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13
14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **SAN JOSE DIVISION**

17 STEVEN P. GARCIA, and ANTHONY
18 STACHOWIAK, individually and on behalf
of all others similarly situated;

19 Plaintiffs,

20 v.

21 INTEL CORPORATION, a Delaware
22 corporation;

23 Defendant.

Case No. 5:18-cv-00046-SVK

**CLASS ACTION COMPLAINT FOR
DAMAGES AND EQUITABLE
RELIEF**

DEMAND FOR JURY TRIAL

1 Plaintiffs Steven P. Garcia and Anthony Stachowiak (“Plaintiffs”), individually and on
2 behalf of all others similarly situated, by their undersigned counsel, allege the following upon
3 personal knowledge as to their own acts and upon information and belief as to all other matters.

4 **INTRODUCTION**

5
6 1. Plaintiffs bring this action against defendant Intel Corporation (“Intel” or
7 “Defendant”) on behalf of all persons who purchased a defective Intel core processor (“CPUs”).

8 2. Defendant Intel’s x86-64x CPUs suffer from a security defect, which causes the
9 CPUs to be exposed to troubling security vulnerabilities by allowing potential access to
10 extremely secure kernel data (the “Defect”). The only way to “patch” this vulnerability requires
11 extensive changes to the root levels of the Operating System which will dramatically reduce
12 performance of the CPU. The Defect renders the Intel x86-64x CPUs unfit for their intended use
13 and purpose. The Defect exists in all Intel x86-64x CPUs manufactured since at least 2008. The
14 x86-64x CPU is, and was, utilized in the majority of all desktop, laptop computers, and servers in
15 the United States
16

17 3. To date, Defendant has been unable or unwilling to repair the Defect or offer
18 Plaintiffs and class members a non-defective Intel CPU or reimbursement for the cost of such
19 CPU and the consequential damages arising from the purchase and use of such CPUs. Indeed,
20 there does not appear to be a true “fix” for the Defect. The security “patch,” while expected to
21 cure the security vulnerabilities, will dramatically degrade the CPU’s performance. Therefore,
22 the only “fix” would be to exchange the defective x86-64x processor with a device containing a
23 processor not subject to this security vulnerability. In essence, Intel x86-64x CPU owners are left
24 with the unappealing choice of either purchasing a new processor or computer containing a CPU
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1 that does not contain the Defect, or continuing to use a computer with massive security
2 vulnerabilities or one with significant performance degradation.

3 4. The CPUs Defendant manufactured and sold to Plaintiffs and Class members
4 were not merchantable and were not fit for the ordinary and particular purposes for which such
5 goods are used in that the CPUs suffer from a critical security defect, requiring an OS-level
6 software patch that will degrade the performance of the CPU.

7
8 5. Having purchased a CPU that suffers from this Defect, Plaintiffs and class
9 members suffered injury in fact and a loss of money or property as a result of Defendant’s
10 conduct in designing, manufacturing, distributing and selling defective CPUs. Intel has failed to
11 remedy this harm, and has earned and continues to earn substantial profit from selling defective
12 CPUs.

13 **THE PARTIES**

14 6. On personal knowledge, Plaintiff Steven P. Garcia is an individual and a citizen
15 residing in the State of California. On or about February 14, 2015, Plaintiff Garcia purchased an
16 Asus desktop computer with an Intel CPU processor from Best Buy. He was unaware of the
17 CPU Defect described herein prior to his purchase of this computer. Had Defendant disclosed
18 such material facts Plaintiff Garcia would not have purchased a computer with this CPU or paid
19 the price he did.
20

21 7. On personal knowledge, Plaintiff Anthony Stachowiak is an individual and a
22 citizen residing in the State of Tennessee. On or about May 16, 2012, Plaintiff Stachowiak
23 purchased a new Intel Core i5-2500k processor from Amazon which he then inserted into his
24 computer. Plaintiff Stachowiak utilizes his computer for activities requiring high-end processor
25 performance such as gaming. Plaintiff Stachowiak was unaware of the Defect described herein
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1 prior to his purchase of this CPU. Had Defendant disclosed such material facts Plaintiff
2 Stachowiak would not have purchased this CPU or paid the price he did.

3 8. Defendant Intel Corporation is a business incorporated under the laws of the State
4 of Delaware. Defendant’s principal place of business is located at 2200 Mission College Blvd.,
5 Santa Clara, California. At all relevant times, Defendant was engaged in the business of
6 designing, manufacturing, distributing and/or selling electronic computer products, including the
7 defective Intel CPUs at issue.

