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

17 ZIXUAN RAO and KYLE BARBARO,
18 individually and on behalf of all others similarly
19 situated,

20 Plaintiffs,

21 v.

22 APPLE INC.,

23 Defendant.

Case No.

CLASS ACTION COMPLAINT FOR:

1. **Breach of Express Warranty;**
2. **Breach of the Covenant of Good Faith and Fair Dealing;**
3. **Breach of the Implied Warranty of Merchantability;**
4. **Violation of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, et seq.;**
5. **Violation of the Song-Beverly Consumer Warranty Act;**
6. **Violation of California’s Unfair Competition Law;**
7. **Violation of California’s Consumer Legal Remedies Act; and**
8. **Fraudulent Concealment.**

DEMAND FOR JURY TRIAL

1 Plaintiffs Zixuan Rao and Kyle Barbaro, individually and on behalf of all others similarly
2 situated, allege as follows against Defendant Apple Inc.

3 **SUMMARY OF THE ACTION**

4 1. This action is brought on behalf of individuals who purchased model year 2015 or later
5 Apple MacBook laptops and model year 2016 or later MacBook Pro laptops (the “MacBook”). The
6 MacBook Pro is marketed and sold as top of the line—the 15-inch model’s starting price is \$2,399. But
7 the MacBook is defective: its “butterfly” keyboard is prone to fail. Thousands of consumers have
8 experienced this defect. When the MacBook’s butterfly keyboard fails, the keys stick and no longer
9 register keystrokes. As a result, the user cannot type.

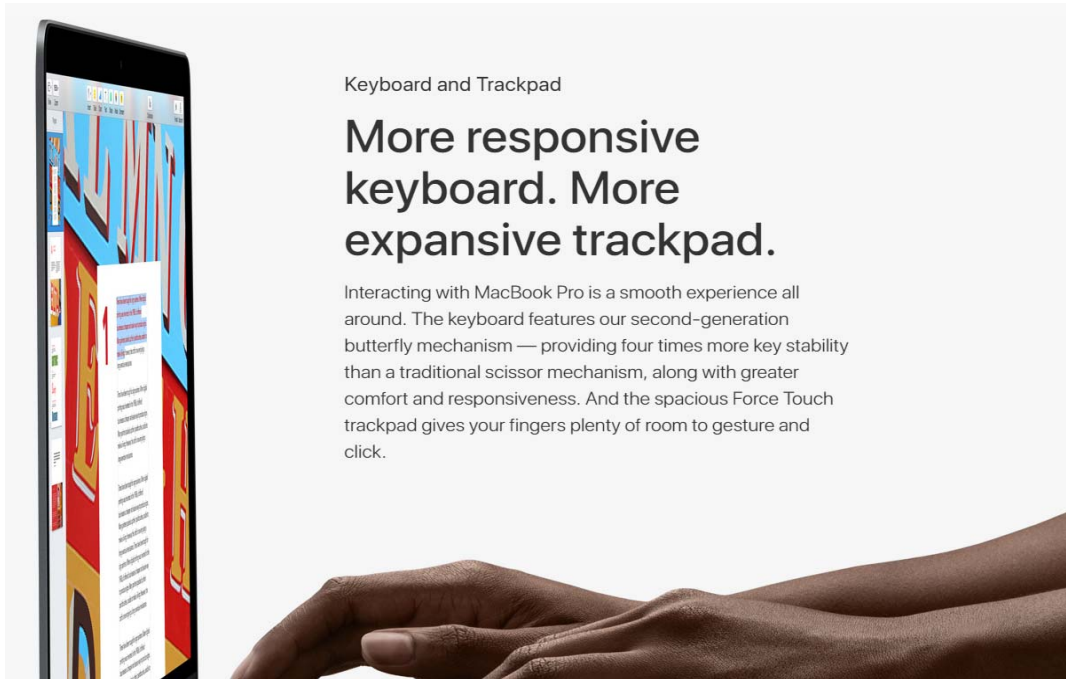
10 2. Apple’s butterfly keyboard and MacBook are produced and assembled in such a way
11 that when minimal amounts of dust or debris accumulate under or around a key, keystrokes fail to
12 register. The keyboard defect compromises the MacBook’s core functionality. As a result of the defect,
13 consumers who purchased a MacBook face a constant threat of non-responsive keys and accompanying
14 keyboard failure. When one or more of the keys on the keyboard fail, the MacBook can no longer serve
15 its core function: typing. Thus, when this defect manifests in the MacBook, the computer becomes
16 inoperable and unsuitable for its ordinary and intended use.

17 3. Apple knew that the MacBook is defective at or before the time it began selling the
18 affected models to the public. Complaints of keyboard failures began to come in shortly after the 2015
19 MacBook was launched. Despite awareness of the keyboard defect, Apple equipped future model
20 MacBook and MacBook Pro laptops with the butterfly keyboard, and continued selling these laptops to
21 consumers at premium prices.

22 4. Despite awareness of the defect, Apple touted—and continues to tout—the MacBook as
23 having a superior and highly responsive keyboard, with “four times more key stability than a traditional
24 scissor mechanism.” Apple’s representations regarding the MacBook’s keyboard were false. Apple
25 failed to disclose that the keyboard is defective, and this information would have been important to
26 Plaintiffs’ decision to purchase a MacBook:¹

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¹ <https://www.apple.com/macbook-pro/> (last visited May 8, 2018).



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13 5. Apple failed and continues to fail to disclose to consumers that the MacBook is
14 defective, including when consumers bring their failed laptops into the “Genius Bar” (the in-store
15 support desk) at Apple stores to request technical support.

16 6. Although every MacBook comes with a one-year written warranty, Apple routinely
17 refuses to honor its warranty obligations. Instead of fixing the keyboard problems, Apple advises
18 MacBook owners to try self-help remedies that it knows will not result in a permanent repair. When
19 Apple does agree to attempt a warranty repair, the repair is only temporary—a purportedly repaired
20 MacBook fails again from the same keyboard problems. For consumers outside of the warranty period,
21 Apple denies warranty service, and directs consumers to engage in paid repairs, which cost between
22 \$400 and \$700.

23 7. The keyboard defect in the MacBook is substantially certain to manifest. Thousands of
24 consumers have reported sticking or non-responsive keys on their MacBook keyboards. The failures
25 have become so prevalent that a petition on Change.org to demand an Apple recall amassed nearly
26 17,000 signatures in just over a week.²

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28 ² The Change.org petition is available at <https://www.change.org/p/apple-apple-recall-macbook-pro-w-defective-keyboard-replace-with-different-working-keyboard> (last visited May 10, 2018).

1 8. As a consequence of the undisclosed keyboard defect, Plaintiffs and Class members
2 were deprived of the benefit of their bargain. Plaintiffs bring this action to obtain relief for themselves
3 and other MacBook laptop purchasers.

4 **PARTIES**

5 9. Plaintiff Zixuan Rao is a citizen and resident of San Diego, California.

6 10. Plaintiff Kyle Barbaro is a citizen and resident of Melrose, Massachusetts.

7 11. Defendant Apple Inc. is incorporated under the laws of the State of California and has its
8 principal place of business in Cupertino, California.

9 **JURISDICTION AND VENUE**

10 12. This Court has original jurisdiction under 28 U.S.C. § 1331 based on Plaintiffs' claims
11 under the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.* The Court has supplemental
12 jurisdiction over Plaintiffs' state-law claims under 28 U.S.C. § 1367.

13 13. This Court also has jurisdiction over this lawsuit under the Class Action Fairness Act, 28
14 U.S.C. § 1332, because this is a proposed class action in which: (1) there are at least 100 Class
15 members; (2) the combined claims of Class members exceed \$5,000,000, exclusive of interest,
16 attorneys' fees, and costs; and (3) Plaintiff Barbaro and Defendant are domiciled in different states.

17 14. The Court has personal jurisdiction over Apple because its principal place of business is
18 within this District and it has sufficient minimum contacts in California to render the exercise of
19 jurisdiction by this Court proper and necessary.

20 15. Venue is also proper in this District under 28 U.S.C. § 1391(b) because a substantial part
21 of the events or omissions giving rise to Plaintiffs' claims occurred in this District.

22 16. The practices described herein were conceived, reviewed, approved, and otherwise
23 controlled from Apple's headquarters in Cupertino, California. Employees at Apple's headquarters
24 directed the production and assembly of the MacBook software and hardware, including the defective
25 butterfly keyboards. Promotional activities and literature were developed and coordinated at, and
26 emanated from, Apple's California headquarters, including the launch events for the 2015 MacBook
27 and 2016 MacBook Pro, which occurred in Cupertino. Apple made critical decisions concerning the
28 development, marketing, and advertising of the MacBook in California. Misrepresentations and

1 omissions alleged herein were made by Apple employees based in California and were contained,
2 among other places, on Apple's website, which is maintained by Apple employees based in California.
3 Warranty policies and procedures were developed and carried out by Apple employees in Cupertino.

4 **INTRADISTRICT ASSIGNMENT**

5 17. Assignment to the San Jose Division is appropriate under Local Rule 3-2(c) because
6 Apple is headquartered in Cupertino, California and a substantial part of the conduct at issue in this
7 case occurred in Santa Clara County.

8 **PLAINTIFF-SPECIFIC ALLEGATIONS**

9 **Plaintiff Zixuan Rao**

10 18. On January 5, 2018, while in California, Mr. Rao purchased a new 15.4" MacBook Pro
11 with Touch Bar from B&H Photo Video online for \$2,499.

