

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

STATE OF NEW YORK, BY ATTORNEY  
GENERAL ANDREW M. CUOMO,

Plaintiff,

v.

INTEL CORPORATION, a Delaware  
corporation,

Defendant.

C. A. No. 09-827 (JJF)

**JURY TRIAL DEMANDED**

Public Version:  
January 12, 2010

**ANSWER**

Defendant INTEL CORPORATION ("Intel"), by and through its undersigned attorneys, hereby files its answer to Plaintiff's Complaint dated November 3, 2009, admitting, denying and otherwise stating as follows (the numbered paragraphs correspond to those in Plaintiff's Complaint).

**Responses to Individual Paragraphs**

Intel hereby responds to the individual paragraphs of the Complaint as follows:

1. Intel denies the allegations of paragraph 1. Intel states that it has not engaged in "a systematic worldwide campaign of illegal, exclusionary conduct." Rather, Intel has competed aggressively, but lawfully, on the merits by increasing output, improving efficiency, lowering prices, and improving the performance of its microprocessors and related products. Intel denies

that it has “exacted exclusive or near-exclusive agreements” in exchange for “payments.”

Instead, Intel has successfully competed on the merits against its competitors for business with the large OEMs (many of whom are larger than Intel), often in bidding situations dictated by the OEMs by providing discounts for contested business. Intel has both won and lost business, based on the attractiveness of its offers on the merits. Intel has not “robbed” its competitors of an opportunity to compete. During the relevant period, the market has been fiercely competitive. To give but one example, AMD increased its revenue share of microprocessors used in servers from virtually zero in early 2003 to approximately 33% in 2006.

The Complaint is based on a fundamental inconsistency – it accuses Intel of overcharging its customers, but the mechanism through which it claims that Intel overcharged customers is *discounting*. It takes the irrational position that price competition from the larger player in the market is anticompetitive and leads to higher, not lower prices.<sup>1</sup> The Complaint also takes a highly selective approach to citation of evidence to support its theories. As set forth in the paragraphs below, the Complaint regularly quotes material taken out of context and presents it in a misleading fashion. The Complaint ignores a massive amount of additional evidence, provided to the NYAG during its investigation, that refutes its claims. Throughout its answer, Intel cites to a small portion of this evidence, much of which is subject to a Protective Order and cannot yet be disclosed publicly, but which depicts a much different picture of competition, one consistent

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<sup>1</sup> While the Complaint purports to promote price competition, it singles out Intel discounting as being “anticompetitive” and even goes so far as to use terms like “bribery,” even though such a term – well-established in law as being a payment to induce a breach of duty, and not a rebate – obviously has no place in this case.

with reality and with the unqualified and indisputable performance of the marketplace. That marketplace performance contradicts every aspect of the Complaint. Throughout the period cited in the Complaint, the microprocessor market has produced dramatically better performing microprocessors, operating at lower power, and sold at lower prices, and output has expanded materially year after year, to the benefit of consumers, including those in New York.

#### **Decreasing Prices and Expanding Output**

Paragraph 1 contends that Intel's alleged conduct raised the prices of microprocessors and the products containing them. In reality, from 1999 to the present, according to U.S. Bureau of Labor Statistics data, microprocessor prices, adjusted for quality, declined at an annual rate of 42%. This rate of decline was greater than that of any of the 1,200 products that the Bureau tracks, including any other high-technology product. During the same period, the quality-adjusted price of personal computers declined at an annual rate of 23%.

And contrary to the Complaint's allegation that Intel's conduct reduced output, sales of x86 microprocessors grew from 136.5 million in 1999 to 324.7 million in 2008. During the time when the Complaint alleges that Intel was suppressing output, Intel made repeated multi-billion dollar investments in new semiconductor manufacturing capacity, even during business downturns. Most recently, in February 2009 Intel announced a \$7 billion investment in U.S. manufacturing, in the midst of the worst business downturn in decades.

#### **Dramatic Increases in Innovation.**

Paragraph 1 alleges that Intel's conduct has been detrimental to innovation. But the period covered by the Complaint has been characterized by rapid innovation that has increased the functionality and performance of microprocessors and the platforms into which they are incorporated. During this period, Intel, among other things:

- Shifted to dual-core and multi-core microprocessors, so that most personal computers (PCs) today are sold with microprocessors that contain the “brains” of at least two separate microprocessors;
- Reduced microprocessor power consumption to improve energy efficiency and enable prolonged battery life;
- Introduced the Centrino mobile technology, the first mobile computing platform optimized for long battery life and wireless connectivity, which sparked an explosion in mobile computing and brought about a paradigm shift in computing toward mobility;
- Introduced other important platform-level innovations, including technologies that enable IT departments to diagnose and repair problems with PCs remotely, even when they are turned off;
- Incorporated cache memory onto its microprocessors and has since dramatically increased the amounts of memory on microprocessors;
- Consistently led in transitioning to new manufacturing technologies that in each generation doubled the number of transistors that could be packed into the same area of a microprocessor chip; and
- Consistently led in manufacturing innovations, including its development of the high-k metal gate technology, which Computerworld called “one of the most significant technological advances in the past several decades.”

Competition has spurred innovation by Advanced Micro Devices (“AMD”). AMD also incorporated important innovations during this period, including 64-bit extensions to the x86 microprocessor architecture, a point-to-point link for multi-processor systems, and the

introduction of an integrated memory controller in an x86 microprocessor for the first time since Intel's i486SL processor. [REDACTED]

[REDACTED]

[REDACTED]

This extraordinary increase in innovation is a reflection of increasing investments in research and development. In 1999, Intel spent \$3.1 billion on research and development, and AMD spent \$636 million. In 2008, Intel spent \$5.7 billion on R&D, and AMD spent \$1.8 billion, nearly three times as much as it spent in 1999. These huge investments in research and development have been spurred by the very competition condemned in the NYAG complaint.

2. Intel admits that AMD was a competitor in 2001. Intel states that AMD has been a competitor of Intel for nearly 30 years. Except as expressly admitted, Intel denies the allegations of paragraph 2. Intel states that, contrary to allegations of paragraph 2, AMD consistently lagged Intel in addressing the stability, quality, manageability, security and performance concerns of corporate customers and that these critical failures, and AMD's failure to build a competitive mobile microprocessor, not alleged Intel misconduct, account for AMD's lack of success in the corporate segment. Intel denies that business customers "increasingly" sought AMD computers. Intel further states that [REDACTED]

[REDACTED], not cited or acknowledged by Plaintiff.

3. Intel denies the allegations of paragraph 3. Intel states that it provided discounted pricing to customers to meet competition, typically in the form of rebates that reduced the purchase price paid by a customer to Intel. Contrary to the allegations in the Complaint, these

rebates are discounts, not "payments." These discounts were provided to meet competition and benefited Intel's customers by reducing the cost of Intel's products. Intel further states that many of its customers are very large companies whose purchases of microprocessors and related products amount to billions of dollars, and thus the amount of Intel's above-cost discounts cited in the Complaint reflect and are proportional to the overall cost of the microprocessors purchased.

4. Intel denies the allegations of paragraph 4. Intel states that it provides discounts to OEMs to meet competition and to help OEMs compete in the marketplace against systems based on microprocessors other than Intel's. Intel states that it often contributes resources to joint development efforts with its customers for new computer products containing Intel microprocessors, and that these efforts have led to new, innovative products in the marketplace. Intel further states that it has neither "ended" any joint development efforts as "retaliation" for a customer use of AMD microprocessors, nor made threats to do so.

5. Intel lacks sufficient information or belief to admit or deny the allegation that OEMs have "narrow profit margins," and on that basis denies that allegation. Intel otherwise denies the allegations of paragraph 5.

6. Intel admits that it had written agreements starting in December 2002 with HP to sell microprocessors to be included in desktop systems to be sold to corporate customers. These agreements, referred to as the "HPA" agreements, were one year in length, with 30-day mutual termination provisions. The first HPA agreement, called "HPA1," was extended monthly by mutual agreement until June 1, 2004, when HPA2 was made effective. The HPA1 and HPA2 agreements provided HP with, among other things, a negotiated amount of rebates, credited

quarterly, based on anticipated volumes of microprocessor purchases by HP. Intel states that HP

[REDACTED] without

"retaliation" from Intel. Intel further states that [REDACTED]

[REDACTED]

[REDACTED] Except as expressly admitted, Intel denies the allegations of paragraph 6.

7. Intel denies the allegations of paragraph 7. Intel states that IBM cancelled the "AMD-based product" for the server segment referred to in paragraph 7 [REDACTED]

[REDACTED]

[REDACTED]

8. Intel denies the allegations of paragraph 8. Intel states that the history of microprocessor competition and innovation resoundingly contradicts the allegations of paragraph 8. Intel states that according to data published by the United States government's Bureau of Labor Statistics ("BLS"), the quality-adjusted price of microprocessors has fallen 42% *annually* over the last ten years. Furthermore, the quality-adjusted price of microprocessors has declined more rapidly than *any* of the 1,200 product categories monitored by the BLS, including all other high-technology products. This is the exact opposite of what would be expected if a company engaged in improper conduct to maintain monopoly power (where prices would rise, output would decrease, and innovation would be stifled).

9. Intel admits that nothing in the antitrust laws prevents Intel from competing on the merits, including through innovation or price cuts, and admits that Intel has competed in such a fashion. Intel states that the NYAG's view of the antitrust laws would inhibit, not benefit

competition. Intel admits that the Complaint seeks damages and injunctive relief. Except as expressly admitted, Intel denies the allegations of paragraph 9.

10. Intel admits that the Complaint purports to allege violations of the Sherman Act, 15 U.S.C. § 2, and that subject matter jurisdiction is claimed under sections 4, 12, and 16 of the Clayton Act, 15 U.S.C. §§ 15, 22, and 26. Intel further admits that the Complaint purports to allege violations of state antitrust laws, and of the New York State Executive Law, and seeks damages and civil penalties, as well as injunctive and other equitable relief under those state laws. Except as expressly admitted, Intel denies the allegations of paragraph 10.

11. Intel admits that the Complaint claims subject matter jurisdiction over the federal claims under 28 U.S.C. §§ 1331 and 1337, and over the state law claims under 28 U.S.C. § 1367. Except as expressly admitted, Intel denies the allegations of paragraph 11.

12. Intel admits that the Court has personal jurisdiction over it. Intel notes that this paragraph refers to "Defendants," but that it is the only defendant named in the action. Except as expressly admitted, Intel denies the allegations of paragraph 12.

13. Intel admits the allegations of paragraph 13.

14. Intel admits that Plaintiff is a sovereign state and that it purports to bring this action as a sovereign state, in its proprietary capacity and as otherwise authorized by law on behalf of: (a) the State itself, including all of its branches, departments, agencies or other parts thereof; (b) non-State public entities; and (c) New York consumers who purchased x86 CPUs or x86 CPU-containing products directly or indirectly from Defendant. Intel admits that the Attorney General is a duly-constituted officer authorized to represent the State of New York.



Except as expressly admitted, Intel lacks sufficient information or belief to admit or deny the allegations of paragraph 14 and on that basis denies them.

15. Intel admits that it is a Delaware corporation with its principal executive offices in Santa Clara, California. Intel further admits that it conducts business directly and through wholly-owned subsidiaries. Intel admits that it designs, produces, and sells, among other things, a variety of microprocessors, flash memory devices, and silicon-based products for use in the computer and communications industries worldwide. Except as expressly admitted, Intel denies the allegations of paragraph 15.

16. Intel admits the allegations of paragraph 16. Intel states that, through continual investment and innovation, it has been an industry leader in the development of process and manufacturing technology to produce microprocessors and that this innovation has led to better performing microprocessors, using less power, made at lower cost.

17. Intel lacks information or belief sufficient to admit or deny the state of mind of computer users concerning the importance of an instruction set versus the computer microarchitecture and on that basis denies those allegations. Intel admits that software programs are written to execute an instruction set. Except as expressly admitted, Intel denies the allegations of paragraph 17.

18. Intel admits that except for Itanium, the microprocessors or CPUs referenced in the Complaint are known as "x86" microprocessors in reference to the specific instruction set that the microprocessor recognizes. Intel denies the x86 microprocessors constitute a separate relevant market. Intel states the success of the x86 architecture is due to a number of factors,

including Intel's consistent record of innovation, and not merely its selection by IBM in the early 1980's. Except as expressly admitted, Intel denies the allegations of paragraph 18.

19. Intel admits that IBM requested that there be a second source for x86 microprocessors, and AMD was chosen for that role. Intel states that, commencing in 1995, AMD began to develop x86 microprocessors that were not merely clones of Intel microprocessors, and had some successes and failures in its efforts, based on AMD's ability to design, manufacture, and market its products, and its relative success was based on AMD's ability to compete on the merits. Except as expressly admitted, Intel denies the allegations of paragraph 19.

20. Intel admits that, as a general matter, microprocessors are not sold directly for final use to businesses or consumers, but as components of desktop, mobile, and server computers. Intel states that computers today are typically manufactured by what are known as Original Design Manufacturers ("ODMs"), often on behalf of OEMs. Intel admits that OEMs collectively and individually are Intel's largest customers. Except as expressly admitted, Intel denies the allegations of paragraph 20.

21. Intel admits that microprocessors sold for use in servers often have higher gross margins than microprocessors sold for use in other types of computers, such as desktop, mobile, or netbooks. Intel states that the downstream market for computer systems of all kinds is highly competitive and that its OEM customers possess and exercise considerable negotiating power in their dealings with Intel. Except as expressly admitted, Intel denies the allegations of paragraph 21.

22. Intel admits that there are benefits of close cooperation between a microprocessor manufacturer and an OEM for both parties, as well as end users. Intel states this increases the power of the OEMs to negotiate for better sales terms, including pricing, from their microprocessor suppliers. Except as expressly admitted, Intel denies the allegations of paragraph 22.

23. Intel admits that its share of x86 microprocessors sold over the past decade by unit volume has generally ranged from between 70 and 85%. Intel states that it has taken risks by consistently investing billions of dollars in manufacturing technology and capacity to facilitate the overall extraordinary growth of the computer industry, during both good and challenging economic periods, and that this has resulted in tremendous value to the market. Except as expressly admitted, Intel denies the allegations of paragraph 23.

24. Intel admits that Intel and AMD have intellectual property material to the design and production of x86 microprocessors. Intel further admits that manufacturing facilities for microprocessors are known as "fabs" and can require several billion dollars to design and construct. Intel admits that, within any given fab, there are economies of scale throughout a range of the fab's manufacturing capacity. Intel states that during the relevant time period, AMD was able to obtain multi-billion dollar financial support, financing and tax breaks to build fabs, including from foreign governments and the State of New York. Intel further states that its fab investments were risky, as any failure on the part of Intel to innovate and otherwise drive significant growth in the computer industry would lead to an inability to recover its large investments. Except as expressly admitted, Intel denies the allegations of paragraph 24.

25. Intel denies the allegations of paragraph 25. Intel states that it is misleading to compare the gross margins of Intel, a semiconductor manufacturer, with those of its OEM customers, which have very different business models and risk profiles. The semiconductor business is characterized by higher fixed costs than the OEM business, and semiconductor companies accordingly have larger gross margins than OEMs. Intel further states that it consistently competes to win the business of its customers on the merits — the performance and quality of its products, price, supply, brand, and marketing, among other things — and does not “favor” certain OEMs and “punish” others.

26. Intel denies the allegations of paragraph 26. Intel states that it is misleading to quote a portion out of context of an internal 39-page HP strategy document, which in total describes [REDACTED]. [REDACTED] Intel further states that the document directly undercuts a basic theory of Plaintiff’s complaint, [REDACTED]. [REDACTED] Intel states that its margins reflect the extraordinary level of its investment in introducing new cutting-edge technology at lower cost, and that Intel has consistently delivered better performing products at lower prices. Except as expressly admitted, Intel denies the allegations of paragraph 26.

27. Intel admits that the quoted language referenced in paragraph 27 is contained in a February 2004 internal Dell email. Intel lacks sufficient information or belief to admit or deny Dell’s state of mind regarding Intel in February 2004 and on that basis denies the allegations concerning such state of mind. Intel states that it is misleading to quote these sentences of an

internal email exchange of Dell employees discussing negotiating strategy with Intel as industry facts. Except as expressly admitted, Intel denies the allegations of paragraph 27.