8
9 9. Whenever this complaint refers to any act of Defendant, the reference shall mean
10 (1) the acts of the directors, officers, employees, affiliates, or agents of Defendant who
11 authorized such acts while actively engaged in the management, direction or control of the
12 affairs of Defendant, or at the direction of Defendant, and/or (2) any persons who are the parents
13 or alter egos of Defendant, while acting within the scope of their agency, affiliation, or
14 employment.

15
16 **JURISDICTION AND VENUE**

17 10. The court has jurisdiction over the lawsuit under 28 U.S.C. § 1332(d), the Class
18 Action Fairness Act, because this suit is a class action, the parties are diverse, and the amount in
19 controversy exceeds \$5 million, excluding interest and costs.

20 11. Venue is proper in this District under 28 U.S.C. §1391(b)(2) because a substantial
21 part of the events or omissions giving rise to this claim occurred in this district.

22
23 **FACTUAL ALLEGATIONS**

24 12. For at least 10 years, Defendant has marketed, distributed, and warranted these
25 defective Intel CPUs in California and throughout the United States.

1 13. On or about November 21, 2017, news stories revealed that a large number of
2 Intel processors contain a serious design flaw that creates significant security vulnerabilities for
3 any device that uses Intel processors. The security flaw is in Intel's x86-64 hardware which was
4 first introduced in 2004 and is still in use in the majority of today's modern-day processors.

5 14. The design defect is believed to exist in almost every Intel processor made since
6 at least 2004 regardless of the operating system. Intel's x86-64x processors are the most widely-
7 used chips in virtually all desktop and laptop computers. The Intel processors are also used in
8 most of the large, cloud based servers such as those from Google, Microsoft and Amazon.

9 15. On or about January 2, 2018, it was revealed that the "patch" to this security
10 vulnerability would lead to substantial CPU performance degradation. The "patch" would require
11 root level changes to the Operating System resulting in a substantial decrease in CPU
12 performance as much as 30-50% by some estimates.

13
14 **A. The Intel CPU Defect**

15 16. Intel's Intel CPUs have a Defect that is inherent within the CPU itself and/or the
16 result of software or hardware design or manufacturing flaws. Fixing the Defect using an OS-
17 level software patch causes the CPUs to slow down.

18 17. As *The Register* reported on January 2, 2018:

19
20 A fundamental design flaw in Intel's processor chips has forced a
21 significant redesign of the Linux and Windows kernels to defang the chip-
22 level security bug.

23 Programmers are scrambling to overhaul the open-source Linux kernel's
24 virtual memory system. Meanwhile, Microsoft is expected to publicly
25 introduce the necessary changes to its Windows operating system in an
26 upcoming Patch Tuesday: these changes were seeded to beta testers
27 running fast-ring Windows Insider builds in November and December.

1 Crucially, these updates to both Linux and Windows will incur a
2 performance hit on Intel products. The effects are still being benchmarked,
3 however we're looking at *a ballpark figure of five to 30 per cent slow
4 down*, depending on the task and the processor model. More recent Intel
5 chips have features – such as PCID – to reduce the performance hit. [...]

6 Similar operating systems, such as Apple's 64-bit macOS, will also need
7 to be updated – the flaw is in the Intel x86-64 hardware, and it appears a
8 microcode update can't address it. *It has to be fixed in software at the OS
9 level, or go buy a new processor without the design blunder.*

10 Details of the vulnerability within Intel's silicon are under wraps: an
11 embargo on the specifics is due to lift early this month, perhaps in time for
12 Microsoft's Patch Tuesday next week. Indeed, patches for the Linux
13 kernel are available for all to see but comments in the source code have
14 been redacted to obfuscate the issue.

15 See https://www.theregister.co.uk/2018/01/02/intel_cpu_design_flaw/ (last visited January 2,
16 2018).

17 18. Subsequent reporting by *The Register* found that Apple has already provided a
18 software patch for the defect: "Finally, macOS has been patched to counter the chip design
19 blunder since version 10.13.2, according to operating system kernel expert Alex Ionescu." (*Id.*)

20 19. The Defect's presence is material because fixing the Defect reduces the
21 performance of the CPUs thereby causing the CPUs to slow down from the performance
22 specifications that Defendant promised and that consumers expected when buying a computer
23 with an Intel CPU. The Defect is also material because of the security vulnerabilities Intel based
24 CPUs are exposed to.

25 20. As *The Register* article further explains:

26 **Impact**

27 It is understood the bug is present in modern Intel processors produced in
28 the past decade. It allows normal user programs – from database

1 applications to JavaScript in web browsers – to discern to some extent the
2 layout or contents of protected kernel memory areas.

3 The fix is to separate the kernel’s memory completely from user processes
4 using what’s called Kernel Page Table Isolation, or KPTI. [...]

