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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 KIM AHERN, NIKOLAS FRENZEL, and
14 JUSTIN EVANS, on behalf of themselves and
all others similarly situated,

15 Plaintiffs,

16 v.

17 APPLE INC., A CALIFORNIA
18 CORPORATION,

19 Defendant.

No. 5:18-cv-7196

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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I. INTRODUCTION

1
2 1. Apple is the most valuable company in the world because customers trust Apple to
3 manufacture and deliver state-of-the-art technology products. Customers are willing to spend a
4 premium price for these products based on Apple’s reputation for quality and longevity.

5 2. But Apple’s computers, including its iMac desktops and MacBook laptops
6 (“Computers”), contain a critical defect that has led to at least two deficiencies in the performance of
7 the Computers (the “Filter Defect”). The components in Apple’s Computers generate a great deal of
8 heat during use, and Apple installed fans and vents to cool them down. But Apple did not install any
9 filters for the vents. As a result of this Filter Defect, the fans suck in dirt and debris that get stuck
10 behind the screen, causing a permanent dark smudging to appear in the corners of the screens. If
11 brought in for repair outside the warranty period (or if Apple refused to honor the warranty), Apple
12 told customers that they must pay upwards of \$600 to replace the entire screen. In reality, there is a
13 simple and cheap fix for many of the Computers: the screen can be removed by a suction cup, and
14 then cleaned with a soft rag. Despite the existence of this inexpensive fix, Apple continues to charge
15 non-warranty customers \$600 to replace the entire screen.

16 3. The second deficiency caused by the Filter Defect is the harmful effect of the dust on
17 the “motherboard” of the computer, which houses the various electronic components of the
18 computer. The accumulated dust on the motherboard causes it to overheat, which slows down the
19 processing speed of the computer, and ultimately causes it to crash. The problem of accumulation of
20 dust is well-known in the technology community, yet Apple did not take the simple step of inserting
21 a filter to prevent it.

22 4. The Filter Defect is particularly troubling because Apple promotes itself as making
23 technology products that set the standard in the industry. Apple advertises its products as having
24 undergone “rigorous testing methods that simulated customers’ experiences with their devices.”¹ It
25 promises that, “[o]n a Mac, everything is designed to work just the way you expect it to,”² and that
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27 ¹ See <https://www.apple.com/environment/resources/>.

28 ² See <https://www.apple.com/imac/macOS/>.

1 the Retina display screens in particular are the “the most advanced, most brilliant desktop display[s]
2 we’ve ever built.”³ These representations are false and misleading, for the reasons detailed below.

3 5. Plaintiffs Kim Ahern, Nikolas Frenzel, and Justin Evans accordingly brings this class
4 action on behalf of themselves and the putative class for the following relief:

- 5 a. Monetary compensation for the premium class members paid for the screens,
6 which did not perform as advertised and have decreased the value of the
7 Computers;
- 8 b. Monetary compensation for class members who have already spent several
9 hundred dollars in out-of-pocket costs to replace the screens after Apple
10 refused to pay for the fix;
- 11 c. Monetary compensation for class members who have sold their Computers at
12 a loss because of the dark, smudgy spots on their Computers;
- 13 d. Monetary compensation for class members who have already spent several
14 hundred dollars in out-of-pocket costs to replace the motherboards because
15 their Computers either substantially slowed down or crashed; and
- 16 e. Monetary compensation for class members who have sold their Computers at
17 a loss because of the sluggish performance of the motherboard.

18 II. JURISDICTION

19 6. This Court has subject matter jurisdiction over this matter pursuant to the Class
20 Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because the proposed classes consist of 100 or
21 more members; the amount in controversy exceeds \$5,000,000, exclusive of costs and interest; and
22 Plaintiffs Ahern, Frenzel, and Evans, residents of Arizona, Colorado, and Wisconsin, respectively,
23 are citizens of a state different from the defendant, which is a California corporation.

24 III. VENUE

25 7. Venue is proper in this judicial district under 28 U.S.C. § 1391 because a substantial
26 part of the events or omissions giving rise to Plaintiffs’ claims occurred in this judicial district.
27 Furthermore, Apple’s principal place of business is in this judicial district, and it is believed, and
28 therefore alleged, that a substantial amount of the conduct of which Plaintiffs complain occurred in

³ See <https://www.apple.com/imac/>.

1 this judicial district. Further, Apple has marketed, advertised, and sold affected Computers within
2 this judicial district.

3 8. Intradistrict Assignment: Pursuant to Civil L.R. 3-2(c), the San Jose division of this
4 Court is the proper division for filing because Apple’s headquarters are located in Cupertino,
5 California.

6 IV. PARTIES

7 A. The Plaintiffs

8 1. Kim Ahern

9 9. Kim Ahern is a resident of Phoenix, Arizona, and she works as a photographer. She
10 primarily photographs families and babies, including foster children. On June 25, 2015, she
11 purchased her iMac 27” 5K Retina in Chandler, Arizona for approximately \$2,700. She purchased
12 her computer because Apple is a “known commodity”—it offers high quality and reliability. In
13 anticipation of being able to use the computer for the next several years, she purchased a fully
14 upgraded model. She specifically purchased it to use for touching up photos as part of her
15 photography business, and she relied on Apple’s representations that the 5K Retina screen was
16 particularly sharp and vivid. If not for this need for a vivid display, she would have purchased a non-
17 Apple laptop for much cheaper.

18 10. About nine months after her purchase, she began to notice dark smudges on the
19 bottom corners of her screen. She initially thought that the smudges were on the outside of the
20 screen (not inside the computer), so she used a microfiber cloth to try to rub out the smudges. But
21 rubbing a cloth on the screen did not remove the smudges.

22 11. The smudges on her screen began to affect her work, in two respects. First, she spent
23 considerable time trying to remove what she believed were smudges on the photos, which in fact
24 were smudges caused by the Filter Defect. Second, after realizing this, she then assumed that
25 smudges she saw in photographs were caused by the Filter Defect, but in fact the photos had
26 smudges that needed to be removed. On one occasion, she took pictures of a foster baby that had
27 smudges at the bottom, which she did not remove because she thought it was caused by the Filter
28 Defect. The client later asked her about the smudges on the photos that ran along the bottom of the

1 picture. To avoid this problem, she often had to send photos to a PC in order to determine if the
2 smudges were on the photo or caused by the Filter Defect.

3 12. When she discovered the smudges on her screen, Ms. Ahern called Apple Support,
4 who told her to use spray cleaner on the screen. When that did not work, she began to Google the
5 issue, and discovered a host of people who had the same issue and were discussing it on various
6 online forums, including Apple's own website.

7 13. As the smudging problem continued to worsen, she called Apple in September 2018
8 to report the issue. She initially was told by customer service that they had not heard of this
9 problem. As she persisted in describing the problem, however, her call was elevated to a manager.
10 The manager initially told her that he was not aware of the issue, and Ms. Ahern responded that a
11 Google search would reveal several postings about the issue. In a subsequent conversation, he said
12 that he understood the issue and saw that it is a common problem, and would elevate it further to
13 determine whether Apple could replace the computer. He later told her that a return was not
14 authorized.

