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American Guarantee and Liability Insurance Company

11  
12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**  
14

15 Intel Corporation, a Delaware Corporation,

16 Plaintiff,

17 v.

18 American Guarantee and Liability Insurance  
Company, a New York Corporation,

19 Defendant.  
20

CASE NO. C09-00299-JF

**DEFENDANT AMERICAN GUARANTEE  
AND LIABILITY INSURANCE  
COMPANY'S ANSWER AND  
AFFIRMATIVE DEFENSES TO THE  
FIRST AMENDED COMPLAINT**

The Honorable Jeremy Fogel

21  
22 Defendant, American Guarantee & Liability Insurance Company ("American Guarantee"),  
23 by way of Answer to the First Amended Complaint of Plaintiff Intel Corporation ("Intel") says:

24 1. American Guarantee admits the allegations in the first two sentences of Paragraph  
25 1. American Guarantee admits that it is a New York corporation with a statutory home office  
26 located at One Liberty Plaza, 165 Broadway, 32nd Floor, New York, New York 10006, and a  
27 main administrative office or principal place of business located at 1400 American Lane,  
28 Schaumburg, Illinois 60196. The remaining allegations in Paragraph 1 assert a legal conclusion to

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1 which no response is required.

2           2.       The allegations in Paragraph 2 assert a legal conclusion to which no response is  
3 required.

4           3.       The allegations in the first sentence of Paragraph 3 assert a legal conclusion to  
5 which no response is required. American Guarantee denies that the American Guarantee policy  
6 was negotiated and/or obtained through a San Francisco based insurance broker, Marsh.  
7 American Guarantee lacks knowledge or information sufficient to form a belief as to the truth of  
8 the remaining allegations in Paragraph 3.

9           4.       American Guarantee refers to the complaints in the matters consolidated as Multi  
10 District Litigation and known as *In Re Intel Corporation Microprocessor Antitrust Litigation*,  
11 MDL No. 1717-JJF, and the complaints in the matters consolidated as the *Intel X86*  
12 *Microprocessor Cases*, Superior Court of California, County of Santa Clara (JCCP 4443), for their  
13 content. American Guarantee denies that the claims alleged in the AMD Litigation are at least  
14 potentially covered by the “advertising liability” language in the American Guarantee Policy and  
15 denies the remaining allegations in Paragraph 4.

16           5.       American Guarantee admits that by letter dated October 4, 2006, which American  
17 Guarantee refers to for its contents, Intel first advised it of the AMD Litigation. American  
18 Guarantee admits that by letter dated June 10, 2008, which American Guarantee refers to for its  
19 contents, Intel requested that American Guarantee acknowledge a duty to defend Intel in the AMD  
20 Litigation and reimburse it for its outstanding defense fees and costs from the AMD Litigation.  
21 American Guarantee admits that by letter dated January 9, 2009, which American Guarantee refers  
22 to for its content, American Guarantee denied Intel’s request that American Guarantee  
23 acknowledge a duty to defend Intel in the AMD Litigation and reimburse it for its outstanding  
24 defense fees and costs from the AMD Litigation. American Guarantee denies the remaining  
25 allegations in Paragraph 5.

26           6.       American Guarantee denies that any policies American Guarantee issued to Intel  
27 provide coverage for costs to defend the AMD Litigation or any indemnity arising from the AMD  
28 Litigation. American Guarantee lacks knowledge or information sufficient to form a belief as to

1 the truth of the remaining allegations in Paragraph 6.

2 7. American Guarantee refers to the First Amended Complaint for its content and  
3 denies the remaining allegations in Paragraph 7.

4 8. American Guarantee admits the allegations in Paragraph 8.

5 9. American Guarantee admits that it is a New York corporation engaged in the  
6 insurance business with a statutory home office located at One Liberty Plaza, 165 Broadway, 32nd  
7 Floor, New York, New York 10006, and a main administrative office or principal place of  
8 business located at 1400 American Lane, Schaumburg, Illinois 60196.

9 10. American Guarantee denies that the American Guarantee Policy was negotiated or  
10 obtained through California based insurance broker, Marsh. American Guarantee denies that Intel  
11 has exhausted the “second layer policy which sits directly below” the American Guarantee Policy.  
12 American Guarantee lacks knowledge or information sufficient to form a belief as to the truth of  
13 the remaining allegations in Paragraph 10.

14 11. American Guarantee refers to the XL 01-02 Policy for its content and denies the  
15 remaining allegations in Paragraph 11.

