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14 Attorneys for Plaintiffs
15 ROMAN HUFF
16 and all others similarly situated

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

15 ROMAN HUF, on behalf of himself and
16 others similarly situated,

Case No. 09 01064

RS

Plaintiff,

CLASS ACTION COMPLAINT

v.

DEMAND FOR JURY TRIAL

20 APPLE INC.,

Defendant.

24 Plaintiff, by his attorneys, Meiselman, Denlea, Packman, Carton & Eberz
25 P.C., as and for his class action complaint, alleges, with personal knowledge as to his
26 own actions, and upon information and belief as to those of others, as follows:
27

28 CALDWELL
LESLIE &
PROCTOR

Nature of this Case

1
2 1. This class action seeks to redress the widespread and commonplace
3 characteristic defect and design flaw existing at the time of manufacture which
4 renders Apple's iMac G5's displays inoperative during the computer's useful life.
5 This inherent defect manifests itself shortly after an iMac G5 (hereinafter "iMac G5"
6 or "iMac") owner begins using his or her iMac. Typically, the iMac's display begins
7 to degrade, with prominent vertical lines appearing across the screen. In addition,
8 some iMac owners also experience color degradation: a change of colors from the
9 top to the bottom of the iMac screen. Stated differently, a solid colored background
10 appears normal at the top of the screen and gradually changes color at the bottom of
11 the screen. At the bottom of the display, the color appears faded or washed out. For
12 example, medium blue becomes light blue and light colors become white. As the
13 entire display eventually is rendered inoperable, either because of vertical lines
14 appearing across the display screen and/or color degradation, consumers who choose
15 to repair their defective displays can incur costs of more than \$800 in parts and
16 labor.

17 2. Moreover, the inherent defect can manifest itself months or even years
18 after purchase of a new iMac G5.

19 3. In response to thousands of complaints from its iMac customers,
20 including an online petition signed by almost 2,200 iMac purchasers, Apple has
21 refused to repair the defective displays.

22 4. As a result of Apple's actions, thousands of its customers have
23 purchased iMac computers with defective displays. Apple has refused to repair or
24 replace the defective iMac displays free of charge, and has refused its customers'
25 requests for refunds or exchanges of their defective iMacs. As such, thousands of
26 Apple iMac owners have been compelled to either repair or replace their defective
27 displays at their own expense or lose permanently the ability to use their computers.

1 manufactured – when the iMac is used for a short period of time, the display begins
2 to degrade, thus rendering the iMac useless.

3 17. Although the useful life of a desktop computer is five years, the
4 inherent defect in the Apple iMac G5 display renders the computer substantially
5 certain to result in malfunction during the computer’s useful life.

6 18. Affected iMac G5 computers exhibit at least one of the following
7 symptoms: (1) The iMac’s display begins to degrade, with prominent vertical lines
8 appearing across the screen, to the point where most, if not all, of the screen is filled
9 with vertical lines rendering the display useless; or (2) The iMac’s display begins to
10 experience substantive color degradation, with all colors eventually fading entirely,
11 rendering the display useless as the screen cannot display any colors whatsoever.

12 ***B. Apple Wrongfully Refuses to Correct the Vast Majority of Defective***
13 ***Computers***

14 19. Despite the inherent defect existing in the display at the time the
15 computers were manufactured, Apple has refused to repair malfunctioning iMac
16 computers or reimburse consumers for the cost of replacing the display or repairing
17 it. Apple has maintained its refusal to repair the defective computers, although the
18 inherent defect results in malfunction during the iMac’s useful life.

19 20. Apple claims that it is not obligated to repair defective iMac computers
20 when the inherent defect resulted in malfunction outside Apple’s purported one-year
21 limited warranty period. Apple’s refusal to repair Plaintiff’s and other iMac owners’
22 inherently defective computers, however, is wrongful because the defect that exists
23 at the time of manufacture renders the computer substantially certain to result in
24 malfunction during the computer’s useful life thus violating Plaintiff’s right to
25 obtain a product free from defects. Accordingly, because the defect existed within
26 the warranty period, Apple is obligated to repair, replace, correct, or otherwise
27 provide relief to its customers.

1 21. Moreover, Apple's purported limitation of warranties is ineffective
2 because it is not delivered to consumers in advance of their purchases, consumers are
3 not permitted to negotiate the terms, and the terms of the limited warranty
4 unreasonably favor Apple. The unconscionability of Apple's purported limitation of
5 warranties is compounded by Apple's knowledge that it manufactured defective
6 computers, yet continued to sell them without correcting the defects.

7 22. Thus, if an iMac owner finds out about the computer's defective display
8 one year after purchase, according to Apple, he or she would have no recourse other
9 than incurring the expense of fixing or replacing the defective display, or be stuck
10 with a computer which he or she could not use.

11 23. Tens of thousands of people nationwide have purchased iMac
12 computers manufactured with defective displays. Aside from the limited number of
13 iMacs covered by Apple's purported one-year limited warranty period, Apple has
14 informed Plaintiff and other customers with defective iMacs that they have no
15 recourse other than to repair or replace the defective screens at their own expense.
16 Apple has refused to warrant, repair or pay for any repairs relating to the iMac's
17 defective display, or to warrant any iMac should the defect manifest itself sometime
18 in the future.

