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Superior Court of CA, County of Santa Clara  
Case #1-05-CV-039231 Filing #G-44122  
By R. Walker, Deputy

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HEWLETT-PACKARD COMPANY

13  
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 FOR THE COUNTY OF SANTA CLARA

16 JANET SKOLD and DAVID DOSSANTOS on  
17 behalf of themselves and all others similarly  
situated and the general public,

18 Plaintiffs,

19  
20 vs.

21 INTEL CORPORATION, HEWLETT-  
PACKARD COMPANY and DOES 1-50,

22 Defendants.  
23

Case No. 1-05-CV-039231

[Assigned to: Hon. James P. Kleinberg]

**CLASS ACTION**

**DEFENDANT HEWLETT-PACKARD  
COMPANY'S ANSWER TO PLAINTIFFS'  
SIXTH AMENDED CLASS ACTION  
COMPLAINT**

Complaint Filed: March 12, 2004  
Discovery Cut-Off: None  
Trial Date: None

24 Defendant Hewlett-Packard Company ("HP") hereby answers the claims asserted by  
25 Plaintiff Janet Skold in the unverified Sixth Amended Class Action Complaint (the "Complaint").

26 **PRELIMINARY STATEMENT**

27 The Court's order of May 3, 2012 certified a "subclass of California class members who  
28 purchased their computers from HP" (the "HP Subclass"). Accordingly, Plaintiff David

1 Dossantos, a New York resident, is not a member of the HP Subclass and, pursuant to the Court's  
2 order of May 3, 2012, cannot assert any claim against HP under California's Unfair Competition  
3 Law ("UCL"), Cal. Bus. & Prof. Code §17200 *et seq.* Alternatively, if Mr. Dossantos could  
4 assert such a claim against HP, HP's Answer and Affirmative Defenses as to Ms. Skold apply  
5 equally to Mr. Dossantos.

6 **GENERAL DENIAL**

7 Pursuant to Section 431.30 of the Cal. Code of Civ. Pro., HP generally denies each and  
8 every allegation contained in the Complaint and specifically denies that Plaintiffs have sustained,  
9 or will sustain, any damages, injuries, costs or expenses, including attorneys' fees, in the manner  
10 or sum alleged, or in any other manner whatsoever by reason of any alleged act, breach, or  
11 omission on the part of HP. HP further denies that Plaintiffs are entitled to the relief prayed for or  
12 any relief whatsoever.

13 HP asserts the following affirmative defenses:

14 **FIRST AFFIRMATIVE DEFENSE**

15 **(Failure to State a Claim)**

16 1. The Complaint fails to state a claim, individually or on behalf of some or all of the HP  
17 Subclass, upon which relief can be granted.

18 **SECOND AFFIRMATIVE DEFENSE**

19 **(Aiding and Abetting – No Basis for Liability Under UCL)**

20 2. Aiding and abetting is not a proper basis for liability under the Unfair Competition Law,  
21 Cal. Bus. & Prof. Code §17200 *et seq.*

22 **THIRD AFFIRMATIVE DEFENSE**

23 **(Aiding and Abetting – No Requisite Knowledge)**

24 3. HP did not have the requisite knowledge required for aiding and abetting liability.

25 **FOURTH AFFIRMATIVE DEFENSE**

26 **(Aiding and Abetting – No "Substantial Assistance")**

27 4. HP did not provide the "substantial assistance" to co-defendant Intel Corporation ("Intel")  
28 required for aiding and abetting liability.

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**FIFTH AFFIRMATIVE DEFENSE**

**(Statute of Limitations)**

5. The claims of some or all of the HP Subclass members are barred, in whole or in part, by the applicable statutes of limitations including, but not limited to, Cal. Bus. & Prof. Code § 17208.

**SIXTH AFFIRMATIVE DEFENSE**

**(Proposition 64)**

6. The UCL claims made by some or all of the HP Subclass members are barred, in whole or in part, by Proposition 64.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Unclean Hands)**

7. The claims of some or all of the HP Subclass members are barred, in whole or in part, by the doctrine of unclean hands.

**EIGHTH AFFIRMATIVE DEFENSE**

**(Waiver)**

8. The claims of some or all of the HP Subclass members are barred, in whole or in part, by the doctrine of waiver.

**NINTH AFFIRMATIVE DEFENSE**

**(Estoppel)**

9. The claims of some or all of the HP Subclass members are barred, in whole or in part, by the doctrines of res judicata, collateral estoppel, and estoppel.

**TENTH AFFIRMATIVE DEFENSE**

**(Ratification)**

10. The claims of some or all of the HP Subclass members are barred, in whole or in part, by the doctrine of ratification.

**ELEVENTH AFFIRMATIVE DEFENSE**

**(Laches)**

11. The claims of some or all of the HP Subclass members are barred, in whole or in part, by

1 the doctrine of laches because Ms. Skold delayed an unreasonable period of time before bringing  
2 this action, causing detriment and prejudice to HP.

3 **TWELFTH AFFIRMATIVE DEFENSE**

4 **(Consent)**

5 12. The claims of some or all of the HP Subclass members are barred, in whole or in part, by  
6 the doctrine of consent.