16 12. American Guarantee refers to the XL 01-02 Policy for its content and denies the  
17 remaining allegations in Paragraph 12.

18 13. American Guarantee refers to the XL 01-02 Policy for its content and denies the  
19 remaining allegations in Paragraph 13.

20 14. American Guarantee refers to the XL 01-02 Policy for its content and denies the  
21 remaining allegations in Paragraph 14.

22 15. American Guarantee denies the allegations in Paragraph 15.

23 16. American Guarantee lacks knowledge or information sufficient to form a belief as  
24 to the truth of the allegations in Paragraph 16.

25 17. American Guarantee admits that it issued to Intel excess liability policy no. AEC  
26 522880300 (the “American Guarantee Policy”), refers to the policy for its content, and denies the  
27 remaining allegations in Paragraph 17.

28 18. American Guarantee refers to the complaint in the lawsuit entitled *AMD v. Intel*,

1 U.S. District Court for Delaware, Case No. 05-441, for its content and denies the remaining  
2 allegations in Paragraph 18.

3 19. American Guarantee refers to the complaint in the lawsuit entitled *Paul v. Intel*,  
4 U.S. District Court for Delaware, Case No. 05-484, for its content and denies the remaining  
5 allegations in Paragraph 19.

6 20. American Guarantee refers to the complaints in the lawsuits pending in the  
7 Superior Court of California for the County of Santa Clara and consolidated as the *Intel X86*  
8 *Microprocessor Cases*, (JCCP 4443), for their content and denies the remaining allegations in  
9 Paragraph 20.

10 21. American Guarantee refers to the complaints in the AMD Litigation for their  
11 content. American Guarantee denies that the allegations in the AMD Litigation trigger the  
12 potential for coverage under the "Advertising Liability" language of the American Guarantee  
13 Policy, and further denies the remaining allegations in Paragraph 21.

14 22. American Guarantee refers to the complaints in the AMD Litigation for their  
15 content. American Guarantee denies that the allegations in the AMD Litigation trigger the  
16 potential for coverage under the "Advertising Liability" language of the American Guarantee  
17 Policy, and further denies the remaining allegations in Paragraph 22.

18 23. American Guarantee refers to the Standstill and Confidentiality Agreement for its  
19 content and denies the remaining allegations in Paragraph 23.

20 24. American Guarantee refers to the Standstill and Confidentiality Agreement for its  
21 content and denies the remaining allegations in Paragraph 24.

22 25. American Guarantee refers to the Standstill and Confidentiality Agreement for its  
23 content and denies the remaining allegations in Paragraph 25.

24 26. American Guarantee admits the receipt of correspondence from Intel dated October  
25 4, 2006, which American Guarantee refers to for its contents, wherein Intel first advised it of the  
26 AMD Litigation. American Guarantee admits that by letter dated June 10, 2008, which American  
27 Guarantee refers to for its contents, Intel requested that American Guarantee acknowledge a duty  
28 to defend Intel in the AMD Litigation and reimburse it for its outstanding defense fees and costs

1 from the AMD Litigation. American Guarantee denies that the XL 01-02 Policy was exhausted  
2 through the payment of defense costs for the AMD Litigation. American Guarantee lacks  
3 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in  
4 Paragraph 26.

5 27. American Guarantee admits that pursuant to the Standstill and Confidentiality  
6 Agreement, Intel provided it with certain information and refers to said information for its content.  
7 American Guarantee denies the remaining allegations in Paragraph 27, including the allegation  
8 that Intel's insurance program is trade secret protected, proprietary or confidential.

9 28. American Guarantee admits that by letter dated January 9, 2009, which American  
10 Guarantee refers to for its contents, American Guarantee denied any duty to defend or indemnify  
11 Intel for the AMD Litigation. American Guarantee denies the remaining allegations in Paragraph  
12 28.

13 29. American Guarantee admits that it filed the lawsuit entitled *American Guarantee &*  
14 *Liability Insurance Company v. Intel Corporation, et al.*, Case No. 09C-01-170, in the Superior  
15 Court of the State of Delaware, New Castle Division, and refers to the complaint in that matter for  
16 its content. American Guarantee denies the remaining allegations in Paragraph 29.

17 30. American Guarantee incorporates the responses contained in the preceding  
18 paragraphs of this Answer as though fully set forth herein.