28. Intel admits that its customers rely upon Intel for supply of products, and at times for marketing support and technical information. Intel lacks sufficient information or belief to admit or deny HP's internal state of mind regarding Intel in 2002 and on that basis denies the allegations concerning such state of mind. Intel states that the quoted language is contained in the referenced document, but has been altered from the original by excerpting portions and presenting it as a single sentence. Intel further states that it competes on the merits to sell its products, including, but not limited to, [REDACTED]

[REDACTED]  
[REDACTED] Intel denies that it "controls industry standards," [REDACTED]  
[REDACTED], and not alleged by Plaintiff in this action. Intel states that "industry standards" are typically created in collaborative groups that include a broad range of industry participants, and that Intel participates in such groups to help ensure that better computer technology performance is delivered to the marketplace. Examples among many where Intel has contributed to industry standards without compensation are USB, PCI and PCI-E, which are industry standard connections for peripheral components that have spurred innovation. Except as expressly admitted, Intel denies the allegations of paragraph 28.

29. Intel admits it has created alliances in various forms with its customers to deliver new and better technology to the marketplace and promote the success of Intel and its customers. Intel states that such efforts benefit consumers. Except as expressly admitted, Intel denies the allegations of paragraph 29.

30. Intel denies the allegations of paragraph 30. Intel states that paragraph 30 selectively quotes a small portion of an email exchange in March 2006 involving Paul Otellini and an HP executive, specifically omitting relevant portions of the exchange that place the quoted portions in context. For example, the Complaint fails to quote Mr. Otellini's observation that he had shortly before the email exchange, at HP's request, made a presentation that promoted HP before a large gathering of customers and that he believed HP's release was inconsistent with that request and presentation. It further leaves out the last exchange from Mr. Otellini to HP where he stated, "Ok, I trust you," to create a false impression that the issues raised by the exchange were not satisfactorily resolved.

31. Intel denies the allegations of paragraph 31. Intel states that paragraph 31 selectively quotes from a November 2004 email from Paul Otellini to a senior IBM executive. Intel states that Intel and IBM were working on joint innovation and development projects in the server area, and that Mr. Otellini was simply sharing recent competitive information he had received which reflected on those engagements.

32. Intel admits that throughout its history, including during the 1990s, it has continually developed new generations of microprocessor products. Intel further admits that AMD developed and introduced new products in the late 1990s and again in 2003. Intel denies the implication of paragraph 32 that the focus of Intel's microprocessor development was to make the transition from 32-bit to 64-bit computing. Intel states that, for example, in the late 1990s Intel began the development of its Banias (Pentium M) microarchitecture, which was specifically optimized for mobile computing, and was the core component of the Centrino mobile technology released in March 2003. Intel states that the Centrino release was a watershed

event not acknowledged in the Complaint. The introduction of Centrino mobile technology brought about a paradigm shift in computing from a deskbound model to a mobility model, based on its combination of a microprocessor optimized for mobile computing, small form factor, wireless connectivity, and long battery life. Intel states that, by contrast, the value of 64-bit x86-based computing until recently was limited to portions of the server segment, due to the lack of an operating system and applications that could take advantage of the additional memory addressability provided by 64 bits.

33. Intel admits that in mid-1995 it began working with HP on a new 64-bit microprocessor product named Itanium, based initially on technology brought by HP, directed primarily at powerful, high-end servers or computers that were not served by x86 microprocessors. Instead, this segment was served primarily by "RISC" microprocessors. HP and Intel believed that Itanium would have significant performance advantages over the existing RISC processors, while providing the essential stability and reliability necessary for high-end mission critical servers. Intel admits that Itanium was not "backwards [sic] compatible" with x86 software, except through software emulation. Intel denies the implication in paragraph 33 that Itanium was intended to replace x86 microprocessors; instead Intel states that Itanium was intended to compete in what was then a different market segment from that being served by x86 microprocessors. Intel further states that starting in 1995, with Intel's release of the x86-based Pentium Pro designed for the server segment and Intel's marketing efforts, Intel opened up the server market in general to x86 microprocessors and increased customer choice. Intel states that the Pentium Pro and Intel's successor products achieved great success and created the opportunity for AMD to later enter the server segment, which it did with its Opteron.

microprocessor. Intel admits that to establish Itanium as an alternative to RISC-based servers at the higher end, Intel and other companies made substantial investments in software applications and operating systems. Except as expressly admitted, Intel denies the allegations of paragraph 33.

34. Intel lacks sufficient information or belief to admit or deny the allegation of the cost to AMD to develop its Opteron microprocessor, and on that basis denies the allegation that it cost AMD "billions of dollars." Intel denies the allegations that Athlon and Opteron were released at the same time as Itanium. Intel states that the first Athlon microprocessor was released in 1999, the first Itanium microprocessor was released in 2001, and Opteron was released in 2003. Intel also denies the implication that Opteron and Itanium were directed at the same server segment. Intel states that Opteron competed primarily with Intel's Xeon line of x86 microprocessors. Intel states that Opteron was a year late to market and failed to reach the performance characteristics that AMD had promised. Intel denies that AMD had "leapfrogged" Intel with its Opteron family of microprocessors. Intel states that for certain applications, particularly relating to high performance scientific and financial simulations, Opteron had superior performance, but that the Xeon processor was superior for other applications, including most enterprise applications. [REDACTED]

[REDACTED] Intel further states that, using the same Banias microarchitecture that the Complaint ignores as the foundation for a new line of server microprocessors, Intel regained a significant performance advantage in virtually all server applications with the introduction of its new line of Xeon processors in June 2006 and its subsequent server products. Intel further states



that today Intel is generally considered to have superior server technology across the board.

Except as expressly admitted, Intel denies the allegations of paragraph 34.

35. Intel admits that Opteron had performance per watt advantages over Intel's Xeon microprocessors until Intel's release of its new line of Xeon processors in 2006. Intel states that even during the time Opteron had a performance per watt advantage, this advantage was only important to some server customers, primarily those that operated large "server farms." Intel further states that AMD achieved significant success between 2004-2006, consistent with the competitiveness of its products. Intel states that since June 2006 it has largely held the performance per watt advantage over competitive AMD microprocessors. Intel admits that AMD utilized a direct connect architecture for communication between microprocessors which enabled efficient processing of information. Intel states that during the entire time it had superior cache memory technology to AMD's. Cache memory is the most efficient memory and Intel's advantage over AMD in cache memory in many instances enabled systems using Xeon microprocessors to offer competitive or superior performance. Except as expressly admitted, Intel denies the allegations of paragraph 35.

36. Intel denies the allegations of paragraph 36. Intel states that, during the relevant period in the Complaint, the Itanium processor was used primarily in servers that competed with computers that did not use AMD microprocessors. Intel further states that Plaintiff misleadingly conflates the server market segment with corporate desktop and mobile segments. Intel states that the advantages of the Opteron microprocessor were not applicable to the corporate desktop and mobile segments. Intel states that [REDACTED]

[REDACTED]

██████████ AMD's failure to offer stable platforms and part of its issue with mobile systems in turn was a result of Intel's decision to invest in the design and manufacture of chipsets, a critical complementary product to microprocessors, which AMD did not do. AMD's highest ranking sales executive internally described AMD as "pathetic" for "selling processors rather than platforms and exposing a partial story, particularly in the commercial segment, that is clearly inferior to Intel's if we want to be honest with ourselves." The same executive declared that "[i]f you look at it, with an objective set of eyes, you would never buy AMD. I certainly would never buy AMD for a personal system if I wasn't working here." He also declared that "if I was a decision maker in a Fortune 500 company, I wouldn't use AMD." He added that AMD is saddled with a reputation that "we're cheap, less reliable, lower quality consumer type product." Intel states that AMD's acknowledged deficiencies in failing to meet the need of commercial customers, and not "retaliation," explain AMD's lack of success in the corporate desktop/mobile segment.

37. Intel admits that AMD had alliances with Microsoft, Hewlett-Packard, Sun, Fujitsu, and IBM, among others, the existence of which contradicts the Complaint's essential claims that companies in the computer business feared Intel "retaliation" if they allied themselves with AMD. Except as expressly admitted, Intel lacks information or belief sufficient to admit or deny the allegations of paragraph 37, and on that basis denies them.

38. Intel admits that AMD was a competitor throughout the period covered by the Complaint, and that generally sales lost by Intel would be gained by AMD, and sales lost by AMD would be gained by Intel. Intel states that its desktop and mobile products had significant competitive advantages in performance, platform stability, manageability and security, among

other things, and therefore the purchase of an AMD-based server would not lead to a customer also purchasing desktop or mobile PCs with AMD microprocessors. Except as expressly admitted, Intel denies the allegations of paragraph 38.

39. Intel denies the allegations on paragraph 39. Intel states that its Pentium M processor and Centrino mobile technology were the most significant advances of the period cited in paragraph 39 and directly led to the explosion of mobile computing that has revolutionized computer usage. Intel further states that it has maintained a sustained advantage over its competition in the mobile segment, which has since grown from a quarter of the size of the desktop segment to exceeding it by size. Intel further states that while it had areas in its server product line that it recognized it needed to improve in the 2004-2005 time period, at that time Intel had on its roadmap a new server product line, introduced in 2006, that was widely recognized as superior to AMD's.

40. Intel denies the allegations of paragraph 40. The term "bribe" has no place in this litigation. Intel states that it negotiates with its customers and offers price reductions, in the form of rebates, or credits against the purchase price, which are beneficial to its customers. Intel states that these are not "payments," or "bribes," which are payments made to induce a party to breach a fiduciary duty. Instead, Intel's rebates are true discounts, which reduce the effective price of Intel's products to its customers. Intel further states that its customers themselves are large and powerful buyers, who routinely play Intel and AMD off one another to obtain better terms. Intel states that its sales agreements with OEMs are short-term, typically lasting a quarter, and do not prevent competition, but rather are the results of Intel winning competition on the merits of its products and pricing.

41. Intel lacks sufficient information or belief to admit or deny HP's internal state of mind regarding Intel in November 2003 and on that basis denies the allegations concerning such state of mind. Intel states that it is misleading to quote a single sentence out of context of an internal 21-page strategy document focused on [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Except as expressly admitted, Intel denies the allegations of paragraph 41.

42. Intel denies the allegations of paragraph 42.

43. Intel denies the allegations of paragraph 43. Intel states that Intel and HP entered into a written agreement entitled HPA1, and the written terms contained the final agreement of the parties. Intel further states that the background of HPA1 was that HP had informed Intel that it intended to award 5% of its microprocessor purchases for corporate desktop PCs to AMD, and identified a percentage of the remaining business that the parties would compete to provide to HP. After extended negotiations, HP awarded the contested business to Intel. The parties ultimately agreed that, due to the long and difficult negotiations, a simple written agreement with a 30-day termination provision without cause would be in the interests of both parties. That written agreement did not contain a limit on AMD's market share. Intel further states that the parties discussed the progress of the agreement, including the volumes and market segment share of Intel, during regularly scheduled meetings. Intel states that it entered into an overall agreement in November 2006 with HP, which, based on different price discounts, marketing support, and supply innovations, among other things, provided Intel the opportunity to increase

its sales volume and share of business with HP, but did not require or ensure such an outcome. Intel further states that the discounts in the 2006 agreement were based on volume, not market segment share, and that the language quoted in paragraph 43 from an Intel account representative was intended to ensure that the agreement accurately reflect that fact.

44. Intel denies the allegations of paragraph 44. Intel states that the quoted sentence is taken out of context.

45. Intel admits that the quoted language in paragraph 45 is contained in an internal Intel email. Intel states that it negotiates in good faith with its customers. Intel states that the example used in paragraph 45 related to Intel's funding of a joint marketing program with Sony in light of Intel's perceived return on that investment. Intel, like all companies, invests in marketing to promote its products in the marketplace and increase sales. Intel further states that if a particular marketing program is not achieving the intended objectives, Intel has the right to raise that with its customer and make a decision whether to continue, stop, or expand a particular program. Such actions are not threats. Intel states that to mischaracterize this single situation from 2002 and imply that it was a "modus operandi" of Intel during 2002-2006 is incorrect and irresponsible. Except as expressly admitted, Intel denies the allegations of paragraph 45.

46. Intel admits that the quoted language in paragraph 46 is contained in an internal Intel email involving the same joint marketing program addressed in the response to paragraph 45. Intel states there is no fixed definition of the word "alignment" at Intel. Intel further states that "alignment" is often used at Intel to refer to situations where a customer and Intel have mutually-shared business objectives in creating, for example, a particular computer platform or marketing campaign that can provide the basis for mutual investment and cooperation to

introduce and promote new products in the market. Intel states that it does not use "alignment" as a "code word." Except as expressly admitted, Intel denies the allegations of paragraph 46.

47. Intel admits that the quoted language in paragraph 47 is contained in an internal HP document. Intel states that [REDACTED]

[REDACTED] Except as expressly admitted, Intel denies the allegations of paragraph 47.

48. Intel admits that the quoted language in paragraph 48 is contained in an internal Intel document. Intel states that there are benefits of strategic relationships between Intel and its customers to both parties and to consumers. Such strategic relationships are the basis for cooperation in product development and marketing that lead to new, innovative products being brought to market. Intel states that it often has both strategic and transactional relationships with its customers at the same time, in different segments and in all cases competes vigorously on the merits, including discounted pricing, to win business. Intel states that in April 2002 Intel and Compaq were engaged in ongoing discussions about their relationship and in what segments both parties wished to engage in mutual strategic market activities. Except as expressly admitted, Intel denies the allegations of paragraph 48.

49. Intel denies the allegations of paragraph 49. Intel states that it has standard pricing, called "CAP" pricing, that it offers to customers, and further provides discounted pricing, on a meeting competition basis, referred to as "ECAPs." The purpose of ECAP pricing is to meet competition, typically from AMD, and win contested business. Intel further states that in some situations, based on the volume and complexity of the products being purchased from

Intel, Intel developed a comprehensive program, sometimes referred to as MCP ("Meeting Competition Program"), to provide discounts to meet competition. Intel's discounts are provided to allow it to compete for business, and to enable its customers to compete in the marketplace, and do not "exclude" competition, but allow Intel to win competition on the merits.

50. Intel admits that Dell had a negotiated meeting competition program that was referred to at Intel first as "MOAP," or "Mother of all Programs" and later as "MCP," or "Meet Competition Program" or "Meeting Competition Program." Intel further admits that it developed an overall meeting competition program for Toshiba. Except as expressly admitted, Intel denies the allegations of paragraph 50.

51. Intel admits that the quoted language in paragraph 51 is contained in a Dell email, but states that the language is presented in a misleading fashion. Intel states that its negotiations with Dell were based on providing Dell discounted pricing and other support to meet competition and to assist Dell in being successful in the computer market. Intel further states that the level of discounts referenced in paragraph 51 reflects Dell's multi-billion dollar purchases from Intel, and that Dell is a powerful purchaser with very substantial bargaining power, which enables it to extract large discounts for contested sales. Except as expressly admitted, Intel denies the allegations of paragraph 51.

52. Intel denies the allegations of paragraph 52. Intel states that it competed with AMD in all segments of the market, and that in the corporate segment, Intel's ability to provide stable platforms, consistent quality and reliability, and manageability and security features gave it sustained and earned competitive advantages on the merits, and those advantages were the basis for its market segment share in the corporate segment. Intel further states that Intel's

advantages in the corporate segment [REDACTED]

[REDACTED] For example, AMD's head of Marketing bluntly stated, "[I]f I was a decision maker in a Fortune 500 company, I wouldn't use AMD." Indeed, AMD's then Chairman and CEO, Hector Ruiz, admitted internally that "Our failure to penetrate commercial may have more to do with our ineptness at translating [sic] customer [sic] need into actions than our [sic] competitors' fear [fear, uncertainty, and doubt]." [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

53. Intel admits that the language quoted in paragraph 53 is contained in an Intel email from 1998. Intel states that it sought to avoid losing business wherever it could compete for sales profitably. Except as expressly admitted, Intel denies the allegations of paragraph 53.

