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14 UNITED STATES DISTRICT COURT
15 DISTRICT OF OREGON

16 LUCAS KINTZ, individually and on behalf of
17 all others similarly situated;

18 Plaintiffs,

19 v.

20 INTEL CORPORATION, a Delaware corporation;

21 Defendant.

No. 3:18-cv-00211

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

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

4 I. INTRODUCTION

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

7 2. Defendant Intel’s x86-64x CPUs suffer from a security defect that exposes the
8 CPUs to troubling security vulnerabilities by allowing potential access to extremely sensitive
9 kernel data and program data (the “Defect”). The only way to “patch” these vulnerabilities
10 requires extensive changes to the root levels of the Operating System which dramatically reduces
11 CPU performance, and does not fully address the vulnerabilities. The Defect renders the Intel
12 x86-64x CPUs unfit for their intended use and purpose. The Defect exists in all Intel x86-64x
13 CPUs manufactured since at least 2008. The x86-64x CPU is, and was, utilized in the majority of
14 all desktop, laptop computers, and servers in the United States.

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

25 4. The CPUs Defendant manufactured and sold to Plaintiffs and Class members
26 were not merchantable and were not fit for the ordinary and particular purposes for which such
27 goods are used in that the CPUs suffer from a critical security defect, requiring software patches
28 that will degrade the performance of the CPU.

1 10. Venue is proper in this District under 28 U.S.C. §1391(b)(2) because a substantial
2 part of the events or omissions giving rise to this claim occurred in this district. Defendant has
3 extensive operations in Oregon, and it asserts that the team that evaluated the security
4 vulnerabilities is principally based in Portland, Oregon, that the team that developed patches to
5 mitigate those vulnerabilities is principally based in Portland, Oregon, and that key witnesses and
6 documents are likely to be found in the District of Oregon.

7 11. Plaintiffs also allege that venue would be proper in the Northern district of
8 California because a substantial part of the events or omissions which give rise to Plaintiff's
9 claims occurred within that District and Defendant's principal place of business is located in
10 Santa Clara, California. Defendant's marketing and sales occurred in California to a significant
11 degree.

12 IV. FACTUAL ALLEGATIONS

13 12. For at least 10 years, Defendant has marketed, distributed, and warranted these
14 defective Intel CPUs in Oregon and throughout the United States.

15 13. On or about January 2, 2018, the technical press reported on the existence of a
16 design defect in almost every Intel processor made since 2004 or earlier. The affected Intel x86-
17 64x processors are the most widely-used CPUs in desktop and laptop computers, as well as in
18 servers, including servers relied on by large cloud services providers, such as Amazon,
19 Microsoft, and Google.

20 14. Also, on or about January 2, 2018, it was revealed that the "patch" to one of the
21 security vulnerabilities would lead to substantial CPU performance degradation. The "patch"
22 would require root level changes to the Operating System resulting in a substantial decrease in
23 CPU performance of as much as 30%.

24 A. The Intel CPU Defect

25 15. Intel's x86-64x CPUs have a Defect that is inherent within the CPU itself and/or
26 the result of software or hardware design or manufacturing flaws. Fixing the Defect using an OS-
27 level software patch causes the CPUs to slow down.

28 16. As *The Register* reported on January 2, 2018:

1 A fundamental design flaw in Intel’s processor chips has forced a
2 significant redesign of the Linux and Windows kernels to defang the
chip-level security bug.

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

7 Crucially, these updates to both Linux and Windows will incur a
8 performance hit on Intel products. The effects are still being
9 benchmarked, however we’re looking at ***a ballpark figure of five to
10 30 per cent slow down***, depending on the task and the processor
model. More recent Intel chips have features – such as PCID – to
reduce the performance hit. [...] (emphasis added)

11 Similar operating systems, such as Apple’s 64-bit macOS, will also
12 need to be updated – the flaw is in the Intel x86-64 hardware, and it
13 appears a microcode update can’t address it. ***It has to be fixed in
14 software at the OS level, or go buy a new processor without the
15 design blunder.*** (emphasis added)

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

20 See https://www.theregister.co.uk/2018/01/02/intel_cpu_design_flaw/ (last visited January 2,
21 2018).

22 17. Subsequent reporting by *The Register* revealed that Apple has already provided a
23 software patch for the defect: “Finally, macOS has been patched to counter the chip design
24 blunder since version 10.13.3, according to operating system kernel expert Alex Ionescu.” (*Id.*)

25 18. The Defect’s presence is material because ameliorating the Defect reduces the
26 performance of the CPUs thereby causing the CPUs to slow down from the performance
27 specifications that Defendant promised and that consumers expected when buying a computer
28 with an Intel CPU. The Defect is also material because of the security vulnerabilities Intel based
CPUs are exposed to.