7 **THIRTEENTH AFFIRMATIVE DEFENSE**

8 **(Release)**

9 13. The claims of some or all of the HP Subclass members are barred, in whole or in part, to  
10 the extent that such claims have been previously released.

11 **FOURTEENTH AFFIRMATIVE DEFENSE**

12 **(Failure to Mitigate Damages)**

13 14. The claims of some or all of the HP Subclass members are barred, in whole or in part, to  
14 the extent that they failed to mitigate their alleged damages.

15 **FIFTEENTH AFFIRMATIVE DEFENSE**

16 **(Lack of Standing)**

17 15. The claims of some or all of the HP Subclass members are barred, in whole or in part, to  
18 the extent that they lack standing to bring this action.

19 **SIXTEENTH AFFIRMATIVE DEFENSE**

20 **(Lack of Duty)**

21 16. The claims of some or all of the HP Subclass members are barred, in whole or in part,  
22 because HP did not owe any duty to the HP Subclass members.

23 **SEVENTEENTH AFFIRMATIVE DEFENSE**

24 **(Damages Not Caused by Act/Omission of HP)**

25 17. The claims of some or all of the HP Subclass members are barred, in whole or in part,  
26 because any damages allegedly sustained by the HP Subclass members were not caused by the  
27 acts or omissions of HP.

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**EIGHTEENTH AFFIRMATIVE DEFENSE**

**(Enjoyed Benefit of Purchase)**

18. Some or all of the HP Subclass members have enjoyed the benefits of their purchase of the products that are the subject of the Complaint and are thereby barred from making the claims for relief in this litigation.

**NINETEENTH AFFIRMATIVE DEFENSE**

**(Good Faith)**

19. The claims of some or all of the HP Subclass members are barred, in whole or in part, because HP acted in good faith.

**TWENTIETH AFFIRMATIVE DEFENSE**

**(Non-Actionable Puffery)**

20. The claims of some or all of the HP Subclass members are barred, in whole or in part, because any allegedly deceptive advertising or marketing upon which Plaintiffs' claims are based is non-actionable opinion, sales talk, or puffery.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

**(Representations Were True)**

21. The claims of some or all of the HP Subclass members are barred, in whole or in part, because any representations made by HP regarding the products at issue in this legal action are true.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

**(Voluntarily Entered into Transactions with HP)**

22. The claims of some or all of the HP Subclass members are barred, in whole or in part, because they voluntarily undertook the alleged transactions and they had the opportunity, if not the obligation, to read all documents associated with the products at issue in this legal action.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

**(Knowingly Entered into Transactions with HP)**

23. The claims of some or all of the HP Subclass members are barred, in whole or in part, because they knowingly entered into the now-completed transactions with HP, having either

1 understood the transactions or having failed to avail themselves of the opportunity to understand  
2 the transactions.

3 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

4 **(Violation of Constitutional Rights)**

5 24. The claims of some or all of the HP Subclass members violate HP's constitutional rights,  
6 including due process rights, under both the United States and California Constitutions.

7 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

8 **(Separate Trials)**

9 25. The claims of some or all of the HP Subclass members are barred, in whole or in part, to  
10 the extent that trial of this action as a class action and/or with Intel would violate HP's  
11 constitutional right to separate trials.

12 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

13 **(Not Entitled to Relief)**

14 26. Some or all of the HP Subclass members are not entitled to any of the remedies or relief  
15 requested.

16 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

17 **(No Damages)**

18 27. Some or all of the HP Subclass members have suffered no damages or injuries.

19 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

20 **(Not Entitled to Restitution and Disgorgement)**

21 28. The purported claims for restitution and disgorgement made by some or all of the HP  
22 Subclass members are barred, in whole or in part, because restitution and disgorgement are  
23 unrelated to any measurable harm to consumers.

24 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

25 **(Lack of Privity)**

26 29. The claims of some or all of the HP Subclass members are barred, in whole or in part, to  
27 the extent they lack privity with HP.

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**THIRTIETH AFFIRMATIVE DEFENSE**

**(Failure to Comply With Warranty)**

30. The claims of some or all of the HP Subclass members are barred, in whole or in part, to the extent they have failed to comply with the applicable terms and conditions of warranties concerning the computers.

**THIRTY-FIRST AFFIRMATIVE DEFENSE**

**(Recovery Cannot Exceed Replacement Cost)**

31. Without conceding that any act of HP caused harm to the HP Subclass members or any other person in any respect, and without conceding that any of the HP Subclass members have complied with applicable warranty terms, HP alleges that pursuant to the terms and conditions of applicable warranties, recovery in this case, if any, could not exceed the replacement, or replacement cost, of the Pentium 4 processors at issue.

**THIRTY-SECOND AFFIRMATIVE DEFENSE**

**(Adequate Remedy at Law)**

32. The equitable claims made by the HP Subclass members are barred, in whole or in part, because there exists an adequate remedy at law.

