

1 MEISELMAN, DENLEA, PACKMAN,
2 CARTON & EBERZ P.C.

3 Jeffrey I. Carton (*pro hac vice*)
4 jcarton@mdpcelaw.com

5 Michael A. Berg (*pro hac vice*)
6 mberg@mdpcelaw.com

7 1311 Mamaroneck Avenue
8 White Plains, New York 10605

9 Telephone: (914) 517-5000

10 Facsimile: (914) 517-5055

11 CALDWELL LESLIE & PROCTOR, PC
12 ROBYN C. CROWTHER, SBN 193840

13 crowther@caldwell-leslie.com

14 ERIC S. PETTIT, SBN 234657

15 pettit@caldwell-leslie.com

16 1000 Wilshire Blvd., Suite 600

17 Los Angeles, California 90017-2463

18 Telephone: (213) 629-9040

19 Facsimile: (213) 629-9022

20 Attorneys for Plaintiffs and all others similarly situated
21 (Additional Counsel on signature page)

22 **UNITED STATES DISTRICT COURT**

23 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

24 REUBEN BERENBLAT, ANDREW
25 PERSONETTE, EARL C. SIMPSON,
26 LAURA MILLER, On behalf of
27 themselves and all others similarly
28 situated,

Plaintiffs,

v.

APPLE INC.,

Defendant.

Case No. C-08-04969 JF (PVT)

Case No. C-09-01649 JF (PVT)

**THIRD AMENDED
CLASS ACTION COMPLAINT**

DEMAND FOR JURY TRIAL

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

Plaintiffs,

v.

APPLE, INC.,

Defendant.

1 Plaintiffs, by their attorneys, as and for their Third Amended Class Action
2 Complaint against defendant Apple Inc. (“Apple”), allege, with personal knowledge
3 as to their own actions, and upon information and belief as to those of others, as
4 follows:

5 **NATURE OF THIS CASE**

6 1. This class action seeks to redress the widespread product defect and
7 design flaw existing at the time of manufacture which renders one or more of
8 Apple’s PowerBook G4’s memory slots inoperative during the computer’s useful
9 life. This inherent defect manifests itself when a PowerBook owner adds additional
10 memory (RAM) to the first or second (upper or lower) memory slot available in
11 most PowerBooks, including the PowerBook G4. Typically, when the additional
12 memory is added, the PowerBook does not recognize the memory, resulting in
13 slower processing speeds, decreased computer function and other computing
14 problems. Unfortunately for consumers, because both memory slots are hardwired
15 to the PowerBook’s motherboard (or logic board), consumers who choose to repair
16 the defect can incur costs of more than \$500 in parts and labor.

17 2. Moreover, the inherent defect often manifests itself months or even
18 years after purchase of a new PowerBook and/or installation of memory (RAM) in a
19 memory slot.

20 3. Apple was aware of the widespread defect by 2004 at the latest, yet
21 continued to market and sell defective PowerBook computers to the public, and not
22 inform purchasers that their laptops may have a defect.

23 4. Apple learned of the PowerBook memory slot defect, and manifested
24 its awareness of the defect, in several ways. Apple executives actively monitored
25 complaints about the memory slot defect that consumers posted on Apple’s web
26 sites and lodged with Apple’s telephone call center. Apple directed its employees
27 not to acknowledge the existence of the defect when consumers inquired about it,
28 and Apple deliberately deleted, from a publicly accessible web page, a discussion

1 thread containing more than 350 posts concerning the memory slot defect. Apple
2 prepared memoranda, known within the company as “knowledge based articles,”
3 concerning the memory slot defect; Apple disseminated these articles internally, but
4 withheld and concealed the information in the articles concerning the defect from
5 PowerBook purchasers and the public. Finally, starting in January 2006, Apple
6 offered an extended warranty program for the PowerBook G4 memory slot. While
7 this program was severely limited and inadequate, it was a clear admission by Apple
8 that it was aware of the PowerBook memory slot defect.

9 5. In response to thousands of complaints from its PowerBook customers,
10 Apple admitted that its PowerBooks, specifically certain PowerBook G4 models,
11 have defective memory slots. But aside from a limited number of PowerBooks
12 manufactured between January 2005 and April 2005, Apple has refused to repair the
13 defect.

14 6. As a result of Apple’s failure to disclose the memory slot defect that
15 was known to Apple but not to consumers, thousands of its customers have
16 purchased PowerBook computers with defective memory slots. Apple has refused
17 to repair the defect free of charge, and has refused its customers’ requests for
18 refunds or exchanges of their defective PowerBooks. As such, thousands of Apple
19 PowerBook owners have been compelled to either repair the defective memory slot
20 at their own expense or permanently lose the ability to add additional memory to
21 their computers.

22 7. This suit is brought on behalf of a nationwide class of all persons who
23 have purchased Apple PowerBook computers, including but not limited to the
24 PowerBook G4, manufactured with defective memory slots, from January 1, 2005 to
25 the present (the “Class”), including a sub-class of persons who purchased
26 PowerBook G4 computers directly from Apple (the “Sub-Class”). It seeks, *inter*
27 *alia*, restitution and/or compensatory damages for Plaintiffs and each Class member,

1 including but not limited to: reimbursement of expenses incurred to repair defective
2 memory slots; attorneys' fees; and the costs of this suit.

3 **JURISDICTION AND VENUE**

4 8. Jurisdiction in this civil action is authorized pursuant to 28 U.S.C. §
5 1332(d), as Plaintiffs' citizenship is diverse from Apple's, there are more than 100
6 class members, and the amount in controversy is in excess of \$5 million.

7 9. Venue is proper in this district under 28 U.S.C. § 1391(b)(2), as a
8 substantial part of the events or omissions giving rise to Plaintiffs' claims occurred
9 in the Northern District of California.

10 10. Venue is also proper in this district under 28 U.S.C. § 1391(a)(2), on
11 the grounds that a substantial part of the events relating to Plaintiffs' claims
12 occurred in the Northern District of California.

13 **PARTIES**

14 11. Plaintiff Reuben Berenblat is a resident of the State of New York,
15 County of Nassau. Mr. Berenblat purchased an Apple PowerBook G4 with a
16 defective memory slot directly from Apple over the Internet. Mr. Berenblat seeks to
17 represent the Class and Sub-Class.

18 12. Plaintiff Andrew Personette is a resident of the State of New York,
19 County of Kings. Mr. Personette acquired an Apple PowerBook G4 from the Apple
20 store in New York City. Mr. Personette seeks to represent the Class and Sub-Class.

21 13. Plaintiff Earl "Duke" Simpson is a resident of the State of Washington,
22 County of Clark. Dr. Simpson purchased an Apple PowerBook G4 from MacShop
23 Northwest in Oregon, which is identified on Apple's website as an authorized
24 reseller and service provider. Dr. Simpson seeks to represent the Class.

25 14. Plaintiff Laura Miller is a resident of the State of California, County of
26 San Francisco. Ms. Miller purchased an Apple PowerBook G4 from a third party
27 internet vendor. Ms. Miller seeks to represent the Class.

1 *The Introduction of the PowerBook G4*

2 23. In or about January 2001, Apple began designing, manufacturing,
3 warranting, advertising, marketing, selling and providing PowerBook G4 laptop
4 computers to consumers throughout the United States. Between 2001 and 2003,
5 Apple produced the Titanium PowerBook G4; between 2003 and 2006, the
6 Aluminum models were produced.

