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FILED
Clerk of the Superior Court
SEP - 9 2011
By _____ DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY SOLANO

ALEX TOMEK., an Individual and on behalf of all others similarly situated,

Plaintiff,

v.

APPLE, INC., a California corporation, and DOES 1 through 20, inclusive,

Defendants.

CLASS ACTION COMPLAINT

CASE NO. FCS038512

COMPLAINT FOR:

1. **Products Liability – Negligence**
2. **Products Liability – Defective Design, Manufacture, and Assembly**
3. **Products Liability – Breach of Express and Implied Warranty of Merchantability**
4. **Intentional Misrepresentation**
5. **Negligent Misrepresentation**
6. **Fraud and Concealment**
7. **Unfair Business Practices (California Business & Professions Code §17200)**
8. **Consumer Legal Remedies Act; and,**
9. **Unjust Enrichment**

ASSIGNED TO JUDGE Maffice FOR ALL PURPOSES

BY FAX

COMES NOW, Plaintiff, Alex Tomek on behalf of himself and all others similarly situated, brings this Complaint against APPLE Inc. and hereby alleges as follows:

PARTIES

1. At all times herein mentioned, Plaintiff, Alex Tomek (hereinafter referred to as "TOMEK") is and was a resident of the State of California, County of Solano. On February 28, 2001, just days after APPLE's release the new 2011 MacBook Pro notebook computer, TOMEK purchased a 17 inch 2011 MacBook Pro serial number C02FC231DF93 directly from APPLE.

2. APPLE, Inc. ("APPLE") is a California corporation whose headquarters and principal place of business are in Cupertino, California. APPLE designs, manufactures, assembles brands, promotes, markets, distributes, and/or sells personal computers and related software, among other things, to consumers. APPLE sells its products world wide through APPLE's website, its own retail stores, and by other means.

3. The true names and capacities of the defendants named herein as DOES 1 through 20, inclusive, whether individual, corporate, or otherwise, are currently unknown to plaintiff who therefore sues said defendants by such fictitious names. Plaintiff will amend this Complaint to show the true names and capacities when they are ascertained.

4. At all times relevant hereto, each of the respective defendants, including those designated as DOES, were and are the agents, servants, employees, subsidiary, affiliate, partner, assignees, successors in interest, alter egos or other representative of each other or in the alternative were acting in a common conspiracy, each with the other, in performing the acts herein complained of, acted within the course and scope of their respective agency and employment or in the furtherance of said conspiracy, or in the alternative ratified, aided and abetted the other defendants in performing the acts complained of herein.

GENERAL ALLEGATIONS OF THE CASE

5. On or about February 15, 2011, APPLE unveiled the newest 2011 MacBook Pro which it touted as having "huge leaps in performance.[1]" These 2011 MacBook Pro computers released in early 2011 come in three (3) models, the 13-inch, 15-inch, and 17-inch. This case concerns only the 2011 MacBook Pro models 15-inch and 17-inch which were manufactured and designed to

[1] http://www.apple.com/macbookpro

include the installation of the Intel quad-core I7 processor and the AMD Radeon graphics processor and were first released in early 2011. For purposes of this Complaint the term "the 2011 2011 MacBook Pro" shall refer to 2011 MacBook Pro models 15-inch and 17-inch which were manufactured and designed to include the use of the Intel quad-core I7 processor and the AMD Radeon graphics processor.

6. According to APPLE, the 2011 MacBook Pro is a "breakthrough through and through" which is up to two (2) times faster with stunning graphics[2]. According to APPLE's advertising:

> But we couldn't leave fast enough alone. The new 15- and 17-inch models bring quad-core power to almost everything you do. The available 2.3GHz quad-core Intel Core i7 processor — with Turbo Boost speeds up to 3.4GHz and up to 8MB of shared L3 cache — enables these MacBook Pro models to run applications up to twice as fast as their top-of-the-line predecessors[3].

APPLE's advertising states:

> They perform up to twice as fast as the previous generation, breezing through demanding tasks like editing HD video... .
>
> * * *
>
> Say you're using a processor-intensive application like Aperture 3 or Final Cut Pro that benefits from extra power. Turbo Boost is a dynamic performance technology that automatically increases the speed of the active cores — up to 3.4GHz. Turbo Boost 2.0 is even more dynamic and efficient. By shifting core frequency in smaller increments than before, it allows the processor to manage performance without sacrificing efficiency. All this takes place behind the scenes, so your work just goes smoother and faster[4].

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2 http://www.APPLE.com/macbookpro/features.html
3 http://www.APPLE.com/macbookpro/features.html#processor
4 http://www.APPLE.com/macbookpro/performance.html

7. According to APPLE's Technical Specifications the consumer who purchases a MacBook could expect to experience up to seven hours of battery life but the product also comes with an 85 watt power adapter, AC wall cord and power cord[5]. According to APPLE, "even with faster processors and graphics, the new MacBook Pro lasts an amazing 7 hours on a single charge.[6]"

8. APPLE touts the MacBook operating system:

> At the heart of every MacBook Pro — and every Mac — is Mac OS X, an operating system custom made for the Intel multicore processors and advanced graphics inside. Mac OS X is based on an entirely 64-bit architecture, and so are virtually all of the applications that come with a Mac. Translation: Everything you do on your MacBook Pro happens with dramatic speed and incredible overall performance[7].