19. As *The Register* article further explains:

Impact

It is understood the bug is present in modern Intel processors produced in the past decade. It allows normal user programs – from database applications to JavaScript in web browsers – to discern to some extent the layout or contents of protected kernel memory areas.

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

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

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

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

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

(*Id.* (emphases added).)

20. 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 unprivileged
3 user program, or even JavaScript running in a web browser, could be used to gain access to
4 sensitive kernel and program data, including passwords. As the *The Register* writes, “[t]hat
5 would allow ring-3-level user code to read ring-0-level kernel data. And that is not good.” *Id.*

6 21. 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 22. The Defect is unprecedented in scope in that it exposes millions and millions of
11 Intel-based computers to critical security vulnerabilities and hacking and the “patch” to cure
12 these security vulnerabilities results in substantial performance degradation.

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

14 23. Intel is aware that its CPUs suffer from the Defect that exposes the CPUs to
15 critical security vulnerabilities and that proposed OS-level software patches will slow the
16 performance of these CPU chips and are not completely effective to protect against the
17 vulnerabilities.

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

20 Intel Responds to Security Research Findings:

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

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

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

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

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

21 Intel believes its products are the most secure in the world and that,
22 with the support of its partners, the current solutions to this issue
23 provide the best possible security for its customers.¹

24 25. Defendant's press release acknowledges the existence of the Defect, claims other
25 vendors (competitors) products also suffer from this Defect, and downplays the performance
26 impact which it asserts "will be mitigated over time." *Id.*

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

29 V. CLASS ACTION ALLEGATIONS

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

32 28. Plaintiffs bring their claims on their own behalf, and on behalf of the following
33 class (the "Class"):

34 All individuals or entities who purchased one or more Intel CPUs
35 with the Defects from Intel or its authorized retailer sellers or as part

36 ¹ <https://newsroom.intel.com/news/intel-responds-to-security-research-findings/>

1 of an original equipment manufacturer system. Excluded from the
2 Class are Defendant, its officers and directors at all relevant times,
3 members of immediate families and their legal representatives,
4 heirs, successors, or assigns and any entity in which the Defendant
5 had a controlling interest.

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

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

14 31. Plaintiffs do not anticipate any difficulties in the management of this action as a
15 class action. There is a well-defined community of interest in the questions of law and/or fact
16 alleged herein since the rights of each Class member were infringed or violated in similar fashion
17 based upon Defendant's uniform misconduct. Notice can be provided through sales and warranty
18 records and publication.

19 32. Questions of law or fact common to the Class exist as to Plaintiffs and all Class
20 members, and these common questions predominate over any questions affecting only individual
21 members of the Class. Among these predominant common questions of law and/or fact are the
22 following:

- 23 a. Whether Defendant engaged in the conduct alleged herein;
- 24 b. Whether Defendant's processors are defective and contain the Defect;
- 25 c. Whether the purported "patches," "fixes," or other remedies are ineffective
26 and/or result in reduced processing performance;
- 27 d. Whether Defendant knew, or should have known, that its processors were
28 defective and that, if mitigated, resulted in reduced processing performance;

1 e. Whether Defendant had a duty to disclose, and breached its duty to disclose,
2 that its processors were defective and that, if mitigated, resulted in reduced
3 processing performance;

4 f. Whether Defendant intentionally, recklessly, or negligently misrepresented
5 or omitted material facts including the fact that its processors are defective and that,
6 if mitigated, resulted in reduced processing performance;

7 g. Whether Defendant breached its implied warranties in that its processors
8 were defective with respect to manufacture, workmanship, and/or design;

9 h. Whether Defendant violated the Magnuson-Moss Warranty Act, 15 U.S.C.
10 § 2301 et seq.;

11 i. Whether Defendant was unjustly enriched by the conduct alleged herein;

12 j. Whether Defendant violated the Oregon Unlawful Trade Practices Act, Or.
13 Rev. Stat. §§ 646.605, *et seq.*;

14 k. Whether Defendant violated California's Unfair Competition Law,
15 California Business & Professions Code § 17200 et seq.;

16 l. Whether Plaintiff and members of the Class overpaid for AMD Processors;

17 m. Whether Plaintiff and members of the Class are entitled to equitable relief,
18 including, but not limited to, restitution or injunctive relief; and

19 n. Whether Plaintiff and members of the Class are entitled to damages and
20 other monetary relief and, if so, in what amount.