19 31. American Guarantee refers to the American Guarantee Policy for its content.  
20 American Guarantee denies that American Guarantee has a duty to pay Intel's defense costs and  
21 expenses incurred defending against the AMD Litigation and denies the remaining allegations in  
22 Paragraph 31.

23 32. American Guarantee denies that Intel has exhausted underlying limits and amounts  
24 and denies the remaining allegations in Paragraph 32.

25 33. The allegations in Paragraph 33 assert a legal conclusion to which no response is  
26 required. To the extent an answer is required, American Guarantee denies the allegations in  
27 Paragraph 33.

28 34. American Guarantee admits that it disputes Intel's contentions. The remainder of

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1 the allegations in Paragraph 34 assert a legal conclusion to which no response is required. To the  
2 extent an answer is required, American Guarantee denies the allegations in Paragraph 34.

3 35. The allegations in Paragraph 35 assert a legal conclusion to which no response is  
4 required. To the extent an answer is required, American Guarantee denies the allegations in  
5 Paragraph 35.

6 36. American Guarantee incorporates the responses contained in the preceding  
7 paragraphs of this Answer as though fully set forth herein.

8 37. American Guarantee denies the allegations in Paragraph 37.

9 38. American Guarantee denies the allegations in Paragraph 38.

10 39. American Guarantee denies the allegations in Paragraph 39.

11 40. American Guarantee incorporates the responses contained in the preceding  
12 paragraphs of this Answer as though fully set forth herein.

13 41. American Guarantee refers to the American Guarantee Policy for its content.  
14 American Guarantee denies that American Guarantee has a duty to indemnify Intel with respect to  
15 the AMD Litigation and denies the remaining allegations in Paragraph 41.

16 42. American Guarantee denies that Intel has exhausted underlying limits and amounts,  
17 and denies the remaining allegations in Paragraph 42.

18 43. The allegations in Paragraph 43 assert a legal conclusion to which no response is  
19 required. To the extent an answer is required, American Guarantee denies the allegations in  
20 Paragraph 43.

21 44. American Guarantee admits that it disputes Intel's contentions. The remainder of  
22 the allegations in Paragraph 44 assert a legal conclusion to which no response is required.

23 45. The allegations in Paragraph 45 assert a legal conclusion to which no response is  
24 required. To the extent an answer is required, American Guarantee denies the allegations in  
25 Paragraph 45.

26 46. American Guarantee incorporates the responses contained in the preceding  
27 paragraphs of this Answer as though fully set forth herein.

28 47. American Guarantee denies the allegations in Paragraph 47.

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1 48. American Guarantee denies the allegations in Paragraph 48.

2 49. American Guarantee denies the allegations in Paragraph 49.

3 50. American Guarantee incorporates the responses contained in the preceding  
4 paragraphs of this Answer as though fully set forth herein.

5 51. The allegations in the first sentence of Paragraph 51 assert a legal conclusion to  
6 which no response is required. American Guarantee denies the remainder of the allegations in  
7 Paragraph 51.

8 52. American Guarantee denies the allegations in Paragraph 52.

9 53. American Guarantee denies the allegations in Paragraph 53.

10 54. American Guarantee denies the allegations in Paragraph 54.

11 **FIRST AFFIRMATIVE DEFENSE**

12 Intel has failed to state a claim against American Guarantee upon which relief can be  
13 granted.

14 **SECOND AFFIRMATIVE DEFENSE**

15 Intel's claims are barred, in whole or in part, by the doctrines of waiver, release, laches,  
16 estoppel, and/or unclean hands.

17 **THIRD AFFIRMATIVE DEFENSE**

18 Intel has failed to join indispensable parties.

19 **FOURTH AFFIRMATIVE DEFENSE**

20 Intel's claims are barred, in whole or in part, by the application of the terms, conditions  
21 and provisions of the American Guarantee Policy.

22 **FIFTH AFFIRMATIVE DEFENSE**

23 Any alleged coverage afforded by the American Guarantee Policy is subject to the self-  
24 insured retentions, limits of liability, and other terms and conditions contained in the policy.

25 **SIXTH AFFIRMATIVE DEFENSE**

26 Intel's claims are barred, in whole or in part, to the extent that Intel has failed to comply  
27 with conditions precedent and subsequent required under the American Guarantee Policy.

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**SEVENTH AFFIRMATIVE DEFENSE**

The complaints in the AMD Litigation do not allege “advertising liability” arising out of an “occurrence” during the policy period of the American Guarantee Policy.