12 19. Before purchasing the MacBook Pro, Mr. Rao saw several advertisements in which
13 Apple made representations about the MacBook Pro's high quality and functionality, including that it
14 was equipped with a highly responsive, high quality butterfly keyboard. Immediately upon receiving
15 his laptop, but before using it, Mr. Rao viewed the MacBook Pro's box and went through the
16 computer's initial setup process, in which Apple provided him with information about the device.

17 20. In approximately February 2018, Mr. Rao's MacBook Pro began to experience keyboard
18 failures. For example, the letter "b" key became unresponsive, resulting in many typing errors and
19 incomplete words.

20 21. Mr. Rao attempted to troubleshoot his MacBook by cleaning his keyboard, i.e., by
21 turning his laptop at an angle and carefully tapping on the base multiple times to clear dust from the
22 keyboard. His attempts were not successful in alleviating the effects of the keyboard defect.

23 22. On approximately April 2, 2018, Mr. Rao brought his laptop into a San Diego Apple
24 store to inquire about the problem. There, an Apple representative attempted to clean the "b" key that
25 was not working, but the problem persisted even after a thorough cleaning. The Apple representative
26 advised Mr. Rao that he could bring his laptop in for a repair, but that it would take about a week.
27 Apple declined to provide him with a temporary or loaner device during that repair period. Mr. Rao's
28 programming work requires him to have access to a functioning laptop at all times. Mr. Rao had also

1 read reports of MacBook owners whose keyboards were repaired experiencing repeat failures as a
2 result of the keyboard defect. Because he could not go a week without his laptop and did not want a
3 repair that would not permanently fix the keyboard defect, Mr. Rao declined the repair offer. He
4 purchased a replacement external keyboard for \$139 on the recommendation of the Apple store
5 representative.

6 23. Mr. Rao continues to experience repeated failures and problems with the functionality of
7 the butterfly switch keys on the keyboard of his MacBook Pro.

8 **Plaintiff Kyle Barbaro**

9 24. On November 20, 2016, while in Massachusetts, Mr. Barbaro purchased a MacBook Pro
10 from Apple's online store for \$2,548.94.

11 25. Before purchasing the MacBook Pro, Mr. Barbaro saw promotional material about the
12 MacBook's keyboard, including Apple's representation that the MacBook Pro had a "more responsive
13 keyboard." Prior to purchase, Apple disclosed further information to Mr. Barbaro, including price and
14 model information, in its online purchase portal. Immediately after receiving his laptop, but before
15 using it, Mr. Barbaro viewed the MacBook Pro's box and went through the computer's initial setup
16 process, in which Apple provided him with additional information about the device.

17 26. In or around July 2017, Mr. Barbaro's space bar and caps lock keys became
18 unresponsive. Mr. Barbaro attempted to fix the problem by holding the MacBook at an angle and
19 cleaning the keyboard with compressed air, but the problem persisted.

20 27. Mr. Barbaro contacted Apple in September 2017. After a failed attempt to troubleshoot
21 the problem, Apple recommended that Mr. Barbaro take his device to the Genius Bar for further
22 assistance.

23 28. Mr. Barbaro took his laptop to the Genius Bar on September 11, 2017. A Genius Bar
24 technician inspected the keyboard and confirmed that the space bar and caps lock keys were
25 unresponsive. The technician offered to send the laptop to Apple's service depot for repairs.

26 29. Mr. Barbaro sent his computer in, and after about one week, Mr. Barbaro received the
27 repaired MacBook. He continued to use the MacBook for ordinary tasks until December 2017, when
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1 the space bar again became unresponsive in the same way as the first time his MacBook manifested the
2 keyboard defect. Mr. Barbaro returned to the Genius Bar to seek assistance.

3 30. At the Genius Bar, a technician examined the laptop and determined that it would cost
4 over \$700 to repair the problem. The technician informed Mr. Barbaro that his warranty had expired
5 and that he would be responsible for the full cost of the repairs. Mr. Barbaro declined to pay for the
6 repairs. He still has the MacBook. It remains defective.

7 * * *

8 31. As described above, each Plaintiff encountered specific representations by Apple
9 regarding the quality and functionality of the keyboards on the MacBook.

10 32. Despite (1) knowledge that the MacBook is defective and (2) ample opportunity to
11 accurately describe the defective condition of the keyboards on the MacBook, Apple uniformly failed
12 to disclose to any Plaintiff that the MacBook is defective.

13 33. Each Plaintiff was unaware before purchasing a MacBook that it is defective. Had Apple
14 disclosed the defect, Plaintiffs would not have purchased a MacBook, would not have bought it at the
15 price they did, or would have returned it during their respective seller's customer remorse periods,
16 which ranged from 14 to 30 days. Each Plaintiff was directly injured by Apple's conduct described
17 herein.

18 34. Each Plaintiff ordinarily prefers Apple products to other products. Apple continues to
19 advertise the MacBook's high quality and the functionality of the keyboard. But, because of their
20 experience with the MacBook, Plaintiffs do not trust Apple's representations about its MacBook. As a
21 result, although Plaintiffs would like to again buy the Apple MacBook, they will not do so unless Apple
22 takes sufficient steps to cure the keyboard defect and ensure the accuracy of its representations about
23 the MacBook.

24 **COMMON FACTUAL ALLEGATIONS**

25 35. According to Pew Research Center, nearly 75% of adults in the United States own
26 desktop or laptop computers. Laptops have become part of everyday life in the United States, largely
27 supplanting desktop computers.

1 36. Consumers who choose laptops over tablets or desktops often do so because of, among
2 other things, the mobility of a laptop as compared to a desktop, and the comfort of a fixed physical
3 keyboard—which is typically not a feature of tablets.

4 37. The keyboard’s operability is critical to the workings of the laptop itself. Many of the
5 core functions of a laptop cannot be performed without a working keyboard.

6 **Overview of Keyboard Technology and Technological Advances**

7 38. Early versions of the modern computer were equipped with thick keyboards that had
8 clunky and mechanical keys that operated on buckling spring mechanisms.

9 39. As the consuming public increasingly opted for laptops, manufacturers began using new
10 technology to make laptops more portable and sleek.

11 40. Laptop manufacturers introduced a traditional scissor mechanism for keyboard keys,
12 often referred to as a “scissor switch.”

13 **Apple Introduces the Butterfly Keyboard In the MacBook**

14 41. In 2015, with the unveiling of its new 12-inch MacBook, Apple began putting new
15 “butterfly” keyboards into the MacBook. The butterfly keyboards are slimmer than the scissor-switch
16 keyboards, and enabled Apple to make their laptops thinner. Apple also produced the butterfly
17 keyboards with the goal of improving key stability, comfort, and reliability.

18 42. On the website dedicated to the MacBook, Apple touts the MacBook’s “[e]nhanced
19 butterfly mechanism” which is “[k]ey to the keyboard.” Apple claims that “[n]ow, with our second-
20 generation butterfly mechanism, the keyboard experience is refined for greater comfort and
21 responsiveness.”³ An image of one of Apple’s MacBook advertisements appears on the next page.

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³ <https://www.apple.com/macbook/> (last visited May 8, 2018).

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Enhanced butterfly mechanism. Key to the keyboard.

Now, with our second-generation butterfly mechanism, the keyboard experience is refined for greater comfort and responsiveness. So when your finger strikes a key, it goes down and bounces back with a crisp motion that you'll appreciate the moment you start typing.



Traditional scissor mechanism



Apple-designed second-generation butterfly mechanism

43. Apple uses similar language in advertisements for the MacBook Pro:

“More responsive keyboard. More expansive trackpad.”

“Interacting with MacBook Pro is a smooth experience all around. The keyboard features our second-generation butterfly mechanism — providing four times more key stability than a traditional scissor mechanism, along with greater comfort and responsiveness.”

Apple Launches the MacBook Without Disclosing the Keyboard Defect

44. Apple introduced the MacBook in spring 2015. The launch event for the MacBook was broadcast from Apple in Cupertino on March 9, 2015. During this event, Apple’s Senior Vice President for worldwide marketing, Phil Schiller, touted the keyboard:

The butterfly mechanism is built with a single assembly. And is supported by a stainless steel dome switch. And that *all adds up to a key that is much more precise, and accurate. In fact it is four times more stable than that scissor mechanism.* Yet is 40% thinner allowing us to make a thinner keyboard. And we also made the key cap larger, making it even easier to strike and get a beautiful typing experience. . . . The *keys are much more precise, much more accurate*, even if you strike them on the side. It is a beautiful keyboard

45. Apple began selling the MacBook on April 10, 2015. The price for the laptop started at \$1,299 for the base configuration with 256 GB of flash storage. An upgraded model cost \$1,599 and contained 512 GB of storage and a faster processor.

46. In late 2016, Apple introduced its MacBook Pro. Apple’s press release described the laptop as “revolutionary” and “groundbreaking” with “breakthrough performance.” One of the main selling points for the MacBook Pro was the keyboard. Apple characterized the MacBook Pro as

1 possessing “[m]ore responsive and comfortable typing on the keyboard” and as containing “the most
2 responsive keyboard ever.”

3 47. The launch event for the MacBook Pro (also held in Cupertino) occurred on October 27,
4 2016. Schiller again touted the capabilities of the laptop’s butterfly keyboard, hailing it as revamped
5 and upgraded, and stating that “the keyboard . . . [is] more responsive, it gives an even greater sense of
6 keyboard travel as you press on it. It is a great keyboard. I could talk all day about it.”