15 14. Next, Ms. Ahern took the computer to a "Genius Bar" in Chandler, Arizona.⁴ At the
16 Genius Bar, Apple representatives told her that they would have to replace the whole screen, which
17 would cost over \$600 (including taxes). Ms. Ahern told one Apple representative about the Filter
18 Defect, and he responded, "you can't believe everything you read on the internet." Ms. Ahern
19 ultimately decided not to pay to fix the screen (the person who was to perform the fix acknowledged
20 that he has seen this problem before).

21 15. Had Plaintiff been informed about the Filter Defect, which causes the display to
22 develop smudge marks in the bottom corners of the screens, Plaintiff would not have purchased her
23 computer, or would have paid substantially less for it.

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⁴ A "Genius Bar" is part of the Apple store that is reserved for fixing and repairing Apple
28 products.

1 **2. Nikolas Frenzel**

2 16. Plaintiff Nikolas Frenzel is a resident of Castle Rock, Colorado. On April 30, 2018,
3 he purchased his iMac 27” 5K Retina in Denver, Colorado for approximately \$1,900. In early
4 September, 2018, he noticed dark smudge marks in the bottom right- and left-hand corners of his
5 screen. He uses his computer as part of his business, which is a phone repair shop. In order to fix
6 his computer, he took it into a computer repair shop, where he paid approximately \$600 to replace
7 the screen.

8 17. Had Mr. Frenzel been informed about the Filter Defect, which causes the display to
9 develop smudge marks in the bottom corners of the screens, he would not have purchased his
10 computer, or would have paid substantially less for it.

11 **3. Justin Evans**

12 18. Plaintiff Justin Evans is currently a resident of New Berlin, Wisconsin. On
13 approximately March 1, 2011, he purchased his iMac 27” in Albuquerque, New Mexico. Soon
14 thereafter, he began to notice dark smudges in the corner of the screens. In 2013, he brought it in for
15 service under the AppleCare program (which extends customers’ warranty by two years) and had the
16 screen replaced. But the dark smudges reappeared even after replacing the screen, and he had to
17 have his screen replaced two more times—in approximately 2014 and 2015, and on each occasion
18 replacing the screen did not permanently fix the Filter Defect because the smudges would return
19 soon after replacement. He paid approximately \$450-\$650 each for the last two replacements. In
20 2017, Mr. Evans also had to have his motherboard replaced because of the dust that was sucked into
21 the machine by Apple’s fans, causing his computer to slow down and overheat. He paid
22 approximately \$900 to replace his motherboard.

23 19. Had Mr. Evans been informed about the Filter Defect, which causes the display to
24 develop smudge marks in the bottom corners of the screens, and which causes dust to get trapped on
25 the motherboard, causing it to eventually crash and need replacement, he would not have purchased
26 his computer, or would have paid substantially less for it.

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B. The Defendant

20. Apple, the designer, manufacturer, and vendor of the Computers, is a California corporation. It maintains its headquarters and principal place of business in Cupertino, California. Upon information and belief, Apple made all decisions and actions referenced herein at or near its corporate headquarters in Cupertino, California, or elsewhere in the state of California.

21. Apple transacts substantial business throughout California, including the design of the Computers. One of the most prominent developers of the Computers, Jonathan Ive, is featured prominently in YouTube ads for the Computers.⁵ Upon information and belief, Mr. Ive and his colleagues design and develop prototypes of the Computers in California.⁶ In sum, it is believed and alleged that substantially all of the conduct giving rise to the claims brought by Plaintiffs occurred in or emanated from California.

V. FACTUAL ALLEGATIONS

A. Apple’s Computers are defective because they do not filter out dust and residue.

22. The inner workings of a computer made by Apple generate substantial heat, and computer manufacturers generally install fans inside the computer to cool down the components. The thin monitors that Apple adopted are particularly susceptible to overheating, because there is less room in the computer for air to flow. The working components of the iMac computer are housed inside the monitor; there is no stand-alone tower as with most PCs. A typical iMac computer looks like this:

⁵ See, e.g., “Apple – Designed by Apple in California,” available at https://www.youtube.com/watch?v=CEW4D_CERkE.

⁶ See *id.*



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12 23. To keep the air circulating, Apple (and other manufacturers) install vents in the
13 computer to bring in cooler air, and to push the hot air out. But Apple skips a crucial step: it does
14 not install filters in the vents to filter out particulate matter that is in the air, which means that dust
15 and debris accumulates inside the computer.

16 24. This has at least two serious consequences for Apple owners. First, the dust begins to
17 adhere to the back of the screen, which results in dark, smudgy marks in the bottom corners of the
18 screens. Second, the dust accumulates on the “motherboard,” or what Apple calls the logic board.
19 As an online article explained, “[t]he motherboard houses the vital electronic circuits that keep the
20 desktop computer working. It has several fans to keep the temperature cool, because a cool
21 environment is correlated to the computer’s efficiency. It is also here that the computer’s
22 microprocessor, the random access memory (RAM), the video card, the sound card, the LAN card,
23 among other removable parts, are housed.”⁷ This dust can damage the computer: “When dust picks
24 up moisture, the sensitive parts may short-circuit and are damaged in the process. The fan can get
25 clogged with dirt and cause friction at the sides of the housing. If left unattended, the fan will
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28 ⁷ See “Maintaining your Computer’s Motherboard,” July 2, 2018, available at
<https://punchng.com/maintaining-your-computers-motherboard/>.

1 eventually stop and your computer will heat up then suddenly crash when a very high temperature is
2 reached.”⁸

3 25. Upon information and belief, Apple knew that not installing filters on the Computers
4 would have negative consequences for Computer owners, but decided not to install them, either for
5 aesthetic or monetary reasons. On Apple’s own website, Computer owners have been complaining
6 about the dark, smudgy marks on their displays for *years*, which often appeared just after their one-
7 year warranty expired. Below is a sample of comments (copied verbatim, including spelling and
8 grammatical mistakes) on *Apple’s own website* about the problem:

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- 10 • On January 24, 2016, user “Gyurza” complained about some “weird dark spots” on
11 the bottom-left portion of the display. “Gyurza” tried to clean it with a soft cloth, but
12 discovered that the spots were behind the glass. “Gyurza’s” warranty had expired two
13 months prior to discovering the dark spots. When “Gyurza” took his/her computer to
14 Apple Store, he/she was told that the store could not do anything about it. “Gyurza”
15 noted that the fee of \$500 “is a bit too much for me when I spend at least 3200.00 for
16 it less than 14 months ago.”⁹ “Gyurza” posted the following picture on the website to
17 illustrate the smudges in the bottom left-hand portion of the screen (illustration
18 added):
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27 ⁸ *Id.*

28 ⁹ See <https://discussions.apple.com/thread/7435219>.

