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8 | Plaintiffs' Lead Class Counsel

22 COME NOW Plaintiffs, on behalf of themselves individually and as representatives of a
23 class of similarly-situated indirect Intel microprocessor purchasers and end-users/consumers
24 throughout California, and, demanding a trial by jury, complain and allege through their
25 attorneys on information and belief as follows:

INTRODUCTION

27 1. Defendant Intel Corporation ("Intel") dominates the market for microprocessors,
28 accounting for more than 80% of all sales world-wide.

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1 2. This litigation is about the various illegal acts in which Intel has engaged with the
2 intent and purpose of extending its monopoly, and the consequent harm Intel has caused
3 consumers and the market.

4 3. Intel has threatened, coerced, bribed, punished and otherwise abused its market
5 power in order to ensure that its customers buy all or nearly all of their microprocessors from
6 Intel, regardless of whether Intel microprocessors actually have a legitimate competitive
7 advantage.

8 4. It is unlawful in California to condition the sale of goods or the price charged for
9 goods on an agreement or understanding that the purchaser will not deal in the goods of a
10 competitor if that agreement may have the effect of substantially reducing competition. Such
11 anticompetitive conduct is prohibited under the Cartwright Act, specifically sections 16720 and
12 16727, of the California Business and Professions Code.

13 5. Intel's anticompetitive conduct has lessened competition and allowed Intel to
14 maintain and exploit its monopoly.

15 6. Intel's conduct has excluded any competitors from the microprocessor market,
16 with the result of robbing consumers of the fair pricing and robust innovation that only a truly
17 competitive market could offer. Plaintiffs are consumers who have been affected by Intel's
18 illegal activities and bring this suit on behalf of themselves and others who are similarly situated.

19 JURISDICTION AND VENUE

20 7. This Complaint is filed pursuant to California Business and Professions Code
21 sections 16720, *et seq.*, commonly known as the Cartwright Act. Under California Business and
22 Professions Code section 16750(a), Plaintiffs seek to recover treble the damages Plaintiffs and
23 the members of the Class have sustained due to Defendants' illegal activities.

24 8. Venue is proper in Santa Clara County under California Business and Professions
25 Code section 16750(a), and California Code of Civil Procedure section 395.5. First, Defendant
26 Intel's principal place of business is in Santa Clara County. Second, members of the Class
27 purchased Intel microprocessors in Santa Clara County.

28 9. The amount in controversy for the individual Plaintiffs and for each Class

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1 member is less than \$75,000 per Class member.

2 10. No portion of this Complaint is brought pursuant to federal law.

3 11. All the members of the proposed Class are citizens of the State of California.

4 Class Plaintiffs seek significant relief from Defendant Intel Corporation, which is headquartered
5 in, and has its principal place of business in California. The relief sought by Plaintiffs is sought
6 exclusively from Defendant Intel Corporation and the injuries to Plaintiffs resulting from the
7 misconduct alleged herein were incurred in the State of California. During the three (3) year
8 period preceding the filing of these coordinated actions, no other class action was filed asserting
9 similar allegations against Defendant Intel on behalf of the same class of persons. Intel is the
10 primary Defendant and its conduct as alleged herein forms a significant basis for the claims
11 asserted by the proposed Plaintiff Class.

PARTIES

12 12. Plaintiff Armen Melkonians is an individual residing in the State of California.
13 During the period of time covered by this Complaint, Plaintiff purchased Intel microprocessors
14 indirectly from Defendants and has been injured in his business or property by reason of the
15 violations alleged herein.

17 13. Plaintiffs Elena and Sal Toronto are individuals residing in the State of California.
18 During the period of time covered by this Complaint, Plaintiffs purchased an Intel
19 microprocessor indirectly from Defendants and have been injured in their business or property
20 by reason of the violations alleged herein.

21 14. Plaintiff Gregory Wangler is an individual residing in the State of California.
22 During the period of time covered by this Complaint, Plaintiff purchased Intel microprocessors
23 indirectly from Defendants and has been injured in his business or property by reason of the
24 violations alleged herein.

25 15. Plaintiff Oscar Macias is an individual residing in the State of California. During
26 the period of time covered by this Complaint, Plaintiff purchased Intel microprocessors
27 indirectly from Defendants and has been injured in his business or property by reason of the
28 violations alleged herein.

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1 16. Plaintiff Babak Pishvace is an individual residing in the State of California.
2 During the period of time covered by this Complaint, Plaintiff purchased Intel microprocessors
3 indirectly from Defendants and has been injured in his business or property by reason of the
4 violations alleged herein.

5 17. Plaintiff Julian Gross is an individual residing in the State of California. During
6 the period of time covered by this Complaint, Plaintiff purchased Intel microprocessors
7 indirectly from Defendants and has been injured in his business or property by reason of the
8 violations alleged herein.

9 18. Defendant Intel is a citizen of the State of California, incorporated under the laws
10 of Delaware with its principal place of business located in Santa Clara County, California. It is
11 engaged in the business of research, development and sale of computer products, primarily
12 microprocessors.

13 19. The acts charged in this Complaint as having been done by the Defendants were
14 authorized, ordered, or done by the officers, agents, employees, or representatives of Defendants
15 while actively engaged in the management of the Defendants' business or affairs.

16 20. DOES 1 to 50 are persons whose identities are unknown to Plaintiffs at this time.
17 Defendant DOES 1 to 50 are business entities controlled by, and/or agents of and/or employees
18 of and/or affiliated with Defendants. Plaintiffs are ignorant of the true names and capacities of
19 the Defendants sued herein under the fictitious names DOES 1 to 50. They are sued herein
20 pursuant to Code Civ. Proc. § 474. When Plaintiffs become aware of the true names and
21 capacities of the Defendants sued as DOES 1 to 50, Plaintiffs will amend this Complaint to state
22 their true names and capacities.

23 21. Each Defendant sued herein was the principal, agent, or employee of the other,
24 and was acting within the scope of such agency or employment. Each Defendant sued herein
25 was the co-conspirator of the other and was acting within the course and scope of a conspiracy
26 formed amongst each of them. Each Defendant sued herein aided and abetted the other with the
27 intent that each would be successful in their mutual endeavors. Each Defendant sued herein
28 received money or property as a result of the conduct described herein without consideration

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1 therefore and/or with knowledge that the money or property was obtained as a result of the
2 wrongful conduct described herein. Each Defendant knowingly and/or recklessly conspired in,
3 and/or aided and abetted, the common course of conduct set forth in this complaint. The acts of
4 conspiracy and aiding and abetting included, among other things, manufacturing, marketing, and
5 selling a product that does not perform as expressly warranted.

6 22. "Plaintiffs" as used in this Complaint refers to the Plaintiffs Armen Melkonians,
7 Oscar Macias, Gregory Wangler, Elena and Sal Toronto, Babak Pishvae, and Julian Gross.

