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7 Attorneys for Defendant  
 8 APPLE INC.

9  
 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.

20 THOMAS WAGNER, SCOTT MEYERS, On  
 21 behalf of themselves and all others similarly  
 situated,

22 Plaintiffs,

23 v.

24 APPLE INC.,

25 Defendant.

Case No. C-08-04969 JF  
 Case No. C-09-01649 JF

**APPLE INC.'S NOTICE OF  
 MOTION AND MOTION TO  
 DISMISS THE SECOND  
 AMENDED COMPLAINT**

Date: February 5, 2010  
 Time: 9:00 am  
 Courtroom: 3

1 PLEASE TAKE NOTICE that on February 5, 2010 at 9:00 am, in the courtroom of the  
2 Honorable Jeremy Fogel, San Jose, California, defendant Apple Inc. (“Apple”) will move to  
3 dismiss all of Plaintiffs’ claims pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to  
4 state a claim upon which relief can be granted.

5 Apple moves to dismiss Plaintiffs’ claims on the following grounds: (1) Plaintiffs fail to  
6 state a claim for breach of the implied warranty of merchantability because the alleged defect in  
7 plaintiffs’ computers manifested itself after any implied warranties had expired; (2) Plaintiffs fail  
8 to state a claim for violation of the Unfair Competition Law because Apple’s actions were not  
9 unlawful, unfair, or fraudulent; (3) Plaintiffs fail to state a claim for unjust enrichment because no  
10 such cause of action exists in California and because nothing about Apple’s actions was unjust.

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

15  
16 Dated: November 5, 2009

PENELOPE A. PREVOLOS  
ANDREW D. MUHLBACH  
ANNE M. HUNTER  
ALEXEI KLESTOFF  
MORRISON & FOERSTER LLP

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20 By: /s/ Penelope A. Preovolos  
Penelope A. Preovolos

21 Attorneys for Defendant  
22 APPLE INC.

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**CERTIFICATE OF SERVICE BY MAIL**  
(Fed. R. Civ. Proc. rule 5(b))

I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address is 425 Market Street, San Francisco, California 94105-2482; I am not a party to the within cause; I am over the age of eighteen years and I am readily familiar with Morrison & Foerster’s practice for collection and processing of correspondence for mailing with the United States Postal Service and know that in the ordinary course of Morrison & Foerster’s business practice the document described below will be deposited with the United States Postal Service on the same date that it is placed at Morrison & Foerster with postage thereon fully prepaid for collection and mailing.

I further declare that on the date hereof I served a copy of:

**APPLE INC.’S NOTICE OF MOTION AND MOTION TO DISMISS THE SECOND AMENDED COMPLAINT**

**APPLE INC.’S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION TO DISMISS THE SECOND AMENDED COMPLAINT**

**DECLARATION OF ALEXEI KLESTOFF**

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF APPLE INC.’S MOTION TO DISMISS THE SECOND AMENDED COMPLAINT**

**[PROPOSED] ORDER GRANTING APPLE INC.’S MOTION TO DISMISS THE SECOND AMENDED COMPLAINT**

on the following by placing a true copy thereof enclosed in a sealed envelope addressed as follows for collection and mailing at Morrison & Foerster LLP, 425 Market Street, San Francisco, California 94105-2482, in accordance with Morrison & Foerster’s ordinary business practices:

Douglass J. McNamara  
Cohen Mistein Hausfeld & Toll PLLC  
1100 New York Avenue, Suite 500  
Washington D.C. 20005-3964

I declare under penalty of perjury that the above is true and correct.

Executed at San Francisco, California, this 5th day of November, 2009.

\_\_\_\_\_  
Mia R. Gimenez  
(typed)

\_\_\_\_\_  
/s/ Mia Gimenez  
(signature)

**ATTESTATION OF E-FILED SIGNATURE**

I, Penelope A. Prevolos, am the ECF User whose ID and password are being used to file this Certificate of Service. In compliance with General Order 45, X.B., I hereby attest that Mia Gimenez has read and approved this Certificate of Service and consents to its filing in this action.

Dated: November 5, 2009.

MORRISON & FOERSTER LLP

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/s/ Penelope A. Prevolos  
Penelope A. Prevolos