7 24. When the Aluminum PowerBook G4s were released in January 2003,
8 Apple marketed them as being designed to exacting standards and touted their many
9 features, including the fact that each Aluminum PowerBook G4 has two memory
10 slots. The memory slots are an essential feature of the computer, and are marketed
11 so as to give consumers the ability to expand the PowerBook's random access
12 memory (RAM).

13 25. The existence of two memory slots allowing users to expand the
14 PowerBook's RAM at some time after purchase is material to a reasonable person's
15 (and Plaintiffs') decision to buy the PowerBook instead of a less expensive laptop
16 computer without that feature. Conversely, the fact that one of the memory slots
17 was defective and inoperable, which Apple concealed from consumers, would have
18 been material to a reasonable person's (and Plaintiffs') purchase decision

19 26. RAM is the main memory of a computer, in which data can be stored or
20 retrieved from all locations at the same time. As programs and files fill up a
21 laptop's memory, the machine will slow down. The ability to expand the memory is
22 material to purchasers, and affects the product's price. Reasonable consumers
23 expect that they would not need to expand the memory, and use the extra memory
24 slots, until after a year or more – or beyond the limited one-year warranty that came
25 standard with the Apple PowerBook.

26 27. Indeed, Apple represented to PowerBook purchasers on packaging, in
27 the technical specifications, and in the PowerBook product manual, that the
28 computer could support additional RAM up to a total of 2GB when the consumer

1 needed to expand memory. Apple maintained this representation from at least May
2 2001 through December 2005. For example, the PowerBook Technology Overview
3 provided, “For a considerable performance improvement when working with large
4 files, the memory in the 12-inch model can be expanded to 1.25Gb, and the 15-inch
5 and 17-inch models can accommodate up to 2GB. Both the 15-inch and 17-inch
6 models come with 512MB of memory ... leaving a slot open for future memory
7 upgrades.”

8 28. Although the useful life of a laptop or notebook computer is five years,
9 the inherent defect in the Apple PowerBook G4 computer memory slots render the
10 computers substantially certain to malfunction during the computer’s useful life.

11 ***Apple Conceals the Growing Problems with PowerBook Memory Slots***

12 29. At least as early as November 2004, consumers began posting
13 complaints online about the PowerBook memory slots. These posts reflected
14 conversations in which consumers specifically advised Apple personnel of the
15 PowerBook memory slot defect, and Apple acknowledged the problem (while
16 attempting to minimize it). These complaints included the following:

17 Jim_Babcock

18 11-09-2004, 04:41 PM

19 I added an off brand 1 gig module to the lower slot on my
20 wife's 17 inch PB. The extra memory was recognized but
21 when she started running FCPHD, it was unstable and
22 crashed repeatedly. I removed the module and crashes
23 ceased. I have heard one should only use Apple brand,
24 and/or premium RAM upgrades for this reason. Anybody
25 have any experience with this issue?

26 _____
27 chrisbabbitt

28 11-10-2004, 08:40 PM

1 Jim,

2 You might want to have Apple check out that PowerBook.
3 *There have been many reported failures of the lower*
4 *memory slot on Aluminum G4s.* I believe there is some
5 sort of recall underway.

6 Jim_Babcock

7
8 11-11-2004, 02:28 PM

9 Good suggestion, but I checked with Apple and they said
10 no. There IS a problem but involves only the 15 inch PB's.
11 On some of those, RAM is simply not recognized. They
12 suggested Apple branded memory which I am going to
13 try.¹

14 30. As this exchange demonstrates, a consumer who “checked with Apple”
15 about the memory slot defect was given misinformation as part of Apple’s
16 systematic campaign to conceal and downplay the problem. Contrary to the
17 information that Apple provided Mr. Babcock, the defect was not limited to the 15-
18 inch PowerBook. Apple’s policy and practice, as confirmed by former Apple
19 customer service employees, was at all relevant times to limit the information
20 provided to customers about the memory slot defect and to withhold facts
21 concerning the nature and extent of the problem.

22 31. Nevertheless, as early as November 2004, Apple acknowledged to
23 consumers that the additional RAM was not recognized in at least some PowerBook
24 G4 models. Yet Apple continued to market the PowerBook G4 by touting its
25 expandable memory.

26
27 ¹ See <http://www.2-popforums.com/forums/archive/index.php/t-68640.html>
28 (emphasis added). All consumer comments are reproduced here verbatim, without
correcting typographical and other errors.

1 32. According to former employees, Apple’s customer service center
2 received complaints from consumers and logged the information received into
3 databases for review by higher-ranking employees. This procedure was followed
4 with respect to the PowerBook G4 and, in particular, its memory slot defect. Apple
5 executives monitored call center operations and website comments to determine
6 whether Apple products had recurring problems arising from a design or
7 manufacturing defect.

8 33. According to former Apple technicians, who worked for Apple during
9 the time period G4 PowerBooks were marketed, Apple directed its employees to
10 conceal the defective memory slot from consumers. One technician stated that
11 “Apple’s MO was they never wanted you to tell the customer about defects, what it
12 affects - just say that you’re having a problem, we’ll cover it this time. Make it
13 sound like you’re doing them a favor.”

14 34. In addition to complaining by telephone to Apple’s customer service
15 center about the PowerBook G4 memory slot defect, PowerBook users posted
16 information about the defect on Apple’s website.² A discussion thread with the
17 heading “lower memory slot – empty” has grown to 312 pages of postings since the
18 first complaints were posted in 2005. Aggrieved customers specifically informed
19 Apple of the memory slot defect by telephone and subsequently described these
20 futile attempts to obtain redress from Apple on Apple’s website, and in a separate
21 online petition.

22 35. The complaints included the following:

23 **Eric Gore (10/3/05)**

24 alright, i went to the apple store in okc the other day to
25 have them check out my powerbook. *they said that the*

26 _____
27 ² See May 9, 2005 thread, “Lower Memory Slot – Empty,” accessed at
28 <http://discussions.apple.com/thread.jspa?messageID=1136942�> on May
24, 2010.

1 *problem has not been brought up by enough customers*
2 *to warrant apple doing anything to repair/replace*
3 *defective powerbooks.* so they gave me a quote to fix my
4 out of warranty powerbook at \$1,300. really upsets me
 about this crap

5 Despite Apple's corporate policy of downplaying and concealing the extent
6 of the memory slot defect, Mr. Gore's statement establishes, at a minimum, that
7 Apple was aware of the defect by October 2005 (as it was in 2004, as evidenced by
8 Mr. Babcock's statements, *supra*).

9 36. Other exchanges between consumers and Apple demonstrate that Apple
10 not only downplayed the problem but denied it altogether, even though Apple
11 acknowledged it to Mr. Gore and in many other contexts. For example:

12 **BellBucci (12/28/05)**

13
14 Add me to the list of users with lower memory slot
15 problems (out of warranty). I have a G4 Powerbook
16 1.25GHz with 512MB RAM. (now only 256MB). The
17 Genius at the local Apple store diagnosed it as a likely bad
18 main logic board and said it could be sent in for repair for
19 a flat rate of \$330. He also gave me a case number. *I*
20 *called Apple Care to enquire about a complimentary*
21 *repair given the widespread problems with this issue. A*
22 *product specialist said that Apple does not have any*
23 *known issues with this machine.* When I called his
24 attention to this relatively large thread, he replied "That's
25 just a message board." Given that I've paid for other out of
26 warranty repairs, I don't think that I will sink more money
27 into this repair. I will likely just buy a larger stick to use in
28 the top slot.

 * * *

bob - pgh, pa - 26 September 2005.

1 lower slot failed 3 wks ago, using a 1gb stick in the upper
2 until i find the time to get the logic board replaced. *the*
3 *applecare rep. i talked to denied any trend for this*
4 *problem in PB G4 1.5ghz.* apple had better step up to the
5 plate and address this issue before the loyal buyers and
6 users of apple products jump ship!

7 * * *

8 **Deb Trazino** - New York - 29 November 2005.

9 Bought a 15" 1.5Ghz model for my father after telling him
10 what great machines they are. I have owned 5 Macs so far
11 and use them at work on a daily basis. Constant freezing,
12 strange audio buzzing, acid trip video signal. *Apple claims*
13 *Macmall is to blame, they put the blame on the memory*
14 *supplier.* Lower Memory Failure on AHT. Totally
15 unacceptable.

16 * * *

17 **Susan Hanifin** - Vienna VA - 2 October 2006.

18 The people at the Apple Store told me the problem was
19 bad RAM, sold me \$300 of new Apple Ram, only to then
20 tell me I needed a whole new logic board. My serial
21 number is not in the replacement serial numbers, and I
22 have now learned the problem will likely recur. Apple
23 needs to stand by this product!

24 * * *

25 **Lillian** - New Jersey - 1 July 2007.

26 Menlo Mall mac genius' did NOT believe me when I told
27 them my computer was affected by this. In fact, the
28 manager told me that "you can't trust people online" when
I told him this was a wide spread issue. I had to pay 1,000
to get it fixed outside of apple. It was a ridiculous,
expensive, and horrible experience that I still have to deal
with everytime I deal with Apple or my computer.

* * *

1 **Keith Parr** - south lake tahoe - 2 February 2008.

2 apple has told me that they havent had any complaints
3 about this issue.

4 37. Apple’s denials do not prove that there was no defect; to the contrary,
5 Apple has expressly acknowledged that the defect existed. Rather, the denial is part
6 of Apple’s pattern and practice of concealment.

7 38. In some of the conversations reported above, Apple downplayed the
8 significance of the PowerBook memory slot defect by questioning the reliability of
9 information posted online. For example, when “Lillian” told Apple’s representative
10 that the issue was widespread, he replied, “[Y]ou can’t trust people online.”
11 Another consumer (“BellBucci”) told an Apple representative of “this relatively
12 large thread” of messages complaining about the defect, and was told in response,
13 “That's just a message board.”

14 39. The irony is rich. Apple has been at the forefront of popularizing – and
15 profiting richly from – the computer and its online applications. Apple itself set up
16 user comment pages for its products, including the PowerBook G4. Yet when
17 consumers cited hundreds of online complaints in a sincere attempt to demonstrate
18 how widespread the memory slot defect was, Apple downplayed consumers’ web
19 postings because they were recorded electronically.

20 40. There is no logical basis – nor is there any basis in the Federal Rules of
21 Civil Procedure – to disregard communications, or view them as inherently
22 unreliable, merely because they are posted electronically and not submitted in pen
23 and ink. Moreover, despite its attempts to convince callers otherwise, Apple
24 eventually acknowledged the defect. This is not a case where the defendant can
25 claim that the consumers’ complaints were unfounded; as demonstrated below,
26 Apple itself acknowledged that the memory slot defect existed and impaired the
27 operation of the PowerBook G4.

1 41. With the number of consumer complaints growing, Apple deleted a
2 discussion thread containing over 350 posts about the PowerBook memory slot
3 defect from its website, as referenced in the next-to-last paragraph of the following
4 exchange:

5 Posted: May 9, 2005 9:35 PM by ggeoffre

6 Any update on this issue, I have been searching through
7 the posts and have found that this is affecting certain
8 PowerBooks for the *second time now*. It appears as if
9 what ever is causing the lower slot to fail has not been
resolved.

10 For those not familiar with the issue. Apparently the lower
11 dimm slot on the main logic board fails to work. This may
12 be the result of new power management updates to the
13 software. It may be due to the fan not working and the
14 PowerBook overheating and frying the main logic board.
Does anyone know?

15 RE: Lower Memory Slot - Empty

16 Posted: Jul 31, 2005 7:45 PM in response to: [ggeoffre](#)

17 no resolution.

18 *apple has removed a 350+ post thread concerning this*
19 *issue.*

20 google over to an independent site using search terms ram
21 mac PowerBook logic board *failure*.
22 keep this thread alive.

23 42. Apple's conduct in deleting a thread of 350-plus messages concerning
24 the memory slot defect demonstrates, at a minimum, that Apple was aware of the
25 memory slot defect and that Apple took affirmative steps to inhibit discussion of it
26 and conceal it from consumers.

1 ***The Defect Existed and Was Known to Apple***

2 43. Contrary to Apple’s statement that “you can’t trust people online,”
3 consumers’ complaints about the PowerBook memory slot defect were accurate and
4 legitimate. Hundreds of consumers did not succumb to a mass delusion over a non-
5 existent product defect. To the contrary, consumers who tried to expand their
6 PowerBook’s memory by adding a memory card to the machine’s second memory
7 slot typically found that the computer did not recognize the additional memory, that
8 the computer’s operation became more sluggish, and that its performance degraded.

9 ***Apple Partners with Intel and Retires the PowerBook Brand***

10 44. As complaints about the defective PowerBooks increased, Apple’s
11 CEO announced that Apple would begin producing Intel-based Mac computers in
12 2006. As part of its transition to an Intel-based system, Apple announced the
13 retirement of the PowerBook brand.

14 45. While the June 6, 2005 announcement of the partnership between
15 Apple and Intel stunned consumers, according to the technology press, the deal
16 between Apple and Intel was anything but sudden. The technological sea-change in
17 switching to Intel processors was developed in secret over a period of years.

18 46. Thus, consistent with its plans to retire the PowerBook brand, Apple
19 ignored the obvious defect in its soon-to-be discontinued line of products.

20 47. In connection with its transition to an Intel processor, Apple began to
21 aggressively market a new laptop computer – the MacBook Pro. The MacBook Pro
22 was designed to replace the PowerBook in Apple’s product line.

23 48. Indeed, Apple’s conversion to Intel processors was completed ahead of
24 schedule – as complaints about the PowerBook memory slot defect escalated.

25 ***Apple Belatedly Acknowledges the RAM Slot Defect, but Inadequately Extends***
26 ***Warranty Coverage***

27 49. While the existence of the memory slot defect is demonstrated by the
28 consumer complaints cited above, it is also established by Apple’s offer of an

1 extended warranty for the PowerBook memory slot, as well as Apple’s public
2 statements and internal communications.

3 50. The warranty program adopted in 2006, described more fully below,
4 was known as the Memory Slot Repair Extension Program (the “Program”). As set
5 forth in an online article posted by Apple and last modified on July 25, 2008, the
6 program offered to sell consumers an extended warranty “covering repair or
7 replacement of the memory slot in PowerBook G4 models manufactured between
8 January 2005 and April 2005 (2005-01 through 2005-04) *that were experiencing*
9 *specific component issues.*” See Exhibit A.(emphasis added). This public
10 statement is an admission by Apple that the G4 was, in fact, “experiencing” memory
11 slot “issues.”