8 23. "Intel," "Defendant Intel," "Intel Corporation," refers to Defendant Intel
9 Corporation.

10 24. "Defendants" as used in this Complaint refers to the Defendant Intel as well as
11 DOES 1 to 50.

CLASS ALLEGATIONS

13 25. This suit is brought as a class action pursuant to Section 382 of the California
14 Code of Civil Procedure, on behalf of a class as follows:

15 All persons and entities who are citizens of the State of California
16 and who purchased Intel x86 Microprocessor Chips or any product
17 containing an Intel x86 Microprocessor Chip other than for resale
or distribution during the Class Period.

18 26. Based upon the nature of the trade and commerce involved Plaintiffs believe that
19 the total number of Class members is in the thousands, and that Class members are
20 geographically dispersed throughout the State of California. Therefore, joinder of all members
21 of the Class is not practicable.

22 27. There are questions of law and fact common to the Class which predominate over
23 any questions which may affect only individual members of the Class, including, but not limited
24 to:

- 25 a. The nature and extent of Intel's conduct;
- 26 b. Whether Intel's conduct violated California Business and Professions
27 Code section 16720 of the Cartwright Act;
- 28 c. Whether Intel's conduct violated California Business and Professions

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1 Code section 16727 of the Cartwright Act;

2 d. The lengths of time that Defendant Intel has engaged in acts that violate

3 the Cartwright Act;

4 e. Whether Intel's conduct violated California Business and Professions

5 Code section 17200;

6 f. Whether Intel's conduct injured Plaintiffs' and Class members' business

7 or property; and

8 g. Whether Intel was unjustly enriched by selling its x86 Microprocessor

9 Chips at prices inflated by its unlawful conduct;

10 h. The type and/or measure of damages Plaintiffs' and Class members

11 suffered as a result of Intel's conduct;

12 28. Plaintiffs will fairly and adequately protect the interests of the Class in that
13 Plaintiffs' claims are typical and representative of the claims of all members of the Class, all of
14 whom purchased Intel Microprocessors indirectly from the Defendant for use and not for resale.

15 29. There are no defenses of a unique nature which may be asserted against Plaintiffs
16 individually, as distinguished from the other members of the Class, and the relief sought is
17 common to the Class. Plaintiffs are typical indirect-purchasers of Intel Microprocessors, do not
18 have any interest which is in conflict with or is antagonistic to the members of the Class and
19 have no conflict with any other member of the Class. Plaintiffs have retained competent counsel
20 experienced in class-action antitrust litigation to represent them and the Class.

21 30. A class action is superior to other available methods for the fair and efficient
22 adjudication of this controversy. In the absence of a class action, Defendants will retain the
23 benefits of their wrongful conduct.

NATURE OF THE ACTION

25 The Product and Market

26 31. The focus of this case is a single component which controls virtually every
27 computational function of a computer – the microprocessor.

32. Underlying the microprocessors which are the subject of this complaint is the

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1 Microsoft microprocessor architecture known as x86 Instruction Set.

2 33. Every computer contains a microprocessor, an integrated circuit capable of
3 executing a menu of instructions and performing requested computations at very high speed.
4 Microprocessors are defined by their instruction set – the repertoire of machine language
5 instructions that a computer follows. So, too, are computer operating systems – software
6 programs that perform the instructions in the set allowing the computer to perform meaningful
7 tasks. The first generation of microprocessors, which were capable of simultaneously handling 4
8 and then later 8 bits of data, evolved to provide 16-bit capability, then sometime later a 32-bit
9 capability allowing the use of advanced graphical interfaces such as later versions of the
10 Microsoft Windows operating system, and now 64-bit capability.

11 34. When IBM defined the original personal computer ("PC") standards in the early
12 1980s, it had available to it a variety of microprocessors, each with its own instruction set.
13 Among those microprocessors were those developed by Motorola, Zilog, National
14 Semiconductor, Fairchild, Intel and AMD.

15 35. IBM opted for the Intel architecture, which utilized what became known as the
16 x86 instruction set (after Intel's naming convention for its processors, *i.e.* 8086, 80186, 80286,
17 80386), and a compatible operating system offered by Microsoft, known as DOS.

18 36. Starting with the x86, microprocessors commonly referred to as 286, 386, 486 etc.,
19 were developed.

20 37. The x86 versions of both Windows and Linux, the two operating systems that
21 dominate both business and personal computers throughout the world, have in turn led to the
22 creation of countless applications and programs that can only run on the x86 Instruction Set.

23 38. The relevant product market is x86 microprocessors. A monopolist in this market
24 is able to raise the prices of x86 microprocessors above a competitive level without losing so
25 many customers to other manufacturers of microprocessors to make such an increase
26 unprofitable.

27 39. While existing end-users can theoretically shift to other operating-system
28 platforms, high costs associated with replacing both existing hardware and software make this

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1 extremely unlikely. Further, the number of new, first-time users who could choose a different
2 operating-system platform is now too small to prevent an x86 Microprocessor Chip monopolist
3 from imposing a meaningful price increase for a non-transitory period of time. Computer
4 manufacturers would also encounter high switching costs in moving from x86 Microprocessor
5 Chips to other architectures, and no major computer maker has ever done it. In short, demand is
6 not cross-elastic between x86 Microprocessor Chips and other microprocessors at the
7 competitive level.

8 40. The relevant geographic market for x86 microprocessors is worldwide. The
9 relevant PC platform is the same worldwide, and microprocessors can be easily and
10 inexpensively shipped around the world. The potential for arbitrage prevents chipmakers from
11 pricing processors differently in one country from another or in one state versus another.

12 41. Intel dominates the global, and the California market for microprocessors. Intel
13 microprocessors are by far the best selling microprocessors in the world, accounting for over
14 80% of all sales world-wide during the relevant period.

15 42. In 2004 alone, sales of microprocessors accounted for over 25 billion dollars of
16 revenue for Intel.

17 **Historical Background: How Intel Gained Its Monopoly Position**

18 43. IBM first defined the original PC standards and ultimately chose Intel's
19 microprocessor design for its PC. However, so as not to be limited to a single source, IBM
20 required Intel to license its product to another entity, AMD. AMD then began manufacturing
21 microprocessors that, in theory at least, were supposed to compete with Intel's.

22 44. However, a dispute later arose between AMD and Intel over this licensing
23 agreement. In short, Intel did everything it could to effectively eliminate or negate AMD's
24 effectiveness as a competitor. An arbitrator would later describe Intel's efforts to undermine the
25 licensing agreement as "corporate extortion."

