

1 Defendant's wrongful conduct outweighs any purported benefits attributable to such
2 conduct.

3 43. By reason of the foregoing, Defendant has violated Cal. Bus. & Prof. Code §
4 17200, and is liable to Plaintiff and the other members of the Class for the damages that
5 they have suffered as a result of Defendant's actions, the amount of such damages to be
6 determined at trial, plus costs and attorneys' fees.

7 SECOND CAUSE OF ACTION

8 **(Breach of Implied Warranty of Merchantability)**

9 44. Plaintiff repeats and re-alleges the allegations contained in Paragraphs 1
10 through 43 above as if fully set forth herein.

11 45. Defendant is a merchant with respect to computers, including PowerBook
12 computers manufactured and sold under the Apple brand.

13 46. On or about April, 2004, Plaintiff purchased from Defendant a PowerBook
14 G4. An implied warranty that Plaintiff's PowerBook G4 was merchantable arose by
15 operation of law as part of the sale, and as part of the sales of PowerBook computers to
16 other members of the Class.

17 47. Defendant breached the implied warranty of merchantability in that the
18 PowerBook computers sold to Plaintiff and the Class were not in merchantable condition
19 when sold or at any time thereafter, in that Plaintiff's and the Class' PowerBook computers
20 have defective memory slots.

21 48. When purchasing their PowerBook computers, Plaintiff and the Class were
22 not aware of the memory slot defect as the defect was and is not open or obvious.

23 49. Plaintiff notified Defendant of the memory slot defect in December, 2006,
24 which was the same month and year Plaintiff discovered the defect.

25 50. Any attempt by Apple to limit the duration and scope of the implied warranty
26 of merchantability is unreasonable, unconscionable and void as Apple knew or recklessly
27 disregarded the fact that the memory slot defect existed and might not be discovered, if at
28 all, until such time as a PowerBook owner would attempt to install additional memory and

1 uncover the fact that the one or both of the memory slots were defective. Apple withheld
2 information about the memory slot defect from PowerBook owners intending that owners
3 would not uncover the defect until such time as any Apple written warranty in effect
4 expired.

5 51. As a result of Apple's breach of the implied warranty of merchantability,
6 Plaintiff and the Class have suffered incidental and consequential damages, including
7 expenses incurred to repair the memory slot defect or replace their PowerBook computers,
8 and damages representing the difference between the value of the defective PowerBooks
9 purchased and the value the PowerBooks would have had if they had been as warranted and
10 did not have defective memory slots.

11 52. By reason of the foregoing, Defendant is liable to Plaintiff and the other
12 members of the Class for the damages that they have suffered as a result of Defendant's
13 actions, the amount of such damages to be determined at trial.

14 THIRD CAUSE OF ACTION

15 **(Breach of Implied Warranty of Fitness for a Particular Purpose)**

16 53. Plaintiff repeats and re-alleges the allegations contained in Paragraphs 1
17 through 52 above as if fully set forth herein.

18 54. In selling its PowerBook computers and placing them into the stream of
19 commerce, Apple impliedly warranted that its PowerBook computers, specifically both of
20 the PowerBooks' memory slots, were fit for their particular purpose, *i.e.*, adding memory
21 (RAM).

22 55. Defendant breached the implied warranty of fitness for a particular purpose in
23 that the PowerBook computers sold to Plaintiff and the Class were not fit for the particular
24 purpose for which it was sold, in that Plaintiff's and the Class' PowerBook computers have
25 defective memory slots.

26 56. When purchasing their PowerBook computers, Plaintiff and the Class were
27 not aware of the memory slot defect as the defect was and is not open or obvious.

1 73. By reason of the foregoing, Defendant is liable to Plaintiff and the other
2 members of the Class for the damages that they have suffered as a result of Defendant's
3 actions, the amount of such damages to be determined at trial, plus actual attorneys' fees
4 and costs pursuant to 15 U.S.C. § 2310.

5 **SIXTH CAUSE OF ACTION**

6 **(Negligence)**

7 74. Plaintiff repeats and re-alleges the allegations contained in Paragraphs 1
8 through 73 above as if fully set forth herein.

9 75. Defendant Apple owed a duty to Plaintiff and the Class to manufacture and
10 sell PowerBook computers with functioning and non-defective memory slots.

11 76. Defendant breached its duty to use reasonable care in manufacturing
12 PowerBook computers without defective memory slots in violation of, among other things,
13 common and ordinary industry-wide standards of care, and in failing to act in accordance
14 with all other applicable standards of care.

