

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO**

AMY STOREY, MICHAEL INMAN and  
DENNIS CHAVEZ, individually and on  
behalf of all others similarly situated;

Plaintiffs,

v.

INTEL CORPORATION, a Delaware  
corporation;

Defendant.

Case No.

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

DEMAND FOR JURY TRIAL

Plaintiffs Amy Storey, Michael Inman and Dennis Chavez (“Plaintiffs”), individually and on behalf of all others similarly situated, by their undersigned counsel, allege the following upon personal knowledge as to their own acts and upon information and belief as to all other matters.

## **INTRODUCTION**

1. Plaintiffs bring this action against Defendant Intel Corporation (“Intel” or “Defendant”) on behalf of all persons who purchased defective Intel central processing units (“CPUs”). Commonly referred to as computer chips, these are the brain of the computer.

2. Defendant Intel’s x86-64x CPUs suffer from a security defect which causes the CPUs to be exposed to troubling security vulnerabilities by allowing potential access to extremely secure kernel data (the “Defect”). The Defect renders the Intel x86-64x CPUs unfit for their intended use and purpose. The Defect exists in all Intel x86-64x CPUs manufactured since at least 2008. The x86-64x CPU is, and was, utilized in the majority of all desktop computers, laptop computers, and servers in the United States. The only way to “patch” this vulnerability requires extensive changes to the root levels of the Operating System which would dramatically reduce performance of the CPU. Alternately, assuming that consumers could obtain a suitable replacement CPU, one could only replace the processor itself at considerable expense. Perhaps worse, for most computer manufacturers, doing so could void the warranty, which is another substantial expense.

3. To date, Defendant has been unable or unwilling to repair the Defect or offer Plaintiffs and Class members non-defective Intel CPUs - or reimbursement for the cost of such CPUs and the consequential damages arising from the purchase and use of such CPUs. Indeed, there does not appear to be a true “fix” for the Defect. The security “patch,” while expected to mitigate the security vulnerabilities, will dramatically degrade the CPUs’ performance. Therefore,

the only “fix” would be to exchange the defective x86-64x processor with a device containing a processor not subject to this security vulnerability. In essence, Intel x86-64x CPU owners are left with the unappealing choice of either purchasing a new processor or computer containing a CPU that does not contain the Defect, or continuing to use a computer with massive security vulnerabilities, or one with significant performance degradation.

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

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

#### **THE PARTIES**

6. On personal knowledge and pursuant to the investigation of counsel, Plaintiff Amy Storey is an individual and a citizen residing in the State of New Mexico. Ms. Storey purchased an Apple Mini with an Intel CPU processor. She was unaware of the CPU Defect described herein prior to her purchase of this computer and relied upon the represented characteristics of the machine. Had Defendant disclosed such material facts Ms. Storey would not have purchased a computer with this CPU or paid the price that she did.

7. On personal knowledge and pursuant to the investigation of counsel, Plaintiff Michael Inman is an individual and a citizen residing in the State of Colorado. On or about 2016, Mr. Inman purchased a new Lenovo Yoga containing the defective Intel processor for his “main”

computer. Mr. Inman also purchased six phones and five other computers with the defective chips for his family. Mr. Inman was unaware of the Defect described herein prior to his purchase of these computers containing the defective CPUs and relied upon the represented characteristics of the machines. Had Defendant disclosed such material facts Mr. Inman would not have purchased these CPUs or paid the price he did.

8. On personal knowledge and pursuant to the investigation of counsel, Plaintiff Dennis Chavez is an individual and a citizen residing in the State of Arizona. On or about 2016, Mr. Chavez purchased a Dell computer featuring the defective Intel processor for his “main” computer. Mr. Chavez also purchased six phones and five other computers with the defective chips for his family. Mr. Chavez was unaware of the Defect described herein prior to his purchase of these computers containing the defective CPUs and relied upon the represented characteristics of the machine. Had Defendant disclosed such material facts Mr. Chavez would not have purchased these CPUs or paid the price he did.

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

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

### **JURISDICTION AND VENUE**

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

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

### **FACTUAL ALLEGATIONS**

13. For at least 10 years, Defendant has marketed, distributed, and warranted these defective Intel CPUs in Arizona, Colorado and New Mexico and throughout the United States.

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

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

16. On or about January 2, 2018, it was revealed that the "patch" to this security vulnerability would lead to substantial CPU performance degradation. The "patch" would require root level changes to the Operating System resulting in a substantial decrease in CPU performance - as much as 30-50% by some estimates. In other words, the processor will take longer to "think."

