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19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA

JW

RS

21 ESMERALDA MENDEZ, on behalf of
22 herself and all others similarly situated,

23 Plaintiff,

24 v.

25 INTEL CORPORATION,

26 Defendant.

Case No.

CV 09 2889

**CLASS ACTION COMPLAINT FOR
EQUITABLE RELIEF**

DEMAND FOR JURY TRIAL

CLASS ACTION

1 **NATURE OF THE CASE**

2 1. Battery life is one of its most important features of a laptop computer. Consumers are
3 willing to pay more for laptops that can run longer without being recharged, and as a result, laptop
4 computers with longer battery lives command higher prices.

5 2. Defendant Intel Corporation has unfairly capitalized on consumers' willingness to pay for
6 longer battery lives by (a) designing a program, called MobileMark 2007, to inflate battery life
7 measurements for laptops with Intel processors, and (b) wrongly presenting MobileMark 2007 to the
8 public as an objective measure of battery life developed by a supposedly independent entity called
9 BAPCo.

10 3. On behalf of herself and similarly situated purchasers of laptop computers with Intel
11 processors, Plaintiff Esmeralda Mendez brings this class action to stop Intel from engaging in these or
12 similar unfair business practices and disgorge the profits it has wrongfully obtained. An injunction
13 prohibiting Intel from using third parties such as BAPCo as a front for Intel-developed benchmark
14 programs is crucial to secure a fair marketplace for consumers and competitors alike. This is not the
15 first time that Intel has deceived the public by using home-grown benchmark programs to make its
16 products look more desirable by first "donating" those programs to an independent third party like
17 BAPCo. Unless an injunction is entered, it will almost certainly not be the last time, either.

18 **JURISDICTION AND VENUE**

19 4. This Court has jurisdiction over this action under the Class Action Fairness Act, 28
20 U.S.C. § 1332(d). The aggregated claims of the individual class members exceed the sum value of
21 \$5,000,000, exclusive of interests and costs, and this is a class action in which more than two-thirds of
22 the proposed plaintiff class, on the one hand, and Defendant, on the other, are citizens of different states.

23 5. Venue is proper in this district under 28 U.S.C. § 1391 because Intel resides in this
24 district and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this
25 district.

1 **INTRADISTRICT ASSIGNMENT**

2 6. Assignment is proper to the San Jose division of this District under Local Rule 3-2(c)-(e),
3 as a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in Santa Clara
4 County, where Intel is headquartered.

5 **PARTIES**

6 7. Plaintiff Esmeralda Mendez is, and at all relevant times was, a citizen of Nueces County,
7 Texas. She purchased two laptop computers with Intel processors in November 2008.

8 8. Defendant Intel Corporation is a Delaware corporation with its principal place of business
9 in Santa Clara, California. Intel manufactures, markets, and sells laptop microprocessors.

10 **FACTUAL ALLEGATIONS**

11 9. One of the most important factors that consumers consider when deciding which laptop
12 computer to purchase is battery life. Consumers will pay more for laptops when they think they're
13 getting a longer battery life.

14 10. Intel developed a program, called MobileMark 2007, that measures the battery life of
15 laptop computers. MobileMark 2007 was designed by Intel to yield inflated battery life measurements
16 for laptop computers with Intel processors. Intel achieved this result by, among other things, designing
17 MobileMark 2007 to test a laptop computer's battery life under contrived conditions that differ markedly
18 from how consumers actually use their computers. For instance, MobileMark 2007 measures laptop
19 battery life with the processor running at approximately 7.5% of capacity, with the screen dimmed to
20 approximately 20% of capacity, and with the laptop's wireless network card turned off.

21 11. MobileMark 2007 yields battery life measurements that are markedly higher than the
22 actual battery life obtainable by consumers under reasonable, real-life conditions. MobileMark 2007
23 also yields battery life measurements that are markedly higher for laptop computers with Intel
24 processors than for laptop computers with processors made by Intel's competitors, even though under
25 reasonable, real-life conditions, the actual battery life of laptop computers with Intel processors and
26 laptop computers with processors made by Intel's competitors are comparable.

27 12. A reasonable consumer expects battery life measurements to reflect the way consumers
28 actually use laptop computers. By measuring battery life through contrived, programmed conditions

1 that are not representative of any reasonable consumer's computer usage, MobileMark's battery life
2 measurements are misleading to consumers and to the marketplace.