9. With regard to battery life, APPLE advertises:

> The new MacBook Pro delivers amazing battery life. And that's with more powerful processors and faster graphics. An energy – efficient processor architecture with an integrated video encoder, along with automatic graphics switching in the 15- and 17-inch models, all help improve battery life. So you can expect to surf the web wirelessly for up to 7 hours on a single charge. Or take your entire creative studio on the road for live performances or a location shoot[8].

10. Soon after the 2011 MacBook Pro was released, purchasers began complaining that their 2011 MacBook Pro was not charging the battery under certain conditions when the 2011 MacBook Pro was fully utilizing either the Intel quad-core I7 processor or the AMD Radeon graphics processor, or both, such as when steaming movies, playing video games, or editing video. Some

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5 http://www.APPLE.com/macbookpro/specs.html
6 http://www.apple.com/macbookpro/features.html
7 http://www.APPLE.com/macbookpro/software.html#macosx
8 http://www.apple.com/macbookpro/features.html#battery

consumers reported to Apple that their battery actually was draining even when the AC adapter was being used. The problem is that the 85 watt power supply, the only available adaptor for Apple's computers which now are designed only to work with Apple's own, exclusive proprietary "mag connector", provided by APPLE with the MacBook cannot deliver enough current to run the machine at the peak speed promised by APPLE, and cannot charge the battery when fully using the Intel quad-core I7 processor and the AMD Radeon graphics processor, or both as a result of design defect which results in, consumers experiencing situations where the 2011 MacBook Pro stops functioning properly as well as causing damage to the batteries by increasing the battery cycle count. . Moreover, Apple's design which does not allow the consumer to change the battery prevents consumers from using more than one battery in order to optimize and obtain better performance. APPLE tells customers who've purchased the 2011 MacBook Pro and complained to its customer service representatives about this problem that this is how APPLE designed the MacBook and that APPLE will not help resolve the issue. One consumer described this on APPLE's discussions boards as "malfunctions as designed." APPLE's defect in its design and manufacturing of the subject 2011 MacBookPro models includes the coupling of the Intell CPU's & AMD Radeon GPU's (which would otherwise have the capacity to achieve the functionality Apple represents) with an inadequate power supply resulting in the lack of functionality for the purpose that the 2011 MacBookPro was represented and intended by Apple and purchased by consumers to be used. Furthermore, Apple has failed and refused and continues to fail and refuse to provide adequate customer service to Plaintiff and the Class to cope with this defect.

11. Customer complaints about the problem have begun to appear in large number on various websites[9]. Examples of some of the many complaints about the 2011 MacBook Pro on APPLE's own website include:

A. "Hey everyone, I discovered a problem on my 2011 MBP 17" which I was told that "it's perfectly normal' and I want to see if you guys can reproduce it on your new 2011 models as well (please indicate your screen size)"

[9] http://APPLEguru.org/blog/2011/04/12/2011-macbook-pro-battery-not-charging-under-gpu-load/

"I was able to reproduce this at the apple store on a 17" 2011 model as well but I'm curious if this also happens on the 15 and 13 inch models. I was told by the engineering team on the phone that this is 'perfectly normal'. I guess it falls in the category of malfunctions as designed..." (Posted by "TheRosta" on March 18, 2011).

B. "You aren't alone - mine is doing this too... And my cycle counts are going up sometimes 2 in one day. I've got screen shots which I've sent to support which show 13 to 214:30 hours to full charge. Nutty these new MacBook's are." (Posted by "jkirker" on March 18, 2011)

C. "I have the 15" 2.2ghz model (2011). If I play World of warcraft, it will not only stop charging, but actually drain the battery to a point where the mac turns itself off. What I have found of information tells me that the MacBook Pro family can't get enough power from the 85W (?) magsafe, and under extreme tasks (gaming, editing ect.) it will use both the Magsafe and the battery to power the GPU / CPU. Just one thing: My mac died because I used it without the charger until it went to sleep, THEN i plugged in the charger and continued playing. If i have 100% battery b4 starting to play, it will drain so slowly that there is no danger of the mac dying. Nevertheless, if this is the case, I am very disappointed. I've used so much money on a "Pro" mac and it cant use its hardware without slowly dying..." (Posted by "Zapatillo" on May 20, 2011)

D. "I would like to report on an fully-loaded early 2011 17" MacBook Pro I also have the following problem:

Under heavy load while plugged in, the battery charge indicator will begin dropping from 100%. I would not say this is "normal" or "expected" behavior for a machine that retails for $2,900." (Posted by "ExtremeArtists" on May 22, 2011).

