

1 RAOUL D. KENNEDY (Bar No. 40892)  
2 JAMES P. SCHAEFER (Bar No. 250417)  
3 SKADDEN, ARPS, SLATE, MEAGHER &  
4 FLOM LLP  
5 525 University Avenue  
6 Palo Alto, CA 94301  
7 Telephone: (605) 470-4500  
8 Facsimile: (650) 470-4570

9 DAN L. BAGATELL (Bar No. 218879)  
10 PERKINS COIE BROWN & BAIN P.A.  
11 2901 North Central Avenue  
12 Post Office Box 400  
13 Phoenix, Arizona 85001-0400  
14 Telephone: (602) 351-8000  
15 Facsimile: (602) 648-7000

16 Attorneys for Defendant  
17 INTEL CORPORATION

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA CLARA**

15 JANET SKOLD and DAVID DOSSANTOS, ) Case No. 1-05-CV-039231  
16 on behalf of themselves and all others )  
17 similarly situated and the general public, ) Assigned to: Hon. James P. Kleinberg  
18 Plaintiffs, ) **CLASS ACTION**  
19 v. ) **INTEL CORPORATION'S ANSWER**  
20 INTEL CORPORATION, HEWLETT ) **TO PLAINTIFFS' SIXTH AMENDED**  
21 PACKARD COMPANY and DOES 1-50, ) **COMPLAINT**  
22 Defendants. ) Complaint Filed: March 12, 2004  
23 ) Discovery Cut-Off: None  
24 ) Trial Date: None  
25 )  
26 )  
27 )  
28 )

1 Defendant Intel Corporation ("Intel") responds to the unverified Sixth Amended  
2 Complaint of Plaintiffs Janet Skold and David Dossantos ("Plaintiffs") as follows:

3 Intel generally denies each and every allegation contained in the Sixth Amended  
4 Complaint and the purported cause of action therein, and without limitation upon the generality of  
5 the foregoing, specifically denies that Plaintiffs, or any member of the purported class or subclass  
6 on whose behalf Plaintiffs purport to sue, have been damaged in any sum of money, or at all, by  
7 reason of any act or omission of Intel.

8 As separate and affirmative defenses to the Sixth Amended Complaint, Intel alleges  
9 as follows:

10 **FIRST AFFIRMATIVE DEFENSE**

11 The Sixth Amended Complaint, and each of its purported causes of action, fails to  
12 state facts sufficient to constitute a cause of action against Intel.

13 **SECOND AFFIRMATIVE DEFENSE**

14 The claims made by Plaintiffs, and members of the purported class and subclass on  
15 whose behalf they purport to sue, are barred, in whole or in part, to the extent that they lack  
16 standing to sue.

17 **THIRD AFFIRMATIVE DEFENSE**

18 The claims made by Plaintiffs, and members of the purported class and subclass  
19 on whose behalf they purport to sue, are barred, in whole or in part, to the extent that either:  
20 (1) they are not the actual purchaser or lessee of the computer upon which their claims are based;  
21 (2) they did not lease or purchase the computer upon which their claims are based for their own  
22 use; or (3) they suffered no cognizable harm.

23 **FOURTH AFFIRMATIVE DEFENSE**

24 The claims made by Plaintiffs, and members of the purported class and subclass on  
25 whose behalf they purport to sue, are barred, in whole or in part, by waiver.

26 **FIFTH AFFIRMATIVE DEFENSE**

27 The claims made by Plaintiffs, and members of the purported class and subclass on  
28 whose behalf they purport to sue, are barred, in whole or in part, by estoppel.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**SIXTH AFFIRMATIVE DEFENSE**

The claims made by Plaintiffs, and members of the purported class and subclass on whose behalf they purport to sue, are barred, in whole or in part, by unclean hands.

**SEVENTH AFFIRMATIVE DEFENSE**

The claims made by Plaintiffs, and members of the purported class and subclass on whose behalf they purport to sue, are barred, in whole or in part, because they have failed to mitigate their damages.

**EIGHTH AFFIRMATIVE DEFENSE**

The claims made by Plaintiffs, and members of the purported class and subclass on whose behalf they purport to sue, are barred, in whole or in part, by laches because Plaintiffs delayed an unreasonable period of time before bringing this action, causing detriment and prejudice to Intel.

**NINTH AFFIRMATIVE DEFENSE**

The claims made by Plaintiffs, and members of the purported class and subclass on whose behalf they purport to sue, are barred, in whole or in part, to the extent that such claims have been previously released.