17. Regrettably, the Defendant was evidently aware of the defect. Seven months earlier, on or about June 1, 2017, a member of Google's Project Zero security team had warned

Defendant of security vulnerabilities in its CPUs. Three other teams of computer experts also contacted Defendant about the Defect, and Intel connected them together to compare findings no later than August 2016, at the Black Hat cybersecurity conference in Las Vegas.

**A. The Intel CPU Defect**

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

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

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

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

Crucially, these updates to both Linux and Windows will incur a performance hit on Intel products. The effects are still being benchmarked, however we're looking at *a ballpark figure of five to 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. [...]

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

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

See [https://www.theregister.co.uk/2018/01/02/intel\\_cpu\\_design\\_flaw/](https://www.theregister.co.uk/2018/01/02/intel_cpu_design_flaw/) (last visited January 2, 2018).

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

21. The Defect’s presence is material because fixing the Defect reduces the performance of the CPUs thereby causing the CPUs to slow down from the performance specifications that Defendant promised and which consumers expected when buying a computer with an Intel CPU. Expressed in Megahertz or Gigahertz, the higher the number, the faster the CPU. The Defect is also material because of the security vulnerabilities Intel based CPUs are exposed to.

22. 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).)

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

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

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<sup>1</sup> [https://www.theregister.co.uk/2018/01/02/intel\\_cpu\\_design\\_flaw/](https://www.theregister.co.uk/2018/01/02/intel_cpu_design_flaw/) (last visited January 3, 2018)



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

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

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

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

**Intel Responds to Security Research Findings**

Intel and other technology companies have been made aware of new security research describing software analysis methods that, when used for malicious purposes, have the potential to improperly gather 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.

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

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

Intel is committed to the industry best practice of responsible disclosure of potential security issues, which is why Intel and other vendors had planned to disclose this issue next week when more software and firmware updates

will be available. However, Intel is making this statement today because of the current inaccurate media reports.

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

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

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

29. Remarkd Linus Torvalds, the inventor of Linux:

I think somebody inside Intel needs to really take a long hard look at their CPU's, and actually admit that they have issues instead of writing PR blurbs that say that everything works as designed.

....

Or is Intel basically saying "we are committed to selling you s\$!\* forever and ever, and never fixing anything"?

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

31. Any fix would require extensive changes at the root levels of the OS software, which would assuredly impact the performance of Intel processor-based machines. More importantly, any "fix" would not only directly impact the performance of a particular user's Intel-based device, but have indirect performance impacts. Countless servers that run internet-connected services in the cloud will see a dramatic degradation in performance, which will have a

downstream impact to all users of these servers. Thus, cloud-based services like Microsoft, Google, and Amazon will see performance degradation.

### **CLASS ACTION ALLEGATIONS**

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

33. Plaintiffs bring their claims on their own behalf, and on behalf of the following Class (the “Class”):

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

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

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

36. Plaintiffs do not anticipate any difficulties in the management of this action as a Class action. The Class is ascertainable, and there is a well-defined community of interest in the questions of law and/or fact alleged herein since the rights of each Class member were infringed

or violated in similar fashion based upon Defendant's uniform misconduct. Notice can be provided through sales and warranty records and publication.

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

- a. Whether Defendant's CPUs possess the Defect and the nature of that Defect;
- b. Whether Defendant made any implied warranties in connection with the sale of the defective CPUs;
- c. Whether Defendant breached any implied warranties relating to its sale of defective CPUs by failing to resolve the Defect in the manner required by law;
- d. Whether Defendant was unjustly enriched by selling defective Intel CPUs; Whether Defendant violated applicable consumer protection laws by selling CPUs with the Defect and/or by failing to disclose the Defect, and failing to provide the relief required by law; and
- e. The appropriate nature and measure of Class-wide relief.

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

39. Plaintiffs' claims are typical of the claims of Class members. The injuries sustained by Plaintiffs and the Class flow, in each instance, from a common nucleus of operative facts based

on the Defendant's uniform conduct as set forth above. The defenses, if any, that will be asserted against Plaintiffs' claims likely will be similar to the defenses that will be asserted, if any, against Class members' claims.

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

41. A Class action is superior to other available methods for the fair and efficient group-wide adjudication of this controversy, and individual joinder of all Class members is impracticable, if not impossible because a large number of Class members are located throughout the United States. Moreover, the cost to the court system of such individualized litigation would be substantial. Individualized litigation would likewise present the potential for inconsistent or contradictory judgments and would result in significant delay and expense to all parties and multiple courts hearing virtually identical lawsuits. By contrast, the conduct of this action as a Class action presents fewer management difficulties, conserves the resources of the parties and the courts, protects the rights of each Class member and maximizes recovery to them.

42. Defendant has acted on grounds generally applicable to the entire Class, thereby making final injunctive relief or corresponding declaratory relief appropriate with respect to the Class as a whole.