54. Intel denies the allegations of paragraph 54. Intel states that in fact AMD achieved significant success in the server segment, particularly from 2004 until Intel's 2006 release of its new line of server microprocessors. Intel states that paragraph 54 illustrates the inconsistent reasoning behind the Complaint: On the one hand it alleges that consumers have been *overcharged* for microprocessors because Intel discounted its microprocessors, but on the other hand it alleges that competition was harmed because AMD was not able to *raise* its prices "sufficiently." Intel states that the quotation attributed to Mr. Otellini is from a 1998 discussion regarding Intel's Celeron brand, and did not relate to any of the actions alleged in the Complaint. Moreover, there is nothing anticompetitive about a CEO's expression of hope that a competitor would not develop successful products and improve its brand value. Intel further states that it is



misleading to juxtapose an internal statement in a different context from 1998 and attempt to transform it into a purported "argument to OEMs" during 2002-2006.

55. Intel admits the allegation in paragraph 55 that it has and had an antitrust compliance program, with various components, during all times during the relevant period, and that aspects of the program as it existed in 2001 were described in a June 2001 article in the Harvard Business Review. Intel also admits that it had and followed a business policy of not conditioning its willingness to deal with a customer on that customer not dealing with an Intel competitor. Except as expressly admitted, Intel denies the allegations of paragraph 55.

56. Intel states that its antitrust compliance activities were conducted in good faith to ensure Intel's compliance with the law, and therefore denies the allegations of paragraph 56. Intel admits that the quoted language in paragraph 56 is contained in a 2001 internal Intel email. Intel states that it is perfectly appropriate for Intel to seek to provide all or as much of a customer's requirements as the customer is willing to purchase from Intel. Except as expressly admitted, Intel denies the allegations of paragraph 56.

57. Intel denies the allegations of paragraph 57. Intel states that the selectively-quoted email exchange in paragraph 57 was not by an "Intel executive," but from a lower-level employee in Asia relating to marketing in Asia. Moreover, Intel did not reduce Acer's market development funds.

58. Intel admits that the selectively-quoted language in paragraph 58 is contained in internal Intel documents. Intel denies the implication of the allegations in paragraph 58 that Intel was not concerned with the conduct of the employees, but merely the language used by them. Except as expressly admitted, Intel denies the allegations of paragraph 58.

59. Intel admits that the selectively-quoted language in paragraph 59 is contained in internal Intel emails, but states that two isolated sentences do not establish the point Plaintiff seeks to make. Except as expressly admitted, Intel denies the allegations of paragraph 59.

60. Intel lacks sufficient information or belief to admit or deny the allegations of the state of mind of OEMs as alleged in paragraph 60, and on that basis denies them. Intel otherwise denies the allegations of paragraph 60. Intel states that its focus was on selling and promoting its products, not on limiting the sales of competitive products.

61. Intel denies that it makes or has made "payments for exclusivity." Intel lacks sufficient information or belief to admit or deny the remaining allegations of paragraph 61, and on that basis denies them.

62. Intel lacks sufficient information or belief to admit or deny the allegations of paragraph 62 relating to the basis of "Dell's profitability" and on that basis denies those allegations. Intel states that Dell often sought to negotiate reduced pricing from Intel to address competition, with the stated or implied consequence that Dell would switch purchases from Intel to AMD if Intel did not reduce its prices. Intel states that the relation between Intel's pricing of microprocessors and the ultimate financial results of an OEM is based on a variety of factors, including the performance of products, the strength of competitive offerings, the effectiveness of marketing, and macroeconomic factors. Except as expressly admitted, Intel denies the allegations of paragraph 62.

63. Intel denies that it makes rebate "payments" to Dell or other customers and states that its rebates are discounts that it makes to meet competition. Intel admits that the quoted language in paragraph 63 is contained in internal Dell documents, but lacks sufficient knowledge

and belief as to the allegations of the state of mind of Dell and HP that paragraph 63 attributes to those companies, and on that basis denies such allegations. Intel states that it consistently competed for business, whether or not an OEM chose to use AMD. Intel states that it did not threaten its customers that it would not compete for business or otherwise "retaliate" if they used AMD, and in fact Intel has consistently competed in good faith to sell its products to customers, including continuing to provide competitive discounts for the business Intel retained. Intel further states that when a customer chose to buy lower volumes of Intel microprocessors, they obviously would no longer receive rebates on microprocessors that the customer was no longer purchasing, and thus might receive lower rebates reflecting the lower volumes purchased and the absolute dollar amounts of the rebates attributable to those volumes. Except as expressly admitted, Intel denies the allegations of paragraph 63.

64. Intel lacks sufficient knowledge and belief as to the state of mind of IBM alleged in paragraph 64, and on that basis denies such allegations. Intel admits that the quoted language in paragraph 64 is contained in the referenced documents. Intel states that the quoted language does not reflect the full context and that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

65. Intel admits that the quoted language in paragraph 65 is contained in an internal HP document, but lacks sufficient knowledge and belief as to the state of mind of HP alleged in paragraph 65. Intel states that at the time of the communication cited in paragraph 65, Intel had lost very large amounts of money on the Itanium processor, for which HP was the main customer. Intel further states that, at that time, it was seeking to reconstitute the Itanium relationship to reduce or end the losses on a going forward basis. Except as expressly admitted, Intel denies the allegations of paragraph 65.

66. Intel admits that its agreements with OEMs were almost always for no longer than a year, and often quarterly. In fact, quarterly negotiations presented Intel's customers with continuing opportunities to use the threat of buying from AMD to extract additional discounts. In addition, in many cases, OEMs shifted large amounts of business to AMD, as evidence by the growth of AMD's market share. Except as expressly admitted, Intel denies the allegations of paragraph 66.

67. Intel lacks sufficient knowledge and belief as to the allegations of the state of mind of its customers contained in paragraph 67, and on that basis denies such allegations. Intel denies the remaining allegations of paragraph 67. Intel incorporates by reference its response to paragraph 66. Intel further states that the improved performance and lower prices of computer

systems in all segments throughout the relevant time period is unassailable and contradicts the fundamental premise of the allegations in paragraph 67.

68. Intel denies the allegations of paragraph 68. Intel states that HP's decision to announce a broad multi-year partnership with AMD in the server segment without notice to Intel, despite its awareness that Intel was losing money on its Itanium processor collaboration with HP while HP was profiting from that collaboration, establishes HP's freedom to make choices regarding microprocessor purchases.

69. Intel admits that the quoted language in paragraph 69 is contained in HP or Dell documents, but lacks sufficient information or belief to admit or deny the state of mind of the OEMs referenced in paragraph 69 and on that basis denies such allegations. Intel states that it provides price discounts in response to both direct and downstream competition. Intel further states that data compiled by the United States Government demonstrates that the absolute and performance-adjusted prices of microprocessors have consistently declined during the relevant time period, and have declined more than those of any other product. Except as expressly admitted, Intel denies the allegations of paragraph 69.

70. Intel denies the allegations of paragraph 70. Intel states that the Complaint presents a misleading story relating to the server segment, including innovation. Intel, through innovative products and marketing, introduced and established x86-based servers, starting with its Pentium Pro microprocessor in 1995, through major investments in server technology and in the porting of software from other architectures to the x86 architecture. These efforts led to a rapid decline in server prices and created an opportunity for AMD to enter the segment after Intel's investments created an ecosystem of hardware and software to enable end users to run

demanding server applications on x86-based servers. Rather than limiting opportunities for AMD, Intel created them, through risk-taking investments to migrate server technology to the x86 architecture.

71. Intel admits that the microprocessor has been an engine for productivity growth in wide segments of the economy, and has been characterized by extraordinary technical progress and consistent absolute and performance-adjusted price declines throughout the relevant period. Except as expressly admitted, Intel denies the allegations of paragraph 71.

72. Intel admits that competition is beneficial, but denies the remaining allegations of paragraph 72. Intel states that Intel's extraordinary history of innovation in microprocessor design, process technology, manufacturing, chipsets, and other complementary products is well-established, and demonstrate that Intel's responses to competition have provided numerous benefits to consumers. Except as expressly admitted, Intel denies the allegations of paragraph 72.

73. Intel denies the allegations of paragraph 73.

74. Intel denies the allegations of paragraph 74. Intel states that it never had an exclusive relationship with Dell and further states that Dell never agreed to purchase microprocessors exclusively from Intel. The depositions of Dell executives confirm that Dell never had an exclusive relationship with Intel. Intel further states that Intel did not make payments to Dell; Intel sold microprocessors and other products to Dell, for which Dell paid Intel, and in connection with those sales Intel provided Dell with above-cost discounts that reduced the price that Dell paid Intel for those products. Intel further states that its discounts to Dell were never conditioned on Dell purchasing microprocessors exclusively from Intel. The

depositions of Dell executives confirm that Dell did not believe that the rebates Dell received from Intel were conditioned on Dell not purchasing microprocessors from AMD or any other brand of microprocessors. [REDACTED]

[REDACTED] Intel states that it never provided Dell with assurances of a preferred supply of microprocessors in exchange for a commitment of exclusivity by Dell. Intel further states that Dell was at all times free to decide to purchase microprocessors from AMD or any other supplier. The depositions of Dell executives confirm that they always believed [REDACTED] Dell was free to buy microprocessors from AMD or another supplier [REDACTED] if it so chose.

[REDACTED] Intel further states that at no time was AMD ever precluded by Intel's discount arrangements or other Intel conduct from competing to sell microprocessors to Dell. [REDACTED]

[REDACTED] Except as expressly admitted, Intel denies the allegations of paragraph 74.

75. Intel denies the allegations of paragraph 75.

76. Intel admits that Dell periodically evaluated and considered launching AMD-based products throughout the 2001 to 2006 period. [REDACTED]





[illegible]

Intel denies that it ever threatened to retaliate against Dell if Dell were to purchase from AMD. The depositions of the Dell executives confirm that no one from Intel ever threatened to retaliate against Dell if Dell were to buy microprocessors from AMD or any other supplier. Intel states that Dell constantly negotiated

with Intel to obtain the lowest possible prices. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Intel further states that, as a result of its volume of purchases, Dell had substantial bargaining power with Intel. [REDACTED]

[REDACTED]

[REDACTED] Intel states that Dell repeatedly used the prospect of shifting volume to AMD as negotiating leverage with Intel. [REDACTED]

[REDACTED]

[REDACTED] Intel denies the allegation that Dell "recognized AMD's superiority in chip design" and "suffered market share losses as a result of its decision" to remain using Intel as a sole source of microprocessors until 2006. Intel states that Dell experienced substantial growth in every product segment from 2000 to 2005, becoming the world's largest supplier of personal computers in 2001 and, with the exception of a brief period in 2002 after HP acquired Compaq, retaining that position until the third quarter of 2006 (also the quarter in which it began selling AMD-based computers). Intel further states that Dell's revenues grew from \$31.9 billion for Dell fiscal year 2001 to \$55.9 billion for Dell fiscal year 2006; its unit shipments grew by 15% in Dell fiscal year 2002 (despite an industry-wide decline of 5%), 21% in fiscal year 2003 (despite

an industry-wide decline of 1%), 26% in fiscal year 2004 (with the industry growing at only 9-12%), and 21% in fiscal year 2005 (with the industry growing at 15%). Intel states that from 2001 through 2005, Dell ranked first in the sale of servers, workstations, notebooks, and desktops in the United States, and either first or second in those categories worldwide. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Intel states that most

of Dell's sales were in the corporate segment, a segment in which Intel's long-standing reputation for platform stability, manageability and security, as well as reliability, gave it substantial advantages over AMD, which historically had not found acceptance among corporate customers. Intel further states that in the mobile and corporate desktop segments Intel's products offered generally-recognized significantly superior performance as compared to AMD's offerings in those segments. Intel states that even in the server segment, where Intel faced certain performance challenges, particularly relating to multi-processor services and to HPCC applications, AMD's Opteron microprocessors were not superior on all benchmarks or for all applications and that Dell achieved great success. Intel further states that Opteron had superior performance on certain benchmarks, while on others Intel's Xeon processors performed better.

[REDACTED]

[REDACTED] Intel states that Intel regained a significant performance advantage, starting in June 2006, with the introduction of its Woodcrest server microprocessor and its subsequent products. Except as expressly admitted, Intel denies the allegations of paragraph 76.

77. Intel admits that beginning in late 2001 Intel provided discounts to Dell pursuant to a program referred to as MOAP, which internally stood for "Mother Of All Programs." Intel further admits that the acronym MOAP was later replaced by the acronym MCP, which stood for Meeting Competition Program or Meet Competition Program. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Except as expressly admitted, Intel denies the allegations of paragraph 77.

78. Intel denies the allegations of paragraph 78.

79. Intel admits that Intel sought to satisfy Dell's demands for supply of Intel products because Dell was more dependent in the very short run on Intel supplies than other customers. Intel states that it strives to meet fully the supply needs of all of its customers, including Dell. Intel states that paragraph 79 quotes out-of-context statements from an email exchange in October 2005 involving Paul Otellini and other Intel executives, specifically and

consciously deleting portions of the exchange that place the quoted portion in context. For example, the email quoted in paragraph 79 relates to the supply of chipsets, not microprocessors. Intel further states that, while the words quoted in paragraph 79 appear in the email, the Complaint mischaracterizes the content of the email and Intel denies the characterization. Except as expressly admitted, Intel denies the allegations of paragraph 79.

80. Intel states that Dell constantly negotiated with Intel in an effort to obtain lower prices. Intel states that Dell never sought advantaged pricing or supply in exchange for a commitment of exclusivity. Intel admits that Dell sometimes used the term "Tier 0" to refer to its goal of obtaining from Intel the most competitive pricing and other terms. [REDACTED]

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Except as expressly admitted, Intel denies the allegations of paragraph 80.

81. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Intel further states that its discounts to Dell were intended to meet both direct competition from AMD and indirect competition in the form of lower-priced AMD-based PCs that competed against Dell's Intel-based systems in the marketplace. Intel states that paragraph 81 quotes a portion of an internal Dell email exchange in April 2004. While the words quoted in paragraph 81 appear in the email, Intel denies the Complaint's characterization of the document. For example, Intel states the email was not written by a Dell "executive." Intel further states that the email merely contains the comments of a single Dell employee regarding his views about positions Dell should take in negotiations with Intel. [REDACTED]

[REDACTED]

[REDACTED] In the author's view, since Dell's meeting competition rebates from Intel were based in significant part on Dell's competitive exposure to AMD-based systems in the marketplace, if the competitive strength of AMD products declined, then Dell's discounts from Intel could also decline. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Accordingly, Intel states that the email does not show that "Dell was being paid to hold AMD at bay, not for any pro-competitive act," as alleged by the Complaint. Intel further states that Dell paid Intel for microprocessors it purchased; while Dell received price discounts from Intel for those purchases, Intel did not "pay" Dell. Except as expressly admitted, Intel denies the allegations of paragraph 81.

82. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Intel states that it never "encouraged Dell to make below-cost bids, with Intel subsidies." Except as expressly admitted, Intel denies the allegations of paragraph 82.

83. Intel denies the allegations of paragraph 83. Intel states that that it never threatened to retaliate against Dell if Dell were to purchase from AMD. The depositions of the Dell executives confirm that no one from Intel ever threatened to retaliate against Dell if Dell were to buy microprocessors from AMD or any other supplier. Intel further states that the depositions of Dell executives confirm that Dell did not fear disproportionate retaliation from Intel if Dell bought microprocessors from AMD. Intel states that the depositions of Dell's

executives responsible for making decisions regarding microprocessor suppliers confirm that Dell never chose to not to buy from AMD because of fear of retaliation by Intel.

84. Intel denies the allegations of paragraph 84. Intel states that the quoted language in paragraph 84 is contained in a Dell document, but denies the implication drawn by Plaintiff and incorporates its answer to paragraph 76 by reference. Intel states that the presentation quoted by the Complaint was prepared by an unknown author who was not knowledgeable about the formation of the MCP program. Intel further states that the statement quoted by the Complaint is ambiguous and it is not clear what the unknown author meant by it. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

85. Intel denies that the cited 2003 internal document states the "rationale" for the Meet Competition Program. Intel admits that the MCP was typically negotiated quarterly and was not contained in a formal written contract, although Dell's requests for discounts and Intel's responses are generally memorialized in emails, spreadsheets and presentations. Intel states that paragraph 85 misleadingly and selectively quotes a portion of an internal Dell email exchange in January 2003. [REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Except as expressly admitted, Intel denies the allegations of paragraph 85.

86. [REDACTED]

[REDACTED] Intel states that there were no "secret agreements" between Dell and Intel related to the rebates, except to the extent all of Intel's discount arrangements with its customers are proprietary and confidential. Except as expressly admitted, Intel denies the allegations of paragraph 86.

87. Intel states that the selectively-quoted language in paragraph 87 is contained in a Dell document, but denies the implication drawn by Plaintiff. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Accordingly, Intel states that this statement does not support at all Plaintiff's allegation that "Intel would not tolerate a Dell shift to AMD CPUs." Except as expressly admitted, Intel denies the allegations of paragraph 87.

88. Intel states that the quoted language in paragraph 88 is contained in a Dell document, but denies the implication drawn by Plaintiff. Intel states that the quoted statements

Except as expressly

admitted, Intel denies the allegations of paragraph 88.

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extract discounts from Intel. Intel incorporates its response to paragraph 76 by reference. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Except as expressly admitted, Intel denies the

allegations of paragraph 89.

90. Intel states that that it never threatened to retaliate against Dell if Dell were to purchase from AMD. The depositions of the Dell executives confirm that no one from Intel ever threatened to retaliate against Dell if Dell were to buy microprocessors from AMD or any other supplier. Intel further incorporates its response to paragraph 88 by reference. Except as expressly admitted, Intel denies the allegations of paragraph 90.

91. Intel denies the allegations of paragraph 91. Intel states that paragraph 91 quotes out of context a portion of a July 9, 2002 internal Dell email from Kevin Rollins, Dell's then-President, to Michael Dell, Dell's Chairman and CEO. While the words quoted in paragraph 91 appear in the email, Intel denies the Complaint's characterization of the document. Intel further states that the quoted portion of the email merely shows that Dell's then-President Kevin Rollins

perceived that Intel, when confronted with Dell's potential decision to shift business to AMD, responded by conveying the impression that Intel was willing "to do whatever it takes to persuade Dell" to keep the business and offering increased discounts to Dell to win the business. Intel states that this is the essence of competition.

92. Intel admits that Dell periodically evaluated and considered launching AMD-based products throughout the 2001 to 2006 period. [REDACTED]

[REDACTED] Intel states that, while Intel competed vigorously to win Dell's business, Intel never threatened to retaliate against Dell if Dell were to purchase from AMD, and Dell never communicated to Intel a fear of retaliation. Intel states that the depositions of Dell executives confirm that Intel never threatened Dell with retaliation if it bought microprocessors from AMD and that Dell never decided not to buy microprocessors from AMD because of fear of retaliation from Intel. Intel incorporates its response to paragraph 88 by reference. Intel further states that paragraph 92 quotes out of context a portion of one slide from a June 2002 internal Dell slide presentation entitled "Boomerang Analysis Review." [REDACTED]

[REDACTED] Intel further states that the Complaint mischaracterizes the

content of the document and Intel denies the Complaint's characterization. Except as expressly admitted, Intel denies the allegations of paragraph 92.

93. Intel states that paragraph 93 quotes from a June 2002 internal Dell slide presentation entitled "Boomerang Analysis Review." While the words quoted in paragraph 93 appear in the presentation, the Complaint mischaracterizes the document and Intel denies the Complaint's characterization. Intel admits that the presentation quoted in paragraph 93 contains a slide that includes the questions, "Will MOAP increase or decrease? And over what time period -- short term vs. long term?" Intel admits that the same slide states, "Up to 32% of MOAP program could be risked and still have the same net benefit." Intel further states that the language quoted by the Complaint is internal speculation by the Dell employees who prepared the document and does not reflect any communication by Intel. Intel further states that on their face the statements quoted in paragraph 93 contradict the fundamental premise of the Complaint's claims as to Dell, as the statements reveal that there was a range of views within Dell as to what impact, if any, Dell's launch of AMD-based products would have on Dell's discounts from Intel; [REDACTED]

[REDACTED] Intel incorporates its response to paragraph 88 by reference. Except as expressly admitted, Intel denies the allegations of paragraph 93.

94. Intel states that the Complaint selectively quotes statements in a June 2002 internal Dell email. While the words quoted in paragraph 94 appear in the email, the Complaint mischaracterizes the document and Intel denies the Complaint's characterization. Intel further states that the statements quoted in paragraph 94 are speculation by a single Dell employee and do not reflect any communication from Intel. Intel further states that Intel never threatened Dell

that Intel would retaliate against Dell if Dell were to purchase microprocessors from AMD. Intel denies that the author of the email was a "key Dell executive acting as informal liaison between Intel and Dell" on the results of the Boomerang study. Intel incorporates its responses to paragraphs 83 and 88 by reference. Except as expressly admitted, Intel denies the allegations of paragraph 94.

95. Intel denies the allegations of paragraph 95. Intel states that Dell's discounts from Intel under the Meeting Competition program were based on various factors, including Dell's volume of purchases from Intel and the level of competitive exposure Dell faced in the marketplace from AMD-based systems sold by Dell's competitors. Intel further states that the quoted statements merely refer to the fact that if Dell "added AMD to [its] arsenal" this could reduce Dell's volume of purchases from Intel. Intel states that if Dell purchased a lower volume of Intel microprocessors, Dell might receive lower rebates reflecting the lower volumes purchased and the absolute dollar amounts of the rebates attributable to those volumes. Intel states that it never threatened Dell that if Dell offered AMD-based products Intel would take away Dell's MCP discounts and give them to other OEMs to compete against Dell.

96. Intel lacks information and belief sufficient to admit or deny whether a Dell executive gave the testimony quoted in paragraph 96, and on that basis denies it. Intel incorporates its responses to paragraphs 83 and 88 by reference. Except as expressly admitted, Intel denies the allegations of paragraph 96.

97. Intel admits that Dell decided not to launch AMD-based products in 2002. [REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] Intel

further states that on January 30, 2003, AMD announced that it was delaying its desktop



Hammer processor once again, this time to September 2003, an additional delay of nine months.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

While Plaintiff cites to alleged testimony to the Attorney General by a lower level Dell employee who was responsible for "analytics" related to the Boomerang study, Plaintiff fails to cite a single document or portion of testimony showing that Dell's executive decision-makers ever decided against purchasing from AMD based on fear of retaliation by Intel or the worst-case scenarios in the emails and models cited in the Complaint. Intel further states that the depositions of Dell's executives confirm that Dell's decisions not to purchase from AMD at certain junctures were not the result of fear of Intel retaliation or of discounts conditioned on exclusivity. Except as expressly admitted, Intel denies the allegations of paragraph 97.

98. Intel admits that in the fall of 2003, Dell was involved in discussions with Microsoft, AMD, and IBM regarding a proposal that the participants in the discussions referred to as MAID, an acronym formed from the first letters of the names of the four companies involved. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Except as expressly admitted, Intel denies the allegations of paragraph 98.

99. Intel denies the allegations of paragraph 99. Intel states that it never “bribed” or “threatened” Dell to induce Dell to continue using Intel as its sole source of microprocessors. Intel further states that Dell never agreed to purchase microprocessors exclusively from Intel and the depositions of Dell executives confirm that Dell never had an exclusive relationship with Intel. Intel states that its discounts to Dell were never conditioned on Dell purchasing microprocessors exclusively from Intel and that the depositions of Dell executives confirm that fact. Intel incorporates its response to paragraph 76 by reference. Except as admitted, Intel denies the allegations of paragraph 99.

100. Intel admits that Craig Barrett, Intel’s then-Chairman, and Michael Dell, Dell’s Chairman and CEO, met in September 2003 to negotiate regarding Dell’s request for additional discounts to meet competition. Intel states that paragraph 100 quotes out-of-context statements in a September 2003 internal Intel email from Mr. Barrett regarding the meeting with Mr. Dell. Intel further states that, while the words quoted in paragraph 100 appear in the email, Intel denies the Complaint’s characterization of the document. Mr. Barrett’s quoted statement in the email that he “committed Intel’s long range support regardless of competition” merely reflects Mr. Barrett’s assurance to Mr. Dell that Intel had a long-term interest in growing the market, independent of any need to meet competition from AMD, and that Dell could count on Intel’s support regardless of how the competitive landscape might change in the future. Intel further

states that Mr. Barrett's statement was not a reference to a commitment to provide Dell any particular form or level of discounts in the future.

101. Intel denies the allegations of paragraph 101. Intel states that while the words in paragraph 101 appear in an October 1, 2003 internal Dell email exchange, the Complaint mischaracterizes the document and Intel denies the Complaint's characterization. Intel states that its discounts to Dell were never conditioned on Dell's not buying microprocessors from AMD and Intel never communicated to Dell that Intel's discounts were conditioned on Dell's purchasing microprocessors exclusively from Intel. Intel further states that the depositions of Dell executives confirm that Dell never believed that Intel's discounts were conditioned on exclusivity. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

102. Intel admits that the proposed MAID transaction never came to fruition. Intel denies that it entered into any arrangement or agreement with Dell that would have precluded Dell from proceeding with the proposed MAID transaction. Intel incorporates by reference its response to paragraph 101. [REDACTED]

[REDACTED] Except as expressly admitted, Intel denies the allegations of paragraph 102.

103. Intel admits that on February 24, 2004 HP publicly announced its decision to launch servers using AMD's Opteron microprocessor. Intel states that paragraph 103 quotes out-of-context statements in a January 2004 internal Dell email exchange in which Dell employees discussed various potential competitive responses by Dell to the HP server announcement, including potential additional discounts from Intel to address Dell's increased competitive exposure as a result of HP's newly-announced AMD-based server systems. Intel further states that, while the words quoted in paragraph 103 appear in the email exchange, Intel denies the Complaint's characterization of the document. Except as expressly admitted, Intel denies the allegations of paragraph 103.

104. Intel admits that HP's decision to produce and market AMD-based servers represented competition to Intel-based products. Except as expressly admitted, Intel denies the allegations of paragraph 104.

105. Intel denies the allegations of paragraph 105. Intel states that Intel did not inform Dell that it was prepared for "jihad" or otherwise threaten Dell with retaliation if Dell were to

purchase microprocessors from AMD. Intel further states that the depositions of Dell executives confirm that Dell's executives did not understand that Intel was prepared for "jihad" if Dell were to purchase microprocessors from AMD or any other supplier. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Intel further states that Intel never threatened Dell that Intel would retaliate against Dell if Dell were to purchase microprocessors from AMD and that the speculative internal Dell email quoted in paragraph 105 does not reflect any such communication from Intel. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

106. Intel admits that Dell and Intel executives met in March 2004 to negotiate regarding Dell's request for additional discounts from Intel and that those negotiations continued to April 2004. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Except as expressly admitted, Intel denies the allegations of paragraph 106.

107. Intel lacks information and belief sufficient to admit or deny the rebate and net income figures allegedly reported by Dell that are contained in paragraph 107, and on that basis denies them. Intel further denies that it made "payments" to Dell. Intel states that the quarterly rebates Intel provided to Dell were discounts on Dell's purchases from Intel and thus were reductions in the price that Dell paid Intel for the products it bought. Except as expressly admitted, Intel denies the allegations of paragraph 107.

108. Intel states that paragraph 108 quotes out-of-context statements in an April 2004 internal Intel email exchange. Intel further states that, while the words quoted in paragraph 108 appear in the email exchange, Intel denies the Complaint's characterization of the document. Intel states that it never provided Dell with discounts for the purpose of stabilizing Dell's forecasted earnings. Except as expressly admitted, Intel denies the allegations of paragraph 108.

109. Intel denies the allegations of paragraph 109. Intel denies that it provided "subsidies" to Dell; Intel provided Dell with price discounts that were negotiated on a regular basis. Intel states that paragraph 109 quotes out-of-context statements in an April 2004 internal Intel email exchange. Intel further states that, while the words quoted in paragraph 109 appear in the email exchange, Intel denies the Complaint's characterization of the document. Intel further

states that the quoted portion of the email merely reflects the author's understanding that, to address what Dell perceived to be increased competitive exposure in the market due to lower-priced AMD-based systems, Dell had discounted its Intel-based systems more heavily during the quarter than had been anticipated in the negotiations that occurred prior to the start of the quarter. Intel further states that, as a result, Dell approached Intel with a request for additional discounts to address the increased competitive exposure that Dell had experienced. Intel lacks sufficient information and belief as to Dell's internal accounting of its rebates or Dell's financial reporting to admit or deny the allegations in paragraph 109 relating to Dell's margin guidance, and on that basis denies them.

110. Intel states that paragraph 110 selectively quotes an April 8, 2004 internal Dell email exchange regarding Dell's negotiations with Intel concerning Dell's request for additional discounts to meet competition. Intel further states that the quoted email shows that Intel did not provide Dell with the full level of incremental meet competition discounts Dell had requested for the quarter. Except as expressly admitted, Intel denies the allegations of paragraph 110.

111. Intel denies the allegations of paragraph 111. Intel denies that it made payments to Dell; Intel provided Dell with price discounts that were negotiated on a quarterly basis to meet competition. Intel states that Intel's discounts to Dell, in the form of rebates, lowered the cost of microprocessors to Dell.

112. Intel lacks sufficient information and belief as to the state of mind of Dell's executives and on that basis denies the allegations of paragraph 112. Intel states that Intel did not lose server performance leadership in 2004 or at any time. Intel states that, for certain applications, particularly relating to multi-processor systems and high performance computing,



Opteron had superior performance on some benchmarks but on other benchmarks and for other applications Intel's Xeon microprocessors performed better than AMD's Opteron. Intel further states that to address the competitive challenges presented by Opteron Intel worked proactively with Dell and other OEMs to improve its server roadmap in 2004 and 2005, and offered higher above-cost discounts to enable Dell to compete more effectively against AMD-based servers offered by other OEMs.

113. Intel lacks sufficient information and belief as to the state of mind of Dell's executives and on that basis denies the allegations of paragraph 113 regarding Dell's alleged concerns. Intel states that, as it did with all of its suppliers, Dell constantly negotiated with Intel to obtain the lowest possible prices. [REDACTED]

[REDACTED] Intel further states that the quoted statement by Mr. Otellini that Intel "underestimated Opteron" is merely an acknowledgement that, based on AMD's long history of delivering late to the market products that failed to meet expectations, Intel had not anticipated the full extent Opteron's success. Intel further states that to address the competitive challenges presented by Opteron Intel worked proactively with Dell and other OEMs to address the issues facing its server roadmap in 2004 and 2005, including making revisions to its server roadmap and offering increased above-cost discounts to enable Dell to compete more effectively against AMD-based servers offered by other OEMs.

114. Intel denies the allegations of paragraph 114. Intel states that paragraph 114 quotes out-of-context statements in a September 2004 email exchange between a Dell executive

and Paul Otellini. Intel further states that, while the words quoted in paragraph 114 appear in the email exchange, Intel denies the Complaint's characterization. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Intel further states that throughout 2004 and 2005 Intel worked with Dell to improve Intel's server roadmap and to maintain Dell's competitiveness, as the statement from Mr. Otellini quoted in paragraph 114 indicates.

115. Intel states that paragraph 115 quotes out-of-context statements in a November 30, 2004 internal Dell email exchange. Intel incorporates its response to paragraph 114 by reference. As Plaintiff alleges the internal Dell email was written to Dell's "lead negotiator with Intel" and Intel states that the statements quoted in the email reflect negotiating posturing by Dell. Except as expressly admitted, Intel denies the allegations of paragraph 115.

116. Intel states that paragraph 116 selectively quotes statements in a December 6, 2004 email exchange between Intel and Dell executives regarding negotiations about Dell's request for incremental discounts to address competitive exposures. Intel states that the incremental discounts referred to in paragraphs 116-118 of the Complaint were not conditioned on Dell purchasing microprocessors exclusively from Intel, as the depositions of Dell's executives confirm. Except as expressly admitted, Intel denies the allegations of paragraph 116.

117. Intel states that the Complaint quotes out-of-context statements in a December 7, 2004 email exchange between Intel and Dell executives regarding negotiations about Dell's request for incremental discounts to meet competitive exposures. Except as expressly admitted, Intel denies the allegations of paragraph 117.

