

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Class Action)

NO : 500-06-000898-185

9085-4886 QUÉBEC INC.

Petitioner

vs.

INTEL OF CANADA, LTD.

-and-

INTEL INTERNATIONAL, INC.

-and-

INTEL CORPORATION

Respondents

**APPLICATION BY THE RESPONDENTS TO TEMPORARILY STAY THE CLASS ACTION
(Articles 18 and 577 of the *Code of Civil Procedure*)**

**TO ONE OF THE HONOURABLE JUSTICES OF THE QUEBEC SUPERIOR COURT, SITTING
IN AND FOR THE DISTRICT OF MONTREAL, THE RESPONDENTS RESPECTFULLY SUBMIT
THE FOLLOWING:**

I. INTRODUCTION

1. The Respondents seek a temporary stay of all proceedings related to the *Application to Authorize the Bringing of a Class Action & to Appoint the Petitioner as Representative Plaintiff* filed on January 8, 2018, by Plaintiff 9085-4886 Québec Inc. (the "**Quebec Action**").
2. The principal reason for seeking a temporary stay of the Quebec Action is the existence of duplicative and overlapping proceedings in Canada as well as the United States, being (a) a parallel proposed national class action filed in Ontario before the Superior Court of Justice, in *Dean Jin, et al. vs. Intel Corporation, et al.*, in court docket number CV-18-592675-00CP (the "**Ontario Action**") as appears from a copy of the Ontario Action attached hereto as **Exhibit R-1**; and (b) a parallel national multi-district litigation class action in the United States District Court for the District of Oregon, through which 41 proposed product liability class actions have been consolidated for all pre-trial proceedings (MDL No. 2828, the "**US Action**"). A copy of the Transfer Order and the various Conditional Transfer Orders in MDL No. 2828 are attached hereto as **Exhibit R-2, en liasse**.
3. Certain other proposed class actions, as well as derivative actions filed by shareholders, have been filed in the United States against Intel Corporation based on securities laws, and are pending in the California state and federal courts.

4. The proposed national class in the Ontario Action excludes residents of Quebec. Both the Ontario Action and the US Action raise similar or substantially similar issues as in the Quebec Action.

II. THE ONTARIO ACTION AND THE US ACTION

5. The proposed class in Quebec is the following:

"All persons residing in Quebec who purchased and/or leased, either alone or as part of an electronic device, an Intel processor with x86-64 architecture (the "Intel Processors"), or any other group to be determined by the Court;"

6. On February 23, 2018, a Statement of Claim raising similar facts was filed in Ontario by the Plaintiffs Dean Jin et al. (the "**Ontario Plaintiffs**") against the Respondents and computer manufacturers (Exhibit R-1).

7. The Ontario Plaintiffs seek to represent the following putative classes:

"The "Intel Class" [...]:

- i) All individuals in Canada, excluding residents of Quebec, who purchased, own, owned, or leased a CPU directly from Intel.*

The "Intel Subclass" [...]:

- i) All individuals in Canada, excluding residents of Quebec, who purchased, own, owned, or leased a CPU directly from Intel for their personal use."*

8. The Ontario Plaintiffs also seek to represent putative classes composed of individuals or entities in Canada (excluding residents of Quebec) who acquired a device from one of several computer manufacturers, being Microsoft, Lenovo, Apple, Dell and HP (as defined in Exhibit R-1).

9. The US Action, as noted above, consolidates several dozen proposed class proceedings which are all based on substantially the same facts and seek similar remedies as in the Quebec Action. A sample of those proceedings are attached hereto as **Exhibit R-3** (a consolidated pleading for the US Action in MDL No. 2828 will be placed on file with the Oregon District in August 2018).

III. STAY OF PROCEEDINGS

10. The essential facts in support of the ongoing and overlapping class actions are the same, the objectives sought are identical and the questions raised are substantially similar.

11. Indeed, the central allegation raised by the Ontario Plaintiffs and the Petitioner in the Quebec Action is that the Respondents designed, manufactured and sold processors which are allegedly defective as a result of the security research findings reported as "Meltdown" and "Spectre".

12. The basic allegations in support of all these proceedings (i.e. the "cause"), which are the same, can be summarized as follows: Certain security vulnerabilities have been identified in most modern microprocessors, including those manufactured by Intel and other microprocessor manufacturers. The plaintiffs in these proceedings contend that the mitigations designed to address these vulnerabilities will cause a material reduction in the performance of these microprocessors. They further claim that Intel is at fault in connection with those vulnerabilities, whether because Intel's microprocessors were defective in possessing these vulnerabilities, because Intel allegedly made misrepresentations or omitted material facts in how it characterized its microprocessors to the public, because Intel has warranty liability associated with these vulnerabilities, or for other reasons.
13. The object of all the proceedings is also substantially similar insofar as they all claim compensatory and punitive (or exemplary) damages against the Respondents.
14. It is in the interests of justice and of the parties herein to avoid a multiplicity of court proceedings and the possibility of contradictory judgments.
15. In the US Action, the plaintiffs have claimed liability in the billions of US dollars.
16. Extensive resources will be spent in the US Action, including extensive, complex and highly technical expert evidence, to determine the existence and impact of any security flaws or performance issues. Indeed, it is anticipated that millions of dollars will be spent on expert discovery alone (in addition to document production and the depositions of factual witnesses).
17. Proposed Quebec class members will benefit from the factual and technical findings which will be made in the US Action, in particular. With respect, it would not accord with the interests of justice, the principles of proportionality and wise expenditure of judicial and party resources and access to justice to duplicate these substantial efforts and expenses concerning the exact same alleged technical issues.

IV. THE RIGHTS AND INTERESTS OF THE QUEBEC CLASS MEMBERS IN THE CONTEXT OF A STAY

18. It is in the interests of the members of the putative Quebec class that the Quebec Action be stayed for a temporary period of 12 months (subject to further review) in order to allow the industry efforts to address the security research findings to continue and attain the outcome desired by all.
19. The rights of the proposed Quebec class members will not be in any way be negatively impacted during the period of a temporary stay. To the contrary, a temporary stay will allow for the remediation efforts to continue, for the actual consequences of the alleged flaws to be demonstrated, and for progress to be made in overlapping and ongoing cases which will benefit Quebec class members.
20. At the conclusion of the temporary stay period of 12 months (if not earlier), the parties may apply for further orders in respect of the progress of the Quebec Action, based on developments in the remediation efforts, the US and Ontario Actions.

V. CONCLUSION

21. The temporary stay of the Quebec Action for a period of 12 months will allow for the factual situation to crystallize further and afford the parties significant savings in time, energy, and financial resources, as well as to achieve significant savings in judicial resources.

22. On an ongoing basis during the pendency of the stay, the Respondents undertake to keep this Court advised of any material developments in the US Action and the Ontario Action.

FOR THESE REASONS, MAY IT PLEASE THIS COURT TO:

GRANT the Application to Temporarily Stay the Class Action;

STAY the *Application to Authorize the Bringing of a Class Action & to Appoint the Petitioner as Representative Plaintiff* filed by 9085-4886 Québec Inc. for a period of 12 months from the date of the judgment herein;

RESERVE the rights of the parties to seek a further temporary stay or permanent stay in the present file;

WITHOUT COSTS.

MONTREAL, July 6, 2018.

Stikeman Elliott LLP

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Montréal (Québec) H3B 3V2
Attorneys for the Respondents
Our reference : 033126-1077

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

NO : 500-06-000898-185

SUPERIOR COURT
(Class Action)

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INTEL CORPORATION

Respondents

AFFIDAVIT OF DANYELLE BROTHERS

I, Danyelle Brothers, Senior Litigation Paralegal at Intel Corporation, having a place of business at 2200 Mission College Blvd. RNB-4-150, Santa Clara, California 95054, being duly sworn, do solemnly swear and affirm the following:

1. I am currently employed by Intel Corporation as a Senior Litigation Paralegal;
2. The facts alleged at paragraphs 2, 3, 9, and 16 are true.

AND I HAVE SIGNED:


Danyelle Brothers

SOLEMNLY AFFIRMED before me,
in _____, this _____ day of _____, 2018

see attached

Notary Public

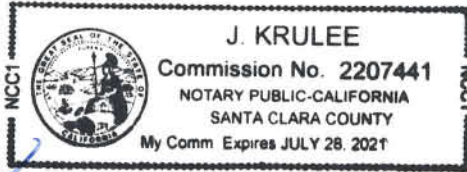
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Santa Clara

Subscribed and sworn to (or affirmed) before me on this 6th
day of July, 2018, by Danyelle Brothers (only)

proved to me on the basis of satisfactory evidence to be the
person~~(s)~~ who appeared before me.


Signature



(Seal)

NOTICE OF PRESENTATION

TO :

Mtre Jeff Orenstein
Mtre Andrea Grass
CONSUMER LAW GROUP INC.
1030 Berri St., suite 102
Montréal (Québec) H2L 4C3
jorenstein@clg.org.
agrass@clg.org

TAKE NOTICE that the present Application to Temporarily Stay the Class Action will be presentable for adjudication before one of the Honourable Judges of the Superior Court, at the Montréal Courthouse, located at 1 Notre-Dame East, Montréal, Québec, at a date and time to be set by the Court.

PLEASE GOVERN YOURSELVES ACCORDINGLY.

MONTRÉAL, July 6, 2018

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**LIST OF EXHIBITS
(APPLICATION BY THE RESPONDENTS TO TEMPORARILY STAY THE CLASS ACTION)**

- EXHIBIT R-1:** Copy of the Statement of Claim filed by the Plaintiffs Dean Jin et al. in Ontario;
- EXHIBIT R-2:** Copy of the US multi-district litigation (MDL) panel's decision No. 2828 dated March 29, 2018;
- EXHIBIT R-3:** Sample of the consolidated US proposed class proceedings;

MONTRÉAL, July 6, 2018

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Attorneys for the Respondents

EXHIBIT R-1

ROCHON | GENOVA_{LLP}
BARRISTERS • AVOCATS

of Counsel

FRANK G. FELKAI, Q.C. (1942-2016)
ALLAN C. HUTCHINSON

in association with
LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP
SAN FRANCISCO | NEW YORK | NASHVILLE

Our File No. 18100

February 26, 2018

VIA PROCESS SERVER

Intel of Canada, Ltd. ✓
5300-199 Bay Street
Commerce Court West
Toronto, ON N5L 1B9

Microsoft Canada Inc.
1950 Meadowvale Blvd
Mississauga, ON L5N 8L9

Lenovo (Canada) Inc.
55 Idema Road
Markham, ON L3R 1B1

Dell Canada
155 Gordon Baker Road, Unit 501
North York, ON M2H 3N5

Apple Canada Inc.
120 Bremner Boulevard, Suite 1600
Toronto, ON M5J 0A8

HP Canada
5150 Spectrum Way, Unit 600
Mississauga, ON L4W 5G1

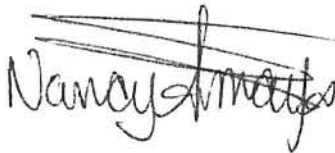
Dear Sir/Madame,

RE: Dean Jin, et al. v. Intel Corporation, et al.
Court File No.: CV-18592675-00CP

Please find enclosed our issued Statement of Claim dated February 23, 2018, served upon you pursuant to the *Rules of Civil Procedure*.

Yours very truly,

Per:



Joel P. Rochon
/na

Enc.

