities designed to influence government or agency action, or are otherwise covered by privilege or attorney work product.

Please let me know if you have any questions.

Mark

Mark A. Samuels
O'Melveny & Myers LLP
400 S. Hope St., #1800
Los Angeles, CA 90071
ph: (213) 430-6340
fax: (213) 430-6407
msamuels@omm.com

This message and any attached documents contain information from the law firm of O'Melveny & Myers LLP that may be confidential and/or privileged. If you are not the intended recipient, you may not read, copy, distribute, or use this information. If you have received this transmission in error, please notify the sender immediately by reply e-mail and then delete this message.

6/10/2009

Exhibit J

From: Rocca, Brian
Sent: Friday, May 22, 2009 11:59 AM
To: 'Samuels, Mark'
Cc: Herron, David; Pickett, Donn; 'Dillickrath, Thomas'
Subject: RE: AMD v. Intel - Glover Park

Mark,

First and foremost, please extend our sincere condolences to Beth. We were sorry to hear this news and we hope that she is doing as well as possible under the circumstances.

As for the Glover Park issue, we do have a few questions, mainly because your proffered representation does not appear to be wholly consistent with Mr. Warshawsky's deposition testimony. [REDACTED]

[REDACTED]

In light of this, can you please address these issues?

-- Did Mr. Warshawsky testified accurately?

-- If your position is that all "messaging" and "public relations" activities fall into the category of "otherwise covered by privilege or attorney work product," please explain how that is the case.

-- Is Glover Park prepared to certify under oath that the only responsive documents it has from late 2004 relate solely to lobbying? If so, that would make us feel much more comfortable with this.

Thanks,

Brian

Brian C. Rocca|Bingham McCutchen LLP
Three Embarcadero Center, San Francisco, CA 94111
Tel: 415.393.2394|Fax: 415.393.2286
brian.rocca@bingham.com

From: Samuels, Mark [mailto:MSamuels@OMM.com]
Sent: Wednesday, May 20, 2009 8:53 AM
To: Rocca, Brian
Cc: Herron, David
Subject: AMD v. Intel - Glover Park

Brian, please forgive the delay in getting back to you concerning the Glover Park subpoena. As you may know, Beth Ozmun's husband passed away ten days ago and she was

6/10/2009

inaccessible to us. After conferring with Glover Park and AMD, we are prepared to represent to Intel, in exchange for withdrawal of the subpoenas directed to Glover Park, that all of Glover Park's activities during the relevant timeframe were in relation to AMD's activities designed to influence government or agency action, or are otherwise covered by privilege or attorney work product.

Please let me know if you have any questions.

Mark

Mark A. Samuels
O'Melveny & Myers LLP
400 S. Hope St., #1800
Los Angeles, CA 90071
ph: (213) 430-6340
fax: (213) 430-6407
msamuels@omm.com

This message and any attached documents contain information from the law firm of O'Melveny & Myers LLP that may be confidential and/or privileged. If you are not the intended recipient, you may not read, copy, distribute, or use this information. If you have received this transmission in error, please notify the sender immediately by reply e-mail and then delete this message.

EXHIBIT K

**THIS EXHIBIT HAS BEEN
REDACTED IN ITS ENTIRETY**

Exhibit L

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE)	
INTEL CORPORATION)	MDL No. 1717-JJF
MICROPROCESSOR ANTITRUST)	
LITIGATION)	
<hr/>		
ADVANCED MICRO DEVICES, INC., a)	
Delaware corporation, and AMD)	
INTERNATIONAL SALES & SERVICES, LTD.,)	
a Delaware corporation,)	
)	
Plaintiffs,)	C.A. No. 05-441-JJF
)	
v.)	
)	
INTEL CORPORATION, a Delaware corporation,)	
and INTEL KABUSHIKI KAISHA, a Japanese)	
corporation,)	
)	
Defendants.)	
<hr/>		
PHIL PAUL, on behalf of himself)	
and all others similarly situated,)	C.A. No. 05-485-JJF
)	
Plaintiffs,)	CONSOLIDATED ACTION
)	
v.)	
)	
INTEL CORPORATION,)	
)	
Defendants.)	

**STIPULATION WITHDRAWING SUBPOENAS DUCES TECUM TO POTOMAC
COUNSEL, LLC, DC NAVIGATORS, LLC AND PUBLIC STRATEGIES, LLC AND
RESTRICTING FUTURE DISCOVERY FROM CONSULTANTS RETAINED TO
INFLUENCE GOVERNMENT ACTION**

WHEREAS, on or about September 27, 2007, Intel Corp. and Intel Kabushiki Kaisiha (collectively "Intel") served subpoenas duces tecum on three consulting firms engaged to render

services on behalf of AMD; namely Potomac Counsel, LLC; DC Navigators, LLC; and Public Strategies, Inc.; and

WHEREAS, the subpoenas request the production of documents relating to (1) actual or potential litigation against Intel proposed or contemplated by AMD; (2) any possible or actual investigation of Intel by the United States or a foreign governmental entity; and (3) efforts by AMD to influence a government agency, including, but not limited to, any contracting or procurement officers of such an agency, to adopt certain specifications in Requests for Proposal ("RFP") or Requests for Quotation ("RFQ"); and

WHEREAS, AMD represents that its relationship with Public Strategies, Inc. ended on or about October 30, 2004, prior to the date it contends it first reasonably anticipated that it would file a lawsuit against Intel, and that did not retain Potomac Counsel, LLC, until after it had commenced litigation against Intel; and

WHEREAS, AMD further represents that its lawsuit does not allege as a claim or part of the factual allegations supporting a claim Intel's conduct to influence any public contracting or procurement agency to adopt technical specifications in Requests for Proposal ("RFP") or Requests for Quotation ("RFQ") favoring Intel over AMD and will not introduce evidence of such conduct in the case; and

WHEREAS, both parties agree not to serve or enforce subpoenas on any similar consulting firm retained by or on behalf of the other calling for the production of documents or testimony related to activities designed to influence government or agency action;

NOW, THEREFORE, the parties through their respective counsel of record, hereby stipulate that the subpoenas are withdrawn save and except that portion of the subpoena served

on DC Navigators, LLC (Requests 1 and 2), requiring production of documents tending to show that AMD reasonably anticipated filing its lawsuit against Intel prior to March 31, 2005.

RICHARDS, LAYTON & FINGER, P.A.

By: /s/ Frederick L. Cottrell, III

Frederick L. Cottrell, III (#2555)

Chad M. Shandler (#3796)

Steven J. Fineman (#4025)

One Rodney Square

920 North King Street

Wilmington, DE 19899

(302) 651-7836

Cottrell@rlf.com

Shandler@rlf.com

Fineman@rlf.com

Attorneys for Advanced Micro Devices, Inc. and
AMD International Sales & Service, Ltd.

POTTER ANDERSON & CORROON LLP

By: /s/ Richard L. Horwitz

Richard L. Horwitz (#2246)

W. Harding Drane, Jr. (#1023)

Hercules Plaza, 6th Floor

1313 N. Market Street

Post Office Box 951

Wilmington, D.E. 19890-0951

(302) 984-6000

rhorwitz@potteranderson.com

wdrane@potteranderson.com

Attorneys for Intel Corporation and Intel
Kabushiki Kaisha

EXHIBIT M

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE)	
INTEL CORPORATION)	MDL No. 1717-JJF
MICROPROCESSOR ANTITRUST)	
LITIGATION)	
<hr/>		
ADVANCED MICRO DEVICES, INC., a)	
Delaware corporation, and AMD)	
INTERNATIONAL SALES & SERVICE, LTD., a)	
Delaware corporation,)	
)	
Plaintiffs,)	C.A. No. 05-441-JJF
)	
v.)	
)	
INTEL CORPORATION, a Delaware corporation,)	
and INTEL KABUSHIKI KAISHA, a Japanese)	
corporation,)	
)	
Defendants.)	
<hr/>		
PHIL PAUL, on behalf of himself)	
and all others similarly situated,)	C.A. No. 05-485-JJF
)	
Plaintiffs,)	CONSOLIDATED ACTION
)	
v.)	
)	
INTEL CORPORATION,)	DM 4d
)	
Defendants.)	

**ORDER REGARDING LENGTH AND SCOPE OF INTEL'S
FED. R. CIV. P. 30(B)(6) NOTICE OF DEPOSITION CONCERNING
AMD'S EVIDENCE PRESERVATION**

WHEREAS, on May 30, 2008, Intel served a Notice of Deposition under Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 30(b)(6) seeking discovery into AMD's preservation of electronic evidence in this matter. AMD moved to quash said Notice of Deposition, and Intel

moved to compel. The parties' cross-motions came before the Special Master for telephonic hearing on September 11, 2008. Following the hearing, the parties entered into a proposed Stipulation and Order Regarding Intel Discovery Into AMD Evidence Preservation ("Stipulation and Order"), which was approved and issued by the Special Master on November 25, 2008.

WHEREAS, pursuant to the Stipulation and Order, Intel conducted informal discovery into AMD's preservation of evidence, which informal discovery included, *inter alia*, document productions from certain of AMD's IT personnel, interviews of a member of AMD's IT department and one of its electronic-discovery consultants, and telephonic conferences with the Special Master's electronic-discovery consulting experts, Eric Friedberg, Jennifer Martin and/or Jason Novak.

WHEREAS, on December 30, 2008, Intel served a revised Notice of Deposition ("Notice") under Fed. R. Civ. P. 30(b)(6), designating 15 deposition topics and requesting the production of documents in 8 categories.

WHEREAS, Intel and AMD each filed briefs on January 5, 2009, setting forth their respective positions concerning the length of deposition and scope of deposition topics and document requests in Intel's Notice.

WHEREAS, the Special Master held a telephonic hearing on January 9, 2009, and allowed the parties a full opportunity to argue their respective positions.

Having read and considered fully the briefs and associated exhibits and other materials submitted by each party, having heard the parties' extensive argument, and having consulted with Stroz Friedberg LLC, the Special Master concludes as follows:¹

¹ In entering this Order, Counsel for AMD submitted a proposed form of Order on January 20, 2009. The Special Master considered red-lined proposed edits from counsel for Intel submitted on the same date.

1. Intel shall be allowed a total of sixteen (16) hours to conduct its Fed. R. Civ. P. 30(b)(6) deposition. In determining that sixteen hours is sufficient, the Special Master notes that certain topics listed in Intel's Notice have been the subject of informal discovery over the past several months, and that much of Intel's Fed. R. Civ. P. 30(b)(6) deposition, therefore, may be in the nature of AMD witnesses' confirming, under oath, the information that AMD previously provided. However, the content of Intel's Fed. R. Civ. P. 30(b)(6) depositions is not limited to such confirmatory questions. Intel may ask questions regarding the topics specified in its Notice, subject to the sixteen-hour limit and the findings and conclusions in this Order.

2. AMD shall designate one or more witnesses to answer questions concerning the deposition topics listed in Intel's Notice, subject to the following:

a. Privilege. Any claim by AMD of privilege or attorney-work-product protection relating to Intel's questions can be asserted by AMD during deposition. The Special Master declines to rule in advance concerning any such claims of privilege or attorney-work-product protection that AMD may assert during the Fed. R. Civ. P. 30(b)(6) deposition.

b. Non-designated Custodians. By agreement of the parties, discovery in this litigation has been conducted in a custodian-based fashion. Under this system, a subset of the total universe of custodians from each party was designated for document production ("production custodians"). Intel's requests in the Notice for information with respect to preservation by any AMD custodian who is not a production custodian are not relevant and shall not be permitted.

c. Deposition Topic 6 (Harvesting). The Special Master noted during the hearing that it would be impractical for AMD to prepare and present a witness who could testify regarding the proposed data-harvesting details with respect to every AMD custodian.

Counsel for Intel confirmed during the hearing that Intel intends to ask questions at deposition regarding the process and procedures by which AMD harvested data. Intel may ask questions consistent with Intel's clarification of this deposition topic.

d. Deposition Topic 10 (Backup Tapes). During the hearing, the Special Master, Mr. Friedberg and the parties' counsel discussed the level of specificity called for by this deposition topic. Counsel for Intel confirmed during the hearing that Intel intends to ask general questions regarding backup tapes and agreed to limit questioning to the subtopics explicitly delineated in the Notice for this topic. Intel may ask questions consistent with Intel's clarification and limitation of this deposition topic.

e. Deposition Topic No. 13 (Custodian-specific issues). During the hearing, counsel for Intel agreed to explore seeking the information concerning this topic by way of AMD's proposal to provide the information in the form of an interrogatory response made under oath. The parties are directed to make a good-faith attempt to address this topic as herein described.