E. "+1 here too... 2011 2.2GHz i7 MBP, 85w charger it came with. Watching movies with netflix/silverlight/chrome causes this problem to manifest (results in 100% CPU usage on a single core). Doing so almost immediately results in the battery stopping charging, a clear indication that the supplied power supply cannot, in fact, supply enough power to the machine under load to both run and charge it. Incredibly annoying/disappointing, I haven't yet spoken to apple about this, but I

will... (Especially since this greatly increases my battery cycle count!)" (Posted by "Adam Urban" on April 11, 2011).

F. "What has me concerned isn't the battery not charging under high system load, I can understand diverting all power to the task at hand; rather, it's the possibility that under high load that both the power from wall AC and the laptop's battery will be used together. My takeaway is that if I want to use my MacBook Pro for **Pro** use, I can only do so in some circumstances while I also have battery power. Transcoding a meager 13GB of footage shouldn't cause this to happen. Worse still, I saw my battery deplete during the transcode session. For road warriors, the last bastion of safety with a laptop is the coveted AC outlet; as long as the laptop gets plugged in, you're good. With a MacBook Pro, there is no such safety." (Posted by "ShawnLive" on May 11, 2011)

G. "Same problem here. I thought I was going crazy because my battery on my old Mac gave me better performance." (Posted by "18th Letter" on May 13, 2011)

H. "Same problem here. I have a 2011 15" MacBook Pro with a 2.3Ghz Core i7, 8GB RAM, High-res glossy, and the 512GB SSD and when I am working in programs that use the graphics card heavily my computer either stops charging or even starts draining. I was working in Motion last night and when I was rendering out video my battery drained about 5-6% in 15 minutes. Hopefully this issue will be addressed." (Posted by "mdpeterman" on May 20, 2011)

I. "I also have a 2011 MBP 15" 2.2GHz, 8 GB ram, hi res screen and am noticing the same thing. Without this issue, this would easily be my favorite laptop of all time - but as someone who is frequently producing audio, editing HD video, and gaming, it is extremely frustrating to know that when plugged in my computer can still die. I just got my computer today and have ALREADY discovered this issue; what will the next 2 years look like. Very frustrating, especially having spent nearly $2500 bucks on this computer." (Posted by "allawayr" on May 31, 2011)

J. "Mbp 2011 15" hires screen. I have the same problem running win7 (bootcamp) + nfs shift 2 or crysis 2. The magsafe led turns orange indicating its charging when i'm using plugged on the power. I'm a bit disapointed. My mbp 2007 didn't act like that." (Posted by "Clovist" on May 31, 2011)

K. "While playing games with heavy graphics, I noticed that even while conected with the Power Adapter my battery don`t reach up 100%, or when I start playing and it is 100% it`s charge actually decreases (game example: Starcraft 2 on nearly ultra graphical settings). So I am afraid I might be punishing my MacBook Pro by doing that." (Posted by "Rikktor" on July 27, 2011)[10]

The design and manufacturing defects have been well established by users, who have documented the problem. This problem became immediately apparent soon after the 2011 MacBook Pro began shipping to customers on or about February 15, 2011. Apple's response to the problem inherent in the design and manufacture of the 2011 MacBook Pro is to deny there is a problem at all, and to tell consumers that this is how it was designed, in effect, saying it was intended to work this way. Plaintiff is informed and believes and thereon alleges that this is a design defect created by and known by Apple to exist in the 2011 MacBook Pro which it never disclosed to and which, in fact, it concealed from consumers before they purchased it. Apple continues to conceal this defect from consumers and continues to promote the 2011 Apple MacBook Pro for consumer, professional and other uses for which it is unfit.

12. The 2011 MacBook Pro has been widely marketed and distributed by APPLE. Customers who use and rely on the 2011 MacBook Pro find that they are unreliable for many of the uses touted by APPLE for which they are intended and unfit for the common uses by consumers for which Apple claims they are intended and fit. Due to the large number of customer complaints, including complaints on APPLE's own website and on its discussion forum that APPLE is well aware of the problem at issue. Nevertheless, at no time did APPLE make the buying public, including Plaintiff, aware of, or even acknowledge the defect or alter its advertisements, representations, or other marketing material. In releasing this product with the aforereferenced built-in design defect, or other defect in accordance with proof, and failing to disclose such defect to the consuming public and, instead, concealing it from the consuming public and affirmatively misrepresenting the functionality of the product, as if such defect did not exist, APPLE deliberately and wrongfully chose easy profits over responsibility to its purchasers for products it designed, manufactured and

[10] These comments where found among hundreds of others in page after page on APPLE's website, discussions.apple.com

placed into the stream of commerce. Defendants failed to disclose at the time that they made their false and misleading statements to Plaintiff and to the Class that the 2011 MacBook Pro was defective and inadequate to provide the represented performance, speed and functionality with other software products, including some of its own Apple Branded software, like its Final Cut photo/video editing software.

13. Plaintiff is informed and believes and on that basis herein alleges that Defendants did not act with due care when designing, manufacturing, marketing, promoting and selling the defective 2011 MacBook Pro.