**COUNT I**  
**Breach of Implied Warranty**

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

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

45. Defendant impliedly warranted to members of the general public, including Plaintiffs and Class members, these CPUs were of merchantable quality (*i.e.*, a product of a high enough quality to make it fit for sale, usable for the purpose it is made, of average worth in the marketplace, or not broken, unworkable, damaged, contaminated or flawed), was of the same quality as those generally acceptable in the trade or that would pass without objection in the trade, were free from material defects and were reasonably fit for the ordinary purposes for which they were intended or used. In addition, Defendant either was or should have been aware of the particular purposes for which such CPUs are used, and that Plaintiffs and the Class members were relying on the skill and judgment of Defendant to furnish suitable goods for such purpose. This is particularly true given the current heightened focus on data security in the tech industry.

46. Pursuant to agreements between Defendant and its authorized agents and re-sellers, the stores Plaintiffs and Class members purchased their defective Intel CPUs from are authorized retailers and authorized CPU service facilities. Plaintiffs and Class members are third-party beneficiaries of, and substantially benefited from, such contracts.

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

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

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

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

**COUNT II**  
**Unjust Enrichment**

51. Plaintiffs re-allege and incorporate by reference the allegations contained in all preceding paragraphs as though set forth fully herein, and, to the extent necessary, this cause of action is pled in the alternative.

52. Plaintiff and the Nationwide Class have unintentionally and inadvertently conferred substantial benefits on the Defendant by purchasing the defective computer chips.

53. Defendant knew or should have known that the payments they received were given and received with the expectation that Plaintiff and the Nationwide Class members would receive a "data secure" CPU which would perform at the speeds represented.

54. Because of Defendant's wrongful activities, they have unlawfully received Plaintiff and Nationwide Class members' monies through corporate revenues, salaries and other financial benefits.

55. Defendant, having retained the monies which unjustly enriched them, should be required by the Court to account to Plaintiff and the Nationwide Class for their unjust enrichment and the profits earned thereafter such monies.

56. As a direct and proximate result of Defendant's wrongful conduct and unjust enrichment, Plaintiff and Nationwide Class members have suffered damages in an amount to be determined at trial.

57. Defendant should be required to disgorge all monies, profits and gains which they have obtained or will unjustly obtain in the future at the expense of Plaintiff's and Nationwide Class members.

**COUNT IV**  
**Strict Liability**

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

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

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

60. Plaintiffs and Class members have been harmed, as they now own computers with CPUs which, due to such manufacturing or design defect, has left the supposedly core protected part of the CPU vulnerable to hackers and with decreased performance, in an amount according to proof at trial.

**COUNT V**  
**Negligence**

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



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

63. Defendant's negligence was a substantial factor and reasonably foreseeable in causing harm to Plaintiffs and Class members. This is particularly true as Defendant was aware of, but failed to correct the problem.

64. Plaintiffs and Class members have been harmed, as they now own computers with CPUs which, due to such manufacturing or design defect, are subject to invasion of a supposedly core protected part of the CPU as well as decreased performance, in an amount according to proof at trial.

**COUNT VI**  
**Violation of the New Mexico Unfair Trade Practices Act**  
**N.M.S.A. 1978, 57-12, *et seq.***

65. Plaintiff Storey re-alleges and incorporates by reference the allegations contained in all preceding paragraphs as though set forth fully herein.

66. Plaintiff asserts this cause of action on behalf of herself and the Nationwide Class members.

67. This cause of action is brought pursuant to New Mexico's Unfair Trade Practices Act, N.M.S.A. 1978, § 57-12-1, *et seq.* ("NMUPA").

68. The NMUPA, § 57-12-2 (D) defines an unlawful deceptive and unfair trade practice as:

an act specifically declared unlawful pursuant to the Unfair Practices Act, a false or misleading oral or written statement, visual description or other representation of any kind knowingly made in connection with the sale, lease, rental or loan of goods or services or in the extension of credit or in the collection of debts by a person in the regular course of the person's trade or commerce, that may, tends to or does deceive or mislead any person and includes:

(5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that the person does not have;

(14) using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if doing so deceives or tends to deceive;

69. Defendant violated the NMUPA by engaging in fraudulent and deceptive marketing practices by purposefully misleading consumers into believing that its CPUs would perform at a certain speed while remaining safe from surreptitious data exfiltration.

70. Defendant violated the NMUPA by falsely representing that the Plaintiff and Nationwide Class members were receiving micro-processors with specific speed and security characteristics which were not delivered.

71. Defendant's acts and practices in the sale and dissemination of the defective CPUs, as alleged in the foregoing paragraphs were false, misleading, deceptive, and unfair to consumers, in violation of the NMUPA and other applicable consumer protection laws.