Court File No.: CV-18-592675-
00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

DEAN JIN, 1925321 ONTARIO INC., PAUL SPAGNUOLO, and JULIE SOOS

Plaintiffs

- and -

INTEL CORPORATION, INTEL OF CANADA, LTD., MICROSOFT CORPORATION,
MICROSOFT CANADA INC., LENOVO GROUP LTD., LENOVO (CANADA) INC., DELL
INC., DELL CANADA, APPLE INC., APPLE CANADA INC., HEWLETT-PACKARD
COMPANY, HP INC., and HP CANADA



Proceeding under the Class Proceedings Act, 1992

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

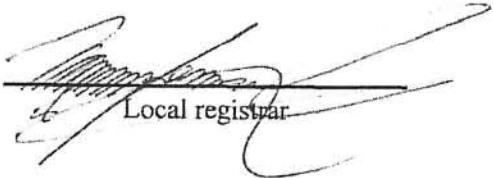
Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES,

LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: *February 23, 2018*

Issued by: 
Local registrar

Address of
court office: 393 University Avenue
10th Floor
Toronto, ON M5G 1E6

TO: Intel Corporation
2200 Mission College Boulevard
Santa Clara, CA 06054
USA

AND TO: Intel of Canada, Ltd.
5300-199 Bay Street
Commerce Court West
Toronto, ON N5L 1B9
Canada

AND TO: Microsoft Corporation
1 Microsoft Way
Redmond, WA 98052
USA

AND TO: Microsoft Canada Inc.
1950 Meadowvale Blvd
Mississauga, ON L5N 8L9
Canada

AND TO: Lenovo Group Ltd.
1009 Think Place
Morrisville, NC 27560
USA

AND TO: Lenovo (Canada) Inc.
55 Idema Road
Markham, ON L3R 1B1
Canada

AND TO: Dell Inc.
1 Dell Way
Round Rock, TX 78682
USA

AND TO: Dell Canada
155 Gordon Baker Road, Unit 501
North York, ON M2H 3N5
Canada

AND TO: Apple Inc.
1 Infinite Loop
Cupertino, CA 95014
USA

AND TO: Apple Canada Inc.
120 Bremner Boulevard, Suite 1600
Toronto, ON M5J 0A8
Canada

AND TO: Hewlett Packard Company and HP Inc.
3000 Hanover Street
Palo Alto, CA 94304
USA

AND TO: HP Canada
5150 Spectrum Way, Unit 600
Mississauga, ON L4W 5G1
Canada

I. DEFINITIONS

1. The following definitions apply for the purposes of this Statement of Claim:
 - a) “*Act*” means the *Class Proceedings Act, 1992*, S.O. 1992 c. 6, as amended;
 - b) “**Apple**” means the Defendants Apple Inc. and Apple Canada Inc.;
 - c) “**Apple Inc.**” means the Defendant Apple, incorporated pursuant to the laws of the State of California, with its head office located in Cupertino, California;
 - d) “Apple Canada Inc.” means the Defendant Apple Canada Inc., a wholly-owned subsidiary of Apple Inc., with its head office located in Toronto, Ontario;
 - e) “Class Members” means all Intel Class Members, Intel Subclass Members, Computer Class Members, and Computer Subclass Members, defined below;
 - f) “*Competition Act*” means *Competition Act*, R.S.C. 1985, c. C-34, as amended;
 - g) The “**Computer Class**” and “**Computer Class Members**” means the following:
 - i) All individuals or entities in Canada, excluding residents of Quebec, who have purchased, own, owned, or leased a device from one of the following computer manufacturers: Microsoft, Lenovo, Apple, Dell, or HP.
 - h) The “**Computer Subclass**” and “**Computer Subclass Members**” means the following:
 - i) All individuals in Canada, excluding residents of Quebec, who purchased, own, owned, or leased for their personal use a device from one of the following computer manufacturers: Microsoft, Lenovo, Apple, Dell, or HP.
 - i) “**Computer**” or “**Computers**” means any computer sold by Microsoft, Lenovo, Apple, Dell, or HP that contains an Intel CPU;

- j) “**Consumer Protection Act**” means the *Consumer Protection Act, 2002*, S.O. 2002, c.30, Sch. A, as amended (references to the *Consumer Protection Act* shall also be taken to include the equivalent provisions of the consumer protection legislation in the rest of Canada, as described in “Schedule A”);
- k) “**CPU**” refers to the allegedly defective Intel ‘central processing unit’, manufactured since 1995, including but not limited to the CPUs described in “Schedule B”.
- l) “**Defect**” refers to two separate defects, namely: (1) “Spectre” and (2) “Meltdown”, which exploit vulnerabilities in the CPU to allow hackers to manipulate the CPU into initiating a process that allows them to access confidential, private, or otherwise sensitive data that the chip makes available as it anticipates its next function. These defects were discovered by a team of security analysts at Google, referred to as “Google Project Zero”;
- m) “**Defendants**” mean the Defendants in this action;
- n) “**Dell**” means the Defendants Dell Inc. and Dell Canada;
- o) “**Dell Inc.**” means the Defendant Dell Inc., an American corporation incorporated pursuant to the laws of the State of Texas, with its head office located in Round Rock, Texas;
- p) “**Dell Canada**” means the Defendant Dell Canada, a wholly-owned subsidiary of Dell Inc., with its head office located in North York, Ontario;
- q) “**Devices**” includes computers and laptops;
- r) “**HP**” means the Defendants Hewlett Packard Company, HP Inc., and HP Canada;
- s) “**Hewlett Packard Company**” and “**HP Inc.**” means the Defendant Hewlett Packard, incorporated pursuant to the laws of the State of California, with its head office in Palo Alto, California;

- t) “**HP Canada**” means the Defendant HP Canada, a wholly-owned subsidiary of Hewlett Packard Company and HP Inc., with its head office in Mississauga, Ontario;
- u) “**Intel**” means the Defendants Intel Corporation and Intel of Canada, Ltd.;
- v) “**Intel Corporation**” means the Defendant Intel Corporation, incorporated pursuant to the laws of the State of Delaware, with its head office located in Santa Clara, California;
- w) “**Intel of Canada**” means the Defendant Intel of Canada, Ltd., a wholly-owned subsidiary of Intel Corporation, with its head office in Toronto, Ontario;
- x) The “**Intel Class**” and “**Intel Class Members**” means the following:
 - i) All individuals or entities in Canada, excluding residents of Quebec, who purchased, own, owned, or leased a CPU directly from Intel.
- y) The “**Intel Subclass**” and “**Intel Subclass Members**” means the following:
 - i) All individuals in Canada, excluding residents of Quebec, who purchased, own, owned, or leased a CPU directly from Intel for their personal use.
- z) “**Lenovo**” means the Defendants Lenovo Group Ltd. or Lenovo PC International, and Lenovo (Canada) Inc.;
- aa) “**Lenovo Group Ltd.**” means the Defendant Lenovo, incorporated pursuant to the laws of the State of North Carolina, with its head office located in Morrisville, North Carolina;
- bb) “**Lenovo (Canada)**” means the Defendant Lenovo (Canada) Inc., a wholly-owned subsidiary of Lenovo Group Ltd., with its head office located in Markham, Ontario;
- cc) “**Microsoft**” means the Defendants Microsoft Corporation and Microsoft Canada Inc.;

- dd) “**Microsoft Corporation**” means the Defendant Microsoft Corporation, incorporated pursuant to the laws of the State of Washington, with its head office located in Redmond, Washington;
- ee) “**Microsoft Canada**” means the Defendant Microsoft Canada Inc, a wholly-owned subsidiary of Microsoft Corporation, with its head office located in Mississauga, Ontario;
- ff) “**Side-Channel Attacks**” means the kind of attack where hackers take advantage of a legitimate computer process to access sensitive personal information.

II. RELIEF SOUGHT

2. The Plaintiffs Dean Jin (“Jin”), 1925321 Ontario Inc. claim on their own behalf and on behalf of all Intel Class Members and Intel Subclass Members:

- a) an order pursuant to the *Act* certifying this action as a class proceeding and appointing Jin, on behalf of 1925321 Ontario Inc., as the Representative Plaintiff for the Intel Class, and Jin, in his personal capacity, as the Representative Plaintiff for the Intel Subclass;
- b) a declaration that the CPUs are defective;
- c) a declaration that the Defendants:
 - i) breached the *Consumer Protection Act* in relation to the Intel Subclass;
 - ii) breached their contracts and warranties with the members of the Intel Class and Intel Subclass;
 - iii) deceitfully withheld information from Intel Class Members and Intel Subclass Members constituting the Tort of Deceit;
 - iv) breached the *Competition Act*;

- d) a declaration that Intel Class Members and Intel Subclass Members who purchased, own, owned, or leased the CPUs are entitled to damages arising from their purchase, ownership, and/or lease of the CPUs;
- e) in the alternative, a declaration that the Intel Class Members and Intel Subclass Members are entitled to rescission of their purchase or lease agreements;
- f) a declaration that any applicable statute of limitation has been tolled by the Defendants' knowledge, deceit, and fraudulent concealment, which prevented the Intel Class Members and Intel Subclass Members from discovering their cause of action;
- g) damages in an amount to be provided prior to trial, including but not limited to damages for the diminution in value of the CPUs;
- h) aggravated and/or punitive damages;
- i) prejudgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C. 43;
- j) costs of this action; and
- k) such further and other relief as this Honourable Court deems just.

3. The Plaintiffs Jin, 1925321 Ontario Inc., Paul Spagnuolo ("Spagnuolo"), and Julie Soos ("Soos") claim on their own behalf and on behalf of all Computer Class Members and Computer Subclass Members:

- a) an order pursuant to the Act certifying this action as a class proceeding and appointing Jin, on behalf of 1925321 Ontario Inc. and in his personal capacity, Spagnuolo, and Soos as the Representative Plaintiffs for the Computer Class, and Jin, in his personal capacity, Spagnuolo, and Soos as the Representative Plaintiffs for the Computer Subclass;
- b) a declaration that the Computers containing the CPUs are defective;
- c) a declaration that the Defendants:

- i) breached the *Consumer Protection Act* in relation to the Computer Subclass;
 - ii) breached their contracts and warranties with the members of the Computer Class and Computer Subclass;
 - iii) deceitfully withheld information from Computer Class Members and Computer Subclass Members constituting the Tort of Deceit;
 - iv) breached the *Competition Act*;
- d) a declaration that Computer Class Members and Computer Subclass Members who purchased, own, owned, or leased Computers are entitled to damages arising from their purchase, ownership, and/or lease of the said Computers;
 - e) in the alternative, a declaration that the Computer Class Members and Computer Subclass Members are entitled to rescission of their purchase or lease agreements;
 - f) a declaration that any applicable statute of limitation has been tolled by the Defendants' knowledge, deceit, and fraudulent concealment, which prevented the Computer Class Members and Computer Subclass members from discovering their cause of action;
 - g) damages in an amount to be provided prior to trial, including but not limited to damages for the diminution in value of the Computers containing the CPUs;
 - h) aggravated and/or punitive damages;
 - i) prejudgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C. 43;
 - j) costs of this action; and
 - k) such further and other relief as this Honourable Court deems just.

III. NATURE OF THIS ACTION

4. The CPUs put into the stream of Canadian commerce by the Defendants have caused grave privacy concerns and considerable expense to Class Members. The CPUs have

compromised and continue to compromise the privacy and security of Class Members. Individual computing devices, as well as entire server networks, were and continue to be at serious risk. Canadian consumers were unaware that their devices contained the CPUs.

5. Class Members purchased CPUs and Computers from Intel and various computer manufacturers including Microsoft, Lenovo, Dell, Apple, and HP.

6. This action involves defective CPUs, which were all vulnerable to the hacking of personal information as a result of the Defect in the CPU. The Defendants were aware of the defective CPUs since at least June 2017. Proposed fixes to the defective CPUs have either slowed CPUs by up to 30%, or have been recalled because they were entirely ineffective.

7. By purchasing these CPUs and Computers, Class Members bought a product that either compromised their personal information or slowed their computer processing capacity to such a degree that they no longer operated at the high speeds as advertised. This was not an equal bargain, as Class Members purchased CPUs and Computers that effectively had no commercial value, given the serious nature of the Defect.

IV. THE PLAINTIFFS

8. Jin is a Lenovo computer user who lives in Toronto, Ontario, and is the president of 1925321 Ontario Inc.

9. On September 14, 2012 Jin purchased a Lenovo X1 Carbon computer at a cost of CAD \$1,979.00. This computer contained an Intel Core i7 processor.

10. 1925321 Ontario Inc. is an Ontario corporation with its registered office at 280 Simcoe Street, Unit 1509A, Toronto, Ontario.

11. On January 18, 2015, 1925321 Ontario Inc. purchased a Microsoft Surface Pro 3 17 256GB, which contained an Intel Core i7 processor. The cost of the Microsoft Surface Pro 3 17 256GB was CAD \$1,599.99. 1925321 Ontario Inc. also purchased a “kit” for the device, as well as other associated miscellaneous items for the computer. The cost of all items combined, including the Computer containing the CPU, totalled \$2,903.59.