3. Regarding the document requests that were included with Intel's Notice, the Special Master rules as follows:

a. Document Request No. 1. This request seeks "Documents sufficient to show the dates and sources of each harvest of electronic data for each Custodian, including each harvest from hard drive, Enterprise Vault system, email journaling system, PNS and exchange servers." After conferring with the Special Master's technical consultants, the Special Master concludes that this request is overbroad, is an attempt by Intel to fish for errors from all custodians, and would impose an undue burden on AMD. AMD is, therefore, not required to comply with this request.

b. Document Request No. 2. This request seeks “For each Custodian, documents sufficient to show the nature and scope of each harvest of electronic data from AMD’s Enterprise Vault and email journaling systems, including the search tools, parameters and/or criteria used to extract the data.” In light of the Special Master’s ruling concerning Document Request No. 1, counsel for Intel has withdrawn this request. AMD is, therefore, not required to comply with this request.

c. Document Request No. 3. This request seeks “By Custodian for each suppressed email, the logs or tracking information automatically generated by, and/or stored within, the Attenex database(s) as a result of the near-deduplication process” As this information is not relevant to Intel’s inquiry into AMD’s evidence preservation, AMD is, therefore, not required to comply with this request. During the hearing, AMD offered to produce to Intel all suppressed, near-duplicate emails subject to agreement. Intel accepted AMD’s offer. After reaching this agreement in principle, the parties agreed to hold further discussions regarding the timing, method, form, and cost of such production. The parties are directed to hold such discussions.

d. Document Request No. 4. This request seeks “The logs generated during the migration of PSTs into AMD’s Enterprise Vault system” The Special Master concludes that this request is unduly burdensome and is an attempt by Intel simply to fish for errors. The Special Master is advised by Stroz Friedberg LLC that these logs would likely be thousands, if not tens of thousands, of lines long. Parsing through and explaining voluminous logs would be an unwarranted and distracting side show where there is no information gathered during informal discovery to support the suspicion of wide-scale problems with migration. AMD is, therefore, not required to comply with this request.

e. Document Request No. 5. This request seeks “Documents sufficient to show which Custodians, if any, requested an increase in his or her mailbox size quotas (after March 1, 2005), the date of any such request(s), and the action taken by AMD’s IT department in response to such request(s).” The Special Master concludes that this request is overbroad and is an attempt by Intel to fish for errors. AMD is, therefore, not required to comply with this request.

f. Document Request No. 6. This request seeks “Documents sufficient to show (a) any instructions, recommendation and/or user guides provided to AMD employees, or (b) internal AMD IT policies and/or procedures, related to AMD’s Enterprise Vault and email journaling systems.” AMD has agreed to produce documents responsive to this request and is ordered to do so.

g. Document Request No. 7. This request seeks “For each Custodian, documents sufficient to show each email address and/or display name that, when used, would result in an email being delivered to the subject Custodian’s AMD email account.” A lengthy discussion during the hearing concerning the issues surrounding this request made clear that informal discussions between the parties regarding the technical issues presented, with the involvement of Stroz Friedberg LLC, may entirely resolve this request. The parties are therefore ordered to hold informal discussions with the assistance of Stroz Friedberg LLC to attempt to resolve this request.

h. Document Request No. 8. This request seeks certain information “[f]or each individual AMD Custodian for whom data has not been produced to Intel (*i.e.*, non-designated Custodians).” As previously stated, Intel’s requests in the Notice for information

with respect to preservation by any AMD custodian who is not identified as a custodian for production is not relevant. AMD is, therefore, not required to comply with this request.

THE SPECIAL MASTER'S ORDER WILL BECOME A FINAL ORDER OF THE COURT, UNLESS OBJECTION IS TAKEN IN ACCORDANCE WITH THE ANTICIPATED ORDER BY THE COURT WHICH SHORTENS THE TIME WITH WHICH AN APPLICATION CAN BE FILED PURSUANT TO FED. R. CIV. P. 53(f)(2).

IT IS SO ORDERED.

DATED: January 22, 2009



Vincent J. Poppiti (#100614)
Special Master

EXHIBIT N

**THIS EXHIBIT HAS BEEN
REDACTED IN ITS ENTIRETY**

EXHIBIT O

**THIS EXHIBIT HAS BEEN
REDACTED IN ITS ENTIRETY**

EXHIBIT P

**THIS EXHIBIT HAS BEEN
REDACTED IN ITS ENTIRETY**

EXHIBIT Q

**THIS EXHIBIT HAS BEEN
REDACTED IN ITS ENTIRETY**

Exhibit R

▷

United States District Court,
S.D. New York.
CALVIN KLEIN TRADEMARK TRUST and
Calvin Klein, Inc., Plaintiffs,

v.

Linda WACHNER, the Warnaco Group, Inc., Warnaco Inc., Designer Holdings Ltd.,
CKJ Holdings, Inc., Jeanswear Holdings, Inc.,
Calvin Klein Jeanswear Company
and Outlet Holdings, Inc., Defendants.

No. 00 Civ. 4052(JSR).

Dec. 5, 2000.

Trademark infringement defendants challenged plaintiff's assertion of attorney-client privilege and work-product protection with respect to documents and testimony sought by defendants from public relations firm hired by plaintiff's counsel. The District Court, Rakoff, J., held that: (1) documents were not protected by attorney client privilege, and (2) documents were protected work-product only to extent it revealed firm's strategy about conduct of litigation itself.

Assertion of privilege sustained in part and denied in part.

West Headnotes

[1] Privileged Communications and Confidentiality ¶160311Hk160 Most Cited Cases

(Formerly 410k206)

Communications between plaintiff's law firm and public relations firm which law firm had retained as consultant for plaintiff's suit were not protected by attorney client privilege; documents did not contain or reveal confidential communications from plaintiff, made for purpose of obtaining legal advice.

[2] Privileged Communications and Confidentiality ¶168311Hk168 Most Cited Cases

(Formerly 410k219(3))

Even if communications between plaintiff's law firm and public relations firm which law firm had retained as consultant for plaintiff's suit contained confidential client communications, they were not protected by attorney client privilege; privilege in communications was waived by law firm's disclosure of them to public relations firm.

[3] Privileged Communications and Confidentiality ¶112311Hk112 Most Cited Cases

(Formerly 410k198(1))

Attorney-client privilege must be narrowly construed.

[4] Federal Civil Procedure ¶1604(1)170Ak1604(1) Most Cited Cases

(Formerly 170Ak1600(3))

Public relations advice obtained by law firm with regard to litigation was privileged work product to extent it revealed firm's strategy about conduct of litigation itself, but not to extent it revealed strategy for dealing with effects of litigation on client's customers.

*53 Jonathan D. Schiller, Boies, Schiller & Flexner, LLP, Washington, DC, David R. Boyd, David Boies, Armonk, NY, Andrew Haves, for plaintiffs.

*54 Kevin T. Baine, Washington, DC, Brendan Sullivan, Greg Craig, Washington, DC, for defendants.

MEMORANDUM ORDER

RAKOFF, District Judge.

Defendants challenge the assertion by plaintiffs of attorney-client privilege and work-product protection with respect to certain otherwise responsive documents and testimony sought by defendants from the public relations firm of Robinson Lerer & Montgomery ("RLM") and from an RLM employee, Donald Nathan. The Court, having considered the parties' letter-briefs (including an unauthorized

second brief from plaintiffs, which the Court has nevertheless considered) and having reviewed *in camera* the documents withheld from defendants, denies plaintiffs' assertion of attorney-client privilege and sustains in part and denies in part plaintiffs' assertion of work product protection, for the reasons that follow.

In May, 2000, in anticipation of filing the instant lawsuit, plaintiffs' counsel, the law firm of Boies, Schiller & Flexner LLP. ("BSF"), retained RLM to act "as a consultant to [BSF] for certain communications services in connection with [BSF's] representation of Calvin Klein, Inc." See Letter dated May 19, 2000 from Patrick S. Gallagher, Chief Financial Officer of RLM, to Jonathan D. Schiller, Esq. of BSF. At the time, RLM was already working directly for plaintiff Calvin Klein, Inc. ("CKI") pursuant to an agreement dated September 10, 1999. *Id.*

While defendants contend that BSF retained RLM "to wage a press war against the defendant," see Defendants' Letter Brief dated November 30, 2000, at 1, plaintiffs contend that RLM's retention served more defensive purposes, *i.e.*, to help BSF "to understand the possible reaction of CKI's constituencies to the matters that would arise in the litigation, to provide legal advice to CKI, and to assure that the media crisis that would ensue--including responses to requests by the media about the law suit and the overall dispute between the companies--would be handled responsibly...." See Plaintiffs' Letter Brief dated November 29, 2000, at 3. None of these vague and largely rhetorical contentions by the respective parties is particularly helpful to assessing the purpose of the documents here in issue, many of which appear on their face to be routine suggestions from a public relations firm as to how to put the "spin" most favorable to CKI on successive developments in the ongoing litigation. In any event, however, no matter how these documents are viewed, none qualifies for the protection of the attorney client privilege, for at least three reasons.

[1] *First*, and foremost, few, if any, of the docu-

ments in issue appear to contain or reveal confidential communications from the underlying client, CKI, made for the purpose of obtaining legal advice. Yet it is only such communications that the attorney-client privilege ultimately protects. See, *e.g.*, *United States v. Kovel*, 296 F.2d 918, 921 (2d Cir.1961) (citing Wigmore). Thus, the possibility that communications between RLM and BSF may help the latter to formulate legal advice is not in itself sufficient to implicate the privilege: "the privilege protects communications between a client and an attorney, not communications that prove important to an attorney's legal advice to a client." *United States v. Ackert*, 169 F.3d 136, 139 (2d Cir.1999).

[2] *Second*, even assuming *arguendo* that somewhere hidden in the voluminous documents here in issue are nuggets of client confidential communications that were originally made for the purpose of seeking legal advice, their disclosure to RLM waives the privilege, since inspection of the documents here in question clearly establishes that RLM, far from serving the kind of "translator" function served by the accountant in *Kovel*, *supra*, is, at most, simply providing ordinary public relations advice so far as the documents here in question are concerned. Indeed, even RLM's own "Account Activity Report" to BSF for the period from May 27, 2000 to October 31, 2000 (item 38 on the privilege log, but only slightly redacted) shows that much of RLM's services for BSF consisted of such activities as reviewing press coverage, making calls to various media to comment on developments in the litigation, *55 and even "finding friendly reporters." The possibility that such activity may also have been helpful to BSF in formulating legal strategy is neither here nor there if RLM's work and advice simply serves to assist counsel in assessing the probable public reaction to various strategic alternatives, as opposed to enabling counsel to understand aspects of the client's own communications that could not otherwise be appreciated in the rendering of legal advice. See *Akert*, 169 F.3d at 139; *Kovel*, 296 F.2d at 922.

[3] *Third*, it must not be forgotten that the attorney-client privilege, like all evidentiary privileges, stands in derogation of the search for truth so essential to the effective operation of any system of justice: therefore, the privilege must be narrowly construed. See, e.g., *United States v. Nixon*, 418 U.S. 683, 710, 94 S.Ct. 3090, 41 L.Ed.2d 1039 (1974); *In re Horowitz*, 482 F.2d 72, 81 (2d Cir.1973). Yet plaintiffs' approach would, instead, broaden the privilege well beyond prevailing parameters. On any fair view of the materials submitted for the Court's *in camera* inspection, RLM does not appear to have been performing functions materially different from those that any ordinary public relations firm would have performed if they had been hired directly by CKI (as they also were), instead of by CKI's counsel, BSF. "Nothing in the policy of the privilege suggests that attorneys, simply by placing accountants, scientists, or investigators [or, here, a public relations firm] on their payrolls ... should be able to invest all communications by clients to such persons with a privilege the law has not seen fit to extend when the latter are operating under their own steam." *Kovel*, 296 F.2d at 921. It may be that the modern client comes to court as prepared to massage the media as to persuade the judge; but nothing in the client's communications for the former purpose constitutes the obtaining of legal advice or justifies a privileged status. [FN1]

[FN1]. Although plaintiffs assert that the decision in *H.W. Carter & Sons, Inc. v. The William Carter Co.*, 1995 WL 301351 (S.D.N.Y. May 16, 1995) is contrary to the foregoing analysis, in fact it is impossible to tell from the very brief discussion of the issue in that case exactly what its *ratio decidendi* is.

[4] Turning to the assertion of "work product," it is obvious that as a general matter public relations advice, even if it bears on anticipated litigation, falls outside the ambit of protection of the so-called "work product" doctrine embodied in Rule

26(b)(3), Fed.R.Civ.P. That is because the purpose of the rule is to provide a zone of privacy for strategizing about the conduct of litigation itself, not for strategizing about the effects of the litigation on the client's customers, the media, or on the public generally. See *United States v. Nobles*, 422 U.S. 225, 238, 95 S.Ct. 2160, 45 L.Ed.2d 141 (1975); *United States v. Adlman*, 68 F.3d 1495, 1501 (2d Cir.1995).

It does not follow, however, that an otherwise valid assertion of work-product protection is waived with respect to an attorney's own work-product simply because the attorney provides the work-product to a public relations consultant whom he has hired and who maintains the attorney's work-product in confidence. See, e.g., *In re Pfizer Inc. Secs. Litig.*, 1993 WL 561125, *6 (S.D.N.Y. Dec. 23, 1993); *Niagara Mohawk Power Corp. v. Stone & Webster Eng'g Corp.*, 125 F.R.D. 578, 589 (N.D.N.Y.1989). This is especially so if, as plaintiffs here assert, the public relations firm needs to know the attorney's strategy in order to advise as to public relations, and the public relations impact bears, in turn, on the attorney's own strategizing as to whether or not to take a contemplated step in the litigation itself and, if so, in what form. In the instant case, four of the 38 categories of documents presented for the Court's *in camera* review fall into this category, to wit, categories 1, 2, 3, and 29, all of which consist of counsel-drafted or counsel-selected materials given by BSF or CKI's in-house counsel to RLM prior to the filing of the complaint in this case, following which RLM met with BSF to discuss the complaint. In addition, there appear to be several categories of documents (such as notes of witness interviews) that, even though prepared by RLM, appear to implicitly reflect BSF work-product. They are categories 7, 10, 11, 12, 19, and 27. Nor have defendants demonstrated *56 a need for these materials that overcomes the work-product protection. Accordingly, the documents in categories 1, 2, 3, 7, 10, 11, 12, 19, 27, and 29 will be protected from disclosure, but none others.

