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19 QBEX COMPUTADORES S.A.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

SAN JOSE DIVISION

20 QBEX COMPUTADORES S.A., a

21 Brazilian corporation,

22 Plaintiff,

23 vs.

24 INTEL CORPORATION, a Delaware
25 corporation,

26 Defendant.

Case No. 5:17-cv-_____

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff Qbex Computadores S.A. (“Qbex”) alleges as follows:

INTRODUCTION

1
2
3 1. Qbex is a local electronics company in Brazil that has seen its goodwill
4 and reputation destroyed after a series of Intel Corporation (“Intel”) Smartphones sold
5 under the “QBEX” brand began to overheat and explode.
6

7 2. Qbex was one of the fastest growing local electronics companies in Brazil.
8 With a reputation for selling quality electronic devices at affordable prices, Qbex’s
9 sales increased from \$1.3 million in 2005 to more than \$85 million in 2012. Indeed, in
10 2015, the QBEX tablet was the second most popular tablet sold in Brazil, just behind
11 the internationally renowned Samsung Galaxy.
12

13 3. This growth was brought to a halt by Intel’s defective phones.
14

15 4. In September of 2015, Qbex began selling in Brazil a series of Intel
16 Smartphone models under the QBEX brand. The smartphones were “Intel Inside”
17 devices, featuring Intel’s SoFia microprocessor and Intel’s integrated mobile platform.
18 With a sales projection of more than 800,000 units per year, the Intel Smartphones
19 promised to cement Qbex’s position in the Brazilian market and raise its profile in the
20 industry.
21

22 5. However, Intel’s Smartphones – and specifically Intel’s SoFia
23 microprocessors – had a design defect that caused the phone to overheat, catch fire, and
24 sometimes explode.
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1 6. Intel was fully aware of this defect at the time of its sales to Qbex and
2 eventually suspended the production of the SoFia microprocessors. But with callous
3 disregard for the safety of the public in Brazil, Intel continued to dump its defective
4 products into that market.

5
6 7. Indeed, after Intel received internal reports that its SoFia microprocessor
7 was defective, Intel expanded its contractual relationship with Qbex and agreed to sell
8 1,250,000 units to Qbex through the second quarter of 2017.

9
10 8. Worse yet, as the number of customer complaints, returns, and explosions
11 skyrocketed, Intel abandoned Qbex and stopped providing technical support for the
12 smartphones.

13
14 9. Through its own independent research, Qbex determined that a design
15 defect in Intel's SoFia microprocessor was the cause of the overheating and stopped
16 selling the Intel Smartphones. By then the smartphone fiasco had destroyed Qbex's
17 reputation and as a result Qbex's sales have plummeted. Qbex has received more than
18 35,000 customer complaints about the smartphone's overheating problems and it is now
19 facing more than 4,000 lawsuits in Brazil, where customers seek to hold Qbex
20 responsible for Intel's explosive smartphones. QBEX, the once renowned local brand
21 of reliable and affordable electronics in Brazil, is now known as the brand of exploding
22 and defective smartphones.

23
24
25
26 10. This lawsuit seeks redress for the harm that Intel has caused. Qbex sues
27 for: common law fraud (Count I); violation of Delaware Consumer Fraud Act – 6 *Del.*
28

1 C. § 2513 (Count II); common law negligent misrepresentation (Count III); breach of
2 the implied warranty of merchantability – 6 Del. C. § 2-314 (Count IV); common law
3 breach of the implied covenant of good faith and fair dealing (Count V); common law
4 unjust enrichment (Count VI); common law civil conspiracy (Count VII); and breach of
5 contract (Count VIII).
6

7 **PARTIES**

8
9 11. Qbex is a Brazilian corporation (*sociedade anônima*) with its principal
10 place of business in the city of Lauro de Freitas, State of Bahia, Brazil.

11 12. Intel is a Delaware corporation with its principal place of business in Santa
12 Clara, California. Intel designs, trademarks, manufactures, markets, and sells
13 microprocessors.
14

15 **JURISDICTIONAL STATEMENT**

16 17. The Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a)
17 because Qbex and Intel are citizens of different states, and the amount in controversy
18 exceeds \$75,000.
19

20 14. The Court has supplemental jurisdiction of Qbex’s state law claims
21 pursuant to 28 U.S.C. § 1367.
22

23 15. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1) because
24 Intel resides in Santa Clara, California. Venue is also proper in this district because a
25 substantial part of the events giving rise to the claim occurred in this district and
26 because the parties have contractually agreed to venue in this forum.
27
28

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INTRADISTRICT ASSIGNMENT

1
2 16. Assignment is proper to the San Jose Division of this District under Local
3 Rule 3-2(c), (e), as a substantial part of the events giving rise to Qbex’s claims occurred
4 in Santa Clara County, where Intel is headquartered.
5

6 **FACTUAL ALLEGATIONS**

7 **I. The story of Qbex in Brazil: quality electronics at affordable prices.**

8
9 17. Until its reputation was tarnished by the smartphone debacle that is the
10 subject of this action, QBEX was one of the most popular local electronics brands in
11 Brazil.
12

13 18. Qbex began selling electronics at discounted prices in the city of Salvador,
14 Brazil in 2003. Since its inception, Qbex invested a significant portion of its operating
15 budget to local marketing with the goal of becoming the leading local electronics brand
16 in Brazil. The QBEX brand (and logo) was featured prominently in popular television
17 commercials, in renowned newspapers and magazines, and in local sponsorships. True
18 and correct copies of representative samples of Qbex’s marketing materials are attached
19 hereto as **Composite Exhibit “A”** and are incorporated by reference.
20
21

22 19. This marketing strategy made QBEX one of the most known and reputable
23 brands of electronics in the region, widely recognized for its reliable products and
24 affordable prices.
25

26 20. In 2005, Qbex began to expand its product line. That year, Qbex
27 successfully launched its first model of desktop computer. Qbex continued its
28

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1 expansion in 2010 when it launched its first laptop and in 2013 when it released its
2 popular, cost-effective Ultrabook QBEX Touch UX640.

3 21. The QBEX computers were a tremendous success. In 2008, the QBEX
4 desktops were recognized among the “most reliable” computers in Brazil. In 2012 and
5 2013, Qbex was listed among the top ten desktop vendors in Brazil.

7 22. From 2009 to 2014, Qbex assembled and sold more than 600,000 units of
8 its various desktop models, including the Atlas Celeron, Atlas Gold, and Atlas Pro.
9 During this time frame, Qbex saw its revenues increase from roughly \$1,300,000 in
10 2005 to more than \$85,000,000 in 2012.

12 23. Given the success of its computer brands, Qbex expanded its line of
13 products into the tablet market. The QBEX tablets built on the success of the QBEX
14 computers, and in 2012, Qbex was the first company in Latin America to be authorized
15 by Intel to produce the local Ultrabooks line and was subsequently recognized by Intel
16 with the “Client Solution Innovation Award.”

17 24. As of September of 2015, the QBEX TX300 tablet was the second most
18 sold tablet in Brazil according to GFK Brazil (part of one of the largest market research
19 companies in the world) only behind the Samsung Galaxy Tablet.
20

21 **II. The QBEX Smartphone: “Intel Inside.”**

22 25. In January of 2015, after the success of the QBEX tablets, Alessandra
23 Souza, one of the executive representatives of Intel in Brazil, in charge of the Qbex
24 account since 2011, approached Joabe Fonseca, the president of Qbex, and told him that
25
26
27
28

1 Intel was interested in launching its line of smartphones in Brazil under the QBEX
2 brand.

3 26. Mr. Fonseca saw this invitation as a recognition of the goodwill and
4 reputation that Qbex had achieved in the Brazilian market during the course of almost
5 15 years and he believed that launching QBEX-branded smartphones, featuring Intel's
6 SoFia microprocessor and mobile platform, would solidify Qbex's position as one of
7 the leading local electronics brands in Brazil.
8
9

10 27. Indeed, this project was supposed to be Intel's first foray into the
11 smartphone market in Brazil with the SoFia microprocessor.

12 28. The plan was to have the QBEX logo prominently displayed on the
13 smartphones and the boxes together with the "Intel Inside" logo to make clear to the
14 public that the smartphones featured Intel's SoFia microprocessors and mobile systems,
15 and that there was a close, strategic collaboration between Intel and Qbex.
16
17

18 29. On February 27, 2015, Ms. Souza sent to Mr. Fonseca the catalogs of
19 Intel's original design manufacturers or "ODMs" that would furnish the Intel
20 Smartphone hardware to Qbex.
21

22 30. An ODM is a foreign manufacturer commonly designated by technology
23 companies based in the United States and other developed countries to take advantage
24 of the lower labor and manufacturing costs in other countries without having to operate
25 a factory. Essentially, the technology company designs a product, then outsources
26 manufacturing to an ODM, which is under the direct supervision of the technology
27
28

1 company and has the contractual obligation to produce the product according to
2 specifications provided by the technology company.¹

3 31. In the specific case of Intel, Ms. Souza informed Mr. Fonseca that Water
4 World Technology Co. Ltd. (“Waterworld”) in China would be the ODM for the
5 motherboard and internal systems of the smartphones. The catalog Ms. Souza sent to
6 Mr. Fonseca proclaimed that each smartphone featured Intel’s SoFia microprocessor
7 and Intel’s product specifications, including Intel’s mobile platform. In turn, Fortune
8 Ship Technology (HK) Limited (“FortuneShip”), I-Swim Technology Company
9 Limited (“I-Swim”), and HK Tianruixiang Communication Equipment Limited (f/k/a
10 JZH) (“HK Tianruixiang”) – all based in China (or Hong Kong) – were the System
11 Integrators that Intel identified for the smartphone parts.