3 13. Intel has concealed its development of MobileMark 2007 by positioning it as an objective
4 program for measuring battery life developed by an independent entity called Business Applications
5 Performance Corporation, or BAPCo. Intel has long employed similar practices, developing programs
6 designed to make its products look good and then "donating" them to BAPCo for public release.

7 14. As a result of Intel's development of MobileMark 2007 to inflate battery life
8 measurements for laptops with Intel processors, and release of the program through the supposedly
9 independent BAPCo, Intel has wrongly increased its profits from the sale of laptops with Intel
10 processors. More consumers purchase laptops with Intel processors than otherwise would, and
11 consumers pay more for laptops with Intel processors than they otherwise would.

12 **PLAINTIFF'S EXPERIENCE**

13 15. Plaintiff Esmeralda Mendez purchased two laptop computers with Intel processors in
14 November 2008.

15 16. Battery life was an important factor in Ms. Mendez's purchasing decision. MobileMark
16 2007 measured her laptops' battery life at approximately 2 hours and 45 minutes, which measurement
17 was reported by the laptops' manufacturer, and Ms. Mendez expected that her laptops' would last
18 approximately 2 hours and 45 minutes.

19 17. Ms. Mendez's laptops' actual battery life under reasonable, real-world conditions is less
20 than an hour. Had Ms. Mendez known this, or had she known that Intel developed MobileMark 2007 to
21 yield inflated battery life measurements for laptops with Intel processors, she would not have purchased
22 her laptops with Intel processors and she would not have paid as much as she paid.

23 18. As a result of Intel's conduct, Ms. Mendez has suffered injury in fact and lost money or
24 property. She spent money that she would not otherwise have spent. For that money, she received
25 laptop computers with shorter battery lives, and thus less value, than that measured by MobileMark
26 2007 and that Ms. Mendez reasonably expected to receive.

CLASS ACTION ALLEGATIONS

1
2 19. Plaintiff brings this action on behalf of herself and others similarly situated, as members
3 of a class that Plaintiff proposes be defined as follows:

4 All persons in the United States who purchased a laptop with an Intel
5 processor after the release of MobileMark 2007.

6 Excluded from the proposed class are Intel; any entity in which Intel has or had a controlling interest;
7 any officers or directors of Intel, the legal representatives, heirs, successors, and assigns of Intel; any
8 Judge assigned to this action and his or her immediate family, and anyone who timely requests exclusion
9 from the class.

10 20. This action may be maintained on behalf of the class proposed above under the criteria of
11 Rule 23 of the Federal Rules of Civil Procedure.

12 21. **Numerosity.** The class consists of millions of consumers who purchased a laptop with
13 an Intel processor after the release of MobileMark 2007, and so is so numerous that individual joinders
14 are impracticable.

15 22. **Commonality and Predominance.** Common questions of law and fact exist as to
16 members of the class and predominate over questions affecting only individual class members. These
17 common questions include:

- 18 a. Whether Intel developed the MobileMark to yield inflated battery life
19 measurements for laptops with Intel processors?
20 b. Whether Intel unfairly concealed its development of MobileMark by releasing the
21 product through BAPCo?
22 c. Whether Intel's practices are unscrupulous, unethical, or substantially injurious to
23 consumers, and thus forbidden by California's Unfair Competition law as unfair
24 business practices?
25 d. Whether Intel should be enjoined from developing programs to evaluate computer
26 performance and releasing them through third parties such as BAPCo, or from
27 other business practices alleged herein?
28

1 e. Whether Intel should be required to disgorge the profits it obtained due to its
2 unfair practices of inflating battery life measurements for laptops with Intel
3 processors?

4 23. **Typicality.** Plaintiff is a member of the proposed class and her claims are typical of the
5 claims of the other members of the class. Plaintiff and class members all purchased laptops with Intel
6 processors after the release of MobileMark 2007, and all were injured by the same wrongful acts and
7 practices alleged herein. Neither Plaintiff nor any class member received a laptop with an actual battery
8 life equivalent to that measured by MobileMark 2007.

9 24. **Adequacy.** Plaintiff is an adequate representative of the class because her interests do
10 not conflict with the interests of the members of the class she seeks to represent. Plaintiff has retained
11 counsel competent and experienced in complex class action litigation, and Plaintiff intends to prosecute
12 this action vigorously. The interests of members of the Class will be fairly and adequately protected by
13 Plaintiff and her counsel.

14 25. **Superiority.** A class action is superior to all other available methods for the fair and
15 efficient adjudication of this controversy because joinder of all members is impracticable. Furthermore,
16 as the damages suffered by individual class members may be relatively small, the expense and burden of
17 individual litigation makes it impossible for members of the class to individually redress the wrongs
18 done to them. There will be no difficulty in the management of this case as a class action.