21 33. Defendant engaged in a common course of conduct giving rise to the legal rights
22 sought to be enforced by Plaintiffs and the Class. Individual questions, if any, pale by
23 comparison to the numerous common questions that predominate.

24 34. Plaintiffs' claims are typical of the claims of Class members. The injuries
25 sustained by Plaintiffs and the Class flow, in each instance, from a common nucleus of operative
26 facts based on the Defendant's uniform conduct as set forth above. The defenses, if any, that will
27 be asserted against Plaintiffs' claims likely will be similar to the defenses that will be asserted, if
28 any, against Class members' claims.

1 trade, were free from material defects and were reasonably fit for the ordinary purposes for
2 which they were intended or used. In addition, Defendant either was or should have been aware
3 of the particular purposes for which such CPUs are used, and that Plaintiffs and the Class
4 members were relying on the skill and judgment of Defendant to furnish suitable goods for such
5 purpose.

6 41. Plaintiffs and Class members purchased their defective Intel CPUs from
7 authorized retailers and authorized CPU service facilities pursuant to agreements between
8 Defendant and its authorized agents and re-sellers. Plaintiffs and Class members are third-party
9 beneficiaries of, and substantially benefited from, such contracts.

10 42. Defendant breached its implied warranties by selling Plaintiffs and Class
11 members defective Intel CPUs. The Defect renders the Intel CPUs unmerchantable and unfit for
12 their ordinary or particular use or purpose. Defendant has refused to recall, repair or replace, free
13 of charge, all Intel CPUs or any of their defective component parts or refund the prices paid for
14 such CPUs.

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

17 44. As a direct and proximate result of Defendant's breach of its implied warranties,
18 Plaintiffs and Class members have suffered damages and continue to suffer damages, including
19 economic damages at the point of sale in terms of the difference between the value of the CPUs
20 as warranted and the value of the CPUs as delivered. Additionally, Plaintiffs and Class members
21 either have or will incur economic, incidental and consequential damages in the cost of repair or
22 replacement and costs of complying with continued contractual obligations as well as the cost of
23 buying an additional CPU they would not have purchased had the CPUs in question not
24 contained the non-repairable Defect.

25 45. Plaintiffs and Class members are entitled to legal and equitable relief against
26 Defendant, including damages, specific performance, rescission, attorneys' fees, costs of suit,
27 and other relief as appropriate.
28

COUNT II
Violation of the Magnuson-Moss Warranty Act

1
2 46. Plaintiffs incorporate all of the above allegations by reference as if fully set forth
3 herein. Plaintiffs assert this claim individually and on behalf of all Class members.

4 47. The Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 et seq., provides a federal
5 remedy for consumers who have been damaged by the failure of a supplier or warrantor to
6 comply with any obligation under a written warranty or implied warranty, or other various
7 obligations.

8 48. An implied warranty of merchantability arose in connection with the purchases of
9 the Intel CPUs by Plaintiffs by operation of state law under the Magnuson-Moss Warranty Act,
10 15 U.S.C. § 2301(7).

11 49. The Intel CPUs are a “consumer product” within the meaning of the Magnuson-
12 Moss Warranty Act, 15 U.S.C. § 2301(1).

13 50. Plaintiffs and other members of the Class are “consumers” within the meaning of
14 the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

15 51. Defendant is a “supplier” and “warrantor” within the meaning of the Magnuson-
16 Moss Warranty Act, 15 U.S.C. §§ 2301(4) & 2301(5).

17 52. Defendant breached its implied warranty of merchantability by selling Plaintiffs
18 and Class members defective Intel CPUs and thereby violated the Magnuson-Moss Warranty
19 Act.

20 53. Consequently, Plaintiffs and the other members of the Class have suffered injury
21 and are entitled to damages in an amount to be proven at trial, along with attorney’s fees and
22 costs.

COUNT III
Violations of the Oregon Unlawful Trade Practices Act

23
24 54. Plaintiffs incorporate by reference each preceding paragraph as though fully set
25 forth herein.

26 55. This count is brought on behalf of Class members residing in Oregon.
27
28

1 56. Plaintiff and Defendant are “persons” within the meaning of Or. Rev. Stat. §
2 646.605(4).