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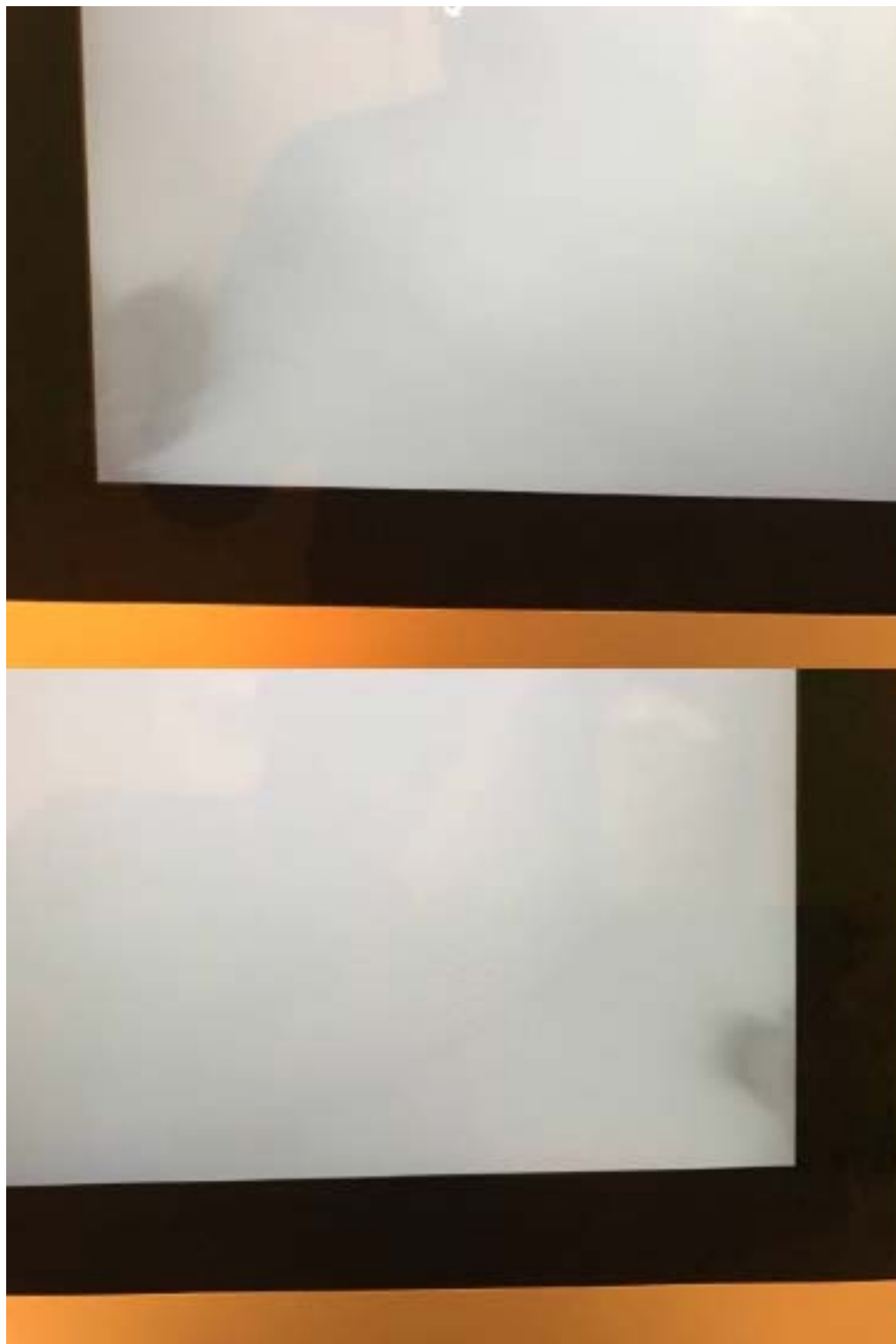
- On March 7, 2016, “OrangeOlive,” after noting the same problem, stated that he/she “went to the local Apple store and they said it is a defective housing and that screen needs to be replaced. Most likely it is dust/smoke that is getting in through the fan and then seeping out a small space and getting caught behind the glass.” *Id.*
- On June 19, 2016, “Debi.Mishra” responded and said “I have same issue in my 15 inch Mac Book Pro. I am out of warranty now[.]” *Id.*
- On November 12, 2016, “xlan_7” responded with the same problem, and noted “[t]his is pretty bad. my IMac is less than 13 months old.” *Id.* He/she then posted the following pictures:

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- On November 16, 2016, “maceatw” responded by stating “I have the exact same issue,” and included the following pictures (*id.*):

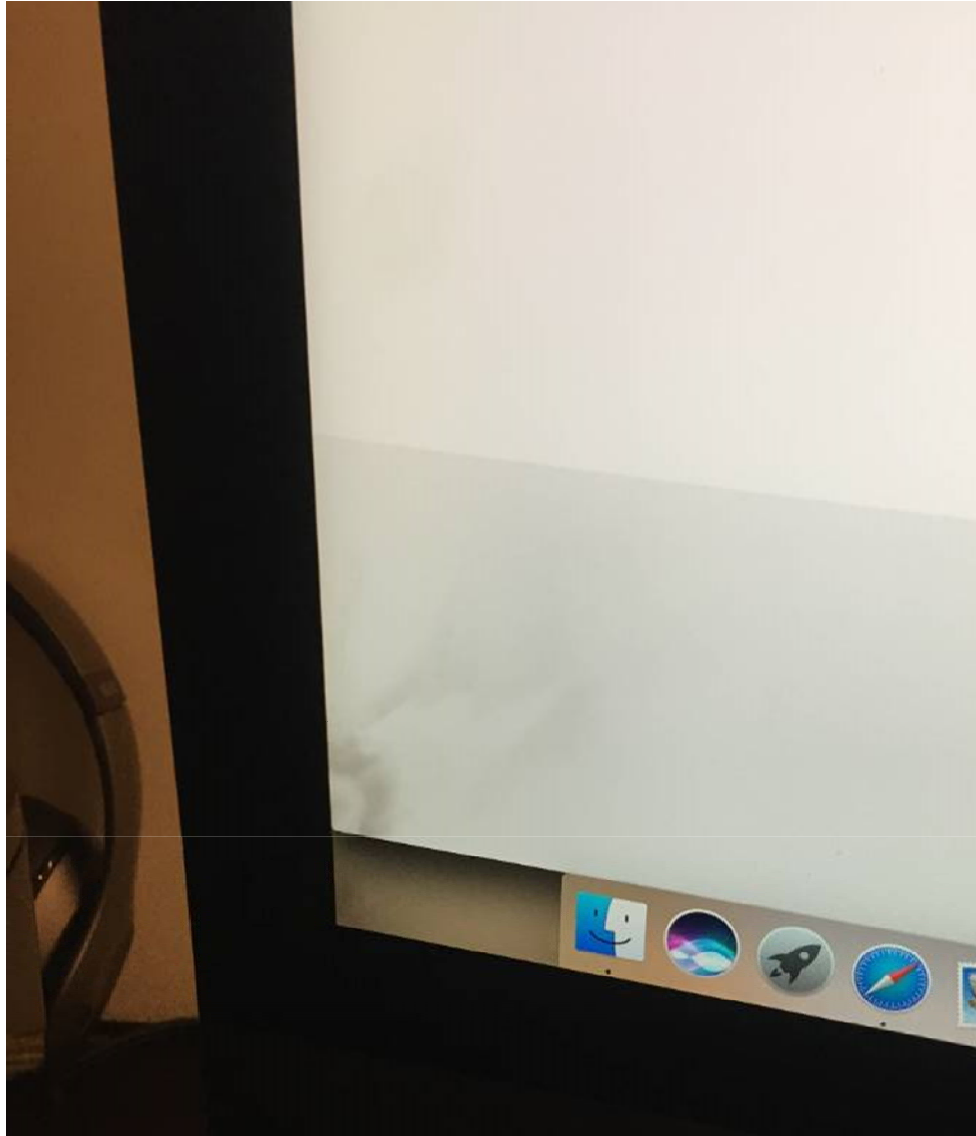
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- On February 4, 2017, “Urvakanner” responded “I have an iMac (Retina 5K, 27-inch, Late 2014) and have the same problem,” with the following picture:¹⁰