**EIGHTH AFFIRMATIVE DEFENSE**

Any coverage obligation of American Guarantee is limited by the “other insurance” provisions contained in the American Guarantee Policy.

**NINTH AFFIRMATIVE DEFENSE**

Intel has failed to demonstrate that all available coverage underlying the American Guarantee Policy has been exhausted

**TENTH AFFIRMATIVE DEFENSE**

Intel’s claims are barred because the XL 01-02 Policy has not been properly exhausted by payment of judgments or settlements.

**ELEVENTH AFFIRMATIVE DEFENSE**

The American Guarantee Policy requires, as a condition precedent to coverage, that the insured comply with notice requirements. To the extent that American Guarantee was not provided with timely and proper notice as required by the policy with respect to the claims in the AMD Litigation, coverage is not available under the policy for the claims alleged in the AMD Litigation.

**TWELFTH AFFIRMATIVE DEFENSE**

Intel’s claims are barred because the complaints in the AMD Litigation allege only intentional and unlawful conduct by Intel in the form of a scheme to dominate the microprocessor market and maintain its monopoly through a worldwide effort to coerce customers to refrain from dealing with AMD.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Intel’s claims are barred, in whole or in part, to the extent the amounts sought from Intel in the AMD Litigation relate to losses that were known or were in progress prior to the policy period of the American Guarantee Policy.

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**FOURTEENTH AFFIRMATIVE DEFENSE**

Intel's claims are barred, in whole or in part, to the extent Intel has failed to mitigate the damages for which it allegedly is liable.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Intel's claims are barred, in whole or in part, to the extent it has made any voluntary payment, admitted liability, assumed any obligation, or incurred any expense without American Guarantee's consent.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Intel's claims are barred, in whole or in part, to the extent that it has failed to cooperate as required by the American Guarantee Policy.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Any coverage obligation of American Guarantee is limited by the limits of liability of the American Guarantee Policy.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

To the extent the American Guarantee Policy is held to apply to the claims against Intel in the AMD Litigation, a proper allocation of the loss or damages as between American Guarantee, Intel, and all other implicated insurers is required.

**NINETEENTH AFFIRMATIVE DEFENSE**

American Guarantee is not required to reimburse Intel for any unreasonable, excessive, improper, unnecessary, or unrelated costs or sums.

**TWENTIETH AFFIRMATIVE DEFENSE**

The rights and obligations of American Guarantee and Intel are defined and controlled by the limits of liability, terms, exclusions, conditions, and other provisions of the American Guarantee Policy. The terms, exclusions, conditions, and other provisions of the policy are too voluminous to itemize as affirmative defenses and, therefore, are incorporated by reference herein.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

Intel's First Amended Complaint is not described with sufficient particularity to permit American Guarantee to ascertain what other defenses (including defenses based on terms,

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1 conditions, or exclusions of the American Guarantee Policy) may exist. American Guarantee,  
2 therefore, reserves the right to assert all applicable defenses once the precise nature of the  
3 allegations in the First Amended Complaint is determined.

4 **WHEREFORE**, American Guarantee prays for relief as follows:

5 A. For a dismissal of the First Amended Complaint with prejudice;

6 B. For a denial of the relief sought by Intel in the First Amended Complaint;

7 C. For an award to American Guarantee of the attorneys' fees and costs of suit  
8 incurred in defending the First Amended Complaint; and

9 D. For such other relief as this Court may deem just and proper.

10 DATED: June 25, 2009

COUGHLIN DUFFY

11 CROWELL & MORING LLP

12  
13 By:  /s/

14 Steven P. Rice  
15 Attorneys for Defendant  
16 American Guarantee and Liability Insurance  
17 Company

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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF ORANGE**

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Orange, State of California. My business address is 3 Park Plaza, 20th Floor, Irvine, California 92614-8505.

On June 25, 2009, I served true copies of the following document(s) described as

**DEFENDANT AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY'S ANSWER AND AFFIRMATIVE DEFENSES TO THE FIRST AMENDED COMPLAINT**

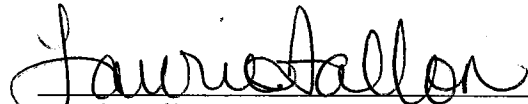
on the interested parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Crowell & Moring LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on June 25, 2009, at Irvine, California.

  
Laurie Fallon

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**SERVICE LIST**  
**C09-00299-JF**

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