3 57. Defendant is engaged in “trade” or “commerce” within the meaning of Or. Rev.
4 Stat. § 646.605(8).

5 58. The Oregon Unfair Trade Practices Act (“Oregon UTPA”) prohibits “unlawful
6 practice . . . in the course of . . . business.” Or. Rev. Stat. § 646.608(1).

7 59. In the course of its business, Defendant, through its agents, employees, and/or
8 subsidiaries, violated the Oregon UTPA as detailed above. Specifically, Defendant developed
9 and sold Defective CPUs and failed to disclose known defects in the CPUs. Defendant engaged
10 in one or more of the following unfair or deceptive acts or practices as defined in Or. Rev. Stat. §
11 646.608(1):

12 A. Causing likelihood of confusion or of misunderstanding as to the rating,
13 approval or certification of the CPUs;

14 B. Representing that the CPUs have characteristics, uses, or benefits that they
15 do not have;

16 C. Representing that the CPUs are of a particular standard, quality and grade
17 when they are not; and/or

18 D. Advertising the CPUs with the intent not to sell them as advertised.

19 60. Defendant’s failure to disclose defects in the CPUs was material to Plaintiff and
20 other class members residing in Oregon, as Defendants intended. Had they known the truth,
21 Plaintiff and other class members residing in Oregon would not have purchased the CPUs or
22 would have paid significantly less money to buy the defective products.

23 61. Plaintiff and other class members residing in Oregon had no way of discerning
24 that Defendant’s representations were false and misleading, or otherwise learning the facts that
25 Defendants had concealed or failed to disclose, because the Defect is highly technical and hard
26 for a non-expert to identify and measure. Plaintiff and other class members residing in Oregon
27 did not, and could not, unravel Defendant’s deception on their own.

28

1 71. Plaintiffs and the Class members are “consumers” under Cal. Civ. Code §1761(d).

2 72. Plaintiffs and Class members engaged in “transactions” under Cal. Civ. Code
3 §1761(e), including the purchase of Intel CPUs and the presentation of Intel CPUs for repair or
4 replacement of the Defect.

5 73. Intel’s unfair and deceptive business practices were intended and did result in the
6 sale of Intel CPUs, a defective consumer product.

7 74. Defendant’s Intel CPUs failed to perform in accordance with their expected
8 characteristics, uses and benefits.

9 75. Defendant had exclusive knowledge of material facts, *i.e.* the Intel CPUs were
10 defective, unknown to Plaintiffs and Class members. If Plaintiffs and Class members had known
11 of the Defect in the Intel CPU, they would not have purchased the CPUs at the prices they did, if
12 at all.

13 76. Defendant had a duty to disclose the Defect for various reasons, including:

14 (a) Intel had exclusive knowledge of the Defect and other material facts not
15 known to Plaintiffs or the Class; and

16 (b) Intel actively concealed a material fact from Plaintiffs and the Class.

17 77. Defendant engaged in unfair and deceptive practices by misrepresenting or not
18 disclosing the above material facts from Plaintiffs and the Class, in violation of Cal. Civ. Code
19 §1770(a)(5), (7), (14) and (16).

20 78. As a direct and proximate result of Defendant’s conduct, Plaintiffs and the Class
21 members suffered injury. Plaintiffs and Class members are entitled to injunctive relief, court
22 costs and attorney fees, and other relief the Court deems proper.

23 **COUNT V**
24 **California Unfair Competition Law**

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

1 80. Defendant's business acts and practices complained of were centered in, carried
2 out, effectuated and perfected within or had their effect in the State of California, and injured
3 Plaintiffs and all Class members.

4 81. Beginning as early as 2008, and continuing thereafter at least up through and
5 including the date of filing this Complaint, Defendant committed acts of unfair competition, as
6 defined by §17200et seq., of the California Bus. & Prof. Code, by engaging in the acts and
7 practices specified above.

8 82. This claim is brought pursuant to §§17203 and 17204 of the Cal. Bus. & Prof.
9 Code to obtain equitable monetary and injunctive relief from Defendant for acts and practices as
10 alleged herein that violated §17200 of the Cal. Bus. & Prof. Code, commonly known as the
11 Unfair Competition Law.

12 83. Defendant's conduct as alleged herein violated §17200 of the Cal. Bus. & Prof.
13 Code. The acts, omissions, practices and non-disclosures of Defendant constituted a common
14 continuous course of conduct of unfair competition by means of the commission of unfair and
15 unlawful business acts or practices within the meaning of Cal. Bus. & Prof. Code, §17200et seq.