118. Intel states that it never had an exclusive relationship with Dell and that Dell never agreed to purchase microprocessors exclusively from Intel. Intel further states that its discounts to Dell were never conditioned on Dell purchasing microprocessors exclusively from Intel. Intel states that paragraph 118 quotes out-of-context statements in a December 10, 2004 internal Intel email exchange regarding negotiations about Dell's request for incremental discounts. Intel states that it offered Dell above-cost discounted prices to retain Dell's business; the offer applied to Dell's purchases only for a short term; and while Intel hoped that Intel would retain Dell's business as a result of its offer, Dell did not commit that it would not seek different terms from Intel at any time going forward, or that it would buy only from Intel going forward. While the words quoted in paragraph 118 appear in the email exchange, Intel denies the Complaint's characterization of the document. Except as expressly admitted, Intel denies the allegations of paragraph 118.

119. Intel admits that Dell did not launch AMD-based products in 2004 or 2005. [REDACTED]

[REDACTED]

[REDACTED] Intel states that its discounts to Dell were never conditioned on Dell purchasing microprocessors exclusively from Intel. Intel further states that Dell was at all times free to decide to purchase microprocessors from AMD or any other supplier. Intel admits that the words quoted in paragraph 119 appear in the February 23, 2005 wire service story. Intel states that Mr. Rollins's quoted statements reflect Dell's contemporaneous assessment of the future performance of Intel and AMD server microprocessors in light of various modifications Intel had made to its server roadmap, including the acceleration of its introduction of the Paxville microprocessor, a dual core microprocessor for the server segment that was launched in 2005, as well as the price discounts offered by Intel.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Intel further states that in a January 20, 2005 email to Paul Otellini and Craig Barrett, Art Roehm reported that he and another Intel executive "had a very encouraging call" with a senior Dell executive who informed them that he was "betting on Intel's accelerated roadmap." [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Intel states that in October 2005, Intel released its Paxville microprocessor, well ahead of its original proposed 2006 release date. Except as expressly admitted, Intel denies the allegations of paragraph 119.

120. Intel denies the allegations of paragraph 120. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

121. Intel states that Dell, not Intel, controlled Dell's use of the bid bucket. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Thus, Intel states that it had no control over the amount of discounts that Dell allocated to the bid bucket, the number of bids to which Dell assigned discounts from the bid bucket, the identity of the bids for which Dell assigned bid bucket discounts, or the amount

of discounts that Dell assigned to particular bids. Except as expressly admitted, Intel denies the allegations of paragraph 121.

122. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Intel states that the partially quoted language is contained in an internal Dell email. Except as expressly admitted, Intel denies the allegations of paragraph 122.

123. Intel denies the allegations of paragraph 123.

124. Intel states that the quoted words in paragraph 124 turned into a "sentence" are taken out of context. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Except as expressly admitted, Intel denies the allegations of paragraph 124.

125. Intel lacks sufficient information and belief to admit or deny whether paragraph 125 accurately quotes the entry from a bid bucket report purportedly set forth in paragraph 125, and on that basis denies the allegation. Intel incorporates by reference its response to paragraph 124. Except as expressly admitted, Intel denies the allegations of paragraph 125.

126. Intel denies the allegations of paragraph 126.

127. Intel denies the allegations of paragraph 127. Intel states that the bid bucket report cited in paragraph 127 does not show that Intel was involved in Dell's pricing decisions with respect to this bid. Intel further states that its Business Development Managers (BDMs) frequently provide technical and other forms of non-monetary support in connection with bids by its customers, including but not limited to Dell. Intel further states that while Intel's BDMs were aware that discounts from the bid bucket were available to Dell's sales force and on occasion suggested to Dell sales personnel that they seek some of those discounts to use in certain highly competitive bids, Intel was not involved in Dell's evaluations or decisions as to whether to use the bid bucket to support a particular bid, the amount of the discounts to be applied from the bid bucket, or the system price to be bid by Dell. Intel states that these decisions were all solely within Dell's discretion.

128. Intel lacks sufficient information and belief to admit or deny the allegations of paragraph 128, and on that basis denies them. Intel incorporates by reference its response to paragraphs 121 and 124.

129. Intel lacks sufficient information and belief to admit or deny the allegations of paragraph 129, and on that basis denies them. Intel incorporates by reference its response to paragraphs 121 and 124. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

130. Intel admits that, in the summer of 2005, Intel and Dell held another round of rebate negotiations and that this came as no surprise to Intel. Intel states that, as confirmed by the depositions of Dell executives, Dell constantly negotiated with Intel to obtain the lowest possible prices, as Dell did with all of its suppliers. Intel further states that Dell constantly used the prospect of shifting purchase volumes to AMD as bargaining leverage with Intel. [REDACTED]

[REDACTED]

[REDACTED] Intel states that, as part of its negotiating strategy, Dell exaggerated Intel's weaknesses and overstated AMD's performance. Intel incorporates by reference its responses to paragraphs 76, 89 and 114. Except as expressly admitted, Intel denies the allegations of paragraph 130.

131. Intel states that paragraph 131 quotes out-of-context statements in a May 12, 2005 internal Intel email in which an Intel executive speculated about a Dell executive's potential position in negotiations with Intel over the sale of Itanium microprocessors for a single workstation, and not servers, as suggested by Complaint. While the words quoted in paragraph 131 appear in the email exchange, the Complaint mischaracterizes the email exchange as



addressing Intel's server business and Intel denies the Complaint's characterization. Except as expressly admitted, Intel denies the allegations of paragraph 131.

132. Intel states that paragraph 132 quotes out-of-context statements in an August 2005 internal Intel email exchange. The context of the exchange was Intel's concerns that Intel and Dell had different views of the most effective competitive strategy to compete on the merits against AMD-based products in the marketplace, which might affect Intel's response to future requests by Dell for increased meeting competition rebates. Except as expressly admitted, Intel denies the allegations of paragraph 132.

133. Intel states that paragraph 133 quotes out-of-context statements in an August 18, 2005 internal Intel email written by Paul Otellini regarding a telephone call he had with Dell's then-CEO, Kevin Rollins. Intel further states that Mr. Otellini's email merely reported that Mr. Rollins had assured him that Dell shared Intel's view that an effective competitive strategy for Dell was to "sell up" by working to sell greater quantities of higher-end computers, which would be a "win/win" for both Intel and Dell as it would enable both companies to sell more of their higher-margin products. Except as expressly admitted, Intel denies the allegations of paragraph 133.

134. Intel states that paragraph 134 quotes out-of-context statements in a November 4, 2005 internal Intel email from Intel's Dell Account Executive. Intel states that this internal Intel email merely reflects the author's frustration in his efforts to influence Dell to follow through on the "sell up" strategy that Intel had been recommending to Dell for some time. Except as expressly admitted, Intel denies the allegations of paragraph 134.

135. Intel states that paragraph 135 quotes out-of-context statements in a November 4, 2005 internal Intel email from Paul Otellini to other Intel executives, leaving out that Mr. Otellini disagreed with Mr. Dell's statements. Intel states that Dell constantly negotiated with Intel to obtain the lowest possible prices and that the telephone call memorialized in the quoted email was another effort by Dell to negotiate increased discounts from Intel. Intel states that Dell repeatedly used the prospect of shifting volume from Intel to AMD as negotiating leverage with Intel. [REDACTED]

[REDACTED] Intel incorporates by reference its responses to paragraphs 89 and 114. Intel denies that in November 2005 Dell was losing "all the high margin business to AMD-based sku's" or that Dell had been behind for four years as a result of sole sourcing microprocessors from Intel. Intel states that, as described in Intel's response to paragraph 76 of the Complaint, Dell experienced very substantial growth during the period when it used Intel as its sole source of microprocessors, consistently outperforming the industry and becoming the world's largest OEM. Except as expressly admitted, Intel denies the allegations of paragraph 135.

136. Intel states that paragraph 136 quotes out-of-context statements in a November 10, 2005 email exchange between Michael Dell and Paul Otellini. [REDACTED]

[REDACTED] Intel incorporates by reference its responses to paragraphs 89 and 114. Intel further states that the quoted statement by Mr. Otellini that Intel's roadmap "is improving rapidly daily" and "will deliver increasingly leadership products" is a reference to the products that resulted from the revisions Intel made to its product

roadmap in 2005 to address the competitive issues raised by Dell, and also to Intel's Conroe, Merom, and Woodcrest microprocessors, which were scheduled to be launched in mid-2006. Intel further states that, with the introduction of Conroe, Merom, and Woodcrest, and Intel's subsequent products, Intel did in fact deliver leadership products, as Mr. Otellini wrote to Mr. Dell that Intel would do. Intel further states that Mr. Otellini's reference to Intel's providing "over \$1B per year to Dell for meet comp efforts" is simply a reference to the above-cost price discounts Intel provided to Dell to enable Dell to compete more effectively against AMD-based products offered by other OEMs. [REDACTED]

[REDACTED] Except as expressly admitted, Intel denies the allegations of paragraph 136.

137. Intel states that paragraph 137 quotes out-of-context statements in a November 24, 2005 email exchange between Michael Dell and Paul Otellini. While the words quoted in paragraph 137 appear in the email exchange, the Complaint mischaracterizes the email exchange and Intel denies the Complaint's characterization. [REDACTED]

[REDACTED] Intel incorporates its responses to paragraphs 89 and 114 by reference. Except as expressly admitted, Intel denies the allegations of paragraph 137.

138. Intel denies the allegations of paragraph 138. Intel states that it did not make "payments" to Dell. Intel states that it sold microprocessors and other products to Dell, for which Dell paid Intel, and that, in connection with those sales, Intel provided Dell with above-

cost discounts that reduced the price that Dell paid Intel for those products. Intel further states that its discounts to Dell were never conditioned on Dell purchasing microprocessors exclusively from Intel. The depositions of Dell executives confirm that Dell did not believe that the rebates Dell received from Intel were conditioned on Dell not purchasing microprocessors from AMD or any other brand of microprocessors.

139. Intel states that paragraph 139 quotes out-of-context statements in a February 16, 2006 email from Paul Otellini to other Intel executives. Intel states that the quoted portion of Mr. Otellini's email was merely an internal tongue-in-cheek reference to Dell's constant efforts to negotiate additional price discounts from Intel to increase Dell's competitiveness. Mr. Rollins' statement quoted in paragraph 139 was not the result of any agreement on exclusivity with Intel. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Except as expressly admitted, Intel denies the allegations of paragraph 139.

140. Intel denies that its relationship with Dell ever reached a "breaking point." Intel incorporates its response to paragraph 119 by reference. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Except as expressly admitted, Intel denies the allegations of paragraph 140.

141. Intel admits that in an April 29 email to other Dell executives, Michael Dell wrote: "We have been looking at the situation for a long time, and have decided to introduce a broad range of AMD based systems into our product line to provide the choice our customers are asking for." [REDACTED]

[REDACTED]

[REDACTED] Intel incorporates by reference its response to paragraph 76. Except as expressly admitted, Intel denies the allegations of paragraph 141.

142. Intel admits that the quoted language in paragraph 142 is contained in an internal Intel email. Intel states that the email from Craig Barrett to Paul Otellini quoted in paragraph 142 was purely internal and does not reflect any communication with Dell. Intel further states that Mr. Barrett was not involved in the negotiations with Dell that were ongoing at the time of his email and that the statement in his email was not implemented or communicated to Dell in any fashion. Intel further states that Mr. Barrett's email was an off-the-cuff reaction to a report by Mr. Otellini regarding Dell's negotiation tactics, to which Mr. Barrett took exception. Intel states that after Dell announced in May 2006 that Dell would be launching AMD-based systems, Intel continued to compete vigorously for Dell's business and continued to provide Dell with highly competitive pricing. Except as expressly admitted, Intel denies the allegations of paragraph 142.

143. Intel states that the internal email from Paul Otellini in paragraph 143 is mischaracterized, does not reflect any communication with Dell and merely suggests that Intel "ought to enter negotiations" with Dell concerning Dell's discounts going forward in light of Dell's announcement that it would be shifting volumes from Intel to AMD. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Except as expressly admitted, Intel denies the allegations of paragraph 143.

144. Intel states that the quoted language in paragraph 144, while contained in a Dell email, on its face does not support the inference Plaintiff seeks to draw, and merely reflects Dell's ability to choose to use AMD and Dell's constant willingness to shift volume to AMD if Intel did not sufficiently meet Dell's demands for better pricing. Intel states that it never paid Dell not to deal with AMD. Intel further states that Intel never conditioned its discounts to Dell on exclusivity and the depositions of Dell executives confirm that Dell never believed Intel's discounts to be conditioned on purchasing microprocessors exclusively from Intel. Intel further states that the depositions of Dell executives confirm they understood that at all relevant times Dell was free to decide to buy microprocessors from AMD or another supplier. Intel incorporates by reference its response to paragraph 76. Except as expressly admitted, Intel denies the allegations of paragraph 144.

145. Intel incorporates by reference its response to paragraph 76. Intel further states that there was no agreement between Dell and Intel that Dell would limit its purchase of AMD microprocessors from May through the end of 2006. Intel further states that in the third and fourth quarters of 2006 Dell introduced AMD-based desktop, notebook and dual processor server systems. Specifically, Intel states that Dell introduced AMD-based desktops for consumers in September 2006, AMD-based dual-processor and multi-processor servers in October 2006, and AMD-based Optiplex corporate desktops and consumer and small business notebooks in November 2006. [REDACTED]

[REDACTED] Intel further states that, while AMD's share of Dell's microprocessor business reached approximately 20 percent in

the fourth quarter of 2006, that share is currently less than 10 percent. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Except as expressly admitted,

Intel denies the allegations of paragraph 145.

146. Intel denies the allegations of paragraph 146. Intel incorporates by reference its response to paragraph 145.

147. Intel denies the allegations of paragraph 147. Intel states that Intel did not punish or retaliate against Dell after Dell launched AMD-based products in 2006. Intel further states that the depositions of Dell executives confirm that Dell does not believe that Intel retaliated against Dell after Dell launched AMD-based products in 2006. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

148. Intel states that it never had an exclusive relationship with Dell, that Intel's discounts and supply to Dell were never conditioned on exclusivity, and Dell never agreed to purchase microprocessors exclusively from Intel. Intel further states that the email from Mr. Otellini to a Lenovo executive quoted in paragraph 148 contained Mr. Otellini's confidential views concerning the changing competitive landscape and, as a result, Mr. Otellini sought to make sure it was not disseminated further. Intel states that Mr. Otellini was referring to opportunities for Lenovo to compete with Intel-based systems against expected AMD-based Dell systems. Intel further states that Intel preserved the email and produced it to the New York

Attorney General's Office. Except as expressly admitted, Intel denies the allegations of paragraph 148.

149. Intel admits that HP has developed, sold, and marketed AMD products from 2000 to the present, but disputes that HP's use of AMD products was done on a "limited basis," and states that by 2006 AMD microprocessors amounted to 33.2% of HP's purchases by unit volume, as reported by a leading industry data reporting organization. Intel states that HP used AMD microprocessors in all segments of its business, and [REDACTED]

[REDACTED] Intel denies the characterization of Intel's and HP's relationship. Despite quarterly competition over a multi-year period in many business segments, the Complaint cites no alleged Intel threats to "reduce its payments" or "cancel joint ventures." Instead, Intel and HP engaged in a series of negotiations that led to better pricing and support for HP from Intel. Except as expressly admitted, Intel denies the allegations of paragraph 149.

150. Intel denies the allegations of paragraph 150. The Complaint omits to disclose that AMD's share of HP's purchases, as reported by a leading industry data reporting organization, increased from 13.5% to 33.3% between 2002 and 2006, the period cited in paragraph 150, which contradicts the Complaint's claim that HP restricted its marketing of AMD-based products. With respect to the allegation concerning a 2002 agreement in paragraph 150, Intel states that Intel and HP entered into a written agreement entitled HPA1, and the written terms contained the agreement of the parties. Intel further states that the background of HPA1 was that HP had informed Intel that it intended to award 5% of its corporate desktop business to AMD, and identified a percentage of the remaining business the parties would

compete to provide to HP. After extended negotiations, HP awarded the contested business to Intel. The parties agreed that, due to the long and difficult negotiations, a simple one-year written agreement with a 30-day termination provision without cause would be in the interests of both parties. That written agreement did not contain a limit on market share. Intel further states that the parties would, as part of regular meetings, discuss the progress of the agreement, including the volumes and market segment share of Intel. Intel states that it entered into an overall agreement with HP in November 2006, which, based on a series of price discounts, marketing support and supply innovations, among other things, provided Intel the opportunity to increase its sales volume and share of business with HP, but did not require or ensure such an outcome.