12. On February 27, 2016, 1925321 Ontario Inc. purchased a Microsoft Surface Pro 4 512GB, which contained an Intel Core i5 processor. The cost of the Microsoft Surface Pro 4 512GB was CAD \$2,899.00. 1925321 Ontario Inc. also purchased Microsoft programming, a surface dock, a mouse, a leather sleeve, and a cover for the Microsoft Surface Pro 4 512GB. These items, including the Computer containing the CPU, totalled CAD \$3,676.80. In total, 1925321 Ontario Inc. spent CAD \$6,580.39 on the now unusable Computers containing the CPUs.

13. On January 12, 2018, after being put on notice of the defective CPUs through a January 3, 2018 Intel press release, detailed below, and fearing a breach of security and privacy, 1925321 Ontario Inc. purchased an ASUS X555QA laptop. The purchase of the device, along with other associated miscellaneous items, totalled CAD \$792.10. This device was purchased on account of the defective CPUs in his previously purchased computing devices.

14. As a result of the defective CPUs, 1925321 Ontario Inc. was forced to discard its Microsoft Computers. This has resulted in a significant disruption in the operation of 1925321 Ontario Inc., requiring the purchase and use of a new ASUS computer system and security measures, resulting in additional incurred costs and resources to the corporation.

15. As a result of the defective CPUs, data stored on the computing devices of 1925321 Ontario Inc. has been potentially compromised.

16. Spagnuolo is an Associate Professor at the University of Guelph, and resides in Oakville, Ontario.

17. On March 7, 2012 he purchased a Dell Optiplex 790 MT computer, as well as a Dell U2312H monitor at a total price of CAD \$1,684.99. This Computer contained an Intel Core i7 processor.

18. Soos is an Apple computer user who resides in Toronto, Ontario.

19. In September 2012 Soos received an Apple Macbook Pro as a gift. This device was purchased by her daughter for CAD \$1,124.00, and registered in Soos's name. This device contained an Intel Core i5 processor.

20. The Class Representatives and Class Members were all informed of the defective CPUs by Intel's January 3, 2018 press release. As a result of the defective CPUs, the Class Representatives have been unable to use the Computers for their intended purpose, even for basic computing functions such as online banking and e-mail.

21. As data stored on their Computers has been potentially compromised, the Class Representatives and Class Members have had significant disruptions to their daily lives.

V. THE DEFENDANTS

22. Intel Corporation is an American multinational corporation and technology company with its headquarters in Santa Clara, California. It is the world's second largest semiconductor chip manufacturer. Intel provides processors for computer systems manufacturers including Microsoft, Lenovo, Dell, Apple, and HP.

23. Intel of Canada Ltd. is the wholly-owned Canadian subsidiary of Intel Corporation. Intel of Canada engages in the marketing and sale of Intel products in Canada. Its headquarters and principal place of business in Canada is located in Toronto, Ontario.

24. At all material times, Intel Corporation and Intel of Canada Ltd. were agents of each other and each is vicariously responsible for the acts and omissions of the other.

25. Microsoft Corporation is an American multinational corporation and technology company with its headquarters in Redmond, Washington. It develops, manufactures, licenses, supports, and sells computer software, consumer electronics, personal computers, and services. As of 2017, it was one of the world's largest technology companies.

26. Microsoft Canada Inc. is the wholly-owned Canadian subsidiary of Microsoft Corporation. Microsoft Canada Inc. engages in the marketing and sale of Microsoft products in Canada. Its headquarters and principal place of business is in Mississauga, Ontario.

27. At all material times, Microsoft Corporation and Microsoft Canada Inc. were agents of each other and each is vicariously responsible for the acts and omissions of the other.

28. The Lenovo Group Ltd. is a Chinese multinational technology company with its North American headquarters in Morrisville, North Carolina. It designs, develops, manufactures, and sells personal computing technology.
29. Lenovo (Canada) Inc. is the wholly-owned Canadian subsidiary of Lenovo Group Ltd. Lenovo (Canada) Inc. engages in the marketing and sale of Lenovo products in Canada. Its headquarters and principal place of business is in Markham, Ontario.
30. At all material times, Lenovo Group Ltd. and Lenovo (Canada) Inc. were agents of each other and each is vicariously responsible for the acts and omissions of the other.
31. Dell Inc. is an American multinational computer technology company with its headquarters in Round Rock, Texas. It manufactures, markets, sells, and supports consumer technology, including personal computers, laptops, and software.
32. Dell Canada is the wholly-owned Canadian subsidiary of Dell Inc. Dell Canada engages in the marketing and sale of Dell products in Canada. Its headquarters and principal place of business is in North York, Ontario.
33. At all material times, Dell Inc. and Dell Canada were agents of each other and each is vicariously responsible for the acts and omissions of the other.
34. Apple Inc. is an American multinational technology company with its headquarters in Cupertino, California. It designs, develops, and sells consumer electronics, computer software, and online services.
35. Apple Canada Inc. is the wholly-owned Canadian subsidiary of Apple Inc. Apple Canada Inc. engages in the marketing and sale of Apple products in Canada. Its headquarters and principal place of business is in Toronto, Ontario.
36. At all material times, Apple Inc. and Apple Canada Inc. were agents of each other and each is vicariously responsible for the acts and omissions of the other.

37. Hewlett Packard Company and HP Inc. is an American multinational technology company with its headquarters in Palo Alto, California. It designs, develops, and sells consumer electronics, computing devices, and computer software.

38. HP Canada is the wholly-owned Canadian subsidiary of Hewlett Packard Company and HP Inc., and engages in the marketing and sale of HP products in Canada. Its headquarters and principal place of business is in Mississauga, Ontario.

39. At all material times, Hewlett Packard Company, HP Inc., and HP Canada. were agents of each other and each is vicariously responsible for the acts and omissions of the other.

VI. MATERIAL FACTS

40. Computers are critical to all aspects of daily life, and as such, computers contain our most personal and private information. Consumers and the general public depend on manufacturers to produce properly functioning and secure CPUs and computers.

41. The Defendants are engaged in the business of developing, designing, testing, manufacturing, distributing, marketing, and selling computers, computer parts, and processing systems.

42. Often referred to as the computer's "brain", the CPU is central to the functioning of any computer and is responsible for interpreting and executing most of the commands from the computer's other hardware and software.

43. To make computer processes run faster, a CPU chip will perform "speculative execution", which is a process by which the chip anticipates what information it will need to perform its next function.

44. As the chip predicts what information will be necessary for its next function, it makes that information temporarily available outside of its electronic "brain".

The Defects

45. The “Spectre CPU Defect” at the core of this action allows hackers to manipulate the CPU into initiating the speculative execution process, allowing them to access sensitive data that the chip makes available as it anticipates its next function.

46. The “Meltdown CPU Defect” allows hackers to access this private information through a computer’s operating system.

47. There are two variants of Spectre Defects, variant one, known as Bounds Check Bypass, and variant two, known as Branch Target Injection. The Meltdown Defect is known as Rogue Data Cache Load.

48. These Defects are commonly referred to as “side-channel” attacks, as they access information while it is being used by a separate but parallel process.

49. Intel’s CPU Defect was discovered by researchers at Google’s Project Zero, and by a team of academic researchers, in June 2017.

50. Google Project Zero’s researcher, Jann Horn, demonstrated that hackers could read sensitive information, such as passwords, encryption keys, or sensitive information in open applications. Testing from Google Project Zero also demonstrated that an attack on one machine could gain access to a network’s host machine, and through that host, could gain access to other machines on the same host.

51. At the time of Google Project Zero’s discovery, the Defendants had been manufacturing, distributing, marketing, and selling the defective CPUs for more than 20 years.

52. On January 3, 2018, Intel issued a press release, conceding that sensitive data can be improperly accessed by hackers from user computers through its CPUs.

53. Intel knew about the defective CPUs since at least June 2017, however it failed to advise or warn Class Members of the security vulnerability.

54. In an initial press release, Intel advised customers that “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”.

55. The Defendants failed to notify the Class Members of the defective nature of their devices, as well as the profound privacy risks associated with the defective CPUs.

56. Similarly, Microsoft, Lenovo, Dell, Apple, and HP were also made aware of the Spectre and Meltdown Defects since at least June 2017.

The Patch “Fix”

57. Microsoft, Lenovo, Dell, Apple, and HP have released their own individual patches and attempted fixes that are aimed at mitigating the vulnerabilities stemming from the Spectre and Meltdown Defects.

58. There does not appear to be a “fix” for the defective CPUs. Software updates that aim to add a level of security, known as “patches”, cause the CPUs to operate up to 30% slower.

59. Further, it is not certain that these “patches” are effective. The only way to ensure that the security Defect is addressed is a complete replacement of the computer’s CPU.

Admissions

60. Admitting that it released patches that could not properly fix the Spectre and Meltdown Defects, Intel released a statement on January 22, 2018, recalling its initial fixes and stating: “I apologize for any disruption this change in guidance may cause. The security of our products is critical for Intel, our customers and partners, and for me, personally.”

61. Similarly, Lenovo and HP announced in early January, 2018 that they were withdrawing some of the patches they had released over concerns about patch stability, and Dell announced a similar recall, stating: “If you have already deployed a BIOS update that could have issues according to Intel's January 22nd advisory, in order to avoid unpredictable system behavior, you can revert back to a previous BIOS version”.

62. Further, Microsoft had to pause distribution of its Spectre and Meltdown patches because they were causing fatal flaws in Microsoft computers, and Apple had to retract some of its operating system patches due to serious concerns over their ineffectiveness.

63. None of the proposed fixes have solved the Spectre or Meltdown Defects, and an effective fix is not expected for several years.

64. On January 24, 2018 the U.S. House of Representatives Committee on Energy and Commerce wrote a series of letters to the CEOs of Intel, Microsoft, Dell, and Apple, among other tech companies. In part, these letters sought information as to why information about the Spectre and Meltdown Defects was not released when the Defects were originally discovered in June 2017.

65. In this letter, the U.S. House of Representatives notes the seriousness of the Spectre and Meltdown Defects: “Considering that nearly all modern computing systems – including phones, laptops, and cloud services – rely on vulnerable chipsets, Meltdown and Spectre are serious vulnerabilities requiring a coordinated response”.

66. The defective CPUs expose the affected computers to security breaches and these patches substantially slow the CPUs and computers. These products are not suitable for their intended purpose, contrary to the manner in which they were warranted, marketed, and sold by the Defendants.

67. The Plaintiffs, Class Members, and Subclass Members have incurred substantial damages and continue to incur out of pocket expenses to attempt to “fix” and/or replace the defective CPUs and computers.

VII. CAUSES OF ACTION

a) Breach of the *Consumer Protection Act*

68. Intel Subclass Members who purchased their CPUs from Intel for personal use, and Computer Subclass Members who purchased their Computers for personal use were each a “consumer” as defined in the *Consumer Protection Act*.

69. As it sold individual chips directly to Intel Subclass Members, Intel, and as they sold Computers to Computer Subclass Members, Microsoft, Lenovo, Dell, Apple, and HP were “suppliers” as defined in the *Consumer Protection Act*.

70. Intel’s sale of CPUs to Intel Subclass Members, and Microsoft, Lenovo, Dell, Apple, and HP’s sale of Computers to Computer Subclass Members constituted a “consumer agreement” for purposes of the *Consumer Protection Act*.

71. The Defendants’ marketing of defective CPUs and Computers constitutes an “unfair business practice” pursuant to section 14 of the *Consumer Protection Act*, in that the Defendants did not provide devices that operated as advertised, and further that the Defendants did not warn Intel Subclass Members and Computer Subclass Members of the Defect that put their private information at risk.

72. The Defendants’ sale of these CPUs and Computers that put private information at risk constitutes a breach of section 9 of the *Consumer Protection Act* in that the Defendants sold goods that were not fit for their intended purpose.

73. Further, by not disclosing the CPU Defect, the Defendants made representations and omissions in respect of CPU and Computer performance that were false, misleading or deceptive pursuant to section 14 of the *Consumer Protection Act*.

74. In the alternative, to the extent that any term of the Terms and Conditions of Sale are ambiguous, such ambiguity is to be construed for the benefit of the consumer pursuant section 11 of the of the *Consumer Protection Act*.

75. Intel Subclass Members and Computer Subclass Members are entitled to damages pursuant to section 18(2) of the *Consumer Protection Act*.

b) Breach of Contract, Express Warranty, and Implied Warranty

76. Intel Class Members and Intel Subclass Members had contracts and express and implied warranties with Intel consisting of both express and implied terms. These contracts included the condition that the CPUs were free of defects which would compromise their computers and make

their private information wholly vulnerable to attacks under normal use during both the warranty period and the normal lifespan of the CPUs.