¹⁰ See <https://discussions.apple.com/thread/7435219>. Photo has been cropped and rotated.

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- On October 23, 2017, “rhnarora84” responded and said “Same issue here. I have an iMac 5K 27 inch late 2015 model. After 13 months of my purchase, I observed grey smudges at bottom right corners of my screen, and they are visible if I open a light colored window. It’s a bad luck as this machine is not in warranty anymore. Apple should consider this issue seriously as this should not happen with a machine which is many times costlier as compared to other brands’s desktops in the market. A consumer buys an Apple product because of the trust on its quality, not just because of its brand name.” *Id.*

- 1 • On December 29, 2017, “Jeepgirltx” responded with the following post: “GOOD
2 LUCK!! its happened to 3 of my imacs - including the late 2013 with “ new “
3 housing. Apple does NOTHING to fix this- mine seems to show up weeks after
4 Applecare expires- I paid 2300.00 for a POS and they want 600.00 to replace the lcd (
5 the only solution) but its not a permanent one- same issues occurs after a few
6 months. COMPLETE DISGUST with Apple.” *Id.*
- 7 • On February 18, 2018, “SkyeCruise” stated: “The defect seems to be apparent in all
8 slim models since 2014. In the models before that, the screen could be easily removed
9 and cleaned on the inside.”¹¹
- 10 • On May 30, 2017, on another thread, “Garrick” stated as follows: “I had the same
11 issue as this thread with the smudges/dust under the 5k ‘sealed’ glass. It was out of
12 warranty, so the cost (SoCal) was \$628.77 (\$510.23 for the screen, \$79 labor, + tax)
13 for a replacement screen direct from Apple store. *The techs at Apple store here said*
14 *they had seen the a few times before but guessed that most people didn't want to lug*
15 *in the iMac or spend the \$ to get it fixed.*”¹²
- 16 • On January 2, 2018, “Garrick” again posted that, “[a]fter just 6 months after the last
17 Apple repair, the iMac 5k Retina has had smudges under the screen again. . . .
18 Naturally, this is just past the 90 day warranty that apple provided on the \$630 repair
19 last time. In other words, if I want to fix it again and Apple want¹³ extend the courtesy
20 on the repair, I’m looking at \$1200 to fix the screen twice within a year.”¹⁴
- 21 • On March 10, 2017, “Alex Shum” stated the following: “Yes, the issue is still here,
22 nice and dusty, on my Retina iMac 2014 (first generation of Retina iMac). It worked
23 fine for 2 years (not to mention very blurry facetime camera), and now I am noticing
24 really nasty dust marks in both lower corners of the screen. I must add that *I’ve*

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26 ¹¹ See <https://discussions.apple.com/thread/7435219?page=2>.

27 ¹² See <https://discussions.apple.com/thread/6859047?page=2> (emphasis added).

28 ¹³ Probably “won’t.”

¹⁴ See <https://discussions.apple.com/thread/8222105>.

1 *observed this dust issue on all iMacs that I owned, and it has been not less than 4*
2 *generations*. One would think the issue should be gone when they adopted totally un-
3 repairable glued-sealed screen assembly, but the dust manages to get inside just as
4 well. Why is it not possible for Apple to seal the screen so that is it 100% air-tight, is
5 beyond me. Total shame.”¹⁵

6 26. This running discussion of the Filter Defect on Apple’s own website was undoubtedly
7 noted and tracked by Apple, because Apple closely monitors the submissions. In its “Apple Support
8 Communities Use Agreement” (which governs the “discussions.apple” website), Apple states that
9 “Apple retains the right, but not the responsibility, to edit or remove any Submission,” and that
10 Apple “will have no liability whatsoever for editing, removing, or continuing to permit the display of
11 any Submission whatsoever.”¹⁶ Under the header “Apple involvement,” it states “Apple may
12 respond to questions but does not formally provide technical support on the Site.”¹⁷ The website also
13 states that, if “you provide any ideas, suggestions, or recommendations on this site regarding Apple’s
14 products, technologies or services (“Feedback”), Apple may use such Feedback and incorporate it in
15 Apple products, technologies, and services without paying royalties and without any other
16 obligations or restrictions.”¹⁸ It also states, “Post constructive comments and questions. Unless
17 otherwise noted, your Submission should either be a technical support question or a technical support
18 answer. Constructive feedback about product features is welcome as well. If your Submission
19 contains the phrase ‘Im [sic] sorry for the rant, but...’ you are likely in violation of this policy.”¹⁹ It
20 also contains a standard warning against posting any offensive or illegal conduct, and states that
21 violators will be removed.²⁰

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24 ¹⁵ See <https://discussions.apple.com/thread/7307044> (emphasis added).

25 ¹⁶ See <https://discussions.apple.com/docs/DOC-5952>.

26 ¹⁷ See *id.*

27 ¹⁸ *Id.*

28 ¹⁹ *Id.*

²⁰ *Id.*

1 27. Although Apple routinely charges customers \$600 or more to replace their screens (as
2 reflected in the comments above), in truth a temporary fix is very simple and could be performed at a
3 substantially reduced cost for many of the Computers. iMac screens are held in place by small,
4 powerful magnets.²¹ Apple could simply use suction cups to remove the glass panel on many of
5 them, and use a vacuum or a cloth to clean the screen.²² Instead, Apple tells customers that they
6 must replace the entire screen, at a cost exceeding \$600, apparently in order to increase Apple's
7 profits at the expense of the customer.

