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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE

8 ARAM HOVSEPIAN, individually and  
9 on behalf of all others similarly situated,

Case No.

**08 05788**

sem PVT

Plaintiff,

**CLASS ACTION COMPLAINT**

vs.

**JURY TRIAL DEMANDED**

APPLE, INC.,

Defendant.

14 Plaintiff Aram Hovsepian, individually and on behalf of the class described  
15 below, by his attorneys, makes the following allegations pursuant to the  
16 investigation of counsel and based upon information and belief, except as to  
17 allegations specifically pertaining to Plaintiff and counsel, which are based on  
18 personal knowledge.

19 **I. OVERVIEW OF THE ACTION**

20 1. Plaintiff brings this lawsuit as a proposed class action on behalf of  
21 himself and other Apple iMac consumers whose iMacs contain a latent defect that  
22 has currently manifested in the form of (unwanted) vertical lines on iMac display  
23 screens.<sup>1</sup>

24 <sup>1</sup> The iMac is Apple's version of a desktop computer.

BY FAX

1           2.     Unbeknownst to Plaintiff and Class, and undisclosed by defendant  
2 Apple Inc. (“Apple”), the screen display for iMacs fail at an unusually high rate in  
3 excess of industry standards, with the screen displaying vertical lines.

4           3.     Apple has received numerous complaints and warranty claims arising  
5 from this defect, which it internally recognizes and concedes is a systemic, class-  
6 wide problem (*i.e.*, unwanted vertical lines on iMac screen displays), thus making  
7 Apple aware of the latent defect and its propensity to manifest, as it has with  
8 Plaintiff and Class’s iMacs.

9           4.     As a result of Apple’s misconduct, consumers have purchased iMacs  
10 only to have them manifest the latent defect – and develop unwanted vertical lines  
11 on the display screen; and numerous consumers have made warranty claims arising  
12 from vertical lines which have been denied as out of warranty.

13           5.     Apple’s conduct: (a) violates California law, and/or alternatively, state  
14 consumer protection statutes as enumerated below, (b) constitutes breach of  
15 implied warranties; and (c) constitutes unjust enrichment, as alleged more fully  
16 below; and, (d) makes injunctive relief appropriate pursuant to 28 U.S.C. § 2201.

## 17     **II.     JURISDICTION AND VENUE**

18           6.     This Court has jurisdiction pursuant to 28 U.S.C. § 1332(d). This is a  
19 class action involving more than 100 class members. Members of the classes are  
20 citizens of a state different from defendant, and the amount in controversy, in the  
21 aggregate, exceeds the sum of \$5 million exclusive of interest and costs.

22           7.     Defendant, is a California corporation, has its principal place of  
23 business in Cupertino, California, transacts business in this District, has subjected  
24 itself to this Court’s jurisdiction through such activity, and a substantial part of the

1 events and omissions giving rise to the claim occurred in this District.

2 Accordingly, venue is proper in this District under 28 U.S.C. § 1391.

3 **III. PARTIES**

4 8. Plaintiff Aram Hovsepien is a natural person and resident of Sunny  
5 Isles Beach, Florida, who purchased an iMac in October 2006, and in March 2008,  
6 had vertical lines begin to appear on his display screen.

7 9. As stated, defendant Apple is a California corporation with its  
8 principal place of business in Cupertino, California.

9 **IV. FACTS**

10 10. This case arises out of Apple's failure to disclose material facts  
11 regarding the risk that vertical lines would appear on iMac display screens.

12 11. Vertical lines on LCD screens are the result of a bad transistor or  
13 connection on the back of the screen, a manufacturing and/or design defect.

14 12. Apple failed to warn consumers about the common design and  
15 manufacturing defects with iMac display screens, and failed to warn about the risk  
16 that iMac display screens would develop unwanted vertical lines. Instead Apple  
17 remained silent knowing its iMac display screens would malfunction while  
18 consumers purchased iMacs, made warranty claims arising from the vertical lines  
19 on the display screens, and made out of warranty repairs related to the vertical line  
20 problem.

21 **V. CLASS ACTION ALLEGATIONS**

22 13. Plaintiff brings this action as a class action for equitable, injunctive  
23 and declaratory relief, as well as monetary relief pursuant to Rule 23 on behalf of  
24 the following class:

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All persons and entities who purchased, not for resale, an Apple iMac/s.

Excluded from the Class are Apple; any entity in which it has a controlling interest; any of its parents, subsidiaries, affiliates, officers, directors, employees and members of their immediate families; and members of the federal judiciary.

