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12 Attorneys for Plaintiffs

13 UNITED STATES DISTRICT COURT  
 14 NORTHERN DISTRICT OF CALIFORNIA  
 15 SAN JOSE DIVISION

16 NAOTAKA KITAGAWA, JR., TIMOTHY J.  
 17 BROAD and JESSE REISMAN, on behalf of  
 themselves and all others similarly situated,

18 Plaintiffs,

19 v.

20 APPLE, INC., and, DOES 1 THROUGH 50,  
 21 inclusive,

22 Defendants.

) Case No. C 09-01911 RS

) **FIRST AMENDED CLASS  
ACTION COMPLAINT**

) JURY TRIAL DEMANDED

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FIRST AMENDED CLASS ACTION COMPLAINT

1 Plaintiffs Naotaka Kitagawa, Jr., Timothy J. Broad, and Jesse Reisman (“Plaintiffs”), by and  
2 through their attorneys, bring this action on behalf of themselves and all others similarly situated  
3 against Apple, Incorporated (“Apple” or “Defendant”) and Does 1 through 50. Plaintiffs hereby  
4 allege, on information and belief, except as to those allegations which pertain to the named  
5 Plaintiffs, which allegations are based on personal knowledge, as follows:

6 **NATURE OF THE ACTION**

7 1. Plaintiffs bring this class action on behalf of purchasers of Apple’s “Apple 85W  
8 MagSafe Power Adapter (for MacBook Pro)” and the “Apple 60W MagSafe Power Adapter (for the  
9 MacBook)” (referred to collectively as the “MagSafe Adapter”) in California and throughout the  
10 United States.

11 2. The MagSafe Adapter was represented as being designed with a “magnetic DC  
12 connector that ensures your power cable will disconnect if it experiences undue strain and helps  
13 prevent fraying or weakening of the cables over time. Designed to be the perfect traveling  
14 companion, the adapter has a clever design which allows the DC cable to be wound neatly around  
15 itself for easy cable storage.” *See* <http://www.apple.com/store>.

16 3. The MagSafe Adapter is the only plug-in power source Apple provides for the  
17 MacBook and MacBook Pro computers. However, the MagSafe Adapter is not fit for the ordinary  
18 purposes (powering up and charging the MacBook and MacBook Pro portable laptop computers) for  
19 which it was intended. Instead, the MagSafe Adapter – because it was negligently designed and  
20 manufactured – dangerously frays, sparks, and prematurely fails to work. The MagSafe Adapter  
21 poses a present and latent danger to its users when used as directed. Apple is and was aware of this  
22 dangerous defect, but it has failed to disclose it or warn Plaintiffs and the Class of the defect. As of  
23 the date of this filing, it continues to market and sell the defective MagSafe Adapter, resulting in  
24 continuing damage to the Class. As a result, Plaintiffs and the Class (which likely number in the  
25 millions) have purchased flawed and dangerous Adapters which prematurely fail and present fire  
26 hazards.

27 4. Plaintiffs bring this class action on behalf of themselves and all others similarly  
28 situated, asserting claims under California’s Unfair Competition Law, Cal. Bus. & Prof. Code §

1 17200 *et seq.* (“UCL” or “§17200”), the Consumer Legal Remedies Act, Cal. Civ. Code §1750 *et*  
2 *seq.* (“CLRA”), the Magnuson-Moss Warranty Act, 15 U.S.C. §2310(d)(1), Breach of the Implied  
3 Warranty of Fitness for a Particular Purpose, Breach of the Implied Warranty of Merchantability,  
4 violations of the Song-Beverly Consumer Warranty Act, Cal. Civ. Code §1790 *et seq.* (“Song-  
5 Beverly”), Negligence and Unjust Enrichment. Plaintiffs seek damages and equitable relief on  
6 behalf of the class, which relief includes but is not limited to the following: providing class  
7 members with a safe, defect-free Adapter, or if no such product exists, to refund Plaintiffs and class  
8 members the full amount paid for their Apple computer which relies on the MagSafe Adapter for its  
9 power and usage; a refund of the replacement cost of the defective MagSafe Adapters; costs and  
10 expenses, including attorneys’ fees; and any additional relief that this Court determines to be  
11 necessary to provide complete relief to Plaintiffs and the Class.