12 51. The same online article – there is no reason to question its veracity
13 merely because Apple chose to post it online – identifies “the symptoms on an
14 affected PowerBook G4[.]” It states (emphasis added):

15 *Affected systems would exhibit one of the following symptoms:*

- 16
- 17 • The computer does not start up; instead, there are three short beeps
(typically) followed by the sleep LED flashing periodically.
 - 18 • *When both SO-DIMM memory slots are filled (populated), only one*
19 *slot’s memory is recognized.*
 - 20 • System performance may be degraded because the memory in only one
21 slot is not recognized.

22 Important: These symptoms may occur only intermittently.³

23 52. When Apple put the Program in place, it expressly acknowledged the
24 existence of the memory slot defect. The exact date when Apple first recognized
25

26 ³ See “About the PowerBook G4 (15-inch 1.67/1.5GHz) Memory Slot Repair
27 Extension Program,” available at <http://support.apple.com/kb/HT2164>.

1 that the defect existed is known only to Apple, and is being sought in discovery. It
2 is beyond dispute that Apple had specific knowledge of the defect as early as
3 November 2004, when Apple acknowledged to a consumer (Mr. Babcock) that there
4 was a problem with the memory slot in (at least) the 15-inch PowerBook.

5 53. In addition to Apple's belated and inadequate public recognition of the
6 memory slot defect, Apple acknowledged and discussed the defect internally in
7 memoranda known as "knowledge based articles." These articles, disseminated
8 internally on a periodic basis, were similar to "Frequently Asked Questions" and
9 were made available to Apple technicians and other employees. The articles could
10 only be edited by an employee designated Tier 2 or higher, and only engineers and
11 above had authority to author an article. The articles would explain specific product
12 problems, recall issues, and the like, so that employees could find the available
13 information if a customer called with a question or concern.

14 54. According to former Apple employees, Apple prepared and
15 disseminated "knowledge based articles" regarding the PowerBook memory slot
16 defect. But these articles were not provided to the public, nor were their contents
17 disclosed. Apple made no public acknowledgment of the defect until it adopted the
18 extended warranty Program for a limited number of PowerBooks in 2006. Former
19 Apple employees have stated what later become known about the PowerBook RAM
20 slot defect: that the only way to fix the product was to replace the logic board,
21 which was inordinately expensive.

22 55. Even after the Program was adopted, Apple continued to profit from
23 sales of PowerBook G4 computers and to tout its expandable memory capacity,
24 despite its knowledge that the defect was substantially certain to degrade the
25 computers' performance during its useful life.

26 56. The Program was limited to PowerBooks manufactured between
27 January 2005 and April 2005 and having eleven digit serial numbers in the
28 following range: W8503xxxxxx-W8518xxxxxx. See Ex. A. The Program did not

1 cover 17-inch Powerbook G4 models, nor any 15-inch PowerBook G4 outside of
2 this serial number range. Apple ended the program on July 24, 2008. The vast
3 majority of PowerBooks (which were manufactured and sold between 2001 and
4 2006) were not covered by the Program.

5 57. As noted above, Apple acknowledged that affected PowerBook G4
6 computers may not start up at all, and may not recognize that the lower memory slot
7 is filled, thus degrading system performance because the memory in only one slot is
8 recognized. Apple's admission that the problems may only occur intermittently is
9 also significant. It means that a PowerBook G4 owner may not become aware of the
10 defect until months, or years, after installation of memory in the defective memory
11 slot.

12 58. According to former Apple employees, the Program was internally
13 referred to as "Return Extension Authorization" (REA). There were many instances
14 when a consumer would call Apple regarding the defective RAM issue, but their
15 PowerBooks would not fall within the REA limitations. If a consumer called and
16 his or her PowerBook did not fall within the REA, the Apple employee was
17 instructed to escalate the call to support engineering and inform them that the date
18 range for the REA may need to be modified. This information would be considered
19 by Apple executives in the Cupertino office.

20 59. Apple executives were aware of the total number of defective memory
21 slot complaints the call centers received, as well as the number of complaints
22 received from consumers whose PowerBooks fell outside the REA limitations, both
23 before creating the REA and during its administration. As such, Apple executives
24 made a business decision as to which consumers of their defective product would
25 get some relief – and decided to take their chances with the legal system for others,
26 like the Plaintiffs.

27 60. In addition to its inadequate coverage, the Program was not adequately
28 publicized. Apple did not notify PowerBook purchasers of the defect, or the

1 Warranty Extension Program. Adequately informed PowerBook purchasers could
2 have checked the functionality of their memory slots during their warranty period,
3 and if discovered, had Apple correct the defect. Consumers have complained
4 regarding the lack of sufficient notice:

5 **Jim Thomson** - Los Angeles - 29 November 2008.

6 My laptop had died without warning 2 weeks ago. When I
7 took it to the Apple store to confirm it was the hard drive
8 that failed, they also discovered one of the memory slots
9 no longer works. As the repair window had closed, they
10 said nothing could be done. *I've been getting e-mails
11 from Apple for the past several years about new stores
12 and products, but NOT ONE about this recall. Had I
13 gotten it I would have checked my machine.* I had
14 assumed it was getting slower due to the drive being
15 almost full. Apple really screwed over a number of people
16 on this.

17 * * *

18 **Jesse Edward Davis** - 2365 Congressional Drive El Cajon, CA 92019 - 27
19 January 2009.

20 Apple never notified me of this issue. Even though my
21 serial number W851204GSB7 is well within the W8503 to
22 W8518 range. My computer was registered with
23 AppleCare's three year program. My email did not change,
24 and I only discovered this problem, after deciding to
25 upgrade memory because the computer was running so
26 slow, crashing, and locking up. I thought it odd, that
27 before the upgrade it only showed memory in the upper
28 slot. When I opened the memory bay and saw two cards I
realized something was wrong. After online research it
became obvious what the problem was. Why did Apple
not contact the affected customers? Why did Apple not
compile a software diagnostic as part of their ongoing
updates to identify this problem? This was a very
expensive purchase. They knew they had a problem and
just let the more astute users get repair and left the rest of
us out in the cold. This definitely falls within class action
lawsuit guidelines. Apple knowingly misled it's customers
and made no attempt at notification of a KNOWN
problem.

29 * * *

30 **Tony Chien** - Los Angeles, California - 1 May 2009.

31 I too had the same malfunction with my 15in powerbook.
32 Clearly unethical business practices by Apple. Case and

1 Point: A nation wide, possibly worldwide recall notice was
2 sent to all whom had a faulty apple wall chargers, a \$45-
3 \$65 item, and user replaceable; next came the faulty
4 battery recall, a \$120 item. Apple sent a nationwide recall
5 notice and replacement program for that too. Again user
6 replaceable. A faulty RAM slot on a logic board, \$400+
7 item, not including installation/repair by a certified tech.
8 ***This issue was kept quiet in the apple support page and
9 only accessible if you did a keyword search.***

10 Hmm...smells like a rotten apple to me.

11 P.S. the apple care supervisor on my case sent my info to
12 Apple Engineers and they acknowledged the symptoms of
13 my machine were clearly of that of the faulty product but
14 would not cover my case because I missed the program
15 deadline, and mind you I was three weeks pass the cutoff
16 date.

17 61. Apple also did not directly notify PowerBook purchasers of the
18 Program. Even those who would have otherwise received an extended warranty
19 were not told of the defect or the Program, and could no longer get such coverage
20 after July 24, 2008. Consumers have complained regarding the lack of sufficient
21 notice:

22 **Kevin Gann** - Bellevue, WA - 13 December 2006.

23 The Apple Store didn't mention this program! They
24 wanted to charge me \$900!

25 * * *

26 **Robert Cordo** - Wayzata, MN - 23 August 2008.

27 I visited the Apple Genius bar twice before the current
28 extension expired on 7-24-08. Even though my system
exhibited the exact symptoms; they did not mention this
repair program to me. I found it by accident today when
trying to find out what 3-beeps means at power-up. At this
point they are quoting me \$900+ to fix the problem. This
is silly.

1 *Apple Refuses To Correct Its Defective Computers*

2 62. Tens of thousands of people nationwide have purchased PowerBook
3 computers manufactured with defective memory slots. Aside from purchasers who
4 were covered by the Program, and acted before July 24, 2008, Apple has informed
5 Plaintiffs and other customers with defective PowerBooks that they have no
6 recourse other than to repair the defective memory slots at their own expense.
7 Apple has refused to warrant, repair or pay for any repairs relating to the
8 PowerBook's defective lower memory slot, or to warrant any PowerBooks should
9 the defect manifest itself sometime in the future.

10 63. Despite the inherent defect existing in the memory slots at the time the
11 computers were manufactured, Apple has refused to repair malfunctioning
12 PowerBook G4 computers or reimburse consumers for the cost of the repairs.
13 Apple has maintained its refusal to repair the defective computers, although the
14 inherent defect results in malfunction during the PowerBook's useful life. Because
15 of her initial problems, Ms. Miller purchased an AppleCare Protection Program to
16 cover her PowerBook computer.

17 64. Apple claims that it is not obligated to repair defective PowerBook G4
18 computers when the inherent defect resulted in malfunction outside Apple's
19 purported one-year limited warranty period. However, rather than the result of
20 natural "wear and tear" on its machines, the memory slot defect exists at the time of
21 manufacture, and renders the PowerBook substantially certain to malfunction during
22 the computer's useful life.

23 65. Frustrated by Apple's refusal to repair thousands of defective
24 computers, consumers created an online petition beseeching Apple to provide a
25 remedy for the widespread product defect. To date, the online petition includes over
26 5,406 signatures and numerous accounts of defective PowerBook memory slots.
27 For example:

28 **27 Theodore Stalcup - Oakland CA - 14 June 2005.**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

It seems unfair to demand hundreds of dollars to repair what is obviously a design or manufacturing flaw and something unrelated to use of the product by the consumer

* * *

120 Paul Herrick - Eugene, OR - 20 July 2005.

It is remarkable and shameful that the Apple corporation has made no effort to rectify the lower RAM slot failure on a system that is allegedly worth the extra money. I felt little irritation about this issue until I went online and did not even have to search to find a thread on the Apple support site with over 100 people who had the same problem. I find the \$300+ logic board replacement to be completely offensive, especially in light of the necessity for this very petition.

* * *

747 Kevin Pedersen - Bolinas, CA - 26 October 2005.

PB G4 A1 / 1.25 GHz / (formerly) 1 GB:
Lower memory slot works only when one chip is installed. When both chips are installed, the lower slot is seen as empty (regardless of which chip is in the lower slot). . .

* * *

770 Trevor Sherwin - Canada - 31 October 2005.

I just had to buy a new PowerBook because the last one was out of warranty and you guessed it, the lower RAM slot failed. So I've had my new PowerBook for about 3 weeks now and *I've already run into the same problem! This defect affects every 15" PowerBook and it has to get fixed ASAP.* Apple, ask whoever is making these logic boards to fix the manufacturing defect. Then tell the world that you'll replace the logic board for all of us affected.

* * *

Sandy N. Pawlowski - South Park, Charlotte - 16 November 2005.

1 I have had my apple for a little over one year when I went
2 to the South Park Apple Store, located in Charlotte to
3 figure out the problem. *The "Mac Genius" reported to*
4 *me that this is a continuing problem and has occured a*
5 *number of times to many customers as evidenced by this*
6 *petition. He revealed the truth about a low production*
7 *standard that is diminishing the quality of your product.*
8 Such an essential element should not be known(expected)
9 to fail around the 1 year mark of a new machine. Please
10 stand up for your dedicated customers and do what is
11 right.

12 * * *

13 **Hotmac (2/10/06)**

14 Phoned 30 mins with Aplle: After several weeks of
15 despair because of kernel panics, a never-starting-
16 Powerbook, empty ram slot etc. I found the reason of my
17 problems - the lower ram slot. Apple support now tells me,
18 that I have to accept that my PB now has a defect, but they
19 can't repair it because the serial is not within the range of
20 accepted PBs. If I would like to sell this PB I have to sell
21 it as defect...Because of this ignorance and the problems
22 they have with their hardware I decided to switch to
23 Microsoft next time. If Apple does not assume full
24 responsibility for this bullsh... I can't find any reason why I
25 should support this brand. Thank you Apple.

26 * * *

27 **Alexander Quel - Venice, Ca - 4 April 2006.**

28 I have had this problem occur with TWO separate 15 G4
powerbooks. They are BRAND NEW computers, I
returned the 1st because I was within 14 days, and have
had the SAME problem with the replacement computer
coming straight out of the box. Not to mention the fact that
when I called Apple support, they claimed that
Powerbooks are not guranteed to support 2GB of
memory, with NO mention of the chronic logic board
failures. Not exactly quality customer service.

* * *

31 **George Potter - Montana USA - 17 January 2007.**

32 I was told by apple this problem would be fixed, then told
33 one week later that it would not be. I spent 4 hours on the
34 phone with 5 different apple reps - only one of whome had

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ever heard of this problem. Perhaps now that there is a million different iPods, a new phone and television coming out for apple they don't really care about their loyal customers who have been with them long before iPods even existed.

* * *

Julieun Suh - Kansas City - 4 August 2007.

I purchased my powerbook in August 2005. Just after a year, when my warranty had just expired, I had symptoms of memory failure with my lower memory slot. I took my laptop to a local apple store I was told my machine did not qualify for the memory slot repair program because my serial number did not fall within the range: W8503xxxxxx through W8518xxxxxx. As my powerbook has a later serial number W8530xxxxx, this issue definitely transcends the circumscription period acknowledged by Apple. I am very disappointed with Apple not taking responsibility and acknowledging the widespread problem. As this powerbook was my first Apple computer and large investment to switch from PC to Mac I was not happy to find this problem has yet to be resolved. I would like to think Apple wants to continue to build a loyal consumer following, but putting product out there that fails because of quality issues and not providing a solution to the many people who are affected does not create a positive reputation.

* * *

Dean Bonetzky - 8200 SR 366 - 4 June 2008.

MY POWERBOOK G4'S LOWER MEM MODULE DOES NOT WORK. CALLED APPLE AND THEY TOLD ME I HAD A "VERY OLD MACHINE" "THER ARE MUCH NEWER AND BETTER APPLE NOTEBOOKS" THE TECH THAT TOOK MY CALL WAS VERY ARROGANT. I TOLD HER "OLD?" SHE SAID IT'S 3 YEARS OLD. I HAVE TOSHIBA THATS 6 YEARS OLD AND WORKS PERFECT. AT THE TIME OF PURCHASE I WISH APPLE WOULD TELL ME THEIR MACHINE ARE GOOD FOR ONLY TWO YEARS.