12 32. Fuzhou Rockchip Electronics Co. Ltd. (“Rockchip”) is also one of Intel’s
13 ODMs and it manufactured Intel’s SoFia microprocessors.

14 33. Ms. Souza reiterated to Mr. Fonseca that Intel was responsible for the
15 design and quality of the products its ODM and System Integrator partners
16 manufactured, and that Intel had several supervising technicians working directly at
17 their factories to ensure compliance with Intel’s standards and designs.
18
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25 ¹ In this industry, the acronyms are not universal. This type of entity and relationship is
26 sometimes referred to as an Original Equipment Manufacturer (“OEM”). Regardless, the relationship
27 is one whereby Intel designed the hardware and then utilized and worked closely with (even providing
28 and embedding Intel employees within) the foreign entity to manufacture its designed hardware. Reference to ODMs includes ODMs, OEMs, and System Integrators, and describes the relationship that Intel had to each of those types of entities.

1 34. The next step in the process was for Mr. Fonseca to attend Intel's Solutions
2 Summit for Latin America (the "ISS Conference") that was held on April 22, 2013, in
3 Cancun, Mexico. Intel described the ISS Conference as an opportunity for Mr. Fonseca
4 to meet face to face with Intel executives and discuss the smartphones project. Intel
5 paid for the travel and hotel expenses of Mr. Fonseca.
6

7 35. At the ISS Conference, Mr. Fonseca met with Intel's Vice President, Sales
8 and Marketing Group General Manager, Latin America, Steve Long ("Long"). At that
9 meeting, Mr. Fonseca agreed on behalf of Qbex to expand its relationship with Intel to
10 launch the Intel Smartphones under the QBEX brand.
11

12 36. After reaching a new agreement with Intel, Mr. Fonseca was introduced by
13 Intel to the representatives of Waterworld and FortuneShip.
14

15 37. On June 5, 2015, Marcelo Pinheiro of Intel sent Mr. Fonseca a confidential
16 presentation about the SoFia microprocessor and Intel's mobile platform. In this
17 presentation, Intel represented that SoFia microprocessors performed better – based on
18 several technical functionality benchmarks – than microprocessors produced by its
19 competitors MediaTek and Qualcomm. At the time, Qualcomm was trying to persuade
20 Qbex to sell its smartphones under the QBEX brand.
21

22 38. Mr. Fonseca was impressed by the presentation and confirmed Qbex's
23 acceptance of Intel's offer to launch the Intel Smartphones under the QBEX brand.
24
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III. The umbrella agreements to produce the QBEX Smartphones.

1
2 39. Consistent with Intel's custom and procedures, the contractual relationship
3 between Intel and Qbex was memorialized in a number of electronic agreements
4 electronically signed on Intel's website or confirmed by Intel communications.
5

6 40. As a number of the QBEX computers featured Intel central processing
7 units, on or about October 27, 2011, Qbex entered into a "Technology Provider
8 Program" Agreement with Intel (hereinafter, the "Provider Agreement"). A true and
9 correct copy of the Provider Agreement is attached hereto as **Exhibit "B"** and is
10 incorporated by reference.
11

12 41. Intel requires "Sellers" and "Partners" of Intel products to sign the
13 Provider Agreement.
14

15 42. "Sellers" is a defined term in the Provider Agreement and means "those
16 entities, which distribute or otherwise sell genuine Intel products, or finished goods
17 containing genuine Intel products, such as and including, but not limited to Intel
18 Authorized Distributors, original design manufacturers, original equipment
19 manufacturers, channel suppliers, and channel resellers." See Provider Agreement
20 [Exh. B] at § 1.1.
21

22 43. The term "Partners" is defined as "Sellers" who also meet the criteria of
23 the Intel Technology Provider Program and are members of the program. *Id.* at § 1.6.
24

25 44. Under these definitions, Qbex was a "Partner" as it was a member of
26 Intel's program and sold genuine Intel products or finished goods containing genuine
27
28

1 Intel products, with the agreement that Qbex was obligated to purchase those Intel
2 products from the ODM(s) identified by Intel.

3 45. As a platinum member of Intel's technology provider program, Qbex
4 further agreed that 70% of the "Intel or Intel-based products" that Qbex purchased
5 directly from Intel (or from Intel's ODMs) were sold as finished goods or in the form of
6 an integrated product. *Id.* at § 5.6. Qbex also agreed to comply with Intel's "terms and
7 conditions, any applicable trademark license agreement/terms and conditions that Intel
8 makes available as part or in connection with the Intel Technology Provider program."
9
10
11 *Id.* at § 5.1.