16 84. Defendant engaged in "unlawful" business acts and practices by:

17 (a) breaching implied warranties; and

18 (b) violating the Consumers Legal Remedies Act, Cal. Civ. Code §1750 *et*
19 *seq.*

20 85. Defendant engaged in "unfair" business acts and practices by, among other things:

21 (a) engaging in conduct where the utility of such conduct, if any, is outweighed
22 by the gravity of the consequences to Plaintiffs and the Class considering the reasonably available
23 alternatives, based on legislatively declared policies not to sell defective products in the market
24 without providing an adequate remedy therefor;

25 (b) engaging in conduct that is immoral, unethical, oppressive, unscrupulous,
26 or substantially injurious to Plaintiffs and the Class; and

27 (c) engaging in unfair business practices by refusing to repair or recall the
28 defective Intel CPUs or providing compensation therefor.

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

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

14 94. By virtue of the purchase and sale of the CPUs in question, Defendant
15 alternatively entered into a series of implied-at-law or quasi-contracts that resulted in money
16 being had and received by Defendant, either directly or indirectly, at the expense of Plaintiffs
17 and Class members under agreements in assumpsit. Plaintiffs and other Class members conferred
18 a benefit upon Defendant by purchasing one of the defective CPUs. Defendant had knowledge of
19 the general receipt of such benefits, which Defendant received, accepted and retained. Defendant
20 owes Plaintiffs and Class members these sums that can be obtained either directly from Class
21 members, Defendant or its authorized retailers.

22 95. Under principles of restitution, an entity that has been unjustly enriched at the
23 expense of another by the retention of benefit wrongfully obtained is required to make restitution
24 to the other. In addition, under common law principles recognized in claims of common counts,
25 assumpsit, unjust enrichment, restitution, and quasi-contract, under the circumstances alleged
26 herein it would be inequitable for Defendant to retain such benefits without paying restitution or
27 restitutionary damages. Such principles require Defendant to return such benefits when the
28 retention of such benefits would unjustly enrich Defendant.

1 103. Defendant was negligent in the manufacture and design of the CPUs containing
2 the Defect, which CPUs were contained in, but also separate and apart from, the computers
3 Plaintiffs and Class members purchased.

4 104. Defendant's negligence was a substantial factor and reasonably foreseeable in
5 causing harm to Plaintiffs and Class members.

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

10 **VI. PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs and all Class members pray for judgment against Defendant as
12 follows:

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

22 **VII. DEMAND FOR JURY TRIAL**

23 Plaintiffs, individually and on behalf of all others similarly situated, demand a trial by
24 jury on all issues so triable.

1 DATED: January 31, 2018

Respectfully Submitted,

2 /s/ Daniel P. Mensher

Daniel P. Mensher, OSB #074636

3 T. David Copley, *pro hac vice forthcoming*

4 Gretchen Freeman Cappio, *pro hac vice forthcoming*

5 Cari Campen Laufenberg, *pro hac vice forthcoming*

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10 *Attorneys for Plaintiffs and the proposed class*

11 4816-7593-3275, v. 2

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Lucas Kintz

(b) County of Residence of First Listed Plaintiff Paoli, Indiana
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Daniel P. Mensher, OSB #074636, Keller Rohrbach L.L.P.
1201 Third Avenue, Suite 3200, Seattle, WA 98101
(206) 623-1900 Email: dmensher@kellerrohrback.com

DEFENDANTS

Intel Corporation

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input checked="" type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC 1332(d)

Brief description of cause:
Defective Product**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ _____

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE Michael J. McShaneDOCKET NUMBER 6:18-cv-00028-MC

DATE

January 31, 2018

SIGNATURE OF ATTORNEY OF RECORD

s/ Daniel P. Mensher

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Oregon

LUCAS KINTZ, individually and on behalf of all others similarly situated;

Plaintiff(s)

v.

INTEL CORPORATION, a Delaware corporation;

Defendant(s)

Civil Action No. 3:18-cv-00211

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) INTEL CORPORATION
Serve Agent for Service of Process:
CT Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Daniel P. Mensher, OSB #074636
KELLER ROHRBACK L.L.P.
1201 Third Avenue, Suite 3200
Seattle, WA 98101
(206) 623-1900, Fax (206) 623-3384
dmensher@kellerrohrback.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 3:18-cv-00211

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: