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

NESTOR ALMEIDA, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

APPLE, INC.,

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Nestor Almeida (“Plaintiff”) brings this action on behalf of himself and all others
2 similarly situated against Defendant Apple, Inc. (“Apple” or “Defendant”) for the manufacture,
3 marketing, detailing, distribution, and sale of the Apple M1 MacBook Air and M1 MacBook Pro
4 (“M1 MacBook”). Plaintiff makes the following allegations pursuant to the investigation of his
5 counsel and based upon information and belief, except as to the allegations specifically pertaining
6 to himself, which are based on personal knowledge.

7 **NATURE OF ACTION**

8 1. This action is brought on behalf of purchasers of Apple’s M1 MacBook, including
9 model years 2020 and 2021. Apple markets and sells the M1 MacBook as a top-of-the-line
10 computer, debuting on November 10, 2020 with a hefty price tag of \$999 for the M1 MacBook Air
11 and \$1,299 for the M1 MacBook Pro. But the M1 MacBook is defective, as the screens are
12 extraordinarily fragile, cracking, blacking out, or showing magenta, purple and blue lines and
13 squares, or otherwise ceasing to function altogether (the “Defect”). Thousands of users from
14 across the globe have reported this issue directly to Apple and on Apple sponsored forums.
15 Nonetheless, consumers who have attempted to secure replacements or repairs have been rebuffed
16 by Apple, often forced to pay out of pocket upwards of between \$600 and \$850 for repairs
17 themselves or to secure replacements without Apple’s assistance. Others who have secured repairs
18 or replacements from Apple have quickly experienced the problem reappearing on the repaired or
19 replaced laptop.

20 2. Despite its knowledge of this issue from its own internal testing and user
21 complaints, Apple did not publicly recognize the issue until August 27, 2021. At that time, Apple
22 informed consumers that “[t]o enable the thin design of Mac notebook computers, the clearance
23 between the display (screen) and the top case is engineered to tight tolerances.” Inadvertently
24 admitting the existence of the Defect, Apple proceeded to caution its users, suggesting that “[i]f
25 you use a camera cover, palm rest cover, or keyboard cover with your Mac notebook, remove the
26 cover before closing your display. Leaving any materials on your display, keyboard, or palm rest
27 might interfere with the display when it’s closed and cause damage to your display.” But as the
28 comments reported below demonstrate, the Defect manifests independently of these considerations.

1 In fact, many users, including Plaintiff, does not use any of the covers Apple mentions. Instead,
2 the issues develop on their own without user interference.

3 3. Accordingly, Plaintiff brings his claims against Defendants individually and on
4 behalf of a class of all others similarly situated for (1) Fraudulent Concealment; (2) Violation of the
5 New Jersey Consumer Fraud Act, N.J. Stat. Ann. § 56:801, *et seq.*; (3) Breach of Express
6 Warranty, N.J. Stat. Ann. § 12A:2-313; (4) Breach of the Implied Warranty of Merchantability,
7 N.J. Stat. Ann. § 12A:2-314; and (5) Breach of Contract / Common Law Warranty.

8 **THE PARTIES**

9 4. Plaintiff Nestor Almeida is, and at all times relevant to this action has been, a citizen
10 of Belleville, New Jersey. In or around January 2021, Plaintiff Almeida purchased his M1
11 MacBook Pro directly from Apple at their online store, www.apple.com. Prior to his purchase of
12 the M1 MacBook, he did not know, nor could he have known through reasonable diligence, of the
13 Defect in his laptop. Due to the Defect, Plaintiff's laptop did not operate as Defendants warranted
14 and promised in their advertisements, representations, and the information publicly available in the
15 marketplace. For example, during Plaintiff's use of his M1 MacBook, his screen will display
16 magenta squares and the whole screen will go black. Additionally, none of the packaging in which
17 the M1 MacBook was sold revealed that there was a Defect. Accordingly, not only was Plaintiff's
18 M1 MacBook defective at the point of sale due to the Defect, but Apple has exacerbated the
19 problems via their misrepresentations and omissions concerning the M1 MacBook's screen. As a
20 result of Apple's actions, Plaintiff did not receive the benefit of his bargain and was injured as a
21 result. If Plaintiff had been told of this Defect and the deceptive manner in which Apple would
22 conceal this Defect, Plaintiff would not have purchased his M1 MacBook, or would have paid
23 substantially less.

24 5. Defendant Apple, Inc. is incorporated under the laws of the State of California and
25 maintains its principal place of business in Cupertino, California.

26 **JURISDICTION AND VENUE**

27 6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A)
28 because this case is a class action where the aggregate claims of all members of the proposed class

are in excess of \$5,000,000.00, exclusive of interest and costs, and Plaintiff, as well as most members of the proposed class, are citizens of states different from Defendants. This Court also has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367.

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

8. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part of the events or omission giving rise to Plaintiff's claims occurred in this District.

9. The practices described herein were conceived, reviewed, approved, and otherwise controlled from Apple's headquarters in Cupertino, California. Employees at Apple's headquarters directed the production and assembly of the M1 MacBook's hardware and software, including the defective screens. Promotional activities and literature were developed and coordinated at, and emanated from, Apple's California headquarters. The launch event for the M1 MacBook occurred in Cupertino. Apple made critical decisions about the development, marketing, and advertising of the M1 MacBook in California. Misrepresentations and omissions alleged herein were made by Apple employees based in California and were contained, among other places, on Apple's website, which is maintained by Apple employees based in California. Warranty policies and procedures also were developed and carried out by Apple employees in Cupertino.