5 Whenever a running program needs to do anything useful – such as write
6 to a file or open a network connection – it has to temporarily hand control
7 of the processor to the kernel to carry out the job. To make the transition
8 from user mode to kernel mode and back to user mode as fast and efficient
9 as possible, the kernel is present in all processes’ virtual memory address
10 spaces, although it is invisible to these programs. When the kernel is
11 needed, the program makes a system call, the processor switches to kernel
12 mode and enters the kernel. When it is done, the CPU is told to switch
13 back to user mode, and reenter the process. While in user mode, the
14 kernel’s code and data remains out of sight but present in the process’s
15 page tables. [...]

16 These KPTI patches move the kernel into a completely separate address
17 space, so it’s not just invisible to a running process, it’s not even there at
18 all. Really, this shouldn’t be needed, but clearly there is a flaw in Intel’s
19 silicon that allows kernel access protections to be bypassed in some way.

20 The downside to this separation is that it is relatively expensive, time wise,
21 to keep switching between two separate address spaces for every system
22 call and for every interrupt from the hardware. These context switches do
23 not happen instantly, and they force the processor to dump cached data
24 and reload information from memory. ***This increases the kernel’s
25 overhead, and slows down the computer.***

26 ***Your Intel-powered machine will run slower as a result.***

27 (*Id.* (emphases added).)

28 21. In an effort to run as quickly as possible, Intel processors run something called
“speculative execution.” In essence, the processor attempts to guess what operation is going to
be run next so that code can be standing by, ready to execute. When the processor selects what it
believes is the next operation, it will fetch the code(s) needed to carry out that operation and have

1 the code(s) on standby. However, Intel’s “speculative execute” code may “fetch” secure codes
2 without first performing a security check which would block such a request. So an innocuous
3 program such as Javascript might be exploited to gain access to extremely secure kernel data. Or
4 as the *The Register* writes, “[t]hat would allow ring-3-level user code to read ring-0-level kernel
5 data. And that is not good.”¹

6 22. The Defect is material because neither Plaintiffs, Class members, nor any
7 reasonable consumer would have purchased the defective Intel CPUs at the prices that they did
8 had they known or had they been told by Intel or its retail agents about the Defect prior to
9 purchase.
10

11 23. The Defect is unprecedented in scope in that it exposes millions and millions of
12 Intel-based computers to critical security vulnerabilities and hacking and the “patch” to cure
13 these security vulnerabilities will result in substantial performance degradation.
14

15 **B. Intel Admits the Defect Exists and Fails to Provide a Remedy**

16 24. Intel is aware that its CPUs suffer from the Defect that exposes the CPUs to
17 critical security vulnerabilities and that proposed OS-level software patches will slow the
18 performance of these CPU chips.

19 25. On January 3, 2018, Intel issued a press release in response to the myriad news
20 media reports concerning the Defect, stating:

21 Intel Responds to Security Research Findings

22
23 Intel and other technology companies have been made aware of new
24 security research describing software analysis methods that, when used for
25 malicious purposes, have the potential to improperly gather sensitive data
26 from computing devices that are operating as designed. Intel believes
27 these exploits do not have the potential to corrupt, modify or delete data.

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¹ https://www.theregister.co.uk/2018/01/02/intel_cpu_design_flaw/ (last visited January 3, 2018)

1 Recent reports that these exploits are caused by a “bug” or a “flaw” and
2 are unique to Intel products are incorrect. Based on the analysis to date,
3 many types of computing devices — with many different vendors’
4 processors and operating systems — are susceptible to these exploits.

5 Intel is committed to product and customer security and is working closely
6 with many other technology companies, including AMD, ARM Holdings
7 and several operating system vendors, to develop an industry-wide
8 approach to resolve this issue promptly and constructively. Intel has begun
9 providing software and firmware updates to mitigate these exploits.
10 Contrary to some reports, any performance impacts are workload-
11 dependent, and, for the average computer user, should not be significant
12 and will be mitigated over time.

13 Intel is committed to the industry best practice of responsible disclosure of
14 potential security issues, which is why Intel and other vendors had planned
15 to disclose this issue next week when more software and firmware updates
16 will be available. However, Intel is making this statement today because
17 of the current inaccurate media reports.

18 Check with your operating system vendor or system manufacturer and
19 apply any available updates as soon as they are available. Following good
20 security practices that protect against malware in general will also help
21 protect against possible exploitation until updates can be applied.

22 Intel believes its products are the most secure in the world and that, with
23 the support of its partners, the current solutions to this issue provide the
24 best possible security for its customers.

25 26. Defendant’s press release acknowledges the existence of the Defect, claims other
26 vendors (competitors) products also suffer from this Defect, and downplays the performance
27 impact which it claims “will be mitigated over time.”