From the foregoing analysis, it also follows that the directions given to RLM's employee, Donald Nathan, not to answer certain questions propounded at pages 21-22 and 39-40 of his deposition must be overruled. The similar direction given at page 10 of the deposition is, however, sustained.

In sum, plaintiffs are hereby ordered to furnish to defense counsel, by no later than December 7, 2000, unredacted copies of all documents on the RLM privilege log except those denominated as falling within categories 1, 2, 3, 7, 10, 11, 12, 19, 27, and 29 of that log; and RLM is hereby ordered to make Donald Nathan available, by no later than December 8, 2000, for a telephonic continuation of his deposition, not to exceed 20 minutes, for the purposes of answering the questions the witness was directed not to answer at pages 21-22 and 39-40 of his deposition, as well as any follow-up questions reasonably related thereto.

SO ORDERED.

198 F.R.D. 53, 48 Fed.R.Serv.3d 1055

END OF DOCUMENT

H

Only the Westlaw citation is currently available.

United States District Court,
 D. South Carolina.
 In re: NEW YORK RENU WITH MOISTURELOC
 PRODUCT LIABILITY LITIGATION
 This Document Applies to All Cases
 In re: BAUSCH & LOMB CONTACT LENS
 SOLUTION PRODUCT LIABILITY LITIGATION
 This Document Applies to All Cases
 No. MDL 1785, CA 2:06-MN-77777-DCN.

May 8, 2008.

MEMORANDUM OPINION AND ORDER ON
 DOCUMENTS ASSERTED AS PROTECTED BY
 ATTORNEY-
 CLIENT PRIVILEGE OR AS WORK PRODUCT
 CAPRA, J.

*1 In this litigation, Defendant Bausch & Lomb has refused to produce a number of otherwise responsive documents on the ground that they are protected by the attorney-client privilege or the work product doctrine. This order involves the "first wave" of documents that Bausch & Lomb claims are so protected. The parties are currently working through a "second wave" of documents for the Special Master's consideration.

The documents that are subject to this Order have been set forth in exhibits to an affidavit by Robert Bailey, Esq., Vice President and General Counsel for Bausch & Lomb. The Order follows the exhibit form as presented and as argued by the parties.

I have reviewed the pertinent case law and the extensive written submissions by the parties. I also entertained oral argument on some of the more difficult legal questions presented by these exhibits. What follows is a short discussion of the pertinent case law, and a justification for the orders. Because there is a need for expedition, the case law discus-

sion is truncated.

In evaluating the privilege claims, I applied four fundamental legal principles:

- 1) Defendant, as the party invoking the privilege, has the burden of showing that the requirements of the privilege are met. *See, e.g., United States v. Landof*, 591 F.2d 36 (9th Cir.1978) (as the privilege is in derogation of the search for truth, the party who seeks to invoke it has the burden of establishing it).
- 2) Intra-corporate communications to counsel may fall within the privilege if the predominant intent is to seek legal advice. *United States v. IBM*, 66 F.R.D. 206, 212-13 (S.D.N.Y.1974) (applying the test of predominant intent).
- 3) Intra-corporate communications to and from counsel can retain a privilege if disclosure is limited to those who have a "need to know" the advice of counsel; the company's burden "is to show that it limited its dissemination of the documents in keeping with their asserted confidentiality, not to justify each determination that a particular employee should have access to the information therein." *Federal Trade Comm'n v. GlaxoSmithKline*, 294 F.3d 141, 147-48 (D.C.Cir.2002).
- 4) As this case is in diversity, the applicable privilege law is state law. *See Fed.R.Evid. 501*. And of course state privilege law applies to the actions in New York state court. Choice of law principles appear to point to New York privilege law as determinative, as that is the location of defendant's principal place of business. Federal courts have recognized that the New York law of privilege is substantially similar to federal common law. *See, e.g., NXIVM Corp. v. O'Hara*, 241 F.R.D. 109, 124 (N.D.N.Y.2007) ("the distinction between New York and federal law on attorney-client privilege is quite indistinguishable, as the law intersects in all of its facets, and are viewed interchangeably"); *Bank of Am., N.A. v. Terra Nova Ins. Co. Ltd.*, 211 F.Supp.2d 493 (S.D.N.Y.2002) ("New York law governing attorney-client priv-

ilege is generally similar to accepted federal doctrine."). This statement is helpful when the federal common law is itself clear and undisputed. But a difficulty arises where the federal courts are in dispute about the federal common law, and there appears to be no clear state law on the subject. Where such a situation arises, I have chosen the result that appears most consistent with the approach to privilege questions undertaken by the New York Court of Appeals; that approach is to use a utilitarian analysis to provide protection to communications to and from counsel that would not be made in absence of the privilege. *See generally* Martin & Capra, New York Evidence Handbook § 5.2 (2d ed.2003).

Exhibit 1 (BL100370591)

*2 This is an email from Alan Wilson, Director of Vision Care and Special Project Manager for the Fusarium investigation, to corporate counsel and other high-level personnel, concerning a possible presentation to the FDA. It is seeking a combination of business and legal advice, but it is fair to assume that the predominant reason for sending it to corporate counsel is to seek legal advice. The fact that Wilson was probably seeking business advice from the non-legal corporate personnel does not lose the privilege if the reason for communicating *with the lawyer* is to obtain the lawyer's legal viewpoint. *Federal Trade Comm'n v. GlaxoSmithKline*, 294 F.3d 141, 147-48 (D.C.Cir.2002). Moreover, all the recipients were those who had a "need to know" counsel's advice, and so the privilege was not lost by disclosure to these personnel.

It is notable that legal advice may be sought implicitly or explicitly. *See, e.g., In re CV Therapeutics, Inc. Sec. Litig.*, 2006 U.S. Dist. LEXIS 41568 at *12-13, 2006 WL 1699536 (N.D.Cal.):

The Court looks to the context of the communication and content of the document to determine whether a request for legal advice is in fact fairly implied, taking into account the facts surrounding the creation of the document and the nature of the document. The attorney-client privilege protects

documents which "involve either client communications intended to keep the attorney apprised of continuing business developments, with an implied request for legal advice based thereon, or self-initiated attorney communications intended to keep the client posted on legal developments and implications, including implications of client activity noticed by the attorney but with regard to which no written request for advice from the client has been found." *Jack Winter, Inc. v. Koratron Co.*, 54 F.R.D. 44, 46 (N.D.Cal.1971).

The email from Wilson, fairly read, implicitly seeks legal advice from Mr. Bailey.

Privilege claim sustained.

Exhibit 2 (BL105793290-318)

This is a draft of a powerpoint presentation that Bausch & Lomb was preparing in order to make a presentation to the FDA. The final version of the powerpoint presentation has already been produced, as have other drafts. Bausch & Lomb argues that this particular draft is privileged because it was submitted to in-house counsel for his legal advice on whether any changes to the draft should be made before it would be presented to the FDA.

The federal common law on drafts submitted to counsel is in conflict. The split of authority is discussed in *Schenet v. Anderson*, 687 F.Supp. 1280, 1282-4 (E.D.Mich.1988):

A split of authority exists regarding whether information disclosed to an attorney with the intention that the attorney draft a document to be released to third parties is protected by the attorney-client privilege. Plaintiff cites *In re Grand Jury Proceedings*, 727 F.2d 1352, 1355 (4th Cir.1984) as support for its position [that the draft is not privileged]. The Fourth Circuit held, in that case, that the attorney-client privilege did not apply to information communicated by the client to the attorney with the understanding or intention that the communication was to be made known to others (e.g., in the form of a stock offering brochure or an income tax return.) *In re*

Grand Jury at 1356.

*3 "[A] statement or communication made by a client to his attorney with the intent and purpose that it be communicated to others is not privileged." Nor is the loss of the privilege confined to "the particular words used to express the communication's content" but extends "to the substance of a communication," since the disclosure of " 'any significant part' of a communication waives the privilege" and requires the attorney to disclose "the details underlying the data which was to be published."

In re Grand Jury at 1356.

In *In re Grand Jury*, the government subpoenaed an attorney to testify before a grand jury regarding conversations with his client made in connection with the preparation of a prospectus for a proposed private placement of limited partnership interests. (The proposed prospectus was never issued.). The *In re Grand Jury* court held that the information given to the attorney was to assist in preparing a document to be seen by others, and was not intended to be kept confidential. Thus, the attorney-client privilege was not applicable.

Subsequently, the Fourth Circuit limited its holding in *In re Grand Jury*, in *U.S. v. (Under Seal)*, 748 F.2d 871, 875 (4th Cir.1984). The *(Under Seal)* court noted that, while the existence of the attorney-client relationship does not, by itself, lead to a presumption that attorney-client communications are confidential, "a layman does not expect his attorney to routinely reveal all that his client tells him. Rather than look to the existence of the attorney-client relationship or to the existence or absence of a specific request for confidentiality, we must look to the services which the attorney has been employed to provide, and determine if those services would reasonably be expected to entail the publication of the clients' communications." *U.S. v. (Under Seal)* at 875. The court distinguished *In re Grand Jury* from the case before it, because, in *In re Grand Jury*, the client had decided to publish a prospectus before approaching their attorneys, thus indicating that the attorney had been retained to convey in-

formation to third parties, not to provide legal advice for the client's guidance. In *(Under Seal)*, the client had retained an attorney to investigate the possibility of filing papers, which if filed, would be disclosed to third parties. The court went on to hold that it is only when the client authorizes the attorney to perform services which demonstrate the client's intent to have his communications published that the client will lose the right to assert the privilege as to the subject matter of those communications.

Other courts have extended the attorney-client privilege to cover all information not actually published to third parties, even if the information were disclosed to an attorney in connection with the preparation of a document to be issued to a third party. *U.S. v. Schlegel*, 313 F.Supp. 177, 179 (D.Neb.1970). The *Schlegel* court stated:

*4 [A] ... more realistic rule would be that the client intends that only as much of the information will be conveyed to the [third party] as the attorney concludes should be, and ultimately is, sent to the [third party]. In short, whatever is finally sent to the [third party] is what matches the client's intent. The fact that the client has relinquished to his attorney the making of the decision of what needs to be included within the tax return should not enlarge his intent or decrease the scope of the privilege. A different rule would not really support the purpose of the privilege, which is to encourage free disclosure of information by the client to the attorney. If the client, not knowing what the attorney would advise be sent or would choose to send to the [third-party], were to think that all information given to his attorney would lose its confidential status by the act of delivery to his attorney, the tendency would be to withhold information which he, without advice of counsel, would suppose was detrimental to him, the client. Thus the attorney, the very one professionally capable of evaluating information, could be of no help in evaluating it, because he would not receive it.

The *Schlegel* rule has been adopted by several other courts: *S.E.C. v. Texas International Air-*

lines, Inc., 29 F.R.Serv.2d 408 (D.D.C.1979); U.S. v. Schmidt, 360 F.Supp. 339, 350, n. 35 (M.D.Penn.1973); U.S. v. Willis, 565 F.Supp. 1186, 1193 (S.D.Iowa 1983).

The *Schenet* court opted for the *Schlegel* rule protecting drafts to the extent that the information in those drafts was not ultimately disclosed:

In the Court's opinion, the *Schlegel* rule encourages clients to disclose information freely to their attorneys, and thus is most consistent with the purpose of the attorney-client privilege. Therefore, the Court declines to follow the Fourth Circuit's opinion in *In re Grand Jury* (as modified by *U.S. v. (Under Seal)*), and adopts the holding of the court in *U.S. v. Schlegel*, 313 F.Supp. 177, 179 (D.Neb.1970). Accordingly, the attorney-client privilege applies to all information conveyed by clients to their attorneys for the purpose of drafting documents to be disclosed to third persons and all documents reflecting such information, *to the extent that such information is not contained in the document published and is not otherwise disclosed to third persons*. With regard to preliminary drafts of documents intended to be made public, the court holds that preliminary drafts may be protected by the attorney-client privilege. Preliminary drafts may reflect not only client confidences, but also the legal advice and opinions of attorneys, all of which is protected by the attorney-client privilege. *The privilege is waived only as to those portions of the preliminary drafts ultimately revealed to third parties*. *S.E.C. v. Texas International Airlines, Inc.*, 29 F.R.Serv.2d 408, 410 (D.D.C.1979); *U.S. v. Willis*, 565 F.Supp. 1186, 1193 (S.D.Iowa 1983). (emphases added).

*5 At least one court has taken the position that an entire draft remains privileged if it is given to counsel with the proviso that counsel will provide suggestions on the draft. The court in *Macario v. Pratt & Whitney Canada, Inc.*, 1991 U.S. Dist. LEXIS 597, 1991 WL 1004 (E.D.Pa.), held that a draft was protected in its entirety because "[n]o evidence has

been presented to indicate that at the time the second draft was submitted to [the lawyer] for his review, Pratt & Whitney had any intention to publish the release *in the form provided*. However, the critical issue in determining whether the document was to remain confidential is whether Pratt & Whitney intended that the draft was to be released *in the form given to [the lawyer] for his review*. Because the release was contingent on [the lawyer's] approval and subject to his revision, it is reasonable to assume that Pratt & Whitney intended the document to remain confidential until a final draft was achieved, and thus the second draft would fall within the attorney-client privilege." (emphases added).

The New York law on drafts is unclear. New York of course accepts the unremarkable proposition that if a client communicates to the lawyer with the intent that the communication is to be released to the public, that communication is not privileged. See Martin & Capra, *supra* at 318. But I have found no cases on the specific question of whether drafts are protected when they are given to counsel with the intent that counsel would provide suggestions on what should be cut from (or added to) the draft before it is released to the public. Weinstein Korn & Miller provide the following cryptic statements at ¶ 4503.18:

A common example of communications which are not privileged because it is intended that they be disclosed to third persons are the communications made in the preparation of legal documents such as contracts, deeds and complaints. Only that information which the client knew or should have known would be disclosed is outside the privilege; other matter remains privileged

But the cases cited do not involve drafts and are more in the nature of general statements that there is no privilege if the client anticipates that the communication will be made public.