151. Intel lacks sufficient information and belief to admit or deny the allegations of paragraph 151, and on that basis denies them.

152. Intel denies that it ever had an exclusive relationship with HP and states that HP always retained the ability to purchase microprocessors from AMD. Intel states that the analysis cited was prepared [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Intel lacks sufficient information and belief to admit or deny the remaining allegations of paragraph 152, and on that basis denies them.

153. Intel admits that certain HP executives favored the expanded use of AMD microprocessors in HP's commercial desktop products. Intel denies that "the commercial market . . . was increasingly interested in AMD-based products." Intel further states that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

154. Intel admits that an HP executive [REDACTED] stated to her management that IT managers had petitioned for an AMD desktop PC. Intel further states that

[REDACTED]

[REDACTED]

[REDACTED] Except as expressly admitted, Intel denies the allegations of paragraph 154.

155. Intel admits that HP considered and ultimately offered a desktop named the D315, containing AMD microprocessors, in portions of the corporate segment where HP believed the D315 was competitive. Intel denies that AMD-based PCs were suitable for large enterprises. In fact, nearly two years later, after AMD had had the opportunity to improve its product offerings, AMD's top sales executive stated that he "could come up with half a dozen valid objections in taking AMD into [HP's] true Enterprise line-up." Except as expressly admitted, Intel denies the allegations of paragraph 155.



156. Intel incorporates by reference its response to paragraph 152. Except as expressly admitted, Intel denies the allegations of paragraph 156.

157. Intel states that paragraph 157 contains selective quotes from HP documents, but denies that the statements accurately describe Intel's views. Intel incorporates by reference its response to paragraph 152. Otherwise, Intel lacks information and belief sufficient to admit or deny the allegations of paragraph 157, and on that basis denies the allegations.

158. Intel states that paragraph 158 contains a selective quote from an HP document, but denies that the statements accurately state Intel's motivation or state of mind. Intel incorporates by reference its response to paragraph 152. Except as expressly admitted, Intel denies the allegations of paragraph 158.

159. Intel states that HP's request for \$75 million as alleged in paragraph 159 was not based on any threat, direct or implied, from Intel. Intel lacks information and belief sufficient to admit or deny the remaining allegations of paragraph 159, and on that basis denies the allegations.

160. Intel admits that AMD made an offer to HP, that subject to the fulfillment of certain conditions, HP could obtain one million Athlon XP microprocessors for a net price of zero. Intel further states that the AMD microprocessors were not competitive with Intel's microprocessors for use in corporate PCs, regardless of the net price, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Intel otherwise lacks information and belief sufficient to admit or deny the allegations of paragraph 160, and on that basis denies the allegations.

161. Intel admits that it had a multi-year partnership with HP to develop and market Itanium microprocessors, and that Itanium was a non-x86 microprocessor jointly developed by HP and Intel and targeted primarily at high-end server customers, particularly those running mission critical functions, using servers running RISC processors. Intel denies it threatened HP or linked support of Itanium to HP's purchase of Athlon or Opteron microprocessors. Intel states that the Itanium project required enormous investments by Intel and that, as partners, Intel and HP had ongoing discussions about all aspects of the Itanium project, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Intel further states that such discussions are perfectly reasonable and expected between parties to a long-term product development agreement. Intel states that these discussions culminated in a revised agreement in November 2006 when the parties completed a comprehensive renegotiation of the respective contributions of the partners to the venture. Intel further states that HP and Intel continue to successfully market Itanium. Except as expressly admitted, Intel denies the allegations of paragraph 161.

162. Intel admits that the Itanium project was a partnership, and while both HP's and Intel's contributions to the Itanium project were important to its success, Intel was contributing more to the Itanium partnership than HP. Intel lacks sufficient information or belief as to HP's

state of mind to admit or deny those allegations, and on that basis denies all such allegations.

Except as expressly admitted, Intel denies the allegations of paragraph 162.

163. Intel lacks sufficient information or belief as to HP's state of mind to admit or deny those allegations, and on that basis denies them. Intel otherwise denies the allegations of paragraph 163.

164. Intel denies the allegations of paragraph 164. Intel states that it was entirely reasonable for Intel to invest engineering resources to compete with AMD's Opteron once Opteron achieved acceptance. Given that Intel has limited engineering resources and that the Xeon line of microprocessors, which competed directly with Opteron, was far more critical to Intel's competitiveness, Intel naturally had an interest in directing resources to maintain the competitiveness of this product line.

165. Intel lacks sufficient information or belief to admit or deny the allegations of paragraph 165, and on that basis denies the allegations. Intel states that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] the speculation of a single HP executive eight months prior to HPA1 does not establish such a fact.

166. Intel lacks sufficient information or belief to admit or deny the allegations of HP's state of mind in paragraph 166, and on that basis denies those allegations. Intel states that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Intel further states that HP used the bidding

process between AMD and Intel to obtain significant discounts and benefits from both parties, which improved HP's competitiveness. Intel otherwise denies the allegations of paragraph 166.

167. Intel admits that it entered into one-year written agreement with HP, referred to as HPA1, to supply HP with microprocessors for the corporate desktop segment. Intel states that HPA1 was terminable on thirty days' notice. Intel admits that Intel agreed to provide HP with \$130 million in rebates to be credited against HP's purchase volumes. Intel states that while it had volume and market share expectations, Intel denies that HPA1 had a binding market share or marketing limitation on AMD-based systems, and states that HP sold and marketed AMD based-systems in all portions of the corporate segment. Intel states that the written agreement required HP to segregate its branding to avoid consumer confusion as to whether a corporate desktop system was powered by an Intel or an AMD microprocessor. Intel further states that the written agreement required HP to promote Intel-based systems in requests for proposals in enterprise bids, as well as work with Intel on marketing. Intel states that it worked with HP to improve its ability to market and sell computer systems through its distribution channel. Except as expressly admitted, Intel denies the allegations of paragraph 167.

168. Intel denies the allegations of paragraph 168.

169. Intel denies the allegations of paragraph 169. Intel states that the HPA1 agreement required HP to segregate its branding to avoid consumer confusion as to whether a corporate desktop system was powered by an Intel or an AMD microprocessor. Intel states that HP had intended to, and in fact did, eliminate the Evo brand entirely and went to a system where Intel- and AMD-based systems marketed by HP were distinguished by model number. Intel further states that HPA1 required HP to promote Intel-based systems in requests for proposals in

enterprise bids, as well as work with Intel on marketing. Intel states that HP was not prohibited from selling AMD systems to enterprise customers, and in fact did so.

170. Intel admits that various drafts of a proposed agreement for Intel to provide microprocessors for HP's corporate desktop business were drafted and exchanged between Intel and HP, and that in July 2002 a proposed term sheet containing the selectively-quoted terms was prepared and exchanged. Intel states that the proposed term sheet was not accepted by the parties and did not contain the final terms, which were contained in a written agreement signed by both parties in December 2002. Except as expressly admitted, Intel denies the allegations of paragraph 170.

171. Intel admits that the quoted language in paragraph 171 is contained in an HP email to Intel in July 2002, which was five months prior to the final written agreement. Intel lacks sufficient information or belief as to the allegations concerning HP's state of mind, and on that basis denies those allegations. Intel states that the background of HPA1 was that HP had informed Intel that it intended to award 5% of its corporate desktop business to AMD, and identified a percentage of the remaining business the parties would compete to provide to HP. After extended negotiations, HP awarded the contested business to Intel. [REDACTED]

[REDACTED] Except as expressly admitted, Intel denies the allegations of paragraph 171.

172. Intel lacks sufficient information and belief to admit or deny the allegations of HP's state of mind concerning the secrecy of HPA1 alleged paragraph 172, and on that basis

denies them. Intel admits that the quoted language is contained in HP documents. Except as expressly admitted, Intel denies the allegations of paragraph 172.

173. Intel denies the allegations of paragraph 173.

174. Intel denies the allegations of paragraph 174. Intel states that the parties jointly agreed, after the lengthy negotiations for an agreement were unsuccessful, to enter into the one-page HPA1 agreement to reduce the agreement to the essential provisions and allow the parties to work together to introduce new corporate desktop systems to the market.

175. Intel denies the allegations of paragraph 175. Intel states that Intel and HP held regular meetings to discuss the progress of the HPA1 agreement, including marketing programs, and the volumes and market segment share of Intel. Intel further states that HP consistently reported to Intel that HP considered the HPA1 agreement to be very successful and HP wanted to continue the agreement. Intel further states that AMD's market segment share in HP's corporate desktop business in later versions of the HPA has exceeded 5% at certain times.

176. Intel admits that in 2004 Intel and HP entered into a new written agreement known as HPA2. Intel states that HP stated to Intel that it was pleased with the results of HPA1 and was anxious to enter into HPA2. Intel admits that the rebates negotiated between the parties and provided under HPA2 increased from those provided under HPA1. Intel states that [REDACTED]

[REDACTED] Except as expressly admitted, Intel denies the allegations of paragraph 176.

177. Intel admits that an internal HP document contains the quotations in paragraph

177. Intel further states that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Except as expressly admitted, Intel denies the allegations of paragraph 177.

178. Intel denies the allegations of paragraph 178. Intel states that its corporate desktop offerings have consistently been superior to those offered by AMD, based on Intel's platform stability, performance, manageability, and security, and that AMD internally has recognized that fact repeatedly.

179. Intel denies that it directly or by implication restricted or threatened to restrict HP's supply of microprocessors. Intel states that it attempted in good faith to meet the supply demands of its customers. Intel lacks sufficient information or belief to admit or deny the remaining allegations of paragraph 179, and on that basis denies them.

180. Intel lacks sufficient information or belief to admit or deny the allegations of paragraph 180, and on that basis denies them.

181. Intel admits that the referenced email contains the quoted statement, but lacks sufficient information or belief to admit or deny whether the statement accurately reflected the business situation at HP, and on that basis denies the allegation. Intel further denies any implication that it threatened to retaliate against HP. Except as expressly admitted, Intel denies the allegations of paragraph 181.

182. Intel admits that in February 2004, HP publicly announced a comprehensive three-year partnership with AMD in the server segment. Intel admits that HP did not discuss its AMD partnership with Intel prior to HP's public announcement. Intel denies that HP's use of AMD's products was "limited." Intel admits that its Xeon-based systems competed with

Opteron-based products from late 2003 forward. Except as expressly admitted, Intel denies the allegations of paragraph 182.

183. Intel admits that it faced significant competition from Opteron from late 2003 onward, and Opteron-based systems achieved success commensurate with Opteron's competitive strengths. Intel states that the corporate segment was always open for competition from AMD, but that AMD's failure to adequately address critical issues to corporate customers that Intel did address, notably quality, platform stability, manageability and security, and mobile computing, limited AMD's success in that segment. Intel further states that the implication that success in selling Opteron-based servers necessarily provides greater opportunity to AMD in other areas of the corporate segment is incorrect, given the need to address the specific needs of corporate customers in desktop and mobile systems. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Except as expressly admitted, Intel

denies the allegations of paragraph 183.

184. Intel admits that for certain applications, particularly some relating to high performance computing, Opteron had superior performance benchmarks prior to the introduction of the Woodcrest server microprocessor in June 2006, but for other enterprise applications the Xeon family was superior. Intel states that its server products had other features relating to reliability, availability and serviceability, including security, that were superior to AMD's and were important advantages in some portions of the server segment. Intel admits that it faced significant competition from Opteron from late 2003 onward, and Opteron-based systems achieved success commensurate with Opteron's competitive strengths. Except as expressly admitted, Intel denies the allegations of paragraph 184.

185. Intel admits that the quotation cited is contained in an internal HP email. Intel denies that it threatened to punish HP. Except as expressly admitted, Intel denies the allegations of paragraph 185.

186. Intel denies the allegations of paragraph 186. Intel states that, after HP's February 2004 announcement of a three-year partnership with AMD, Intel continued to compete vigorously for HP's server business, and ultimately negotiated a written agreement in April 2005, providing for volume-based discounts to HP for purchases of microprocessors for servers.

187. Intel lacks sufficient information or belief to admit or deny the allegations of paragraph 187 relating to HP's state of mind, and on that basis denies the allegations. Intel denies the remaining allegations of paragraph 187. Intel states that, after HP's February 2004 announcement of a three-year partnership with AMD, Intel continued to compete vigorously for HP's server business, and negotiated a written agreement in April 2005, [REDACTED]

[REDACTED]

188. Intel admits that the quotation cited in paragraph 188 is contained in an internal email, but states that it does not support the conclusion alleged. Intel states the allegations of paragraphs 188 and 189 are inconsistent, as paragraph 188 alleges that Intel made meeting competition offers to HP's sales force, while paragraph 189 alleges that Intel refused to provide meeting competition offers to HP because of its promotion of AMD-based server systems. Intel further states that it negotiated in good faith with HP to compete with AMD for HP's server business. Except as expressly admitted, Intel denies the allegations of paragraph 188.

189. Intel admits that the selectively-quoted language is contained in an internal Intel email. Intel states that it made decisions, based on its own business interests, whether to accept specific HP requests for discounted prices in individual bidding opportunities. Intel further states that it negotiated with HP throughout 2004, culminating in April 2005 in a written contract

providing HP volume-based discounts to purchase Intel server microprocessors. Intel denies that it "punished" HP. Except as expressly admitted, Intel denies the allegations of paragraph 189.

190. Intel lacks information and belief to admit or deny the allegations of paragraph 190 relating to HP's state of mind, and on that basis denies the allegations. Intel otherwise denies the allegations of paragraph 190.

191. Intel states that it engages in continuous discussions with HP on a wide variety of business issues, and in particular negotiated with HP concerning HP's server business. Intel further states that it appropriately seeks opportunities to compete for HP's business, but that HP has decided, in a number of instances, in the exercise of its business discretion, not to provide opportunities for Intel to compete, including at times in the server segment in 2004. Except as expressly admitted, Intel denies the allegations of paragraph 191.

192. Intel admits that the quoted language is contained in an HP communication to Intel. Intel admits that HP is a large and important customer of Intel's, Intel is a major supplier of HP, and that HP and Intel engage in continuous discussions about competitive issues. Intel further states that HP was also a major customer of AMD, and that during that time promoted AMD-based multi-processor systems. Except as expressly admitted, Intel denies the allegations of paragraph 192.

193. Intel admits that the quoted statements are contained in internal HP emails, but lacks sufficient information or belief to admit or deny the allegations concerning HP's state of mind, and on that basis denies those allegations. Intel states that it had made very large investments in Itanium and that Itanium was not profitable to Intel both prior to and in 2005, and Intel had discussions with HP throughout the Itanium partnership to find ways to mutually

improve the results of the partnership. These discussions ultimately led to an agreement in November 2006 between HP and Intel that provided benefits to both parties and made the Itanium collaboration viable and profitable going forward. Except as expressly admitted, Intel denies the allegations of paragraph 193.

194. Intel denies that it had agreements with HP to limit HP's sales and promotions of AMD-based products. Intel admits that it entered into a written Memorandum of Understanding with HP effective November 1, 2006 (the "2006 MOU"). Intel denies the characterization of the 2006 MOU contained in paragraph 194. Intel states that the 2006 MOU was a good-faith attempt on the part of HP and Intel to improve their relationship and HP's competitiveness through a variety of provisions, including but not limited to volume-based price discounts, supply innovation, and joint marketing. Except as expressly admitted, Intel denies the allegations of paragraph 194.

195. Intel denies the allegations of paragraph 195. Intel denies that "HP had persisted in maintaining a limited relationship with AMD." In fact, despite acknowledged deficiencies in its offerings, AMD had more than doubled its share of HP's microprocessor consumption, from 13.5% in 2002 to 33.2% in 2006. Intel incorporates by reference paragraph 30.