12 46. The Provider Agreement also establishes a series of benefits for Sellers,
13 like Qbex, including financial benefits or rebate points if Qbex purchased "Intel
14 products" from Intel Authorized Distributors (*i.e.*, Intel's ODMs) and other entities
15 approved by Intel to distribute or otherwise sell "Intel based products." *Id.* at § 6.1.
16
17

18 47. As contemplated by the Provider Agreement, Qbex also signed the
19 Channel Trademark License Agreement and separate Price Matching Agreements for its
20 various purchase orders of Intel products. A true and correct copy of the Channel
21 Trademark License Agreement is attached hereto as **Exhibit "C"** and is incorporated by
22 reference.
23

24 48. These umbrella agreements governed the relationship between Intel and
25 Qbex and were supplemented or expanded by oral and written communications
26
27
28

1 regarding the number of units that Qbex agreed to purchase and that Intel agreed to
2 provide to Qbex from its ODMs.

3 **IV. The release of the QBEX Smartphones.**

4 49. After the signing of the electronic agreements, the parties prepared for the
5 launch of the smartphones in Brazil.
6

7 50. Qbex worked closely with Intel and its ODMs to produce the smartphones
8 and Qbex was pleased to see that Intel in fact did exercise control over its ODMs.
9

10 51. Intel supervised and controlled the production of the SoFia
11 microprocessors by Rockchip, the motherboards and internal systems by Waterworld,
12 and the mobile parts by FortuneShip, HK Tianruixiang, and I-Swim.
13

14 52. Indeed, whenever Qbex had any issue or question about the ODMs, Qbex
15 could either ask Intel or ask the ODMs directly. For all practical purposes, the ODMs
16 functioned as an extension of Intel, which was exactly what Ms. Souza and other
17 executives of Intel had represented to Mr. Fonseca.
18

19 53. Qbex invested more than \$130,000 in preparation for the launch of the
20 smartphones and eventually shifted more than 90% of its capacity to the assembly,
21 marketing, and sale of the Intel Smartphones. Qbex also hired more than 200 new
22 employees for the Intel Smartphone business.
23
24
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1 54. On September 29, 2015, Intel announced in an official press release the
2 QBEX Smartphones launch. A true and correct copy of the press release is attached
3 hereto as **Exhibit “D”** and is incorporated by reference.²

4
5 55. Qbex began to sell the finished and fully assembled Intel Smartphones in
6 October of 2015.

7 56. The phones were mainly distributed by Rcell Telecom, a distributor
8 selected by Intel. The finished Intel Smartphones were branded as the: QBEX X-Gray,
9 QBEX X-Gold, QBEX X-Rose, QBEX X-GO, QBEX X-Pocket, and QBEX EVO,
10 depending on the color and size of the device. Each model prominently displayed the
11 “Intel Inside” logo.

12
13 57. The QBEX Smartphones made a splash in the Brazilian market. Indeed,
14 from October 2015 to December 2016 – when Qbex stopped selling the phones – Qbex
15 sold (or distributed) 235,074 units, an impressive figure for a once local electronics
16 company.
17

18
19 **V. The overheating problems and increased sales.**

20
21 58. The tremendous success of the QBEX Smartphones was a curse in disguise
22 for Qbex because Intel’s central microprocessor and/or mobile system had a design
23 defect that caused the device to overheat and even explode.

24
25 59. As early as October of 2015, Intel and its ODMs had technical reports
26 showing that the smartphone had a design defect that caused overheating.

27
28 ² An English translation and certificate of translation is incorporated with the original exhibit,
listed on the certificate as “Qbex lança smartphones X-Gold e X-Gray.”

1 60. However, Intel never disclosed these technical reports (or their findings) to
2 Qbex.

3 61. To the contrary, Intel and its ODMs intentionally omitted the information
4 contained in those technical reports in their dealings with Qbex.
5

6 62. Indeed, Intel and its ODMs' explanations about the smartphone's
7 overheating were a moving target that changed without any justification or further
8 explanation.
9

10 63. First, Intel and its ODMs took the position that the higher temperatures of
11 the phones were "normal." This was the explanation Intel's ODMs offered in
12 December of 2015 in response to an inquiry from Qbex's engineering team.
13

14 64. As part of its quality control and operation procedures, Qbex tests all of the
15 smartphones that it assembles for different parameters, including performance, battery,
16 cycle, and proper behavior of the camera, wifi, and touch screen. Before starting the
17 mass production of smartphones, Qbex also conducts a homologation procedure with
18 samples received from the ODMs, during which it tests performance, temperature, and
19 the general look and feel of the devices.
20
21

22 65. While performing these tests, Qbex's engineering team noted that the
23 temperature of the Intel Smartphones was higher than the temperature of other
24 comparable electronics.
25

26 66. After running numerous tests on sample units received from FortuneShip,
27 Raul Miranda of Qbex's engineering team reported the problem to Mike Huang,
28

1 Raymond Zou, Cherry Chueng, Jim Hong, Luo Guoke, Nina, Daniel, and Ronny Chen
2 of Intel's ODM FortuneShip in an e-mail dated December 12, 2015.