77. Intel breached its contracts and warranties with Intel Class Members and Intel Subclass Members by, *inter alia*:

- a) supplying Intel Class Members and Intel Subclass Members with CPUs that were and are defective;
- b) supplying Intel Class Members and Intel Subclass Members with CPUs containing significant security vulnerabilities that were not suitable for their intended purpose;
- c) supplying Intel Class Members and Intel Subclass Members with CPUs that failed to perform to the characteristics and qualities that Intel warranted; and
- d) supplying Intel Class Members and Intel Subclass Members with patches that caused the CPUs to operate up to 30% slower.

78. All Computer Class Members and Computer Subclass Members had contracts and warranties with Microsoft, Lenovo, Dell, Apple, and HP as part of their purchase agreements.

79. These contracts and warranties consisted of both express and implied terms, and included the condition that the purchased devices were free of defects in materials or workmanship under normal use.

80. Microsoft, Lenovo, Dell, Apple, and HP breached the contracts and warranties with Computer Class Members and Computer Subclass Members by, *inter alia*:

- a) supplying Computer Class Members and Computer Subclass Members with computers that were and are defective;
- b) supplying Computer Class Members and Computer Subclass Members with Computers containing significant security vulnerabilities that were not suitable for their intended purpose; and

- c) supplying Computer Class Members and Computer Subclass Members with Computers that failed to perform to the characteristics and qualities that the Defendants warranted; and
 - d) supplying Computer Class Members and Computer Subclass Members with patches that were both ineffective and caused the Computers to substantially slow down.
81. Class Members all sustained damages as a result of the Defendants' breach of contract.

c) Tort of Deceit

82. Intel designed and sold defective CPUs, and Microsoft, Lenovo, Dell, Apple, and HP sold Computers that contained defective CPUs.
83. The Defendants all marketed the devices as industry-leading CPUs and computers, with the fastest processes and best available hardware.
84. The Defendants all knew about the Spectre and Meltdown Defects since at least June 2017, however no disclosure of these Defects was made until January 2018.
85. In fact, prior to its January 2018 admission, Intel advised Class Members that "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".
86. Class Members were not aware of the alleged Defects and could not, through the exercise of reasonable care, have discovered those Defects on their own.
87. As a consequence of Intel deceitfully withholding information about the Spectre and Meltdown Defects, Microsoft, Lenovo, Dell, Apple, and HP sold Computers to Computer Class Members and Computer Subclass Members that contained defective Intel CPUs.
88. The Defendants suppressed or concealed the material facts regarding the performance of the CPUs and the performance of Microsoft, Lenovo, Dell, Apple, and HP Computers with the intent of avoiding consumer panic over their defective products, and inducing Class Members to continue using and purchasing their defective products.

89. The Defendants deceived Class Members by, *inter alia*:
- a) falsely representing that Intel's CPUs and Microsoft, Lenovo, Dell, Apple, and HP Computers performed to the quality represented and warranted;
 - b) falsely representing that Intel's CPUs and Microsoft, Lenovo, Dell, Apple, and HP Computers would protect Class Members' privacy and security;
 - c) failing to disclose by at least June 2017 that Intel's CPUs, and Microsoft, Lenovo, Dell, Apple, and HP Computers were vulnerable to the Spectre and Meltdown Defects;
 - d) failing to disclose by at least June 2017 that the Spectre and Meltdown Defects could cause Class Members' private information to be gathered by hackers;
 - e) allowing Class Members to purchase Intel CPUs and Microsoft, Lenovo, Dell, Apple, and HP Computers while knowing that the Spectre and Meltdown Defects could compromise their personal information;
 - f) offering temporary fixes to Class Members that would knowingly and substantially slow their devices by up to 30%;
 - g) allowing Class Members to purchase new and upgraded devices while knowing that they contained defective CPUs.

90. Had Intel acted in a transparent fashion, Intel Class Members and Intel Subclass Members would have been aware that the CPUs were defective and posed a serious security threat and would have stopped or altered their use of the CPUs by at least June 2017.

91. Had Microsoft, Lenovo, Dell, Apple, or HP acted in a transparent fashion, Computer Class Members and Computer Subclass Members would have known that their Computers were defective and posed a serious security threat and would have stopped or altered their use of the Computers by at least June 2017.

92. In the alternative, if Intel had disclosed the CPU Defect, Intel Class Members and Intel Subclass Members would have been free to purchase devices containing processor chips built by other companies, or, in the further alternative, to stop or limit what information they entered into their devices or to cease using their devices altogether to avoid having private information openly available on a compromised device.

93. Additionally, if Microsoft, Lenovo, Dell, Apple, and HP had disclosed the CPU Defect contained in their Computers, Computer Class Members and Computer Subclass Members would have been free to purchase devices from companies not affected by Spectre and Meltdown, to stop or limit what information was entered into their devices to avoid having it compromised, to cease using their Computers altogether, or, at the very least, would have been informed as to what they were purchasing.

94. By withholding material information affecting Class Members, the Defendants removed any potential mitigating action that could have been taken by Class Members to protect their privacy, or any choice that Class Members had to purchase devices from a distributor not affected by the Spectre and Meltdown Defects.

d) Breach of the *Competition Act*

95. The Plaintiffs plead and rely upon the facts and allegations referred to above.

96. By making representations to the public as to the quality, safety, privacy, and effectiveness of the devices, Intel, Microsoft, Lenovo, Dell, Apple, and HP breached section 52 of the *Competition Act*, in that their representations:

- a) were made to the public, in the form of advertising brochures, website statements, and other standardized statements claiming industry-leading quality, performance, and protection of personal privacy;
- b) were made to promote the supply or use of a product or for the purpose of promoting the business interests of the Defendants;
- c) stated a level of performance of their devices, including protecting consumer privacy, that was not based on adequate and proper testing, and analysis; and

d) were false and misleading in a material respect.

97. The Plaintiffs plead that the affirmative statements made by the Defendants to the effect that their devices were of industry-leading quality and protected personal privacy, coupled with the non-disclosure of the privacy concerns arising from the Spectre and Meltdown Defects, constitutes material and false and/or misleading representations for the purposes of section 52 of the *Competition Act*.

98. Class Members have therefore suffered damages and are entitled to recover damages pursuant to section 36(1) of the *Competition Act*.

e) Fraudulent Concealment

99. As revealed by Google Project Zero's June 2017 discovery of the Spectre and Meltdown Defects, and the U.S. House of Representatives Committee on Energy and Commerce's January 24, 2018 letters, Intel, Microsoft, Lenovo, Dell, Apple, and HP knew about the Defects as early as June 2017.

100. No public disclosure of these Defects was made until Intel's statement in January 2018.

101. Class Members were not aware of the alleged Defects and could not, through the exercise of reasonable care, have discovered those Defects on their own.

102. The Defendants suppressed or concealed the material facts regarding the alleged Defects with the intent of protecting their public image, and maintaining consumer sales.

103. Class Members were misled as to the security of their CPUs and Computers, and would not have purchased these products from the Defendants had they been informed about such a disturbing security breach, or would have altered their use of the products.

104. Any applicable statute of limitation has been tolled by the Defendants' knowledge and fraudulent concealment of the facts alleged herein, which prevented the Class members from discovering their causes of action until Project Zero's 2017 discovery.

f) Unjust Enrichment

105. By its wrongful acts and omissions as set forth herein, the Defendants were unjustly enriched at the expense of the Class Members as follows:

- a) Enrichment: The Defendants were enriched in the form of increased profits, benefits, and other compensation related to the sale of the CPUs and Computers prone to the Spectre and Meltdown Defects;
- b) Corresponding Deprivation: Intel Class Members and Intel Subclass members purchased defective CPUs and Computer Class Members and Computer Subclass Members purchased Computers at prices that exceeded the true value of those products, and further incurred out of pocket expenses to attempt to “fix” or replace the defective products; and
- c) Absence of Juristic Reason for Enrichment: There can be no juristic reason for the Defendants’ enrichment and Class Members’ corresponding deprivations to be maintained.

106. It would be inequitable for the Defendants to retain any profits, benefits, and other compensation obtained from their wrongful conduct.

107. To date, attempted fixes or patches to the CPU will cause the CPU and Computer to operate up to 30% slower. Class Members should not bear the burden for these Defects through slower performing CPUs and Computers. Many Class Members require high performance CPUs and Computers for professional and business purposes, and through the Defendants’ fixes, will be left with a product that is incapable of performing to the standard that has been paid for.

108. Class Members who do not have such high performance demands will still be left with a device with a significant performance delay compared to what was purchased.

109. The only viable option to maintain performance, at this stage, is for Class Members to opt out of security patches in favour of maintaining performance, but in doing so, maintaining their devices’ vulnerability to the Spectre and Meltdown Defects, thereby causing a real and substantial possibility that personal and private information will be inadvertently released.

110. The Plaintiffs, on behalf of all Class Members seek restitution from Intel, Microsoft, Lenovo, Dell, Apple, and HP, and disgorgement of all profits, benefits, and other compensation obtained by the Defendants.

VIII. DAMAGES

111. It was foreseeable that Class Members would suffer damages as a result of the breach of the *Consumer Protection Act*, breach of contract and warranty, deceit, breach of the *Competition Act*, fraudulent concealment, and unjust enrichment of the Defendants. Such damages include, but are not limited to, the following:

- a) out of pocket expenses incurred for the attempted "fix" or replacement of their CPUs and Computers;
- b) damages for the frustration, inconvenience, and distress as a result of the defective CPUs and Computers;
- c) damages in relation to breach of their privacy rights;
- d) income and business losses as a result of the disruption of the expected use of the CPUs and Computers.

IX. PUNITIVE AND AGGREGATED DAMAGES

112. Class Members rely on the facts and allegations set out above and state that, in every meaningful sense, the Defendants have acted in a deliberate, unlawful, arrogant, outrageous, secretive, high-handed, callous, wanton and reckless manner, without regard to the interests, rights, and well-being of the Class Members, so as to warrant a claim for punitive and aggregated damages.

X. LEGISLATION

113. The Plaintiffs plead and rely on the following, and any and all regulations issued thereunder:

- a) Newfoundland and Labrador's *Act Respecting the Sale of Goods*, RSNL 1990 Chapter S-6;
- b) British Columbia's *Business Practices and Consumer Protection Act*, SBC 2004, c 2;
- c) Ontario's *Class Proceedings Act*, 1992, S.O. 1992, c. 6;
- d) Canada's *Competition Act*, R.S.C. 1985, c. C-34;
- e) New Brunswick's *Consumer Product Warranty and Liability Act*, SNB 1978, c C-18.1;
- f) Ontario's *Consumer Protection Act*, S.O. 2002, c. 30, Sched. A;
- g) Manitoba's *Consumer Protection Act*, CCSM c C200;
- h) Nova Scotia's *Consumer Protection Act*, RSNS 1989, c 92;
- i) Prince Edward Island's *Consumer Protection Act*, RSPEI 1988, c C-19;
- j) Yukon's *Consumers Protection Act*, RSY 2002, c 40;
- k) Northwest Territories' *Consumer Protection Act*, RSNWT 1988, c C-17;
- l) Nunavut's *Consumer Protection Act*, RSNWT (Nu) 1988, c C-17;
- m) Saskatchewan's *Consumer Protection and Business Practices Act*, SS 2014, c C-30.2;
- n) Newfoundland and Labrador's *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1;
- o) Ontario's *Courts of Justice Act*, R.S.O. 1990, c. C.43;
- p) Alberta's *Fair Trading Act*, RSA 2000, c F-2;
- q) Manitoba's *Limitation of Actions Act*, C.C.S.M. c. L150;

- r) Ontario's *Negligence Act*, R.S.O. 1990, c. N-1, as amended;
- s) New Brunswick's *Personal Health Information Privacy and Access Act*, Chapter P-7.05;
- t) Newfoundland and Labrador's *Personal Health Information Act*, Chapter P-7.01;
- u) Ontario's *Personal Health Information Protection Act*, 2004, S.O. 2004, c. 3, Sched. A;
- v) Alberta's *Personal Information Protection Act*, Statutes of Alberta, 2003 Chapter P-6.5;
- w) British Columbia's *Personal Information Protection Act* [SBC 2003] Chapter 63;
- x) New Brunswick's *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5;
- y) Canada's *Privacy Act*, (R.S.C., 1985, c. P-21);
- z) British Columbia's *Privacy Act*, C.C.S.M. c. P-125, sections 2 and 3;
- aa) Manitoba's *Privacy Act*, C.C.S.M. c. P-125, sections 2 and 3;
- bb) Newfoundland and Labrador's *Privacy Act*, R.S.N.L. 1990, c. P-22, sections 3 and 4;
- cc) Saskatchewan's *Privacy Act*, R.S.S. 1978, c. P-24, sections 2, 3 and 6;
- dd) Alberta's *Sale of Goods Act*, Revised Statutes of Alberta 2000 Chapter S-2;
- ee) British Columbia's *Sale of Goods Act*, [RSBC 1996] CHAPTER 410;
- ff) Manitoba's *Sale of Goods Act*, C.C.S.M. c. S10;
- gg) New Brunswick's *Sale of Goods Act*, RSNB 1972, c S-1;
- hh) Nova Scotia's *Sale of Goods Act*, Chapter 408 of the Revised Statutes, 1989;

- ii) Ontario's *Sale of Goods Act*, R.S.O. 1990, c. S.1, as amended;
- jj) Prince Edward Island's *Sale of Goods Act*, prepared by the Legislative Counsel Office, is an office consolidation of this Act, current to November 1, 2003; and
- kk) Saskatchewan's *Sale of Goods Act*, Chapter S-1 of The Revised Statutes of Saskatchewan, 1978 (effective February 26, 1979) as amended by the Statutes of Saskatchewan, 1979-80, c.39; 1980-81, c.83; 1993, c.P-6.2; and 2015, c.21.