8 **B. Apple promotes its Computers based on their reliability, durability, and longevity**
9 **because Apple knows these qualities are material to a reasonable consumer.**

10 28. As some of the commentators quoted above noted, Apple is known worldwide for the
11 quality of its products. And Apple promotes and advertises its products on this basis. As its website
12 currently states: "iMac has always been the ultimate in form and function: An all-in-one computer
13 that puts everything — display, processor, graphics, storage, memory, and more — inside one
14 simple, stylish enclosure. The new iMac includes the most advanced, most brilliant desktop display
15 we've ever built, and it's filled with all-new technologies that take power and performance to a
16 whole new level."²³ It also states that "On a Mac, everything is designed to work just the way you
17 expect it to — from operating it with simple, intuitive gestures to asking Siri to find a file to having
18 your apps automatically update themselves. Whatever you set out to do on a Mac, there's much less
19 to learn and that much more to accomplish."²⁴

20 29. Apple also promotes its products based on their longevity. On its website, Apple
21 proclaims that a "durable device is a greener device. When products can be used longer, fewer
22 resources need to be extracted from the earth to make new ones. So we assess all our products in our
23 Reliability Testing Lab, using rigorous testing methods that simulated customers' experiences with
24 their devices. . . . All new materials, including recycled materials, are tested extensively to make sure

25 ²¹ See Apple iMac Glass Removal: Cleaning Behind the Glass, *available at*
26 https://www.youtube.com/watch?v=CEW4D_CERkE.

27 ²² See *id.*

28 ²³ See <https://www.apple.com/imac/>.

²⁴ See <https://www.apple.com/imac/macOS/>.

1 they meet our performance and durability standards.”²⁵ Apple also asserts that it “designs for
2 durability, so our products are better for the customer and for the environment.”²⁶

3 30. Jonathan Ive, Apple’s Chief Design Officer, has a YouTube commercial in which he
4 states, “the new MacBook Pro contains the fundamental qualities of an ultraportable device with
5 uncompromising performance. . . . The new MacBook Pro achieves a design that optimizes both
6 performance and portability. It marks a milestone in the evolution of the Mac.”²⁷

7 **C. Apple failed to satisfy its warranty obligations.**

8 31. In addition to misrepresenting the quality and durability of the Computers, and
9 omitting critical facts about the Filter Defect, Apple failed to satisfy its warranty obligations.

10 32. Plaintiffs purchased Computers that were covered by an express limited warranty, and
11 Apple repaired the Computers pursuant to Apple’s “Repair Terms and Conditions.”²⁸ The
12 Computers are covered by a one-year limited warranty,²⁹ and Computer owners have the option to
13 purchase two additional years of warranty through the “AppleCare+” program.³⁰ Although the
14 warranty has changed slightly several times over the years, the warranty’s material terms relevant to
15 this action are uniform and therefore subject to uniform standards, principles, and applications for
16 purchasers throughout the United States.

17 33. The warranty covers defects in “materials and workmanship” and provides that Apple
18 will, at its option, either (1) repair the product, (2) replace the product with the same model, or (3)
19 exchange the product for a refund of the purchase price.³¹ The warranty on replacement parts is the
20 remainder of the original warranty period or 90 days, whichever is greater. *See id.*

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22 ²⁵ See <https://www.apple.com/environment/resources/>.

23 ²⁶ See <https://www.apple.com/environment/>.

24 ²⁷ See “The New MacBook Pro – Design, Performance and Features – Apple (published on Oct.
25 27, 2016), available at <https://www.youtube.com/watch?v=WVPRkcczXCY>.

26 ²⁸ See Apple Repair Terms and Conditions, available at [https://www.apple.com/legal/sales-
27 support/terms/repair/](https://www.apple.com/legal/sales-support/terms/repair/).

28 ²⁹ See Apple One (1) Year Limited Warranty (“Warranty”), available at
<https://www.apple.com/legal/warranty/products/embedded-mac-warranty-us.html>.

³⁰ See <https://www.apple.com/support/products/mac.html>.

³¹ See Warranty.

1 42. Numerosity. The members of the proposed Class are so numerous and geographically
2 dispersed that individual joinder of all proposed class members is impracticable. *See* Fed. R. Civ. P.
3 23(a)(1). While Plaintiff believes that there are millions of members of the proposed class, the
4 precise number of Class members is unknown to them, but may be ascertained from Apple's books
5 and records. Class members may be notified of the pendency of this action by recognized, court-
6 approved notice dissemination methods, which may include U.S. mail, e-mail, internet postings,
7 and/or published notice.
8

9 43. Commonality and Predominance. This action involves common questions of law and
10 fact, which predominate over any questions affecting individual Class members. *See* Fed. R. Civ. P.
11 23(a)(2) and (b)(3). These include, without limitation:

- 12 • Whether Apple engaged in the conduct alleged in this complaint;
- 13 • Whether Apple designed, advertised, marketed, distributed, sold, or otherwise placed
14 Apple Computers into the stream of commerce in the United States;
- 15 • Whether Apple advised owners of Apple Computers (including Plaintiffs and putative
16 Class members) about the Filter Defect when it sold the Computers;
- 17 • Whether the Filter Defect is a product design defect;
- 18 • When Apple learned about the Filter Defect, and what it did in response;
- 19 • Whether the Filter Defect causes smudges on the Computers' screens;
- 20 • Whether the Filter Defect causes the motherboard to overheat, slow down, and
21 eventually crash;
- 22 • Whether Apple marketed the Computers' display as clear and the best in the industry;
- 23 • Whether Apple promoted the Computers based on their longevity and reliability;
- 24 • Whether Apple's conduct, including, but not limited to, its alleged deceptive conduct,
25 violates California's consumer protection laws or other laws as asserted herein;
- 26 • Whether Plaintiffs and members of the proposed Class are entitled to damages, as
27 well as punitive, exemplary, or multiple damages, due to Apple's conduct as alleged
28 in this complaint, and if so, in what amounts; and

- Whether Plaintiffs and other putative Class members are entitled to equitable relief, including, but not limited to, restitution or injunctive relief as requested in this complaint.

44. Typicality. Plaintiffs' claims are typical of the putative class members' claims because, among other things, all such Class members were comparably injured through Apple's wrongful conduct as described above. *See* Fed. R. Civ. P. 23(a)(3).

45. Adequacy. Plaintiffs are adequate proposed class representatives because their interests do not conflict with the interests of the other members of the proposed Class they seek to represent; because they have retained counsel competent and experienced in complex class action litigation; and because they intend to prosecute this action vigorously. The interests of the proposed class will be fairly and adequately protected by Plaintiffs and their counsel. *See* Fed. R. Civ. P. 23(a)(4).

46. Declaratory and Injunctive Relief. Apple has acted or refused to act on grounds generally applicable to Plaintiffs and the other members of the proposed Class, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to the proposed Class as a whole. *See* Fed. R. Civ. P. 23(b)(2).