#### 12 JURISDICTION AND VENUE

13 5. This Court has subject matter jurisdiction pursuant to 15 U.S.C. §2310(d)(1)(B) and  
14 28 U.S.C. §§1331, 1332 and 1367, because Plaintiffs’ claims arise under federal statute. The Court  
15 has supplemental jurisdiction over Plaintiffs’ state law claims pursuant to 28 U.S.C. §1367(a).

16 6. With respect to the Magnuson-Moss Warranty Act claims, the amount in  
17 controversy in each individual claim is at least twenty five dollars (\$25), the proposed class consists  
18 of over 100 members, and the aggregate damages exceed \$50,000.

19 7. This Court has original jurisdiction over this action under the Class Action Fairness  
20 Act of 2005, 28 U.S.C. §1332(d)(2) (“CAFA”), as to the named Plaintiffs and every member of the  
21 Class, because the proposed Class contains more than 100 members, the aggregate amount in  
22 controversy exceeds \$5 million, and members of the Class reside across the United States and are  
23 therefore diverse from Defendant.

24 8. This Court has personal jurisdiction over Apple because its corporate headquarters  
25 are located in Cupertino, California, it is authorized to conduct business in California, and it has  
26 intentionally availed itself of the laws and markets of California through the promotion, marketing,  
27 distribution and sale of its MagSafe Adapter in California.



1 bay in mid-September, 2006 for approximately \$58.00. That adapter recently failed in similar  
2 fashion and Mr. Broad purchased his second replacement adapter.

3 13. Plaintiff Jesse Reisman ("Mr. Reisman") resides in Fort Washington, Maryland. In  
4 or about June 2006, Plaintiff purchased an Apple MacBook Pro computer, which came with an  
5 Apple MagSafe 85W Adapter. Approximately a year and a half after purchase, Mr. Reisman noticed  
6 that the MagSafe Adapter became "noticeably hot" when the computer was in use and that the cable  
7 wires had become exposed at the point where cable entered the main adapter body, as well as at the  
8 point of insertion into the MagSafe connector, creating a hazardous condition. Mr. Reisman  
9 purchased an 85W MagSafe replacement adapter on January 18, 2008 from Amazon.com for \$70.38.  
10 Mr. Reisman's replacement adapter is now showing signs of premature failure.

11 14. Defendant Apple, Inc. ("Apple") is incorporated in California. Its executive offices  
12 and company headquarters are located in Cupertino, Santa Clara County, California. Apple is  
13 registered to do business in the State of California, and conducts substantial business here. Apple is  
14 a publicly traded company, with net sales of over \$32.4 billion in 2008, \$14.5 billion in the United  
15 States alone (up 26% from 2007)<sup>1</sup>. Apple sells its MacBook and MacBook Pro Computers ("Subject  
16 Computers") and MagSafe Adapters to consumers throughout the United States, including to at least  
17 tens of thousands of consumers in California, which constitutes a significant percentage of Apple's  
18 sales in the United States and California.

19 15. The true names and capacities of Defendants sued herein under C.C.P. § 474 as  
20 Does 1 through 50, inclusive, are presently unknown to Plaintiffs, who therefore sue these  
21 Defendants by fictitious names. Plaintiffs will amend this Complaint to show their true names and  
22 capacities when they have been ascertained. Each of the Doe Defendants is responsible in some  
23 manner for the conduct alleged herein.

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<sup>1</sup> Apple, Inc.'s 2008 10-K.  
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1 \* \* \* \* \*

2 Designed to be the **perfect traveling companion**, the adapter has a clever design  
3 which allows the DC cable to be wound neatly around itself for easy cable  
4 storage.<sup>4</sup>

5 20. Regarding the 60W MagSafe Adapter that comes with the MacBook series laptop  
6 computers, Apple makes the following representations:

7 Good design leaves nothing to chance. Great design anticipates it. No surprise, then,  
8 that MacBook features little touches — like a **klutz-proof power adapter** and a  
9 **nifty magnetic latch** — that make your computing experience as streamlined as the  
10 MacBook itself.<sup>5</sup>