**THIRTY-THIRD AFFIRMATIVE DEFENSE**

**(Fault of HP Subclass Members)**

33. The claims of some or all of the HP Subclass members are barred, in whole or in part, because their damages, if any, alleged in the Complaint were directly and proximately caused, in whole or in part, by the negligence, carelessness, fault, recklessness, lack of due care, breach of contract, deceit, fraud and/or other conduct of the HP Subclass members, and/or their agents, employees, servants and contractors. Accordingly, any HP Subclass members are barred from recovering against HP for any such damages, or their damages, if any, are subject to a proportionate reduction on a comparative basis for damages so caused.

**THIRTY-FOURTH AFFIRMATIVE DEFENSE**

**(Fault of Third Parties)**

34. The claims of some or all of the HP Subclass members are barred, in whole or in part,

1 because the damages, if any, alleged in the Complaint were directly and proximately caused, in  
2 whole or in part, by the negligence, carelessness, fault, recklessness, lack of due care, breach of  
3 contract, breach of warranty, deceit, fraud and/or other conduct of third parties and/or their  
4 agents, employees, servants and contractors. Accordingly, if any HP Subclass members are found  
5 to have sustained or to be entitled to any damages whatsoever, HP is not liable for those damages  
6 at all or is entitled to indemnification or contribution from third parties.

7 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

8 **(Setoff and Recoupment)**

9 35. Without conceding that any act of HP caused harm to Plaintiffs or any other person in any  
10 respect, HP is entitled to a setoff for the value Plaintiffs and any other person obtained from their  
11 use of the computers during the time period from their respective dates of purchase to the present.

12 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

13 **(Ambiguous and Uncertain Claims)**

14 36. Each and every cause of action asserted in the Complaint is ambiguous and uncertain.

15 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

16 **(Claims by Non-California Purchasers)**

17 37. Pursuant to the Court's Amended Class Certification Order, May 3, 2012, non-California  
18 purchasers of HP computers are not members of the HP Subclass and cannot assert claims against  
19 HP.

20 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

21 **(Mootness, Hypothetical, Advisory Opinion)**

22 38. The claims of some or all of the HP Subclass members are barred, in whole or in part, by  
23 the doctrine of mootness, hypothetical or advisory opinion.

24 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

25 **(Other Affirmative Defenses Available)**

26 39. HP incorporates by reference any affirmative defense asserted by Intel, to the extent such  
27 affirmative defense applies to HP and reserves the right to assert or plead any additional defenses  
28 that may arise or become known throughout the course of this legal action.



1 HP has identified these affirmative defenses out of an abundance of caution, but in so  
2 doing, does not concede that it bears the burden of proof or burden of production on any of the  
3 defenses it identified, or that the identified matters are anything other than affirmative elements of  
4 the claims alleged in the Complaint which Plaintiffs would be required to prove to prevail under  
5 the law.

6 WHEREFORE, HP prays for judgment that:

- 7 1. Plaintiffs and the HP Subclass take nothing by this action;
- 8 2. Judgment be entered in favor of HP and against the HP Subclass on all causes of  
9 action;
- 10 3. HP be awarded its costs of suit;
- 11 4. HP be awarded its attorneys' fees for this suit; and
- 12 5. The Court award HP such other and further relief as it deems proper.

14 DATED: June 20, 2012

Respectfully submitted,

15 /s/ Kristofor T. Henning  
 16 J. Gordon Cooney, Jr. (admitted Pro Hac Vice)  
 Kristofor T. Henning (admitted Pro Hac Vice)  
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**PROOF OF SERVICE**

*Skold v. Hewlett-Packard, SC Santa Clara 1-05-CV-039231 (063784.0027)*

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 2 Palo Alto Square, 3000 El Camino Real, Suite 700, Palo Alto, CA 94306-2121. On **June 20, 2012**, I served the within documents:

**DEFENDANT HEWLETT-PACKARD COMPANY'S ANSWER TO PLAINTIFFS' SIXTH AMENDED CLASS ACTION COMPLAINT**

<input checked="" type="checkbox"/>	by placing the documents listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery to the addressees noted below.
<input checked="" type="checkbox"/>	<b>by electronic mail</b> to the addressees noted below.

Eric H. Gibbs Geoffrey A. Munroe Amy M. Zeman C. Tucker Cottingham GIRARD GIBBS LLP 601 California Street, 14th Floor San Francisco, California 94108 Telephone: (415) 981-4800 Facsimile: (415) 981-4846 Email: <a href="mailto:ehg@girardgibbs.com">ehg@girardgibbs.com</a>	Raoul D. Kennedy Richard J. Zuromski, Jr. SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP 525 University Avenue, Suite 1100 Palo Alto, California 94301 Telephone: 650.470.4500 Facsimile: 650.470.4570 Email: <a href="mailto:raoul.kennedy@skadden.com">raoul.kennedy@skadden.com</a> Email: <a href="mailto:richard.zuromski@skadden.com">richard.zuromski@skadden.com</a>
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Executed on **June 20, 2012**, at Palo Alto, California.

I declare under penalty of perjury, under the laws of the State of California and the United States of America, that the foregoing is true and correct.



Richard Jackson III