26 45. Intel's efforts to limit AMD's business derived from its decision in 1984 to
27 become the sole-source for a new chip known as the 80386. To accomplish this goal, Intel
28 engaged in an elaborate scheme to mislead AMD (and the public) into erroneously believing that

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1 AMD would be a second competitive source of the 80386, thereby providing the illusion that
2 there was in fact a competitive market for this product. This duplicitous strategy served a
3 broader purpose than simply preventing AMD from competing with Intel. Just as important,
4 potential customers were left with the impression that AMD would continue to serve as Intel's
5 authorized second source. This in turn was essential to Intel's aim of entrenching its
6 microprocessors as the industry standard. If computer manufacturers knew Intel intended to be
7 the sole source of the 80386 chip, Intel knew it faced the likelihood that manufacturers would
8 foster competition from other sources. Intel could not preserve the appearance of competition if
9 it terminated its agreement with AMD. Therefore, Intel engaged in a strategy of stalling
10 negotiations of its licensing contract and keeping its design changes secret. This injured
11 competition by deterring and impeding serious competitive challenges to Intel and directly
12 injured AMD by depriving it of the revenues and profits it would have earned from such a
13 challenge.

14 46. Intel engaged in this conduct for the purpose of creating and maintaining illegal
15 monopoly of its line of microprocessors, which it did by 1987. Intel's efforts, which included
16 providing AMD with incomplete and unusable information, delayed AMD's ability to reverse
17 engineer or manufacture competitive products. This in turn allowed Intel through the licensing
18 agreement to have the benefit of AMD's marketing and other skills, acquire proprietary
19 information from AMD regarding its practices, keep AMD from pursuing its own independently
20 competitive product and otherwise served Intel's plans to create and maintain a monopoly.

21 47. Eventually, after AMD brought a petition to compel arbitration regarding its
22 dispute with Intel regarding its practices, the arbitrator awarded AMD over \$10 million as a
23 result of Intel's breach of the parties' preexisting agreement.

24 48. Thereafter, AMD began the process of developing its own products independent
25 of Intel. This included creating products which in fact, on a technological basis, exceeded the
26 capabilities of Intel's microprocessors. Ultimately, in a major breakthrough for AMD, Microsoft
27 announced that its Windows operating system would now support an architecture suited to
28 AMD's state-of-the-art 64-bit micro processor.

1 **Modern Day: How Intel Maintains Its Monopoly**

2 49. With all its technological breakthroughs, including those which exceeded the
3 performance offered by Intel for its microprocessors, AMD's market share has not increased as
4 would be expected under such circumstances.

5 50. Intel completely dominates the x86 Microprocessor Market. During the relevant
6 period, Intel has regularly achieved, worldwide, a market share of over 90%, while AMD's share,
7 based on revenues, is approximately 9%. All other potential competitors have either left the
8 market completely or collectively occupy specialized markets accounting for less than 1% of
9 total microprocessor revenues.

10 51. Intel is now shielded from new competition by barriers, including a cost of up to
11 \$3 billion to build a manufacturing plant, and potentially billions in research and development
12 costs to design a microprocessor that would compete with the x86 product.

13 52. Intel has maintained its x86 microprocessor monopoly by means of a variety of
14 financial and other exclusionary business strategies that effectively limit its customers' ability
15 and/or incentive to deal with AMD.

16 53. Though Intel has engaged in and continues to engage in activities to maintain its
17 monopoly, its purpose and goal have been and are the same: to exclude AMD from the
18 microprocessor market, and effectively ban any other potential competitor from entering the
19 market.

20 54. To accomplish its anticompetitive goal, Intel used direct payments in return for
21 agreements for exclusivity and near-exclusivity, discriminatory rebates, discounts and subsidies
22 and pricing structures that are conditioned on customer "loyalty" that have had the practical and
23 intended effect of creating exclusive or near-exclusive dealing arrangements.

24 55. Intel has also used threats of economic retaliation against those who give, or even
25 contemplate giving, too much of their business to AMD, or who refuse to limit their AMD
26 business to Intel-approved models, brands, lines and/or sectors, or who cooperate too closely (or
27 in some cases at all) with AMD's promotion of its competitive processors.

28

1 **Examples of Intel's Actions Aimed at Forcing OEMs Towards Exclusive Dealings**

2 56. The majority of the x86 microprocessors are sold to a relatively small number of
3 original equipment manufacturers (OEMs) including primarily Dell, Sony, Toshiba, NEC,
4 Fujitsu, Hitachi, Gateway, Hewlett Packard, IBM, Micron and Acer which account for over 80%
5 of the worldwide manufacturer of personal computers.

6 57. Intel's misconduct is global, having targeted California, national and offshore
7 customers at all levels in the market, with the focused goal of keeping AMD (the sole remaining
8 potentially significant competitor) from competing and growing and keeping Intel's customers
9 dependent on Intel for very substantial amounts of product.

10 ***Exclusive and Near-Exclusive Deals With OEMs***

11 58. Dell. In its history, Dell has not purchased a single AMD x86 microprocessor
12 despite acknowledging Intel's shortcomings and customer clamor for AMD solutions, principally
13 in the server sector.

14 59. Dell has been and remains Intel-exclusive. According to industry reports, Intel
15 has bought Dell's exclusivity with outright payments and favorable discriminatory pricing and
16 service. In discussions about buying from AMD, Dell executives have frankly conceded that
17 they must financially account for Intel retribution in negotiating pricing from AMD.

18 60. Sony. With the introduction of its Athlon microprocessor in 1999, AMD began to
19 make notable inroads into Intel's sales to major Japanese OEMs, which export PCs
20 internationally including into the U.S. By the end of 2002, AMD had achieved an overall
21 Japanese unit market share of approximately 22%. To reverse the erosion of its business, in
22 2003 Intel paid Sony multimillion dollar sums, disguised as discounts and promotional support,
23 in exchange for absolute microprocessor exclusivity. Sony abruptly cancelled an AMD Mobile
24 Athlon notebook model. Soon thereafter, it cancelled plans to release AMD Athlon desktop and
25 notebook computers. As a result, AMD's share of Sony's business dropped from 23% in 2002 to
26 8% in 2003, and then to 0%, where it remains today. In proceedings brought by the Japanese
27 Fair Trade Commission ("JFTC"), Intel has accepted the JFTC charges of misconduct with
28 respect to Sony.

1 61. Toshiba. Like Sony, Toshiba was once a significant AMD customer, but also
2 Like Sony, Toshiba received a very substantial payment from Intel in 2001 to not use AMD
3 processors. Toshiba thereupon dropped AMD. Its executives agreed that Intel's financial
4 inducements amounted to "cocaine," but said they were hooked because reengaging with AMD
5 would jeopardize Intel market development funds estimated to be worth \$25-30 million per
6 quarter. Toshiba made clear to AMD that the tens of millions of dollars of additional marketing
7 support was provided on the explicit condition that Toshiba could not use AMD
8 microprocessors. In proceedings brought by the JFTC, Intel has accepted the JFTC charges of
9 misconduct with respect to Toshiba.