14. The members of the Classes are readily ascertainable but are so numerous that joinder is impracticable. The exact number and names of the members of the Class are presently unknown to Plaintiff, but can be ascertained readily through appropriate discovery. Plaintiff believes that there are thousands of members of the Class whose names and addresses may be readily discovered upon examination of the records in the custody and control of Apple.

15. There are questions of law and fact common to the Class. Defendant pursued a common course of conduct toward the Class as alleged. This action arises out of a common nucleus of operative facts. Common questions include but are not limited to:

- (a) Whether Apple iMac display screens have a latent defect;
- (b) Whether Apple iMac display screens have a latent defect that is common to Apple iMacs;
- (c) Whether the latent defect manifests as vertical lines that appear on iMac display screens;
- (d) Whether Apple has denied warranty claims arising from the latent defect when that defect has manifested;
- (d) Whether Defendant's conduct constitutes deceptive,

1                   unfair and/or oppressive conduct as defined under the  
2                   California Unfair Business Practices Act (CUBPA) (Cal.  
3                   Bus. & Prof. Code §17200 *et seq.*),

4                   (e) Whether Defendant was unjustly enriched by its scheme;

5                   (e) Whether Plaintiff and Class have been damaged, and if  
6                   so, in what amount?

7                   16. Plaintiff's claim is typical of the claims of other members of the  
8                   Class. Plaintiff purchased an iMac from Defendant, and Plaintiff was denied a  
9                   warranty claim arising from vertical lines on the display screen charged.

10                  17. Plaintiff will fairly and adequately represent and protect the interests  
11                  of the Class, and common issues of law and fact predominate.

12                  18. Plaintiff has retained counsel competent and experienced in  
13                  prosecuting complex consumer class actions.

14                  19. Class certification is appropriate because Defendant has acted, or  
15                  refused to act, on grounds generally applicable to the Classes, making class-wide  
16                  equitable, injunctive, declaratory and monetary relief appropriate. In addition, the  
17                  prosecution of separate actions by or against individual members of the Class  
18                  would create a risk of incompatible standards of conduct for Defendant and  
19                  inconsistent or varying adjudications for all parties. A class action is superior to  
20                  other available methods for the fair and efficient adjudication of this action.

21                  **VI. CALIFORNIA'S SUBSTANTIVE LAW APPLIES TO THE**  
22                  **PROPOSED NATIONWIDE CLASS**

23                  20. California's substantive laws apply to the proposed Nationwide Class,  
24                  as defined herein, and Plaintiff properly brings this Complaint in this District.

1           21. California's substantive laws may be constitutionally applied to the  
2 claims of Plaintiff and the Nationwide Class under the Due Process Clause, 14th  
3 Amend., § 1, and the Full Faith and Credit Clause, art. IV., § 1, of the U.S.  
4 Constitution. California has significant contact, or significant aggregation of  
5 contacts, to the claims asserted by Plaintiff and all Class members, thereby creating  
6 state interests that ensure that the choice of California state law is not arbitrary or  
7 unfair.

8           22. Defendant's United States headquarters and principal place of  
9 business is located in California. Defendant also own property and conduct  
10 substantial business in California, and therefore California has an interest in  
11 regulating Defendant's conduct under its laws. Defendant's decision to reside in  
12 California and avail itself of California's laws, and to engage in the challenged  
13 conduct from and emanating out of California, renders the application of California  
14 law to the claims herein constitutionally permissible.

15           23. California is also the State from which Defendant's alleged  
16 misconduct emanated. This conduct similarly injured and affected all Plaintiffs  
17 and Class members residing in the United States. For instance, Defendant's  
18 marketing efforts relating to personal computer sales were created and orchestrated  
19 from its headquarters in California. More specifically, California has the following  
20 significant contacts to the claims of Plaintiffs and Class members:

21           (a) California serves as the headquarters for Apple's  
22 marketing and sales in the United States and provides all  
23 sales support;

24           (b) Upon information and belief, all corporate decisions

1 regarding the iMac, iMac screens and iMac screen  
2 warranty claims were directed by, or emanated from,  
3 Apple representatives working in California or directly  
4 reporting to superiors situated in California.

5 24. The application of California laws to the Nationwide Class is also  
6 appropriate under California's choice of law rules because California has  
7 significant contacts to the claims of the Plaintiffs and the proposed Nationwide  
8 Class, and California has a greater interest in applying its laws here than any other  
9 interested state.

