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10 **UNITED STATES DISTRICT COURT**

11 **EASTERN DISTRICT OF CALIFORNIA**

12 ANTHONY DIEGO,)	Case No. _____
)	
13 Plaintiff,)	COMPLAINT
14 vs.)	
)	Breach of Warranty
15 APPLE INC.,)	
)	
16 Defendant.)	
)	<u>DEMAND FOR JURY TRIAL</u>
17)	
18 _____)	

19 Plaintiff Anthony Diego (“Plaintiff”) brings this complaint against Apple Inc.,
20 (“Defendant”), and alleges as follows:

21 1. This is a breach of warranty complaint against Defendant for its production of a
22 product (“Product”) that is defective, and which Defendant has falsely marketed as a fully-
23 functional product.

24 2. Plaintiff is, and at all relevant times hereto has been, a resident of the State of
25 California. He purchased Defendant’s Product on or about June 15, 2010.

26 3. Defendant Apple Inc. (“Apple”) is a California corporation that maintains its
27 principal place of business at 1 Infinite Loop, Cupertino, California, USA, 95014. Apple has

1 developed, designed, manufactured, assembled, branded, promoted, marketed, distributed and/or
2 sold the Product throughout the United States.

3 JURISDICTION AND VENUE

4 4. Claims arising under the Magnuson-Moss Warranty Act may be brought in
5 federal district court pursuant to 15 U.S.C. 2310(d)(1).

6 5. This Court has jurisdiction over Defendant because Defendant is either a
7 corporation or an association organized under the laws of California, a foreign corporation or
8 association authorized to do business in California and registered with the California Secretary of
9 State, or does sufficient business in or has sufficient minimum contacts with California, or
10 otherwise intentionally avails itself of the California markets through the promotion, marketing,
11 advertising and/or sales of their products and services in California to render the exercise of
12 jurisdiction by California courts permissible under traditional notions of fair play and substantial
13 justice.

14 6. Under 28 U.S.C. Section 1391, venue is proper in this District because Plaintiff is
15 a resident of this District. Moreover, a substantial portion of the acts and practices underlying
16 this Complaint occurred here.

17 FIRST CAUSE OF ACTION

18 (Violation of the Magnuson-Moss Warranty Act)

19 7. Plaintiff incorporates by reference each and every preceding paragraph as though
20 fully set forth herein.

21 8. Plaintiff is a “consumer” within the meaning of the Magnuson-Moss Act.

22 9. Defendant is a “supplier” and “warrantor” within the meaning of the Magnuson-
23 Moss Act.

24 10. The Product is a “consumer product” within the meaning of the Magnuson-Moss
25 Act.

26 11. Defendant’s written affirmations of fact, promises and/or descriptions as alleged
27 herein are each a “written warranty” as to the Product as fully functional and/or there exists an

1 implied warranty for the sale of such products within the meaning of the Magnuson-Moss Act.

2 12. Defendant breached these express and implied warranties, as the Product did not
3 perform as Defendant represented or was not fit for its intended use. Defendant has refused to
4 remedy such breaches, and its conduct caused damages to Plaintiff.

5 13. The amount in controversy meets or exceeds the sum or value of \$25.

6 14. As Defendant has refused all previous requests, resorting to any informal dispute
7 settlement procedure and/or affording Defendant another opportunity to cure these breaches of
8 warranties is unnecessary and/or futile. Any remedies available through any informal dispute
9 settlement procedure would be inadequate under the circumstances, as Defendant has indicated
10 they have no desire to participate in such a process at this time. Any requirement under the
11 Magnuson-Moss Act or otherwise that Plaintiff resort to any informal dispute settlement
12 procedure and/or afford Defendant a reasonable opportunity to cure the breach of warranties
13 described above is excused and/or has been satisfied.

14 15. As a result of Defendant's breaches of warranty, Plaintiff has sustained damages
15 and other losses in an amount to be determined at trial. Plaintiff is entitled to recover damages,
16 specific performance, costs, attorneys' fees, rescission, and/or other relief as is deemed
17 appropriate.

18 PRAYER FOR RELIEF

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

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

23 2. A declaratory judgment stating that Defendant may not pursue the policies, acts
24 and practices complained of herein;

25 3. A temporary, preliminary and/or permanent order for injunctive relief requiring
26 Defendant to undertake an informational campaign to inform members of the general public as to
27 the wrongfulness of Defendant's practices;

1 4. An award of actual, statutory and/or exemplary damages, as appropriate for the
2 particular Causes of Action;

3 5. An order requiring disgorgement of Defendant's ill-gotten gains by requiring the
4 payment of restitution to Plaintiff, as appropriate;

5 6. Reasonable attorneys' fees;

6 7. All related costs of this suit;

7 8. Pre- and post-judgment interest; and

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

9 JURY DEMAND

10 Plaintiff and the Class demand a trial by jury on all claims so triable.

11 DATED: June 30, 2010.

KERSHAW, CUTTER & RATINOFF

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