7 48. Apple repeatedly emphasized the high quality construction of the MacBook and its
8 component parts, including the keyboard. Through various mediums, Apple represented to consumers
9 that the MacBook keyboard is “highly responsive” and sensitive to type commands.

10 49. The price for the MacBook Pro varied depending upon the model. A 13-inch MacBook
11 Pro without a Touch Bar (2.0 GHz dual-core Intel Core i5 processor with Turbo Boost, 8GB memory,
12 256 GB flash storage) was offered for \$1,499. An upgraded model of the 13-inch MacBook Pro with a
13 Touch Bar was offered for \$1,799. The 15-inch MacBook Pro laptop equipped with the Touch Bar (2.6
14 GHz quad-core Intel Core i7 process with Turbo Boost, 16GB memory, 256GB flash storage) was
15 offered for \$2,399. Each of these models came with the butterfly switch keyboards. The MacBook Pro
16 went on sale on October 27, 2016, with Touch Bar models shipping in the weeks that followed.

17 50. The MacBook and MacBook Pro can be purchased directly through Apple at its
18 storefront locations or through its online store. The laptops are also available for purchase through
19 third-party retailers such as B&H, Amazon, Best Buy, and Walmart.

20 51. Before purchasing and/or using their MacBook, both Plaintiffs were exposed to their
21 laptop’s external packaging. The MacBook’s box displays basic product information like the laptop
22 model number, serial number, and product specs. The box does not—and never did—disclose that the
23 MacBook’s keyboard has a propensity to fail.

24 52. Consumer who purchased the MacBook online from Apple also were exposed to further
25 disclosures from Apple regarding the computer in Apple’s online purchase portal. The online purchase
26 portal does not—and never did—disclose that the MacBook is prone to keyboard failure.

27 53. After purchasing but before using their MacBook, each Plaintiff was required to, and
28 did, undertake Apple’s standard MacBook setup process. During this process, Plaintiffs interacted with

1 Apple in connection with their MacBook, and received or observed information disseminated by Apple
2 about how to use the laptop. Plaintiffs conducted general setup activities like: (1) connecting to the
3 internet; (2) migrating data to and from other devices; (3) downloading Apple applications; and (4)
4 otherwise enrolling in Apple and Apple product services. Through the setup process, before they began
5 using their laptop, Plaintiffs were presented with and required to acknowledge additional information
6 and disclosures about the laptop (e.g., diagnostic information, terms of service, privacy policy, and
7 location services). Apple did not use its setup process to inform either Plaintiff that the MacBook had
8 defective keyboards.

9 54. Apple permits customers to return a MacBook purchased directly from Apple (i.e., at
10 Apple's online or retail stores) for a refund within 14 calendar days after receiving the laptop. B&H, the
11 merchant that sold Mr. Rao his MacBook Pro, allows customers to return products 30 days after
12 purchase.

13 55. Apple therefore had numerous opportunities and means to disclose the butterfly
14 keyboard defect prior to or at the time of Plaintiffs' purchases, or during the period in which Plaintiffs
15 could have returned their laptop for a full or partial refund. Apple failed to do so.

16 **The Keyboard Defect Manifests Soon After Launch**

17 56. The MacBook suffers from a latent defect. Though it appears to function normally when
18 new, the MacBook has a defective keyboard. As numerous online consumer complaints describe, not
19 long after consumers purchase the MacBook, their keyboard begins to suffer from a host of problems
20 including keys sticking, keystrokes failing to register, keys typing a letter or command multiple times
21 even though it was struck only once, and keys simply not working at all. These problems foreclose or
22 seriously impair the use of the computer. They result from a defect that permits what should be an
23 uneventful occurrence—the accumulation of minute amounts of dust or debris—to render one or more
24 of the keys inoperable. This defect also renders the keyboards different from, and inferior to, Apple's
25 intended manufacturing result.

26 57. When users experience these keyboard problems, the MacBook fails in one of its most
27 basic functions: inputting keystroke commands. Hence, when the defect manifests, it is not possible to
28 use MacBook for its ordinary and intended purpose.

1 58. The MacBooks are all equipped with the same keyboard, and it is produced from the
2 same materials and assembled in the same way for each MacBook. The MacBooks are uniformly
3 plagued by—and will eventually experience—the keyboard defect.

4 59. While pre-release testing should have made Apple aware that the MacBook is defective
5 in advance of product launch, the record of public complaints to Apple demonstrates that it was aware
6 of the problems with the MacBook shortly after its release.

7 60. The internet is replete with time-stamped complaints from consumers who have taken to
8 Apple’s own website, social media, internet message boards, and product pages on retailer websites to
9 voice dissatisfaction, frustration, and outrage about the defect.

10 61. Consumers described MacBook keyboard failures in public forums immediately after
11 the MacBook was released and immediately after the MacBook Pro was released. For example, about a
12 month after the MacBook’s April 2015 release, many consumers were complaining about failing
13 keyboards on Apple’s discussion forums:

- 14 • ronsavell, posted May 18, 2015:

15 The spacebar on my new 12” macbook is not working properly on the right side. Is anyone
16 else having this problem, if so, is there a solution? It feels like it is bottoming out on that
17 side, i don’t really know how to explain it. If I press it more towards the middle or on the
left side it works fine.⁴

- 18 • calliefromlivermore, posted June 1, 2015:

19 Yup I had the same issue, returned it and exchanged it for a new one, and now the second
20 one is having the same issue. Apple is going to have a huge issue with this I think.⁵

21 62. Many other consumers described their problems through other mediums, including one
22 consumer who posted within a week after the MacBook became available for purchase:

- 23 • Matt2053, posted Apr. 15, 2015:

24 I really love the new keyboard—except for the “H” key. Every other key works great, but
25 the “H” doesn’t register when I press it on the corners. I have to hit it right in the middle.
Every other key, I can press the corner and it registers. Is this a problem in general, or is it
26 just my MacBook and I should return it for a new one?⁶

27 ⁴ <https://discussions.apple.com/thread/7048209> (last visited May 9, 2018).

28 ⁵ *Id.*

⁶ <https://forums.macrumors.com/threads/new-keyboard-h-key.1867551/> (last visited May 9, 2018).

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- Appleuserindc, posted May 22, 2015:

2 The C key on my new MacBook has a subtle but noticeable problem. I noticed yesterday
3 morning that typing C wasn't always registering. I played around with the key and
4 discovered that pressing the top of the key registered a normal click like the rest of the keys,
5 but pressing at the bottom of the key was mushy with no click. I have an appointment at the
6 Genius Bar Monday. I'm posting this to see if other people have a similar problem. Never
7 had a key fail on an Apple keyboard before and I'm worried that this one broke just five
8 weeks in.⁷

63. Similarly, many complaints about the MacBook Pro's keyboard were made within a few
7 weeks of that product's release:

- Roch, posted Nov. 15, 2016:

9 My 2016 15'' MacBook Pro arrived yesterday (as one of the first). 63 of the 64 keys work
10 fine. But the i-key most of the time types the letter twice. I suggest you test out your
11 keyboard thoroughly. With auto-correct it can be easy to think it works. However, my
12 password contains the letter i, and I quickly became super frustrated not being able to get
13 my password right So take a document, turn off auto-correct, and check all the keys.⁸

- Craigner, posted Nov. 15, 2016:

13 I have the same thing with my brand new 15 inch! The u key. Sometimes it doesn't work at
14 all. Other times it types twice. Guess I'll be returning it. Wanted to take this laptop on a trip
15 next week.⁹

64. Myriad complaints about the MacBook Pro continued to surface in the weeks and
16 months that followed, including on Apple's own discussion page:

- ManuCH, posted Nov. 23, 2016:

18 After a lot of waiting and refreshing the delivery tracking page, my 2016 MacBook Pro 15''
19 (BTO with 2.9 GHz and 1TB SSD) arrived. And guess what - the keyboard is defective.

20 Yes, the "e" key is broken, meaning that it sometimes registers twice (depending on where
21 you press on it exactly, ie. the lower right corner is worse). ... I tried wiggling, pressing
22 hard, canned air, the usual stuff - no dice.

23 So there you go, a brand new machine which I spent a fortune on, with a broken key. I went
24 to the Apple Store but they suggested I get it replaced by AppleCare, as they don't even
25 have the spare parts to repair it yet.¹⁰

26 ⁷ <https://forums.macrumors.com/threads/macbook-12-c-key-failing.1885101/> (last visited May 9, 2018).

27 ⁸ <https://forums.macrumors.com/threads/macbook-pro-2016-keyboard-failure.2015079/> (last visited
28 May 9, 2018).

⁹ *Id.* (last visited May 9, 2018).

¹⁰ <https://discussions.apple.com/thread/7759662> (last visited May 9, 2018).