28 27. Intel has failed to cure the Defect or replace Plaintiffs’ Intel CPUs with non-
defective CPUs and offer full compensation required under federal and state law.

1 28. Any fix would require extensive changes at the root levels of the OS software,
2 which would assuredly impact the performance of Intel processor-based machines. More
3 importantly, any “fix” would not only directly impact the performance of a particular user’s
4 Intel-based device, but have indirect performance impacts. Countless servers that run internet-
5 connected services in the cloud will see a dramatic degradation in performance, which will have
6 a downstream impact to all users of these servers. Thus, cloud-based services like Microsoft,
7 Google, and Amazon will see performance degradation.
8

9 **CLASS ACTION ALLEGATIONS**

10 29. Plaintiffs bring this class action claim pursuant to Rule 23 of the Federal Rules of
11 Civil Procedure. The requirements of Rule 23 are met with respect to the class defined below.

12 30. Plaintiffs bring their claims on their own behalf, and on behalf of the following
13 class (the “Class”):

14 All persons who, in California and such other states the Court determines to be
15 appropriate, purchased one or more Intel CPUs from Intel and/or its authorized
16 retailer sellers and experienced the Defect or are likely to experience the Defect
17 during the useful life of the CPU. Excluded from the Class are Defendant, its
18 officers and directors at all relevant times, members of immediate families and
19 their legal representatives, heirs, successors, or assigns and any entity in which
the Defendant had a controlling interest.

20 31. Plaintiffs reserve the right to amend or modify the Class definition in connection
21 with a motion for class certification and/or the result of discovery. This lawsuit is properly
22 brought as a class action for the following reasons.

23 32. The Class is so numerous that joinder of the individual members of the proposed
24 Class is impracticable. The Class includes thousands of persons geographically dispersed
25 throughout the United States. The precise number and identities of Class members are unknown
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1 to Plaintiffs, but are known to Defendant or can be ascertained through discovery, using records
2 of sales, warranty records, and other information kept by Defendant or its agents.

3 33. Plaintiffs do not anticipate any difficulties in the management of this action as a
4 class action. The Class is ascertainable, and there is a well-defined community of interest in the
5 questions of law and/or fact alleged herein since the rights of each Class member were infringed
6 or violated in similar fashion based upon Defendant's uniform misconduct. Notice can be
7 provided through sales and warranty records and publication.
8

9 34. Questions of law or fact common to the Class exist as to Plaintiffs and all Class
10 members, and these common questions predominate over any questions affecting only individual
11 members of the Class. Among these predominant common questions of law and/or fact are the
12 following:

- 13 a. Whether Defendant's CPUs possess the Defect and the nature of that
14 Defect;
- 15 b. Whether Defendant made any implied warranties in connection with the
16 sale of the defective CPUs;
- 17 c. Whether Defendant breached any implied warranties relating to its sale of
18 defective CPUs by failing to resolve the Defect in the manner required by
19 law;
- 20 d. Whether Defendant was unjustly enriched by selling defective Intel CPUs;
- 21 e. Whether Defendant violated applicable consumer protection laws by
22 selling CPUs with the Defect and/or by failing to disclose the Defect, and
23 failing to provide the relief required by law; and
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- 25 f. The appropriate nature and measure of Class-wide relief.
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1 35. Defendant engaged in a common course of conduct giving rise to the legal rights
2 sought to be enforced by Plaintiffs and the Class. Individual questions, if any, pale by
3 comparison to the numerous common questions that predominate.

4 36. Plaintiffs' claims are typical of the claims of Class members. The injuries
5 sustained by Plaintiffs and the Class flow, in each instance, from a common nucleus of operative
6 facts based on the Defendant's uniform conduct as set forth above. The defenses, if any, that
7 will be asserted against Plaintiffs' claims likely will be similar to the defenses that will be
8 asserted, if any, against Class members' claims.
9

10 37. Plaintiffs will fairly and adequately protect the interests of Class members.
11 Plaintiffs have no interests materially adverse to or that irreconcilably conflict with the interests
12 of Class members and have retained counsel with significant experience in handling class actions
13 and other complex litigation, and who will vigorously prosecute this action.

14 38. A class action is superior to other available methods for the fair and efficient
15 group-wide adjudication of this controversy, and individual joinder of all Class members is
16 impracticable, if not impossible because a large number of Class members are located throughout
17 the United States. Moreover, the cost to the court system of such individualized litigation would
18 be substantial. Individualized litigation would likewise present the potential for inconsistent or
19 contradictory judgments and would result in significant delay and expense to all parties and
20 multiple courts hearing virtually identical lawsuits. By contrast, the conduct of this action as a
21 class action presents fewer management difficulties, conserves the resources of the parties and
22 the courts, protects the rights of each Class member and maximizes recovery to them.
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1 39. Defendant has acted on grounds generally applicable to the entire Class, thereby
2 making final injunctive relief or corresponding declaratory relief appropriate with respect to the
3 Class as a whole.