10 62. NEC. AMD also enjoyed early success with NEC, capturing nearly 40% of its
11 microprocessor purchases for notebooks and desktops in the first quarter of 2002. In May 2002,
12 Intel agreed to pay NEC more than 300 million yen per quarter in exchange for caps on NEC's
13 purchases from AMD. The caps assured Intel at least 90% of NEC's business in Japan, and they
14 established an overall worldwide quota on NEC's AMD dealings. The impact was immediate.
15 While AMD had maintained an 84% share of NEC's Japanese consumer desktop business in the
16 third quarter of 2002, after the payments, AMD's share quickly plummeted to virtually zero in
17 the first quarter of 2003. NEC has made clear to AMD that its Japanese share must stay in the
18 single digits pursuant to NEC's agreement with Intel. Worldwide, AMD's share dipped from
19 nearly 40% to around 15%, where it stands today. In proceedings brought by the JFTC, Intel has
20 accepted the JFTC charges of misconduct with respect to NEC.

21 63. Fujitsu. In the summer of 2002, Fujitsu informed AMD that Intel had pressured
22 Fujitsu to remove Fujitsu's AMD-powered desktop models from Fujitsu's website. Fujitsu
23 complied by making any potential AMD-buyer click past Intel products to get to the AMD
24 offerings. Then, in early 2003, Intel moved to lock up an even greater share of Fujitsu's
25 business. Intel offered an undisclosed package of financial incentives in return for Fujitsu's
26 agreement to restrict its dealings with AMD. Fujitsu's catalog currently limits AMD to a single
27 notebook product. In proceedings brought by the JFTC, Intel has accepted the JFTC charges of
28 misconduct with respect to Fujitsu.

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1 64. Hitachi. According to the JFTC, Intel has also purchased an exclusive-dealing
2 arrangement with Hitachi, which had been a substantial AMD customer. The agreement caused
3 AMD's Hitachi business to fall precipitously. For example, during the first part of 2002, AMD
4 was shipping 50,000 Athlon microprocessors to Hitachi per quarter. But by the middle of the
5 year, AMD sold no microprocessors to Hitachi at all. In proceedings brought by the JFTC, Intel
6 has accepted the JFTC charges of misconduct with respect to Hitachi.

7 65. Gateway/eMachines. From 2001 to 2004, Gateway was exclusively Intel. In
8 2001 former Gateway CEO, Ted Waitt, explained to an AMD executive that Intel offered him
9 large sums not to deal with AMD, which he could not refuse: "I have to find a way back to
10 profitability. If by dropping you, I become profitable, that is what I will do." Shortly thereafter,
11 Gateway stopped purchasing from AMD and issued a press release announcing its Intel
12 exclusivity. The announcement came within weeks of similar public announcements of Intel
13 exclusivity by both IBM and Micron.

14 66. Supermicro. Intel's exclusive dealing also extends to small, specialty OEMs of
15 which Supermicro is a good example. Supermicro, the preeminent system assembler for servers
16 and other high-end computers, historically has followed the Dell strategy of never buying from
17 AMD. This arrangement foreclosed AMD from a large part of the approximately one fifth of the
18 server sector not controlled by the Tier One OEMs. Following two years of negotiation,
19 Supermicro finally agreed last year to begin developing an Opteron-powered (AMD) server.
20 However, it so feared Intel retaliation that it secretly moved the AMD development to quarters
21 behind Supermicro's main manufacturing facility. Further, it forbade AMD from publicizing the
22 product or beginning any marketing prior to its actual release. When, in April 2005, Supermicro
23 finally broke away from years of Intel exclusivity, it restricted distribution of its newly-released
24 Opteron-powered product to only sixty of its customers and promoted them with a glossy,
25 upscale brochure devoid of its name and labeled "secret and confidential."

26 *Product-Line, Channel or Geographic Restrictions Placed on OEMs*

27 67. Intel has, through various means, coerced limited exclusivity from OEMs in order
28 to exclude competition regarding its most profitable lines or from channels of distribution best

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1 tailored to take advantage of AMD's price/performance advantage over Intel. In exchange for
2 discriminatory discounts, subsidies or payments, for example, Intel has largely foreclosed
3 competition from the lucrative commercial desktop sector. Intel has focused on the major OEMs
4 because, when IT executives from Fortune 1000 companies purchase desktop computers, they
5 look for a strong brand on the box - Dell, IBM or HP. Knowing this, Intel has relentlessly fought
6 to block the introduction of an AMD-powered commercial desktop by the major OEMs who
7 have not ceded total exclusivity to Intel. What follows, again, are only representative examples
8 of Intel misconduct.

9 68. HP. In 2002, when AMD set out to earn a place in HP's commercial desktop
10 product roadmap, HP demanded a \$25 million quarterly fund to compensate it for Intel's
11 expected retaliation. Eager to break into the commercial market, and to earn a place in HP's
12 successful "Evo" product line, AMD agreed instead to provide HP with the first million
13 microprocessors for free in an effort to overcome Intel's financial hold over HP. On the eve of
14 the launch, HP disclosed its plan to Intel, which told HP it considered AMD's entry into HP's
15 commercial line a "Richter 10" event. It immediately pressured HP into (1) withdrawing the
16 AMD offering from its premier "Evo" brand and (2) withholding the AMD-powered computer
17 from HP's network of independent value-added resellers, the HP's principal point of access to
18 small business users for whom the computer was designed in the first place. Intel went so far as
19 to pressure HP's senior management to consider firing the HP executive who spearheaded the
20 AMD commercial desktop proposal. As a result of Intel's coercion, the HP-AMD desktop
21 offering was dead on arrival. HP ended up taking only 160,000 of the million microprocessors
22 AMD offered for free. As of today, HP's AMD-equipped commercial desktops remain channel-
23 restricted, and AMD's share of this business remains insignificant.

24 69. Intel also purchased HP's exclusivity for its most popular notebook line. HP
25 captured 15% of the U.S. retail market by Christmas 2004 with an Intel-powered 14.1" display
26 notebook (the "DV 1000") with a popular power saving feature called Quick Play. When AMD
27 sought to convince HP to carry a similar AMD-powered notebook, HP declined. It explained
28 that Intel had paid between \$3 and \$4 million to lock up this product line for at least one year.

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1 70. Gateway. After Gateway's 2004 merger with eMachines, AMD attempted to
2 revive the relationship it had enjoyed with Gateway until 2001, but experienced extremely
3 limited success. While Gateway built one AMD-powered desktop model at the request of
4 Circuit City, AMD remains locked out entirely of Gateway's direct internet sales, its commercial
5 offerings and its server line. According to Gateway executives, their Company has paid a high
6 price for even its limited AMD dealings. They claim that Intel has beaten them into "guacamole"
7 in retaliation.