- 1 • Desmond Harte, posted on Nov. 24, 2016:

2 Number 4 for me on 13” model. Sometimes registers twice, sometimes registers ‘4od’ and
3 other things. Hold it down and it will randomly repeat despite the keyboard not being set to
4 repeat. Also have a defective trackpad, rattles and other things. Not a great showing at all.
5 Returning for refund. Will reconsider my position in terms of buying another MacBook
6 given what are clearly very profound lapses in quality control that should not happen on a
7 machine that costs over £2,000.¹¹

- 8 • Doridian, posted on Nov. 30, 2016:

9 I recently got my new 2016 MacBook Pro 15”. ... Sometimes I have to hit it 5 times to
10 make it work. This usually happens after I didn’t use the laptop for an hour or so (and it
11 went to sleep). Recently, since I used the MBP more, it has become more and more rare and
12 the performance of the key seems more “on point” (usually have to only hit it twice to make
13 it work after such time). Very very rarely hitting the key once produces the letter twice. Is
14 this a software or a hardware issue? Will this just go away entirely with more use? What
15 should I do?¹²

16 65. Many other consumers have contacted Apple directly to notify it that the MacBook is
17 defective. The following sampling of complaints—many from Apple’s own message board—
18 demonstrate that Apple is aware that the MacBook is defective and that the defect is plaguing the
19 MacBook even as Apple continues to market newer, yet still defective, models:

- 20 • Dan1ell, posted on Apr. 15, 2018:

21 I have a stuck key on the butterfly keyboard of a MacBook Pro (13-inch, 2016). . . .
22 [Apple] reference[s] compressed air.¹³

- 23 • Juan1982, posted on Apr. 29, 2018:

24 Stuck Keys on Macbook pro

25 I’ve had my new Macbook pro (15” 2017) for a month and already I have 4 keys solidly
26 stuck and half of the keyboard with stubborn keys. This results in me taking longer to do
27 my work and also, having to smack down on the keys so that I don’t misspell
28 everything. The new keyboard is horrible. I’ve been looking through articles on how to
clean the keyboard but I’m very confused. ... Apple suggests using compressed air to
clean under the keys and warns that we should not attempt to clean the keys without
Genius Bar supervision. (Geez!) ... I need a solution. It’s a \$2300 machine... The
keyboard can’t be this bad. Please help me recover my keys.¹⁴

¹¹ *Id.*

¹² <https://discussions.apple.com/thread/7769334> (last visited May 9, 2018).

¹³ <https://discussions.apple.com/thread/8359279> (last visited May 9, 2018).

¹⁴ <https://discussions.apple.com/thread/8375729> (last visited May 9, 2018).

- 1 • Sue AK, posted on Apr. 10, 2018:

2 text jumps all over the place

3 My keyboard is doing strange things. I can be typing and suddenly the text jumps back
4 to the middle of the line or to another lintier altoge (like this. Also the spacekeydoesnot
place a space between words.¹⁵

- 5 • iFriendly, posted on Apr. 17, 2018:

6 Macbook Pro 2018 butterfly keyboard, solutions?

7 I have a two week old MacBook Pro, and would appreciate some advice. Within a few
8 days of owning this MBP, they keys are sticking - I have had 3 keys get stuck while
9 used in a clean office environment with light use. Is there anything I can do to stop these
keys from sticking?¹⁶

- 10 • Anfield 17, posted on Aug. 28, 2017:

11 MacBook Pro (13-inch, 2017) Butterfly Keyboard Problem

12
13 On my new mac, all of the sudden the left shift key doesn't seem to work, and it would
need a forced pressing for it to function.¹⁷

- 14 • jude x, posted on Oct. 8, 2017:

15 15" Macbook Pro 2017 keyboard problem.

16 I have a 2017 15" MacBook Pro and was disappointed to discover recently that you get
17 two presses for every one with the H key I'm concerned that this new second gen
18 butterfly keyboard is not reliable which I find unacceptable on a device that cost me
19 £2699. How long will the new keyboard last?¹⁸

- 20 • Automaticftp, posted on Nov. 17, 2017:

21 I had the top case/keyboard replaced on a 2016 15" twice, meaning three different
22 keyboards failed.¹⁹

- 23 • FFWest17, posted on Dec. 19, 2017:

24 Ironically enough, I experienced the same problem. First with a MacBook (with the first
25 generation butterfly switch) and now with my 15" MacBook Pro (second generation
butterfly switch). . . . This time, it is the "B" key (which sometimes works and other

26 ¹⁵ <https://discussions.apple.com/thread/8353304> (last visited May 9, 2018).

27 ¹⁶ <https://discussions.apple.com/thread/8362778> (last visited May 9, 2018).

28 ¹⁷ <https://discussions.apple.com/thread/8051207> (last visited May 9, 2018).

¹⁸ <https://discussions.apple.com/thread/8106230> (last visited May 9, 2018).

¹⁹ *Id.*

1 times either registers multiple keystrokes with a single press or no keystrokes at all). The
 2 first time, they had to send the MacBook in to a service center to have the entire top case
 replaced.²⁰

- 3 • WestVanPete, posted on Jan. 20, 2018:

4 I just had the same problem today. Return Key stopped working. Took it in, guy said I
 5 would need a new “Top Cover” whatever that is. Thank Christ I paid for AppleCare, or
 6 it would be \$690 Canadian. I told him I’d never buy another one of these again. Under
 his breath he said ‘I can’t blame you’. Sad.²¹

- 7 • Vslow, posted on May 3, 2018:

8 I have the same problem. It started just after 2 months with a key “e”. And then it was
 9 happening for a space key. After I brought it to a Service Center (when the warranty was
 10 still active) they said that they reassembled something and the problem is gone. It was
 11 true for a day, but the next day problem with key “e” returned, also for key “a”. And
 now key “command” stopped working. This is ridiculous, I walk to the meetings with
 12 wireless magic keyboard ... because without it MacBook Pro is not usable.²²

- 13 • ugleAK, posted on May 6, 2018:

14 I have the same problem. Both with the spacekey, but also <. It’s like they’re stuck and I
 15 have to press them really hard, which made the < key to break off yesterday. I went to an
 16 applestore for help. They told me it’s a mechanical problem and that the whole keyboard
 17 would have to be replaced. It’ll be around 370 GBP. I’m a student and I saved up for this
 computer for like 4 years, and will never be able to afford paying for a new keyboard
 every second year. My macbook pro is not even 1 year old yet. And to hear that I’m not
 18 the only one having this problem makes me so frustrated!²³

- 19 • Nobitasan17, posted Dec. 6, 2017

20 Well I have similar issue as well. After 2 months, the notorious ‘b’ key started acting up.
 21 I just searched the Internet and looked like this was a common issue reported by others
 too. Pressing the ‘b’ key either didn’t work at all or caused the ‘bb’. ...

22 The guy at Genius Bar said because I lifted the key it voided the warranty. They didn’t
 23 listen to the fact that this \$2000 laptop had issue with the keyboard and therefore I lifted
 the key to look. I have to pay \$400 to get it repaired and it will take 4-5 days.

24 Apple couldn’t handle this any poorer.²⁴

25 _____
 26 ²⁰ *Id.*

27 ²¹ *Id.*

28 ²² <https://discussions.apple.com/thread/8106230?page=2>

²³ *Id.*

²⁴ <https://forums.macrumors.com/threads/2017-macbook-pro-with-touch-bar-keyboard-issue.2083845/>
 (last visited May 10, 2018).

- 1 • WubsyloL, posted Feb. 2, 2018

2 My B, E, G, and J keys are all starting to exhibit the symptoms described in here; double
3 presses are the most common, but occasionally it won't work at all and requires an
4 incredibly hard press.

5 A frustrating development considering my MBP is only 2 and bit months old. I've tried
6 cleaning it with compressed air (as per the Apple support document) but that did
7 nothing. Time for a Genius Bar appointment!²⁵

- 8 • WeezyWally, posted May 1, 2018

9 I'm super careful with my electronics and always clean and make sure no dirty gets in
10 the keys but my shift key still failed on me. It's very frustrating because my old MBP
11 works perfectly and I can type as hard/soft as I like without worrying.²⁶

- 12 • BobTheHeart, posted April 30, 2018

13 "The 2016 15in w/ touch bar is my third MacBook, had my keyboard replaced last
14 summer after the spacebar became unclickable along with some other keys. Never had
15 any keyboard issues with my previous computers."²⁷

- 16 • MichalxH, posted Feb. 5, 2018

17 What is interesting that most of the broken keys are "B", "H", "N". ... I'm experiencing
18 same problem with 13" MBP Late 2017, my "N" key is working in only about 25% of
19 time. Fortunately I'm still covered by warranty, unfortunately I don't have AppleCare
20²⁸

21 66. The problems with the MacBook's butterfly keyboard are so prevalent that, as of the
22 date of this filing, a petition initiated in the first week of May 2018 on Change.org calling for Apple to
23 recall the affected MacBook has garnered nearly 17,000 signatures.²⁹

24 67. Apple was aware of the defect through consumer complaints to Apple shortly after it
25 released the defective MacBook. Apple has been aware of these serious keyboard problems through the
26 discussion pages hosted on Apple's website as early as May 2015, the month after the MacBook was
27 released. Apple continuously monitors those web pages. Apple also regularly monitors other web
28 pages, including MacRumors, on which consumers complained about keyboard problems beginning on
April 15, 2015, just five days after the MacBook came to market. Many consumers contacted Apple

²⁵ <https://forums.macrumors.com/threads/2017-macbook-pro-with-touch-bar-keyboard-issue.2083845/page-2> (last visited May 10, 2018).

²⁶ https://www.reddit.com/r/apple/comments/8g13we/2016_macbook_pro_butterfly_keyboards_failing/ (last visited May 10, 2018).

²⁷ *Id.* (last visited May 10, 2018).

²⁸ <https://discussions.apple.com/thread/8106230> (last visited May 10, 2018).

²⁹ <https://www.change.org/p/apple-apple-recall-macbook-pro-w-defective-keyboard-replace-with-different-working-keyboard> (last visited May 8, 2018).