14. Plaintiff, individually and on behalf of all class members alleges that, at the time he purchased his, he had no knowledge of the defects inherent in the 2011 MacBook Pro. Plaintiff and class members could not have known nor reasonable discovered, nor had reason to know of the defect inherent in the 2011 MacBook Pro until after they purchased and began using the product because despite complaints by consumers, Apple continued, and continues to this day, to falsely advertise, represent, and warrant that the 2011 MacBook Pro as set forth herein.

15. Plaintiff and other members of the Class were injured in fact and lost money or property as a result of Defendants' material misstatements, concealments and omissions of fact, paying more to receive an inferior product in relation to what Apple's misrepresentations, deceptive and false advertising led them to believe that they had purchased.

16. Plaintiff, Alex Tomek, who recently purchased a 2011 MacBook Pro for both personal and professional use believing it to be the state of the art notebook advertised by APPLE as being superior, faster and more reliable, brings this action individually and on behalf of all others similarly situated to require APPLE to (1) resolve the past, present, and future issues that APPLE's misrepresentation inherent defect has created concerning MacBooks already sold; (2) cease selling defective 2011 MacBook Pro laptops, (3) make restitution as deemed appropriate by the Court; and, (4) provide other appropriate relief.

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CLASS ACTION ALLEGATIONS

17. Plaintiff brings this action on behalf of himself and all other persons similarly situated within the United States of America, or such states as the Court determines to be appropriate. This action has been brought and may properly be maintained pursuant to the provisions of California Code of Civil Procedure §382 and satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements.

18. The class is defined as follows:

> All persons or entities in the United States who purchased a new 15-inch and/or 17-inch 2011 MacBook Pro model released by Apple since February 1, 2011. Excluded from the class are APPLE's directors, officers, employees, and counsel.

19. Plaintiff reserves the tight to modify the class definition if and as appropriate.

20. Plaintiff reasonably estimates that the class has thousands of members in diverse locations and therefore is so numerous and geographically dispersed that joinder is impracticable. Although the exact number of class members is presently unknown to Plaintiff, Plaintiff anticipates that APPLE maintains detailed computerized records that are sufficient to determine the number of class members and to ascertain their identities. The class is therefore readily ascertainable.

21. The disposition of the claims of Plaintiff and all other class members in a single action will provide substantial benefits to the parties and the Court.

22. There exists a well defined community of interest in the questions of law and fact presented by this controversy.

23. The same questions of law and fact common to Plaintiff and other class members predominate over questions that may affect only individual members, if any. Defendants have

acted on grounds generally applicable to the entire class, thereby making final injunctive relief and corresponding declaratory relief appropriate with respect to the class as a whole. Among the questions of law and fact common to the class are the following:

A. Whether APPLE advertised and sold the 2011 MacBook Pro by promoting the products speed and performance, when in fact the actual performance was materially different and/or worse than the promises and claims by by APPLE;

B. Whether APPLE's advertising is likely to deceive;

C. Whether APPLE was negligent in the design, manufacturing, and distribution of the 2011 MacBook Pro;

D. Whether the 2011 MacBook Pro unites designed, manufactured, marketed, distributed, or sold by APPLE from February 1, 2011 until the present are unfit for their intended purpose and use because of the design, manufacturing, or assembly;

E. Whether APPLE breached any warranties in selling the 2011 MacBook Pro;

F. Whether APPLE intentionally or negligently misrepresented material facts relating to the character and quality of the 2011 MacBook Pro;

G. Whether APPLE failed to disclose material facts about limitations in the speed and performance characteristics of the 2011 MacBook Pro to consumers;

H. Whether APPLE's practices as alleged herein are fraudulent, unfair, or deceptive;

I. Whether APPLE forced class members to pay unjust charges for the goods they were sold by APPLE, as well as whether that failure violates statutory and common prohibitions against such conduct as alleged herein; and,

J. Whether Plaintiff and the class members are entitled to injunctive relief and, if so, what that relief should be;

K. Whether Plaintiff and the class members are entitled to restitutionary relief and, if so, what that relief should be; and,

L. What other forms of relief, if any, are appropriate to remedy the acts complained of herein.

24. Plaintiff is a member of the class.

25. Plaintiff's claims are typical if not identical to the claims of the other class members because Plaintiff and all class members were affected by the same wrongful practices in which defendants engaged, as alleged herein. Plaintiff and the class members sustained injury and a loss of money or property arising from and as a result of APPLE's unlawful common course of conduct. Plaintiffs and the class members purchased a 2011 MacBook Pro based in substantial part on the uniformly advertised and represented claim that it had certain characteristics and greater performance than that the computer actually provides. Those representations were a substantial factor in their decision to purchase the 2011 MacBook Pro. Plaintiff and the class members did not receive any disclosures from APPLE before or after purchase explaining the material imitations in the 2011 MacBook Pro and how its design does not always live up to the performance promised by APPLE due to its inherently defective design and manufacture. In fact, the alleged defects were uniformly concealed by Apple from them. As a result Plaintiff and the class members were sold a defective computer which when used in a manner consistent with normal use and in a manner in which such devices are intended to be used and for which they were represented to be fit, Plaintiff and the class members have experienced less than the promised performance, computer failures, and battery damage. As result of the defect, Plaintiff and the class members have suffered monetary damages. Accordingly, Plaintiff has been subjected to substantially the same wrongdoing as all other class members and Plaintiff and the class members have incurred identical damages.