8 71. IBM. AMD and IBM began negotiations in August 2000 over a proposed
9 commercial PC business partnership. After seven months and with a deal nearing completion,
10 Intel approached IBM with an incentive-based program under which Intel would become IBM's
11 "preferred supplier" for processors in commercial products. "Preferred" meant exclusive. IBM
12 accepted Intel's proposal and terminated discussions with AMD. In return for that exclusivity,
13 according to IBM executive Ed Thum, Intel paid IBM "millions of dollars in market
14 development funds."

15 72. Intel has used its monopoly power to prevent companies that purchase chips and
16 build computers from freely using AMD's microprocessors, thereby limiting AMD to lower-end
17 markets and preventing AMD from achieving the economies of scale necessary to become a fully
18 competitive alternative to Intel and by creating and maintaining impediments to AMD's ability
19 to increase its production capacities.

20 *Exclusionary Rebates Imposed on OEMs*

21 73. Intel has also imposed on OEMs a system of first-dollar rebates that have the
22 practical and intended effect of creating exclusive or near-exclusive dealing arrangements and
23 artificially foreclosing competition.

24 74. For example, each quarter, Intel unilaterally establishes a target level of purchases
25 of Intel microprocessors. If the customer meets Intel's set target, Intel gives the customer a
26 substantial (approximately 8-10%) rebate on *all* of the quarter's purchases of all
27 microprocessors.

28 75. Intel is able to very accurately forecast anticipated sales, and therefore each

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1 OEMs microprocessor needs, because OEM market shares are very well reported in industry
2 publications and do not change significantly from quarter to quarter.

3 76. Moreover, Intel knows each OEM's microprocessor needs because, given its
4 monopoly, Intel has historically been the sole or primary supplier of microprocessors to OEMs

5 77. Using this information, Intel is able to set purchase thresholds at levels that offer
6 a substantial discount for any OEM who does not purchase any significant portion of its needs
7 from another supplier. If an OEM switches to another supplier for a significant portion of its
8 requirements, it incurs substantial switching costs in the form of lost loyalty rebates on all the
9 microprocessors it purchases from Intel.

10 78. Intel sets its rebate levels not to reflect potential cost efficiencies that may accrue
11 when dealing with larger quantities, but to effectively require OEMs to purchase most or all of
12 their microprocessors from Intel.

13 79. Intel also uses these rebates to threaten or punish those OEMs who consider
14 purchasing more of their needs from another supplier. If an OEM fails to meet Intel's
15 unilaterally set purchase requirement (effectively sending a message to Intel that the OEM is
16 buying some significant number of a competitor's microprocessors), Intel can and has withheld
17 rebate checks, effectively raising the price to the OEM on microprocessors across the board.

18 80. For smaller OEMs in particular, the price of failing to meet Intel's goals can mean
19 losing its account with Intel, which means increased costs and less security of indirect buying.

20 81. In this way, Intel ensures that OEMs cannot afford or do not dare to purchase any
21 significant portion of their requirements from anyone other than Intel.

22 82. Intel's various retroactive rebate systems are all discriminatory and are intended
23 to, and do, foreclose competition.

24 *Threats of Retaliation Against OEMs*

25 83. Intel also intimidates OEMs from purchasing microprocessors from anyone other
26 than Intel with threats. Intel would withdraw a rebate or subsidy to a disloyal OEM, or would
27 extend a price cut to an OEM that is competing with a disloyal OEM, or Intel would withhold or
28 delay shipments of scarce processors or supplies. The effect of Intel's threats against OEMs who

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1 bought from another manufacturer is to ensure that OEMs buy exclusively or nearly exclusively
2 from Intel.

3 84. For example, Compaq Computer received threats from Intel every time it sought
4 to engage in business with AMD. In late 2000, Compaq's CEO, Michael Capellas disclosed that
5 because of the volume of business he had given to AMD, Intel withheld delivery of server chips
6 that Compaq desperately needed. Capellas told an AMD executive that he had a "gun to his
7 head" and that Compaq had to stop buying from AMD.

8 85. In 2002, Intel threatened to discontinue providing NEC with the technological
9 roadmap for future Intel processors (putting NEC at a serious competitive disadvantage) if NEC
10 did not convert its entire line of Value Star L computers to Intel microprocessors. NEC
11 succumbed and eliminated AMD from the Value Star L series in 2002 and 2003.

12 ***Product Bundling***

13 86. Intel also uses product bundling as an exclusionary weapon in a variety of ways.
14 Intel's most common practice when bidding for a new OEM platform is bundling
15 microprocessors with free (or heavily discounted) chipsets or motherboards, often offered in
16 amounts exceeding the OEM's requirements for the new platform. (The chipsets and
17 motherboards, of course, are only compatible with Intel processors, thereby providing the OEM a
18 strong inducement to go with Intel rather than AMD on uncommitted models.) AMD does not sell
19 chipsets or motherboards; they are provided by independent suppliers such as ATI, Vidia and Via
20 which incur their own costs and control their own pricing. Hence, to match Intel's bundled
21 microprocessor-chipsets-motherboards offer, AMD must extend a discount on its
22 microprocessors that will not only match any Intel discount on the microprocessors themselves
23 but also will compensate the OEM for the savings it will lose on independent Intel chipset and
24 motherboard purchases. The additional compensation AMD is forced to provide through a
25 discount on the sale of microprocessors alone makes AMD's sale of microprocessors potentially
26 unremunerative, and it also enables Intel to avoid competing with AMD directly on
27 microprocessor price and quality by imposing disproportionate burdens on AMD that are wholly
28 unrelated to AMD's product quality which, as has been demonstrated, is frequently superior to

1 that of Intel's.

2 87. As retaliation for dealing with AMD, Intel has also used chipset pricing as a
3 bludgeon. For example, in 2003, Acer had committed to launch the AMD Athlon XP. Acer
4 executives worldwide had been working with AMD to bring the product to market post-launch.
5 But, on the eve of the launch the Acer management in Taiwan pulled the plug. AMD learned from
6 Acer executives that Intel had threatened to raise chipset prices by \$10 on all Intel-based Acer
7 systems if any processor business was awarded to AMD outside of Europe.

8 88. Intel's dealings with OEMs are unlawfully exclusionary, have no pro-competitive
9 justification, and are intended to maintain and exploit its monopoly.

10 *Practices Directed At Distributors*

11 89. Intel uses many of the same tactics it practices on OEMs to restrict distributors
12 from carrying AMD processors or selling AMD products into markets it deems strategic. For
13 example, it entered into an exclusive deal with Synnex, which is one of the largest U.S.
14 distributors. Given Intel's 80% plus market share, there is no pro-competitive justification for
15 this arrangement.