3 67. In the December 12, 2015 e-mail, Mr. Miranda explained that the "heating
4 was compared to other models and found that [it] is above the rest, which (sic)
5 functional testing, using the GSM (link 2 minutes with the connected Wi-Fi and
6 Bluetooth) the User does not support the device next to any part of the body." In that e-
7 mail, Mr. Miranda enclosed a copy of Qbex's Engineering Report showing performance
8 temperatures of 44 degrees Celsius (111.20 degrees Fahrenheit).
9

10
11 68. On December 14, 2015, Raymond Zou of FortuneShip responded that "the
12 maximum temperature 44 degree Celsius should be accepted. For Intel SoFia 3G
13 platform, the power consumption is a little higher than other platform." True and
14 correct copies of the December 12, 2015, and December 14, 2015, e-mails are attached
15 hereto as **Exhibit "E"** and are incorporated by reference.
16

17
18 69. Qbex informed Ms. Souza about the higher temperatures and
19 FortuneShip's response in its first meeting with Intel. Ms. Souza represented to Qbex
20 that Intel would review this issue with FortuneShip. However, this response was
21 deceiving because two months earlier – by no later than October 2015 – Intel and
22 FortuneShip had already determined that the smartphones tended to overheat.
23

24
25 70. In the first quarter of 2016, Qbex sold 38,934 units, but the number of
26 customer complaints or returned smartphones due to malfunctioning continued to
27 increase. In December of 2015, for example, there were only 2 reported incidents of
28

1 complaints for malfunctioning phones, but that number escalated in the following
2 months to 43 returns/complaints in January, 79 in February, and 219 in March.

3 71. Intel was aware of these issues because its representatives Ms. Souza and
4 Marcelo Pinheiro were working closely with Qbex to address the problem. However,
5 Intel and its ODMs took the position that Intel would resolve these problems with a
6 software update.
7

8 72. Indeed, on February 23, 2016, Mr. Fonseca met with Mr. Long during the
9 Mobile World Congress in Barcelona, and Mr. Long confirmed that Intel was pleased
10 with the acceptance of the QBEX Smartphones in the Brazilian market and hoped to
11 continue to support the QBEX Smartphones for 2016, 2017, and beyond.
12

13 73. Mr. Long and the other Intel executives present at the meeting, namely
14 Ricardo Ferraz (Client Computing Group Sales Lead Brazil), Mariano Yacovino (Sales
15 Development Manager), Michael Wittmann (Senior Director of Marketing), Rodrigo
16 Tamellini (Latin America Manager for Tablets and Smartphones), and Jeep Kline
17 (Director of Marketing and Business Development), reiterated to Mr. Fonseca that
18 Intel's SoFia microprocessors were of high quality.
19
20

21 74. On March 1, 2016, Ms. Kline again reiterated her comments in an e-mail
22 addressed to Mr. Fonseca stating that she was "personally excited about the SoFia 3GR
23 product this year along with SoFia LTE" and thanking him for "considering our
24 product." A true and correct copy of the March 1, 2016 e-mail is attached hereto as
25
26 **Exhibit "F"** and is incorporated by reference.
27
28

1 75. In the second quarter of 2016, Qbex doubled its first quarter's sales and
2 sold more than 88,000 units. However, the number of complaints or malfunctioning
3 phones continued to increase with 401 complaints/returns in April, 915 in May, and
4 1,446 in June.

5
6 76. On April 13, 2016, Mr. Fonseca attended the Hong Kong Electronics Fair
7 as Intel's guest. During this fair, Intel gave a PowerPoint presentation announcing that
8 it intended to launch new microprocessors of the SoFia platform, namely SoFia 3GR
9 and SoFia LTE.

10
11 77. On April 29, 2016, however, Intel announced that it was canceling the
12 production of its SoFia microprocessor. Qbex found the news surprising and
13 irreconcilable with the presentations Intel made at the Hong Kong Fair and Intel's
14 February and March 2016 representations. However, Intel led Qbex to believe that the
15 SoFia microprocessor was being discontinued as a part of its business restructuring, not
16 because of any problem with the SoFia microprocessor. Intel further assured Qbex that
17 it was working on a new version of the software for the SoFia microprocessor.
18
19

20
21 **VI. The agreement to supply SoFia microprocessors through the second**
22 **quarter of 2017.**

23 78. Believing that Intel and its ODMs fixed any overheating issues in the
24 processing system and that a new version of the software was in the works, Qbex
25 continued to sell the smartphones, which reached a peak of 37,049 units sold in August
26 2016.
27
28