26. Plaintiff can fairly and adequately represent and protect the class's interests because he seeks the same or similar remedies that would be available to other class members. No irreconcilable conflicts exist between the position of Plaintiff and those of the members of the class. Plaintiff has retained attorneys who are competent and experienced in litigating significant class actions to represent their interests and that of the class members. Counsel have significant experience in handling class actions and the types of claims asserted herein and have been appointed as class counsel by courts in other actions. Plaintiff and his counsel already have done significant work in identifying and investigating the potential claims in this action, and are willing to devote the necessary resources to vigorously prosecute this action. Plaintiff and his counsel are aware of their responsibilities to the class to represent fairly and adequately the class, to vigorously prosecute the claims herein and are determined to discharge those duties by seeking the maximum possible recovery for the class based on the merits of these claims and the defendants' available resources.

27. A class action is superior to the alternatives, if any, for the fair and efficient adjudication of the controversy alleged herein, for the following reasons, among others: Class treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without duplication of effort, evidence, and expense that numerous individual action would engender. Because of the low individual damage amount, individual class members would have little or no incentive to prosecute such a claim on an individual basis. Such individual actions are not const-effective or practical, and the costs associated with proving a prima facie case would exceed the obtainable recovery. This action will result in the orderly and expeditious administration of all claims. Uniformity of decisions will be assured, thereby avoiding the risk of inconsistent and varying determinations. Prosecution of

actions such as this in numerous forums would serve no purpose and would promote non-uniformity in the interpretation of California law.

28. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action.

FIRST CAUSE OF ACTION

Against All Defendants

(Products Liability – Negligence)

29. Plaintiff repeats, re-alleges, and incorporates herein by this reference each of the preceding paragraphs 1 through 28 as if fully set forth herein.

30. Defendants, in designing, manufacturing, advertising, marketing, promoting distributing and selling the 2011 MacBook Pro had a duty to Plaintiff and the class member to do so in a reasonable manner and to ensure that the product was without defect.

31. Defendants breached this duty when they placed the defective 2011 MacBook Pro product into the stream of commerce either with knowledge or negligently unaware of its defective nature.

32. As a direct and proximate result of Defendants' negligence, the defective 2011 MacBook Pro product has caused economic injury, in an amount in accordance with proof to Plaintiff and all class members.

SECOND CASUE OF ACTION

Against All Defendants

(Products Liability – Defect in Design, Manufacture, and Assembly)

33. Plaintiff repeats, re-alleges, and incorporates herein by this reference each of the preceding paragraphs 1 through 32 as if fully set forth herein.

34. The 2011 MacBook Pro units that are the subject of the instant action were not reasonably fit, suitable, or safe for their intended use by reason of a defect in their design, manufacture, or assembly, which caused them to not function properly.

35. The defect in design, manufacture, or assembly existed at the time Defendants placed the 2011 MacBook Pro unites into the stream of commerce.

36. The 2011 MacBook Pro laptops were used in their intended and reasonably foreseeable way when they failed to function properly and caused economic damage and harm to Plaintiffs and all class members.

37. As a direct and proximate result thereof, Plaintiff and the class members have all been injured and damaged in an amount that will be shown in accordance with proof.

THIRD CAUSE OF ACTION

Against All Defendants

(Products Liability – Breach of Express and Implied Warranty)

38. Plaintiff repeats, re-alleges, and incorporates herein by this reference each of the preceding paragraphs 1 through 37 as if fully set forth herein.

39. Plaintiff and the class members purchased their APPLE 2011 MacBook Pro laptops which were represented, promoted, marketed and sold by Apple as being the state of the art laptop computers and used them for their ordinary and intended purpose and received uniform warranties concerning the speed and reliability in connection with the purchase of the 2011 MacBook Pro laptops.

40. The 2011 MacBook Pro laptops subject of this lawsuit cannot perform its ordinary and represented purpose because the 2011 MacBook Pro laptop computers do not provide the speed and reliability warranted and represented by Defendants.

41. When Defendants made their representations and placed the 2011 MacBook Pro laptop computers into the stream of commerce, Defendants knew, reasonably should have known, or were obligated to understand that the intended and ordinary purpose of their product was to provide fastest, most reliable computing and that users, including Plaintiff would expect the same through ordinary use of the 2011 MacBook Pro.