The question is which law to apply regarding drafts. Under the Fourth Circuit law, and despite defendant's argument to the contrary, the draft is unprivileged in its entirety, as are any pertinent lawyer

notes. This is because defendant made the decision to present the powerpoint to the FDA, in some form, by the time the draft was sent to Mr. Bailey. Defendant certainly has not proved otherwise. But the problem with the Fourth Circuit view is that it appears to look at the client's intent to publish in an undifferentiated way. A client may have decided to publish *some* information in *some* form, yet the precise form and content could well be subject to review by counsel. The Fourth Circuit law does not provide protection in the more nuanced situation in which the client is going to make a public disclosure but submits it to the lawyer in order to determine whether the final form is consistent with the client's legal interest. Yet that is the very situation in which the client ought to be able to seek confidential advice of counsel; the Fourth Circuit rule thus deters the client from communicating with counsel about what should or should not go into a public statement, and therefore undermines the attorney-client privilege. Because the Fourth Circuit view deters communications that are necessary to the free flow of information between client and attorney, it is contrary to the underlying principles of the attorney-client privilege under New York law.

*6 On the other hand, the result in *Macario, supra*--that the entire draft is protected by the privilege if given to the lawyer for a legal-advice review--is overprotective. It would mean that the draft would be protected even if the lawyer made no changes, and even as to parts of the draft which were understood by both attorney and the client to be an inevitable part of the public presentation. The *Macario* rule allows the client to shield an unprotected document simply by referring it to the lawyer. As such it is contrary to the limitations inherent in the privilege. See *In re Bekins Record Storage Co.*, 62 N.Y.2d 324, 476 N.Y.S.2d 806, 465 N.E.2d 345 (1984) (preexisting documents compellable if in the hands of the client do not become privileged when referred to an attorney).

The compromise view is that of *Schenet/Schlegel*--if the draft is sent to the lawyer for a legal-advice

review, then any statements in the draft are privileged to the extent that they are not ultimately revealed to the public. Put the other way, only the portions of the draft that are ultimately disclosed in the final document are subject to disclosure. The problem with this view is that it requires a line-by-line redaction of the draft. Arguably the costs of a line-by-line redaction might be considerable if the case involves hundreds of drafts. Yet despite its costs, the *Schenet/Schlegel* view is the one most consistent with the policy of the privilege. It allows and encourages the client to seek legal advice on the propriety of language in a draft, without overprotecting the draft in such a way that its disclosure is barred even as to portions that are clearly intended for public disclosure. As the *Schenet/Schlegel* view is most consistent with the policies of the privilege, I conclude that it is most consistent with the New York Court of Appeals' approach to privilege (especially the corporate attorney-client privilege) in such cases as *Rossi v. Blue Cross & Blue Shield*, 73 N.Y.2d 588, 542 N.Y.S.2d 508, 540 N.E.2d 703 (1989) and *Spectrum Sys. Intl. Corp. v. Chemical Bank*, 78 N.Y.2d 371, 575 N.Y.S.2d 809, 581 N.E.2d 1055 (1991).

Applying the *Schenet/Schlegel* view, I find first that the draft powerpoint presentation was referred to Mr. Bailey with the implicit request for legal advice. Therefore, the portions of the draft powerpoint that were not disclosed in the final draft may be redacted. The portions that were ultimately revealed to the FDA are not privileged. Defendant must therefore produce the draft, but may make redactions in accordance with this opinion and order.

Privilege claim sustained in part and denied in part.

Exhibit 3 (BL100101027)

This exhibit consists of two-email strings regarding a contact with the FDA about a planned public statement about MoistureLoc. The first email is from Barbara Kelley to Ron Zarella, Bob Bailey, and others, including two public relations consult-

ants from Hill & Knowlton, a public relations firm employed by Bausch & Lomb. Plaintiffs contend that any privilege is lost because of the disclosure to Hill & Knowlton. For the reasons discussed below, I agree with plaintiffs and accordingly find that this email is not privileged and must be produced in its entirety.

*7 Communications to non-lawyers can be brought within the privilege under the *Kovel* doctrine--the court in *United States v. Kovel*, 296 F.2d 918, 921 (2d Cir.1961) held that confidential communications to non-lawyers could be protected by the privilege if the non-lawyer's services are necessary to the legal representation. But the *Kovel* protection is applicable only if the services performed by the non-lawyer are necessary to promote the lawyer's effectiveness; it is not enough that the services are beneficial to the client in some way unrelated to the legal services of the lawyer. Id at 922 (the "communication must be made in confidence for the purpose of obtaining legal advice from the lawyer.... If what is sought is not legal advice but only accounting services ... or if the advice sought is the accountant's rather than the lawyer's, no privilege exists."). See generally *NXIVM Corp. v. O'Hara*, 241 F.R.D. 109 (S.D.N.Y.2007) ("the extension of the privilege to non-lawyer's communication is to be narrowly construed. If the purpose of the third party's participation is to improve the comprehension of the communication between attorney and client, then the privilege will prevail."). See also *United States v. Ackert*, 169 F.3d 136, 139 (2d Cir.1999) (ruling that the communication "between an attorney and a third party does not become shielded by the attorney-client privilege solely because the communication proves important to the attorney's ability to represent the client").

Courts are in some dispute on whether public relations firms are "necessary to the representation" so as to fall within the *Kovel* protection. Most courts agree, however, that basic public relations advice, from a consultant hired by the corporate client, is not within the privilege. The court in *NXIVM*, *supra*

at 141, surveys this basic case law:

This legal notion that even a public relations firm must serve as some sort of "translator," much like the accountant in *Kovel*, was visited in *Calvin Klein Trademark Trust v. Wachner*, 198 F.R.D. 53 (S.D.N.Y.2000). Much like the services being rendered here, the public relations firm in *Calvin Klein* was found to have simply provided ordinary public relations advice and assisted counsel in "assessing the probable public reaction to various strategic alternatives, as opposed to enabling counsel to understand aspects of the client's own communications that could otherwise be appreciated in the rendering of legal advice." 198 F.R.D. at 54-55 (citing *United States v. Ackert*, 169 F.3d at 139). Thus, no attorney client privilege was extended to its communications with either the client or the firm. Id. at 53-55. A similar result occurred in *Haugh v. Schroder Inv. Mgmt. North Am. Inc.*, 2003 U.S. Dist. LEXIS 14586, 2003 WL 21998674 (S.D.N.Y. Aug. 25, 2003), wherein the court found that the record did not show the public relations specialist performed anything other than standard public relations services for the plaintiff, and noting that a media campaign is not a legal strategy. See also *De Beers LV Trademark Ltd. v. De Beers Diamond Syndicate Inc.*, 2006 U.S. Dist. LEXIS 6091, 2006 WL 357825 (S.D.N.Y. Feb.15, 2006).

*8 Judge Cote in *Haugh v. Schroder Inv. Mgmt. North Am. Inc.*, 2003 U.S. Dist. LEXIS 14586, 2003 WL 21998674, at *8 (S.D.N.Y.2003) summed up the basic law, and held that disclosure to a public relations firm lost the privilege, in the following passage:

Plaintiff has not shown that Murray [the p.r. consultant] performed anything other than standard public relations services for Haugh, and more importantly, she has not shown that her communications with Murray or Murray's with Arkin [the lawyer] were necessary so that Arkin could provide Haugh with legal advice. The conclusory descriptions of Murray's role supplied by plaintiff fail to bring the sixteen documents within the ambit of the attorney-client privilege. The docu-

ments transmitted from plaintiff to Murray and the one document from Murray to Arkin are consistent with the design of a public relations campaign. Plaintiff has not shown that Murray was "performing functions materially different from those that any ordinary public relations" advisor would perform. Calvin Klein Trademark Trust v. Wachner et al., 198 F.R.D. 53, 55 (S.D.N.Y.2000). As such, Haugh's transmission of documents to Murray, even simultaneously with disclosure to former counsel, and Murray's transmission of a meeting agenda to Arkin, vitiates the application of the attorney-client privilege to these documents.

Judge Cote relied on the compelling point that "[a] media campaign is not a litigation strategy. Some attorneys may feel it is desirable at times to conduct a media campaign, but that decision does not transform their coordination of a campaign into legal advice."

It is true that a few cases have found communications to public relations consultants to be within the attorney-client privilege. But those cases arise from unusual and extreme facts and do not involve the basic provision of public relations advice by a company retained by the client, as in the instant case. For example, in In re Copper Market Antitrust Litig., 200 F.R.D. 13 (S.D.N.Y.2001), a foreign company found itself in the midst of a high profile scandal involving both regulatory and civil litigation aspects, and hired a public relations firm because it lacked experience both in English-speaking and in dealing with Western media. The public relations firm acted as the corporation's spokesperson when dealing with the Western press and conferred with the company's U.S. litigation counsel. Judge Swain upheld the attorney-client privilege claim, reasoning that the public relations firm, in the extreme circumstances of the case, was the functional equivalent of an in-house department of the corporation and thus part of the "client." Obviously the facts of Copper Market do not approach those of this case, in which a public relations consulting firm provides basic consulting advice.

Likewise, the facts of In re Grand Jury Subpoenas, 265 F.Supp.2d 321 (S.D.N.Y.2003) are vastly different from the instant case. Judge Kaplan held that the privilege applied to a public relations consulting firm hired to assist counsel to create a climate in which prosecutors might feel freer not to indict the client. He concluded that this was an area in which counsel were presumably unskilled and that the task constituted "legal advice." As Judge Cote stated in Haugh: "There is no need here to determine whether In re Grand Jury Subpoenas was correctly decided." Bausch & Lomb has not identified with particularity any legal advice that required the assistance of a public relations consultant; Bailey's affidavit simply states, in conclusory fashion, that Hill & Knowlton's presence was "necessary." Bausch & Lomb has not, for example, identified any nexus between the consultant's work and the attorney's role in defending against possible litigation or a regulatory action or proceeding.

*9 I am most reluctant to rely on the broad applications in Copper Market and In re Grand Jury Subpoenas in light of the well-reasoned case law indicating that the privilege is lost when the corporate client communicates to an outside consultant, hired by the corporation, and providing nothing more than basic public relations advice. See, e.g., Ann M. Murphy, Spin Control and the High-Profile Client--Should the Attorney-Client Privilege Extend to Communications With Public Relations Consultants?, 55 Syracuse L.Rev. 545 (2005) (concluding that "expanding the attorney-client privilege to communications with public relations consultants is inadvisable and against the interests of justice"). A conservative approach is, indeed, mandated by New York law, which appears to recognize the Kovel doctrine only in narrow circumstances in which the non-lawyer's services are absolutely necessary to effectuate the lawyer's legal services. See, e.g., People v. Edney, 39 N.Y.2d 620, 385 N.Y.S.2d 23, 350 N.E.2d 400 (1976).

Accordingly, the email from Barbara Kelley dated May 11, 2006 is not privileged because it was

routed to employees of Hill & Knowlton. (If not for that routing, the email would be privileged because it was implicitly seeking Bob Bailey's legal advice on discussions with the FDA).

In contrast, the second email in the string, dated May 11, 2006 at 11:07 p.m., is privileged. It discusses the need to seek legal advice from Bob Bailey, and this email was *not* sent or routed to Hill & Knowlton.

Privilege claim sustained in part and denied in part.

Exhibit 4 (BL105792209)

Exhibit 4 is an email from Michael Santaluccia to outside counsel and Bob Bailey, as well as others with a "need to know" (see Federal Trade Comm'n v. GlaxoSmithKline, 294 F.3d 141, 147-48 (D.C.Cir.2002)), concerning communications with an FDA official about investigations respecting MoistureLoc. It is clear that at the time of the email, Bausch & Lomb faced a situation involving legal liability, and that discussion and interaction with the FDA was critical to Bausch & Lomb's legal position. I find that the request for legal advice is implicit in the email. See Jack Winter, Inc. v. Koratron Co., 54 F.R.D. 44, 46 (N.D.Cal.1971) (implicit requests for legal advice in the corporate context can qualify for privilege protection). Accordingly, the email is privileged.

Privilege claim sustained.

Exhibit 5 (BL100879259)

This is an email string involving the drafting of a response to the Australian counterpart to the FDA, concerning Fusarium keratitis cases in Asia. The three emails in the string reference an attachment, which is the draft on which each of the email writers provides comments. Bausch & Lomb asserts that plaintiffs have not challenged its privilege claim as to the attachment (the draft response), and that the only challenge is to the emails themselves. But plaintiffs' memorandum in opposition to the

Bailey affidavit, at 8, specifically contends that "drafts of material meant to be shown to third parties, such as the TGA, are not privileged." I therefore find that plaintiffs have sufficiently raised the issue of whether the draft itself is privileged-- and I find, consistently with the discussion of Exhibit 2, that the draft is privileged only as to the statements and information not contained in the published document. The attachment must be produced with any redactions to be made in accordance with this Opinion and Order.