## 10 VII. CAUSES OF ACTION

### 11 FIRST CAUSE OF ACTION

#### 12 (Violations of the California Unfair Business Practices Act 13 and California Consumers Legal Remedies Act)

14 25. Plaintiff repeats and realleges the allegations of the prior paragraphs,  
15 as if fully set forth herein.

16 26. At all times relevant hereto, there was in full force and effect the  
17 California Consumers Legal Remedies Act (CCLRA), Cal. Civ. Code § 1750, *et*  
18 *seq.*, and the California Unfair Business Practices Act (CUBPA), California  
19 Business and Professions Code § 17200, *et seq.*, which prohibit deceptive,  
20 fraudulent and unfair business acts and practices.<sup>2</sup>

21 27. Plaintiff and other Class members are consumers within the meaning

22  
23 <sup>2</sup> If the California act does not apply to non-California class members, then the consumer fraud claims  
24 of absent, non-California Class members are brought under the consumer protection statute(s) of their  
respective states. *See e.g.*, Fla. Stat. Ann. § 501.201 *et seq.* (Florida); 815 ILCS § 505/1 *et seq.* (Illinois);  
Mich. Stat. Ann. § 19.418(1) *et seq.* (Michigan); Mo. Rev. Stat. § 407.010 *et seq.* (Missouri); N.Y. Gen.  
Bus. Law. § 349 *et seq.* (New York); N.C. Gen. Stat. § 75-1 *et seq.* (North Carolina); Ohio Rev. Code  
Ann. § 1345.01 *et seq.* (Ohio); Wash. Rev. Code § 19.86.010 *et seq.* (Washington)

1 of the CCLRA and CUBPA given that Defendant's business activities involve  
2 trade or commerce, are addressed to the consumer market generally and otherwise  
3 implicate consumer protection concerns.

4 28. Defendant intended that Plaintiff and the Class would rely on its  
5 deception by purchasing iMacs and not challenging warranty denials, unaware of  
6 the material facts described above. This conduct constitutes consumer fraud, an  
7 unfair business practice and violation of the CCLRA.

8 29. Defendant has committed deceptive acts or practices within the  
9 meaning of the CUBPA by engaging in the acts and practices alleged herein.

10 30. Defendant's conduct alleged herein is further unfair insofar as it  
11 offends public policy; is so oppressive that the consumer has little alternative but to  
12 submit; and causes consumers substantial injury.

13 31. Defendant's conduct adversely affects the public interest and is a  
14 proximate cause of injury and money damages to Plaintiff Class in an amount to be  
15 proven at trial. Defendant is liable to Plaintiff Class for all appropriate damages  
16 allowed under the law, costs and attorneys' fees, including as private attorney  
17 generals under Cal. Code Civ. Proc. §1021.5

18 WHEREFORE, Plaintiff Hovsepien, individually and on behalf of the  
19 California Class described herein, prays for relief as more fully set forth below.

20 **SECOND CAUSE OF ACTION**

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

22  
23 32. Plaintiff repeats and realleges the allegations of the prior paragraphs,  
24 as if fully set forth herein.



1  
2 33. The Apple iMacs were defectively made, having left Defendant'  
3 manufacturing facilities with defective display screens.

4 34. At all times relevant hereto, there was duty imposed by law which  
5 requires that a manufacturer or seller's product be reasonably fit for the purposes  
6 for which such products are used, and that product be acceptable in trade for the  
7 product description.

8 35. Notwithstanding the aforementioned duty, at the time of delivery,  
9 Apple iMacs sold to Plaintiff and the Class were not merchantable.

10 36. As documented in its own business records and elsewhere, Defendant  
11 was notified that its iMac computers, specifically the display screens were not  
12 merchantable.

13 37. As a result of the non-merchantability of the Apple iMac computers  
14 described herein, Plaintiff and other members of the Class sustained a loss or  
15 damages.

16 WHEREFORE, Plaintiff Hovsepien, individually and on behalf of the  
17 California Class described herein, prays for relief as more fully set forth below.

18 **THIRD CAUSE OF ACTION**

19 **(Unjust Enrichment (alternative claim))**

20 38. Plaintiff repeats and realleges the allegations of the prior paragraphs,  
21 as if fully set forth herein.

22 39. Plaintiff and the Class have conferred benefits on Defendant by  
23 paying the purchase price for iMacs and/or by paying for repairs to iMacs to  
24 correct vertical line problems in the display screens.

