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October 18, 2018

VIA ECF FILING

Mr. Peter R. Marksteiner
Circuit Executive & Clerk of Court
United States Court of Appeals for the Federal Circuit
717 Madison Place, NW
Washington, DC 20439

RE: *Princeton Digital Image Corporation v. Office Depot Inc., et al.,*
Nos. 17-2597, et al. – Citation of Supplemental Authority

Dear Mr. Marksteiner:

Pursuant to Fed. R. App. P. Rule 28(j) and Federal Circuit Rule 28(i), Appellee Princeton Digital Image Corp. ("PDIC") hereby submits a Citation of Supplemental Authorities. The cases cited below were issued after PDIC filed its last applicable brief.

PDIC had cited the Supreme Court's decision in *Microsoft Corp. v. Baker*, 137 S. Ct. 1702 (2017) in challenging this Court's appellate jurisdiction. (D.I.31 at 28-30). In its reply, Appellant argued that the case was limited to class action certifications. (D.I.41 at 6-7).

Pertinent to the above arguments, two additional U.S. Courts of Appeal have now applied *Microsoft v. Baker* to dismiss appeals in cases that did not involve class action certifications, and thus have rejected Appellant's argument and supported Appellee's argument. See:

Keena v. Groupon, Inc., 886 F.3d 360, 364 (4th Cir. 2018) (dismissing an appeal from a voluntary dismissal which was filed after the trial court ordered arbitration of claims, stating that the appeal "seeks to transform an otherwise interlocutory order into a § 1291 final decision" and "the final-judgment rule will not tolerate that effort");

Bd. of Trustees of Plumbers , Pipe Fitters & Mech. Equip. Serv., Local Union No. 392 v. Humbert, 884 F.3d 624, 626 (6th Cir. 2018) (dismissing appeal from judgment in a case for breach of a collective bargaining agreement, stating "If we reverse any of the district court's

decisions as to liability, the parties … are then free to litigate 'any issues' on remand, … and later to bring another appeal as to the court's decisions regarding those"); and

Wells Fargo Bank, N.A. v. Allstate Ins. Co., 735 F. App'x 208, 209 (6th Cir. 2018) (dismissing appeal after grant of partial summary judgment in breach of insurance contract case).

The above cases support the conclusion that *Microsoft v. Baker* governs here, and requires dismissal of Appellant's appeal for lack of finality, because Appellant voluntarily dismissed its case in order to appeal from an interlocutory decision limiting damages, without having tried liability or other issues, with intent to resurrect those abandoned issues on remand.

Respectfully Submitted,

George Pazuniak

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Word Count: 342

Counsel for Appellee/Cross-Appellant/Plaintiff

Service: Counsel of record via ECF