* * *

Aaron McFarland - Northglenn CO - 17 December 2008.

Was told by Apple that because it happened after the warranty period they wouldn't fix even though it was a known issue with the laptop

* * *

1 **Tony Chien** - Los Angeles , CA - 21 May 2009.

2 Call apple care several times. They acknowledge that my
3 powerbook has the faulty lower ram slot, however they
4 will cover the repair costs because the serial# of my
5 powerbook was not within the range stated on the website.
6 I argued that this range was just an estimate and if they can
7 actually prove the exact number of powerbooks sold with
8 this faulty ram slot. ***They admitted there is no way to
9 determine just exactly how many powerbooks were sold
10 and distributed with this issue so they just estimated that
11 number.*** I was told several different excuses before being
12 arriving at the conclusion that I would have to cover the
13 repair costs. ***Legally this issue should have been disclosed
14 to all customers that purchased this product due to the
15 fact that this was a known manufacture defect.*** I would
16 care as much if this was a \$50 fix, but a to replace the
17 logic board where the ram slot is located would cost
18 several hundred dollars.

19 66. To date, Apple has not taken effective action to remedy defective
20 memory slots in its PowerBook computers. The Program only compounds the
21 deception, as it implies that the only machines that would suffer from the defect
22 were manufactured within a four-month period in 2005, and had only certain serial
23 numbers. That is not true. Apple has acted unfairly and deceptively.

24 ***Plaintiff Reuben Berenblat Purchases a Defective PowerBook G4 Directly from
25 Apple***

26 67. On or about July 12, 2005, Mr. Berenblat purchased directly from
27 Apple an Aluminum PowerBook G4 15", serial number W85252RYRG4.

28 68. In September 2008, Mr. Berenblat realized that his computer was not
working well. Thinking that he might require additional memory to optimize the
performance of his computer, Mr. Berenblat added memory to his computer.
However, his computer's performance only worsened.

69. Mr. Berenblat brought his computer to an Apple store in New York
City and was told that his hard drive was defective. However, it was later

1 determined that there was no problem with the hard drive; rather, the lower memory
2 slot was defective and degraded his computer's performance. Mr. Berenblat again
3 contacted Apple directly to have his computer repaired, and Apple refused to repair
4 or replace his defective computer.

5 70. As a result of the defect, Mr. Berenblat cannot use his PowerBook for
6 its ordinary and intended purpose, and has suffered damage.

7 ***Plaintiff Andrew Personette Receives a Defective PowerBook G4 Directly from***
8 ***Apple***

9 71. In 2005, Mr. Personette purchased a titanium PowerBook computer
10 with an AppleCare Protection Plan. However, Mr. Personette's titanium
11 PowerBook was defective. After returning his titanium computer to the Apple store
12 in New York City's Soho neighborhood several times for repair, Apple personnel
13 determined that the titanium PowerBook could not be fixed. Accordingly, in
14 exchange for his defective titanium PowerBook, in 2005, Mr. Personette received
15 from the Apple store an Aluminum PowerBook G4 15", serial number
16 W84080FANRW.

17 72. In 2007, Mr. Personette added memory to his PowerBook to increase
18 its functionality. However, shortly thereafter, in September 2007, Mr. Personette
19 noticed that his PowerBook was functioning very slowly and determined that the
20 computer did not recognize one of the memory cards because the lower memory slot
21 was defective.

22 73. Mr. Personette contacted Apple directly to have his computer repaired,
23 and Apple refused to repair or replace his defective computer.

24 74. As a result of the defect, Mr. Personette cannot use his PowerBook for
25 its ordinary and intended purpose, and has suffered damage.

1 ***Plaintiff Earl Simpson Purchases a Defective PowerBook G4 Computer from an***
2 ***Apple-Authorized Reseller***

3 75. On or about August 20, 2005, Dr. Simpson purchased an Aluminum
4 PowerBook G4 15", serial number W852545TRG4 from MacShop Northwest, an
5 Apple-authorized reseller and service provider.

6 76. Dr. Simpson sought to increase the RAM in his PowerBook to the
7 maximum of 2GB. However, on or about October 12, 2008, when Dr. Simpson
8 attempted to add memory to his PowerBook, he realized that the lower memory slot
9 was defective and did not recognize the memory.

10 77. Dr. Simpson was advised by Apple-authorized reseller and service
11 provider, The Portland Mac Store, to increase the RAM in the upper memory slot to
12 the maximum in the single memory slot of 1 GB. Thus, Dr. Simpson was not able
13 to obtain the maximum amount of memory that his computer should have been able
14 to utilize had it not been defective.

15 78. As a result of the defect, Dr. Simpson cannot use his PowerBook for its
16 ordinary and intended purpose, and has suffered damage.

17 ***Plaintiff Laura Miller Purchases a Defective PowerBook G4***

18 79. In or around early 2006, Ms. Miller purchased an Aluminum
19 PowerBook G4 15", serial number W8527057RG3 from a third-party internet
20 vendor.

21 80. Shortly after purchasing her PowerBook, Ms. Miller experienced
22 problems and returned the computer to Apple. In June 2006, Apple replaced the
23 motherboard of her PowerBook.

24 81. Because of her initial problems, Ms. Miller purchased an AppleCare
25 Protection Program to cover her PowerBook computer.

26 82. Just after expiration of her AppleCare extended protection, Ms.
27 Miller's computer again failed. At this time, Ms. Miller learned that the lower
28 memory slot of her PowerBook G4 was defective and did not recognize the memory
that she attempted to load into the computer. Thus, Ms. Miller was not able to

1 obtain the maximum amount of memory that her computer should have been able to
2 utilize had it not been defective.

3 83. As a result of the defect, Ms. Miller cannot use her PowerBook for its
4 ordinary and intended purpose, and has suffered damage.

5 ***Plaintiff Thomas Wagner Purchases a Defective PowerBook G4***

6 84. In the summer of 2005, Plaintiff Thomas Wagner purchased a
7 Powerbook G4 15”, 1.67 MHZ, with the serial number W851526GRG4 from a
8 third-party internet vendor. He purchased it with the 3-year Apple Care warranty
9 coverage.

10 85. While covered under Apple Care, he twice sent his computer to Apple
11 to repair other issues. He purchased two 1GB SO-DIMMS memory expansion from
12 the Apple Store in March of 2006. He noticed at times that his computer appeared
13 sluggish. He had not been told by Apple about the RAM slot defect, even when his
14 machine was being repaired by Apple for other issues.

15 86. In January 2009, Mr. Wagner’s computer stopped making a startup
16 tone. Upon opening the “about this Mac” tab, Mr. Wagner learned his computer was
17 only recognizing 1GB of RAM. He does not know how long his PowerBook failed
18 to recognize his lower RAM slot.

19 87. Mr. Wagner called AppleCare who suggested the problem was the
20 memory card. Only upon calling his local computer shop was he told of the memory
21 slot defect. He was also told of Apple’s Memory Slot Repair Program. His machine
22 (based upon its serial number) would appear to have been eligible for the program.
23 However, he was not made aware of the program, nor any need to examine his
24 machine, run diagnostics, or get the memory slot replaced until after the program
25 ended in July of 2008.