1 directly about such problems, and Apple also actively monitored and engaged with consumers on
2 internet message boards, social media, and retailer websites about their problems with the MacBook
3 keyboard.

4 68. Apple knew or reasonable should have known of the butterfly keyboard vulnerabilities
5 even earlier, through standard pre-release product testing.

6 **Apple Failed to Adequately Address the Keyboard Defect in the MacBook**

7 69. Apple provided (and provides) a written one-year limited warranty with each MacBook.

8 70. Apple's warranty states, in pertinent part:

9 **WHAT IS COVERED BY THIS WARRANTY?**

10 Apple Inc. of One Infinite Loop, Cupertino, California 95014, U.S.A. ("Apple")
11 warrants the Apple-branded hardware product and Apple-branded accessories contained
12 in the original packaging ("Apple Product") against defects in materials and
13 workmanship when used normally in accordance with Apple's published guidelines for a
14 period of ONE (1) YEAR from the date of original retail purchase by the end-user
15 purchaser ("Warranty Period").

16 ***

17 **WHAT WILL APPLE DO IN THE EVENT THE WARRANTY IS BREACHED?**

18 If during the Warranty Period you submit a claim to Apple or an AASP in accordance
19 with this warranty, Apple will, at its option:

20 (i) repair the Apple Product using new or previously used parts that are equivalent to new
21 in performance and reliability,

22 (ii) replace the Apple Product with the same model (or with your consent a product that
23 has similar functionality) formed from new and/or previously used parts that are
24 equivalent to new in performance and reliability, or

25 (iii) exchange the Apple Product for a refund of your purchase price.

26 71. Notwithstanding Apple's Limited Warranty warranting against material defects,
27 including improper or inferior workmanship and materials, Apple sold the MacBook to consumers—
28 including Plaintiffs—knowing the MacBook is defective. Furthermore, even though the Limited
Warranty obligates Apple to repair, replace, or refund the purchase price of a defective MacBook,
Apple fails to provide an effective remedy for the defect, instead instructing consumers to attempt futile
repairs or troubleshooting, and fails to provide an effective repair that does not lead to repeated
keyboard failure.

1 72. Where Apple has agreed to repair or replace defective MacBook keyboards, the repairs
2 and replacements do not fix the keyboard defect, resulting in consumers experiencing repeated
3 keyboard failure.

4 73. Apple representatives frequently attempt to pass blame for the defective keyboards to
5 consumers, telling the consumers that their problems are due to dust and debris getting under the
6 keyboard, and that consumers—not Apple—should try to fix this problem.

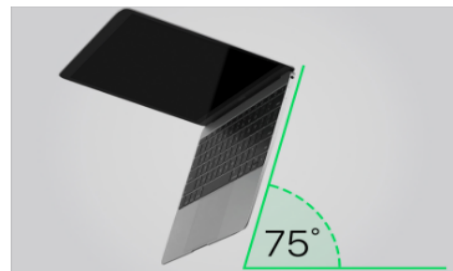
7 74. Apple provides the following instructions to consumers on its support page for
8 troubleshooting the keyboard problems:³⁰

How to clean the keyboard of your MacBook or MacBook Pro

If your MacBook (2015 and later) or MacBook Pro (2016 and later) has an unresponsive key, or a key that feels different than the other keys when you press it, follow these steps to clean the keyboard with compressed air.

As you follow these steps, remember to use the straw included with the compressed air to control airflow, and keep the end of the straw about a half-inch away from the keyboard as you spray. Also remember to not invert the air can while you're spraying.

- 1 Hold your Mac notebook at a 75-degree angle, so it's not quite vertical.



³⁰ <https://support.apple.com/en-us/HT205662> (last visited May 9, 2018).

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2 Use compressed air to spray the keyboard, or just the affected keys, in a left-to-right motion.



3 Rotate your Mac notebook to its right side and spray the keyboard again, from left to right.



4 Repeat the action, this time with your Mac notebook rotated to its left side.



75. No matter how often they are repeated, the four steps shown above do not fix the keyboard defect or prevent the keyboard from failing.

76. One 2016 MacBook Pro owner made the following complaint on Apple's community forum and received the following response from an Apple discussion forum Community Specialist recommending the ineffective troubleshooting process:³¹

³¹ <https://discussions.apple.com/thread/8142456> (last visited May 10, 2018).



Happy Daisy

• Level 1 (14 points)



Mac App Store

Q: butterfly mechanism keyboard problem

Dear community

I own a MacBook pro 2016 with touch bar and touch ID which I bought in the middle of 2017. It was carefully kept. I recently noticed that one of my keys (B key) starts to misbehave. sometimes it doesn't respond when I press it, and sometimes it pops up 2 Bs when I pressed it only 1 time. and sometimes it works just fine. Will there be any potential fixes?

thank you.

MacBook Pro TouchBar and Touch ID, macOS Sierra (10.12.5)

Posted on Nov 1, 2017 10:41 PM



chris_g1



Community Specialist

Nov 2, 2017 3:17 PM in response to Happy Daisy

Greetings, Happy Daisy.

I see that one of the keys on the keyboard of your MacBook Pro isn't behaving as expected. Sometimes it won't respond, and sometimes it responds too often. I'm happy to help.

[How to clean the keyboard of your MacBook or MacBook Pro](#) -- Since this is limited to only one of the keys, follow the steps provided here.

Cheers!

77. As reported and observed by numerous consumers, Apple's instructions regarding keyboard cleaning are not effective. Mere troubleshooting cannot fix the defect. The butterfly keyboard failures result from a defect that plagues all MacBooks (2015 and later) and MacBook Pros (2016 and later). It is because of this defect that the keyboards fail repeatedly, even after Apple attempts a repair.

78. Apple's publication of the above instructions and direction that consumers undertake home remedies to resolve keyboard failure reflect Apple's attempt to shift the burden and cost of the defect onto consumers.

79. Plaintiff Rao took his MacBook into an Apple store where a store employee tried to take apart the keyboard to address its failure. The employee was unable to prevent the defect from continuing to manifest—which it did shortly after Mr. Rao left the Apple store.

1 80. Plaintiffs' experiences are not unique. Many consumers who received a repair or
2 replacement from Apple report subsequent or repeated keyboard failure:

- 3 • Naimfan, posted Nov. 3, 2017

4 A brief review of threads in Apple support indicates it is relatively common. In my most
5 recent communications with Apple, each person I spoke or chatted with has said
6 keyboard issues are much more frequent than in the past. Only one person, at an Apple
7 store, was willing to put a number on it; he suggested that he sees approximately 1
8 failure per 5 machines. I have no way of evaluating the veracity of that statement, but
9 from my personal experience that seems low - as noted above, I'm on my third keyboard
10 with this machine, and I'm headed to Apple on Saturday to insist on a replacement.³²

- 11 • Automaticftom, posted Nov. 17, 2017

12 I had the top case/keyboard replaced on a 2016 15" twice, meaning three different
13 keyboards failed. The 2017 I have seems to be OK so far.

14 It's been suggested that heat is a problem - my 2016 had the 460 GPU, which may have
15 overheated the butterfly mechanism of certain keys and warped them, causing the
16 problem.³³

- 17 • CalebJacob0, posted Apr. 17, 2018

18 I'm on my second keyboard on my 15-inch 2016 MBP. Both times my keys got stuck
19 they had to send it to Apple and replace the whole top piece where the keyboard is.

20 ... A laptop that is so delicate and sensitive to dust is no good.³⁴

- 21 • 537635, posted Apr. 22, 2018

22 After three topcase replacements they put a 2017 topcase & keyboard back in January.
23 Three months later I'm starting to get double keys registered instead of single ones.

24 Laptop hasn't been moved from my desk in three months, absolutely no food around it,
25 have had a keyboard cover on all the time³⁵

26 81. Apple's inability to provide an effective fix or repair for the failed keyboards is
27 consistent with their defective nature.

28 ³² <https://forums.macrumors.com/threads/2017-macbook-pro-with-touch-bar-keyboard-issue.2083845/>
(last visited May 10, 2018).

³³ <https://discussions.apple.com/thread/8106230> (last visited May 10, 2018).

³⁴ <https://forums.macrumors.com/threads/2017-macbook-pro-with-touch-bar-keyboard-issue.2083845/page-4>

³⁵ *Id.* (last visited May 10, 2018).

CLASS ACTION ALLEGATIONS

1
2 82. Plaintiffs bring this lawsuit under Federal Rules of Civil Procedure Rules 23(a), (b)(1),
3 (b)(2), (b)(3), and/or (c)(4) as representatives of the following Class:

4 All persons within the United States who purchased, other than for resale,
5 a model year 2015 or later Apple MacBook, or a model year 2016 or later
6 MacBook Pro laptop, equipped with a “butterfly” keyboard.

7 83. The following persons and entities are excluded from the Class: Apple and its officers,
8 directors, employees, subsidiaries, and affiliates; all judges assigned to this case and any members of
9 their immediate families; and the parties’ counsel in this litigation. Plaintiffs reserve the right to
10 modify, change, or expand the Class definitions based upon discovery and further investigation.

11 84. **Numerosity.** Apple sold at least hundreds of thousands of MacBook laptops. Members
12 of the Class are widely dispersed throughout the country. Class members are so numerous that joinder
13 is impracticable.