19 26. In the alternative, the class may be certified because:

- 20 a. the prosecution of separate actions by the individual members of the class would
21 create a risk of inconsistent or varying adjudication with respect to individual
22 class members which would establish incompatible standards of conduct for Intel;
- 23 b. the prosecution of separate actions by individual class members would create a
24 risk of adjudications with respect to them which would, as a practical matter, be
25 dispositive of the interests of other class members not parties to the adjudications,
26 or substantially impair or impede their ability to protect their interests; and
27
28

1 c. Intel has acted or refused to act on grounds generally applicable to the class,
2 thereby making appropriate final and injunctive relief with respect to the members
3 of the class as a whole.

4 **FIRST CAUSE OF ACTION**

5 **(Violation of California's Unfair Competition Law)**

6 27. Plaintiff incorporates by reference the foregoing paragraphs.

7 28. Intel's acts and practices, as alleged in this complaint, constitute unfair business practices
8 in violation of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*

9 29. The business practices engaged in by Intel that violate the Unfair Competition Law
10 include, among other conduct alleged herein, (a) designing MobileMark 2007 to inflate battery life
11 measurements for laptops with Intel processors, and (b) presenting MobileMark 2007 to the public as
12 an objective measure of battery life developed by the independent entity, namely, BAPCo.

13 30. Intel's business practices are unscrupulous, unethical, and substantially injurious to
14 consumers. There is no legitimate business reason for Intel's business practices such that the utility of
15 its business practices outweigh the harm to consumers. Furthermore, Intel's business practices
16 undermine this State's fundamental policy against unfair and sharp business practices that are likely to
17 deceive or mislead consumers, and which undercut trust and fair competition in the consumer
18 marketplace.

19 31. As a direct and proximate result of Intel's unfair business practices, Plaintiff and class
20 members have suffered injury in fact and lost money or property, in that they purchased laptops with
21 Intel processors they would not have otherwise purchased; paid more for their laptops with Intel
22 processors than they otherwise would have; and received laptops with shorter battery lives, and thus of
23 less value, than that measured by MobileMark 2007.

24 32. Plaintiff and the class are entitled to equitable relief, including restitutionary
25 disgorgement of all profits accruing to Intel because of its unfair business practices and an injunction
26 prohibiting Intel from engaging in the same or similar unfair business practices in the future. The entry
27 of injunctive relief is of particular importance, and necessary to secure a fair consumer marketplace.
28 Intel has repeatedly engaged in similar unfair business practices, regularly developing and manipulating

1 computer measurement programs to inflate the measurements or ratings for Intel products, and then
2 concealing its involvement by presenting those programs to the public as objective tests developed by
3 an independent third party, such as BAPCo.

4 **SECOND CAUSE OF ACTION**

5 **(Unjust Enrichment)**

6 33. Plaintiff incorporates by reference the foregoing paragraphs.

7 34. Intel has been, and continues to be, unjustly enriched as a result of its wrongful conduct
8 alleged herein, to the detriment of Plaintiff and the class.

9 35. Through their purchase of laptops with Intel processors, Plaintiff and the class conferred
10 a benefit on Intel in the form of increased profits. Intel accepted that benefit, which under the
11 circumstances, it would be unjust to allow Intel to retain.

12 36. Plaintiff and the class therefore seek disgorgement of all wrongfully-obtained profits
13 received by Intel as a result of its inequitable conduct.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff prays that the Court enter judgment and orders in their favor and against
16 Intel as follows:

17 A. An order certifying the proposed class, or an alternative class that the Court may find
18 appropriate under Rule 23 of the Federal Rules of Civil Procedure, directing that some or all of
19 Plaintiff's claims proceed on a class-wide basis, and appointing Plaintiff and her counsel to represent the
20 class;

21 B. An order and/or judgment enjoining Intel from engaging in the same or similar unfair
22 business practices alleged herein;

23 C. A judgment requiring Intel to pay restitution to Plaintiff and the class and disgorge all
24 wrongfully-obtained profits received by Intel as a result of its inequitable conduct;

25 D. An order granting reasonable attorneys' fees and costs, as well as pre- and post- judgment
26 interest at the maximum legal rate; and

27 E. Such other and further relief as this Court may deem appropriate.
28

DEMAND FOR TRIAL BY JURY

Plaintiff demands a trial by jury on all issues so triable as a matter of right.

DATED: June 26, 2009

Respectfully submitted,

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