42. Plaintiff and the class members purchased their 2011 MacBook Pro laptop computers with the reasonable expectation that they would receive the fast and reliable computers represented by Apple. The advertisements, promotional, marketing and sales materials Defendants disseminated stressed the excellence, quickness, and reliability of the 2011 MacBook Pro, and constituted a warranty that the products would operate as advertised during their useful life, upon which Plaintiff and the class reasonably acted. The 2011 MacBook Pro is not fit for its warranted, advertised, ordinary and intended purpose of providing fast and reliable computing and is in fact defective, or is unacceptable as determined by industry standards to those in the trade or industry.

43. Defendants' breach of the warranty described above also constitutes a violation of the California Civil Code §1792, et seq.

44. Plaintiff and the class members were injured and are entitled to damages, in an amount in accordance with proof as a result of such breaches. Plaintiff and the class request relief as described below as appropriate for this cause of action.

FOURTH CAUSE OF ACTION

Against All Defendants

(Intentional Misrepresentation)

45. Plaintiff repeats, re-alleges, and incorporates herein by this reference each of the preceding paragraphs 1 through 44 as if fully set forth herein.

46. At all times herein referred to, Defendants were engaged in the business of designing, manufacturing, marketing, advertising, promoting distributing, and/or selling the 2011 MacBook Pro laptop computers which are the subject of this litigation.

47. Defendants, acting through its officers, agents, servants, representatives, or employees, delivered the 2011 MacBook Pro units to their own retail and on-line stores, distributors, and various other distribution channels for sale/resale and, ultimately, for sale/resale to end-user consumers.

48. Defendants willfully, falsely, and knowingly and uniformly misrepresented material facts relating to the character and quality of the 2011 MacBook Pro as herein above alleged. These misrepresentations are contained in various media advertising, marketing, sales, promotional materials and packaging disseminated or caused to be disseminated by Defendants, and such misrepresentations were reiterated and disseminated by officers, agents, representatives, servants, or employees of Defendants, acting within the line and scope of their authority, so employed by Defendants to merchandise, advertise, promote, market and/or sell the 2011 MacBook Pro. Specifically, the promotional literature and pages on APPLE's own website describe the ordinary use of the 2011 MacBook Pro in a manner in which ordinary use Plaintiff and the class members then experienced problems as described above.

49. Defendants aforesaid representations were made with the intent that the general public, including Plaintiff and the class members, rely upon them. Defendants' aforesaid representations were made with knowledge of the falsity of such statements, or in reckless disregard of the truth thereof.

50. In actual and reasonable reliance upon Defendants' aforesaid misrepresentations, Plaintiff and the class members purchased and used the 2011 MacBook Pro laptop computers for their ordinary, intended, advertised, and reasonably foreseeable purposes. Plaintiff and the class

members were unaware of the existence of the true facts that Defendants uniformly suppressed and failed to disclose as herein above. If they had been aware of the suppressed facts, Plaintiff and the class members would not have purchased the defective 2011 MacBook Pro laptop computers.

51. Plaintiff and the class members are informed and believe, and thereon allege, that Defendants uniformly misrepresented material facts as herein above alleged with the intent to defraud Plaintiff and the class members. Plaintiff and the class members were unaware of the intent of the Defendants and reasonably relied upon the representations of Defendant in purchasing the 2011 MacBook Pro.

52. Plaintiff and the class members' reliance on the uniform representations as herein above alleged of Defendants was reasonable.

53. In actual and reasonable reliance upon the Defendants' aforesaid misrepresentations, Plaintiff and the class members purchased the defective 2011 MacBook Pro laptop computers and used them in the way in which they were intended, the direct and proximate result of which was injury and harm to the Plaintiff and class members, causing economic damage in an amount that will be supplied in accordance with proof.

FIFTH CAUSE OF ACTION

Against All Defendants

(Negligent Misrepresentation)

54. Plaintiff repeats, re-alleges, and incorporates herein by this reference each of the preceding paragraphs 1 through 53 as if fully set forth herein.

55. Defendants negligently and recklessly and uniformly misrepresented various material facts regarding the quality and character of the 2011 MacBook Pro, as herein above alleged under circumstances where Defendants either knew or, in the exercise of reasonable care, should have

known that the representations were not true or were not known to be true. These misrepresentations were contained in various advertising, marketing, promotional and sales materials, packaging, and correspondence from Defendants, and such misrepresentations were further reiterated and disseminated by officers, agents, representatives, servants, or employees of Defendants, acting within the line and course and scope of their authority, so employed by Defendants to merchandise, promote, market and sell the 2011 MacBook Pro.

56. In actual and reasonable reliance upon Defendants' uniform misrepresentations as herein above alleged Plaintiff and the class members purchased and used the 2011 MacBook Pro laptop computers for their ordinary, intended, advertised, and reasonably foreseeable purposes. Plaintiff and the class members were unaware of the existence of facts that Defendants suppressed and failed to disclose as herein above alleged. If they had been aware of the suppressed facts, Plaintiff and the class members would not have purchased the defective 2011 MacBook Pro laptop computers.

57. As a direct and proximate consequence of the Defendants' negligent misrepresentations, Plaintiff and the class member have been injured and damaged as alleged herein and in an amount that will be supplied in accordance with proof.