XI. REAL AND SUBSTANTIAL CONNECTION

50. There is a real and substantial connection between the subject matter of this action and the Province of Ontario for the following reasons:

- a) the Defendants carry on business via subsidiaries designed specifically for Canadian consumers;
- b) the Defendants distribute and sell products in Ontario and derive substantial income in Ontario from such sales;
- c) The Plaintiffs and Class Members are resident in Ontario and purchased and used the defective CPUs and Computers in Ontario; and
- d) The Plaintiffs and Class Members sustained damages in Ontario.

XII. SERVICE OUTSIDE OF ONTARIO

51. This statement of claim may be served without court order outside Ontario because the claim is:

- a) in respect of a tort committed in Ontario (rule 17.02(g));
- e) in respect of damages sustained in Ontario arising from a tort or breach of contract however committed (rule 17.02(h));

- f) against a person or persons carrying on business in Ontario (rule 17.02(p) of the Rules of Civil Procedure, RRO 1990, Reg 194).

XIII. PLACE OF TRIAL

52. The Plaintiffs propose that this action be tried in the City of Toronto, in the Province of Ontario.

Date:

FSimony

23, 2018

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“Schedule A” – Consumer Protection Legislation Across Canada

Province or Territory	Legislation
British Columbia	<i>Business Practices and Consumer Protection Act, SBC 2004, c 2</i>
Alberta	<i>Fair Trading Act, RSA 2000, c F-2</i> **Please note that this Act was amended by Bill 31, passed on December 13, 2017. Bill 31 proposed to create Alberta’s <i>Consumer Protection Act</i> , which will be proclaimed in 2018.
Saskatchewan	<i>The Consumer Protection and Business Practices Act, SS 2014, c C-30.2</i>
Manitoba	<i>Consumer Protection Act, CCSM c C200</i>
Ontario	<i>Consumer Protection Act, 2002, S.O. 2002, c. 30, Sched. A</i>
Quebec	<i>Consumer Protection Act, CQLR c P-40.1</i>
Newfoundland and Labrador	<i>Consumer Protection and Business Practices Act, SNL 2009, c C-31.1</i>
Nova Scotia	<i>Consumer Protection Act, RSNS 1989, c 92</i>
New Brunswick	<i>Consumer Product Warranty and Liability Act, SNB 1978, c C-18.1</i>
Prince Edward Island	<i>Consumer Protection Act, RSPEI 1988, c C-19</i>
Yukon	<i>Consumers Protection Act, RSY 2002, c 40</i>
Northwest Territories	<i>Consumer Protection Act, RSNWT 1988, c C-17</i>
Nunavut	<i>Consumer Protection Act, RSNWT (Nu) 1988, c C-17</i>

“Schedule B” – Allegedly Defective Intel CPUs

1. *Intel Core i3 processor (45nm and 32nm);*
2. *Intel Core i5 processor (45nm and 32nm);*
3. *Intel Core i7 processor (45nm and 32nm);*
4. *Intel Core M processor family (45nm and 32nm);*
5. *2nd generation Intel Core processors;*
6. *3rd generation Intel Core processors;*
7. *4th generation Intel Core processors;*
8. *5th generation Intel Core processors;*
9. *6th generation Intel Core processors;*
10. *7th generation Intel Core processors;*
11. *8th generation Intel Core processors;*
12. *Intel Core X-series Processor Family for Intel X99 platforms;*
13. *Intel Core X-series Processor Family for Intel X299 platforms;*
14. *Intel Xeon processor 3400 series;*
15. *Intel Xeon processor 3600 series;*
16. *Intel Xeon processor 5500 series;*
17. *Intel Xeon processor 5600 series;*
18. *Intel Xeon processor 6500 series;*
19. *Intel Xeon processor 7500 series;*
20. *Intel Xeon Processor E3 Family;*
21. *Intel Xeon Processor E3 v2 Family;*
22. *Intel Xeon Processor E3 v3 Family;*
23. *Intel Xeon Processor E3 v4 Family;*
24. *Intel Xeon Processor E3 v5 Family;*
25. *Intel Xeon Processor E3 v6 Family;*
26. *Intel Xeon Processor E5 Family;*
27. *Intel Xeon Processor E5 v2 Family;*
28. *Intel Xeon Processor E5 v3 Family;*
29. *Intel Xeon Processor E5 v4 Family;*

30. *Intel Xeon Processor E7 Family;*
31. *Intel Xeon Processor E7 v2 Family;*
32. *Intel Xeon Processor E7 v3 Family*
33. *Intel Xeon Processor E7 v4 Family;*
34. *Intel Xeon Processor Scalable Family;*
35. *Intel Xeon Phi Processor 3200, 5200, 7200 Series;*
36. *Intel Atom Processor C Series;*
37. *Intel Atom Processor E Series;*
38. *Intel Atom Processor A Series;*
39. *Intel Atom Processor x3 Series;*
40. *Intel Atom Processor Z Series;*
41. *Intel Celeron Processor J Series;*
42. *Intel Celeron Processor N Series;*
43. *Intel Pentium Processor J Series; and*
44. *Intel Pentium Processor N Series.*

DEAN JIN, et al.
Plaintiffs

-and-

INTEL CORPORATION, et al.

Defendants

Court File No.: *V-18-5926-75-00CP*

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED IN
TORONTO

STATEMENT OF CLAIM

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EXHIBIT R-2

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: INTEL CORP. CPU MARKETING,
SALES PRACTICES AND PRODUCTS
LIABILITY LITIGATION**

MDL No. 2828

TRANSFER ORDER

Before the Panel:* Plaintiffs in two Northern District of California actions move under 28 U.S.C. § 1407 to centralize this litigation in the Northern District of California. This litigation consists of five actions pending in four districts, as listed on Schedule A.¹ Plaintiffs in twenty actions and potential tag-along actions support the motion. Plaintiffs in eight of these potential tag-along actions and one additional potential tag-along action support centralization in the District of Oregon, as does defendant Intel Corporation. Plaintiffs in three potential tag-along actions suggest centralization in the Eastern District of New York.

On the basis of the papers filed and the hearing held, we find that centralization under Section 1407 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. All responding parties agree that the actions share factual issues arising out of allegations that Intel manufactured its computer processors to use “speculative execution” technology, which left the processors exposed to security vulnerabilities known as “Spectre” and “Meltdown,” and that the fix for this problem can considerably slow the processors’ speed. Centralization will eliminate duplicative discovery, prevent inconsistent pretrial rulings on class certification and other issues, and conserve the resources of the parties, their counsel, and the judiciary.

We find that centralization in the District of Oregon is appropriate. Defendant Intel and plaintiffs in at least nine related actions support centralization in that district. Intel has extensive operations there, including its employees who evaluated the security vulnerabilities and developed patches to mitigate them, as well as the team that led the development of the first Intel processor to

* Judge Ellen Segal Huvelle and Judge Lewis A. Kaplan took no part in the disposition of this matter. Additionally, one or more Panel members who could be members of the putative classes in this litigation have renounced their participation in these classes and have participated in this decision.

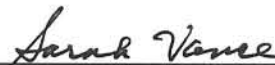
¹ The Panel also has been notified of 30 potentially-related actions pending in seven districts. These and any other related actions are potential tag-along actions. See Panel Rules 1.1(h), 7.1, and 7.2.

-2-

use speculative execution. It is likely, therefore, that relevant evidence and witnesses will be located in this district. Judge Michael H. Simon, located in Portland, is an experienced transferee judge who can steer this litigation on a prudent course.

IT IS THEREFORE ORDERED that the actions listed on Schedule A and pending outside the District of Oregon are transferred to the District of Oregon, and, with the consent of that court, assigned to the Honorable Michael H. Simon for coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



Sarah S. Vance

Chair

Marjorie O. Rendell
R. David Proctor

Charles R. Breyer
Catherine D. Perry

**IN RE: INTEL CORP. CPU MARKETING,
SALES PRACTICES AND PRODUCTS
LIABILITY LITIGATION**

MDL No. 2828

SCHEDULE A

Northern District of California

GARCIA, ET AL. v. INTEL CORPORATION, C.A. No. 5:18-00046
REIS, ET AL. v. INTEL CORPORATION, C.A. No. 5:18-00074

Southern District of Indiana

JONES v. INTEL CORPORATION, C.A. No. 1:18-00029

Eastern District of New York

STERN v. INTEL CORPORATION, C.A. No. 1:18-00065

District of Oregon

MANN v. INTEL CORPORATION, C.A. No. 6:18-00028

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: INTEL CORP. CPU MARKETING, SALES
PRACTICES AND PRODUCTS LIABILITY
LITIGATION

MDL No. 2828

(SEE ATTACHED SCHEDULE)

CONDITIONAL TRANSFER ORDER (CTO –1)

On April 5, 2018, the Panel transferred 4 civil action(s) to the United States District Court for the District of Oregon for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. *See* F.Supp.3d (J.P.M.L. 2018). Since that time, no additional action(s) have been transferred to the District of Oregon. With the consent of that court, all such actions have been assigned to the Honorable Michael H. Simon.

It appears that the action(s) on this conditional transfer order involve questions of fact that are common to the actions previously transferred to the District of Oregon and assigned to Judge Simon.

Pursuant to Rule 7.1 of the Rules of Procedure of the United States Judicial Panel on Multidistrict Litigation, the action(s) on the attached schedule are transferred under 28 U.S.C. § 1407 to the District of Oregon for the reasons stated in the order of April 5, 2018, and, with the consent of that court, assigned to the Honorable Michael H. Simon.

This order does not become effective until it is filed in the Office of the Clerk of the United States District Court for the District of Oregon. The transmittal of this order to said Clerk shall be stayed 7 days from the entry thereof. If any party files a notice of opposition with the Clerk of the Panel within this 7-day period, the stay will be continued until further order of the Panel.