26 88. As a result of the memory slot defect, Mr. Wagner is not able to obtain
27 the maximum amount of memory that his computer should have been able to utilize
28 had it not been defective.

1 89. As a result of the defect, Mr. Wagner cannot use his Powerbook for its
2 ordinary and intended purpose, and has suffered damage.

3 ***Plaintiff Scott Meyer Purchases a Defective PowerBook G4***

4 90. Mr. Meyer bought a PowerBook G4 from Apple online in June 2005,
5 serial number W85243ATSQ7. He also purchased AppleCare.

6 91. Mr. Meyer noticed that the machine was running slowly. He took his
7 machine to two registered Apple repair stores in 2008. The technicians did not
8 diagnose the problem. He purchased an additional 1 GB RAM card in December
9 2008 for \$35.04. When he went to install it, he learned there was a 512 GB card
10 already in the lower memory slot that was not being recognized by the computer.
11 While he has two 1 GB RAM cards, he is only able to use one of them. Mr. Meyer
12 learned about the RAM slot defect not by Apple's technicians, but by looking
13 online. He also learned that his PowerBook was not covered by the Memory Slot
14 Repair Program, and that Apple had refused to repair or replace the PowerBooks of
15 similarly situated PowerBook owners.

16 92. As a result of the memory slot defect, Mr. Meyer is not able to obtain
17 the maximum amount of memory that his computer should have been able to utilize
18 had it not been defective.

19 93. As a result of the defect, Mr. Meyer cannot use his PowerBook for its
20 ordinary and intended purpose, and has suffered damage.

21 ***Thousands of Consumers Have Suffered Losses as a Result of Apple's***
22 ***Manufacture of Defective PowerBook G4 Computers***

23 94. There have been numerous consumer complaints to various Federal and
24 State authorities about the PowerBook's defective lower memory slots, and, as set
25 forth above, web sites are full of consumers who have complained about the fact
26 that their PowerBook computers' memory slots do not work. Consumers have
27 posted complaints stating that they have had to repair the defective memory slot at
28 their own expense, that Apple has refused to reimburse them for the expense

1 incurred, and that Apple has refused to exchange defective PowerBooks for
2 PowerBooks with properly functioning memory slots. Given the prevalence of
3 complaints, discovery will likely reveal Apple's awareness of the inherent defect in
4 the PowerBook computers.

5 95. Apple continued to manufacture and sell PowerBook computers with
6 defective memory slots even after receiving thousands of complaints informing it of
7 the specific defect alleged herein. Indeed, Apple's removal of a discussion thread
8 regarding the PowerBook memory slot defect from Apple's own website confirms
9 that Apple was aware of the problem and took active steps to conceal it. As such,
10 Apple profited enormously from sales of its PowerBook G4 computers while
11 Plaintiffs and the Class incurred significant damages, including but not limited to
12 the expenses incurred in repairing or replacing their defective PowerBook
13 computers.

14 96. Apple has, and continues to this day, refused to respond to the
15 thousands of customer complaints regarding the PowerBook's defective memory
16 slot, and has refused to repair at its own expense the defective memory slot or
17 compensate thousands of PowerBook purchasers who repaired the defective
18 memory slot at their own expense.

19 97. As referred to above, no adequate notice has been provided to
20 Plaintiffs, and no consent or bargained-for approval has been granted by Plaintiffs
21 or other Apple customers who purchased PowerBook computers, including the
22 PowerBook G4, that their computers have defective memory slots. Nor did
23 Defendant provide any notice, adequate notice or full disclosure of the fact that its
24 PowerBook computers have defective memory slots.

25 **CLASS ACTION ALLEGATIONS**

26 98. Plaintiffs bring this action on their own behalf and additionally,
27 pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of a
28 nationwide class of all persons who have purchased PowerBook computers with one

1 or more defective memory slots, during the period from January 1, 2005, to the
2 present (the “Class”) and a sub-class of persons who purchased PowerBook
3 computers directly from Apple (the “Sub-Class”).

4 99. Excluded from the Class is Defendant; any parent, subsidiary, or
5 affiliate of Defendant; any entity in which Defendant has or had a controlling
6 interest, or which Defendant otherwise controls or controlled; and any officer,
7 director, employee, legal representative, predecessor, successor, or assignee of
8 Defendant; and the judge to whom this case is assigned and his or her immediate
9 family.

10 100. This action is brought as a class action for the following reasons:

11 a. The Class consists of at least thousands of persons and is
12 therefore so numerous that joinder of all members, whether otherwise
13 required or permitted, is impracticable;

14 b. There are questions of law or fact common to the Class that
15 predominate over any questions affecting only individual members,
16 including:

17 i. Whether Defendant was unjustly enriched by selling defective
18 laptops while actively concealing information about that defect

19 ii. Whether Defendant violated Cal. Bus. & Prof. Code § 17200
20 by manufacturing and selling PowerBook computers with
21 defective memory slots;

22 iii. Whether members of the Class have sustained damages
23 and/or other compensable losses and, if so, the proper measure
24 thereof; and

25 iv. Whether Defendant should be enjoined from selling
26 PowerBook computers with defective memory slots, or required
27 to extend warranty coverage to additional PowerBook machines.

1 c. The claims asserted by Plaintiffs are typical of the claims of the
2 members of the Class;

3 d. Plaintiffs will fairly and adequately protect the interests of the
4 Class, and Plaintiffs have retained attorneys experienced in class and
5 complex litigation, including related litigation involving consumer
6 fraud;

7 e. A class action is superior to other available methods for the fair
8 and efficient adjudication of the controversy, for at least the following
9 reasons:

10 i. Absent a class action, Class members as a practical matter
11 will be unable to obtain redress, Defendant's violations of its
12 legal obligations will continue without remedy, additional
13 customers will be harmed, and Defendant will continue to retain
14 its ill-gotten gains;

15 ii. It would be a substantial hardship for most individual
16 members of the Class if they were forced to prosecute individual
17 actions;

18 iii. When the liability of Defendant has been adjudicated, the
19 Court will be able to determine the claims of all members of the
20 Class;

21 iv. A class action will permit an orderly and expeditious
22 administration of Class claims, foster economies of time, effort,
23 and expense and ensure uniformity of decisions; and

24 v. The lawsuit presents no difficulties that would impede its
25 management by the Court as a class action.

26 f. Defendant has acted on grounds generally applicable to Class
27 members, making class-wide monetary and injunctive relief
28 appropriate; and

1 g. The prosecution of separate actions by individual members of the
2 Class would create a risk of incompatible standards of conduct for
3 Defendant and of inconsistent or varying adjudications for all parties.

4 101. Defendant's violations of the common law are applicable to all
5 members of the Class, and Plaintiffs are entitled to have Defendant enjoined from
6 engaging in unlawful conduct in the future.

7
8 **FIRST CAUSE OF ACTION**

9 **(Violation of California Business and Professions Code § 17200 *et seq.* –**
10 **On Behalf of the Class and Sub-Class)**

11 102. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1
12 through 101 as if fully set forth herein.

13 103. California Business and Professions Code § 17200 prohibits acts of
14 unfair competition, including any “unlawful, unfair or fraudulent business act or
15 practice[.]”

16 104. Apple's conduct in marketing and selling the PowerBook computers
17 with the memory slot defect described herein was tantamount to common law fraud,
18 and was also a course of conduct that was likely to deceive the public.