SIXTH CAUSE OF ACTION

Against All Defendants

(Fraud By Concealment)

58. Plaintiff repeats, re-alleges, and incorporates herein by this reference each of the preceding paragraphs 1 through 57 as if fully set forth herein.

59. Plaintiff is informed and believes, and thereon alleges, that Defendants knew that the 2011 MacBook Pro would not function as fast or reliably when used in its normal, ordinary and intended

manner or the manner uniformly represented by Defendant and Defendants uniformly concealed this fact.

60. Defendants had a duty to disclose the suppressed and concealed information herein above alleged to Plaintiff and the class members. Defendant failed to disclose this information to Plaintiff and the class members. Further, Defendants actively and uniformly suppressed and concealed the fact that the 2011 MacBook Pro could not be used in a manner consistent with the normal and ordinary usage as uniformly represented, as herein above alleged by Defendants.

61. Defendants uniformly concealed such information for the [purpose of inducing the purchase and use of the 2011 MacBook Pro laptop computers designed, manufactured, distributed, advertised, promoted, marketed and sold by Defendants.

62. Plaintiff and the class members were unaware of the existence of facts, which Defendants uniformly failed to disclose and actively suppressed and concealed. If Plaintiff had been aware of the facts, as herein above alleged, not disclosed by Defendants, they would not have purchased or used the defective 2011 MacBook Pro laptop computers. Plaintiff and the class members are informed and believe and thereon allege that Defendants uniformly concealed such material facts with the intent to defraud Plaintiff and the class members. Under the circumstances, especially since Defendants omitted and concealed material facts, Plaintiff and class members' reliance on the representations of Defendants was reasonable.

63. As a result of Defendants' material omissions, failure to disclose, and active concealment, Plaintiff and the class members purchased Defendants' defective 2011 MacBook Pro units and used them in the ordinary manner in which they were intended, the direct and proximate result of which was injury and harm to the Plaintiff and class members damaging them in an amount that will be supplied in accordance with proof.

SEVENTH CAUSE OF ACTION

Against All Defendants

(Violation of the Unfair Competition Law)

64. Plaintiff repeats, re-alleges, and incorporates herein by this reference each of the preceding paragraphs 1 through 63 as if fully set forth herein

65. Defendants' acts and practices described herein, constitute unlawful, unfair or fraudulent business practices in violation of the Unfair Competition Law, Business and Professions Codes section 17200 et seq.

66. Defendants' acts and practices, described herein, violate the CLRA, Civil Code section 1770, et seq., Business and Professions Code section 17500, and constitute unlawful, unfair or fraudulent business practices in violation of the Unfair Competition Law, Business & Professions Code section 17200 , et seq.

67. Defendants have engaged in unfair business practices in connection with their misrepresentations as to the quality and characteristics of the 2011 MacBook Pro_and failure to disclose, as herein above alleged, including the failure to disclose a manufacturing and design defect in the Product that was known to the defendants which renders the product unmerchantable and to fail at its essential purpose, which acts and omissions violate the CLRA, which seeks to protect consumers against unfair or sharp business practices and to promote a basic level of honesty and reliability in the marketplace. Moreover, the utility of Defendants' conduct, if any, is outweighed by the harm it caused to Plaintiff and the class members and which will continue to harm prospective consumer purchasers unless and until defendants' said continued course of conduct is enjoined. Defendants' acts and practices are immoral, unethical, oppressive, unscrupulous, and substantially injurious to plaintiff and the class.

68. Plaintiff and the class have lost money, in an amount that will be supplied in accordance with proof at the time of trial, and were injured in fact by and as a result of Defendants' unfair and unlawful practices.

69. Pursuant to Business and Professions Code sections 17200, 17203, and 17204, Plaintiff, on behalf of himself, the class and the general public, seeks an order of this Court enjoining Defendants from continuing the unfair business practices described herein. Plaintiff additionally requests an order awarding Plaintiff and the class restitution of all monies wrongfully acquired from the class by means of such unlawful acts and practices, so as to deter Defendants and to rectify Defendants' unfair and unlawful practices and to restore any and all monies to Plaintiff and the class and to the general public, which are still retained by Defendants, plus interest, attorney's fee and costs.

EIGHTH CAUSE OF ACTION

Against All Defendants

(Violation of the California Consumers Legal Remedies Act)

70. Plaintiff repeats, re-alleges, and incorporates herein by this reference each of the preceding paragraphs 1 through 69 as if fully set forth herein.

71. Defendants provide "goods" and "services" within the meaning of California Civil Code sections 1761(a), 1761(b) and 1770.

72. Defendants are "persons" within the meaning of California Civil Code sections 1761 (c) and 1770.

73. Users of Defendants' services, including Plaintiff and the class members, are "consumers" within the meaning of California Civil Code section 1761(d) and 1770.

74. Plaintiff's and each and every class member's use of the services and goods offered by Defendants constitute "transactions" within the meaning of California Civil Code sections 1761(e) and 1770.