FOR THE PANEL:



Jeffery N. Lüthi
Clerk of the Panel

**IN RE: INTEL CORP. CPU MARKETING, SALES
PRACTICES AND PRODUCTS LIABILITY
LITIGATION**

MDL No. 2828

SCHEDULE CTO-1 – TAG-ALONG ACTIONS

<u>DIST</u>	<u>DIV.</u>	<u>C.A.NO.</u>	<u>CASE CAPTION</u>
ALABAMA NORTHERN			
ALN	3	18-00357	West et al v. Intel Corporation
CALIFORNIA NORTHERN			
CAN	5	18-00105	Carl Jones-v-Intel Corp
CAN	5	18-00111	Rinn et al v. Intel Corporation
CAN	5	18-00146	West v. Intel Corporation, a Delaware corporation
CAN	5	18-00187	Bahcevan v. Intel Corporation
CAN	5	18-00210	Dean et al v. Intel Corporation
CAN	5	18-00235	Lee v. Intel Corporation
CAN	5	18-00298	Zog, Inc. v. Intel Corporation
CAN	5	18-00352	Pascarella et al v. Intel Corporation
CAN	5	18-00379	Mechri et al v. Intel Corporation
CAN	5	18-00580	Sterling v. Intel Corporation
CAN	5	18-00633	Young v. Intel Corporation, a Delaware corporation
CAN	5	18-00742	Park v. Intel Corporation
CAN	5	18-00799	Ferrer v. Intel Corporation
CAN	5	18-00894	City of Providence v. Intel Corp.
CAN	5	18-01216	Artesia General Hospital, et al. v. Intel Corporation
CAN	5	18-01461	Fooshee et al v. Intel Corporation
ILLINOIS CENTRAL			
ILC	2	18-02009	Murphy et al v. Intel Corporation
NEW JERSEY			
NJ	1	18-00540	ROBBINS v. INTEL CORPORATION
NEW MEXICO			
NM	1	18-00051	Storey et al v. Intel Corporation

NEW YORK EASTERN

NYE	1	18-00526	Bernstein et al v. Intel Corporation
NYE	2	18-00147	Rosenberg et al v. Intel Corporation
NYE	2	18-00574	United Food and Commercial Workers International Union Local 1500 v. Intel Corporation

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: INTEL CORP. CPU MARKETING, SALES
PRACTICES AND PRODUCTS LIABILITY
LITIGATION

MDL No. 2828

(SEE ATTACHED SCHEDULE)

CONDITIONAL TRANSFER ORDER (CTO –2)

On April 5, 2018, the Panel transferred 4 civil action(s) to the United States District Court for the District of Oregon for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. *See* F.Supp.3d (J.P.M.L. 2018). Since that time, 23 additional action(s) have been transferred to the District of Oregon. With the consent of that court, all such actions have been assigned to the Honorable Michael H. Simon.

It appears that the action(s) on this conditional transfer order involve questions of fact that are common to the actions previously transferred to the District of Oregon and assigned to Judge Simon.

Pursuant to Rule 7.1 of the Rules of Procedure of the United States Judicial Panel on Multidistrict Litigation, the action(s) on the attached schedule are transferred under 28 U.S.C. § 1407 to the District of Oregon for the reasons stated in the order of April 5, 2018, and, with the consent of that court, assigned to the Honorable Michael H. Simon.

This order does not become effective until it is filed in the Office of the Clerk of the United States District Court for the District of Oregon. The transmittal of this order to said Clerk shall be stayed 7 days from the entry thereof. If any party files a notice of opposition with the Clerk of the Panel within this 7-day period, the stay will be continued until further order of the Panel.

Inasmuch as no objection is
pending at this time, the
stay is lifted.

Apr 27, 2018

CLERK'S OFFICE
UNITED STATES
JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

FOR THE PANEL:



Jeffery N. Lüthi
Clerk of the Panel

**IN RE: INTEL CORP. CPU MARKETING, SALES
PRACTICES AND PRODUCTS LIABILITY
LITIGATION**

MDL No. 2828

SCHEDULE CTO-2 – TAG-ALONG ACTIONS

<u>DIST</u>	<u>DIV.</u>	<u>C.A.NO.</u>	<u>CASE CAPTION</u>
CALIFORNIA NORTHERN			
CAN	3	18-01733	Andrew East v. Intel Corporation

**UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION**

**IN RE: INTEL CORP. CPU MARKETING, SALES
PRACTICES AND PRODUCTS LIABILITY
LITIGATION**

MDL No. 2828

(SEE ATTACHED SCHEDULE)

CONDITIONAL TRANSFER ORDER (CTO –3)

On April 5, 2018, the Panel transferred 4 civil action(s) to the United States District Court for the District of Oregon for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. *See* 291 F.Supp.3d 1381 (J.P.M.L. 2018). Since that time, 24 additional action(s) have been transferred to the District of Oregon. With the consent of that court, all such actions have been assigned to the Honorable Michael H. Simon.

It appears that the action(s) on this conditional transfer order involve questions of fact that are common to the actions previously transferred to the District of Oregon and assigned to Judge Simon.

Pursuant to Rule 7.1 of the Rules of Procedure of the United States Judicial Panel on Multidistrict Litigation, the action(s) on the attached schedule are transferred under 28 U.S.C. § 1407 to the District of Oregon for the reasons stated in the order of April 5, 2018, and, with the consent of that court, assigned to the Honorable Michael H. Simon.

This order does not become effective until it is filed in the Office of the Clerk of the United States District Court for the District of Oregon. The transmittal of this order to said Clerk shall be stayed 7 days from the entry thereof. If any party files a notice of opposition with the Clerk of the Panel within this 7-day period, the stay will be continued until further order of the Panel.

FOR THE PANEL:



Jeffery N. Lüthi
Clerk of the Panel

**IN RE: INTEL CORP. CPU MARKETING, SALES
PRACTICES AND PRODUCTS LIABILITY
LITIGATION**

MDL No. 2828

SCHEDULE CTO-3 – TAG-ALONG ACTIONS

<u>DIST</u>	<u>DIV.</u>	<u>C.A.NO.</u>	<u>CASE CAPTION</u>
CALIFORNIA NORTHERN			
CAN	5	18-02424	Hodsdon v. Intel Corporation
ILLINOIS NORTHERN			
ILN	1	18-02754	Nathan v. Intel Corporation

EXHIBIT R-3

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14 *Counsel for Plaintiff*

15
16 **UNITED STATES DISTRICT COURT**
17
18 **NORTHERN DISTRICT OF CALIFORNIA**
19
20 **SAN JOSE DIVISION**

21 JENNIFER HODSDON, individually and
22 on behalf of all others similarly situated,

23 Plaintiff,

24 v.

25 INTEL CORPORATION,

26 Defendant.

27 Case No. 5:18-cv-2424

28 **CLASS ACTION COMPLAINT**

JURY TRIAL DEMANDED

1 Plaintiff Jennifer Hodsdon (“Plaintiff”), by and through her counsel, brings this
2 Class Action Complaint against Defendant Intel Corporation (“Defendant”) on behalf of
3 herself and all others similarly situated, and alleges, upon personal knowledge as to her
4 own actions and her counsel’s investigations, and upon information and belief as to all
5 other matters, as follows:

6 **NATURE OF THE CASE**

7 1. This is a class action arising from Defendant’s failure to disclose a critical
8 defect in its semiconductor chips (“CPUs”) that exposes CPU users to serious security
9 vulnerabilities.

10 2. Defendant is one of the world’s largest manufacturers of CPUs, the
11 hardware component of a computer responsible for interpreting and executing most of
12 the commands from the computer’s hardware and software.

13 3. Defendant’s focus on producing a faster CPU left its CPUs with security
14 vulnerabilities and exposed to attack. Since, 1995, Defendant’s CPUs have been
15 designed to perform a process known as “speculative execution,” which is intended to
16 increase performance by allowing a CPU to predict its next set of instructions.
17 Although this may increase the CPU’s speed, Defendant knows and has known for
18 many months—and confirmed on January 3, 2018—that speculative execution creates
19 serious security vulnerabilities that can be exploited by hackers to steal passwords,
20 encryption keys, photos, emails, instant messages, sensitive business documents, and
21 other sensitive data (the “Defect”).

22 4. Reportedly, approximately 90% of the 1.5 billion personal computers in
23 use today are powered by Defendant’s CPUs. The Defect exists in nearly every CPU
24 Defendant has manufactured in the last 20 years, affecting most personal computers,
25 laptops, smartphones, tablets, and servers in use today (the “Devices”).

26 5. Third-party researchers were able to discover the Defect in 2017, when
27 Defendant knew or should have known of the Defect much earlier with its inside
28 knowledge of its CPUs design and functionality. Since the exposure of the Defect,

1 Defendant has acknowledged the Defect and software companies have scrambled to
2 introduce software patches to cure the Defect. However, the Defect is hardware-based,
3 so these patches only mitigate the security threat while significantly compromising the
4 Device's performance. Defendant has conceded that the Defect may only be cured by
5 an architectural change to its CPUs' hardware.

6 6. Since security is an essential feature of any Device, Defendant's CPUs sold
7 to Plaintiff and the Class were not merchantable and unfit for their ordinary and
8 particular purposes for which such goods are used. Plaintiff and Class Members are
9 now forced to either purchase new devices without the Defect or continue to use their
10 defective Devices with security vulnerabilities and/or reduced performance.

11 7. Plaintiff and Class members suffered injuries as a result of Defendant's
12 conduct because they would not have purchased their Devices or would not have paid
13 the price they paid for them, but for Defendant's failure to disclose the Defect.

14 PARTIES

15 8. Plaintiff is a resident of Santa Barbara, California. Plaintiff purchased a
16 13" Apple MacBook Pro in or around 2017 with a 2.7 GHz Intel Core i5 processor
17 affected by the Defect. Plaintiff would not have purchased her Device or would not
18 have paid the price she paid for it, but for Defendant's failure to disclose the Defect.

19 9. Defendant is a Delaware corporation with its principal place of business at
20 2200 Mission College Boulevard, Santa Clara, California. Defendant conducts business
21 throughout the United States and is registered to do business in California.

22 JURISDICTION AND VENUE

23 10. This Court has subject matter jurisdiction over this action under 28 U.S.C.
24 § 1332(d)(2), in that the matter is a class action wherein the amount in controversy
25 exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and members of
26 the Class are citizens of states different from Defendant.

27 11. This Court has personal jurisdiction over Defendant because it is
28 headquartered in this District and is registered to conduct business in California.

1 12. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1) because
2 Defendant resides here, and under 28 U.S.C. § 1391(b)(2) because a substantial part of
3 the events and omissions giving rise to this action occurred in this District.

4 13. Assignment is proper in the San Jose Division pursuant to N.D. Cal. L.R.
5 3-2, because a substantial part of the events or omissions giving rise to Plaintiff's claims
6 arose in Santa Clara County, which is served by this Division. Defendant's principal
7 place of business, from which Defendants' acts or omissions pertinent to Plaintiff's
8 claims emanated, is situated in Santa Clara County.

9 **FACTUAL BACKGROUND**

10 14. Defendant is a technology company headquartered in Santa Clara,
11 California. Until 2017, Intel was the world's largest manufacturer of CPUs. Intel sells
12 its CPUs individually and as components of Devices manufactured by other companies
13 such as Apple, Asus, Acer, Google, Lenovo, Hewlett Packard, and Dell. To date,
14 reportedly 90% of the approximately 1.5 billion personal computers in use are powered
15 by Defendant's CPUs.

16 15. On January 3, 2018, a Google report revealed that, sometime in 2017,
17 security researchers from Google's Project Zero discovered "serious security flaws"
18 existing in most of Defendant's CPUs. The security flaws—dubbed Meltdown and
19 Spectre—were reportedly discovered simultaneously by multiple research groups
20 working independently from one another, including researchers from Cyberus
21 Technology and the Graz University of Technology.

22 16. The Meltdown and Spectre vulnerabilities are the result of an undisclosed
23 tradeoff that Defendant made between security and performance in order to
24 manufacture faster CPUs and become the dominant CPU manufacturer in the industry.
25 Specifically, beginning in 1995, Defendant began designing its CPUs to perform a
26 process known as "speculative execution." Speculative execution increases
27 performance by allowing a CPU to predict its next set of instructions.

28 17. However, Defendant prioritized speed and performance over security. As

1 discovered by researchers from Google and elsewhere, speculative execution can be
2 exploited by hackers to access sensitive data stored in the memory of a computer in
3 order to steal passwords, encryption keys, photos, emails, instant messages, sensitive
4 business documents, and other sensitive data.

5 18. Meltdown affects nearly every processor Defendant has manufactured
6 since 1995. Spectre is more far-reaching and impacts most desktops, laptops, cloud
7 servers, and smartphones in use today. Many millions of devices in use today are
8 affected by the Defect.

9 19. Defendant has admitted that it knew about the Defect for at least six
10 months. Nonetheless, Defendant continued to manufacture, sell, and distribute
11 defective CPUs without disclosing the Defect. Defendant knew or should have known
12 about the Defect long ago but either failed to disclose it or was negligent and reckless in
13 failing to discover it. In 2017, three independent security researchers discovered the
14 Defect using Defendant's proprietary information. Defendant, with its inside
15 knowledge and familiarity with the design of its CPUs, was in a better position to
16 discover the Defect than these third-party researchers and, as the manufacturer and
17 seller of the defective CPUs, had a duty to discover and disclose it to consumers.