11 \* \* \* \* \*

12 Compact, durable, everything-you-need MacBook.<sup>6</sup>

13 \* \* \* \* \*

14 MacBook makes it easy to hit the road thanks to its tough polycarbonate case, built-  
15 in wireless technologies, and innovative MagSafe Power Adapter that releases  
16 automatically if someone accidentally trips on the cord.<sup>7</sup>

17 \* \* \* \* \*

18 **Designed to withstand the rigors of life on the go**, every MacBook comes with  
19 Apple's MagSafe Power Adapter, **created especially for mobile users** that makes  
20 charging the notebook's battery easier than ever by magnetically coupling the power  
21 cord to the MacBook. The MagSafe Power Adapter **safely disconnects from the**  
22 **notebook when there is strain on the power cord**, helping to prevent the notebook  
23 from falling off its work surface.<sup>8</sup>

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24 <sup>4</sup> [http://store.apple.com/1-800-MY-APPLE/WebObjects/AppleStore.woa/wa/RSLID?mco=816A0BD3&fnode=home/shop\\_mac/mac\\_accessories/power&np1m=MA938LL/A#overview](http://store.apple.com/1-800-MY-APPLE/WebObjects/AppleStore.woa/wa/RSLID?mco=816A0BD3&fnode=home/shop_mac/mac_accessories/power&np1m=MA938LL/A#overview)

25 <sup>5</sup> <http://www.apple.com/macbook/design.html>

26 <sup>6</sup> <http://www.apple.com/getamac/whichmac.html>

27 <sup>7</sup> <http://www.apple.com/macbook/design.html>

28 <sup>8</sup> Apple Press Release – May 16, 2006

1           21.       Apple also boasts that its MacBook Pro is its “state of the art”<sup>9</sup> flagship portable  
2 designed “for mobile professionals” and “life on the road.”<sup>10</sup>

3           22.       Apple markets the MagSafe Adapter for both the MacBook and MacBook Pro as  
4 “designed to be the perfect travel companion.”<sup>11</sup>

5           23.       However, contrary to its advertisements, Apple’s MagSafe Adapter is not “durable”  
6 or “designed to withstand the rigors of life on the go” but rather, fragile and fails when used as  
7 intended.

8           24.       The MagSafe Adapter consistently frays at the end of the cable going in to the  
9 magnetic connector. These exposed wires turn the MagSafe Adapter into a fire and electrical shock  
10 hazard for Apple’s customers. A common point of failure is at the end of the MagSafe cable closest  
11 to where it connects to the computer. Affixed to that end is a magnetic connector.

12          25.       Any adapter designed for a laptop computer must be durable enough to withstand  
13 the uses for which it is intended. Such normal use includes coiling the plug when not in use. The  
14 Apple MagSafe Adapter is designed so that the power cable will be wound around itself for storage  
15 or when in transport and also requires the user to clamp the cable onto itself to keep it in place.<sup>12</sup>  
16 This normal folding and clamping causes undue stress, wear and degradation to the MagSafe  
17 Adapter cable.

18          26.       As the MagSafe Adapter designer and manufacturer, Apple possesses specialized  
19 knowledge regarding the composition of its MagSafe Adapter, and is in a superior position to know  
20 and learn about defects in its MagSafe Adapter. In fact, as evidenced by the many purchasers of the  
21 MagSafe Adapter who have gone through the trouble of logging on to Apple’s website to complain  
22 of the problems alleged herein, Apple has been aware of these defects for nearly three years, but has

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24 <sup>9</sup> <http://www.apple.com/macbookpro/>

25 <sup>10</sup> Apple Press Release – June 5, 2007 [http://www.apple.com/ca/press/2007\\_06/macbookpro.html](http://www.apple.com/ca/press/2007_06/macbookpro.html)

26 <sup>11</sup> Apple Store “Overview” for both the 85W and 60W Adapters

27 <sup>12</sup> Apple Store / Shop Mac / Power / 85W Adapter

1 done nothing about them. From June 2006 through March 2009, more than 1,000 “customer  
2 reviews” of the MagSafe Adapter have been posted to the Apple Online Store. The vast majority of  
3 the reviews are extremely negative, warning Apple over and over again about the hazards of its  
4 MagSafe Adapter. For example, a recent posting about the 85W Adapter on February 28, 2009,  
5 titled, “**It melted – literally**” states:

6 • I turn off (and unplug) my laptop almost every night and while I am gone during the  
7 day. The wire literally has melted near the battery and no longer works. Aside from being  
8 very frustrating and annoying, I can see this as posing a possible safety hazard. I'm a very  
9 unhappy customer right now and just spent around \$100 (including shipping) to get another  
10 power cord shipped to me.