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1 79. In May of 2016, Mr. Fonseca was once again invited to attend Intel’s ISS
 2 Conference, being held in Panama that year. At the conference, Mr. Fonseca met with
 3 CJ Bruno, the Vice-President and General Manager of Global Accounts of Intel, Ms.
 4 Souza, and Mr. Long to evaluate the contractual relationship between Intel and Qbex.
 5

6 80. At that May 2016 meeting, Mr. Bruno recognized that QBEX Smartphones
 7 had been selling beyond Intel’s expectations and reiterated that Intel was pleased with
 8 the work of Qbex.
 9

10 81. Mr. Bruno also agreed on behalf of Intel to sell to Qbex through Intel’s
 11 ODMs 970,000 smartphone units to cover the market demand through the second
 12 quarter of 2017, as follows:
 13

Qbex Purchase Order	Smartphone Volume (SoFia 3GR) (ku)
2Q16	110,000 units
3Q16	250,000 units
4Q16	210,000 units
1Q17	200,000 units
2Q17	200,000 units

14 82. These units would be priced consistent with the parties’ then existing
 15 pricing arrangement.
 16
 17

18 83. Intel further agreed to provide technical support to Qbex and its customers
 19 through, at least, the second quarter of 2017, and to pay all rebates agreed upon for
 20 2016.
 21
 22
 23
 24
 25
 26
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 28

1 84. This agreement was memorialized in an e-mail exchange between Intel and
 2 Qbex dated May 19, 2016. A true and correct copy of this e-mail is attached hereto as
 3 **Exhibit “G”** and is incorporated by reference.³

4 85. Intel partially satisfied its contractual obligations in so far as it paid the
 5 agreed upon rebates outstanding for 2016. However, Intel breached its agreement by
 6 failing to provide the stipulated technical support.
 7

8 **VII. The design defect forces Qbex to suspend the sale of the QBEX**
 9 **Smartphones.**

10 86. In the third quarter of 2016, the number of returns or complaints for
 11 malfunctioning smartphones skyrocketed. Qbex received 9,090 complaints or returns in
 12 July of 2016 and 5,962 complaints or returns in August.
 13

14 87. While the complaints and returns increased exponentially, Intel and its
 15 ODMs were unable to give Qbex any effective solution to the problems. To make
 16 matters worse, Qbex began hearing rumors that Intel had fired all of the engineers in
 17 charge of the SoFia microprocessors and that the ODMs could not solve the overheating
 18 problems without Intel’s engineers.
 19

20 88. Eventually, Qbex confirmed through an independent study that a design
 21 defect in Intel’s SoFia microprocessor caused the smartphones to overheat, catch fire,
 22 and sometimes explode.
 23
 24

25
 26
 27 ³ An English translation and certificate of translation is incorporated with the original exhibit,
 28 listed on the certificate as “Doc 019 REUNIAO FORCASR NO PANAMA E GARANTIA DE SUPORTE ATE 2017.”

1 89. In December of 2016, Qbex terminated its relationship with Intel and
2 stopped selling the defective smartphones.

3 **VIII. Qbex's damages.**

4 90. Qbex has suffered and continues to suffer significant damages as a result
5 of the design defect in the SoFia microprocessors, including but not limited to: (i) loss
6 of its investment in the smartphone expansion, (ii) loss of goodwill and reputation, and
7 (iii) loss of the profits expected from the sale of the smartphone units that Intel agreed
8 to supply through the second quarter of 2017.
9

10 91. Qbex has also been damaged by the more than 35,000 customers'
11 complaints it has received in connection with the design defect in the SoFia
12 microprocessors. To manage these complaints and the ensuing lawsuits, Qbex had to
13 hire 216 additional employees. To date, Qbex has agreed to exchange more than
14 18,000 defective smartphones and has resolved and/or settled numerous additional
15 administrative and judicial complaints.
16

17 92. Moreover, Qbex is currently storing 13,518 smartphones with Intel's SoFia
18 microprocessor technology that it cannot sell. In addition, there are 20,000 units held in
19 customs in Brazil and 10,000 units in storage at the ODM plants in Hong Kong.
20

21 93. Due to Intel's conduct, it was necessary for Qbex to employ counsel and
22 instruct the filing of this action for which Qbex will incur costs and expenses, including
23 attorneys' fees, costs, and other related expenses.
24
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1 94. All conditions precedent to bringing this action have been performed, have
2 occurred, are excused or are waived.

3 **FIRST CLAIM FOR RELIEF**
4 (Common Law Fraud; Delaware law)

5 95. Qbex hereby incorporates and realleges paragraphs 1 through 94.

6
7 96. Intel represented to Qbex that its SoFia microprocessors were high quality
8 microprocessors that would function not only for their intended purpose, but better than
9 Intel's competitors' MediaTek and Qualcomm designed microprocessors, as more
10 specifically alleged in paragraphs 34 through 38 and elsewhere.