18 20. Companies like Apple, Google, and Microsoft have attempted to protect
19 against the security threat associated with the Defect by introducing software patches to
20 address its vulnerabilities. However, these patches reportedly reduce the performance
21 of a Device and can only mitigate the problem, since the Defect is hardware-based.

22 21. Defendant has since released statements that it is investigating
23 "architecture and/or microarchitecture changes" to its CPUs to remedy the Defect,
24 confirming that a full redesign, and not just a software patch, would be needed.

25 **CLASS ACTION ALLEGATIONS**

26 22. Plaintiff seeks relief in her individual capacity and as a representative of all
27 others who are similarly situated. In accordance with Fed. R. Civ. P. 23(a) and (b)(2)
28 and/or (b)(3), Plaintiff seeks certification of the following Class:

1 All persons residing in the United States who purchased one
2 or more Intel CPU with the Defect either from Intel, its
3 authorized retail sellers, or from a computer retailer of
4 manufacturer who installed the defective CPU inside the
5 consumer's Device (the "Class").

6 23. Excluded from the Class are Defendant, including any entity in which
7 Defendant has a controlling interest, is a parent or subsidiary, or which is controlled by
8 Defendant, as well as the officers, directors, affiliates, legal representatives, heirs,
9 predecessors, successors, and assigns of Defendant. Also excluded are the judges and
10 court personnel in this case and any members of their immediate families.

11 24. Numerosity. Fed. R. Civ. P. 23(a)(1). The members of the Class are so
12 numerous that the joinder of all members is impractical. While the exact number of
13 Class members is unknown to Plaintiff at this time, based on media reports, millions of
14 consumers have Devices affected by the Defect.

15 25. Commonality. Fed. R. Civ. P. 23(a)(2) and (b)(3). There are questions of
16 law and fact common to the Class, which predominate over any questions affecting only
17 individual Class members. These common questions of law and fact include, without
18 limitation:

- 19 a. Whether Defendant breached its express warranties to Plaintiff and Class
20 Members;
- 21 b. Whether Defendant breached its implied warranties to Plaintiff and Class
22 Members;
- 23 c. Whether Defendant violated 15 U.S.C. § 2301, *et seq.*;
- 24 d. Whether Defendant violated California Business and Professions Code §
25 17200, *et seq.*;
- 26 e. Whether Defendant violated California Civil Code § 1750, *et seq.*; and
- 27 f. The nature of the relief, including equitable relief, to which Plaintiff and
28 Class Members are entitled.

1 CPUs.

2 34. Defendant is a “merchant” and its CPUs are “goods” within the meaning of
3 the Uniform Commercial Code.

4 35. In connection with each sale, Defendant represented that its CPUs
5 provided security, which they did not, and were of particular processing speeds, which
6 they are not after implementation of a software patch necessary to mitigate security
7 threats caused by the Defect.

8 36. Defendant’s affirmations of fact and promises relating to its defective
9 CPUs became part of the basis of the bargain and created an express warranty that the
10 CPUs would conform to Defendant’s affirmations and promises.

11 37. Defendant’s express warranties run to Plaintiff and Class Members either
12 directly or as third-party beneficiaries.

13 38. Defendant breached its express warranties by delivering CPUs that failed
14 to conform to Defendant’s affirmations and promises.

15 39. All conditions precedent to Plaintiff’s claims herein have been satisfied.

16 40. Defendant’s breach of express warranties directly and proximately caused
17 damages, injury in fact, and ascertainable loss to Plaintiff and Class Members, in an
18 amount to be determined at trial.

19 **COUNT II**

20 **Breach of Implied Warranties**

21 41. Plaintiff incorporates the allegations above as if fully set forth herein.

22 42. Defendant and its authorized agents and resellers are merchants who sold
23 Defendant’s CPUs to Plaintiff and Class Members in the regular course of business.

24 43. As such, Defendant impliedly warranted that each CPU was merchantable
25 and fit for a particular purpose in each sale to Plaintiff and Class Members.

26 44. To be merchantable, Defendant’s CPUs, at a minimum, were required to
27 pass without objection in the trade under the contract description, be fit for the ordinary
28 purposes for which such goods are used, and conform to the promises or affirmations of

1 fact made on their packaging.

2 45. Defendant's implied warranties extend directly to Plaintiff and Class
3 Members either directly or as third-party beneficiaries.

4 46. Defendant breached the implied warranty of merchantability by delivering
5 CPUs that were not merchantable because the CPUs could not pass without objection in
6 the trade under the contract description in that they provide deficient security and
7 performance, which are key features of a CPU, because they did not conform to
8 Defendant's promises or affirmations of fact regarding their security and performance,
9 and because they were not fit for the ordinary purposes for which CPUs are used, which
10 is to provide fast and secure computer processing power.

11 47. All conditions precedent to Plaintiff's claims herein have been satisfied.

12 48. Defendant's breaches of implied warranties directly and proximately
13 caused damages, injury in fact, and ascertainable loss to Plaintiff and Class Members, in
14 an amount to be determined at trial.

15 **COUNT III**

16 **Violation of California Unfair Competition Law, Bus. & Prof. Code § 17200, et seq.**

17 49. Plaintiff incorporates the allegations above as if fully set forth herein.

18 50. Defendant engaged in unfair, fraudulent and unlawful business practices in
19 violation of the Unfair Competition Law ("UCL").

20 51. Plaintiff suffered injury in fact and lost money or property as a result of
21 Defendant's alleged violations of the UCL.

22 52. The acts, omissions, and conduct of Defendant as alleged constitutes
23 "business practices" within the meaning of the UCL.

24 53. Defendant violated the unlawful prong of the UCL by violating, *inter alia*,
25 the CLRA and MMWA, as alleged below.

26 54. Defendant's acts, omissions, and conduct also violate the unfair prong of
27 the UCL because those acts, omissions, and conduct, as alleged herein, offended public
28 policy and constitute immoral, unethical, oppressive, and unscrupulous activities that

1 caused substantial injury, including to Plaintiff and Class Members. The harm cause by
2 Defendant's conduct outweighs any potential benefits attributable to such conduct and
3 there were reasonably available alternatives to further Defendant's legitimate business
4 interests, other than Defendant's conduct described herein.

5 55. By knowing or negligently selling Plaintiff and Class Members defective
6 CPUs susceptible to serious security vulnerabilities, Defendant engaged in a fraudulent
7 business practice that is likely to deceive a reasonable consumer.

8 56. A reasonable person would not have agreed to purchase the defective
9 CPUs and/or Devices containing the defective CPUs had he or she known the truth
10 about the Defect. By withholding material information about the Defect, Defendant
11 was able to convince users to purchase the defective CPUs.

12 57. Defendant's misconduct as described herein also constitutes an unfair
13 business practice under the UCL. Defendant's conduct is unethical, unscrupulous, and
14 substantially injurious to Class Members.

15 58. As a result of Defendant's violations of the UCL, Plaintiff and Class
16 Members are entitled to injunctive relief.

17 59. As a result of Defendant's violations of the UCL, Plaintiff and Class
18 members have suffered injury in fact and lost money or property, as detailed above.
19 Plaintiff requests that the Court issue sufficient equitable relief to restore Class
20 Members to the position they would have been in had Defendant not engaged in unfair
21 competition.

22 **COUNT IV**

23 **Violation of California Consumers Legal Remedies Act, Civ. Code § 1750, *et seq.***

24 60. Plaintiff incorporates the allegations above as if fully set forth herein.

25 61. Defendant is a "person" as defined by Cal. Civ. Code § 1761(c).

26 62. Plaintiff and Class Members are "consumers" within the meaning of Cal.
27 Civ. Code § 1761(d).

1 63. The defective CPUs constitute “products” as defined by Cal. Civ. Code §
2 1761(b).

3 64. Plaintiff’s and Class Members’ purchases of the defective CPUs and/or
4 Devices containing the defective CPUs constitute “transactions,” as defined by Cal.
5 Civ. Code § 1761(e).

6 65. Plaintiff’s and Class Members’ purchases of the CPUs were for personal,
7 family, and household purposes as meant by Cal. Civ. Code § 1761(d).

8 66. Venue is proper under Cal. Civ. Code § 1780(d) because a substantial
9 portion of the transactions at issue occurred in this District. (*See* Declaration of Tina
10 Wolfson, attached hereto.)

11 67. Defendant deceived consumers in its marketing, advertising, and labeling
12 of the CPUs. Further, Defendant knew or should have known that its marketing,
13 advertising, and labeling of the CPUs would mislead a reasonable consumer.

14 68. Defendant’s misrepresentations and nondisclosures violated the California
15 Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.* (“CLRA”) in the
16 following manner:

17 a. In violation of Section 1770(a)(5), Defendant misrepresented that
18 the CPUs had characteristics, benefits, or uses that they did not have (that the CPUs
19 were free from defects when in fact they were not);

20 b. In violation of Section 1770(a)(7), Defendant misrepresented that
21 the CPUs were of a particular standard, quality, and/or grade when they were of another
22 (that the CPUs were free from defects when in fact they were not);

23 c. In violation of Section 1770(a)(9), Defendant advertised the
24 Products with an intent not to sell them as advertised (advertising the Products as free
25 from defects when they were not);

26 d. In violation of Section 1770(a)(14), Defendant misrepresented that
27 the Products conferred or involved rights, remedies, or obligations that they did not
28 have (that the CPUs were free from defects when in fact they were not); and

1 e. In violation of Section 1770(a)(16), Defendant misrepresented that
2 the CPUs were supplied in accordance with previous representations when they were
3 not (that the CPUs were free from defects when in fact they were not).

4 69. Defendant's misrepresentations and nondisclosures regarding the CPUs
5 were never disclosed at the time of purchase, or at any time thereafter, and were
6 material to Plaintiff and Class Members because a reasonable person would have
7 considered the Defect important in deciding whether or not to purchase the CPUs and
8 because Defendant had a duty to disclose the truth about the Defect.

9 70. Plaintiff and Class Members relied upon Defendant's material
10 misrepresentations and nondisclosures and, had Plaintiff and Class Members known the
11 truth about the Defect, they would not have purchased the CPUs and/or the Devices
12 containing the CPUs, or would not have paid as much for them.

13 71. As a direct and proximate result of Defendant's material
14 misrepresentations and nondisclosures, Plaintiff and Class Members have been
15 irreparably harmed.

16 72. On behalf of the Class, Plaintiff seeks injunctive relief in the form of an
17 order enjoining Defendant from making such material misrepresentations and failing to
18 disclose or actively concealing its aforementioned practices. Plaintiff also seeks
19 attorneys' fees and costs.

20 73. In accordance with Cal. Civ. Code § 1782(a), on April 23, 2018, Plaintiff's
21 counsel served Defendant with notice of the CLRA violations by certified mail, return
22 receipt requested.

23 74. If Defendant fails to provide appropriate relief for its CLRA violations
24 within 30 days of receipt of Plaintiff's notification letter, Plaintiff will amend this
25 Complaint to also seek compensatory and exemplary damages as permitted by Cal. Civ.
26 Code §§ 1780 and 1782(b).

COUNT V

Violation of Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, et seq.

75. Plaintiff incorporates the allegations above as if fully set forth herein.

76. Defendant's CPUs are consumer products as defined in 15 U.S.C. § 2301(1).

77. Plaintiff and Class Members are consumers as defined in 15 U.S.C. § 2301(3).

78. Defendant is a supplier and warrantor as defined in 15 U.S.C. § 2301(4)-(5).

79. By reason of Defendant's breach of its implied and express warranties that the its CPUs were merchantable, fit for their ordinary and particular purposes, and free from material defects, Defendant violated the rights of Plaintiff and Class Members.