11 • This one, titled “**Melted cord**” was posted February 16, 2009 (85W): Like many  
12 other people, I too have a Magsafe power adapter whose cord spontaneously melted after  
13 about 9 months.

14 • On January 10, 2009, in a posting titled “**Just Burned Me**” a user states (85W): “I  
15 understand that AC adapters get hot by design, but it is completely unacceptable to get  
16 burned by the mag “safe” end. Absolutely ridiculous Apple. This is a flawed design and I  
17 can't wait for the class action suit. Count me in.”

18 • On December 28, 2008, KG writes (85W), “**FIRE HAZARD**” and states that, “This  
19 product is dangerous. Clearly there is some sort of design flaw here. I noticed a slight  
20 separation of the magnet base from the actual cord with a few frayed wires and I took the  
21 power adapter to the Apple Store, where I was turned away because I didn't have the actual  
22 lap top with me. Figuring, if it were a major issue, I would have been warned not to use the  
23 product, I plugged it later the next day while it was on my lap and noticed a burning smell as  
24 well as excess heat. When I looked down I saw the plastic and rubber melting and I angled  
25 the machine out of my lap and rushed to unplug it. The power port on my computer is  
26 scorched. Luckily I only had a very minor burn on my left thigh as a result...nothing to go the  
27 emergency room about but think about it. If this had happened when the computer was on  
28 my desk, while I was at work, or perhaps if I had been at home asleep, the results could have  
been disastrous. This could have burnt my apartment, killed my dogs or even me.

I have been an Apple customer and die hard fan since the IIGS, and I am extremely  
disappointed in the recent quality of Apple products. First the battery issues, then defective  
hard drives, and now this. I really hope that it doesn't take a death or major property loss for  
Apple to take responsibility and inform customers of this major safety issue.”

• A recent March 4, 2009 posting states (60W), “I have a MacBook and I am on my  
THIRD charger! It melts all of the time right where the cord connects to the magnet thing!”

• Another recent posting in December 2008, stated (60W), “After 12 1/2 months my  
first cord started sparking near the laptop. I was afraid of fire so I took it into the apple store,

1 waited in line for nearly an hour and was told to come back in 5 hours. When I did, I was  
2 told that nothing could be done because I didn't purchase the extra warranty. I purchased  
3 another cord for 79.00 hoping it wouldn't do the same thing. After 5 months, it started  
4 shorting out so I purchased 3rd (THIRD!) cord. Now my 3rd cord has begun to weaken at the  
5 connection and gets VERY hot. I have NEVER felt safe leaving it plugged in while I am  
6 away from it. Instead of purchasing a 4th 79.00 (320.00 in hazardous power cords) I am  
7 going to purchase a new laptop for myself as well as my 2 teenagers - probably time for  
8 another brand!

9 • A posting on February 5, 2008, is titled "FIRE HAZARD!", and states, "This  
10 morning I went to turn on my computer that had been left to charge over night, only  
11 to find it would not turn on. In my quest to determine the cause, I noticed the cord  
12 failure that most of the other reviews describe –the power cord just after the MagSafe  
13 Power Adapter was melted (charred black and brown actually) and frayed wires were  
14 exposed. As disappointed as I was that this could happen, I realized how fortunate I  
15 was that this had not started a fire! There were NO warning signs!! This needs to be  
16 recalled immediately!"

17 • Another 60W Adapter posting on December 30, 2007 states: "Thank  
18 goodness I was home when I found my power adapter melting."

19 • On December 11, 2007, still another customer wrote (60W): "I have had my  
20 MacBook for 11 months. One day I plugged in the charger and this weird hissing  
21 came from my computer, then I smelled smoke, and looked down to see my charger  
22 was smoking. I immediately pulled it out but the rubber on the cable was melted."