FACTUAL ALLEGATIONS

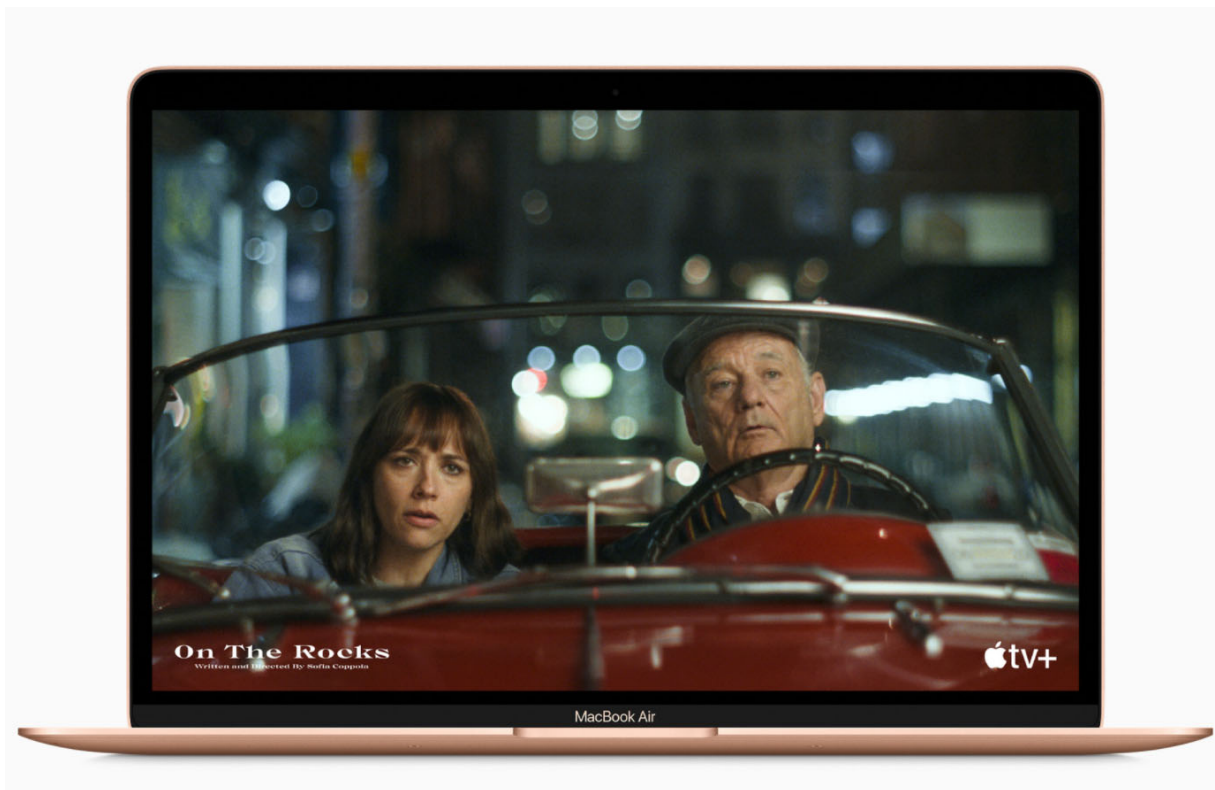
A. Apple Releases The M1 MacBook, Emphasizing the Interrelationship Between The M1's Superior Technology And Screen Display Capabilities

10. Apple debuted the M1 MacBook on November 10, 2021 to great fanfare. Apple announced that "[o]n a momentous day for the Mac, [we] today introduced a new MacBook Air, 13-inch MacBook Pro and Mac mini powered by the revolutionary M1, the first in a family of chips designed by Apple specifically for the Mac."¹ Apple's CEO, Tim Cook, referred to the launch of the new products, saying that "[t]he introduction of three new Macs featuring Apple's

¹ Apple, "Press Release: Introducing the Next Generation of Mac," Newsroom (Nov. 10, 2020), Available at <https://www.apple.com/newsroom/2020/11/introducing-the-next-generation-of-mac/> (last visited Sept. 14, 2021)

breakthrough M1 chip represents a bold change that was years in the making, and marks a truly historic day for the Mac and for Apple.”²

11. Connecting this superior technology to the display, Apple proclaimed that “[w]ith up to an 8-core GPU, graphics are up to 5x faster, the biggest leap ever for MacBook Air, so immersive, graphics-intensive games run at significantly higher frame rates.”³ Apple continued that users can “[i]ntegrate 3D effects into video in Final Cut Pro up to 5x faster” and that users can “[f]or the first time, play back and edit multiple streams of full-quality, 4K ProRes video in Final Cut Pro without dropping a frame.”⁴ Alongside the below photograph, Apple also informed consumers that they could “[w]atch more movies and TV shows with up to 18 hours of battery life, the longest ever on MacBook Air.”⁵



² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

12. Apple then informs consumers that the M1 MacBook also features “[s]upport for P3 wide color” that “results in an even more vibrant, true-to-life Retina display.” Apple writes that “[w]ith its sleek wedge-shaped designed, stunning Retin display, Magic Keyboard, and astonishing level of performance thank to M1, the new MacBook Air once again redefines what a thin and light notebook can do.” Apple then sets these comments out alongside the following photograph of the M1 MacBook display:



13. Apple then repeats several of these representations for the M1 MacBook Pro. Apple suggests that users can “[p]lay back full-quality, 8K ProRes video in DaVinci Resolve without dropping a single frame.” Apple also notes that the M1 MacBook Pro “features two Thunderbolt ports with USB 4 support to connect to more peripherals than ever, including Apple’s Pro Display XDR in full 6K resolution.” Providing its most complimentary statements on the laptop, Apple writes that “[w]ith its amazing performance and unbelievable battery life, combined with its

gorgeous Retina display, Magic Keyboard, and 3-pound compact design, the new 13-inch MacBook Pro is the ultimate expression of what the M1 chip can do.”⁶

14. These representations are expanded upon during Apple’s November 10, 2020 live streaming in connection with the M1 MacBook’s release. Alongside the following photograph, Apple writes that “users love [the M1 MacBook’s] stunning retina display, great everyday performance, and incredibly portable, wedge-shaped design.”⁷



15. Apple reports that “we’re thrilled that M1, our first chip for the Mac, enables the MacBook Air to do things that were previously impossible on such a thin and light notebook.” Apple explained that “[s]o, if you’re editing family photos or exporting a video for the web with iMovie the new Air blazes right through it.”

16. Apple then suggests, alongside the below photograph, that the M1 chip combined with the retina display and “the world’s fastest integrated graphics” allows consumers to “turn[] [their] Air into a mobile photo studio.”

⁶ *Id.*

⁷ Apple, “Apple Event – November 10,” Available at <https://www.youtube.com/watch?v=5AwdkGKmZ0I> (last visited Sept. 14, 2021).



17. Alongside the following photograph, Apple states that “with the world’s fastest integrated graphics that feature up to eight cores, Air delivers up to five times faster graphics performance. That’s the biggest leap ever for MacBook Air. So when it comes to gaming, you can play immersive, graphically-intensive titles at significantly higher frame rates.”



18. Finally, Apple suggests that “[i]n fact, everything looks stunning on the 13-inch Retina display, which now supports P3 wide color for even more vibrant, true-to-life images.”



19. However, as Plaintiff’s experience, as well as the sampling of the thousands of comments publicly available online, demonstrates, not everything “looking stunning on the 13-inch Retina display,” especially not the cracking, blacking out, or magenta, purple and blue lines and squares that emerge on the screen within hours of powering up the M1 MacBook for the first time—which is consistent with user experiences as demonstrated below.

B. Consumers Experiences With The M1 MacBook’s Screen

20. The internet is replete with complaints from consumers who have expressed dissatisfaction about the Defect on Apple’s own website and numerous articles have been written concerning these complaints. These complaints began immediately following Apple’s first sales of these devices. These complaints reveal numerous things about how Apple has handled this screen issue. First, as the complaints below make clear, several Apple technicians begin by denying that

the Defect is widespread and often suggest that the Defect must have resulted from the user's carelessness or negligence in protecting their \$999 or \$1299 device. Second, at the same time that numerous Apple technicians deny that the problem exists, other Apple technicians have clearly articulated that the issue is widespread and that numerous users have reported the issue to them and their colleagues. Third, despite this latter admission, Apple has failed to uniformly address the issue, forcing some users to pay for the repairs out of pocket, by saying that the repairs are not covered under warranty or otherwise, requiring the user to handle the repair themselves. Fourth, user comments have been deleted by Apple on Apple's forums, suggesting that Apple has long been aware of these issues. Fifth, only after months of comments such as those below, did Apple first publicly acknowledge that its screens are susceptible to cracking, discoloration, and blacking out.

21. On December 3, 2020, for example, one user wrote on MacRumors.com the following: "working on my M1 in bed. Put it next to me for like thirty seconds on a soft duvet to take a call. Pick it back up to this damaged screen." The user reported that the M1 MacBook "wasn't bumped, hit or damaged in any way. There is no crack or mark whatsoever. The screen is perfectly smooth, with no marks. Just suddenly happened." The user then included the following photograph:



22. On May 23, 2021, another user took to Apple's forum⁸ to write that I bought a MacBook Air M1 6 months ago and the screen cracked for no apparent reason. I left my computer on the top of my desk during the night and the next day I opened it the screen had 2 small cracks on the right which damaged the functioning of the screen. I contacted an authorized apple center which told me apple warranty would not cover it as it is a contact point crack; as if I have left something the size of a rice berry between the screen and the keyboard . . . It is absurd as I have nothing like it on my desk and the computer was properly closed as usual and didn't move the whole night. More than the price of repairing it, it is frustrating that apple doesn't believe its customers."

23. On May 27, 2021, another user took to Apple's forum to write that the "same thing happened to me. The laptop was sitting on my desk and when I opened it was broken, and showing bars. This seems to be a design flaw and it has been reported by several users on reddit."

24. On June 3, 2021, another user took to Apple's forum to write that Happen[ed] to me as well! They are not willing to take responsibility! I am not planning to give up. Doesn't make any sense that a computer that is brand new and sitting on the desk can break this way. If they have problems with the retina screen they just need to admit that."

25. On June 28, 2021, another user wrote on Apple's forum to write "Same thing here. Sitting on my desk – came home opened it and it was cracked."

26. On July 14, 2021, another user took to Apple's forum to write We bought an M1 Macbook Air 4 months ago. Last weekend my wife was watching a movie on Netflix and adjusted the screen at the end to change the viewing angle. The screen black out except for an area on the left which had bright lines in an irregular pattern." The user continued that "have taken the MBA to the local Apple store and they advise[d] me that my wife caused the pressure crack and it is not covered under warranty. Cost to repair is [\$539]. This leaves a very sour taste. The screen should not break when the screen angle is changed."

⁸ <https://discussions.apple.com/thread/252794122?answerId=255634544022&page=4> (last accessed Sept. 14, 2021).

1 27. On July 23, 2021, another user wrote on Apple’s forum that “My 17 [year old]
2 daughter was at her desk, working on her MacBook Pro (M1 display) and shut it to take a break.
3 When she went back to work, on opening the device she noticed that the bottom of the display was
4 covered by flickering black and white lines and that there were also perpendicular coloured lines
5 on the left hand side of the screen.” The user also reported that “I assumed that, (oh, the naivety)
6 as it is less than 5 months old and that it hadn’t been dropped, bashed, dinged, or had anything
7 spilled on it, this would be a case of taking it to our local apple store for a straight replacement. A
8 call to Apply swiftly disabused me of any hope of a simple solution.”

9 28. On July 24, 2021, another user took to Apple’s forum to write “Have the same issue
10 and Apple won’t fix it.”

11 29. On July 29, 2021, another user took to Apple’s forum to write that “As of this
12 morning, I, too, have the same issue. Turned my M1 Macbook Pro on as usual and the screen was
13 obviously cracked. I have done nothing to cause this.”

14 30. On July 30, 2021, another user wrote on Apple’s forum that “I have just experienced
15 the same thing. On July 28th I closed my laptop to take the dog outside. I came back in and
16 opened up the laptop and there was a crack. It was very confusing as I could not understand how
17 this would have happened. Took the Mac to the apple store and was told right off the bat ‘I will
18 tell you what you did here” and it was explained how I must have closed the lid on something.
19 When I said that did not happen they said I must have pushed down on it or held it wrong. I have
20 not abused or dropped this laptop . . . If you cannot afford to replace a \$700 screen choose a
21 different laptop.”

22 31. On July 30, 2021, another user wrote on Apple’s forum that “This happened to me
23 too. Closed the lid of my laptop to carry it from the lounge to the bedroom. When I opened the lid
24 there were two hairline cracks emanating from the bottom left corner. There had certainly been no
25 debris under the screen and no undue pressure exerted.”

26 32. On July 30, 2021, another user wrote on Apple’s forum that “I just had the exact
27 same situation. I have a Macbook Air M1. I went to sleep with it in perfect condition. The next
28 day I opened the screen and the display had internal cracks and black bars running through it . . . I

1 took it to Apple and they said the exact same thing to me . . . that I ‘closed the lid with something
2 very small in between the lid and the keyboard. I had nothing in between the screen. The laptop
3 was perfectly clean and handled with care when I last used it working perfectly until the next time
4 opening the lid. They said warranty would not cover it because I had damaged it so I had to spend
5 \$460 for repairs.”

6 33. On July 30, 2021, another user wrote on Apple’s forum that “had same issue – apple
7 charged me over \$500 to fix no matter what I said.”

8 34. On August 1, 2021, another user reported to Apple’s forum that “Personally I found
9 the striped screen overnight, three small lines. I don’t think it was me. I do not know what to do.”

10 35. On August 1, 2021, another user reported to Apple’s forum that “Yes I also had the
11 same [issue on the] left side of my screen [which] started to have these rainbow lines and when I
12 looked at it I [saw] these cracks at the bottom of the screen.”

13 36. On August 1, 2021, another user report to Apple’s forum that “I purchased an [M1]
14 for my son [on] June 10th. July 10th he woke up, opened the computer only to see that the screen
15 had a crack in it. Without apple care, it would have cost \$650 to get it repaired. The computer was
16 not dropped, there was no damage whatsoever. The crack just developed overnight, for no
17 apparent reason.”

18 37. On August 1, 2021, another user reported on Apple’s forum that “The same
19 happened to me. I bought the computer 3 months ago. It is frustrating that they are saying that I
20 did something to the computer. I don’t want to repair it because if it is a defect the same is going
21 to happen with the new screen and I just would [have] spent \$400 dollars. So, I don’t want the
22 computer anymore.”

23 38. On August 1, 2021, another user reported on Apple’s forum that “I had the same
24 issue a couple of weeks ago with my wife’s [M1], but the technician decides that was our fault and
25 we have to pay 500 dollars.”

26 39. On August 1, 2021, another user reported on Apple’s forum that “I bought a M1
27 Macbook Air in November 2020, and the screen cracked in March 2021. Apple support told me
28 that I probably left something between the keyboard and the lid, but I did not.”

1 40. On August 2, 2021, another user reported on Apple's forum that "My daughter has
2 the same issue. She saved up to buy a Macbook Air M1 for college and the screen now has an
3 internal crack without any misuse. The glass itself is not cracked but the screen is on the inside.
4 We've contacted Apple Support numerous times over chat [and] they want to charge her close to
5 \$500 to have it mailed in and screen replaced . . . She does not want to pay the repair costs and I
6 don't blame her given the number of people reporting the issue. Now she is faced with starting her
7 freshman year at college with a nice shiny [M1] with a cracked screen! Hopefully Apple will take
8 notice and help out its loyal customer base who shouldn't be having to pay to repair products with
9 faulty designs."

10 41. On August 2, 2021, another user reported on Apple's forum that "I have the same
11 problem. The screen cracked the same day after purchase! Macbook worked for about 6 hours and
12 a small crack appeared, which disabled the entire monitor."

13 42. On August 2, 2021, another user reported on Apple's forum that "Just to add my
14 response to this thread . . . Screen cracked and [has] black vertical bars down the left and horizontal
15 along the bottom. This cracked while being opened sat on a table, from no more than the pressure
16 of opening the lid. No crumbs or other [debris] on the keyboard or anything like that, perfectly
17 clean and never dropped or otherwise mishandled . . . Apple support [has] been absolutely
18 shocking during this whole thing, absolutely sticking their head in the sand that there might be
19 some inherent issue and that we're all not just smashing up our screens ourselves."

20 43. On August 2, 2021, another user reported on Apple's forum that "I have also had
21 multiple posts removed owing to my comment suggesting that the company who made my laptop
22 might be aware of the design fault and the number of customers who have issues with it and might
23 not want to accept the (potentially very expensive) liability for the repairs."

24 44. On August 3, 2021, another user reported on Apple's forum that "This happened to
25 me also. I had the laptop for 3 months. Closed it one day, opened it back up and the screen was
26 cracked for no apparent reason. I had to pay \$590 to get the screen replaced. I am so angry that
27 this happened."
28

1 45. On August 4, 2021, another user reported on Apple’s forum that “This also
2 happened to me. I keep my M1 Macbook Air closed and connected to monitors. I rarely ever even
3 touch the thing. Today when cleaning the dust off I noticed a very visible crack appeared in the
4 lower right screen right next to the right hinge on the screen. I took the [M1] to a local apple store
5 and the technician implied it was not covered by warranty and that I had to shell out \$400 to fix the
6 screen.”

7 46. On August 4, 2021, another user reported on Apple’s forum that “I had the exact
8 same problem . . . my Macbook Air M1 was purchased in February of this year and I opened the lid
9 to have a crack on the left hand side with no apparent external damage as the Mac sits on my desk
10 as well . . . Screen replacement costs are quite expensive and it’s a shame this isn’t covered under
11 Apple’s warranty as it is classified as “accidental damage.”

12 47. On August 4, 2021, another user reported on Apple’s forum that “The same thing
13 happened with me. I bought the MBA M1 [on] January 21. One day I just woke up and opened it
14 had a fish shaped crack – when I contacted Apple Service they said it won’t be covered by the
15 warranty since it falls under ‘physical damage’ – I told them I always treated it with utmost care. I
16 am an international student and this is my first Apple product. I cannot afford to repair it – I do not
17 have the money. I do not know what to do now.”

18 48. The fact that so many consumers made similar complaints about the Defect
19 indicates that the complaints were not the result of individual circumstances or user errors, but
20 instead a systematic problem with the M1 MacBook’s screen.

21 **C. Other Sources Of Apple’s Knowledge Of The Defect**

22 49. In addition to examples of the user reports set out above, including Apple’s deletion
23 of some comments, Apple would have long known about the Defect from multiple other sources,
24 including through its extensive pre-release testing, its own technicians who repaired and reported
25 the problems, its online reputation management, as well as its own statement on the Defect.
26 Accordingly, Apple was under a duty to disclose that the M1 MacBooks were defective because it
27 knew of the Defect. Nonetheless, Apple concealed this knowledge and has continued to sell the
28 M1 MacBooks.

1 50. First, Apple would have known about the Defect through its own extensive pre-
2 release durability testing which it does on all of its products, including the M1 MacBooks. Apple
3 has previously acknowledged that “every new product requires its own test.” To this end, Apple
4 has numerous labs and testing facilities designed for these sorts of pre-release tests, including, for
5 example, Apple’s Secret Wireless Testing Lab and its Input Design Lab. In the past, Apple has
6 widely publicized its rigorous pre-release tests. For instance, Apple claims that in testing its
7 iPhone, the device must go through five tests, including a “three-point bending test,” a “pressure-
8 point cycling test,” a “torsion test,” a “sit test,” and real-life user studies. Presumably, Apple
9 would not have released its most powerful MacBook ever without also doing similar pre-release
10 testing that would have revealed the Defect. Nonetheless, Apple began the sale of these devices
11 without disclosing this knowledge.

12 51. Second, as discussed above, presumably thousands of users of the M1 MacBook
13 have taken their laptops to Apple for repair. Apple’s technicians have either admitted knowledge
14 of the Defect or have feigned ignorance. Either way, in some cases Apple did repair numerous of
15 these M1 MacBooks and would have had knowledge of how widespread the Defect is from these
16 repairs.

17 52. Third, online reputation management (commonly called “ORM” for short) is now a
18 standard business practice among most major companies and entails monitoring consumer forums,
19 social media, and other sources on the internet where consumers can review or comment on
20 consumer services. “Specifically, [online] reputation management involves the monitoring of the
21 reputation of an individual or a brand on the internet, addressing content which is potentially
22 damaging to it, and using customer feedback to try to solve problems before the damage to the
23 individuals or brand’s reputation.”⁹ Many companies offer ORM consulting services for
24 businesses.

25 53. Like most companies, Apple presumably cares about its reputation and regularly
26 monitors online consumer reviews because they provide valuable data regarding quality control

27
28 ⁹ Online Reputation, <https://websolutions-maine.com/online-reputation/>.

1 issues, customer satisfaction, and marking analytics. Reviews like those copied above would be
2 particularly attention-grabbing for Apple's management because extreme reviews are sometimes
3 the result of extreme problems and – just like any other company – Apple is presumably sensitive
4 to the reputational impact of negative online reviews. Hence, Apple's management knew or should
5 have known about the above-reference consumer complaints shortly after each complaint was
6 posted online.

7 54. These complaints were also memorialized by journalists who have written publicly
8 and extensively on this Defect. On August 1, 2021, for example, one journalist, Alan Martin,
9 wrote that “Multiple reports have emerged suggesting that both the MacBook Pro M1 and
10 MacBook Air M1's screens could be fragile enough to crack under normal use. Discussion threads
11 have popped up on both Reddit and Apple's own support community, with multiple accounts
12 outlining similar cases. After closing their laptops, owners reported reopening them later to be
13 greeted by cracks, black lines, and discoloration on their panels.”¹⁰ Similarly, on August 2, 2021,
14 for example, one journalist, Enrico Frahn, wrote that “[a]n increasing number of M1 MacBook Air
15 and MacBook Pro owners say that the retina display of their Apple laptop has cracked during
16 normal usage. Claims like these can be found on the Apple Support Forums, Reddit, and Apple-
17 centric websites like 9to5mac, which has also reported on the issue.”¹¹

18 55. Fourth, Apple, perhaps sensing the onslaught of litigation, only in recent weeks has
19 publicly acknowledged the Defect, stating that “[t]o enable the thin design of Mac notebook
20 computers, the clearance between the display (screen) and the top case is engineered to tight
21 tolerances.” Inadvertently admitting the existence of the Defect, Apple proceeded to caution its
22 users, suggesting that “[i]f you use a camera cover, palm rest cover, or keyboard cover with your
23 Mac notebook, remove the cover before closing your display. Leaving any materials on your
24

25 ¹⁰ Alan Martin, “MacBook M1 Screens Are Reportedly Cracking Without Warning,” (Aug. 1,
26 2021), Available at <https://www.tomsguide.com/news/macbook-m1-screens-are-reportedly-cracking-without-warning> (last accessed Sept. 14, 2021).

27 ¹¹ Enrico Frahn, “M1 MacBook Owners Complaint That Their Screens Cracked For No Apparent
28 Reason,” NotebookCheck (Aug. 2, 2021), Available at <https://www.notebookcheck.net/M1-MacBook-owners-complain-that-their-screens-cracked-for-no-apparent-reason.553114.0.html>.

display, keyboard, or palm rest might interfere with the display when it's closed and cause damage to your display."

56. Apple's knowledge of this Defect is not recent. It has known since beginning sales of the M1 MacBook that the screen was defective. Nonetheless, Apple actively concealed this knowledge in the pursuit of greater profit.

D. Apple Has Failed To Adequately Address The M1 MacBook Defect

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

58. Apple's warranty states, in pertinent part:

WHAT IS COVERED BY THIS WARRANTY?

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

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

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

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

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

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

59. The Limited Warranty gives Apple sole discretion to repair, replace, or refund the purchase price of a defective M1 MacBook. Apple has not exercised its discretion and carried out its obligations under this warranty in good faith. When a consumer submits a warranty claim, Apple either requires the consumer to pay for the repairs or simply replaces the defective M1

MacBook with another M1 MacBook with the same defect. In turn, the program does not fix the Defect. As a result, consumers have experienced repeated screen failures.

CLASS ACTION ALLEGATIONS

60. Plaintiff brings this lawsuit under Federal Rule of Civil Procedure 23(a), (b)(1), (b)(2), and/or (b)(3) as representatives of:

Nationwide Class:

All persons within the United States who purchased, other than for resale, the M1 MacBook Air or M1 MacBook Pro.

New Jersey Subclass:

All persons who purchased, other than for resale, within New Jersey, a Class Computer

61. The following persons and entities are excluded from the Class: Apple and its officers, directors, employees, subsidiaries, and affiliates; all judges assigned to this case and any members of their immediate families; and the parties' counsel in this litigation. Plaintiffs reserve the right to modify, change, or expand the Class definition, including proposing additional subclasses, based upon discovery and further investigation.

62. **Numerosity.** Apple sold tens of thousands of the M1 MacBooks. Members of the Classes are widely dispersed throughout the county. Class members are so numerous that joinder is impracticable.

63. **Typicality.** Plaintiff's claims are typical of the claims of all Class members. Plaintiff, like all Class members, purchased a M1 MacBook containing a defective screen. Plaintiff, like all Class members, would not have purchased, or would have paid substantially less for, an M1 MacBook had he known of the defect or that Apple would respond inadequately when the defect manifested.

64. **Adequacy.** Plaintiff will fairly and adequately protect the interests of the Class. They have no interests antagonistic to the interests of other Class members and is committed to vigorously prosecuting this case. Plaintiff has retained competent counsel experienced in the prosecution of consumer protection class actions involving defective consumer electronics.

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

- a. Whether the M1 MacBook was defective at the time of sale;
- b. Whether the Defect substantially impairs the value of the M1 Macbook;
- c. Whether Apple knew of the defect but continued to promote and sell the MacBook, including its defective scree, without disclosing the defect or its consequences to consumers;
- d. Whether a reasonable consumer would consider the Defect and its consequences important to the decision whether to purchase an M1 MacBook;
- e. Whether Apple breached implied warranties connected to the M1 MacBook;
- f. Whether Apple's representations and omissions relating to the M1 MacBook and its embedded defect were likely to deceived a reasonable consumer;
- g. Whether Plaintiff and Class members overpaid for their M1 MacBook as a result of the Defect;
- h. Whether Plaintiffs and Class members are entitled to equitable relief, including restitution and injunctive relief; and
- i. Whether Plaintiff and Class members are entitled to damages or other monetary relief, and if so, in what amount.

66. **Superiority.** A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Because the amount of each individual Class member's claim is small relative to the complexity of the litigation, and because of Apple's financial resources, Class members are not likely to pursue legal redress individually for the violations detailed in this complaint. Individualized litigation would significantly increase the delay and expense to all parties and to the Court and would create the potential for inconsistent and contradictory rulings. By contrast, a class action present fewer management difficulties, allows

claims to be heard which would otherwise go unheard because the expense of bringing individual lawsuits, and provides the benefits of adjudication, economies of scale, and comprehensive supervision by a single court.

67. Class certification is also appropriate under Rules 23(b)(1) and/or (b)(2) because:

- a. The prosecution of separate actions by the individual members of the Class would create a risk of inconsistent or varying adjudications establishing incompatible standards of conduct for Apple;
- b. The prosecution of separate actions by individual Class members would create a risk of adjudication that would, as a practical matter, be dispositive of the interests of other Class members not parties to the adjudications, or would substantially impair or impede their ability to protect their interests; and
- c. Apple has acted and refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the members of the Class as a whole.

FIRST CAUSE OF ACTION
Fraudulent Concealment
(On Behalf Of The Class and Subclass)

68. Plaintiff incorporates by this reference the allegations contained in the preceding paragraphs as if fully set forth herein.

69. Plaintiff brings this claim individually and on behalf of the proposed Classes.

70. Apple intentionally suppressed and concealed material facts about the performance and quality of the M1 MacBook. As alleged herein, Apple knew that the M1 MacBook screen is defective. Further, Apple was aware of numerous consumer complaints concerning defect-related problems, but never disclosed the defect to Plaintiff and Class members.

71. Because the defect in the M1 MacBook is latent and unobservable until it arises, Plaintiff and Class members had no reasonable means of knowing that Apple's representations concerning the M1 MacBook were incomplete, false, or misleading, or that it had failed to disclose

1 that the MacBook is defective. Plaintiff and Class members did not and reasonably could not have
2 discovered Apple's deceit before they purchased the M1 MacBook or before the end of their
3 buyer's remorse periods.

4 72. Had Plaintiff and Class members known that the M1 MacBook is defective, they
5 would not have purchased a MacBook, would not have purchased it at the price they did, or would
6 have returned it during their respective buyer's remorse periods.

7 73. Apple had a duty to disclose the Defect because the Defect is material and Apple
8 possessed exclusive knowledge of it. Apple conducted pre-release testing of the M1 MacBook and
9 its internal components. This testing would have revealed the existence of the Defect before the
10 M1 Macbook's release. Only Apple had access to those test results.

11 74. Apple also had a duty to disclose the Defect because, through advertising, press
12 releases, and statements made during the launch event, on its M1 MacBook page, in its online
13 purchase portal, and in other sources that Plaintiff and Class members encountered before
14 purchasing their laptops, Apple made partial representations regarding the supposed high quality of
15 the MacBook and its premium features—including the screen—but failed to disclose facts that
16 would have materially qualified these partial representations. Having volunteered information
17 relating to the screen to Plaintiff and Class members, Apple had a duty to disclose the whole truth
18 about the screen and, in particular, its defective nature.

19 75. Plaintiff was exposed to Apple's specific representations about the M1 MacBook
20 before and immediately after purchase and within the time period in which they could have
21 returned his M1 MacBook without penalty. Plaintiff saw Apple's representations about the M1
22 MacBook online or in product advertisements, and received further information from Apple about
23 the M1 MacBook during its setup process. Plaintiff also saw the external packaging of the M1
24 MacBook—which Apple developed—before purchasing or using the laptop and during the buyer's
25 remorse period. None of the informational sources Plaintiff encountered—advertisements,
26 websites, external packaging, the set up process, or the MacBook launch event—indicated that the
27 M1 MacBook is defective.
28

76. Apple concealed the defect to sell more M1 MacBook computers at a premium price, prevent damage to its brand, and avoid the costs of developing a fix for the Defect and of repairs, replacements, and refunds under its Warranty.

77. The facts about the M1 MacBook screen that Apple suppressed and omitted were material, and Plaintiffs and Class members were unaware of them until they experienced the Defect. Had Apple disclosed the Defect, including through advertising, press releases, the M1 MacBook packaging, or the initial setup process, Plaintiffs and Class members would not have purchased an M1 MacBook, would have paid substantially less for it, or would have returned it for a refund.

78. When deciding to purchase a MacBook, Plaintiff and Class members reasonably relied to their detriment upon Apple's material misrepresentations and omissions regarding the quality of the M1 MacBook and the absence of a product defect.

79. Plaintiff and Class members sustained damages as a direct and proximate result of Apple's deceit and fraudulent concealment. Among other damages, Plaintiff and Class members did not receive the value of the premium price they paid for the M1 MacBook.

80. Apple's fraudulent concealment was malicious, oppressive, deliberate, and in reckless disregard of Plaintiff's and Class members' rights, interests, and well-being. Apple's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct, to be determined according to proof.

SECOND CAUSE OF ACTION
Violations of the New Jersey Consumer Fraud Act,
N.J. Stat. Ann. § 56:8-1, et seq. ("NJCFA")
(On Behalf Of The Class and Subclass)

81. Plaintiff incorporates by this reference the allegations contained in the preceding paragraphs as if fully set forth herein.

82. Plaintiff brings this claim individually and on behalf of the proposed Classes against Apple.

83. Plaintiff, Class and Subclass members, and Apple are "persons" within the meaning of N.J. Stat. An.. § 56:801(d).

1 84. Apple’s advertisements discussed herein are “advertisements” within the meaning
2 of N.J. Stat. Ann. § 56:801(a).

3 85. The M1 MacBook is “merchandise” within the meaning of N.J. Stat. Ann. § 56:8-
4 1(c).

5 86. Apple’s sales of the M1 MacBook constitute “sales” within the meaning of N.J.
6 Stat. Ann. § 56:8-1(e).

7 87. New Jersey prohibits “any unconscionable commercial practice, deception, fraud,
8 false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or
9 omission of any material fact with intent that others rely upon such concealment, suppression or
10 omission, in connection with the sale or advertisement of any merchandise . . .” N.J. Stat. Ann. §
11 56:8-2.

12 88. Apple employed unconscionable commercial practices in its advertising and sale of
13 the M1 MacBook. Apple’s practices in connection with its advertising and sale of the M1
14 MacBook entailed a lack of honesty and fair dealing.

15 89. Apple also engaged in deceptive trade practices in violation of New Jersey law, by
16 promoting the M1 MacBook’s screen while failing to disclose and actively concealing the screen’s
17 defective nature.

18 90. Apple intended that others rely upon its concealment of the M1 MacBook’s
19 defective nature when purchasing the laptop.

20 91. Plaintiff and Class and Subclass members suffered ascertainable loss as a direct and
21 proximate result of Apple’s unconscionable and deceptive acts or practices. Had Plaintiff and New
22 Jersey Subclass members known that the M1 MacBook screens contain a latent defect, they would
23 not have purchased the MacBook or would have paid significantly less for it. Among other
24 injuries, Plaintiff and Class and Subclass members overpaid for their M1 MacBook, and their
25 MacBook suffered a diminution in value.

THIRD CAUSE OF ACTION
Breach of Express Warranty
N.J. Stat. Ann. § 12A:2-313
(On Behalf Of The Class and Subclass)

92. Plaintiff incorporates by this reference the allegations contained in the preceding paragraphs as if fully set forth herein.

93. Plaintiff brings this claim individually and on behalf of the proposed Classes against Apple.

94. Apple is and was at all times a merchant with respect to computers.

95. In its Limited Warranty and in advertisements, brochures, and other statements in the media, Apple expressly warranted that it would repair or replace defects in material or workmanship free of charge if they became apparent during the warranty period.