80. As a direct and proximate result of Defendant's actions, Plaintiff and Class Members have suffered economic damages pertaining to their Devices including, but not limited to, security vulnerabilities, decreased performance, substantial losses in value and resale value, and other damages.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all Class Members proposed in this Complaint, respectfully requests that the Court enter judgment in her favor and against Defendant, as follows:

A. For an Order certifying this action as a class action and appointing Plaintiff and her Counsel to represent the Class;

B. For equitable relief enjoining Defendant from engaging in the wrongful conduct complained of herein pertaining to the Defect, and from refusing to issue prompt, complete, and accurate disclosures of the Defect;

C. For equitable relief requiring restitution and disgorgement of the revenues wrongfully retained as a result of Defendant's wrongful conduct;

D. For an award of actual damages, compensatory damages, statutory

1 damages, and statutory penalties, in an amount to be determined;

2 E. For an award of costs of suit and attorneys' fees, as allowable by law; and

3 F. Such other and further relief as this court may deem just and proper.

4 **DEMAND FOR JURY TRIAL**

5 Plaintiff demands trial by jury of all claims so triable.

6
7 Respectfully submitted,

8 Dated: April 23, 2018

9 /s/ Tina Wolfson

10 Robert Ahdoot

11 Tina Wolfson

12 Theodore W. Maya

13 Bradley K. King

14 AHDOOT & WOLFSON, PC

15 10728 Lindbrook Drive

16 Los Angeles, California 90024

17 *Counsel for Plaintiff*

DECLARATION OF TINA WOLFSON

I, Tina Wolfson, declare as follows:

1. I am an attorney with the law firm of Ahdoot & Wolfson, PC, counsel for Plaintiff Jennifer Hodsdon (“Plaintiff”) in the above-captioned action. I am admitted to practice law in California and before this Court, and I am a member in good standing of the State Bar of California. This declaration is made pursuant to California Civil Code section 1780(d). I make this declaration based on my research of public records and upon personal knowledge and, if called upon to do so, could and would testify competently thereto.

2. Venue is proper in this Court because Plaintiff suffered injuries as a result of acts by Defendant Intel Corporation (“Defendant”) in this District, including Defendant’s corporate decisions regarding the design and manufacture of CPUs in this District. Defendant is headquartered in this District and is registered to do business in California.

3. Plaintiff is a resident of Santa Barbara, California, in Santa Barbara County.

4. Defendant is a Delaware corporation registered to do business in California with its principal place of business located at 2200 Mission College Boulevard, Santa Clara, California.

I declare under penalty of perjury under the laws of the United States and the State of California this 23rd day of April, 2018 in Los Angeles, California that the foregoing is true and correct.

/s/ Tina Wolfson

Tina Wolfson

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION**

KYLE MURPHY and TIMOTHY)	
GRUNLOH, on behalf of themselves)	
and all others similarly situated,)	
)	
Plaintiffs,)	
)	
v.)	Civil No. 2:18-cv-2009
)	
INTEL CORPORATION,)	
)	
Defendant.)	

CLASS ACTION COMPLAINT

Plaintiffs Kyle Murphy and Timothy Grunloh (“Plaintiffs”), on behalf of themselves and all others similarly situated, by counsel, bring this Class Action Complaint against Defendant Intel Corporation (“Intel” or “Defendant”), and allege as follows:

INTRODUCTION

1. This is a class action against Intel on behalf of all persons who purchased a defective Intel core processor unit (“CPU”). 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 only way to “patch” this vulnerability requires extensive changes to the root levels of the Operating System, which dramatically reduces the performance of the CPU. 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 desktops, laptops, and servers in the United States

2. To date, Defendant has been unable or unwilling to repair the Defect or offer Plaintiffs and class members a non-defective Intel CPU or reimbursement for the cost of such CPU 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 cure 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.

3. 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 in that the CPUs suffer from a critical security defect, requiring an OS-level software patch that will degrade the performance of the CPU.

4. Having purchased a CPU that suffers 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.

JURISDICTION & VENUE

5. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332(d)(2) because this is a class action involving more than 100 class members in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and in which at least one member of the class of plaintiffs is a citizen of a state different from a defendant.

6. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims occurred in, was directed to, and/or emanated from this District.

PARTIES

7. Plaintiff Kyle Murphy is a citizen of the State of Illinois. Since approximately 2011, Plaintiff Murphy has purchased three computers with the following Intel CPU processors: i3-3225, i3-530, i7-2600. Plaintiff Murphy uses his computer for activities requiring high-end processor performance such as gaming. He was unaware of the CPU Defect described in this Complaint prior to these purchases. Had Defendant disclosed such material facts Plaintiff Murphy would not have purchased a computer with this CPU or paid the price he did.

8. Plaintiff Timothy Grunloh is a citizen of the State of Illinois. Plaintiff Grunloh has a Dell Latitude E6420 computer with an Intel core i7-2720QM processor. Plaintiff Grunloh was unaware of the CPU Defect described in this Complaint prior to the computer's purchase. Had Defendant disclosed such material

facts Plaintiff Grunloh would not have purchased the computer or paid the price he did.

9. Defendant Intel Corporation is, and at all relevant times was, a citizen of the State of Delaware and of the State of California, as it is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in California.

FACTUAL ALLEGATIONS

10. For at least 10 years, Intel has marketed, distributed, and warranted these defective Intel CPUs in Illinois and throughout the United States.

11. 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.

12. 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 from Google, Microsoft, and Amazon.

13. 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.

The Intel CPU Defect

14. Intel 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.

15. 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.

(Kernel-memory-leaking Intel processor design flaw forces Linux, Windows redesign: Speed hits loom, other OSes need fixes, The Register, https://www.theregister.co.uk/2018/01/02/intel_cpu_design_flaw/ (last visited January 4, 2018).)

16. 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.*)

17. 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 that consumers expected when buying a computer with an Intel CPU. The Defect is also material because of the security vulnerabilities Intel based CPUs are exposed to.

18. 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).)

19. 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 Register* writes, “[t]hat would allow ring-3-level user code to read ring-0-level kernel data. And that is not good.” (*Id.*)

20. 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. Moreover, the speed and performance of a CPU directly affect the price that consumers are willing to pay for a particular CPU, with faster and higher-performing CPUs commanding a price premium over slower and lower-performing ones.

21. 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, leaving consumers who use the “patch” with a CPU that is slower and has poorer performance than what they paid for.

Intel Admits the Defect Exists and Fails to Provide a Remedy

22. 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.

23. 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.

(Intel Refutes Chip “Bug,” “Inaccurate Media Reports,” Barrons,

<https://www.barrons.com/articles/intel-refutes-chip-bug-inaccurate-media-reports-1515010736> (last visited Jan. 4, 2018).)

24. 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."

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

26. 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

27. Plaintiffs bring this action on their own behalves and as a class action on behalf of the following class:

All persons in the State of Illinois who 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.

28. This action is properly maintainable as a class action under Fed. R. Civ. P. 23(a) and (b)(3).

29. The class consists of thousands of persons, such that joinder of all Class members is impracticable.

30. There are questions of fact and law that are common to the Class members and that predominate over any questions affecting only individual members. These questions include, but are not limited to:

- 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;
- e. 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
- f. The appropriate nature and measure of Class-wide relief.

31. The claims of the Plaintiffs are typical of the claims of the proposed Class because they are based on the same legal theories, and Plaintiffs have no interests that are antagonistic to the interests of the Class members.

32. The Plaintiffs are adequate representatives of the Class and have retained competent legal counsel experienced in class actions and complex litigation.

33. A class action is an appropriate and superior method for the fair and efficient adjudication of this controversy, as the pursuit of thousands of individual lawsuits would not be economically feasible for individual Class members and would cause a strain on judicial resources and increase the likelihood of varying outcomes, yet each Class member would be required to prove an identical set of facts in order to recover damages.

34. This action does not present any unique management difficulties.

**COUNT I – UNFAIR AND DECEPTIVE TRADE PRACTICES /
CONSUMER FRAUD**

35. Plaintiffs incorporate the preceding paragraphs of this Complaint as if fully set forth below.

36. Through their conduct and omissions, Defendants have violated the Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”), 815 ILCS 505/1, *et seq.*

37. Section 2 of the ICFA, 815 ILCS 505/2, provides:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practices described in Section 2 of the “Uniform Deceptive Trade Practices Act”, approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a) of the Federal Trade Commission Act.

38. Section 10a of the ICFA, 815 ILCS 505/10A, provides in relevant part:

- (a) Any person who suffers actual damage as a result of a violation of this Act committed by any other person may bring an action against such person. The court, in its discretion may award actual economic damages or any other relief which the court deems proper . . .

* * *

- (c) Except as provided in subsections (f), (g), and (h) of this Section, in any action brought by a person under this Section, the Court may grant injunctive relief where appropriate and may award, in addition to the relief provided in this Section, reasonable attorney's fees and costs to the prevailing party.

39. Plaintiffs and other Illinois Class members are “consumers” or “persons,” as defined under the ICFA, 815 ILCS 505/1 *et seq.*

40. Defendant's conduct alleged in this complaint occurred in the course of trade and commerce.

41. Intel's unfair and deceptive business practices were intended and did result in the sale of Intel CPUs, a defective consumer product.

42. Defendant's Intel CPUs failed to perform in accordance with their expected characteristics, uses, and benefits.

43. Defendant had exclusive knowledge of material facts, i.e. the Intel CPUs were defective, unknown to Plaintiffs and Class members.

44. Defendant had a duty to disclose the Defect in the Intel CPUs for various reasons, including that Intel had exclusive knowledge of the Defect and other material facts not known to Plaintiffs or the Class, and Intel actively concealed a material fact from Plaintiffs and the Class.

45. Defendant engaged in unfair and deceptive practices by misrepresenting or not disclosing the above material facts from Plaintiffs and the Class.

46. The omission of this material fact was likely to mislead consumers and, in fact, did mislead them.

47. Defendant made these omissions with the intent that Class members would rely on the information provided, and omitted the material fact of the Defect in the Intel CPUs.

48. Had Defendant not engaged in the deceptive omission of the material fact described above, Plaintiffs and Class members would not have purchased the CPUs at the prices they did, if at all.

49. As a direct and proximate result of Defendant's conduct, Class members have suffered actual damages.

COUNT II – BREACH OF IMPLIED WARRANTY

50. Plaintiffs incorporate the preceding paragraphs of this Complaint as if fully set forth below.

51. Defendant and its authorized agents and resellers sold Intel CPUs to Plaintiffs and Class members in the regular course of business. Intel was aware of Plaintiffs' and Class members' requirement that Intel's CPUs perform at the levels advertised and without security flaws, and Intel manufactured and delivered the CPUs to meet those needs.

52. 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.

53. 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.

54. 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.

55. 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.

56. 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 they would not have purchased had the CPUs in question not contained the non-repairable Defect.

57. 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 III – NEGLIGENCE

58. Plaintiffs incorporate the preceding paragraphs of this Complaint as if fully set forth below.

59. 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.

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

61. Plaintiffs and Class members have been harmed, as they now own a computer with a CPU that due to such manufacturing or design defect is subject to

invasion of a supposedly core protected part of the CPU and decreased performance, in an amount according to proof at trial.

COUNT IV – UNJUST ENRICHMENT/MONEY HAD AND RECEIVED

62. Plaintiffs incorporate the preceding paragraphs of this Complaint as if fully set forth below.

63. Defendant has received and retained funds properly payable to the Plaintiffs and Class members under such circumstances that in equity and good conscience Defendant ought not to retain those funds.

64. Defendant should be required to pay the improperly receive and retained funds, with interest thereon, to the Plaintiffs and Class members.

REQUEST FOR RELIEF

Plaintiffs, individually and on behalf of the Class, request judgment and relief against Defendant as follows:

- A. Certification of the Class requested above and appointment of the Plaintiffs as the Class Representatives and their counsel as Class Counsel;
- 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. All other relief that the Court finds just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs request a jury trial on any and all counts for which trial by jury is permitted.

Dated: January 5, 2018

Respectfully submitted,

/s/Vess A. Miller

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Vess A. Miller

Lynn A. Toops

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*Counsel for Plaintiffs and the Proposed
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SUPERIOR COURT
(Class Action)

N^o. 500-06-000898-185

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

9085-4886 QUÉBEC INC.

Petitioner

- vs -

INTEL OF CANADA, LTD.

-and-

INTEL INTERNATIONAL, INC.

-and-

INTEL CORPORATION

Respondents

BS0350

File: 033126-1077

APPLICATION BY THE RESPONDENTS TO
TEMPORARILY STAY THE CLASS ACTION
(Articles 18 and 577 of the *Code of Civil Procedure*)
AFFIDAVIT OF DANYELLE BROTHERS
NOTICE OF PRESENTATION
LISTE OF EXHIBITS
(Exhibits R-1 to R-3)

ORIGINAL

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