

Michael Fuller, OSB No. 09357

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(additional counsel on signature page)

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

WYATT MANN,
an Oregon consumer,
individually and on
behalf of all others,

Plaintiff,

v.

INTEL CORPORATION,
a Delaware corporation,

Defendant.

Case No. 6:18-cv-28

**CLASS ACTION
ALLEGATION COMPLAINT**

Unlawful Trade Practices
Unjust Enrichment

28 U.S.C. § 1332

Demand for Jury Trial

1.

THE PARTIES

Defendant Intel Corporation (Intel) is a Delaware corporation that regularly advertises and sells microchips used in billions of consumer computers, smartphones and devices across the globe. For the past few months, Intel has been aware of a material defect in its microchips that leaves its customers susceptible to unauthorized access by hackers. The material defect lets hackers compromise the privileged memory of Intel's processors by exploiting the way processes run in parallel. The material defect also lets hackers use code running in a browser to access memory in the attacker's process, potentially exposing customers' passwords and personal information. Intel knew of the material defect in its microchips and intentionally chose not to disclose the defect to its customers. Intel's material defect can be patched – but patched computers, smartphones and devices suffer reduced performance.

2.

Plaintiff Wyatt Mann is an individual consumer residing in Oregon. Like thousands of other consumers, plaintiff responded to Intel's advertisements in the past few months by paying to purchase a Lenovo computer with an Intel microchip for \$1,999.97 on December 11, 2017 from Best Buy.

3.

Plaintiff relied on Intel's advertisements and representations about the features and performance of its microchip and would not have purchased Intel's microchip had he known it would require a patch that would materially reduce its advertised performance rate.

4.

JURISDICTION AND VENUE

This Court has jurisdiction under 28 U.S.C. § 1332 because the parties are citizens of different states and the amount in controversy exceeds \$15 billion, based on \$200 statutory damages per consumer and Intel's estimated 2017 fourth quarter sales revenue of \$16.3 billion. Venue is proper under 28 U.S.C. § 1391 because Intel advertised its microchip to plaintiff here and Intel carries on substantial microchip advertising, production and sales in Oregon. This complaint's allegations are based on personal knowledge as to plaintiff's conduct and made on information and belief as to the acts of others.

5.

FACTUAL ALLEGATIONS

For the past few months, Intel has advertised performance data to the public for its microchips, including on product packaging and in its online and written sales materials. Intel knew, and intentionally failed to disclose to the public that its microchips contained a material defect that left its customers' computers, smartphones and devices susceptible to unauthorized access by hackers. News of the material defect was made public for the first time on Tuesday, January 2, 2018. While patches are available to treat the material defect in Intel's microchips, experts say that the patches will cause slowdowns, some as drastic as 25 percent to 30 percent depending on the computer, smartphone or device.

6.

Intel's failure to disclose the material defect in its microchips has caused ascertainable losses to thousands of consumers like plaintiff who would not have purchased Intel microchips had they known of the material defects, and who were left with a microchip slower and less valuable than they could have purchased for the same price from one of Intel's competitors that did not contain a material undisclosed defect.

7.

CLASS ALLEGATIONS

Plaintiff files this complaint as a national class action lawsuit.

The class consists of consumers who:

- a) Purchased an Intel microchip, or purchased a computer, smartphone or other device containing an Intel microchip,
- b) After the date on which Intel became aware its microchips contained a material defect as alleged in this complaint, and
- c) Who suffered ascertainable loss based on Intel's intentional failure to disclose the known material defect in its microchips.

8.

Excluded from the class are all attorneys for the class, officers and members of Intel, including officers and members of any entity with an ownership interest in Intel, or its parent or subsidiary companies, any judge who sits on the case, and all jurors and alternate jurors who sit on the case.

9.

The exact number of aggrieved consumers, which is well into the thousands based on Intel's sales volume, can be determined with Intel's sales records and data.

10.

Every aggrieved consumer misled by Intel's intentional failure to disclose the material defect in its microchips as alleged in this complaint suffered an actual ascertainable loss of the purchase price they paid for their microchip. But for Intel's failure to disclose the known defect in its microchips, plaintiff and the members of the putative class would not have bought Intel's microchips and would have instead purchased a microchip from one of Intel's competitors for the same price that did not suffer from a material defect.

11.

Intel's behavior as alleged in this complaint willfully violated the UTPA, including ORS 646.608(1)(t). This UTPA violation is common to the putative class.

12.

The class is so numerous that joinder is impracticable. Upon information and belief, the class includes thousands of members, based on Intel's reported sales records and data.

13.

Common questions of fact and law predominate over any questions affecting only individual class members. Common questions include whether plaintiff and the class members are entitled to equitable relief, whether Intel acted willfully, recklessly, knowingly, and intentionally, whether plaintiff and the class members are entitled to recover actual damages or statutory damages or punitive damages from Intel, and whether plaintiff and the class are entitled to recover fees and costs for Intel's UTPA violation.