196. Intel admits that the quoted language in paragraph 196 is contained in an August 2006 email written by Paul Otellini. Intel states that it believed that there were opportunities for HP and Intel to work more closely together to achieve mutual growth through providing better products, service, and pricing to the market. Intel admits that it had regular meetings with HP on a variety of business issues. Except as expressly admitted, Intel denies the allegations of paragraph 196.

197. Intel denies the allegations of paragraph 197 and further states that Intel personnel attempted to make sure that the language included in the written agreement correctly stated the agreement of the parties.

198. Intel denies the allegations of paragraph 198. Intel states that the agreement referred to in paragraph 198 was the 2006 MOU. Intel further states that the 2006 MOU had a two-year term, but provided that at six-month intervals the parties could initiate a 30-day termination process, and that the 2006 MOU included individual volume-based discount tiers for each segment of HP's business, as well as other terms related to, among other things, supply innovations, marketing and the Itanium relationship. Intel states that there were no specific market shares promised or guaranteed by HP to Intel, and in fact Intel's overall percentage share of HP's microprocessor business increased by only 2% in 2007 despite Intel's introduction of a new product line that established clear performance superiority over AMD in all volume market segments, in addition to the superiority in other attributes that Intel possessed, such as reliability, security, stability, battery life for notebook PCs, supply, and reputation. This growth in share was smaller than that recorded by Intel in the market as a whole, based on the strength of Intel's improved offerings and AMD's highly-publicized execution problems in 2007. [REDACTED]

[REDACTED]

[REDACTED]

199. Intel admits that Intel and HP entered into a "Letter of Intent" dated September 14, 2006, which contained the quoted language referenced in paragraph 199, but Intel states that the Complaint leaves out language that clarifies the meaning of the quotation, which was that Intel would be given an opportunity by HP to win additional business if HP was more successful

than the parties projected, and not that Intel would be guaranteed any market share. Intel further states that the 2006 MOU superseded the letter of intent, and did not provide Intel with any promised or guaranteed share of HP's business. Except as expressly admitted, Intel denies the allegations of paragraph 199.

200. Intel denies the allegations of paragraph 200. Intel states that by its express terms the 2006 MOU contained the complete agreement of HP and Intel and therefore any allegations that Intel attempted to "conceal" the substance of the agreement are false. Intel further states that the 2006 MOU contained volume-based discounts that in no way required HP to buy any specific amount of Intel processors, but effectively constituted offers to sell at discounted prices that reasonably decreased with additional purchase volumes.

201. Intel denies the allegations of paragraph 201 that Intel obtained a market share gain or otherwise "knocked AMD back" by virtue of the 2006 MOU. To the extent that AMD was "knocked back" in 2007, it was as a result of serious execution problems on its part, [REDACTED]

[REDACTED]

Intel admits that it increased its overall revenue at HP during 2007, based on the discounts and other benefits provided HP which helped HP become more competitive. Except as expressly admitted, Intel denies the allegations of paragraph 201.

202. Intel denies the allegations of paragraph 202. Intel states that it had a number of joint innovation and development projects with IBM that led to new, innovative products, including a series of server "blade" systems, and an innovative chipset for 4-way servers, codenamed Hurricane.

203. Intel admits that some "High Performance Computing" (HPC) computers support computationally intensive modeling and simulation programs, admits that in the mid-2003 to 2006 time period there was some customer demand in the HPC market segment for Opteron-based servers, and states that AMD dramatically increased its market segment share during that time. Except as expressly admitted, Intel denies the allegations of paragraph 203.

204. Intel admits that IBM launched various Opteron-based servers and workstations in the 2003-05 time period, including the e325 2-way server in 2003, the e1350 cluster in 2003, the A-Pro Intellistation workstation in 2004, and the LS20 Opteron Blade Server in 2005. Intel states that IBM was the first Tier 1 OEM to announce and introduce into the market an Opteron-based server. Except as expressly admitted, Intel denies the allegations of paragraph 204.

205. Intel denies the allegations of paragraph 205. Intel states that, at IBM's request, it provided approximately \$130 million in meet competition discounts over a four-quarter period to allow IBM to meet downstream competition from Opteron-based servers sold by HP, Sun, and others on a price-performance basis and to accelerate the market introduction of IBM's proprietary EXA3 chipset designed to work with Intel's Xeon 4-way processors with 64-bit extensions. Intel further states these discounts were not conditioned on any agreement by IBM not to introduce Opteron-based servers. Intel states that, contrary to the allegation in paragraph 205 that Intel "had no genuine competitive alternative to offer" IBM for a 4-way server, IBM's Intel offering was successful and superior to the 4-way Opteron server alternative being considered by IBM. Intel further states that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

206. Intel admits that IBM launched a 2-way Opteron-based server called the e325 in 2003, [REDACTED]

[REDACTED], and that IBM developed in 2004-05 and launched in 2005 an Opteron-based blade server referred to as the LS20. Except as expressly admitted, Intel denies the allegations of paragraph 206.

207. Intel is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 207. Intel states that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

208. Intel admits the allegations of paragraph 208. Intel states that IBM's appearance at the public AMD Opteron launch event and IBM's commitment as the first Tier 1 OEM to develop an Opteron-based server demonstrates that IBM made its decisions concerning Opteron independent of any purported fear of Intel retaliation.

209. Intel is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 209. Intel states that, notwithstanding any internal speculation from individual IBM executives concerning Intel's potential reaction to IBM's expansion of its



use of AMD microprocessors, that speculation was not sufficient to prevent IBM from appearing at the April 2003 AMD Opteron launch event, publicly committing to launching an Opteron server later in 2003, and from being the first Tier 1 OEM to make publicly available for sale both Opteron-based servers and workstations. [REDACTED]

[REDACTED]

[REDACTED]

210. Intel admits that the selectively-quoted language in paragraph 210 is contained within the referenced email. Intel states that the context of the email string in which the language is contained relates to an internal Intel discussion as to whether Intel should accelerate the announcement of its Xeon x86 server CPU with 64-bit extensions, with a recommendation that Intel do so to meet competition from AMD by offering new, more competitive products. Except as expressly admitted, Intel denies the allegations of paragraph 210.

211. Intel denies that an Intel executive met with IBM "in order to attempt to reverse or severely limit" the distribution of the e325. Intel states that the objective of the meeting was to understand which accounts the IBM and Intel sales forces "will work together on in HPC and where we will compete" since IBM was going to sell both Intel-based and AMD-based servers in the HPC segment. Intel admits that the quoted language in paragraph 211 is contained within the email referenced in paragraph 211 and reflects IBM's stated strategy, except for the inference the Intel executive drew about that strategy, which was incorrect. Intel states that IBM's sales strategy was independently determined by IBM and [REDACTED]

[REDACTED]

[REDACTED] Except as expressly admitted, Intel denies the allegations of paragraph 211.

212. Intel admits that the selectively-quoted language in paragraph 212 is contained within the referenced April 2003 nine-page email string, but states that it does not reflect the complete context of the email string. Intel states that IBM signed the MOU in April 2003, appeared at the Opteron launch event and committed to introduce the IBM e325 Opteron server that was the subject of the MOU. Intel states that it never threatened nor took any action to "kill" IBM's xSeries business or to punish IBM for launching the e325. As stated in paragraph 64, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Except as expressly admitted, Intel denies the allegations of paragraph 212.

213. Intel denies that it ever took any action to "punish" IBM for launching the e325, and states that it never withheld any technical information from IBM. Intel admits that the selectively-quoted language in paragraph 213 is contained within the referenced April 2003 nine-page email string, but states that it does not reflect the complete context of the email string. Except as expressly admitted, Intel denies the allegations of paragraph 213.

214. Intel denies that it took any actions to limit IBM's promotion of the e325 and states that it never "punished" IBM for introducing or promoting the e325. Intel admits that the selectively-quoted language in paragraph 214 is contained within the referenced April 2003 nine-page email string, but states that it does not reflect the complete context of the email string or the actions IBM subsequently took. Intel states that, in fact, Intel increased meeting competition

discounts to IBM after IBM launched the e325. Except as expressly admitted, Intel denies the allegations of paragraph 214.

215. Intel admits that the quoted language in paragraph 215 is contained in the referenced August 2003 internal Intel email string, but states that it does not reflect the full context of the email string, which describes a positive working meeting where Intel and IBM discussed ways for both companies to be successful using Intel microprocessors. Intel states it did not stop collaborating with IBM in 2003 or 2004 as a result of IBM offering Opteron-based products, and in fact Intel expanded its collaborations, nor did Intel attempt to interfere with IBM's marketing and promotion efforts with respect to the e325 IBM was then launching. Except as expressly admitted, Intel denies the allegations of paragraph 215.

216. Intel denies that it threatened to "retaliate" or that it "retaliated" against IBM for its support of Opteron. Intel admits that the quoted language in paragraph 216 is contained within the referenced four-page September 2003 email string, but states that it does not reflect the full context of the email string. Intel states the entire email string shows that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Except as expressly admitted, Intel denies the allegations of paragraph 216.

217. Intel denies that there was any agreement or understanding between IBM and Intel that would have in any way prevented IBM from introducing the e326. Intel admits that the quoted language in paragraph 217 is contained within the referenced September 2004 email string. Intel also states that IBM's position with respect to dual-processor and multi-processor servers reflected IBM's valid business reasons and was not the product of any agreement, and that IBM was free at all times to introduce AMD-based server products. Except as expressly admitted, Intel denies the allegations of paragraph 217.

218. Intel admits that IBM considered launching a 4-way Opteron server in 2004 that it internally identified as the e350. Intel states that the server [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]. Except as expressly admitted, Intel denies the

allegations of paragraph 218.

219. Intel admits that on February 24, 2004 HP announced its intention to launch a number of AMD Opteron-based servers. Intel states that HP's announcement, and a similar announcement by Sun, meant that if IBM were to offer a 4-way Opteron server [REDACTED], it would no longer be the only Tier 1 server manufacturer offering a differentiated Opteron server, but one of several doing so. Intel states that HP's announcement [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Intel further states that, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Intel admits that the quoted language in paragraph 219 is contained in the referenced email. Intel states further that, shortly before the HP announcement, Intel publicly stated that it would be introducing its own Xeon server processors with 64-bit extensions. Except as expressly admitted, Intel denies the allegations of paragraph 219.

220. Intel denies the allegations of paragraph 220. Intel states that its server CPUs were competitive with Opteron CPUs for most applications, and by mid-February 2004 Intel had confirmed that it would be announcing x86 server processors with 64-bit extensions as it had been requested to do by IBM.

221. Intel admits that IBM requested that Intel make a commitment to provide meet competition funds over at least a three-quarter period to assist IBM in meeting on a price/performance basis downstream competition from HP and Sun Opteron-based servers, and that such funds could be used to bid against HP Opteron-based products. Intel denies that it offered IBM meet competition funding not to launch the e350 Opteron-based 4-way server or any other AMD server. Intel states that the quoted statement about IBM's willingness to make a "bold statement" about not going with AMD is taken out of context, and on its face refers to an internal IBM discussion rather than a proposal actually made to Intel. Intel states that IBM did

not make any "bold statement" and continued to develop Opteron 4-way and other servers. Intel further states that [REDACTED]

[REDACTED] Intel incorporates by reference its response to paragraph 218. Intel also admits that the quoted language in paragraph 221 is contained within the referenced documents. Except as expressly admitted, Intel denies the allegations of paragraph 221.

222. Intel admits that it provided to IBM approximately \$130 million in meet competition discounts over the four-quarter period from 2Q of 2004 through 1Q of 2005. Intel states that the discounts were provided to assist IBM in meeting downstream competition from Opteron-based servers sold by HP and other OEMs on a price/performance basis until Intel could make available x86 Xeon processors with 64-bit extensions later in 2004 and IBM could bring to market its proprietary EXA3 chipset compatible with the Intel Xeon processors. Intel further states that its annual server revenues from IBM over this four-quarter period after discounts were more than \$500 million. Except as expressly admitted, Intel denies the allegations of paragraph 222.

223. Intel admits that the quoted language in paragraph 223 is contained in the referenced document. Intel further admits that there was a joint webcast to the Intel and IBM sales teams in April 2004 in which senior Intel and IBM executives participated. Intel states that any commitment IBM made to selling Intel-based servers was the result of its own valid business reasons, and that IBM was free at all times to develop, announce, and bring to market Opteron-based servers, including 4-way and blade servers. Except as expressly admitted, Intel denies the allegations of paragraph 223.

224. Intel admits that the quoted language in paragraph 224 is contained within the referenced April 2004 email. Intel states that the expectation of the Intel executive was proven to be wrong, with IBM introducing an improved version of the e325 (the e326) in the fall of 2004, an Opteron-based workstation in May 2004, an enhanced dual core version of the e326 workstation, and the e1350 dual core cluster server in the spring of 2005, a 2-way Opteron blade server in May 2005, and 5 new Opteron-based servers in August 2006. Except as expressly admitted, Intel denies the allegations of paragraph 224.

225. Intel denies that the \$130 million in discounts to IBM was a payment, and states that that this discount were offered, after analysis of the competitive offerings and negotiation, to help IBM directly compete with other OEMs offering AMD-based servers. Intel denies that IBM's meet competition discounts were mischaracterized as ECAPs. Intel states that it has long used discounts from CAP prices, like those provided to IBM, to meet competition from AMD or downstream competition an OEM faced from AMD-based servers. Intel states that there were a number of procompetitive purposes for the \$130 million in meeting competition discounts provided to IBM, including facilitating IBM's ability to compete with Intel-based servers on a price/performance basis with Opteron-based servers sold by HP, Sun, and others, and accelerating the introduction of IBM's proprietary EXA3 chipset designed to work with Intel's 4-way Xeon processors with 64-bit extensions. Intel further states that the collaboration between Intel and IBM on servers was successful and led to growth for both companies. Except as expressly admitted, Intel denies the allegations of paragraph 225.

226. Intel admits that the quoted language in paragraph 226 is contained within the referenced email. Intel states that Intel and IBM negotiated regularly concerning the appropriate

amount of meeting competition discounts, and that [REDACTED]

[REDACTED] Except as expressly admitted, Intel denies the allegations of paragraph 226.

227. Intel lacks information or belief sufficient to deny the allegations of what IBM "understood," and on that basis denies such allegations in paragraph 227. Intel states that the meeting competition discounts it provided to IBM reflected the substantial increase in downstream competition that IBM faced from Opteron-based servers, the size of the potential Intel revenue at risk, the multi-quarter period for which IBM requested assistance, and the size of IBM's request for discounts. Intel further states that the effect of the meeting competition discounts was to lower Intel's prices and thereby assist IBM in competing on a price/performance basis with Opteron-based servers, and that these discounts benefited consumers. Intel states that [REDACTED]

[REDACTED] Except as expressly admitted, Intel denies the allegations of paragraph 227.

228. Intel is without knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of paragraph 228 and on that basis denies them. Intel denies the allegations of the last sentence of paragraph 228. Intel states that the IBM blade server product using Opteron microprocessors was based on the joint development work of Intel and IBM, supported by funding and intellectual property of Intel. Except as expressly admitted, Intel denies the allegations of paragraph 228.

229. Intel admits the allegations of paragraph 229.



230. Intel admits that IBM and Intel entered into the Blade Server Collaboration ("BSC"), pursuant to the Blade Collaboration Master Agreement ("Blade Collaboration Agreement"), but denies that it was solely for the purpose of establishing its blade technology as an industry standard. Intel states that the primary purpose of the collaboration was to create and promote a new server form factor to more efficiently use space and reduce power consumption and grow the server segment through innovation. Intel admits the allegation of the second sentence of paragraph 230. Intel states that IBM was at liberty to offer a non-Intel blade server without Intel's consent if that blade server did not use either Intel's or joint intellectual property that Intel and IBM developed under the BSC and toward which Intel had contributed tens of millions of dollars and engineering resources. In the event that Intel or joint intellectual property was to be used in a blade server using Opteron blades, Intel admits that the procedure set forth in paragraph 5.5 of the Blade Collaboration Agreement applied. Except as expressly admitted, Intel denies the allegations of paragraph 230.

231. Intel admits the allegations of the first sentence of paragraph 231 and is without knowledge or information sufficient to form or belief as to the truth of the allegations of the second sentence of paragraph 231, and on that basis denies them.