**TENTH AFFIRMATIVE DEFENSE**

The claims made by Plaintiffs, and members of the purported class and subclass on whose behalf they purport to sue, 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.

**ELEVENTH AFFIRMATIVE DEFENSE**

To the extent that other persons or entities, rather than Intel, are at fault with respect to the matters complained of in the Sixth Amended Complaint, any recovery from Intel by Plaintiffs or members of the purported class and subclass on whose behalf they purport to sue, should be reduced proportionately to the fault attributable to said other persons or entities.

**TWELFTH AFFIRMATIVE DEFENSE**

Without conceding that any act of Intel caused harm to Plaintiffs or members of the

1 purported class and subclass on whose behalf they purport to sue, Intel alleges that it is entitled to  
2 offset and recoup against any judgment that may be entered against it an amount equal to the value  
3 of the computers and microprocessors that allegedly did not perform as represented.

4 **THIRTEENTH AFFIRMATIVE DEFENSE**

5 To the extent that the laws of other jurisdictions apply, Intel invokes each and every  
6 constitutional, statutory, and common law defense available to it under the constitutions (or similar  
7 charters) and the laws of each of the fifty States, the District of Columbia, the Commonwealth of  
8 Puerto Rico and the territories and possessions of the United States. This specifically includes, but  
9 is not limited to, provisions relating to due process, freedom of speech, and limitations on damages.

10 **FOURTEENTH AFFIRMATIVE DEFENSE**

11 The claims made by Plaintiffs, and members of the purported class and subclass on  
12 whose behalf they purport to sue, are barred, in whole or in part, to the extent that certification of  
13 this action as a class action would violate Intel's constitutional right to separate trials.

14 **FIFTEENTH AFFIRMATIVE DEFENSE**

15 The claims made by Plaintiffs, and members of the purported class and subclass on  
16 whose behalf they purport to sue, are barred, in whole or in part, to the extent that under California  
17 choice-of-law rules and applicable constitutional limitations on choice-of-law determinations,  
18 California law cannot be applied to such claims.

19 **SIXTEENTH AFFIRMATIVE DEFENSE**

20 The claims made by Plaintiffs, and members of the purported class and subclass on  
21 whose behalf they purport to sue, are barred, in whole or in part, to the extent that such claims are  
22 premised on the unauthorized extraterritorial application of California law.

23 **SEVENTEENTH AFFIRMATIVE DEFENSE**

24 The claims made by Plaintiffs, and members of the purported class and subclass on  
25 whose behalf they purport to sue, are barred, in whole or in part, to the extent that the United States  
26 Constitution and the applicable State constitutions, in addition to the principles of federalism and  
27 comity, prohibit the application of a single State's law to a nationwide or multi-State class.

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EIGHTEENTH AFFIRMATIVE DEFENSE**

The claims made by Plaintiffs, and members of the purported class and subclass on whose behalf they purport to sue, are barred, in whole or in part, to the extent that they seek to deprive Intel of procedural and substantive safeguards, including but not limited to traditional defenses to liability, in violation of the due process clause of the United States Constitution and the analogous provisions of any applicable State constitutions.

**NINETEENTH AFFIRMATIVE DEFENSE**

Intel incorporates by reference any affirmative defense asserted by any other defendant to this action, to the extent such affirmative defense applies to Intel.

By alleging the matters set forth in these defenses, Intel does not allege or admit that it has the burden of proof and/or persuasion with respect to any of these matters. Intel presently lacks sufficient knowledge or information on which to form a belief as to whether it may have available additional affirmative defenses. For this reason, Intel reserves its rights to amend this pleading and assert additional affirmative defenses.

WHEREFORE, Intel prays for judgment as follows:

1. That Plaintiffs, and members of the purported class and subclass on whose behalf they purport to sue, take nothing by reason of the Sixth Amended Complaint herein;
2. That the Court offset the recovery, if any, by Plaintiffs, and members of the purported class and subclass on whose behalf they purport to sue, by any amounts paid by Intel, or other third parties, to them, in connection with claims relating to the subject matter of this lawsuit;
3. That Intel recover its expenses, costs, and attorneys' fees in connection with this lawsuit;

///  
///  
///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

4. That the Court grant Intel such further relief as it deems just and proper.

DATED: June 20, 2012

Respectfully submitted,  
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
PERKINS COIE BROWN & BAIN P.A.

By: /s/ Raoul D. Kennedy  
RAOUL D. KENNEDY  
Attorneys for Defendant  
INTEL CORPORATION