4 **COUNT I**
5 **Breach of Implied Warranty**

6 40. Plaintiffs hereby incorporate all the above allegations by reference as if fully set
7 forth herein. Plaintiffs assert this count individually and on behalf of the proposed Class.

8 41. Defendant and its authorized agents and resellers sold Intel CPUs to Plaintiffs and
9 Class members in the regular course of business.

10 42. Defendant impliedly warranted to members of the general public, including
11 Plaintiffs and Class members, these CPUs were of merchantable quality (*i.e.*, a product of a high
12 enough quality to make it fit for sale, usable for the purpose it is made, of average worth in the
13 marketplace, or not broken, unworkable, damaged, contaminated or flawed), was of the same
14 quality as those generally acceptable in the trade or that would pass without objection in the
15 trade, were free from material defects and were reasonably fit for the ordinary purposes for
16 which they were intended or used. In addition, Defendant either was or should have been aware
17 of the particular purposes for which such CPUs are used, and that Plaintiffs and the Class
18 members were relying on the skill and judgment of Defendant to furnish suitable goods for such
19 purpose.
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22 43. Pursuant to agreements between Defendant and its authorized agents and re-
23 sellers, the stores Plaintiffs and Class members purchased their defective Intel CPUs from are
24 authorized retailers and authorized CPU service facilities. Plaintiffs and Class members are third-
25 party beneficiaries of, and substantially benefited from, such contracts.
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1 44. Defendant breached its implied warranties by selling Plaintiffs and Class
2 members defective Intel CPUs. The Defect renders the Intel CPUs unmerchantable and unfit for
3 their ordinary or particular use or purpose. Defendant has refused to recall, repair or replace, free
4 of charge, all Intel CPUs or any of their defective component parts or refund the prices paid for
5 such CPUs.

6 45. The Defect in the Intel CPUs existed when the CPUs left Defendant's and their
7 authorized agents' and retail sellers' possession and thus is inherent in such CPUs.

8 46. As a direct and proximate result of Defendant's breach of its implied warranties,
9 Plaintiffs and Class members have suffered damages and continue to suffer damages, including
10 economic damages at the point of sale in terms of the difference between the value of the CPUs
11 as warranted and the value of the CPUs as delivered. Additionally, Plaintiffs and Class members
12 either have or will incur economic, incidental and consequential damages in the cost of repair or
13 replacement and costs of complying with continued contractual obligations as well as the cost of
14 buying an additional CPU they would not have purchased had the CPUs in question not
15 contained the non-repairable Defect.
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18 47. Plaintiffs and Class members are entitled to legal and equitable relief against
19 Defendant, including damages, specific performance, rescission, attorneys' fees, costs of suit,
20 and other relief as appropriate.

21 **COUNT II**
22 **Song-Beverly Warranty Act, California Civil Code § 1792, *et seq.***

23 48. Plaintiffs incorporate all of the above allegations by reference as if fully set forth
24 herein. Plaintiffs assert this claim individually and on behalf of all Class members.

25 49. Under the Song-Beverly Consumer Warranty Act, California Civil Code § 1792,
26 *et seq.*, every sale of consumer goods in the State of California is accompanied by both a
27

1 manufacturer's and retail seller's implied warranty that the goods are merchantable and an
2 implied warranty of fitness.

3 50. Plaintiffs and the Class members who bought at retail in California each
4 purchased one or more Intel CPUs, which are "consumer goods" within the meaning of
5 California Civil Code § 1791.

6 51. Defendant is in the business of manufacturing and selling Intel CPUs to retail
7 buyers, and therefore is a "manufacturer" and "seller" within the meaning of California Civil
8 Code § 1791.

9 52. Defendant impliedly warranted to Plaintiffs and Class members that the Intel
10 CPUs were merchantable and fit for the ordinary and particular purposes for which the CPUs are
11 required and used.

12 53. Defendant has breached implied warranties because the Intel CPUs sold to
13 Plaintiffs and Class members were not merchantable and were not fit for the ordinary and
14 particular purposes for which such goods are used in that the CPUs suffer from a critical security
15 defect, requiring an OS-level software patch that will degrade the performance of the CPU. It is
16 not necessary for Plaintiffs to prove the cause of the Defect in the CPUs, but only that the CPUs
17 did not conform to the applicable warranties.