14 85. **Typicality.** Plaintiffs’ claims are typical of the claims of all Class members. Plaintiffs,
15 like all Class members, purchased MacBook laptops that contain defective butterfly keyboards and are
16 subject to a common express warranty. Plaintiffs, like all Class members, would not have purchased, or
17 would have paid substantially less for, MacBook laptops had they known of the defect or the fact that
18 Apple would respond inadequately when the defect manifested.

19 86. **Adequacy.** Plaintiffs will fairly and adequately protect the interests of the Class. They
20 have no interests antagonistic to the interests of other Class members and are committed to vigorously
21 prosecuting this case. Plaintiffs have retained competent counsel experienced in the prosecution of
22 consumer protection class actions involving defective consumer electronics.

23 87. **Predominance.** Questions of law and fact common to the Class members predominate
24 over any questions that may affect only individual Class members, because Apple acted on grounds
25 generally applicable to the Class as a whole. Questions of law and fact common to the Class include:

- 26 a. Whether the MacBook was defective at the time of sale;
27 b. Whether the butterfly keyboard defect substantially impairs the value of the
28 MacBook;

1 c. Whether Apple knew of the defect, but continued to promote and sell the
2 MacBook, including its butterfly keyboard, without disclosing the problems and their consequences to
3 consumers;

4 d. Whether a reasonable consumer would consider the butterfly keyboard defect
5 and its consequences important to the decision whether to purchase a MacBook;

6 e. Whether Apple carried out the discretion it afforded itself under its warranty in
7 good faith;

8 f. Whether Apple breached express and implied warranties connected with the
9 MacBook;

10 g. Whether Apple's affirmative representations and omissions regarding the
11 butterfly keyboard (and its defect) were likely to deceive a reasonable consumer;

12 h. Whether Apple acted unlawfully, unfairly, and/or fraudulently in violation of
13 California's Unfair Competition Law, CAL. BUS. & PROF. CODE § 17200, *et seq.*;

14 i. Whether Plaintiffs and Class members overpaid for their MacBook as a result of
15 the latent keyboard defect;

16 j. Whether Plaintiffs and Class members are entitled to equitable relief, including
17 restitution and injunctive relief; and

18 k. Whether Plaintiffs and Class members are entitled to damages or other monetary
19 relief, and if so, in what amount.

20 88. **Superiority.** A class action is superior to all other available methods for the fair and
21 efficient adjudication of this controversy. Because the amount of each individual Class member's claim
22 is small relative to the complexity of the litigation, and because of Apple's financial resources, no Class
23 member is likely to pursue legal redress individually for the violations detailed in this complaint.
24 Individualized litigation would significantly increase the delay and expense to all parties and to the
25 Court and would create the potential for inconsistent and contradictory rulings. By contrast, a class
26 action presents fewer management difficulties, allows claims to be heard which would otherwise go
27 unheard because of the expense of bringing individual lawsuits, and provides the benefits of
28 adjudication, economies of scale, and comprehensive supervision by a single court.

1 89. Class certification is also appropriate under Rules 23(b)(1), (b)(2), and (c)(4) because:

- 2 • The prosecution of separate actions by the individual members of the Class would create a risk
3 of inconsistent or varying adjudications establishing incompatible standards of conduct for
4 Apple;
- 5 • The prosecution of separate actions by individual Class members would create a risk of
6 adjudications that would, as a practical matter, be dispositive of the interests of other Class
7 members not parties to the adjudications, or would substantially impair or impede their ability
8 to protect their interests;
- 9 • Apple acted and refused to act on grounds generally applicable to the Class, thereby making
10 appropriate final injunctive relief with respect to the members of the Class as a whole; and
- 11 • The claims of Class members include common issues that are appropriate for certification.

12 **CLAIMS FOR RELIEF**

13 90. Plaintiff Rao brings his claims under California law because he is a California resident
14 and purchased his MacBook while in California.

15 91. Plaintiff Barbaro also brings his claims under California law, because he purchased his
16 MacBook directly from Apple through Apple’s online store. Mr. Barbaro’s transaction is subject to
17 Apple’s Sales & Refund Terms and Conditions, which incorporate by reference Apple’s Terms of Use,
18 which in turn provide that “all disputes . . . will be governed by . . . the laws of the State of California
19 without regard to its conflicts of laws provisions.”

20 **FIRST CLAIM FOR RELEF**

21 **Breach of Express Warranty**

22 92. Plaintiffs incorporate the above allegations by reference.

23 93. Apple provided a one-year written Limited Warranty to consumers in connection with
24 every sale of a MacBook. Under the terms of the Limited Warranty, Apple warranted “against defects
25 in materials and workmanship” in the MacBook “when used normally in accordance with Apple’s
26 published guidelines for a period of ONE (1) YEAR from the date of original retail purchase by the
27 end-user purchaser”

1 94. Apple's Limited Warranty provides that if the warranty is triggered during the warranty
2 period, Apple will either: "(i) repair the Apple Product using new or previously used parts that are
3 equivalent to new in performance and reliability, (ii) replace the Apple Product with the same model (or
4 with your consent a product that has similar functionality) formed from new and/or previously used
5 parts that are equivalent to new in performance and reliability, or (iii) exchange the Apple Product for a
6 refund of your purchase price."³⁶

7 95. Notwithstanding the Limited Warranty, Plaintiffs' and Class members' MacBooks were
8 materially defective at the time of sale. The defect is inherent to the MacBook's keyboard, and gives
9 the laptop a substantial propensity to fail—rendering the devices unsuitable for their primary purpose—
10 and existed at all relevant times.

11 96. The Limited Warranty was included with every MacBook and also was made available
12 on Apple's website.

13 97. Plaintiffs and Class members used their MacBook in a manner consistent with the
14 operating instructions prior to manifestation of the latent defect.

15 98. Apple was on actual notice of the defective nature of the MacBook before selling
16 Plaintiffs and Class members their laptops and received timely notice of the breaches they experienced.
17 Despite reasonable opportunities to honor the promises in its express warranty, Apple failed to furnish
18 an effective remedy to Plaintiffs and Class members.

19 99. Apple's failure to provide Plaintiffs and Class members with a non-defective
20 replacement device, an effective repair, or a refund of their purchase price breached its obligations
21 under the warranty.

22 100. As a direct and proximate result of Apple's breaches of express warranty, Plaintiffs and
23 Class members have been damaged in an amount to be proven at trial.

24 **SECOND CLAIM FOR RELIEF**
25 **Breach of Covenant of Good Faith and Fair Dealing**

26 101. Plaintiffs incorporate the above allegations by reference.

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28 ³⁶ <https://www.apple.com/legal/warranty/products/embedded-mac-warranty-us.html> (last visited May 8, 2018).

1 102. A covenant of good faith and fair dealing is implied in every contract and imposes upon
2 each party a duty of good faith and fair dealing in its performance of the contract. Common law calls
3 for substantial compliance with the spirit, not just the letter, of a contract in its performance. The duty
4 to act in good faith and deal fairly requires adherence to commercial norms and prevents a contracting
5 party from acting in contravention of the counterparty's objectively reasonable expectations arising
6 from the agreement.

7 103. Apple breached the covenant of good faith and fair dealing that accompanied its Limited
8 Warranty, and failed to exercise the discretion it afforded itself under the terms of its warranty in good
9 faith. Apple engaged in a uniform pattern and practice of exercising the discretion afforded to it under
10 its Limited Warranty to deny adequate warranty service through an effective repair, replacement with a
11 non-defective MacBook, or purchase-price refund.

12 104. Despite knowing that the MacBook is defective, Apple deprived Plaintiffs and Class
13 members of warranty service through at least the following pattern or practice of behavior:

- 14 • Failing to provide an effective repair or remedy to the defect in the butterfly keyboards, causing
15 the defect to manifest repeatedly;
- 16 • Encouraging or requiring consumers who complain about or seek warranty service relating to
17 the defect to resort to ineffectual self-help methods to alleviate the defect, e.g., telling
18 consumers to clean their keyboards;
- 19 • Promising, but failing to deliver, warranty relief; and
- 20 • Blaming the defective nature of MacBook keyboards on consumers, while knowing that the
21 keyboards are defective.

22 105. Apple's refusal to provide an effective repair, a non-defective replacement, or a refund
23 unfairly nullified Plaintiffs' and Class members' rights under the Limited Warranty. Apple's conduct
24 departs from commercially reasonable behavior and violated Plaintiffs' and Class members' objectively
25 reasonable expectations arising from the express warranty.

26 106. All the conditions required for Apple's performance under the Limited Warranty had
27 occurred as Plaintiffs' and Class members' MacBooks were materially defective.

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1 leaving them without the functional product they reasonably expected in making their purchasing
2 decisions.

3 114. As a direct and proximate result of Apple's breaches of the implied warranty of
4 merchantability, Plaintiffs and Class members have sustained damages in an amount to be determined
5 at trial.

6 **FOURTH CLAIM FOR RELIEF**
7 **Violation of the Magnuson-Moss Warranty Act**
8 **15 U.S.C. § 2301, *et seq.* ("MMWA")**

9 115. Plaintiffs incorporate the above allegations by reference.

10 116. The MacBook is a "consumer product" under the MMWA. 15 U.S.C. § 2301(1).

11 117. Plaintiffs and Class members are "consumers" under the MMWA. 15 U.S.C. § 2301(3).

12 118. Apple is a "supplier" and "warrantor" under the MMWA. 15 U.S.C. § 2301(4)-(5).