15 77. Moreover, Apple owed a duty to Plaintiff and the Class to inform Plaintiff
16 and the Class in a timely manner that their PowerBook computers were manufactured with
17 defective memory slots. Disclosure was required so that, among other things, Apple's
18 customers could take appropriate measures to repair the defective memory slots while still
19 covered by Apple's original one-year manufacturer's warranty, which expires one year after
20 the date of purchase.

21 78. Defendant breached this duty by failing to notify Plaintiff and the Class in a
22 timely manner that the memory slots in their PowerBook computers were defective, even
23 after Apple was, or should have been, fully aware of the defect. Thus, Plaintiff and the
24 Class were harmed by Defendant's delay in notification because, among other things,
25 Plaintiff and the Class could not have the defective memory slots repaired by Apple while
26 still covered by the one year warranty in effect from the date of purchase.

27 79. The resulting personal and financial burden, including but not limited to, the
28 loss of time and money spent by Plaintiff and the Class in repairing at their own expense

1 the defective memory slots, in continuing to use PowerBook computers with non-
2 functioning memory slots, and in seeking to prevent or undo further harm and other
3 economic and non-economic damages, were the direct and proximate result of Defendant's
4 violations of its duties of care, as described above.

5 80. By reason of the foregoing, Defendant is liable to Plaintiff and the other
6 members of the Class for the damages that they have suffered as a result of Defendant's
7 negligence, the amount of such damages to be determined at trial.

8 **SEVENTH CAUSE OF ACTION**

9 **(Unjust Enrichment)**

10 81. Plaintiff repeats and realleges the allegations contained in Paragraphs 1
11 through 80 above as if fully set forth herein.

12 82. By engaging in the conduct described above, Defendant has unjustly enriched
13 itself at the expense of Plaintiff and the other members of the Class and is required, in
14 equity and good conscience, to compensate Plaintiff and the Class for damages suffered as
15 a result of Defendant's actions.

16 83. By reason of the foregoing, Defendant is liable to Plaintiff and the other
17 members of the Class for damages incurred as a result of Defendant's actions, the amount
18 of such damages to be determined at trial.

19
20 WHEREFORE, Plaintiff respectfully requests that the Court enter judgment against
21 Defendant as follows:

22 1. Certifying this action as a class action, pursuant to Rule 23(a) and 23(b)(3) of
23 the Federal Rules of Civil Procedure, with a class as defined above;

24 2. On Plaintiff's First Cause of Action, awarding against Defendant the
25 damages that Plaintiff and the other members of the Class have suffered as a result of
26 Defendant's actions, the amount of such damages to be determined at trial, plus costs and
27 attorneys' fees;

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3. On Plaintiff's Second Cause of Action, awarding against Defendant the damages that Plaintiff and the other members of the Class have suffered as a result of Defendant's actions, the amount of such damages to be determined at trial;

4. On Plaintiff's Third Cause of Action, awarding against Defendant the damages that Plaintiff and the other members of the Class have suffered as a result of Defendant's actions, the amount of such damages to be determined at trial;

5. On Plaintiff's Fourth Cause of Action, awarding against Defendant the damages that Plaintiff and the other members of the Class have suffered as a result of Defendant's actions, the amount of such damages to be determined at trial, plus costs and attorneys' fees;

6. On Plaintiff's Fifth Cause of Action, awarding against Defendant the damages that Plaintiff and the other members of the Class have suffered as a result of Defendant's actions, the amount of such damages to be determined at trial, plus actual attorneys' fees and costs pursuant to 15 U.S.C. § 2310;

7. On Plaintiff's Sixth Cause of Action, awarding against Defendant the damages that Plaintiff and the other members of the Class have suffered as a result of Defendant's actions, the amount of such damages to be determined at trial;

8. On Plaintiff's Seventh Cause of Action, awarding against Defendant the damages that Plaintiff and the other members of the Class have suffered as a result of Defendant's actions, the amount of such damages to be determined at trial;

9. Enjoining Apple from continuing to engage in unlawful and unfair business practices regarding PowerBook computers manufactured and sold with defective memory slots;

10. Ordering Apple to refund to Plaintiff and the Class the moneys paid to Apple for PowerBook computers with defective memory slots;

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- 11. Awarding Plaintiff interest, costs and attorneys' fees; and
- 12. Awarding Plaintiff such other and further relief as this Court deems just and proper.

DATED: October 29, 2008

Respectfully submitted,
CALDWELL LESLIE & PROCTOR, PC
ROBYN C. CROWTHER
ALBERT GIANG

By *Robyn C. Crowther*
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DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury.

DATED: October 29, 2008

Respectfully submitted,

CALDWELL LESLIE & PROCTOR, PC
ROBYN C. CROWTHER
ALBERT GIANG

By Robyn C. Crowther
ROBYN C. CROWTHER
Attorneys for Plaintiffs