16 90. As with OEMs, Intel offers discounts and rebates to distributors on the condition
17 that they not do business with AMD, either worldwide or in strategic sub-markets. For example, in
18 December 2004, Ingram Micro, Intel's biggest distributor in China, suddenly cut off discussions to
19 distribute AMD chips. A high-ranking Ingram Micro official later reported to AMD that Ingram
20 Micro had no choice because Intel proffered loyalty rebates that were too lucrative to pass up.

21 91. Intel also offers a panoply of special programs for distributors who carry Intel
22 microprocessors exclusively: marketing bonuses, increased rebates, credit programs for new
23 customers (credits that can be used for all products from Intel and other suppliers), payment for
24 normal freight charges, and special inventory assistance such as credits to offset inventory costs.
25 When such more nuanced means of achieving exclusivity fail, Intel has simply bribed
26 distributors not to do business with AMD. For example, a high-ranking Tech Data executive
27 turned down \$1 million to stop doing business with AMD, causing the Intel representatives to ask,
28 "How much would it take?"

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1 92. Intel also offers retroactive rebates triggered when a distributor reaches a
2 prescribed buying quota. Like the rebates offered to OEMs, the intent is to inflict economic
3 punishment on those who do too much business with AMD. Unlike OEMs, however,
4 distributors while some of the practice remain ignorant of the specific goals Intel has set for them
5 or the precise consequences of failing to meet them. Intel does not share this information with
6 them; they simply receive a check at the end of a quarter. As a result, every AMD chip they
7 purchase, they buy at their peril.

8 93. Finally, those distributors who choose to do business with AMD have been
9 conditioned to expect Intel retaliation. For example, when ASI, one of the largest computer
10 hardware and software distributors, began distributing AMD processors, Intel demanded that it
11 exclude AMD personnel from its ASI Technology Shows and its General Managers' meetings.
12 Until recently, ASI refused master distributor status from AMD, despite the financial benefits
13 attached, because it feared that such a public alignment with AMD would trigger Intel retaliation.
14 When, in January 2005, it finally accepted Master Distributor status, Intel began reducing the level
15 of market development funds ASI received.

16 94. Avnet Inc., one of the world's largest computer equipment distributors and an avid
17 AMD supporter, has also received its share of Intel intimidation. Thus, Avnet cited Intel as the
18 reason it could not distribute AMD parts to the industrial sector. And when AMD launched its
19 Opteron server chip, Intel made clear it would make it "painful" for Avnet were it to begin
20 distributing that chip. When Avnet did so anyway, Intel threatened to cut it off. Another
21 distributor got even worse treatment. In retaliation for Supercom's AMD dealings in Canada, Intel
22 pressured Supercom's customers to switch to another distributor.

23 95. These are not the only distributors that Intel has attempted to coerce from doing
24 business with AMD. Others include R.I.C. in Germany, Paradigit in the Netherlands, and Quote
25 Components, also in the Netherlands.

26 96. Intel's dealings with distributors are unlawfully exclusionary, have no pro-
27 competitive justification, and are intended to maintain and exploit its monopoly.

28

1 *Practices Directed At Retailers*

2 97. In California, nationally and internationally, approximately one fifth of desktop
3 and notebook computers are purchased at retail stores. A handful of retailers dominate the U.S.
4 PC market: Best Buy and Circuit City are the largest. Other significant but smaller retailers are
5 Wal-Mart/Sam's Club, Staples, Office Depot, and Office Max.

6 98. Most of the PCs sold at retail are sold during four or five "buying seasons" that
7 correspond to events on the calendar, and retailers refresh their inventory for each of those
8 events. A chipmaker faces a two-step process to get its platform on retail shelves: first, it must
9 convince one or more OEMs to build machines using its microprocessor at a suggested price
10 point (called "getting on the roadmap"); and second, it must convince the retailer to stock and
11 devote shelf space to these machines. Shelf space does not come for free.

12 99. The major retailers demand market development funds ("MDF") in exchange for
13 shelf space. MDF can consist of cooperative advertising support, but more frequently it
14 comprises a marketing-related opportunity that a chipmaker must buy for tens of thousands of
15 dollars; for example, for space in a Sunday circular, an in-store display or an Internet training
16 opportunity with the chain's sales staff. The MDF required to secure shelf space can run as high
17 as \$25 per box depending on the computer price point and how urgently the competing chipmakers
18 want the shelf space.

19 100. Intel has historically enjoyed an advantage over competitors at retail because,
20 using many of the strategies described above, it has had greater access to the OEMs' roadmaps
21 and the ability to exert pressure to keep competitors out of their product plans. Also, it has
22 significantly greater financial resources with which to buy retail shelf space.

23 101. But to leverage those advantages, Intel has also made exclusive deals with many
24 key retailers around the world. For example, until recently, Office Depot declined to stock
25 AMD-powered notebooks regardless of the amount of MDF AMD offered, contending that to do
26 so would put its "premier" status with Intel at risk. Fry's is Fujitsu's only retailer in the United
27 States. When Intel learned that Fry's was very successfully marketing a Fujitsu's Athlon™ XP-
28 based notebook, it offered Fry's a large payment to remove it from its shelves.

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1 102. In addition, Intel instituted a rebate program similar to what it foisted on OEMs,
2 with similar exclusionary effect. Under this program, Intel provides full MDF payments to
3 retailers, such as Best Buy and Circuit City, only if they agree to limit to 20% not just the shelf
4 space devoted to AMD-based products, but also the share of revenues they generate from selling
5 AMD platforms. If AMD's share exceeds 20%, the offending retailer's marketing support from
6 Intel is cut by 33% *across all products*. For example, if less than 20% of Circuit City's
7 notebook revenue derives from AMD-based computers (30% for desktops), Intel has agreed to pay
8 Circuit City \$15 in MDF per Intel-powered machine; but if the AMD percentage reaches or
9 exceeds 20%, Circuit City's MDF subsidy is cut to \$10. This creates a \$5 per box "tax" on the
10 retailer for doing 20% or more of its dollar volume with AMD-powered machines; and this "tax"
11 is applicable to all of the Intel-powered machines that the retailer buys, back to the very first
12 machine.

13 103. The story is even worse in Europe. AMD has been entirely shut out from Media
14 Market, Europe's largest computer retailer, which accounts for 35% of Germany's retail sales.
15 Intel provides Media Market between \$15-20 million of MDF annually, and since 1997 Media
16 Market has carved Intel computers exclusively. Intel subsidies also foreclose AMD from Aldi, a
17 leading German food retail chain, whose PC sales account for an additional 15-20% of the
18 German market.