18 54. As a direct and proximate cause of Intel's breach of the Song-Beverly Act,
19 Plaintiffs and Class members sustained damages and other losses in an amount to be determined
20 at trial, entitling them to compensatory damages, consequential damages, statutory damages and
21 civil penalties, diminution in value, costs, attorneys' fees and interest, as applicable.
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25 **COUNT III**
26 **Consumers Legal Remedies Act, California Civil Code § 1750 *et seq.***

1 55. Plaintiffs incorporate all of the above allegations by reference as if fully set forth
2 herein, except those allegations seeking a damages award.

3 56. Plaintiffs assert this claim individually and on behalf of all Class members under
4 California Civil Code §1781.

5 57. The Consumers Legal Remedies Act (“CLRA”) was enacted to protect consumers
6 against unfair and deceptive business practices. The CLRA applies to Defendant’s acts and
7 practices because it covers transactions involving the sale of goods to consumers.
8

9 58. The Intel CPUs are “goods” under California Civil Code §1761(a).

10 59. Intel is a “person” under California Civil Code §1761(c).

11 60. Plaintiffs and the Class members are “consumers” under California Civil Code
12 §1761(d).

13 61. Plaintiffs and Class members engaged in “transactions” under California Civil
14 Code §1761(e), including the purchase of Intel CPUs and the presentation of Intel CPUs for
15 repair or replacement of the Defect.
16

17 62. Intel’s unfair and deceptive business practices were intended and did result in the
18 sale of Intel CPUs, a defective consumer product.

19 63. Defendant’s Intel CPUs failed to perform in accordance with their expected
20 characteristics, uses and benefits.

21 64. Defendant had exclusive knowledge of material facts, *i.e.* the Intel CPUs were
22 defective, unknown to Plaintiffs and Class members. If Plaintiffs and Class members had known
23 of the Defect in the Intel CPU, they would not have purchased the CPUs at the prices they did, if
24 at all.
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1 72. This claim is brought pursuant to §§17203 and 17204 of the California Business
2 and Professions Code to obtain equitable monetary and injunctive relief from Defendant for acts
3 and practices as alleged herein that violated §17200 of the California Business and Professions
4 Code, commonly known as the Unfair Competition Law.

5 73. Defendant’s conduct as alleged herein violated §17200. The acts, omissions,
6 practices and non-disclosures of Defendant constituted a common continuous course of conduct
7 of unfair competition by means of the commission of unfair and unlawful business acts or
8 practices within the meaning of California Business and Professions Code, §17200, *et seq.*

9 74. Defendant engaged in “unlawful” business acts and practices by:
10

- 11 (a) violating the Song-Beverly Consumer Warranty Act, California Civil
12 Code §1792, *et seq.*;
- 13 (b) breaching implied warranties; and
- 14 (c) violating the Consumers Legal Remedies Act, California Civil Code
15 §1750, *et seq.*

16 75. Defendant engaged in “unfair” business acts and practices by, among other things:
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- 18 (a) engaging in conduct where the utility of such conduct, if any, is
19 outweighed by the gravity of the consequences to Plaintiffs and the Class
20 considering the reasonably available alternatives, based on legislatively
21 declared policies not to sell defective products in the market without
22 providing an adequate remedy therefor;
- 23 (b) engaging in conduct that is immoral, unethical, oppressive, unscrupulous,
24 or substantially injurious to Plaintiffs and the Class; and
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1 (c) engaging in unfair business practices by refusing to repair or recall the
2 defective Intel CPUs or providing compensation therefor.

3 76. Specifically, Defendant engaged in “unfair” business acts and practices by selling
4 the Intel CPUs knowing or being aware the CPUs contained a critical security Defect, where the
5 OS-level software patch would degrade the processors performance. Defendant also engaged in
6 unfair business acts and practices by making express and implied warranties, which it refuses to
7 honor.

8
9 77. As such conduct is or may well be continuing and on-going, Plaintiffs and each of
10 the Class members are entitled to injunctive relief to prohibit or correct such on-going acts of
11 unfair competition, in addition to obtaining equitable monetary relief.

12 78. Plaintiffs and Class members used Defendant’s products and had business
13 dealings with Defendant either directly or indirectly as described above. The acts and practices
14 of Defendant have caused Plaintiffs and Class members to lose money and property by being
15 overcharged for and paying for the defective CPUs at issue, or being required to purchase an
16 additional working CPU. Such loss was the result of the above acts of unfair competition and
17 Defendant’s misconduct in violation of the state laws set forth above. Plaintiffs are therefore
18 entitled to seek recovery of such amounts. Such injury occurred at the time such monies were
19 paid. Plaintiffs have thus each suffered injury in fact and lost money or property as a result of
20 such acts and practices as set forth in detail above.