*10 As to the emails themselves, there are three. The first, dated February 26, 2006, at 1:20 a.m., is not sent or routed to a lawyer. But this does not necessarily mean that it is unprotected by the privilege. A number of cases hold that communications among non-lawyer corporate personnel are protected if the dominant intent is to prepare the information in order to get legal advice from the lawyer. See, e.g., AT & T Corp. v. Microsoft Corp., 2003 U.S. Dist. LEXIS 8710, at *7-8 (N.D.Cal.):

Communications between non-lawyer employees about matters which the parties intend to seek legal advice are likewise cloaked by attorney-client privilege. U.S. v. Chevron Texaco Corp., 241 F.Supp.2d 1065 (N.D.Cal.2002). The only question to consider is whether DSP intended to seek legal advice of any kind over the subject matter contained in the memoranda? See Upjohn v. United States, 449 U.S. 383, 396, 101 S.Ct. 677, 66 L.Ed.2d 584 (1981); In re Grand Jury, 974 F.2d at 1071 fn. 2; see also United States v. Chevron Corp., 1996 U.S. Dist. LEXIS 4154 at *5 (N.D.Cal.)....

Communications containing information compiled by corporate employees for the purpose of seeking legal advice and later communicated to counsel are protected by attorney-client privilege. Upjohn at 394-95. As long as the legal implications were understood at the beginning at the inquiry and the communications were covered by a veil of confidentiality, then the privilege attaches. See Upjohn, at 394-95.

See also Santrade, LTD. v. General Electric Co.

150 F.R.D. 539, 543 (E.D.N.C.1993) ("A document need not be authored or addressed to an attorney in order to be properly withheld on attorney-client privilege grounds.").

The question, then, is whether the personnel involved in the first email in the string "intended to seek legal advice of any kind over the subject matter contained in the memoranda." While this is a close question, I find that there is an implicit understanding that a lawyer's review of the response to the Australian regulator will be necessary (as there were obvious legal ramifications to the Australian inquiry) and that the initial review by non-lawyers was appropriate before the lawyer's review. I also note that all the email recipients had a "need to know."

As to the second and third email in the string, these were 1) routed to Bailey, 2) implicitly seek his legal advice, and 3) sent only to those with a "need to know". Accordingly they are privileged. Plaintiffs argue that emails cannot be privileged if the lawyer is only "cc:d" on the email, as opposed to a direct recipient. Such a limitation would be inconsistent with the way that emails are sent. Sending an email by "cc" is usually a question of convenience rather than an expression of some intent to delineate priorities. Moreover, given the law providing that an attorney need not be a recipient *at all* for the privilege to attach, it must surely be the case that a "cc" to an attorney can qualify for the privilege. *See generally Eutectic Corp. v. Metco, Inc.* 61 F.R.D. 35 (E.D.N.Y.1973) (privilege applied where lawyer indirectly receives copies of confidential documents).

*11 *Privilege claim sustained with respect to emails and sustained and denied in part with respect to attachment.*

Exhibit 6 (BL 100089266-BL100089276; BL 157420111; and BL 157420112- BL157420118)

The first challenged document is a draft script for investment analyst calls, explaining the decision to voluntarily recall Renu with MoistureLoc. It is

dated May 13, 2006. This draft was sent to Bob Bailey and others with a need to know, for comments on the draft. As stated in the discussion of Exhibit 2, this draft is privileged only as to the statements and information not contained in the published document. The attachment must be produced with any redactions to be made in accordance with this Opinion and Order.

The second challenged document is an email dated May 15, 2006, clearly seeking legal advice from Bob Bailey. Other recipients had a "need to know." BL 157420111 is privileged.

The third challenged document is a draft of the script dated May 15, 2006. Once again, this draft is privileged only as to the statements and information not contained in the published document. The attachment must be produced with any redactions to be made in accordance with this Opinion and Order.

Privilege claim sustained in part and denied in part.

Exhibit 7 (BL105792809)

Exhibit 7 is an email relating to draft q & a's prepared in anticipation of the voluntary recall of ReNu with MoistureLoc. Two of the recipients are public relations consultants with Hill & Knowlton. For reasons discussed under Exhibit 3, this email is not privileged. There is no indication that Hill & Knowlton is providing anything other than ordinary public relations advice. Bausch & Lomb has not satisfied its burden of showing that Hill & Knowlton is necessary to the legal representation under Kovel.

Privilege claim denied.

Exhibit 8 (BL122438503-BL122438503A; BL105792872; BL105792873-BL105792878; BL105792879; BL105792880-BL105792881)

The first challenged document is a redacted email from Brian Levy, referring drafts to Bob Bailey and

others, regarding proposed public communications. The redacted part of the email contains an implicit request for legal advice and provides information that would be helpful to Mr. Bailey in reviewing the document. The redacted material is privileged.

The attachments to the email are also challenged. Once again, these drafts are privileged only as to the statements and information not contained in the published documents. The attachments must be produced with any redactions to be made in accordance with this Opinion and Order.

BL122438503-BL122438503A--Privilege claim as to redaction in email sustained. Privilege claim as to attachments sustained in part and denied in part.

The remaining challenged documents correspond to the attachments to the Brian Levy email, i.e., the various drafts of planned public responses. For reasons stated immediately above, these drafts are privileged only as to the statements and information not contained in the published documents. The attachments must be produced with any redactions to be made in accordance with this Opinion and Order.

*12 *BL105792872; BL105792873-BL105792878; BL105792879; and BL105792880- BL105792881: Privilege claim sustained in part and denied in part.*

Exhibit 9 (BL134450950-BL134450961)

Exhibit 9 is an email string relating to Bausch & Lomb's response to patient complaints in Singapore. It has been produced to plaintiffs with multiple redactions.

All of the information in this email string was sent to employees of Hill & Knowlton. There is no indication that Hill & Knowlton was providing anything more than ordinary public relations advice. Bausch & Lomb has not established that communicating to Hill & Knowlton was necessary for the effectiveness of legal representation under *Kovel*. Therefore, this email string must be produced to

plaintiffs without redaction.

I note that the redaction on BL 134450952 was not sent to Hill & Knowlton; moreover, it contains an implicit request for legal advice. However, as Bausch & Lomb admits, the response to that email *is* sent to Hill & Knowlton, along with the previous email as part of the email string. Sending the email to Hill & Knowlton destroyed whatever privilege might have previously existed, for the same reason that any initial communication to Hill & Knowlton loses the privilege.

Privilege claim denied.

Exhibit 10 (BL134452241-BL134452245; and BL135539990-BL135539991)

Exhibit 10 contains two similar email strings relating to responses to patient complaints in Singapore. None of these emails were sent to Hill & Knowlton. All of the recipients of the email had a "need to know" legal advice that would be provided by the lawyer, in this case Mr. Eckman.

With respect to the first email string--BL 135539990-BL135539991--there is a clear request for legal advice, and reporting of information that a lawyer would find necessary in formulating a response to claimed injuries. Response to client complaints, and the possible litigation therefrom, is clearly in the nature of legal advice. See Rossi v. Blue Cross & Blue Shield, 73 N.Y.2d 588, 542 N.Y.S.2d 508, 540 N.E.2d 703 (1989) (communications to and from a lawyer in response to a complaint and threat of litigation are protected by the privilege).

BL 135539990-BL135539991--privilege claim sustained.

With respect to the second email string--BL134452241-BL134452245--these emails involve discussions about how to treat claims; even if these claims are not litigated, the processing of these claims clearly affects the legal position of the company as well as its strategy in defending litig-

ated claims. Mr. Eckman is addressed directly and specifically, and provides legal advice. This email string is clearly privileged.

BL134452241-BL134452245--privilege claim sustained.

Exhibit 11 (BL134431726-BL134431729; BL134431723-BL134431725; BL134431718-BL134431719 BL 134450577-BL134450578)

Exhibit 11 contains four email chains discussing the arrangement for handling consumer returns of ReNu products. All of these emails were sent to employees of Hill & Knowlton and for reasons discussed above under Exhibit 3, these documents are not privileged.

*13 Investigation of Hill & Knowlton's contributions on these emails only fortifies the determination that Hill & Knowlton was not involved in furthering (much less necessary to providing) legal advice. In one email, Christina Cheang, an employee of Hill & Knowlton, suggests that optical shops should be used for redemptions, as a means of establishing good business relations with these shops. She has to be told, later on in the string (in an email from Arthur Ng dated February 28, 2006), that Bausch & Lomb cannot legally use optical shops for redemption. Clearly she is not necessary to providing legal advice--indeed she is providing business advice that is contrary to legal advice.

Privilege claim denied.

Exhibit 12 (BL134431951-BL134431952)

Exhibit 12 is a draft press release concerning Bausch & Lomb's consumer product returns for ReNu in Hong Kong. It was emailed to, among others, consultants for Hill & Knowlton. For reasons discussed above under Exhibit 3, the document is not privileged. I note that even if disclosure to Hill & Knowlton did not destroy the privilege, the draft would be protected only as to information not contained in the document published.

Privilege claim denied.

Exhibit 13 (BL103867295-BL103867314; BL144531274-BL144531285; and BL144528650-BL144528652)

Exhibit 13 is three versions of the same email string and discusses requests from the Hong Kong Department of Health. Part of the communications concern whether to obtain third-party verification of testing, and involvement of the Quantic Group. These email strings have been produced with redactions. My analysis will start at the beginning of the string.

*Redaction on BL 144528650--*Email from Alan Wilson to Cheng, Levy, et. al-- there is no lawyer involved in this communication, but the redacted sentence clearly reports legal advice previously received. Everyone on the email has a "need to know." *Privilege claim as to redaction sustained.*
*Redaction on BL 144531283--*This is the same redaction on a different email string. All recipients have a need to know and the redacted information reflects legal advice. *Privilege claim as to redaction sustained.*

*Redaction on BL 144531275--*This is a specific request from Wilson for advice on a question that will have legal ramifications. All recipients have a need to know. Bob Bailey is copied and it is reasonable to assume that Wilson is seeking legal advice from Bailey and business advice from other corporate personnel. *Privilege claim as to redaction sustained.*

*Redactions on BL 1445311274--*There are two redactions on this page. The first in time is the body of an email from Jack Wong to Alan Horne, with Bob Bailey and others ccd. This is an explicit request for legal advice. All recipients have a need to know. *Privilege claim as to redaction sustained.*

The second redaction in time is an email from Bob Bailey to Jack Wong, Alan Wilson and others. It reports FDA and CDC statements about the decision to remove MoistureLoc from the market, and gives the urls for these statements. Despite

the fact that a lawyer is directly involved in this communication, the reference to the public statements, along with web addresses, is not privileged. The lawyer is not giving legal advice, he is simply reporting information that any member of the public could know. See 2 Saltzburg, Martin & Capra, *Federal Rules of Evidence Manual* at 501-20 ("Where the attorney is merely acting as a conduit for information, i.e., as a messenger, the privilege is inapplicable."), and the cases cited therein.

*14 While Bailey's reference to, and quotation of, the FDA/CDC statements is not privileged, there are two parts of the email that do reflect legal advice and are privileged: the second sentence of the body of the email, and the last two sentences of the email, immediately after the quotations. I note that under New York law, confidential communications from the lawyer involving legal advice are protected by the privilege even if they do not reflect client communications. See CPLR 4503 (extending the privilege to communications "between the attorney ... and the client"); *Rossi, supra* (explicitly providing protection to communications by the lawyer to the client). The redaction of this information is therefore proper. *Privilege claim as to redaction sustained in part and denied in part.*

Redaction on BL103867311--This is the same redaction as in BL 144528650. *Privilege claim as to redaction sustained.*

Redactions on BL 103867302--There are two redactions on this page. The first in time is the same as the redaction on BL 1445311275: An email from Alan Wilson to Bob Bailey and others, seeking legal advice. *Privilege claim as to redaction sustained.*

The second redaction in time is the same as the first one on BL 1445311274-- the body of an email from Jack Wong to Alan Horne, with Bob Bailey and others ccd. This is an explicit request for legal advice. All recipients have a need to know. *Privilege claim as to redaction sustained.*

Redactions on BL 103867301--There are two redactions on this page. The first in time is an

email from Arthur Ng to Alan Wilson and Jack Wong, ccd to Bob Bailey and Raymond Cheng. It asks for advice on how to respond to the Hong Kong Department of Health. This is an explicit request for legal advice from Bob Bailey, even though business advice is probably being sought from the others. As such it is privileged. *Privilege claim as to redaction sustained.*

The second email in time (which actually begins on BL103867300) is from Raymond Cheng to James Barton and others. No lawyer is involved in this email. The email sends the prior email string and summarizes the issues on getting a third party endorsement. As such it seeks to implement legal advice and is privileged.. See, e.g., *Santrade, LTD. v. General Electric Co.*, 150 F.R.D. 539, 543 (E.D.N.C.1993) ("documents subject to the privilege may be transmitted between non-attorneys (especially individuals involved in corporate decision-making) so that the corporation may be properly informed of legal advice and act appropriately"). *Privilege claim as to redaction sustained.*

Redaction on BL 103867300--This is an email from Tony Tan to James Barton and others. No lawyer is involved in this email. The first line of the email is not privileged as it simply states that Tan will not be able to join a conference call and "here's what I think we should expect ..." Then there are three numbered paragraphs. Paragraph one summarizes Alan Wilson's position on third-party testing. This reflects legal advice once removed, and is privileged. However, Tan's opinions in paragraphs 2 and 3 appear to reflect his beliefs only, with no reference to legal advice and no indication that legal advice will be sought. Therefore these paragraphs are not privileged. Consequently, the only permissible redaction in this email is for the first numbered paragraph. *Privilege claim as to redaction sustained in part and denied in part.*

*15 *Redaction on BL103867299*--Bausch & Lomb has redacted the entire body of an email from James Barton to Tony Tan, Alan Wilson and others. No lawyer is involved in this email.

