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 8 APPLE INC.

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

13 REUBEN BERENBLAT, ANDREW
 14 PERSONETTE, EARL C. SIMPSON, LAURA
 MILLER, On behalf of themselves and all others
 15 similarly situated,

16 Plaintiffs,

17 v.

18 APPLE INC.,

19 Defendant.

Case No. C-08-04969 JF

**APPLE INC.'S NOTICE OF
 MOTION AND MOTION TO
 DISMISS**

Date: August 14, 2009
 Time: 9:00 am
 Courtroom: 3

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 21 PLEASE TAKE NOTICE that on August 14, 2009 at 9:00 am, in the courtroom of the
 22 Honorable Jeremy Fogel, San Jose, California, defendant Apple Inc. ("Apple") will move to
 23 dismiss all of plaintiffs' claims pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to
 24 state a claim upon which relief can be granted.

25 Apple moves to dismiss plaintiffs' claims on the following grounds: (1) plaintiffs fail to
 26 state a claim for breach of the implied warranty of merchantability because the alleged defect in
 27 plaintiffs' computers manifested itself after any implied warranties had expired; (2) plaintiffs fail
 28 to state a claim for violation of the Unfair Competition Law because Apple's actions were neither

1 unlawful nor unfair; (3) plaintiffs fail to state a claim for unjust enrichment because no such cause
2 of action exists in California and because nothing about Apple's actions was unjust.

3 This motion is based on this Notice of Motion and Motion, the Memorandum of Points
4 and Authorities that follows, the Request for Judicial Notice ("RJN"), and the declaration of
5 Alexei Klestoff filed concurrently herewith, all pleadings and papers filed herein, oral argument
6 by counsel, and such other and further matter that properly may be received by the Court.

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8 Dated: June 1, 2009

PENELOPE A. PREVOLOS
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ANNE M. HUNTER
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By: /s/ Penelope A. Preovolos
Penelope A. Preovolos

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Attorneys for Defendant
APPLE INC.

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