21
22 79. Defendant has unjustly benefited as a result of its wrongful conduct and its acts of
23 unfair competition. Plaintiffs and Class members are accordingly entitled to equitable relief
24 including restitution and/or restitutionary disgorgement of all revenues, earnings, profits,
25 compensation, and benefits that may have been obtained by Defendant as a result of such
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1 business acts and practices, pursuant to California Business and Professions Code §§17203 and
2 17204, as well as attorneys' fees and costs pursuant to, among others, California Code of Civil
3 Procedure §1021.5.

4 **COUNT V**
5 **Common Counts – Assumpsit, Restitution, Unjust Enrichment**
6 **and/or Quasi-Contract**

7 80. Plaintiffs incorporate all of the above allegations by reference as if fully set forth
8 herein. Plaintiffs assert this claim individually and on behalf of all Class members.

9 81. This cause of action is alleged as an alternative to the warranty claims as
10 permitted under Rule 8(d)(2) of the Federal Rules of Civil Procedure.

11 82. As Plaintiffs and the Class show just grounds for recovering money paid for
12 benefits Defendant received from them, either directly or indirectly, and they have a right to
13 restitution at law through an action derived from the common-law writ of assumpsit by implying
14 a contract at law based on principles of restitution and unjust enrichment, or though quasi-
15 contract.

16 83. Defendant, having received such benefits, is required to make restitution. The
17 circumstances here are such that, as between the two, it is unjust for Defendant to retain such
18 benefit based on the conduct described above. Such money or property belongs in good
19 conscience to the Plaintiffs and Class members and can be traced to funds or property in
20 Defendant's possession. Plaintiffs and Class members have unjustly enriched Defendant through
21 payments and the resulting profits enjoyed by Defendant as a direct result of such payments.
22 Plaintiffs' detriment and Defendant's enrichment were related to and flowed from the conduct
23 challenged in this Complaint.

24 84. By virtue of the purchase and sale of the CPUs in question, Defendant
25 alternatively entered into a series of implied-at-law or quasi-contracts that resulted in money
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1 being had and received by Defendant, either directly or indirectly, at the expense of Plaintiffs
2 and Class members under agreements in assumpsit. Plaintiffs and other Class members
3 conferred a benefit upon Defendant by purchasing one of the defective CPUs. Defendant had
4 knowledge of the general receipt of such benefits, which Defendant received, accepted and
5 retained. Defendant owes Plaintiffs and Class members these sums that can be obtained either
6 directly from Class members, Defendant or its authorized retailers.

7
8 85. Under principles of restitution, an entity that has been unjustly enriched at the
9 expense of another by the retention of benefit wrongfully obtained is required to make restitution
10 to the other. In addition, under common law principles recognized in claims of common counts,
11 assumpsit, unjust enrichment, restitution, and quasi-contract, under the circumstances alleged
12 herein it would be inequitable for Defendant to retain such benefits without paying restitution or
13 restitutionary damages. Such principles require Defendant to return such benefits when the
14 retention of such benefits would unjustly enrich Defendant. They should not be permitted to
15 retain the benefits conferred by Plaintiffs and Class members via payments for the defective
16 CPUs. Other remedies and claims may not permit them to obtain such relief, leaving them
17 without an adequate remedy at law.

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19 86. Plaintiffs and Class members seek appropriate monetary relief for such claims. In
20 addition, pursuant to California Civil Code § 2224, “[o]ne who gains a thing by fraud, accident,
21 mistake, undue influence, the violation of a trust, or other wrongful act, is, unless he or she has
22 some other and better right thereto, an involuntary trustee of the thing gained, for the benefit of
23 the person who would otherwise have had it.” Based on the facts and circumstances alleged
24 above, in order to prevent unjust enrichment and to prevent Defendant from taking advantage of
25 its own wrongdoing, Plaintiffs and the Class are further entitled to the establishment of a
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1 constructive trust, in a sum certain, of all monies charged and collected or retained by Defendant
2 from which Plaintiffs and Class members may seek restitution.

3 **COUNT VI**
4 **Strict Liability**

5 87. Plaintiffs incorporate all of the above allegations by reference as if fully set forth
6 herein. Plaintiffs assert this claim individually and on behalf of all Class members.

7 88. Plaintiffs and the Class were harmed by CPUs Defendant manufactured, which
8 were contained in, but also separate and apart from, the computers they purchased.

9 89. Defendant's CPUs contained a manufacturing defect, or were defectively
10 designed for the reasons set forth above.

11 90. Plaintiffs and Class members have been harmed, as they now own a computer
12 with a CPU that due to such manufacturing or design defect is subject to invasion of a
13 supposedly core protected part of the CPU and decreased performance, in an amount according
14 to proof at trial.