19 105. Apple failed and omitted to disclose to the Plaintiffs and other
20 PowerBook purchasers that the PowerBook's purportedly expandable memory did
21 not work; that the PowerBook would not recognize any additional memory installed
22 by the consumer; and that any attempt to use the expandable memory would result
23 in the computer operating sluggishly, or failing to start at all.

24 106. The existence of the dual memory slots, and the opportunity to expand
25 the computer's RAM, were material to Plaintiffs, the class members, and any
26 reasonable consumer who purchased a PowerBook.

27 107. Materiality exists if the omitted information would cause a reasonable
28 consumer to behave differently if he or she were aware of the information. The

1 amount of RAM available affects the price of a computer, with increased memory
2 promising a longer useful life of the machine, increasing the price. As Apple has
3 stated, “For a considerable performance improvement when working with large
4 files, the memory in the 12-inch model can be expanded to 1.25Gb, and the 15-inch
5 and 17-inch models can accommodate up to 2GB. Both the 15-inch and 17-inch
6 models come with 512MB of memory ... leaving a slot open for future memory
7 upgrades.”

8 108. Plaintiffs and the class members were unaware of the memory slot
9 defect when they purchased their PowerBooks. A consumer who knew of the
10 memory slot defect would not have purchased the PowerBook, and certainly would
11 not have paid the same price for the PowerBook, which was specifically marketed
12 on the basis of its expandable memory.

13 109. By failing to disclose the defect and its consequences, Apple withheld
14 material facts from Plaintiffs and all those similarly situated.

15 110. Apple had a duty to disclose the defect and its consequences to
16 Plaintiffs and all those similarly situated. A duty to disclose exists when the
17 defendant has exclusive knowledge of material facts not known to the plaintiff.
18 Apple had exclusive knowledge of the material facts concerning the PowerBook
19 memory slot defect, and those facts were not known to Plaintiffs.

20 111. As demonstrated above, Apple’s exclusive knowledge of the material
21 facts is evidenced by the existence of its internal “knowledge based articles”
22 concerning the defect; the statements of Apple’s former technicians and customer
23 service representatives who were aware of the defect during their employment with
24 Apple; Apple’s receipt of hundreds of complaints from purchasers as early as 2004;
25 and its belated acknowledgment of the defect in January 2006, when an extended
26 warranty was made available on a limited basis to a limited number of purchasers.

27 112. A duty to disclose also exists when the defendant actively conceals a
28 material fact from the plaintiff. Former Apple technicians and customer service

1 representatives stated that they were instructed to downplay any concerns about the
2 PowerBook memory slot, and to make it seem that Apple was doing customers a
3 favor if it resolved their concerns. Moreover, the customer comments posted online
4 relate numerous conversations in which Apple denied the existence of the defect –
5 denials that were false, as later established by Apple’s acknowledgment of the
6 memory slot defect and its symptoms. Meanwhile, Apple continued to market the
7 PowerBook on the basis of its expandable memory, concealing the fact that the
8 additional RAM would not be recognized and that any attempt to use the expansion
9 slot would degrade the computer’s performance. Additional evidence of
10 concealment is contained in the implementation of the extended warranty program
11 itself, which was limited – for no legitimate reason – to purchasers during a four-
12 month period, leaving thousands without recourse and creating the false impression
13 that the defect was less widespread than it actually was.

14 113. On information and belief, Apple’s engineers and quality assurance
15 personnel developed information about the defect before and during the period
16 when consumers complained about it. That information was concealed from the
17 public. Additional information concerning Apple’s discovery and concealment of
18 the defect is being sought in discovery.

19 114. Apple breached its duty to disclose the material facts concerning the
20 PowerBook memory slot defect to Plaintiffs and all others similarly situated. Apple
21 thus engaged in fraudulent business acts or practices in California and nationwide,
22 in violation of California Business & Professions Code § 17200, by manufacturing
23 and selling PowerBook computers with defective memory slots to Plaintiffs and
24 other members of the Class, by failing to use reasonable care to test the memory
25 slots in its PowerBook computers prior to sale, and by continuing to sell PowerBook
26 computers with defective memory slots even after learning that the memory slots in
27 its PowerBook computers were defective.

1 115. As described herein, Apple's conduct in manufacturing and selling
2 computers with an inherent defect that was substantially certain to result in
3 malfunction during the computers' useful lives caused and continues to cause
4 substantial injury to consumers, including Plaintiffs and the other members of the
5 Class.

6 116. As described herein, Apple failed to repair or replace the defective
7 laptops purchased by its customers when they were brought in for repair per their
8 one-year warranty or the extended warranty Program. Apple engaged in a fraudulent
9 business practice in not informing customers about the defect until after their
10 warranty protections lapsed.

11 117. As described herein, Apple acted fraudulently by actively concealing
12 material information from prospective and actual purchasers, namely:

13 a. The available RAM affects a product's price, and impacts a
14 consumers' purchase decision;

15 b. Apple knew the available RAM, and the ability to expand RAM
16 mattered to purchasers;

17 c. Apple knew about a RAM slot defect that plagued its
18 PowerBook G4 computers, and would preclude a significant number of those
19 machines from reaching or maintaining 2 GB of RAM as Apple promised;
20

21 d. Apple had a duty to disclose this information which, as the
22 manufacturer of the product and reviewer of call center operations, was in its
23 exclusive possession;
24

25 e. Apple actively concealed knowledge of the defect by a variety of
26 means, such as misstating to callers the cause of their RAM problem; not
27 alerting callers or website posters of the information it had gathered about the
28 defect; and even deleting 350+ posts to a website thread regarding the defect.

1 118. As a direct and proximate result of Apple's actions as described herein,
2 Plaintiffs and other members of the Class have suffered, and continue to suffer,
3 injury in fact and have lost money as a result of Apple's fraudulent business practice
4 in an amount which will be proven at trial, and which is in excess of the requisite
5 jurisdictional amount.

6 119. By reason of the foregoing, Apple has violated California Business &
7 Professions Code § 17200, and is liable to Plaintiffs and the other members of the
8 Class for restitution and all other appropriate remedies, plus costs and attorneys'
9 fees.

10 **SECOND CAUSE OF ACTION**

11 **(Unjust Enrichment – On Behalf of the Class and Sub-Class)**

12 120. Plaintiffs repeat and reallege the allegations contained in Paragraphs 1
13 through 119 as if fully set forth herein.

14 121. Plaintiffs and the Class have conferred benefits on Apple by paying
15 value for computers that they reasonably expected to have a working expandable
16 memory, and to be fully functioning during the computers' useful life. However,
17 Plaintiffs did not purchase fully functioning computers as a result of an inherent
18 defect known to Apple.

19 122. Apple knowingly and willingly accepted monetary benefits from
20 Plaintiffs and the Class, although Apple did not provide consumers with fully-
21 functioning computers or computers with expandable memory. Apple profited from
22 the sale of inferior and defective products.

23 123. Under the circumstances described herein, it is inequitable for Apple to
24 retain the full monetary benefit at the expenses of Plaintiffs and the Class.

25 124. By engaging in the conduct described above, Apple has unjustly
26 enriched itself at the expense of Plaintiffs and the Class and is required, in equity
27 and good conscience, to compensate Plaintiffs and the Class for harm suffered as a
28 result of Apple's actions.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