Most of it provides Barton's assessment on third party endorsement. Most of it neither reflects nor shows the desire to seek legal advice. However, the third paragraph of the email does note the need for obtaining legal advice in one specific respect. This paragraph is the only part of the email that either reflects or prepares information for legal advice. Accordingly, the redaction of the third paragraph is proper but the rest of the redaction is not justified. *Privilege claim sustained as to the third paragraph and denied as to the rest of the email.*

Redactions on BL103867298--There are three redactions on this page. The first email in time (which begins on BL103867298 and runs over to BL103867299) is an email from Brian Levy to a number of corporate officials--but no lawyers. It provides information concerning third party testing. This email does not reflect, nor does it prepare communications or information for obtaining, legal advice. The email must be produced unredacted. *Privilege claim denied.*

The second email in time is from Raymond Cheng to Brian Levy, ccd to others, but no lawyer. All it says is that it "is really great if we will soon have the 3rd party evaluation report." This in no way reflects legal advice, nor any interest in preparing information for the lawyer, and must be produced in unredacted form. *Privilege claim denied.*

The third email in time is from James Barton to Raymond Cheng, Brian Levy and others. No lawyers are involved. It refers to Quantec and notes the urgency of the situation. This in no way reflects legal advice, nor any interest in preparing information for the lawyer, and must be unredacted. *Privilege claim denied.*

Redactions on BL103867297--There are three redactions on this page. The first email in time is from Alan Wilson to James Barton and others. The first sentence simply states that Wilson is on vacation and not able to patch in via phone. It is absolutely not privileged and this sentence must be produced unredacted. The second sentence specifically reflects the need for obtaining legal

advice. It is therefore privileged. *Privilege claim denied as to the first sentence and sustained as to the second sentence.*

The second email in time is from James Barton, responding to Wilson's suggestion for seeking legal advice and copying Bob Bailey and providing him an update. This is an explicit request for legal advice and so clearly is privileged. All parties on the email have a need to know. *Privilege claim sustained.*

The third email in time is from Michael Santalucia to James Barton, copied to Bob Bailey and others. It implicitly seeks legal advice from Bailey on how to approach the Hong Kong Department of Health. All parties on the email have a need to know. *Privilege claim sustained.*

*16 *Redactions on BL103867296*--There are three redactions on this page. The first email in time is from James Barton to Michael Santalucia and others, copied to Bob Bailey, expressing Santalucia's opinion on the position of the Hong Kong Department of Health with respect to the third-party endorsement. Santalucia specifically asks for the opinion of Raymond Cheng and Jack Wong. He does not ask for Bailey's opinion. This email appears to be an expression of Barton's opinion and an explicit request for business advice. Simply copying the email to the lawyer does not gain a privilege. It's one thing to allow a corporate agent to seek legal advice from a lawyer and business advice from another corporate official in the same email. It's another for a corporate official to specifically ask for business advice in an email and route it to the lawyer. This email is not privileged and must be produced in unredacted form. *Privilege claim denied.*

The second email in time is from Raymond Cheng to James Barton and others, including Bob Bailey, asking if certain information can be released to the Hong Kong Department of Health. This is an implicit request for legal advice from Bailey and as such is privileged. Unlike the previous email, there is no indication that the lawyer is an afterthought. Everyone on the email has a need to know. *Privilege claim sustained.*

The third email in time starts on the previous page (BL103867295), and is from Alan Wilson to Raymond Cheng, et al, copied to Bob Bailey. This is definitely privileged as it seeks legal advice on whether certain should be released. All on the email have a need to know. *Privilege claim sustained.*

Redactions on BL 103867295--There are two redactions on this page. The first email in time is from Raymond Cheng to Alan Wilson. It explicitly states that he is waiting on Bob Bailey's input on the proper form on content of a disclosure. This is definitely privileged as it refers to the need for legal advice, and all on the email have a need to know. *Privilege claim sustained.*

The second email in time is from Alan Wilson to Raymond Cheng et al, copied to Bob Bailey. The first paragraph (two sentences) simply refers to the attachment "minus my notes and a picture or two (with pictures, it is too big for email)." This sentence involves no legal advice at all and must be produced unredacted. The second paragraph (one sentence) implicitly seeks legal advice on the proper form of a public presentation and is privileged. *Privilege claim denied as to first paragraph and sustained as to second paragraph.*

Exhibit 14--BL000190357-BL000190363

Exhibit 14 is an email string concerning a possible response by Bausch & Lomb officials in the Asia region to the withdrawal of ReNu with Moisture-Loc manufactured at the Greenville facility from the worldwide market. The email string was produced with a number of redactions. These redactions are reviewed in reverse order--climbing up the email tree rather than down it seems to be a more effective way to determine what was sent out when.

*17 *Redaction on BL000190361*--Bausch & Lomb has redacted the entire body of an email from Venkateshwaran Suresh (Vision care marketing) to James Barton, and others, including an engineer and another person involved in marketing. Some of these people seem fairly far down in the corporate chain (at least given the information

presented to the Special Master). But the "need to know" test from *Glaxo, supra*, is not rigorous--it simply requires that "the contents of the documents are related generally to the employees' corporate duties." That test is met here. I note that the email was not distributed widely throughout the corporation, as was the case in *Coastal States Gas Corp. v. DOE*, 617 F.2d 854, 863 (D.C.Cir.1980) (confidentiality lost when organization "admitted that it does not know who has had access to the documents, and there is undisputed testimony that copies of the memoranda were circulated to all-area offices"). Furthermore, the email explicitly reports advice of counsel and so is privileged even though it is not routed to lawyers. *Privilege claim sustained.*

Redaction on BL000190360--Bausch & Lomb has redacted the entire body of an email from Jack Wong to Suresh and others concerning testing in India. This email is a request to obtain advice from local counsel and so is privileged. *Privilege sustained.*

Redactions on BL000190359--This page contains two emails, the bodies of which are redacted in their entirety. (There is also a redaction that runs over from the previous page, that will be considered below). The first email in time is from David Hanlon to Amit Singhal, an engineer, discussing the methods that need to be employed for testing to prevent the generation of bad data. There is no lawyer involved in this email and it appears to be purely about science and proper scientific methods. There is no indication that Hanlon is implementing legal advice in suggesting a scientific protocol. There is no indication that the communication is to prepare information for counsel's use. Accordingly, Bausch & Lomb has not met its burden of showing that legal advice is being or has been sought. This email must be produced without redaction. *Privilege claim denied.*

The second email in time is from Amit Singhal to Dennis Fu and Jugesh Singh, the Managing Director of Office Administration in India. This email

clearly relates advice of local counsel. So it is privileged in its entirety. *Privilege claim sustained.*

Redactions on BL000190358--This page contains three redacted emails, one of which runs over to the next page. The first email in time (which runs over) is from Dennis Fu to Amit Singhal and Jugesh Singh, expressing skepticism about certain testing and suggesting a proper procedure for testing by local labs. There is no lawyer on this email. Nothing in the email relates legal advice and there is no attempt to prepare information to obtain legal advice. None of the reservations expressed come from any lawyer. So it is not privileged and must be produced in its entirety. *Privilege claim denied.*

*18 The second email in time is from Dennis Fu to Amit Singhal and others. No lawyer is involved. There is a reference to advice of counsel, which is protected by the privilege, but Fu then expresses his own extra-legal concerns. It is apparent that Fu's expressed concerns involve scientific and not legal questions. It follows that a portion of this email must be unredacted: specifically, everything after the comma in the second sentence of the email must be produced in unredacted form. *Privilege claim sustained in part and denied in part.*

The third email in time is from Dennis Fu to Jugesh Singh and others. It is partially redacted. The redacted information refers to advice of counsel received and is accordingly privileged. *Privilege claim sustained.*

Exhibit 15 (BL100089618-BL100089620)

Exhibit 15 is an email string concerning the investigation of a Fusarium case in Italy. It was produced with a redaction of one of the emails--that email is from Giuliano Nannini (General Manager of Bausch & Lomb, Italy) to Bob Bailey and others. It apprises Bailey of legal developments and is at least an implicit request for legal advice. All others on the email had a need to know. The redacted information is privileged. *Privilege claim sustained.*

Exhibit 16 (BL107098171)

After discussion with the Special Master, Bausch & Lomb commendably has agreed to withdraw its claim of privilege as to Exhibit 16 and has produced the document.

Exhibit 17 (BL134452467-BL134452468; and BL134452538-BL134452539)

Exhibit 17 contains two identical, redacted emails from Dwain Hahs (Senior V.P. and President Asia) to all Singapore email users and to all Hong Kong email users. It is a litigation hold notice, which among other things identifies those who may be in possession of relevant documents and thus may be subject to the hold. Bausch & Lomb claims the work product protection for the redactions. Plaintiffs claim that the work product protection cannot apply because no lawyer is involved in the emails. But in fact the work product immunity protects material prepared by non-lawyers in anticipation of litigation. See *In re Cendant Corp. Sec. Litig.*, 343 F.3d 658, 666 (3d Cir.2003) (noting that "the work product doctrine extends to materials compiled by a non-attorney, who, as the 'agent' of a party or a party's attorney, assists the attorney in trial preparation"). Certainly compiling a list of those with relevant documents involves trial preparation, and disclosure of that list could reveal mental impressions concerning claims or defenses.

While work product protection is qualified and not absolute, plaintiffs have made no case for a need for the information contained in the litigation hold notice. Accordingly, Bausch & Lomb's assertion of work-product immunity is sustained.

Exhibit 18 (BL100100417--BL100100422)

Exhibit 18 is an email string, with the body of one email redacted. That email is from Ron Zarella to Ruth McMullin, Director of the Board of Directors, concerning a tax dispute. It appears that the redacted email is unrelated to the rest of the string. No lawyer is involved in the email and so it can be

privileged only to the extent that it reflects advice of counsel or is prepared with the intent that information will be provided to counsel. *See Santrade, supra*.

*19 The first two sentences of the email provide Zarella's own opinion concerning the tax matter and states that there have been weekly meetings on the subject. These sentences do not reflect legal advice nor any attempt to obtain legal advice, and therefore they must be produced without redactions.

The third sentence relates a lawyer's legal opinion on the matter and is privileged.

The fourth and fifth sentences refer directly to legal advice and the need to obtain it, and are privileged.

The sixth sentence provides Zarella's assessment of the matter and there is no indication that it is reflective of legal advice. So this sentence must be produced without redaction.

The seventh sentence concerns risk and it is reasonable to assume that it reflects the advice of a lawyer. So it is privileged.

The last sentence of the email is about scheduling and is not reflective of legal advice. It must be produced without redaction.

Privilege claim sustained as to the third, fourth, fifth and seventh sentences of the email. Privilege denied as to the remainder of the email.

Exhibit 19 (BL105793320)

Exhibit 19 is an email from Ron Zarella to Robert Stiles (General Counsel) and Steve McCluski (CFO) concerning an accounting update prepared for a member of the Board of Directors. The attachment, which is the update, has already been produced. Bausch & Lomb claims privilege with respect to the body of the email, which contains Zarella's observations concerning the accounting update. These observations clearly involve legal matters, and are directed explicitly to the general coun-

sel of the corporation, from whom legal advice is sought. As such, the redacted material is clearly privileged.

Privilege claim sustained.

Order

Defendant must produce the following documents, with the limitations stated, within five days:

Exhibit 2 (BL105793290-318): This document must be produced, but defendant may redact any statement or information that is not included in the document as finally published.

Exhibit 3 (BL100101027): Defendant must produce the email from Barbara Kelley dated May 11, 2006.

Exhibit 5 (BL100879259): The attachment to the email must be produced, but defendant may redact any statement or information that is not included in the document as finally published. (The three emails are protected by the privilege).

Exhibit 6

BL 100089266-BL100089276: This document must be produced, but defendant may redact any statement or information that is not included in the document as finally published.

BL 157420112-BL157420118: This document must be produced, but defendant may redact any statement or information that is not included in the document as finally published.

Exhibit 7 (BL105792809): This document must be produced in its entirety.

Exhibit 8

BL122438503-BL122438503A: The attachments to the email must be produced, but defendant may redact any statement or information that is not included in the documents as finally published. (The redaction in the email is protected by the privilege).

*20 *BL105792872; BL105792873-BL105792878; BL105792879; and BL105792880-BL105792881*: These documents must be pro-

duced, but defendant may redact any statement or information that is not included in the documents as finally published.

Exhibit 9 (BL134450950-BL134450961): This email string must be produced in its entirety.

Exhibit 11 (BL134431726-BL134431729; BL134431723-BL134431725; BL134431718-BL134431719 BL 134450577-BL134450578): These email strings must be produced in their entirety.

Exhibit 12 (BL134431951-BL134431952): This document must be produced in its entirety.

Exhibit 13

*Redaction on BL 1445311274--*The email from Bob Bailey must be produced but defendant may redact the second sentence and the last two sentences of the email.

*Redaction on BL 103867300--*The email from Tony Tan to James Barton and others must be produced but defendant may redact the first numbered paragraph.

*Redaction on BL103867299--*The email from James Barton to Tony Tan and others must be produced but defendant may redact the third paragraph.

*Redactions on BL103867298--*The first email in time (which begins on BL103867298 and runs over to BL103867299), an email from Brian Levy, must be produced in unredacted form. The second email in time, from Raymond Cheng to Brian Levy and others, must be produced in unredacted form. The third email in time, from James Barton to Raymond Cheng and others, must be produced in unredacted form.

*Redactions on BL103867297--*The first email in time, from Alan Wilson to James Barton and others, must be produced, but defendant may redact the second sentence.

*Redactions on BL103867296--*The first email in time, from James Barton to Michael Santalucia and others, must be produced in unredacted form.

*Redactions on BL 103867295--*The second email

in time, from Alan Wilson to Raymond Cheng and others, must be produced, but defendant may redact the second paragraph.