13 119. Through written and implied warranties, Apple warranted to Plaintiffs and Class
14 members that the MacBook they purchased was free from defects, of merchantable quality, and fit for
15 the ordinary purposes for which a laptop is used.

16 120. Apple breached and refused to honor these written and implied promises. As a result of
17 the butterfly keyboard defect, the MacBook is inoperable and fails to perform in accordance with its
18 ordinary and intended purposes.

19 121. Apple has been given reasonable opportunities to cure its breaches of warranty. Apple
20 had actual knowledge and ample notice that the butterfly keyboard in the MacBook is defective as
21 detailed above, but failed to provide an adequate remedy.

22 122. The amount in controversy for purposes of Plaintiffs' individual claims exceeds \$25.
23 The amount in controversy in this action exceeds \$50,000, exclusive of interest and costs, computed on
24 the basis of all claims to be adjudicated in the suit.

25 123. As a direct and proximate result of Apple's breaches of implied and express warranties
26 pursuant to 15 U.S.C. § 2310(d)(1), Plaintiffs and Class members have suffered damages in an amount
27 to be determined at trial.

28 124. Plaintiffs also seek costs and expenses, including reasonable attorneys' fees, under the
MMWA. 15 U.S.C. § 2310(d)(2).

FIFTH CLAIM FOR RELIEF

**Violation of the Song-Beverly Consumer Warranty Act
CAL. CIV. CODE § 1792, *et seq.***

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3 125. Plaintiff Rao incorporates the above allegations by reference.

4 126. Mr. Rao is a “buyer” within the meaning of CAL. CIV. CODE § 1791(b). He purchased
5 his MacBook while located in California.

6 127. Apple is a manufacturer within the meaning of CAL. CIV. CODE § 1791(j). Apple was
7 responsible for producing the MacBook and directed and was involved in all stages of the production
8 and manufacturing processes.

9 128. The MacBook is a “consumer good[]” within the meaning of CAL. CIV. CODE § 1791(a).

10 129. Apple impliedly warranted to Mr. Rao that the MacBook he purchased was
11 “merchantable” under CAL. CIV. CODE §§ 1791.1(a) and 1792.

12 130. Apple breached the implied warranty of merchantability by producing, manufacturing,
13 and selling laptops that were not of merchantable quality. The MacBook is defective, resulting in
14 sticking and non-responsive keys and preventing them from being used for their core function of
15 typing. The MacBook is therefore unfit for the ordinary purposes for which a laptop is used and would
16 not pass without objection in the laptop trade.

17 131. The defect in the MacBook is latent. Though the MacBook appears operable when new,
18 the butterfly keyboard defect existed in the product at the time of sale and throughout the one-year
19 Limited Warranty period. Accordingly, any subsequent discovery of the defect beyond that time does
20 not bar an implied warranty claim under the Song-Beverly Act.

21 132. Any attempt by Apple to disclaim its implied warranty obligations under the Song-
22 Beverly Act is ineffective due to its failure to adhere to CAL CIV. CODE §§ 1792.3 and 1792.4, which
23 provide that, in order to validly disclaim the implied warranty of merchantability, a manufacturer must
24 “in simple and concise language” state: “(1) The goods are being sold on an ‘as is’ or ‘with all faults’
25 basis. (2) The entire risk as to the quality and performance of the goods is with the buyer. (3) Should
26 the goods prove defective following their purchase, the buyer and not the manufacturer, distributor, or
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1 retailer assumes the entire cost of all necessary servicing or repair.” Apple’s attempted warranty
2 disclaimer does not conform to Sections 1792.3 and 1792.4.³⁷

3 133. As a direct and proximate cause of Apple’s breaches of the Song-Beverly Consumer
4 Warranty Act, pursuant to CAL. CIV. CODE § 1791.1(d) and 1794, Plaintiff Rao and other Class
5 members have been damaged in an amount to be proven at trial.

6 134. Mr. Rao seek costs and expenses, including reasonable attorneys’ fees, under CAL. CIV.
7 CODE § 1794.

8 **SIXTH CLAIM FOR RELIEF**
9 **Violation of the California Unfair Competition Law**
10 **CAL. BUS. & PROF. CODE § 17200, *et seq.* (“UCL”)**

11 135. Plaintiffs incorporate the above allegations by reference.

12 136. The UCL proscribes “any unlawful, unfair or fraudulent business act or practice and
13 unfair, deceptive, untrue or misleading advertising.” CAL. BUS. & PROF. CODE § 17200.

14 **Unlawful**

15 137. Apple’s conduct is unlawful, in violation of the UCL, because it violates the California
16 Consumer Legal Remedies Act, the Magnuson-Moss Warranty Act, the Song-Beverly Warranty Act,
17 and constitutes breach of express and implied warranties, and fraudulent concealment.

18 **Unfair**

19 138. Apple’s conduct is unfair in violation of the UCL because it violates California public
20 policy, legislatively declared in the Song-Beverly Consumer Warranty Act, requiring a manufacturer to
21 ensure that goods it places on the market are fit for their ordinary and intended purposes.

22 139. Moreover, Apple acted in an unethical, unscrupulous, outrageous, oppressive, and
23 substantially injurious manner. For example:

- 24 • Apple promoted and sold laptops it knew were defective in that they contain a keyboard that is
25 substantially certain to fail prematurely;

26
27
28 ³⁷ See <https://www.apple.com/legal/warranty/products/embedded-mac-warranty-us.html> (last visited
May 8, 2018).

- 1 • Apple failed to disclose that the MacBook is defective, and represented through advertising,
2 product packaging, press releases, and other sources that the MacBook possesses particular
3 qualities that were inconsistent with Apple’s knowledge of the product;
- 4 • Apple made repairs and provide replacements that caused Plaintiffs to experienced repeated
5 instances of failure, rendering the Limited Warranty useless;
- 6 • Apple failed to exercise adequate quality control and due diligence over the MacBook before
7 placing it on the market; and
- 8 • Apple minimized the scope and severity of the problems with the MacBook, refusing to
9 acknowledge that its keyboard is defective, failing to provide adequate relief to consumers, and
10 even suggesting to consumers that they should try to resolve the problems by cleaning their
11 keyboard when Apple knew that doing so would be ineffective.

12 140. The gravity of harm resulting from Apple’s unfair conduct outweighs any potential
13 utility. The practice of selling defective laptops without providing an adequate remedy to cure the
14 defect—and continuing to sell those laptops without full and fair disclosure of the defect—harms the
15 public at large and is part of a common and uniform course of wrongful conduct.

16 141. The harm from Apple’s conduct was not reasonably avoidable by consumers. The
17 MacBook suffers from a latent defect, and even after receiving a large volume of consumer complaints,
18 Apple did not disclose the defect. Plaintiffs did not know of, and had no reasonable means of
19 discovering, that the MacBook butterfly keyboards are defective.

20 142. There were reasonably available alternatives that would have furthered Apple’s business
21 interests of satisfying and retaining its customers while maintaining profitability, such as: (1)
22 acknowledging the defect and providing a permanent fix for defective keyboards; (2) disclosing the
23 defect to prospective purchasers; (3) extending the warranty for the MacBook; and (4) offering refunds
24 or suitable non-defective replacement laptops to consumers with failed keyboards.

25 **Fraud by Omission**

26 143. Apple’s conduct is fraudulent in violation of the UCL because it is likely to deceive a
27 reasonable consumer:

- 1 • Apple knowingly and intentionally concealed from Plaintiffs and Class members that the
2 MacBook contains a latent defect that renders the keyboards prone to failure.
- 3 • Apple volunteered information to Plaintiffs and Class members through advertising and through
4 other means that the laptops—and specifically, the butterfly keyboards—were functional,
5 premium devices without disclosing information that would have materially qualified those
6 partial representations.
- 7 • Apple promoted the high quality and premium features of the MacBook—including the superior
8 responsiveness and stability of the butterfly switch keyboard—despite knowing the MacBook is
9 defective, and failed to correct its misleading partial disclosures.

10 144. Apple had ample means and opportunities to alert Plaintiffs and Class members to the
11 fact that the MacBook is defective, including on its web platforms selling the laptop; on the
12 advertisements on its website for the laptop; on the laptop's external packaging; and as part of the
13 standardized MacBook setup process. But Apple uniformly failed to disclose that the MacBook is
14 defective. Had Apple disclosed that the MacBook is defective, Plaintiffs and Class members would not
15 have purchased their laptops, would not have purchased them at the prices they did, or would have
16 returned them during their respective buyer's remorse periods.

17 145. Apple was under a duty to disclose the butterfly keyboard defect because of its exclusive
18 knowledge of the defect before selling the MacBook and because it made partial representations about
19 the laptops and their butterfly keyboards without also disclosing the latent defect.

20 146. Plaintiffs and Class members suffered injury in fact, including lost money or property,
21 as a result of Apple's unlawful, unfair and fraudulent acts and omissions. Absent Apple's unlawful,
22 unfair, and fraudulent conduct, Plaintiffs and Class members would not have purchased their
23 MacBooks, would not have purchased them at the prices they did, or would have returned their devices
24 for a refund during their respective buyer's remorse periods.

25 147. Through its unlawful, unfair, and fraudulent conduct, Apple acquired Plaintiffs money
26 directly and as passed on by Apple's authorized resellers (e.g., B&H, Best Buy, Amazon, Walmart).