19 24. To date, Apple has not taken effective action to remedy defective
20 displays in its iMac computers. To ensure that the displays in all of its iMac
21 computers were fit for their ordinary purpose during the computer's useful life,
22 Apple should have tested the displays prior to selling its iMac computers. Instead,
23 Apple sold iMac computers with displays that were not fit for ordinary use.

24 25. Moreover, Apple did not give adequate notice of the defect to its
25 customers. Apple did not contact purchasers of iMac computers to notify them of
26 the defective displays so that consumers could have their iMacs repaired during the
27 one year warranty in effect from the date of purchase.

1 **C. Plaintiff Roman Huf Purchased a Defective iMac Computer Directly from**
2 **Apple**

3 26. On or about November 8, 2006, Mr. Huf purchased directly from Apple
4 an iMac G5 17", serial number QP645079VUY.

5 27. In or about September, 2008, Mr. Huf's iMac display began exhibiting
6 prominent vertical lines across its screen. Mr. Huf at first thought that the vertical
7 lines were an anomaly, and that they would disappear if he rebooted his computer.
8 He did so, but his display did not improve and was, in fact, degrading quickly. As
9 such, more and more vertical lines began to appear on his iMac's display each time
10 Mr. Huf turned on his computer, reaching the point where there are presently more
11 than 20 prominent vertical lines across the screen. Mr. Huf also noticed that his
12 display was experiencing color degradation; the colors, text and border at the bottom
13 of his screen appear faded and washed out. It was at this time that Mr. Huf realized
14 that his iMac display was defective, and that without the use of the display, his iMac
15 was useless.¹

16 28. Mr. Huf contacted Apple directly to have his display repaired, but
17 Apple refused to repair or replace the defective display as Mr. Huf's computer was
18 no longer covered by Apple's one year warranty in effect from the date of purchase.
19 Apple did, however, inform him that it would fix the defective display, but that it
20 would cost at least \$800.00 to repair.

21 29. As a result of the defect, Mr. Huf cannot use his iMac for its ordinary
22 and intended purpose, and has suffered damage.

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24
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27 ¹ Mr. Huf was shocked that his iMac display had degraded after less than two
28 years of use, as he has a Hewlett Packard computer and monitor that has been
functioning without any issues for the past seven years.

1 **D. Thousands of Consumers Have Suffered Losses as a Result of Apple's**
2 **Manufacture of Defective iMac G5 Computers**

3 30. There have been numerous consumer complaints to various Federal and
4 State authorities about the iMac's defective displays, and web sites are full of
5 consumers who have complained about the fact that their iMac displays do not work.
6 Consumers have posted complaints stating that they have had to repair or replace
7 their defective displays at their own expense, that Apple has refused to reimburse
8 them for the expenses incurred, and that Apple has refused to exchange defective
9 iMac displays for iMacs with properly functioning displays.

10 31. Moreover, an online petition has been initiated by Apple customers who
11 have purchased iMacs with defective displays, and which Apple has refused to repair
12 or replace. As of the date of this Complaint, almost 2,200 iMac owners have signed
13 the petition, providing their name, address and email address, demanding that Apple
14 repair the defective displays or reimburse the petitioners for expenses incurred in
15 repairing or replacing the displays.

16 32. Apple continued to manufacture and sell iMac computers with defective
17 displays even after receiving thousands of complaints informing it of the specific
18 defect alleged herein. As such, Apple profited enormously from sales of its iMac
19 computers while Plaintiff and the Class incurred significant damages, including but
20 not limited to the expenses incurred in repairing or replacing their defective iMac
21 computers.

22 33. Apple has, and continues to this day, refused to respond to the
23 thousands of customer complaints regarding the iMac's defective display, and has
24 refused to repair at its own expense the defective display or compensate thousands of
25 iMac purchasers who repaired or replaced the defective display at their own expense.

26 34. As referred to above, no adequate notice has been provided to Plaintiff,
27 and no consent or bargained-for approval has been granted by Plaintiff or other
28 Apple customers who purchased iMac computers that their computers have defective

1 displays. Nor did Defendant provide any notice, adequate notice or full disclosure of
2 the fact that its iMac computers have defective displays.

3 **Class Action Allegations**

4 35. Plaintiff brings this action on his own behalf and additionally, pursuant
5 to Rule 23 of the Federal Rules of Civil Procedure, on behalf of a nationwide class
6 of all persons who have purchased iMac G5 computers with defective displays and
7 who were damaged thereby, during the period from January 1, 2005, to the present
8 (the "Class").

9 36. Excluded from the Class is Defendant; any parent, subsidiary, or
10 affiliate of Defendant; any entity in which Defendant has or had a controlling
11 interest, or which Defendant otherwise controls or controlled; and any officer,
12 director, employee, legal representative, predecessor, successor, or assignee of
13 Defendant.