11
12 97. However, the SoFia microprocessors were defective and thus these
13 representations were false.

14
15 98. Intel knew that the SoFia microprocessors were defective when it made the
16 misrepresentations or, alternatively, Intel should have known the SoFia microprocessors
17 were defective and failed to uncover these defects due to its reckless indifference to the
18 truth.

19
20 99. Intel made these representations to Qbex with the express intent to induce
21 Qbex into entering a business relationship with Intel whereby Qbex would obtain,
22 market, and sell Intel Smartphones with Intel's SoFia microprocessors under the QBEX
23 brand in Brazil.

24
25 100. Qbex acted reasonably in relying on Intel's representations regarding the
26 design and quality of the SoFia microprocessors.
27
28

1 101. Intel's fraudulent misrepresentations caused Qbex damages in an amount
2 not less than \$100 million, as more fully set forth above.

3 102. Intel acted with oppression, fraud, or malice entitling Qbex to punitive
4 damages in an amount to be presented at trial.

5
6 **SECOND CLAIM FOR RELIEF**

7 (Violation of Delaware Consumer Fraud Act – 6 *Del. C.* § 2513)

8 103. Qbex hereby incorporates and realleges paragraphs 1 through 94.

9 104. Clause 10.9 of the Provider Agreement has a choice of law clause
10 stipulating that “the forum shall be Santa Clara, California, USA and the applicable law
11 shall be that of the State of Delaware, without reference to conflicts of law principles.”

12 105. Intel used or employed deception, fraud, false pretenses, false promises,
13 misrepresentations, or the concealment, suppression, or omission of a material fact (*i.e.*,
14 “unlawful practices”) in connection with the sale of its SoFia microprocessors. This
15 conduct, as set forth above, violates 6 *Del C.* § 2513.

16 106. Intel engaged in this unlawful practice with the intent to induce others
17 including, but not limited to Qbex, to rely on Intel's misrepresentations to further its
18 trade and business interest in the sale, manufacture, and distribution of its Intel designed
19 and branded products, including, but not limited to, the SoFia microprocessors.

20 107. As direct result of Intel's violation of 6 *Del C.* § 2513, Qbex has suffered
21 and will continue to suffer damages, as more fully set forth above.
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THIRD CLAIM FOR RELIEF

(Common Law Negligent Misrepresentation; Delaware law)

108. Qbex hereby incorporates and realleges paragraphs 1 through 94.

109. At or before the time that Intel and Qbex entered into their contractual relationship regarding the manufacture, distribution, and sale of QBEX Smartphones that incorporated Intel’s designed SoFia microprocessors, Intel knew or should have known that Qbex was relying on Intel’s representations regarding the superior quality and fitness of Intel’s SoFia microprocessors.

110. Intel represented to Qbex that the SoFia microprocessors were of high quality, were reliable hardware for installation and sale in smartphones, and were better than their competitors’ microprocessors as more specifically alleged in paragraphs 34 through 38 and elsewhere.

111. However, at or before the time Intel and Qbex entered into this relationship, Intel, with the exercise of reasonable care, should have known that the SoFia microprocessors were defective.

112. Qbex acted reasonably in relying on Intel’s representations regarding the design and quality of the SoFia microprocessors.

113. Intel’s negligent misrepresentations caused Qbex damages in an amount of not less than \$100 million, as more fully set forth above.

FOURTH CLAIM FOR RELIEF

(Breach of the Implied Warranty of Merchantability – 6 Del. C. § 2-314)

114. Qbex hereby incorporates and realleges paragraphs 1 through 94.

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1 115. Intel is a merchant as defined in 6 *Del. C.* § 2-104(1).

2 116. Intel sold goods, including SoFia microprocessors, as that term is defined
3 in 6 *Del. C.* § 2-105(1).

4 117. Intel's design for the SoFia microprocessors was defective when the goods
5 were sold and, as such, the subsequent manufacture of the SoFia microprocessors was
6 likewise defective.

7 118. Intel's defective design of the SoFia microprocessors was the proximate
8 cause of the injury to Qbex.

9 119. Qbex provided notice of the injury to Intel.

10 120. Because of Intel's defective design, Intel caused Qbex damages in an
11 amount not less than \$100 million, as more fully set forth above.

12 **FIFTH CLAIM FOR RELIEF**

13 (Common Law Breach of the Covenant of Good Faith and Fair Dealing; Delaware law)

14 121. Qbex hereby incorporates and realleges paragraphs 1 through 94.

15 122. Intel and Qbex entered into a contractual relationship whereby Intel sold
16 SoFia microprocessors and Qbex purchased SoFia microprocessors.

17 123. Implicit in that contractual agreement, yet not set forth in any specific
18 contractual provision, was Intel's obligation to sell SoFia microprocessors that were not
19 defective.