Exhibit 14

*Redactions on BL000190359--*The first email in time, from David Hanlon to Amit Singhal, must be produced in unredacted form.

*Redactions on BL000190358--*The first email in time (which runs over to BL000190359), from Dennis Fu to Amit Singhal and Jugesh Singh, must be produced in unredacted form. The second email in time, from Dennis Fu to Amit Singhal and others, must be produced, but defendant may redact the first sentence and the second sentence up to the comma.

Exhibit 18 (BL100100417--BL100100422): This email must be produced, but defendant may redact the third, fourth and fifth sentences.

SO ORDERED:

Not Reported in F.Supp.2d, 2008 WL 2338552 (D.S.C.)

END OF DOCUMENT

v

Only the Westlaw citation is currently available.

United States District Court, C.D. Illinois.
 Steve WHITLOW, et al., Plaintiffs,

v.

Timothy MARTIN, Michael R. Stont, and Scott
 Doubet, Defendants.

No. 04-3211.

June 12, 2008.

Carl R. Draper, Howard W. Feldman, Feldman
 Wasser Draper & Cox, Donald M. Craven, Craven
 Law Office, Springfield, IL, for Plaintiffs.

Stephen R. Kaufmann, Hepler Broom MacDonald
 Hebrank True & Noce LLC, Springfield, IL, for
 Defendants.

OPINION

BYRON G. CUDMORE, United States Magistrate
 Judge:

*I This matter comes before the Court on Plaintiffs' Fourth Motion to Compel Compliance with Subpoena Issued to Office of the Governor (d/e 158). Plaintiffs are former employees of the Illinois Department of Transportation (IDOT). Defendants are IDOT officials. Plaintiffs allege that Defendants terminated Plaintiffs' employment as part of a state-wide scheme with the Office of Illinois Governor Rod Blagojevich to terminate employees who were perceived to be political opponents of the Blagojevich administration and to create patronage employment opportunities for supporters of the new administration. As a part of discovery, Plaintiffs served the Office of the Governor with a third-party subpoena in April 2006 and a revised third-party subpoena in August 2007. In the Fourth Motion to Compel, Plaintiffs seek an order compelling full compliance with the subpoenas and, additionally, ask that the Court set the matter for hearing on the question of sanctions. As set forth below, the Fourth Motion to Compel is allowed, in part, and

denied, in part. Plaintiffs' request for a hearing on the issue of sanctions is denied.

The status of the Governor's Office's compliance with the instant subpoenas has been a recurring issue before this Court. Because the remaining contested issues relate to the requests in the revised subpoena, the Court focuses its attention on the facts surrounding it. During a telephone conference on August 9, 2007, the undersigned directed Plaintiffs to re-serve the subpoenas on the Governor's Office by August 17, 2007. *Minute Entry, dated August 9, 2007*. The Court ordered the Governor's Office to respond to the subpoenas by September 17, 2007, although that date was later extended to October 1, 2007. *Text Order, dated September 18, 2007*. On October 1, 2007, Counsel for the Governor's Office filed a motion for extension of time to file a reply to the Plaintiffs' Third Motion to Compel (d/e 99). *Motion for Extension of Time (d/e 112)*. The motion for an extension did not seek to extend the Court-ordered date for response to the subpoena, although it did note that only "some documents" had been produced in response to the subpoena. The Court allowed the request for an extension until October 10, 2007. *Minute Entry, dated October 2, 2007*.

On October 10, 2007, the Governor's Office filed a response to the Third Motion to Compel. *Response to Motion to Compel (d/e 117)*. According to the Governor's Office, Plaintiffs' counsel Carl Draper e-mailed to Assistant Attorney General Corrigan a revised subpoena on or about August 21, 2007, but Draper "did not forward this revised subpoena" to the Office of the Governor until September 17, 2007. *Id.*, p. 1-2. The Court notes that Attorney Corrigan had appeared in the case on behalf of the Governor's Office prior to August 2007. *See, e.g., Motion for Extension of Time (d/e 86)*. In an October 10, 2007 filing, the Governor's Office indicated that it intended "to appropriately object to the revised subpoena in short order." *Response to Motion to Compel (d/e 117)*, p. 1, n. 1.

*2 The Court set the Third Motion to Compel for evidentiary hearing on November 13, 2007. *Notice of Hearing, dated October 25, 2007*. The Court noted that Plaintiffs carried the burden of persuasion and directed Plaintiffs to meet and confer with a representative of the Governor's Office well before the hearing to attempt to resolve the outstanding issues. *Id.* On November 5 and 6, 2007, attorneys Haarlow and Marinello entered appearances on behalf of the Governor's Office and sought to continue the evidentiary hearing. In a November 8, 2007 telephone conference, the Court cancelled the November 13th hearing and established various deadlines for disclosures by the Governor's Office. *Minute Entry, dated November 8, 2007*. On November 19, 2007, the Governor's Office served Plaintiffs with a document titled Non-Party Office of the Governor of the State of Illinois' Revised Responses and Objection to the "Revised" Subpoena for Production of Documents, as an exhibit to a Court-ordered status report. *The Office of the Governor of the State of Illinois' Additional Status Report on Production of Documents (d/e 133)*, Attachment 3. The Court set an evidentiary hearing for the Third Motion to Compel on December 11, 2007, again noting that Plaintiffs carried the burden of persuasion on the motion. *Notice of Hearing, dated November 26, 2007*.

Following the December 11, 2007 hearing, Plaintiffs' counsel and counsel for the Governor's Office were directed, among other things, to meet and confer regarding the status of compliance on each component part of the subpoena; Attorney Draper was directed to identify any types of documents that he believes may be responsive that had not been disclosed; and the parties were directed to meet with the technician who performed the electronic searches to discuss the process employed. At the hearing, a question was raised as to whether the Court believed that the scope of the instant subpoenas properly extended to information relating to state agencies other than I DOT. The parties were directed to meet and confer regarding any type of progressive discovery system that could be put into

place to allow discovery to extend to documents relating to State agencies other than IDOT. Counsel for the Governor's Office stated that the information that was being produced was limited to IDOT and general employment policies of the Governor's Office. The Court directed that status reports be filed on these issues by January 11, 2008. *Minute Entry, dated December 11, 2007*.

Counsel for Plaintiffs and the Governor's Office filed a Joint Status Report on Production of Documents (d/e 146) on January 11, 2008. The parties represented that the following tasks were complete: tender by Governor's Office of five boxes of documents (redacted) with electronic copy; tender by Governor's Office of any remaining documents responsive to the subpoenas, subject to objections; and conference call with technology representative concerning process employed in searching P Drives. The joint status report further stated that Plaintiffs' counsel had begun identifying documents or categories of documents that might be missing from production. Finally, the parties informed the Court that they had begun negotiations regarding the status of compliance and any progressive discovery system that could be put into place to allow discovery to extend to agencies beyond IDOT. The parties recommended that the Court order a supplemental status report by February 8, 2008, which the Court did. *See Text Order, dated January 14, 2008*.

*3 Counsel for Plaintiffs and the Governor's Office filed a Joint Status Report Concerning Subpoena (d/e 155) on February 8, 2008. The parties represented that discussions continued as to the following: (1) documents relating to employment decisions at agencies other than IDOT, including the significant majority of documents in the five boxes that had only the word "REDACTED" on them; (2) computer spreadsheets bearing a title "recommended candidates that were hired" or "recommended candidates;" and (3) network data files. The parties informed the Court that their discussions had been productive and that neither side believed that it was necessary for the Court to continue monitoring the

efforts.

Plaintiffs filed the instant Motion to Compel in April 2008. Counsel for the Governor's Office asserts that Plaintiffs filed the motion in violation of their representations in the February 8th status report and the meet and confer obligations of Fed.R.Civ.P. 37. To the extent meet and confer obligations extend to a motion to compel arising out of a non-party's alleged failure to comply with a Rule 45 subpoena, the Court finds that Plaintiffs have engaged in a good faith effort to secure compliance without court action. The Fourth Motion to Compel certifies that Plaintiffs have exhausted all reasonable efforts to resolve the issues without court action and details discussions and correspondence between the parties following the December 11, 2007 hearing. The Court is keenly aware of the history of the instant subpoenas, and the record evidence supports a finding that the meet and confer requirement has been met. Thus, the Court turns its attention first to the applicable legal standards and then to the individual unresolved subpoena issues identified in the Fourth Motion to Compel.

Standard for Motion to Compel

The Court has broad discretion when reviewing a discovery dispute and "should independently determine the proper course of discovery based upon the arguments of the parties." Gile v. United Airlines Inc., 95 F.3d 492, 496 (7th Cir.1996). Unless limited by court order, the scope of discovery extends to "any nonprivileged matter that is relevant to any party's claim or defense.... Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." Fed.R.Civ.P. 26(b)(1). The Court is cognizant that the Governor's Office is not a party to the underlying litigation. Discovery in the hands of a non-party is subject to discovery under the Federal Rules. See Fed.R.Civ.P. 26(b)(1); Fed.R.Civ.P. 45; Seattle Times Co. v. Rhinehart, 467 U.S. 20, 25 (1984). The scope of discovery under Rule 26 governs the proper scope of requests under Rule 45. The rules,

however, protect individuals subject to subpoenas from undue burden or expense. Fed.R.Civ.P. 45(c)(1); see also Guy Chemical Co., Inc. v. Romaco AG, 243 F.R.D. 310, 313 (N.D.Ind.2007). Non-party status is a significant factor to be considered in determining whether the burden imposed by a subpoena is undue. United States v. Amerigroup Ill., Inc., 2005 WL 3111972 at *4 (N.D.Ill. Oct. 21, 2005). To determine whether a Rule 45 subpoena is unduly burdensome, a court may weigh a number of factors including "relevance, the need of the party for the documents, the breadth of the document request, the time period covered by it, the particularity with which the documents are requested, and the burden imposed." Morrow v. Air Ride Technologies, Inc., 2006 WL 559288 at *2 (S.D.Ind. Mar. 6, 2006).

*4 Rule 45(c)(2)(B) permits an individual who is subject to a subpoena to object to production. The burden then shifts to the party who seeks the documents to move for an order compelling production. Fed.R.Civ.P. 45(c)(2)(B)(i); Price v. Scruggs, 2007 WL 2471860 at *1 (S.D.Ill. Aug. 30, 2007). As the Court has previously noted, Plaintiffs bear the burden of persuasion on their motion to compel. Because the subpoenas provide the only basis for requiring disclosure by the Governor's Office, the Court limits its analysis to information requested in the subpoenas.

At the outset, Plaintiffs assert that the objections served by the Governor's Office on November 19, 2007 are untimely and, thus, waived. Under Fed.R.Civ.P. 45(c)(2)(B), objections "must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served." Plaintiffs, however, fail to identify record evidence to support a finding that these objections were untimely and fail to establish the date on which the August 2007 revised subpoena was actually served in compliance with Rule 45(b)(1). Thus, the Court will address the parties' arguments on the merits.

Counsel for Plaintiffs and the Governor's Office

dispute the scope of relevance in the instant case, a threshold issue in the Court's analysis of the motion to compel. The Governor's Office has consistently insisted that the scope of discovery should be limited to information relating to the reorganization of I DOT, while Plaintiffs seek information relating to employment at all state agencies. The Court addressed this issue in ruling on the Plaintiffs' Motion to Compel Testimony of Mary Lee Leahy. *Opinion (d/e 97), dated October 20, 2006*. Based on Plaintiffs' allegations that Defendants participated in an illegal, state-wide scheme to fire supporters of the prior Republican administration, the Court allowed Plaintiffs to inquire into Ms. Leahy's dealings with all state agencies and declined Defendants' request to limit the scope of her deposition to IDOT. The same reasoning applies to the scope of the instant subpoenas. Information held by the Governor's Office relating to employment decisions at agencies other than IDOT would be relevant to Plaintiffs' claim that a state-wide scheme existed and could reasonably lead to the discovery of admissible evidence. Thus, such information meets the definition of relevance set out in Rule 26(b)(1). The Court holds that the scope of the instant subpoenas if specifically requested extends to information held by the Governor's Office relating to employment decisions at agencies other than IDOT. With these principles in mind, the Court turns to the individual contested subpoena requests.

Contested Subpoena Requests

The Fourth Motion to Compel contains a table which summarizes the status of compliance by item number. *Fourth Motion to Compel*, p. 13-18. According to the table, there are no pending issues relating to subpoena items 1 through 5 and 10. Therefore, the Court will not address these items. Turning to subpoena items 6, 7, and 12, the Court notes that, in each instance, Plaintiffs characterize the status of the request by merely stating that the response asserts that no other documents have been found. Plaintiffs do not identify any types of responsive information that they believe to be missing as to these items. The Governor's Office repres-

ents that production is complete with respect to these items, and Plaintiffs fail to establish otherwise. Therefore, the Fourth Motion to Compel is denied with respect to subpoena items 6, 7, and 12. Items 17 and 18 warrant a similar result. The Governor's Office responded to subpoena items 17 and 18 by stating that it did not know the meaning of terms used in the requests, and as a result, no responsive documents were identified. According to the Governor's Office, these responses are complete. Again, Plaintiffs fail to establish otherwise, and the Fourth Motion to Compel is denied with respect to subpoena items 17 and 18.