47. Superiority. A class is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiffs and putative Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Apple, so it would be impracticable for members of the proposed Classes to individually seek redress for Apple's wrongful conduct. Even if Class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and it increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court. *See* Fed. R. Civ. P. 23(b)(3).

VII. VIOLATIONS ALLEGED

COUNT I

**VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW
(CAL. BUS. & PROF. CODE § 17200, *ET SEQ.*)**

48. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

49. California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200, *et seq.*, proscribes acts of unfair competition, including “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising.”

50. Apple’s conduct, as described herein, was and is in violation of the UCL. Apple’s conduct violates the UCL in at least the following ways:

- i. By failing to disclose that the Computers have the Filter Defect;
- ii. By failing to disclose that the Filter Defect causes dark smudges on the Computers’ screens;
- iii. By failing to disclose that, over time, the Filter Defect causes the Computers’ motherboards to crash or malfunction;
- iv. By failing to disclose, in charging customers \$600 to replace the screen, that there is a temporary fix that is simple and inexpensive;
- v. By marketing the Computers as reliable, durable, and dependable; and
- vi. By marketing the Retina screens as vividly bright, sharp, and offering the best screens in the industry.

51. Apple intentionally and knowingly misrepresented material facts regarding the Computers with an intent to mislead Plaintiffs and the Class.

52. In purchasing the Computers, Plaintiffs and the other Class members were deceived by Apple’s failure to disclose that the Computers have the Filter Defect; that the Filter Defect causes dark smudges to appear on the Computers’ screens; that the Filter Defect causes the Computers’ motherboards to crash or malfunction; and that, in charging customers \$600 to replace the screen, there is a temporary fix for the smudges that is simple and inexpensive.

1 53. Plaintiffs and Class members reasonably relied upon Apple's false misrepresentations.
2 They had no way of knowing that Apple's representations were false and gravely misleading. As
3 alleged herein, Apple engaged in extremely sophisticated methods of deception. Plaintiffs and Class
4 members did not, and could not, unravel Apple's deception on their own.

5 54. Apple knew or should have known that its conduct violated the UCL.

6 55. Apple owed Plaintiffs and the Class a duty to disclose the truth about the Filter Defect
7 because Apple:

8 a. Possessed exclusive knowledge regarding the Filter Defect, and intentionally
9 concealed the foregoing from Plaintiffs and the Class;

10 b. Possessed exclusive knowledge that the Filter Defect causes dark smudges to
11 appear on customers' Computer screens, and intentionally concealed the foregoing from
12 Plaintiffs and the Class;

13 c. Possessed exclusive knowledge that the Filter Defect causes the Computers'
14 motherboards to slow down and crash over time, and intentionally concealed the foregoing
15 from Plaintiffs and the Class; and

16 d. Made incomplete representations regarding the Computers' performance and
17 longevity, while purposefully withholding material facts from Plaintiffs and the Class that
18 contradicted these representations.

19 56. Apple had a duty to disclose that the Computers have the Filter Defect; that the Filter
20 Defect causes dark smudges to appear on the Computers' screens; that the Filter Defect causes the
21 Computers' motherboards to crash or malfunction; and that, in charging customers \$600 to replace
22 the screen, there is a temporary fix for the smudges that is simple and inexpensive, because Plaintiffs
23 and the other Class members relied on Apple's material representations that the Computers they were
24 purchasing were high quality, efficient, durable, and free from defects.

25 57. Apple's conduct proximately caused injuries to Plaintiffs and the other Class
26 members.

27 58. Plaintiffs and the other Class members were injured and suffered ascertainable loss,
28 injury-in-fact, and/or actual damage as a proximate result of Apple's conduct in that Plaintiffs and

1 the other Class members overpaid for their Computers and did not receive the benefit of their
2 bargain, and their Computers have suffered a diminution in value. They also were required to pay
3 more for repairs than they reasonably anticipated based on Apple’s material representations. These
4 injuries are the direct and natural consequence of Apple’s misrepresentations and omissions.

5 59. Apple’s violations present a continuing risk to Plaintiffs as well as to the general
6 public. Apple’s unlawful acts and practices complained of herein affect the public interest.

7 60. Apple’s misrepresentations and omissions alleged herein caused Plaintiffs and the
8 other Class members to make their purchases of their Computers. Absent those misrepresentations
9 and omissions, Plaintiffs and the other Class members would not have purchased the Computers,
10 would not have purchased these Computers at the prices they paid, and/or would have purchased less
11 expensive alternative computers that did not contain the Filter Defect.

12 61. Accordingly, Plaintiffs and the other Class members have suffered injury-in-fact,
13 including lost money or property, as a result of Apple’s misrepresentations and omissions.

14 62. Plaintiffs request that this Court enter such orders or judgments as may be necessary
15 to restore to Plaintiffs and members of the Class any money Apple acquired by unfair competition,
16 including restitution and/or restitutionary disgorgement, as provided in Cal. Bus. & Prof. Code
17 § 17203 and Cal. Civ. Code § 3345, and for such other relief as may be appropriate.

18 **COUNT II**

19 **VIOLATIONS OF THE CALIFORNIA CONSUMER**
20 **LEGAL REMEDIES ACT**
(CAL. CIV. CODE § 1750, ET SEQ.)

21 63. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

22 64. California’s Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750, *et*
23 *seq.*, proscribes “unfair methods of competition and unfair or deceptive acts or practices undertaken
24 by any person in a transaction intended to result or which results in the sale or lease of goods or
25 services to any consumer.”

26 65. The Computers are “goods” as defined in Cal. Civ. Code § 1761(a).

27
28

1 66. Plaintiffs and the other Class members are “consumers” as defined in Cal. Civ. Code
2 § 1761(d), and Plaintiffs and the other Class members, and Apple, are “persons” as defined in Cal.
3 Civ. Code § 1761(c).

4 67. As alleged above, Apple made representations concerning the efficiency,
5 performance, durability, and longevity of the Computers that were misleading.

6 68. In purchasing the Computers, Plaintiffs and the other Class members were deceived
7 by Apple’s failure to disclose that the Computers have the Filter Defect; that the Filter Defect causes
8 dark smudges to appear on the Computers’ screens; that the Filter Defect causes the Computers’
9 motherboards to crash or malfunction; and that, in charging customers \$600 to replace the screen,
10 there is a temporary fix for the smudges that is simple and inexpensive.

11 69. Apple’s conduct, as described herein, was and is in violation of the CLRA. Apple’s
12 conduct violates at least the following enumerated CLRA provisions:

- 13 i. Cal. Civ. Code § 1770(a)(2): Misrepresenting the approval or certification of
14 goods.
- 15 ii. Cal. Civ. Code § 1770(a)(3): Misrepresenting the certification by another.
- 16 iii. Cal. Civ. Code § 1770(a)(5): Representing that goods have sponsorship,
17 approval, characteristics, uses, benefits, or quantities which they do not have.
- 18 iv. Cal. Civ. Code § 1770(a)(7): Representing that goods are of a particular
19 standard, quality, or grade, if they are of another.
- 20 v. Cal. Civ. Code § 1770(a)(9): Advertising goods with intent not to sell them as
21 advertised.
- 22 vi. Cal. Civ. Code § 1770(a)(16): Representing that goods have been supplied in
23 accordance with a previous representation when they have not.