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

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

suffered injury in fact and lost money or property as a result of such acts and practices as set forth in detail above.

74. Pursuant to NMSA § 57-12-10 (B), Plaintiff is entitled to and makes a claim for treble damages and attorney's fees and costs as a result of the Defendant's unfair and deceptive conduct on behalf of himself and the Class.

**COUNT VII**  
**Violation of the Colorado Consumer Protection Act**  
**C.R.S.A. § 6-1-105**

75. Plaintiff Inman incorporates by reference all of the above allegations as if set forth herein.

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

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

78. The acts, omissions, practices and non-disclosures of Defendant constituted a deceptive trade practice by means of the commission of unfair and unlawful business acts or practices within the meaning of the Colorado Consumer Protection Act, § 6-1, *et seq.*, which states:

(1) A person engages in a deceptive trade practice when, in the course of the person's business, vocation, or occupation, the person:

(e) Knowingly makes a false representation as to the characteristics, ingredients, uses, benefits, alterations, or quantities of goods, food, services, or property or a false representation as to the sponsorship, approval, status, affiliation, or connection of a person therewith; and

(g) Represents that goods, food, services, or property are of a particular standard, quality, or grade, or that goods are of a particular style or model, if he knows or should know that they are of another;

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

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

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

82. Pursuant to Colorado Consumer Protection Act, § 6-1-113 (2)(a)(III), the Defendant’s conduct having been in bad faith, Plaintiff is entitled to and makes a claim for the greater of actual, treble damages or \$500.00 per violation. Plaintiff may also make a claim for attorney's fees and costs as a result of the Defendant's unfair and deceptive conduct on behalf of himself and the Class.

**COUNT VIII**  
**Violation of the Arizona Consumer Fraud Act**  
**A.R.S. § 44-1522**

83. Plaintiff Chavez incorporates by reference all of the above allegations as if set forth herein.

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

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

86. Defendants' omission and concealment of the true and sub-par performance of its CPUs constitute a statutory consumer fraud. The Arizona Consumer Fraud Act Section A.R.S. § 44-1522 prohibits:

**A.** The act, use or employment by any person of any deception, deceptive or unfair act or practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression or omission of any material fact with intent that others rely on such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice.

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

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

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

90. Plaintiff may also make a claim for attorney's fees and costs as a result of the Defendant's unfair and deceptive conduct on behalf of himself and the Class.

#### **PRAYER FOR RELIEF**

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

- A. Declaring this action to be a proper Class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;
- B. Awarding Plaintiffs and Class members all proper measures of equitable monetary relief and damages, plus interest to which they are entitled;
- C. Awarding equitable, injunctive, and declaratory relief as the Court may deem just and proper, including restitution and restitutionary disgorgement;
- D. Awarding Plaintiffs' reasonable costs and attorney's fees; and
- E. Granting such further and other relief this Court deems appropriate.

**DEMAND FOR JURY TRIAL**

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

Date: January 17, 2018

Respectfully Submitted:

/s/ Nicholas Koluncich

Nicholas Koluncich  
Law Offices of Nicholas Koluncich, III, LLC  
500 Marquette Avenue NW, Suite 1200  
Albuquerque, New Mexico 87102  
(505) 881-2228  
[nkoluncich@newmexicoclassactions.com](mailto:nkoluncich@newmexicoclassactions.com)  
*Attorneys for all Plaintiffs and the Class*

# 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

AMY STOREY, MICHAEL INMAN and DENNIS CHAVES , individually and on behalf of all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Nicholas Koluncich, Law Offices of Nicholas Koluncich III, LLC  
500 Marquette Avenue NW - Suite 1200  
Albuquerque, NM 87102 (505) 881-2228

### 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)

- |  |   |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)                     |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input checked="" type="checkbox"/> 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 checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input checked="" 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)

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	<b>PERSONAL INJURY</b> <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"/> 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 <hr/> <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <hr/> <b>SOCIAL SECURITY</b> <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))	<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
<b>REAL PROPERTY</b> <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	<b>CIVIL RIGHTS</b> <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	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <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 <b>Other:</b> <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	<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 <hr/> <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<b>FEDERAL TAX SUITS</b> <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)

- |   |   |  |   |  |  |   |
|---|---|--|---|--|--|---|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District (specify) | <input type="checkbox"/> 6 Multidistrict Litigation - Transfer | <input type="checkbox"/> 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 \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE \_\_\_\_\_ SIGNATURE OF ATTORNEY OF RECORD \_\_\_\_\_

01/17/2018 /s/ Nicholas Koluncich

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

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**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.