1           40. Defendant knowingly and willingly accepted these monetary benefits  
2 from Plaintiff and the Class.

3           41. Under these circumstances, it is inequitable for Defendant to retain  
4 these benefits at the expense of Plaintiff and the Class.

5           42. Defendant has been unjustly enriched at the expense of and detriment  
6 to Plaintiff and the Class by wrongfully collecting money to which Defendant, in  
7 equity, is not entitled.

8           43. Plaintiff and the Class are entitled to recover from Defendant all  
9 amounts wrongfully collected and improperly retained by Defendant, plus interest  
10 thereon.

11           44. As a direct and proximate result of Defendant's unjust enrichment,  
12 Plaintiff and the Class have suffered injury and are entitled to reimbursement,  
13 restitution and disgorgement from Defendant of the benefits conferred by Plaintiffs  
14 and the Classes.

15           45. Plaintiffs and the Classes have no adequate remedy at law.

16           46. Plaintiffs seek to obtain a pecuniary benefit for the Classes in the form  
17 of all reimbursement, restitution and disgorgement from Defendant. Plaintiffs'  
18 counsel are entitled to recover their reasonable attorneys' fees and expenses as a  
19 result of the conference of a pecuniary benefit on behalf of the Classes, and will  
20 seek an award of such fees and expenses at the appropriate time.

21           47. As a direct and proximate result of Defendant's misconduct as set  
22 forth above, Defendant has been unjustly enriched.

23           WHEREFORE, Plaintiff, individually and on behalf of the Classes of  
24 persons described herein, pray for an Order as follows:

- 1 A. Finding that this action satisfies the prerequisites for maintenance as  
2 a class action set forth in Fed. R. Civ. P. 23(a) and (b)(3), and  
3 certifying the Class defined herein;
- 4 B. Designating Plaintiff as representative of the Class and his counsel  
5 as Class counsel;
- 6 C. Entering judgment in favor of Plaintiff and the Class and against  
7 Defendant;
- 8 D. Awarding Plaintiff and members of the Class their individual  
9 damages and attorneys' fees and allowing costs, including interest  
10 thereon; and/or restitution and equitable relief; and
- 11 E. Granting such further relief as the Court deems just.

12 **FOURTH CASUE OF ACTION**

13 **(Declaratory Relief Pursuant To 28 U.S.C. § 2201)**

14 48. Plaintiff repeats and realleges the allegations of the prior paragraphs,  
15 as if fully set forth herein.

16 49. There is an actual controversy between Apple and the Class  
17 concerning the validity of the time limitations in the warranty on iMac screen  
18 displays showing vertical lines

19 50. Pursuant to 28 U.S.C. § 2201 this Court may “declare the rights and  
20 legal relations of any interested party seeking such declaration, whether or not  
21 further relief is or could be sought.”

22 51. Apple has wrongfully denied warranty claims as untimely or based on  
23 other grounds despite the root cause of the vertical lines being a manufacturing  
24 and/or design defect as described herein.

1           52.   Accordingly, Plaintiff seeks a declaration that the Apple iMac screen  
2 display warranties regarding the one year time limitation on manufacturing defects  
3 in material or workmanship are void, invalid and not enforceable.

4           WHEREFORE, Plaintiff, individually and on behalf of the Class of persons  
5 described herein, prays for an Order as follows:

- 6           A.   Finding that this action satisfies the prerequisites for maintenance as a  
7                class action set forth in Fed. R. Civ. P. 23(a) and (b)(3), and certifying  
8                the Class defined herein;
- 9           B.   Designating Plaintiff as representative of the Class and his counsel as  
10               Class counsel;
- 11          C.   Entering judgment in favor of Plaintiff and the Class and against  
12               Defendant;
- 13          D.   Awarding Plaintiff and members of the Class their individual damages  
14               and attorneys' fees and allowing costs, including interest thereon;  
15               and/or restitution and equitable relief;
- 16          E.   Compelling Defendant to establish a program to replace and repair  
17               defective iMac displays;
- 18          F.   Compelling Defendant to establish a program to reimburse its  
19               warranty claims previously denied or paid in part, reimburse iMac  
20               owners who have had to pay to repair and/or replace defective iMac  
21               displays; and
- 22          G.   Granting such further relief as the Court deems just.

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24    ///

1 **VIII. JURY DEMAND**

2 Plaintiffs demand a trial by jury on all issues so triable.

3 Dated: December 30, 2008

4 Respectfully Submitted,  
5 ARAM HOVSEPIAN

6 By: /s/  
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