24 70. Apple intentionally and knowingly misrepresented material facts regarding the
25 Computers with an intent to mislead Plaintiffs and the Class.

26 71. Plaintiffs and Class members reasonably relied upon Apple’s false misrepresentations
27 and/or omissions. They had no way of knowing that Apple’s representations were false and gravely
28

1 misleading. As alleged herein, Apple engaged in extremely sophisticated methods of deception.
2 Plaintiffs and Class members did not, and could not, unravel Apple's deception on their own.

3 72. Apple knew or should have known that their conduct violated the CLRA.

4 73. Apple owed Plaintiffs and the Class a duty to disclose the truth about the Computers'
5 Filter Defect and the resulting deficiencies in the Computers' performance because Apple:

6 a. Possessed exclusive knowledge regarding the Filter Defect, and intentionally
7 concealed the foregoing from Plaintiffs and the Class;

8 b. Possessed exclusive knowledge that the Filter Defect causes dark smudges to
9 appear on customers' computer screens, and intentionally concealed the foregoing from
10 Plaintiffs and the Class;

11 c. Possessed exclusive knowledge that the Filter Defect causes the Computers'
12 motherboards to slow down and crash over time, and intentionally concealed the foregoing
13 from Plaintiffs and the Class; and

14 d. Made incomplete representations regarding the Computers' performance and
15 longevity, while purposefully withholding material facts from Plaintiffs and the Class that
16 contradicted these representations.

17 74. Apple had a duty to disclose that the Computers have the Filter Defect; that the Filter
18 Defect causes dark smudges to appear on the Computers' screens; that the Filter Defect causes the
19 Computers' motherboards to crash or malfunction; and that, in charging customers \$600 to replace
20 the screen, there is a temporary fix for the smudges that is simple and inexpensive, because Plaintiffs
21 and the other Class members relied on Apple's material representations that the Computers they were
22 purchasing were high quality, efficient, durable, and free from defects.

23 75. Apple's conduct proximately caused injuries to Plaintiffs and the other Class
24 members.

25 76. Plaintiffs and the other Class members were injured and suffered ascertainable loss,
26 injury-in-fact, and/or actual damage as a proximate result of Apple's conduct in that Plaintiffs and
27 the other Class members overpaid for their Computers and did not receive the benefit of their
28 bargain, and their Computers have suffered a diminution in value. They also were required to pay

1 more for repair costs than they reasonably anticipated based on Apple's material representations.
2 These injuries are the direct and natural consequence of Apple's misrepresentations and omissions.

3 77. Apple's violations present a continuing risk to Plaintiffs as well as to the general
4 public. Apple's unlawful acts and practices complained of herein affect the public interest.

5 78. Apple knew, should have known, or was reckless in not knowing of the defective
6 design and/or manufacture of the Computers, and that the Computers were not suitable for their
7 intended use.

8 79. The facts concealed and omitted by Apple from Plaintiffs and the other Class
9 members are material in that a reasonable consumer would have considered them to be important in
10 deciding whether to purchase the Computers or pay a lower price. Had Plaintiffs and Class members
11 been aware of the Filter Defect with regard to the Computers, and Apple's disregard for the truth,
12 Plaintiffs and Class members who purchased the Computers would have paid less for their
13 Computers or would not have purchased them at all.

14 80. Plaintiffs' and the other Class members' injuries were proximately caused by Apple's
15 unlawful and deceptive business practices.

16 81. In accordance with Cal. Civ. Code § 1780(a), Plaintiffs and the California Class seek
17 injunctive relief for Apple's violations of the CLRA.

18 82. Pursuant to Cal. Civ. Code § 1780(a), Plaintiffs and the California Class seek an order
19 enjoining Apple's unfair and/or deceptive acts or practices, and awarding damages, punitive
20 damages, and any other just and proper relief available under the CLRA. Under Cal Civ. Code §
21 1780(b), Plaintiffs seek an additional award against Apple of up to \$5,000 for each California Class
22 member who qualifies as a "senior citizen" or a "disabled person" under the CLRA. Apple knew or
23 should have known that its conduct was directed to one or more California Class members who are
24 senior citizens or disabled persons. Apple's conduct caused one or more of these senior citizens or
25 disabled persons to suffer a substantial loss of property set aside for retirement or for personal or
26 family care and maintenance, or assets essential to the health or welfare of the senior citizen or
27 disabled person. One or more California Class members who are senior citizens or disabled persons
28 are substantially more vulnerable to Apple's conduct because of age, poor health or infirmity,

1 impaired understanding, restricted mobility, or disability, and each of them suffered substantial
2 physical, emotional, or economic damage resulting from Apple's conduct.

3 83. Plaintiffs provided Apple with notice of its violations of the CLRA on or about
4 November 20, 2018. If Apple fails to remedy its unlawful conduct within the requisite time period,
5 Plaintiffs will seek all damages and relief to which Plaintiffs and the California Class are entitled.

6 **COUNT III**

7 **VIOLATIONS OF THE CALIFORNIA FALSE ADVERTISING LAW**
8 **(CAL. BUS. & PROF. CODE § 17500, ET SEQ.)**

9 84. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

10 85. This claim is brought on behalf of the California Class.

11 86. Cal. Bus. & Prof. Code § 17500 states: "It is unlawful for any ... corporation ... with
12 intent directly or indirectly to dispose of real or personal property ... to induce the public to enter
13 into any obligation relating thereto, to make or disseminate or cause to be made or disseminated ...
14 from this state before the public in any state, in any newspaper or other publication, or any
15 advertising device, ... or in any other manner or means whatever, including over the Internet, any
16 statement ... which is untrue or misleading, and which is known, or which by the exercise of
17 reasonable care should be known, to be untrue or misleading."

18 87. Apple caused to be made or disseminated through California and the United States,
19 through advertising, marketing, and other publications, statements that were untrue or misleading,
20 and which were known, or which by the exercise of reasonable care should have been known to
21 Apple, to be untrue and misleading to consumers, including Plaintiffs and the other Class members.

22 88. Apple violated § 17500 because the misrepresentations and omissions regarding the
23 functionality, reliability, performance, and longevity of the Computers as set forth in this Complaint
24 were material and likely to deceive a reasonable consumer.

25 89. Plaintiffs and the other Class members have suffered an injury-in-fact, including the
26 loss of money or property, as a result of Apple's unfair, unlawful, and/or deceptive practices. In
27 purchasing their Computers, Plaintiffs and the other Class members relied on the misrepresentations
28 and/or omissions of Apple with respect to the functionality, reliability, performance, and longevity of

1 the Computers. The Computers purchased by Plaintiffs and the other Class members were, in fact,
2 defective. Had Plaintiffs and the other Class members known this, they would not have purchased
3 their Computers and/or paid as much for them. Accordingly, Plaintiffs and the other Class members
4 overpaid for their Computers and did not receive the benefit of their bargain.