96. Apple's Limited Warranty, as well as its advertisements, brochures, and other statements in the media regarding the Class Vehicles, formed the basis of the bargain that was reached when Plaintiff and Class and Subclass members purchased the M1 MacBook equipped with the defective screen.

97. Apple breached the express warranty to repair or replace or otherwise correct defects in materials and workmanship in the M1 MacBook's screen. Apple has not repaired or replaced or otherwise corrected these defects, or has been unable to do so.

98. In addition to this Limited Warranty, Apple otherwise expressly warranted several attributes, characteristics, and qualities of the M1 MacBook Screen. Generally these express warranties promised heightened, superior, and state-of-the art technology and promote the benefits of the M1 MacBook. These warranties were made, inter alia, in advertisements, on Apple's website, and in uniform statements provided by Apple to be made by Apple employees. Apple did not provide at the time of sale, and has not provided since then, M1 MacBooks conforming to these express warranties.

99. Furthermore, the Limited Warranty of repair and/or replacement fails in its essential purpose because the contractual remedy is insufficient to make Plaintiffs and other Class members

1 whole and because Apple has failed and/or has refused to adequately provide the promised
2 remedies within a reasonable time.

3 100. Accordingly, recovery by Plaintiffs and other Class members, is not limited to the
4 warranty of repair or replacement, and Plaintiffs, individually and on behalf of the other class
5 members, seek all remedies as allowed by law.

6 101. Also, as alleged in more detail here, at the time that Apple warranted and sold the
7 M1 MacBook it knew that the laptop did not conform to the warranties and was inherently
8 defective, and Apple wrongfully and fraudulently misrepresented and/or concealed material facts
9 regarding the M1 MacBook. Plaintiff and Class members were therefore induced to purchase the
10 M1 MacBook under false and/or fraudulent pretenses.

11 102. Moreover, many of the injuries flowing from the M1 MacBook cannot be resolved
12 through the limited remedy, as many incidental and consequential damages have already been
13 suffered due to Apple's fraudulent conduct as alleged herein, and due to its failure and/or continue
14 failure to provide such limited remedy within a reasonable time, and any limitation on Plaintiff's
15 and the other Class members' remedies would be insufficient to make Plaintiff and the Class
16 members whole.

17 103. Finally, due to Apple's breach of warranties as set forth herein, Plaintiff and other
18 Class members assert as an additional and/or alternative remedy as set forth in N.J. Stat. Ann. §
19 12A:2-608, for a revocation of acceptance of the goods, and for a return to Plaintiffs and to the
20 other Class members of the purchase price of all M1 MacBooks currently owned and for such other
21 incidental and consequential damages as allowed under N.J. Stat. Ann. § 12A:2-711 and 12A:2-
22 608.

23 104. Apple was provided notice of these issues through the instant complaint.

24 105. As a direct and proximate result of Apple's breach of express warranties, Plaintiff
25 and the other Class members have been damaged in an amount to be determined at trial.
26
27
28

FOURTH CAUSE OF ACTION
Breach of Implied Warranty of Merchantability
N.J. Stat. Ann. § 12A:2-314
(On Behalf Of The Class and Subclass)

106. Plaintiff incorporates by this reference the allegations contained in the preceding paragraphs as if fully set forth herein.

107. Plaintiff brings this claim individually and on behalf of the proposed Classes against Apple.

108. Apple is and at all relevant times was a merchant with respect to computers.

109. A warranty that the M1 MacBooks were in merchantable condition is implied by law in the instant transactions.

110. The M1 MacBooks, when sold and at all times thereafter, were not in merchantable condition and were not fit for the ordinary purpose for which computers are used. Specifically, the M1 MacBooks are inherently defective in a manner that goes to the core of the computer.

111. Apple was provided notice through the instant complaint.

112. As a direct and proximate result of Apple's breach of warranties of merchantability, Plaintiff and the other Class members have been damaged in an amount to be proven at trial.

FIFTH CAUSE OF ACTION
Breach of Contract / Common Law Warranty
(On Behalf Of The Class and Subclass)

113. Plaintiff incorporates by this reference the allegations contained in the preceding paragraphs as if fully set forth herein.

114. Plaintiff brings this claim individually and on behalf of the proposed Classes against Apple.

115. To the extent Apple's limited remedies are deemed not to be warranties under New Jersey's Commercial Code, Plaintiff, individually and on behalf of all other Class members, plead in the alternative under common law warranty and contract law. Apple limited the remedies available to Plaintiff and other Class members to repairs and replacements to correct defects in materials or workmanship of any part supplied by Apple, and/or warranted the quality or nature of those services to Plaintiff and other Class members.

116. Apple breached this warranty or contract obligation by failing to repair the M1 MacBooks evidencing a fault and defective computer, or to replace them.

117. As a direct and proximate result of Apple's breach of contract or common law warranty, Plaintiff and the other Class Members have been damaged in an amount to be proven at trial, which shall include, but is not limited to, all compensatory damages, incidental and consequential damages, and other damages allowed by law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and as representative of all other persons similarly situated, prays for judgment against Apple, as follows:

A. An order certifying that the action may be maintained as a Class Action under Fed. R. Civ. P. 23;

B. Award all actual, general, special, incidental, statutory, punitive, and consequential damages and/or restitution to which Plaintiff and Class members are entitled;

C. Award pre-judgment and post-judgment interest as provided by law;

D. Grant appropriate equitable relief, including, without limitation, an order requiring Apple to: (1) adequately disclose the defective nature of the M1 MacBook; and (2) return to Plaintiff and Class members all costs attributable to remedying or replacing the M1 MacBook, including but not limited to economic losses from the purchase or replacement laptops or screens;

E. Award reasonable attorney's fees and costs as permitted by law; and

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

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all issues so triable.

Dated: September 14, 2021

BURSOR & FISHER, P.A.

By: /s/ L. Timothy Fisher
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