15
16 **COUNT VII**
17 **Negligence**

18 91. Plaintiffs incorporate all of the above allegations by reference as if fully set forth
19 herein. Plaintiffs assert this claim individually and on behalf of all Class members.

20 92. Defendant was negligent in the manufacture and design of the CPUs containing
21 the Defect, which CPUs were contained in, but also separate and apart from, the computers
22 Plaintiffs and Class members purchased.

23 93. Defendant's negligence was a substantial factor and reasonably foreseeable in
24 causing harm to Plaintiffs and Class members.

25
26 94. Plaintiffs and Class members have been harmed, as they now own a computer
27 with a CPU that due to such manufacturing or design defect is subject to invasion of a
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1 supposedly core protected part of the CPU and decreased performance, in an amount according
2 to proof at trial.

3 **COUNT VIII**
4 **Violation of Tenn. Code Ann. 47-18-104**
5 **(Asserted by Plaintiff Stachowiak only)**

6 95. Plaintiff Stachowiak incorporates by reference all of the above allegations as if set
7 forth herein.

8 96. Defendant's business acts and practices complained of were centered in, carried
9 out, effectuated and perfected within or had their effect in the State of Tennessee, and injured
10 Plaintiffs and all Class members.

11 97. Beginning as early as 2008, and continuing thereafter at least up through and
12 including the date of filing this Complaint, Defendant committed acts of unfair competition, by
13 engaging in the acts and practices specified above.

14 98. The acts, omissions, practices and non-disclosures of Defendant constituted a
15 common continuous course of conduct of unfair competition by means of the commission of
16 unfair and unlawful business acts or practices within the meaning of Tenn. Code Ann. 47-18-101
17 *et seq.*

- 18 99. Defendant engaged in unfair and/or deceptive business acts and practices by:
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20 (a) breaching implied warranties;
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22 (b) representing that goods or services have sponsorship, approval,
23 characteristics, ingredients, uses, benefits, or qualities that they do not
24 have; and
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1 (c) representing that goods or services are of a particular standard, quality of
2 grade, or that goods are of a particular style or model, if they are of
3 another.

4 100. Specifically, Defendant engaged in “unfair” business acts and practices by selling
5 the Intel CPUs knowing or being aware the CPUs contained a critical security Defect, where the
6 OS-level software patch would degrade the processors performance. Defendant also engaged in
7 unfair business acts and practices by making express and implied warranties, which it refuses to
8 honor.
9

10 101. As a direct and proximate result of these violations, the Plaintiffs and Class
11 members suffered actual damages as set forth herein.

12 102. Pursuant to Tenn. Code Ann. 47-18-104(b) and 109, the Plaintiff is entitled to and
13 makes a claim for actual damages, incidental and consequential damages, punitive or treble
14 damages, and attorney's fees and costs as a result of the Defendant's unfair and deceptive conduct
15 on behalf of himself and the Class.
16

17 103. As such conduct is or may well be continuing and on-going, Plaintiffs and each of
18 the Class members are entitled to injunctive relief to prohibit or correct such on-going acts of
19 unfair competition, in addition to obtaining equitable monetary relief.

20 104. Plaintiffs and Class members used Defendant’s products and had business
21 dealings with Defendant either directly or indirectly as described above. The acts and practices
22 of Defendant have caused Plaintiffs and Class members to lose money and property by being
23 overcharged for and paying for the defective CPUs at issue, or being required to purchase an
24 additional working CPU. Such loss was the result of the above acts of unfair competition and
25 Defendant’s misconduct in violation of the state laws set forth above. Plaintiffs are therefore
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1 entitled to seek recovery of such amounts. Such injury occurred at the time such monies were
2 paid. Plaintiffs have thus each suffered injury in fact and lost money or property as a result of
3 such acts and practices as set forth in detail above.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs and all Class members pray for judgment against Defendant as
6 follows:

- 7 A. Declaring this action to be a proper class action pursuant to Rule 23 of the Federal
- 8 Rules of Civil Procedure;
- 9 B. Awarding Plaintiffs and Class members all proper measures of equitable
- 10 monetary relief and damages (damages excluded at this time for violations of the
- 11 CLRA), plus interest to which they are entitled;
- 12 C. Awarding equitable, injunctive, and declaratory relief as the Court may deem just
- 13 and proper, including restitution and restitutionary disgorgement;
- 14 D. Awarding Plaintiffs’ reasonable costs and attorney’s fees; and
- 15 E. Granting such further and other relief this Court deems appropriate.

16 **DEMAND FOR JURY TRIAL**

17 Plaintiffs, individually and on behalf of all others similarly situated, demand a trial by
18 jury on all issues so triable.
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1 DATED: January 3, 2018

Respectfully Submitted,

2 /s/ William J. Doyle

3 William J. Doyle II

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