19 104. In the United Kingdom, Intel has locked up substantially all of the business of
20 DSG (Dixon Services Group), operator of three major chains including Dixon and PC World that
21 collectively account for two thirds of the U.K. PC market. In exchange for Intel payments, DSG
22 has agreed to keep AMD's share of its business below 10%. Like Media Market, DSG reports
23 that Intel penalizes it with reduced MDF just on account of the small amount of business it does
24 with AMD. Toys'R'Us in the U.K. is also exclusive to Intel. Time, another U.K. retailer (which
25 builds computers as well), took a substantial MDF payment from Intel in exchange for near-
26 exclusivity on notebooks during the first half of 2004, and it reports that Intel has withheld
27 discounts because Time has introduced too many AMD Athlon64 desktop models. In France,
28 Intel has brought pressure on the largest retailers, including Conforama, Boulanger, causing them

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1 to cease dealing with AMD or drastically reduce their AMD business.

2 105. The following illustrates the competitive disadvantage this creates for AMD: if
3 Circuit City were to purchase only Intel-powered notebooks for its 200,000-unit inventory in a
4 quarter, Intel would pay it \$15 of MDF per computer, or a total of \$3 million. If Circuit City,
5 however, were to reduce its purchases of Intel-based notebooks to 80% (160,000 units) so that it
6 could stock a modest number of AMD-powered computers, Intel MDF would fall to \$1.6 million
7 (\$10 MDF/unit times 160,000 units). Were AMD to match Intel's \$10 per unit MDF on the 40,000
8 units it supplied, Circuit City would receive an additional \$400,000, bringing its total MDF to \$2
9 million, leaving it \$1 million worse off for doing business with AMD. For AMD to make Circuit
10 City "whole," it would have to vastly increase its MDF on its 20% share to \$35 MDF per unit
11 (40,000 x \$35 = \$1.4M), which together with Intel's \$1.6 million would bring the total MDF
12 back to \$3 million. In other words, to just capture a 20% share, AMD must offer two or three
13 times as much MDF as Intel -- because it has far fewer units over which to spread the difference.
14 Given these perverse economies, Circuit City is not likely to allocate less than 80% of its
15 notebook sales to Intel, even if it means taking AMD stock off the shelves at the end of a quarter.
16 (Indeed, to avoid inadvertently running afoul of the limitation, a prudent retailer would keep
17 AMD's share well short of 20%).

18 106. Nor is Intel above threatening retailers to gain preferred treatment. For example,
19 at the recent CeBit computer show in Hanover, Germany (the largest computer show in the world),
20 a German chain, Vobis, hung an AMD Turion64 banner from its booth as part of a co-marketing
21 agreement with AMD and its OEM partner (Yakamo) to announce AMD's new mobile
22 microprocessor. Intel's German general manager and its vice president for mobile products
23 demanded that the Turion64 banner be removed. When Vobis' CEO declined, the Intel
24 representatives threatened immediately to stop microprocessor shipments to Vobis' supplier. The
25 banner was removed before the CeBit show opened.

26 107. Intel's dealings with retailers are unlawfully exclusionary, have no pro-
27 competitive justification, and are intended to maintain and exploit its monopoly at the expense of,
28 *inter alia*, Plaintiffs and the other members of the Class.

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IMPACT OF INTEL'S MISCONDUCT

2 108. Because of Intel's conduct, OEMs' distributor and retailers remain vulnerable to
3 continual threats of Intel retaliation, competition is stifled or eliminated, the OEMs' distributors
4 and retailers remain Intel-dependent, and Intel thereby perpetuates its economic hold over them.
5 And the cycle repeats itself: by unlawfully exploiting its existing market share, Intel is impeding
6 competitive growth to the harm of potential customers and consumers.

7 109. Intel's unlawful conduct has caused and will continue to cause substantial harm to
8 competition in the market for x86 microprocessors in California. Were it not for Intel's acts,
9 AMD and others would be able to compete for microprocessor business on competitive merit,
10 bringing customers and end-product consumers lower prices, enhanced innovation, and greater
11 freedom of choice.

12 110. Intel's anticompetitive acts have a direct, substantial, and reasonably foreseeable
13 effect on trade and commerce in California. In maintaining its monopoly by unlawfully denying
14 rivals a competitive opportunity to achieve minimum levels of efficient scale, Intel must
15 necessarily exclude them from the California market.

16 111. Intel's conduct has caused and will continue to cause substantial harm to
17 California consumers (including Plaintiffs and the Class), in the form of higher costs for Intel
18 chips and products that contain Intel chips, such as personal computers.

FIRST CAUSE OF ACTION

[Violation of Cal. Bus. & Prof. Code Sections 16720 (Cartwright Act)]

(Against All Defendants)

22 112. Plaintiffs incorporate, as though fully set forth herein, each and every paragraph
23 set forth above.

24 113. Defendants' conduct as alleged in this Complaint violates Cal. Bus. & Prof. Code
25 Section 16720, et seq., commonly called the Cartwright Act. As alleged in this Complaint,
26 Plaintiffs and the members of the Class have been injured in their business and property as a
27 result of the Defendants' violation of Section 16720 of the California Business and Professions
28 Code, for which they seek treble damages pursuant to Section 16750, subdivision (a) of that Act.

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1 As a proximate result of the Defendants' conduct, Plaintiffs and the Class they represent have
2 been damaged in an amount to be proven at trial.

3 **SECOND CAUSE OF ACTION**

4 [Violations of Cal. Bus. & Prof. Code § 16727 (Cartwright Act)]

5 (Against all Defendants)

6 114. Plaintiffs incorporate and reallege, as though fully set forth herein, each and every
7 allegation set forth in the preceding paragraphs of this Complaint.

8 115. Defendants' conduct as alleged in this Complaint further violates Cal. Bus. &
9 Prof. Code Section 16727. Such conduct included, but is not limited to, making sales or
10 contracts for the sale of goods or merchandise, or to fix a price thereof, discount from, or rebate
11 upon such price on the condition, agreement or understanding that the lessee or purchaser thereof
12 shall not use or deal in the goods or merchandise of a competitor, where the effect of such
13 arrangement may be to (and was) to substantially lessen competition or tend to create a
14 monopoly in the trade of microprocessors in California.

15 116. For the purpose of restraining trade and maintaining and profiting from its
16 monopoly, Intel has engaged in unlawful acts, including but in no way limited to the acts,
17 practices and course of conduct set forth above and the following:

18 a. Entering in to exclusive dealing arrangements with its direct buyers that
19 actually or practically prevented those buyers from using competitors'
20 microprocessors;

21 b. Creating pricing structures, offering rebates, marketing development
22 funds, or other incentives, and raising prices and/or removing incentives if
23 the purchaser bought microprocessors from competitors.

24 c. Threatening its direct buyers with retaliation, including higher prices or a
25 refusal to sell if they bought any appreciable amount of competitors'
26 microprocessors;

27 117. Intel's behavior alleged herein has had, inter alia, the following effects:

28 a. Price competition in the sale of microprocessors has been restrained,

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1 suppressed and/or eliminated in the State of California;

2 b. Prices for microprocessors sold by Defendant and its co-conspirators have

3 been fixed, raised, maintained and stabilized at artificially high, non-

4 competitive levels in the State of California; and

5 c. Those who purchased in the State of California microprocessors from

6 Defendant and its co-conspirators have been deprived of the benefit of free

7 and open competition.