232. Intel admits that the quoted language in paragraph 232 is contained within the referenced Intel email. Except as expressly admitted, Intel denies the allegations of paragraph 232.

233. Intel admits that it did not initially consent to IBM's exception request in December 2004 pursuant to the Blade Collaboration Agreement to utilize Intel's intellectual property in a competing product and that the quoted language in paragraph 233 from an Intel

field sales engineer is contained in an internal Intel email. The quoted language is incomplete and does not reflect the full context. Intel states that it internally evaluated and considered new blade products based on Intel's lower power mobile architecture that it believed had promise for the particular blade segment at issue. Intel states that it timely discussed in good faith the basis and scope of the exception request with IBM. Except as expressly admitted, Intel denies the allegations of paragraph 233.

234. Intel denies that it made "threats" to IBM concerning IBM's request to make an Opteron blade using Intel's intellectual property. Intel admits that the quoted language in paragraph 234 is contained within the referenced Intel email, but states that it does not reflect the full context. Intel states that it had a good faith basis to deny the use of its intellectual property by IBM in a competing product, and that it timely discussed in good faith the basis and scope of the exception request with IBM, as well as related issues concerning its areas of partnership with IBM. Intel has a legitimate interest in preventing a competitor from free riding on its investments in technology. Indeed, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Except as expressly admitted, Intel denies the allegations of paragraph 234.

235. Intel admits that a chipset links the microprocessor with other parts of the computer, that "Hurricane" was a name used by IBM for its proprietary EXA3 chipset used with Xeon 4-way and above processors, that Intel had provided engineering funding to support the development of the chipset, that this chipset had performance advantages over Intel chipsets used with Xeon 4-way processors, and that the EXA3 chipset differentiated IBM's servers from Xeon servers sold by Dell and HP that used Intel chipsets. Intel denies that it threatened to pull funding for Hurricane. Intel states that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Intel further states that it ultimately expressly separated the discussions of the Hurricane chipset license from the Blades Collaboration Agreement exception request. Intel in fact IBM modified the Agreement to allow IBM to sell an Opteron blade. Except as expressly admitted, Intel denies the allegations of paragraph 235.

236. Intel denies the allegations of paragraph 236. Intel states that not only did it not threaten IBM, Intel ultimately expanded its support of the BSC.

237. Intel admits that the quoted language in paragraph 237 is contained within the referenced email. Intel states that the 2-way Opteron blade that was the subject of IBM's exception request would have been housed in IBM's BladeCenter Chassis (like Intel's Xeon blades) to which Intel had contributed intellectual property and tens of millions of dollars to develop jointly with IBM. Intel states that the Blades Collaboration Agreement gave Intel the right to object to the use of its intellectual property for the benefit of a competitor, except under limited circumstances. Intel further states that use of Intel's intellectual property in competing

products reduced the return on Intel's investment. Intel states that IBM and Intel discussed in good faith the scope and nature of IBM's exception request, and ultimately Intel modified the Agreement to allow IBM to sell an Opteron blade. Intel also provided additional funding for the BSC. Intel further states that the BSC was a successful collaboration for IBM that introduced new, innovative server technology to the market. Except as expressly admitted, Intel denies the allegations of paragraph 237.

238. Intel admits that the quoted language in paragraph 238 is contained in the two emails referenced in paragraph 238. Intel states that the language quoted is incomplete and does not provide the full context. Intel states that it was considering reducing its going-forward support of the BSC prior to learning of IBM's Opteron-blade exception request because of a poor return on investment, but that, after receiving the exception request, Intel ultimately increased its level of investment and support. Intel states that it fulfilled all of its commitments to IBM related to the BSC. Intel further states that it subsequently agreed to a modification of the Blade Collaboration Agreement that allowed IBM to introduce on schedule and without delay the LS20 Opteron blade that was the subject of the request. Except as expressly admitted, Intel denies the allegations of paragraph 238.

239. Intel admits the first sentence of paragraph 239. Intel states that it had a good faith basis to deny the use of its intellectual property in a competing product, as shown by [REDACTED] [REDACTED] which is incorporated by reference. Intel further states that it timely discussed in good faith the basis and scope of the exception request with IBM. Intel lacks sufficient information or belief to admit or deny the allegation concerning the IBM executives' state of mind, and on that basis denies it.

Intel states that, as a result of its good faith discussions with IBM, Intel subsequently agreed to a modification of the Blade Collaboration Agreement that allowed IBM to introduce the LS20 Opteron blade that was the subject of the request on schedule and without delay. Except as expressly admitted, Intel denies the allegations of paragraph 239.

240. Intel admits that the quoted language in paragraph 240 is contained in the referenced email, but states that the characterization is misleading. Intel states it timely discussed in good faith the basis and scope of the exception request with IBM. Intel further states that, as result of this good faith discussions, Intel subsequently agreed to a modification of the Blade Collaboration Agreement that allowed IBM to introduce on schedule and without delay the LS20 Opteron blade that was the subject of the request. Intel states that it did not engage in any acts of "retaliation" against IBM as a result of IBM's launch of the LS20 Opteron blade server. To the extent not expressly admitted, Intel denies the allegations of paragraph 240.

241. Intel denies that it developed a plan to deprive the Opteron blade of "marketplace impact." Intel states that it had discussions with IBM about the scope of the requested exception to the provisions of the Blade Collaboration Agreement. Intel admits that the quoted language in paragraph 241 is contained in the referenced document, but that the language does not reflect how the Opteron LS20 blade was actually marketed. Intel states that the Opteron LS20 blade IBM introduced to the market was aggressively sold by IBM and backed by IBM warranties and service, and that the LS20 was viewed as a successful product by IBM. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Except as expressly admitted, Intel denies the allegations of paragraph 241.

242. Intel denies the allegations of paragraph 242. Intel states that [REDACTED]

[REDACTED]

[REDACTED] Intel states that, in light of the stated reason for the exception request, Intel and IBM discussed the scope of the exception, but denies that Intel "proposed a bundle of conditions," or that it "straightjacketed" IBM's marketing. Intel states that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Intel further states that it expanded its support of the BSC.

243. Intel admits that the quoted language in paragraph 243 is contained within the referenced internal IBM email. Intel states that, notwithstanding the speculation in the internal IBM email, IBM launched a full portfolio of five Opteron servers in 2006 and Intel did not "retaliate" in any way after IBM did so. Except as expressly admitted, Intel denies the allegations of paragraph 243.

244. Intel lacks sufficient information and belief to admit or deny the allegations of paragraph 244, and on that basis denies them.

245. Intel lacks sufficient information and belief to admit or deny the allegations of paragraph 245, and on that basis denies them.

246. Intel lacks sufficient information and belief to admit or deny the allegations of paragraph 246, and on that basis denies them.

247. Intel lacks sufficient information and belief to admit or deny the allegations of paragraph 247, and on that basis denies them.

248. Intel lacks sufficient information and belief to admit or deny the allegations of paragraph 248, and on that basis denies them.

249. Intel lacks sufficient information and belief to admit or deny the allegations of paragraph 249, and on that basis denies them.

250. Intel lacks sufficient information and belief to admit or deny the allegations of paragraph 250, and on that basis denies them.

251. Intel lacks sufficient information and belief to admit or deny the allegations of paragraph 251, and on that basis denies them.

252. Intel denies the allegations of paragraph 252. Intel states that its competition on the merits, including its many billions of dollars of yearly investment in research and development in product design, process technology, and manufacturing technology, and its price discounts, have led to an unbroken and indisputable record of dramatically improved computer performance at lower prices. Intel further states that its revolutionary Centrino mobile technology, as well as its Atom technology for netbooks, has led to enormous growth of mobile computing. Intel further states that the Complaint simply ignores the indisputable facts.

253. Intel lacks information or belief sufficient to admit or deny the allegation concerning Dell's state of mind, and denies those allegations on that basis. Intel otherwise denies the allegations of paragraph 253. Intel states that the Complaint is internally inconsistent in that it alleges that Intel provided very significant price reductions to OEMs, but yet at the same time complains Intel's prices were too high. Intel further states that during the time period referenced in the Complaint, AMD showed significant growth in volumes and market share, particularly in the server segment, and therefore any claim that the market was not subject to vigorous competition is unfounded.

254. Intel denies the allegations in paragraph 254.

255. Intel denies the allegations of paragraph 255.

256. Intel hereby incorporates by reference its responses to the allegations contained in Paragraphs 1-255 of the Complaint as set forth above.

257. Intel denies the allegations in paragraph 257.

258. Intel denies the allegations in paragraph 258.

259. Intel hereby incorporates by reference its responses to the allegations contained in Paragraphs 1-258 of the Complaint as set forth above.

260. Intel denies the allegations in paragraph 260.

261. Intel denies the allegations in paragraph 261.

262. Intel denies the allegations in paragraph 262.

263. Intel denies the allegations in paragraph 263.

264. Intel denies the allegations in paragraph 264.



265. Intel hereby incorporates by reference its responses to the allegations contained in Paragraphs 1-264 of the Complaint as set forth above.

266. Intel denies the allegations in paragraph 266.

267. Intel denies the allegations in paragraph 267.

268. Intel denies the allegations in paragraph 268.

269. Intel hereby incorporates by reference its responses to the allegations contained in Paragraphs 1-268 of the Complaint as set forth above.

270. Intel denies the allegations in paragraph 270.

271. Intel denies the allegations in paragraph 271.

272. Intel denies the allegations in paragraph 272.

273. Paragraph 273 is a jury demand and does not require a factual response. Intel also seeks a trial by jury.

#### **SEPARATE AND ADDITIONAL DEFENSES**

Without assuming any burden of proof that it would not otherwise bear, Intel asserts the following separate and additional defenses.

##### **FIRST SEPARATE AND ADDITIONAL DEFENSE**

274. As a defense to the Complaint, and each and every allegation contained therein, Intel alleges that each of plaintiff's claims fails to state facts sufficient to constitute a claim for relief against Intel.

##### **SECOND SEPARATE AND ADDITIONAL DEFENSE**

275. As a defense to the Complaint, and each and every allegation contained therein, Intel alleges that, pursuant to the Foreign Trade Antitrust Improvements Act of 1982 and

principles of international comity, this Court lacks subject matter jurisdiction over claims based on alleged conduct affecting the sale or purchase of AMD microprocessors manufactured outside the United States or AMD's alleged exclusion from selling such microprocessors outside the United States, the manufacture of computer systems outside the United States, or the distribution, marketing, or retail sale of computer systems outside the United States. Such alleged conduct did not and could not have had a direct, substantial, and reasonably foreseeable effect (a) on United States trade or commerce which is not trade or commerce with foreign nations, or on import trade or import commerce with foreign nations; or (b) on United States export trade or export commerce with foreign nations, of a person engaged in such trade or commerce in the United States, as, *inter alia*, AMD has manufactured 100 percent of its microprocessors in Dresden, Germany, or has had them manufactured for it in Singapore.

**THIRD SEPARATE AND ADDITIONAL DEFENSE**

276. As a defense to the Complaint, and each and every allegation contained therein, Intel alleges that its actions were privileged or justified under applicable law, and that plaintiff therefore should be barred from recovery.

**FOURTH SEPARATE AND ADDITIONAL DEFENSE**

277. As a defense to the Complaint, and each and every allegation contained therein, Intel alleges that its actions were undertaken in good faith to advance legitimate business interests and had the effect of promoting, encouraging, and increasing competition.

**FIFTH SEPARATE AND ADDITIONAL DEFENSE**

278. As a defense to the Complaint, and each and every allegation contained therein, Intel alleges that its actions met competition and therefore each of plaintiff's claims is barred by the meeting competition defense.

**SIXTH SEPARATE AND ADDITIONAL DEFENSE**

279. As a defense to the Complaint, and each and every allegation contained therein, Intel alleges that each of plaintiff's claims is barred in whole or part by applicable statutes of limitations, including, but not limited to, 15 U.S.C. § 15b, New York General Business Law § 340(5), and New York General Business Law § 342-a.

**SEVENTH SEPARATE AND ADDITIONAL DEFENSE**

280. As a defense to the Complaint, and each and every allegation contained therein, Intel alleges that plaintiff's claims are barred in whole or in part by the doctrine of laches.

**EIGHTH SEPARATE AND ADDITIONAL DEFENSE**

281. As a defense to the Complaint, and each and every allegation contained therein, Intel alleges that, insofar as plaintiff asserts claims on behalf of indirect purchasers of Intel products, all or part of the damages purportedly caused by Intel's alleged conduct were not passed on to said indirect purchasers of Intel products and, therefore, each such claim is barred by the pass-on defense.

**NINTH SEPARATE AND ADDITIONAL DEFENSE**

282. As a defense to the Complaint, and each and every allegation contained therein, Intel alleges that plaintiff lacks standing to assert some or all of the claims asserted therein.

**TENTH SEPARATE AND ADDITIONAL DEFENSE**

283. As a defense to the Complaint, and each and every allegation contained therein, Intel alleges that plaintiff, and/or any other person or entity in whose name and/or on behalf of whom plaintiff purports to commence this action, has not suffered an injury-in-fact or antitrust injury as a result of Intel's challenged conduct.

**ELEVENTH SEPARATE AND ADDITIONAL DEFENSE**

284. As a defense to the Complaint, and each and every allegation contained therein, Intel alleges that plaintiff, and/or any other person or entity in whose name and/or on behalf of whom plaintiff purports to commence this action, would be unjustly enriched were it allowed to recover any relief claimed to be due.

**TWELFTH SEPARATE AND ADDITIONAL DEFENSE**

285. As a defense to the Complaint, and each and every allegation contained therein, Intel alleges that plaintiff, and/or any other person or entity in whose name and/or on behalf of whom plaintiff purports to commence this action, has failed to mitigate its damages, if any, and that any recovery should be reduced or denied accordingly.

**THIRTEENTH SEPARATE AND ADDITIONAL DEFENSE**

286. As a defense to the Complaint, and each and every allegation contained therein, Intel alleges that plaintiff's claims are barred in whole or in part because application of these claims to wholly interstate or foreign commerce violates the Commerce Clause of the United States Constitution.

**FOURTEENTH SEPARATE AND ADDITIONAL DEFENSE**

287. As a defense to the Complaint, and each and every allegation contained therein, Intel alleges that the amount of any damages allegedly suffered by plaintiff, and/or by any other

person or entity in whose name and/or on behalf of whom plaintiff purports to commence this action, is too remote or speculative to allow recovery.

**FIFTEENTH SEPARATE AND ADDITIONAL DEFENSE**

288. As a defense to the Complaint, and each and every allegation contained therein, Intel alleges that plaintiff's claims are barred in whole or in part by waiver.

**SIXTEENTH SEPARATE AND ADDITIONAL DEFENSE**

289. As a defense to the Complaint, and each and every allegation contained therein, Intel alleges that plaintiff's purported claims for restitution are barred in whole or in part because restitution is unrelated to any measurable harm to consumers.

**SEVENTEENTH SEPARATE AND ADDITIONAL DEFENSE**

290. As a defense to the Complaint, and each and every allegation contained therein, Intel alleges that plaintiff's claims are barred in whole or in part to the extent that permitting the combined adjudication of the claims of plaintiff and of all other persons and entities in whose name and/or on whose behalf plaintiff purports to commence this action would violate Intel's constitutional right to separate trials.

**EIGHTEENTH SEPARATE AND ADDITIONAL DEFENSE**

291. As a defense to the Complaint, and each and every allegation contained therein, Intel alleges that this action is barred in part based upon the filing of a duplicative action currently pending in this Court, *Paul v. Intel Corp. (In re: Intel Corp. Microprocessor Antitrust Litig.)*, No. 05-485-JJF (D. Del.), seeking recovery on the same alleged conduct, based upon similar theories of recovery, and on behalf of a [putative] class of plaintiffs that [would] include many of the persons and entities in whose name and/or on whose behalf plaintiff purports to

commence this action. It would violate principles of due process and comity to allow duplicative actions to proceed at the same time.

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348209v.1/29282

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

**CERTIFICATE OF SERVICE**

I, Richard L. Horwitz, hereby certify that on January 12, 2010, the attached document was filed with the Clerk of the Court, which will send further notification of such filing(s) to the following when the document is available for viewing and downloading from CM/ECF:

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