27 148. Plaintiffs and Class members accordingly seek appropriate relief, including: (1)
28 restitution under the UCL; and (2) such orders or judgments as may be necessary to enjoin Apple from

1 continuing its unfair, unlawful, and fraudulent practices. Plaintiffs also respectfully seek reasonable
2 attorneys' fees and costs under applicable law, including under California Code of Civil Procedure
3 section 1021.5.

4 **SEVENTH CLAIM FOR RELIEF**
5 **Violation of California's Consumer Legal Remedies Act**
6 **CAL. CIV. CODE § 1750, *et seq.* ("CLRA")**

7 149. Plaintiffs incorporate the above allegations by reference.

8 150. Apple is a "person" within the meaning of CAL. CIV. CODE §§ 1761(c) and 1770, and
9 provided "goods" within the meaning of CAL. CIV. CODE §§ 1761(a) and 1770.

10 151. Apple's acts and practices, as alleged in this complaint, violate the CLRA, CAL. CIV.
11 CODE §§ 1770(a)(5), (7), and (9) because they consist of unfair and deceptive acts and practices in
12 connection with transactions—namely, the sale of defective laptops to Plaintiffs and Class members.
Specifically, Apple:

- 13 • Represented that the MacBook had characteristics, uses, and benefits it does not have;
- 14 • Represented that the MacBook is of a standard, quality, or grade that it is not; and
- 15 • Advertised the MacBook with intent not to sell the laptop as advertised

16 152. Through pre-release testing and consumer complaints, Apple was aware that the
17 MacBook's keyboard is defective and prone to failure.

18 153. Apple was under a duty to disclose that the MacBook is defective because it had
19 superior knowledge of the defect—through pre-release testing and consumer complaints—and because
20 it made many general, partial representations regarding the laptops' high quality and premium features,
21 including the keyboard, that were materially misleading.

22 154. Apple had opportunities to disclose to Plaintiffs and Class members that the MacBook is
23 defective, including through advertisements, on external packaging, and during the laptop setup
24 process. Despite its exclusive knowledge and opportunities to disclose the laptop's defective nature,
25 Apple failed to disclose the defect to Plaintiffs and Class members either prior to purchase or before
26 Plaintiffs' and Class members' respective buyer's remorse periods expired.

27 155. Apple's misrepresentations and omissions were material. Had Plaintiffs and Class
28 members known that the MacBook is defective, they would not have purchased their MacBook, would

1 not have purchased it at the prices they did, or would have returned them during their respective
2 buyer's remorse periods.

3 156. Plaintiffs accordingly seek actual damages in an amount to be proven at trial, reasonable
4 attorneys' fees and costs, declaratory relief, and punitive damages.

5 157. Pursuant to California Civil Code § 1782(a), on their own behalf and on behalf of the
6 Class, Plaintiffs Rao and Barbaro each sent CLRA notices to Apple on May 10, 2018.

7 158. Plaintiffs' CLRA notices were sent via certified mail, return receipt requested, to
8 Apple's principal places of business, advising Apple that it is in violation of the CLRA and must
9 correct, replace or otherwise rectify the goods alleged to be in violation of CAL. CIV. CODE § 1770. In
10 the event the relief requested in those notices is not provided within 30 days, Plaintiffs will amend this
11 complaint to include a request for monetary damages pursuant to the CLRA.

12 159. Plaintiffs' CLRA venue declarations are attached as Exhibits 1 and 2 to this complaint in
13 accordance with CAL. CIV. CODE § 1780(d).

14 **EIGHTH CLAIM FOR RELIEF**
15 **Fraudulent Concealment (Common Law)**

16 160. Plaintiffs incorporate the above allegations by reference.

17 161. Apple intentionally suppressed and concealed material facts concerning the performance
18 and quality of the MacBook. As alleged herein, Apple knew or reasonably should have known the
19 butterfly switch keyboard in the MacBook is defective. Furthermore, Apple was aware of consumer
20 complaints concerning defect-related issues, but never disclosed the defect to Plaintiffs and Class
21 members.

22 162. Because the defective nature of the MacBook is latent, Plaintiffs and Class members had
23 no reasonable means of knowing that Apple's representations concerning the MacBook were
24 incomplete, false, or misleading, or that it had failed to disclose that the MacBook is defective.
25 Plaintiffs and Class members did not and reasonably could not have discovered Apple's deception prior
26 to purchase or expiration of their respective buyer's remorse periods.

1 163. Had Plaintiffs and Class members known that the MacBook is defective, they would not
2 have purchased a MacBook, would not have purchased it at the price they did, or would have returned
3 it during their respective buyer's remorse periods.

4 164. Apple had a duty to disclose the defect because the defect is material and Apple
5 possessed exclusive knowledge of the defect. Apple conducted pre-release testing of the MacBook and
6 its internal components. This testing revealed, or reasonably should have revealed, the existence of the
7 defect before the MacBook's release, and only Apple had access to this information.

8 165. Apple also had a duty to disclose the defect because, through advertising, press releases,
9 statements made during the launch event, in its online purchase portal, and in other sources Plaintiffs
10 and Class members encountered before purchasing their laptops, Apple made many general, partial
11 representations regarding the supposed high quality of the MacBook and its premium features—
12 including superior keyboard and keystroke responsiveness—but failed to disclose facts that would have
13 materially qualified these partial representations. Having volunteered information relating to the
14 butterfly keyboard to Plaintiffs and Class members, Apple had the duty to disclose the entire truth and
15 the existence of the defect.

16 166. Both Plaintiffs here were exposed to Apple's specific representations about the
17 MacBook, before and immediately after purchase, and within the time period in which they could have
18 returned their MacBook during their respective buyer's remorse periods. Each Plaintiff encountered
19 Apple's representations (online, in advertisements, or both), and each Plaintiff received information
20 from Apple—including about the MacBook's keyboard—during the MacBook setup process. Each
21 Plaintiff likewise encountered the external packaging of the MacBook—which Apple developed—
22 before purchasing or using the laptop and during the buyer's remorse period. None of the informational
23 sources Plaintiffs encountered—advertisements, websites, external packaging, the setup process, or the
24 MacBook launch event—provided any indication that the MacBook is defective.

25 167. Apple concealed the defect to sell more laptops at a premium price, prevent damage to
26 its brand, and avoid the costs of developing a fix for the defect and of repairs, replacements, and
27 refunds under its Warranty.

28

1 replacing defective MacBook laptops, including but not limited to economic losses from the purchase
2 of replacement laptops;

3 E. Award reasonable attorneys' fees and costs as permitted by law; and

4 F. Grant such other and further relief as the Court deems appropriate.

5 **DEMAND FOR JURY TRIAL**

6 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of all issues
7 triable as of right.

8
9 Dated: May 11, 2018

Respectfully submitted,

10
11 By: 

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Jordan Elias (State Bar No. 228731)

Adam E. Polk (State Bar No. 273000)

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28 *Counsel for Plaintiffs*

EXHIBIT 1

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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

ZIXUAN RAO and KYLE BARBARO,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

APPLE INC,

Defendant.

Case No.

**CLRA VENUE DECLARATION OF
PLAINTIFF ZIXUAN RAO PURSUANT
TO CALIFORNIA CIVIL CODE
SECTION 1780(d)**

1 I, Zixuan Rao, declare as follows:

2 1. I have personal knowledge of the facts stated herein and, if called upon to do so, could
3 competently testify thereto.

4 2. I am a Plaintiff in the above-captioned action.

5 3. I submit this declaration in support of the Class Action Complaint, which is based in part
6 on violations of the Consumers Legal Remedies Act, California Civil Code section 1750 *et seq.*

7 4. The Class Action Complaint has been filed in the proper place for trial of this action.

8 5. Defendant Apple Inc. has its principal place of business in Cupertino, California, which is
9 within Santa Clara County. Apple conducts substantial business, including the acts and practices at
10 issue in this action, within Santa Clara County.

11 6. I purchased my MacBook Pro from B&H Photo Video.

12
13 I declare under penalty of perjury under the laws of the United States that the foregoing is true
14 and correct to the best of my knowledge. Executed on May 11, 2018 in San Diego, CA.

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16 By: Zixuan Rao
17 ZIXUAN RAO
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EXHIBIT 2

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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

ZIXUAN RAO and KYLE BARBARO,
individually and on behalf of all others similarly
situated,

Plaintiff,

v.

APPLE INC,

Defendant.

Case No.

**CLRA VENUE DECLARATION OF
PLAINTIFF KYLE BARBARO
PURSUANT TO CALIFORNIA CIVIL
CODE SECTION 1780(d)**

1 I, Kyle Barbaro, declare as follows:

- 2 1. I have personal knowledge of the facts stated herein and, if called upon to do so, could
3 competently testify thereto.
- 4 2. I am a Plaintiff in the above-captioned action.
- 5 3. I submit this declaration in support of the Class Action Complaint, which is based in part
6 on violations of the Consumers Legal Remedies Act, California Civil Code section 1750 *et seq.*
- 7 4. The Class Action Complaint has been filed in the proper place for trial of this action.
- 8 5. Defendant Apple Inc. has its principal place of business in Cupertino, California, which is
9 within Santa Clara County. Apple conducts substantial business, including the acts and practices at
10 issue in this action, within Santa Clara County.
- 11 6. I purchased my MacBook Pro directly from Apple's online store.

12
13 I declare under penalty of perjury under the laws of the United States that the foregoing is true
14 and correct to the best of my knowledge. Executed on May 10, 2018 in Melrose, Massachusetts.

15
16 By: Kyle Barbaro
KYLE BARBARO