8 118. Plaintiffs and the other members of the Class paid supra-competitive, artificially
9 inflated prices for microprocessors.

THIRD CAUSE OF ACTION

[Violations of Cal. Bus. & Prof. Code § 17200. (Unfair Competition Act)]

(Against all Defendants)

13 119. Plaintiffs incorporate and reallege, as though fully set forth herein, each and every
14 allegation set forth in the preceding paragraphs of this Complaint.

15 120. This Complaint is filed and these proceedings are instituted pursuant to sections
16 17203 and 17204 of the California Business and Professions Code, to obtain restitution,
17 disgorgement, and other available remedies from Defendants for acts and business practices, as
18 alleged herein, in violation of section 17200 of the California Business and Professions Code,
19 commonly known as the Unfair Competition Act.

20 121. The conduct alleged herein violates California Business and Professions Code
21 section 17200. The acts and business practices, as alleged herein, constituted and constitute a
22 common, continuous, and continuing course of conduct of unfair competition by means of unfair,
23 unlawful and/or fraudulent business acts or practices within the meaning of California Business
24 and Professions Code section 17200, *et seq.*, including, but in no way limited to, the following:

25 a. Intel's acts and business practices as described above constitute violations
26 of California Business and Professions Code section 16720, *et seq.*, as set
27 forth above;

28 b. Intel's acts and business practices as described above constitute violations

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1 of California Business and Professions Code section 16727, *et seq.*, as set
2 forth above;

3 c. Intel's acts and business practices as described above, whether or not in
4 violation of California Business and Professions Code sections 16720 or
5 16727, *et seq.*, are otherwise unfair, unconscionable, unlawful and/or
6 fraudulent within the meaning of California Business and Professions
7 Code section 17200;

8 122. Plaintiffs and the other members of the Class are each entitled to full restitution or
9 disgorgement of all revenues, earnings, profits, compensation, and benefits which may have been
10 obtained by Intel as a result of such business acts or practices.

11 123. The illegal conduct alleged herein is continuing and there is no indication that
12 Intel will not continue such activity into the future.

13 **FOURTH CAUSE OF ACTION**

14 [Unjust Enrichment]

15 124. Plaintiffs incorporate and reallege, as though fully set forth herein, each and every
16 allegation set forth in the preceding paragraphs of this Complaint.

17 125. Defendant has been unjustly enriched through overpayments by Plaintiffs and
18 Class members.

19 126. Under common law principles of unjust enrichment, Defendant should not be
20 permitted to retain the benefits conferred via overpayments by Plaintiffs and Class members.

21 127. Plaintiffs seek disgorgement of all overpayments and establishment of a
22 constructive trust from which Plaintiffs and Class members may seek restitution.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiffs, on behalf of themselves and the members of the Class, pray
25 for judgment against the Defendants, jointly and severally, as follows:

26 1. Determining that this action may proceed and be maintained as a class action and
27 that Plaintiffs be certified as Class representatives;

28 2. That the unlawful trust, combination, agreement, and course of conduct alleged

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1 herein be adjudged and decreed to be a violation of section 16720 of the California Business and
 2 Professions Code, and that Plaintiffs and the other members of the Class have been injured and
 3 damaged as a result of Defendants' violation of the Cartwright Act;

4 3. That Defendant's conduct tended to lessen competition, as alleged herein; that
 5 such conduct be adjudged and decreed to be a violation of section 16727 of the California
 6 Business and Professions Code, and that Plaintiffs and the other members of the Class have been
 7 injured and damaged as a result of Defendant's violation of the Cartwright Act;

8 4. That Defendant be found to have engaged in unfair competition in violation of
 9 section 17200 of the California Business and Professions Code;

10 5. For damages according to proof at trial, and that such amount be trebled;

11 6. For reasonable attorneys' fees pursuant to Section 16750(a) of the Business and
 12 Professions Code;

13 7. For prejudgment interest at the highest legal rate, from and after the date of
 14 service of the Complaint in this action;

15 8. Ordering Defendants, and each of them, their agents, servants, and employees,
 16 and all persons acting, directly or indirectly, in concert with them, to restore all funds to each
 17 member of the Class acquired by means of any act or practice declared by this Court to be
 18 unlawful or to constitute unfair competition under Sections 17200, et seq., of the Business and
 19 Professions Code;

20 9. For costs of suit;

21 10. That Plaintiffs and the other members of the Class be granted such other and
 22 further relief as the nature of the case may require or as this Court deems just and proper.

23 Dated: May 10, 2006

ALEXANDER, HAWES & AUDET, LLP

Jason T. Baker

William M. Audet

Jason T. Baker

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Plaintiffs' Lead Class Counsel

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of Santa Clara, State of California; my business address is 152 N. Third Street, Suite 600, San Jose, California 95112. I am over the age of 18 and not a party to the within action. On this date I served the following documents:

MASTER CLASS ACTION COMPLAINT

on the parties shown below:

| | |
|--|---|
| <p>David M. Balabanian Christopher B. Hockett Joy K. Fuyuno J. Leah Castella BINGHAM MCCUTCHEN LLP Three Embarcadero Center, 25th Floor San Francisco CA 94111 Telephone: 415.393.2000 Facsimile: 415.393.2286</p> | <p>Richard A. Ripley Julie Greenwald BINGHAM MCCUTCHEN LLP 1120 20th Street, NW, Suite 800 Washington, DC 20036</p> |
|--|---|

(BY FAX) I am readily familiar with the firm's practice of facsimile transmission; on this date the above-referenced documents were transmitted, the transmission was reported as complete and without error and the report was properly issued.

(BY MAIL) I am readily familiar with the firm's practice for the processing of mail; on this date, the above-referenced documents were placed for collection and delivery by the U.S. Postal Service following ordinary business practices.

(BY OVERNIGHT DELIVERY) I am readily familiar with the firm's practice for the processing of documents for delivery services; on this date, the above-referenced documents were placed for collection and delivery following ordinary business practices.

(BY ELECTRONIC FILING) On this date I provided the documents(s) listed above electronically through the Court's electronic filing service provider pursuant to the instructions on that website.

(BY E-MAIL.) On this date, the above-referenced documents were converted to electronic files and e-mailed to the addresses shown.

(BY PERSONAL SERVICE) I caused the above documents to be delivered by hand pursuant to CCP § 1011.

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1
2 Federal: I declare that I am employed in the office of a member of the bar of this court at
whose direction the service was made.

3
4 State: I declare under penalty of perjury under the laws of the State of California that the
above is true and correct.

5 Executed on this 10th day of May at San Jose, California.

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Chase Areo