14.

Plaintiff's claims are typical of the claims of the class because each was misled by Intel's failure to disclose, the injuries suffered by plaintiff and the class members vary only in the amount paid for Intel's microchips, and plaintiff's claim for relief is based upon the same legal theories as are the claims of the other class members. Plaintiff will fairly and adequately protect and represent the interests of the class because his claim is typical of the claims of the class, he is represented by nationally known and locally respected attorneys who have experience handling class action litigation and consumer protection cases who are qualified and competent, and who will vigorously prosecute this litigation, and their interests are not antagonistic or in conflict with the interests of the class.

15.

A class action is superior to other methods for fair and efficient adjudication of this case because common questions of law and fact predominate over other factors affecting only individual members, as far as plaintiff knows, no class action that purports to include customers suffering the same injury under Oregon law has been commenced, individual class members have little interest in controlling the litigation, due to the high cost of actions, the relatively small amounts of damages, and because plaintiff and his attorneys will vigorously pursue the claims. The forum is desirable because Intel carries on substantial microchip advertising, production and sales in Oregon. A class action will be an efficient method of adjudicating the claims of the class members who have suffered relatively small damages, as a result of the same conduct by Intel. In the aggregate, class members have claims for relief that are significant in scope relative to the expense of litigation. The availability of Intel's sales records and data will facilitate proof of class claims, processing class claims, and distributions of any recoveries.

16.

NATIONAL CLASS CLAIMS FOR RELIEF

– Claim 1 –

VIOLATION OF ORS 646.608

Intel willfully, recklessly, knowingly and intentionally violated ORS 646.608 as alleged above, causing plaintiff and the class ascertainable losses.

17.

Plaintiff and the class are entitled to equitable relief in the form of an accounting, restitution, and unless agreed upon by Intel, an order to preserve all sales data and sales records and documents and information (and electronically stored information) pertaining to this case. Plaintiff and the class are entitled to recover actual damages or \$200 statutory damages, whichever is greater, interest and fees and costs under ORS 646.638. Intel's violation of the UTPA as alleged above was reckless, in pursuit of profit, and constituted a wanton, outrageous and oppressive violation of the right of consumers to be free from unlawful trade practices. Plaintiff and the class are entitled to recover punitive damages under ORS 646.638.

18.

– **Claim 2** –

UNJUST ENRICHMENT

As a matter of justice and equity, Intel should not be able to retain the profits it obtained from purchases of its microchips by plaintiff and the class under these circumstances. Plaintiff and the class are entitled to restitution based on Intel's intentional and knowing failures to disclose material defects and unjust enrichment as alleged in this complaint.

19.

Demand for jury trial.

PRAYER FOR RELIEF

Plaintiff seeks relief for himself and the proposed class as follows:

- A. Unless agreed upon by Intel, an order to preserve all sales records and sales data and documents and information (and electronically stored information) pertaining to this case,
- B. An order certifying this matter as a class action,
- C. Judgment against Intel for actual, statutory, and punitive damages, interest, and reimbursement of fees and costs,
- D. And other relief the Court deems necessary.

January 4, 2018

RESPECTFULLY FILED,

s/ Michael Fuller
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PROOF OF MAILING

Under ORS 646.638(2), I declare and certify that on the date below I caused a copy of this complaint to be mailed to the Oregon Attorney General at the following address:

Ellen Rosenblum
Oregon Attorney General
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon 97301-4096

January 4, 2018

s/ Michael Fuller _____
Michael Fuller, OSB No. 09357
Lead Attorney for Plaintiff
Olsen Daines PC
US Bancorp Tower
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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
Wyatt Mann

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Michael Fuller, US Bancorp Tower, 111 SW 5th Ave., Suite 3150
Portland, Oregon 97204, 503-201-4570

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 checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" 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)*

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 (Excl. 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 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 - Med. Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <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 <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	CIVIL RIGHTS <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	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <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	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. 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 Empl. Ret. Inc. Security Act	PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*
28 U.S.C. § 1332

Brief description of cause:
Unlawful Trade Practices

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions):*

JUDGE _____ DOCKET NUMBER _____

DATE: 01/04/2018

SIGNATURE OF ATTORNEY OF RECORD: s/ Michael Fuller

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Oregon

Wyatt Mann

Plaintiff

v.

Intel Corporation

Defendant

Civil Action No. 6:18-cv-28

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Intel Corporation
c/o registered agent C T Corporation System
780 Commercial St. SE Ste 100
Salem, Oregon 97301

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:

Wyatt Mann
c/o attorney Michael Fuller
US Bancorp Tower
111 SW 5th Ave., Suite 3150
Portland, Oregon 97204

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