5 90. All of the wrongful conduct alleged herein occurred, and continues to occur, in the
6 conduct of Apple's business. Apple's wrongful conduct is part of a pattern or generalized course of
7 conduct that is still perpetuated and repeated, both in the State of California and nationwide.

8 91. Plaintiffs, individually and on behalf of the other Class members, request that this
9 Court enter such orders or judgments as may be necessary to restore to Plaintiffs and the other Class
10 members any money Apple acquired by unfair competition, including restitution and/or restitutionary
11 disgorgement, and for such other relief as may be appropriate.

12 **COUNT IV**

13 **BREACH OF CONTRACT** 14 **(BASED ON CALIFORNIA LAW)**

15 92. Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

16 93. Apple's misrepresentations and omissions alleged herein, including, but not limited
17 to, the failure to disclose that the Computers have the Filter Defect; the failure to disclose that the
18 Filter Defect causes dark smudges on the Computers' screens; the failure to disclose that, over time,
19 the Filter Defect causes the Computers' motherboards to crash or malfunction; the failure to disclose,
20 in charging customers \$600 to replace the screen, that there is a temporary fix that is simple and
21 inexpensive; by marketing the Computers as reliable, durable, and dependable; and by marketing the
22 Retina screens as vividly bright, sharp, and offering the best screens in the industry, caused Plaintiffs
23 and the other Class members to make their purchases of their Computers. Absent those
24 misrepresentations and omissions, Plaintiffs and the other Class members would not have purchased
25 these Computers, would not have purchased these Computers at the prices they paid, and/or would
26 have purchased less expensive alternative Computers that did not contain the Filter Defect.
27 Accordingly, Plaintiffs and the other Class members overpaid for their Computers and did not
28 receive the benefit of their bargain.

1 a. Possessed exclusive knowledge regarding the Filter Defect, and intentionally
2 concealed the foregoing from Plaintiffs and the Class;

3 b. Possessed exclusive knowledge that the Filter Defect causes dark smudges to
4 appear on customers' Computer screens, and intentionally concealed the foregoing from
5 Plaintiffs and the Class;

6 c. Possessed exclusive knowledge that the Filter Defect causes the Computers'
7 motherboards to slow down and crash over time, and intentionally concealed the foregoing
8 from Plaintiffs and the Class; and

9 d. Made incomplete representations regarding the Computers' performance and
10 longevity, while purposefully withholding material facts from Plaintiffs and the Class that
11 contradicted these representations.

12 101. Apple had a duty to disclose that the Computers have the Filter Defect; that the Filter
13 Defect causes dark smudges to appear on the Computers' screens; that the Filter Defect causes the
14 Computers' motherboards to crash or malfunction; and that, in charging customers \$600 to replace
15 the screen, there is a temporary fix for the smudges that is simple and inexpensive, because Plaintiffs
16 and the other Class members relied on Apple's material representations that the Computers they were
17 purchasing were high quality, efficient, durable, and free from defects.

18 102. Plaintiffs and Class members were unaware of the omitted material facts referenced
19 herein, and they would not have acted as they did if they had known of the concealed and/or
20 suppressed facts, in that they would not have purchased the Computers. Apple were in exclusive
21 control of the material facts, and such facts were not generally known to the public, Plaintiffs, or
22 Class members.

23 103. Because of the concealment and/or suppression of the facts, Plaintiffs and Class
24 members have sustained damage because they own Computers that are diminished in value as a
25 result of Apple's concealment of the Filter Defect and the resulting deficiencies in the Computers.
26 Had Plaintiffs and Class members been aware of the true facts with regard to the Computers, and
27 Apple's disregard for the truth, Plaintiffs and Class members who purchased the Computers would
28 have paid less for their Computers or would not have purchased them at all.

1 113. Apple breached these warranties, as described in more detail above. Without
2 limitation, the Computers contain a common design Filter Defect in that the Computers fail to
3 operate as represented by Apple.

4 114. Plaintiffs and the other Class members have had sufficient direct dealings with either
5 Apple or its agents (*e.g.*, sales representatives and technical support) to establish privity of contract
6 between Apple on one hand, and Plaintiffs and each of the other Class members on the other hand.

7 115. Affording Apple a reasonable opportunity to cure its breach of written warranties
8 would be unnecessary and futile here.

9 116. At the time of sale of each Computer, Apple knew, should have known, or was
10 reckless in not knowing of its misrepresentations and omissions concerning the Computers' inability
11 to perform as warranted, but nonetheless failed to rectify the situation and/or disclose the defective
12 design. Under the circumstances, the remedies available under any informal settlement procedure
13 would be inadequate and any requirement that Plaintiffs resort to an informal dispute resolution
14 procedure and/or afford Apple a reasonable opportunity to cure its breach of warranties is excused
15 and thereby deemed satisfied.

16 117. Plaintiffs and the other Class members would suffer economic hardship if they
17 returned their Computers but did not receive the return of all payments made by them. Because
18 Apple is refusing to acknowledge any revocation of acceptance and return immediately any
19 payments made, Plaintiffs and the other Class members have not re-accepted their Computers by
20 retaining them.

21 118. The amount in controversy of Plaintiffs' individual claims meets or exceeds the sum
22 of \$25. The amount in controversy of this action exceeds the sum of \$50,000, exclusive of interest
23 and costs, computed on the basis of all claims to be determined in this lawsuit.

24 119. Plaintiffs, individually and on behalf of the other Class members, seek all damages
25 permitted by law, including diminution in value of the Computers, in an amount to be proven at trial.

26 **PRAYER FOR RELIEF**

27 Plaintiffs and Class members accordingly pray for relief as set forth below:

28 A. Restitution and/or actual, incidental and consequential damages, and such other relief

1 as provided by the statutes cited herein.

2 B. Pre-judgment and post-judgment interest.

3 C. Equitable relief in the form of restitution and/or disgorgement of all of Defendant's
4 ill-gotten gains.

5 D. Attorney's fees and costs.

6 E. An injunction against Apple, its affiliates, successors, transferees, assignees, and
7 other officers, directors, partners, agents and employees thereof, and all other persons acting or
8 claiming to act on their behalf or in concert with them, from in any manner continuing its unfair,
9 unlawful, and deceptive practices and false advertising.

10 F. Injunctive relief under the California CLRA as appropriate.

11 G. All other relief to which Plaintiffs and Class members may be entitled at law or in
12 Equity.

13 **JURY DEMAND**

14 120. Pursuant to Federal Rule of Civil Procedure 38(c), Plaintiffs demand a trial by jury on
15 all matters so triable.

16 DATED: November 28, 2018

Respectfully submitted,

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