*5 Subpoena item 15 requests "[a]ll documents reflecting IDOT headcount requirements imposed by the Governor's office or the Office of [M]anagement and Budget, from the period 2002 through December 31, 2004." *Fourth Motion to Compel*, p. 16. The Governor's Office responds that all such documents have been produced. Plaintiffs, however, assert that no documents produced have this information. The Governor's Office counters by identifying two documents that it characterizes as containing such information. *Governor's Response to "Fourth" Motion to Compel (d/e 163) (Governor's Response)*, p. 20-21 & Ex. 12; *Fourth Motion to Compel*, Ex. 2, GOV 11584. [FNL] The Court notes that, while both identified documents mention IDOT headcounts, neither reflect mandatory headcount requirements. Nevertheless, Plaintiffs fail to establish that documents exist that have not been produced such that the Governor's response to subpoena item 15 would be incomplete. The Fourth Motion to Compel is denied as it relates to this item as well.

[FNL] The Court notes that the internal pagination within the Governor's Response is inconsistent. The Court will, thus, cite to the document by the page numbers assigned by the Court's electronic filing system.

Subpoena item 22 seeks "[a]ll documents that mention or relate to the employment of or applications

for employment of Pilots at IDOT during 2003 to present. Include all documents relating to the application of Chris Lamm." *Fourth Motion to Compel*, p. 18. Plaintiffs characterize the status of compliance as "Some produced. Unclear if it is complete." *Id.* The Governor's Office represents that item 22 is complete. Plaintiffs fail to establish otherwise, and the Fourth Motion to Compel is denied as it relates to item 22.

Subpoena item 8 requests documents prepared by or received by the Office of the Governor that mention or relate to any reorganization at IDOT on or after January 2003 that was the basis for the layoffs of the plaintiffs in this cause. *Fourth Motion to Compel*, p. 14. According to Plaintiffs, while the response states that production is complete, "[m]ost of Julie Curry documents and e-mails, 10 'Confidential Binders,' the organization charts sent to Julie Curry or others" are missing. *Id.* The Governor's Office concedes that it did not initially search Curry's e-mail in response to item 8, but asserts that it has now done so. The Governor's Office represents that the e-mail search did not uncover any responsive documents, and Plaintiffs fail to establish otherwise. The Governor's Office further represents that it has located documents that could potentially fit the description of the 10 Confidential Binders, but that none of this information relates to the reorganization of IDOT. The Court's ruling on the scope of relevance does not effect this response, as subpoena 8 is on its face expressly limited to documents relating to reorganization at IDOT. Plaintiffs fail to establish that the information in the Confidential Binders would be responsive. With respect to the organization charts, Plaintiffs have reason to believe that organization charts that were relied on for the layoff were hand carried to Julie Curry's office for review. If such documents exist, they clearly fall within the scope of subpoena item 8. While the Governor's Office asserts that the organization charts had not previously been expressly identified by Plaintiffs, Plaintiffs are not required to specifically reference these charts. Subpoena item 8 is straightforward in its terms. Thus, the Fourth Mo-

tion to Compel is allowed in part as it relates to item 8. The Governor's Office is directed to comply with subpoena item 8 and produce any documents prepared by or received by the Office of the Governor that mention or relate to any reorganization at IDOT, including organization charts, or certify that they have searched for such documents and none exist.

*6 Subpoena item 9 seeks any communications between any person or state agency and the Office of the Governor sent or received on or after December 1, 2002 that referred to or concerned any of the Plaintiffs or Ann Libri. The Governor's Office asserts that all responsive documents have been produced. Plaintiffs have reason to believe that Julie Curry requested the names of all person who might be affected by the layoffs several months prior to the notification to employees. According to Plaintiffs, no related documentation has been produced. Plaintiffs, however, fail to establish that any written documentation exists relating to Curry's request for names or to identify any categories of documents that might contain such information. Thus, Plaintiffs fail to establish that the response to item 9 is incomplete, and the Fourth Motion to Compel is denied in this respect.

Subpoena item 11 seeks any communication between any person or State agency and the Office of the Governor sent or received on or after December 1, 2002 that referred to or concerned the process for personnel actions to receive approval in the Office of the Governor. According to Plaintiffs, the production is incomplete as to this item because Personnel Action Requests (PARs) and Electronic Personnel Action Requests (ePARs) are missing. Plaintiffs contend that a written PAR is required for every employment transaction for all agencies responsible to the Governor. The Governor's Office responds that documents for agencies other than IDOT have not been produced. However, as the Court previously noted, the subpoenas properly extend to information held by the Governor's Office relating to employment decisions at agencies other

than IDOT. If the Court's ruling as to scope necessitates further disclosure, the Governor's Office is directed to supplement its response to subpoena item 11 in order to comply with the subpoena. The Fourth Motion to Compel is allowed with respect to this item.

Subpoena item 13 seeks any communication between any person or State agency and the Office of the Governor sent or received on or after December 1, 2002 that refers to or concerns IDOT employees, other than the Plaintiffs, who were subject to the layoff at issue in the instant case, including names on documents previously disclosed. The Office of the Governor responds that all documents relating to the layoff have been produced. Plaintiffs again identify Julie Curry documents and e-mails, the ten Confidential Binders, organization charts sent to Julie Curry or others, the PARs, and the ePARs as areas in which production is incomplete. As set forth above, the Governor's Office represents that its search of Curry documents and e-mails did not uncover any responsive documents, and Plaintiffs fail to establish otherwise. Similarly, the Governor's Office further represents that none of the information from the Confidential Binders relates to the reorganization of IDOT, and Plaintiffs fail to establish otherwise. Again, the Court notes that subpoena 13 is on its face expressly limited to documents relating to IDOT employees. As the Court has previously noted, Plaintiffs have reason to believe that the organization charts that were relied on for the layoff were hand carried to Julie Curry's office for review. If such documents exist it is clear that they would concern IDOT employees subject to the layoff such that they would be responsive to subpoena item 13. The Motion to Compel is allowed in this respect. Similarly, any PARs or ePARs relating to IDOT employees subject to the layoff would also be relevant and responsive. It is unclear to the Court whether these have been produced. If they have not, the Governor's Office is directed to tender them.

*7 Subpoena item 14 seeks copies of all corres-

pondence between an employee of IDOT and Julie Curry, Margaret Houlihan, or any other employee of the Governor's Office of Intergovernmental Affairs relating to IDOT personnel, IDOT personnel transactions, or review of agency personnel transactions by the Governor's Office. The Office of the Governor responds that all documents dated on or before December 31, 2004 have been produced concerning (1) the process applicable to all state agencies for the approval of personnel transactions and (2) employment transactions at IDOT. The Office of the Governor expressly states that documents solely concerning state agencies other than IDOT have not been produced. As with subpoena item 13, Plaintiffs identify the following types of documents as missing from the Governor's Office's response: Julie Curry documents and e-mails, the ten Confidential Binders, organization charts sent to Julie Curry or others, the PARs, and the ePARs. The Governor's Office represents that it has reviewed the Curry documents and the ten Confidential Binders and found no relevant information. It appears to the Court that this review was limited to information relating to the IDOT reorganization. If the Court's ruling as to the scope of relevance necessitates further disclosure from these categories of documents in response to subpoena item 14, the Governor's Office is directed to supplement its response. Additionally, if the referenced organizational charts exist, they would clearly be responsive to subpoena item 14 as well and should be produced. Turning to the PARs and ePARs, the reasoning applied in analyzing subpoena request 11 controls here as well. The subpoenas properly extend to information relating to the review by the Governor's Office of personnel transactions at agencies other than IDOT, including PARs and ePARs. Thus, the Motion to Compel is allowed as it relates to subpoena item 14 to the extent set forth above.

Subpoena item 16 requests documents using the following terms or any form or abbreviation of the terms in relation to personnel decisions at any agency under the control of the Governor: politics, political, target, save, saved, and Republican. The

Governor's Office responds that item 16 is complete in that it conducted a search with search terms provided by Plaintiffs' counsel. Plaintiffs assert that the response is incomplete because "[t]he only search was one using the terms Plaintiffs supplied." *Fourth Motion to Compel*, p. 17. On its face, subpoena item 16 requests documents containing specific terms. Plaintiffs fail to explain how a search with search terms provided by Plaintiffs' counsel is insufficient. The Motion to Compel is denied with respect to subpoena item 16.

Subpoena item 19 requests all emails or other documents sent to or received by any employee of the Office of the Governor in relation to a material reorganization at I DOT from January 20, 2003 to present. The Governor's Office responds that all documents relating to the reorganization at IDOT in 2003-2004 have been produced. Plaintiffs assert that the response is incomplete, again identifying the Curry documents as missing. Subpoena item 19 is limited on its face to documents relating to the reorganization of IDOT. As the Court has previously noted, the Governor's Office represents that searches of the Curry documents and the information from the Confidential Binders did not uncover any documents related to the reorganization of IDOT, and Plaintiffs fail to establish otherwise. However, if the referenced organizational charts exist, they would clearly be responsive to subpoena item 19 and should be produced. Thus, the Motion to Compel is allowed in part with respect to subpoena item 19.

*8 Subpoena item 20 requests all documents kept in three-ring binders in the Governor's Office of Intergovernmental Affairs (by Joe Cini, Alonzo Monk, or Bradley Tusk) that were labeled by the names of persons making referrals for jobs or appointments which included but were not limited to referrals from John Daley, Chris Kelly, Tony Rezko, J. Hoffman, and Dick Mell. The Governor's Office responds that no three-ring binders of documents were located, but that it recently identified documents that might be responsive. The Governor's Of-

fice has produced, as a sample, a resume. *Governor's Response*, Ex. 13. The resume itself contains no indication of any person referring the individual for a job. The Governor's Office objects to producing the newly-identified documents, asserting that they are not relevant, production will be burdensome, and the documents are politically sensitive. These objections are for the most part unpersuasive. Clearly, resumes or similar documents labeled by the names of persons making referrals for *Rutan*-protected jobs or appointments are relevant in that they are reasonably calculated to lead to discoverable information on Plaintiffs' claim that a state-wide scheme existed to terminate political opponents and to create employment opportunities for political supporters of Governor Blagojevich in violation of *Rutan*. See *Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990). The Court agrees, however, that recommendations for non-*Rutan* positions are not relevant and need not be produced. While the Governor's Office asserts that the request is burdensome, it provides no concrete information that would allow the Court to assess the burden of producing the documents. Additionally, the fact that the documents may contain politically sensitive information does not, by itself, preclude their production. The Governor's Office may seek a protective order imposing terms to the disclosure pursuant to Fed.R.Civ.P. 26(c). Based on the fact that certain material disclosed in this case has appeared in the press, such terms might include a prohibition against disseminating information produced in response to subpoena item 20 outside of the litigation pending further Court order. Restrictions on discovered, but not yet admitted, information do not constitute restriction of public information. *Seattle Times Co.*, 467 U.S. 20. Because the Governor's Office has not yet requested a protective order, the Court need not decide that issue in ruling on the instant Motion to Compel. The Court merely notes the availability of protections as a means of lessening the burden of production on the non-party Office of the Governor. The Fourth Motion to Compel is allowed as it related to subpoena item 20.

Subpoena item 21 requests e-mails sent to or received by Defendant Scott Doubet during the time he worked in the Office of the Governor (without regard to the source of his wage payments) that mention or relate to any issue concerning employment for applicants or employees of the State of Illinois. The Governor's Office objects to producing Doubet's e-mails as unduly burdensome. The Governor's Office asserts that the request would require it to search a large amount of material, reading each e-mail, and that prior similar efforts relating to other individuals identified by Plaintiffs produced nothing of substance relating to the instant case. The Court sustains the objection to this request as unduly burdensome. Plaintiffs have failed to show a significant need for the requested documents and the breadth of the request is wide and does not include any express search terms that might narrow it. The burden imposed is high, especially in light of the non-party status of the Office of the Governor. Plaintiffs' request to compel a response to subpoena item 21 is denied without prejudice to being renewed with reasonable search terms.

*9 Subpoena item 23 requests "[a]ll 6-box forms and all PAR and EPAR forms submitted to the Office of the Governor for any employment related transaction at IDOT from January 2003 to present." *Fourth Motion to Compel*, p. 18. The Governor's Office responds that it has produced all ePARs and six boxes of forms related to *Rutan*-covered positions at IDOT. Plaintiffs contend that production is incomplete because there has been no production for non-IDOT agencies or for *Rutan*-exempt positions and no "answers to questions about how they are kept." *Fourth Motion to Compel*, p. 18. Plaintiffs further assert that none of the ePARs contain information about approval or non-approval. Plaintiffs contentions are unpersuasive. First, item 23 expressly requests information relating to employment transactions at IDOT, it does not seek information relating to other agencies. Additionally, it requests forms "submitted to the Office of the Governor." *Id.* (emphasis added). Thus, it is not surprising that the forms that have been produced

do not contain information about approval. Under Rule 45, the Office of the Governor may produce the information in the form in which it is ordinarily maintained and need not provide explanation. Finally, counsel for the Governor's Office makes a general objection that documents relating to *Rutan*-exempt positions are not relevant to the case, and, with respect to item 23, the Court agrees. Plaintiffs allege that their employment was terminated in violation of *Rutan*. Plaintiffs fail to establish that personnel request forms submitted to the Governor's Office for transactions relating to *Rutan*-exempt positions are relevant. The Fourth Motion to Compel is denied with respect to item 23.

THEREFORE, the Fourth Motion to Compel is ALLOWED, in part, and DENIED, in part, as set forth above. The Office of the Governor is directed to provide the discovery required under this order on or before July 1, 2008 and to provide a certification that the discovery responses are complete. No sanctions are entered. The Court *sua sponte* extends the fact discovery deadline to July 15, 2008 and the dispositive motion deadline to August 1, 2008.

IT IS THEREFORE SO ORDERED.

Not Reported in F.Supp.2d, 2008 WL 2414830
(C.D.Ill.)

END OF DOCUMENT