75. Defendants' unfair or deceptive acts or practices as described herein were undertaken by Defendants in transactions intended to result or which resulted in the sale of goods and services to consumers, and were intended to induce, and did in fact induce, Plaintiff and the class to purchase for personal use such goods and services, which they would not have otherwise purchased. Further, Defendants' uniform misrepresentations and suppression and/or concealment of the material facts as described herein above was calculated to induce, and did in fact induce, Plaintiff and the class members to provide valuable consideration to Defendants.

76. Defendants' joint and concerted practices, acts and course of conduct as described herein violated the California Consumers Legal Remedies Act ("CLRA") in that they caused the following unfair and deceptive practices to occur:

A. Defendants "represent[ed] that goods or services ... have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which the do not have" in violation of section 1770(a)(5) of the CLRA;

B. Defendants "represent[ed] that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another" in violation of section 1770(a)(7)

C. Defendants advertised goods and services with the intent not to sell them as advertised in violation of section 1770(a)(9) of the CLRA;

D. Defendants represented that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by section 1770(a)(14) of the CLRA, and,

E. Defendants "represented that the transactions were supplied in accordance with a previous representation when they were not" in violation of section 1770(a)(16) of the CLRA.

77. Defendants' practices, acts and course of conduct as described above, are likely to mislead a reasonable consumer acting reasonably under the circumstances to his or her detriment. In engaging in their violations of the CLRA, Defendants uniformly misrepresented and actively concealed and failed to disclose material facts about the true characteristics of the 2011 MacBook Pro laptop computers.

78. Defendants engaged in these unfair and/or deceptive acts and practices with the intent that they result, and which did result, in completed, false, and misleading transactions as herein alleged. As a direct and proximate result of Defendants' violations of law, Plaintiff and the class members have been injured. Pursuant to the provisions of Civil Code section 1782, Plaintiff provided notice to Defendants in conjunction with the filing of the original Complaint in this action (although the Complaint is an appropriate notice of violations) of his intention to seek damages under Civil Code sections 1750 et seq. unless Defendants correct, repair, replace or otherwise rectify their violations of the CLRA. The notice demanded that Defendants take steps as are appropriate to rectify the violations and requiring Defendants to give notice to all affected consumer of the intent to act. Attached hereto and incorporated herein by this reference as Exhibit "A" is a true and correct copy of the notice sent to Apple. If the Defendants fail to adequately respond to Plaintiff's demand within thirty (30) days from the date the notice is serviced, Plaintiff will amend this complaint to seek actual and punitive damages from Defendants according to the CLRA.

79. By the filing of this Complaint, Plaintiff seeks an order enjoining the unlawful practices described herein and an Order requiring defendants to notify the Class of their violations of the CLRA and the remedy they will provide to them. Plaintiff and the class members are entitled to equitable relief in the form of restitution and disgorgement of all earnings, profits, compensation

and benefits obtained by Defendants as a result of the violations of the CLRA, along with other appropriate relief including reasonable attorneys' fees and expenses.

NINTH CAUSE OF ACTION

Against All Defendants

(Unjust Enrichment)

80. Plaintiff repeats, re-alleges, and incorporates herein by this reference each of the preceding paragraphs 1 through 79 as if fully set forth herein.

81. Defendant have benefited and been enriched by the conduct alleged above. Defendant have collected fees and generated revenue from the unlawful conduct described herein.

82. Defendants have knowledge of this benefit.

83. Defendants have voluntarily accepted and retained this benefit.

84. The circumstances, as described herein are such that it would be inequitable for Defendants to retain the ill-gotten benefit without paying the value thereof to Plaintiff and the class members.

85. Plaintiff and the class are entitled to the amount of the Defendants' ill-gotten gains, including interest, resulting from its unlawful, unjust, unfair and inequitable conduct as alleged herein. Plaintiff and the class may make claims on a pro rata basis for restitution.

86. Accordingly, and in addition, Plaintiff seeks the imposition of a constructive trust on those monies by which the Defendants have been unjustly enriched as a result of the unlawful practices described herein.

WHEREFORE, Plaintiff prays for judgment and relief as follows as appropriate for the above causes of action:

1. An award of actual, general, special, restitutionary, statutory and/or exemplary damages, in accordance with proof and as appropriate for the particular causes of action;

2. A temporary, preliminary and/or permanent order for injunctive relief enjoining Defendants from pursuing the policies, acts and practices complained of herein;

3. A declaratory judgment stating that Defendants may not pursue the policies, acts, and practices complained of herein;

4. A temporary, preliminary and/or permanent order for injunctive relief requiring Defendants to undertake an informational campaign to inform members of the general public as to the wrongfulness of Defendants' practices;

5. An order requiring disgorgement of Defendants' ill-gotten gains by requiring the payment of restitution to Plaintiff, in accordance with proof and as found to be appropriate;

6. Reasonable attorneys' fee

7. Costs of suit;

8. Pre- and [post-judgment] interest; and

9. Such other and further relief as the Court may deem necessary or appropriate.

Dated: September 7, 2011

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