20 124. Implicit in that contractual agreement, yet not set forth in any specific
21 contractual provision, was Intel's obligation to continue to provide Qbex with technical
22

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1 support directly or to facilitate technical support through its ODM partners to resolve or
2 minimize issues with the SoFia microprocessors. Instead, after designing and causing
3 Qbex to be supplied a defectively designed product, and further inducing Qbex to invest
4 more capital into the SoFia microprocessor product line, Intel abandoned its obligations
5 to Qbex including its obligation to provide such additional technical support.
6

7 125. Intel breached its obligations of good faith and fair dealing.

8
9 126. Because of these breaches, Intel caused Qbex damages in an amount not
10 less than \$100 million, as more fully set forth above.

11 **SIXTH CLAIM FOR RELIEF**

12 (Common Law Unjust Enrichment; Delaware law)

13 127. Qbex hereby incorporates and realleges paragraphs 1 through 94.

14
15 128. By the acts alleged herein, Intel has been enriched by payments made by
16 Qbex to Intel’s ODMs and Qbex has been impoverished in commensurate degree by the
17 loss of revenue in connection with the faulty and defective products designed and
18 caused to be manufactured by Intel.
19

20 129. Upon information and belief, some if not all of Qbex’s payments to Intel’s
21 ODMs went to Intel and thus Intel received these payments made by Qbex.
22

23 130. There is no justification for Intel’s acceptance of those funds.

24 131. Qbex lacks an adequate remedy of law to recover these funds that Intel
25 unjustifiably received.
26
27
28

SEVENTH CLAIM FOR RELIEF
(Common Law Civil Conspiracy; Delaware law)

132. Qbex hereby incorporates and realleges paragraphs 1 through 94.

133. Upon information and belief, Intel, Rockchip, Waterworld, FortuneShip, I-Swim, and HK Tianruixiang have engaged in, and continue to engage in, a common law conspiracy to violate Qbex’s rights, commit the above intentional torts, and cause Qbex to suffer damages.

134. Specifically, Intel conspired with the above ODMs in order to conceal the design defects of the SoFia microprocessors and to deceive Qbex into believing the defects would be fixed.

135. By such conduct, Intel has caused and is continuing to cause Qbex to suffer damages, as more fully set forth above.

EIGHTH CLAIM FOR RELIEF
(Breach of Contract; Delaware law)

136. Qbex hereby incorporates and realleges paragraphs 1 through 94.

137. In May 2016, Intel and Qbex entered into a valid and enforceable agreement whereby Intel agreed to provide and Qbex agreed to purchase Intel’s designed SoFia microprocessors through the second quarter of 2017. Intel further agreed to provide Qbex with technical support for these products during the term of this agreement.

138. On or about May 19, 2016, Intel sent Qbex an e-mail communication that confirmed Intel’s agreement to supply Qbex with SoFia microprocessors and to provide

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1 technical support. See Exh. G. This e-mail further included an internal Intel
2 communication discussing and identifying Intel’s obligations under this oral agreement.
3 Intel’s internal e-mail demonstrates Intel’s acceptance of this oral agreement.

4
5 139. Qbex acknowledged that this communication accurately reflected the
6 parties’ agreement and neither Intel nor Qbex sent any follow up communication to
7 otherwise alter or retract the terms of this agreement. In short, the e-mail
8 communication represented the parties’ acknowledgement of their final agreement and
9 confirmed the parties’ intent to be bound by the terms of their oral agreement.
10

11 140. In turn, Qbex relied on Intel’s agreement to provide additional SoFia
12 microprocessors through 2017 and continued to dedicate itself to the growth of this
13 product line.
14

15 141. However, in late 2016, Intel breached this agreement by supplying
16 defective SoFia microprocessors, by failing to provide technical support to address or
17 otherwise fix these defects, and thus forcing Qbex to withdraw the QBEX Smartphones
18 from the market.
19

20 142. Due to its breach of this agreement, Intel caused Qbex damages, as more
21 fully set forth above.
22

23 **PRAYER FOR RELIEF**

24 143. **WHEREFORE**, Plaintiff Qbex Computadores S.A. prays for judgment as
25 follows:
26

- 27 a. For judgment against Defendant;
28

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- b. For compensatory and treble damages;
- c. For consequential damages;
- d. For punitive damages;
- e. For restitution;
- f. For attorneys’ fees;
- g. For costs; and
- h. For such other and further relief as the Court deems just and proper.

JURY DEMAND

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

Dated: June 12, 2017

Respectfully submitted,
AKERMAN LLP
 By: /s/ Mark Riera
 Mark Riera
 Luis A. Perez
 Francisco A. Rodriguez
 Darryl R. Graham
 Attorneys for Plaintiff
 QBEX COMPUTADORES S.A.