14 37. This action is brought as a class action for the following reasons:

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

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

20 i. whether Defendant breached the implied warranty of
21 merchantability arising pursuant to Cal. Comm. Code § 2314 by manufacturing and
22 selling iMac computers with defective displays;

23 ii. whether Defendant violated Cal. Bus. & Prof. Code §
24 17200 by manufacturing and selling iMac computers with defective displays;

25 iii. whether Defendant unjustly enriched itself in
26 manufacturing and selling iMac computers with defective displays;

27 iv. whether members of the Class have sustained damages
28 and/or other compensable losses and, if so, the proper measure thereof; and

1 v. whether Defendant should be enjoined from selling iMac
2 computers with defective displays.

3 c. The claims asserted by Plaintiff are typical of the claims of the
4 members of the Class;

5 d. Plaintiff will fairly and adequately protect the interests of the
6 Class, and Plaintiff has retained attorneys experienced in class and complex
7 litigation, including related litigation involving consumer fraud;

8 e. A class action is superior to other available methods for the fair
9 and efficient adjudication of the controversy, for at least the following 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 legal obligations will
12 continue without remedy, additional customers will be harmed, and Defendant will
13 continue to retain its ill-gotten gains;

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

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

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

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

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

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

1 43. Furthermore, as there were reasonable alternatives available to Apple to
2 further its business interests other than voluntarily placing into the stream of
3 commerce iMac computers with defective displays, the gravity of Defendant's
4 wrongful conduct outweighs any purported benefits attributable to such conduct.

5 44. As a direct and proximate result of Defendant's actions as described
6 herein, Plaintiff and other members of the Class have suffered, and continue to
7 suffer, injury in fact and have lost money as a result of Defendant's deception and
8 unfair and unlawful business practice in an amount which will be proven at trial, and
9 which is in excess of the requisite jurisdictional amount.

10 45. By reason of the foregoing, Defendant has violated Cal. Bus. & Prof.
11 Code § 17200, and is liable to Plaintiff and the other members of the Class for
12 restitution and all other appropriate remedies, plus costs and attorneys' fees.

13 **SECOND CAUSE OF ACTION**

14 **(Breach of Implied Warranty of Merchantability**

15 **Pursuant to Cal. Comm. Code § 2314)**

16 46. Plaintiff repeats and realleges the allegations contained in Paragraphs 1
17 through 45 above as if fully set forth herein.

18 47. Defendant is a merchant with respect to computers, including iMac
19 computers manufactured and sold under the Apple brand.

20 48. Plaintiff purchased from Defendant an iMac computer. An implied
21 warranty that Plaintiff's iMac was merchantable arose by operation of law as part of
22 the sale, and as part of the sales of iMac computers to other members of the Class.

23 49. Defendant breached the implied warranty of merchantability in that the
24 iMac computers sold to Plaintiff and the Class were not in merchantable condition
25 when sold or at any time thereafter, in that Plaintiff's and the Class' iMac computers
26 have defective displays that were substantially certain to result in their malfunction
27 during their useful life, and, in fact, did result in malfunction during the display's
28 useful life.

1 computers' useful life. However, Plaintiff did not purchase a fully functioning
2 computer as a result of an inherent defect known to Defendant.

3 56. Defendant knowingly and willingly accepted monetary benefits from
4 Plaintiff and the Class, although Defendant did not provide consumers with fully-
5 functioning computers. Rather, Defendant profited from the sales of inferior and
6 defective products.

7 57. Under the circumstances described herein, it is inequitable for
8 Defendant to retain the full monetary benefit at the expense of Plaintiff and the
9 Class.

10 58. By engaging in the conduct described above, Defendant has unjustly
11 enriched itself at the expense of Plaintiff and the Class and is required, in equity and
12 good conscience, to compensate Plaintiff and the Class for harm suffered as a result
13 of Defendant's actions.

14 59. As a direct and proximate result of Defendant's unjust enrichment,
15 Plaintiff and the Class have suffered injury and are entitled to reimbursement,
16 restitution, and disgorgement from Defendant of the benefit conferred by Plaintiff
17 and the Class.

18
19 WHEREFORE, Plaintiff respectfully requests that the Court enter judgment
20 against Defendant as follows:

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

23 2. On Plaintiffs' First Cause of Action, awarding Plaintiff all appropriate
24 remedies, including, but not limited to restitution, plus costs and attorneys' fees;

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

1 4. On Plaintiff's Third Cause of Action, awarding Plaintiff and the Class
2 all appropriate remedies, including but not limited to reimbursement, restitution, and
3 disgorgement of all profits unjustly retained by Defendant;

4 5. Enjoining Apple from continuing to engage in unlawful and unfair
5 business practices regarding iMac computers manufactured and sold with defective
6 displays;

7 6. Ordering Apple to refund to Plaintiff and the Class the moneys paid to
8 Apple for iMac computers with defective displays;

9 7. Awarding Plaintiff interest, costs and attorneys' fees; and

10 8. Awarding Plaintiff such other and further relief as this Court deems just
11 and proper.

12 DATED: March 11, 2009

Respectfully submitted,

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

16 By Robyn C. Crowther
17 ROBYN C. CROWTHER
18 Attorneys for Plaintiffs

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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: March 11, 2009

Respectfully submitted,

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

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