23 • On January 11, 2008, another customer posted the comment (60W): "I have  
24 had my MacBook for exactly one year and the wire at the end has melted away  
25 exposing the wires."

26 • On December 15, 2007, another customer wrote (60W): "I actually sat there  
27 watching the dumb thing melt. Luckily it didn't catch anything on fire. I hate to see  
28 if it was plugged in while I was away from the house."

• On February 9, 2008, (85W): "I recently went to use my MacBook Pro when  
I noticed that my battery was dead. This was strange considering the power cord had  
been plugged in overnight. I looked at the cord and realized that the LED light was  
not glowing. After seeing this, I immediately saw that part of my cord (close to the  
magnetic part) was brown colored with a few holes burnt in it. Also the part of the  
cord that connects to the little magnet was coming apart."

• On February 1, 2008, (85W): "I've had my MacBook Pro just over 1 year and  
the MagSafe lead started to fray at the laptop end. Last night it popped and fizzed  
and a cloud of smoke appeared. ... These products must be dangerous – very  
disappointed."

1 • Also on February 1, 2008 (85W): "I fell asleep this evening, and woke up to  
2 the smell of burning plastic and discharged MacBook Pro. The magsafe adapter, I've  
3 been using since Sept 06, when I purchased the unit, frayed at the base, and melted,  
4 leaving a plastic mess on the floor, and in the air. I don't want to purchase another  
5 one, but I haven't a choice. There are no alternatives. I don't feel safe with this  
6 product in my home anymore. I recommend that users do NOT charge their apple  
7 laptops at night."

8 • On January 30, 2008 (85W): "It's really very simple: right where the adapter  
9 cable is connected to the MagSafe plug, sparks were flying around... I heard a  
10 'fizzzzzz' sound... short circuit... smoke was billowing. The cable was super hot and  
11 literally disintegrated in my hands. Thank goodness I was there when it happened –  
12 wouldn't want to see my mortgaged house on fire, for crying out loud!"

13 • On January 14, 2008 (85W): "Well, even with the spare power adapter, and  
14 always being careful to plug and unplug it by the head (not pulling on the cord), I  
15 had my adapter fail. The other day I was typing away and all of a sudden I started to  
16 get shocks from the computer. At the same time the green light on the magnetic head  
17 went out and a nasty smell came form the charger. When I went to unplug the charge  
18 I discovered a greasy brown fluid leaking from it."

19 • On January 14, 2008 (85W): "I generally don't think SPARKING AND  
20 SMOKING AND MELTING are good traits for a piece of electronics to have. I'm  
21 obviously not the first person to have this problem, and the most disturbing thing  
22 about these comments is that it KEEPS happening."

23 • On January 13, 2008 (85W): "Had my adapter (magnetic connection great  
24 idea) for just over a year and I plugged it into the laptop this morning to find the  
25 green light flicker and then produce a spark/flame. As described it left the beautiful  
26 smell of melting plastic and nice burn marks on my laptop and the head of the power  
27 cable. MagSAFE... no."

28 • On January 11, 2008 (85W): "Much like everyone else here, my cord melted  
where it meets with the computer. Luckily it was in use and I noticed the sparking  
that may have caused a fire otherwise."

• On January 9, 2008 (85W): "Dear Mac, This is the 3rd try on a battery cord  
for our daughter's MacBook Pro laptop. It actually started smoking. We have the  
battery inside the computer burn up also and it bubbled up the outside body of the  
laptop. We replaced this battery and cord approximately one year or less ago.  
What's up?"

• January 8, 2008 (85W): "Mine melted, burned and exposed wires at the end  
next to the brick, which usually sits on my desk. I bought the extended warranty, but  
seriously, I'm not sure I will be risking my life and home on a new adapter unless it  
is much better protected. I have contacted the UL people, and would advise others to

1 do the same. Hopefully Apple won't wait until someone loses their life or home  
2 because of this very real hazard."

3 27. Apple's own website provides admissions that Apple is not only aware of these  
4 defects, but provides irresponsible advice for consumers regarding how to address the problems  
5 complained of. On a page titled, "Portable Computers: Troubleshooting power adapters," Apple  
6 provides "troubleshooting" under the subject heading: "If you see a spark" which claims that  
7 "Sometimes when you plug the power adapter into the wall, you may see a spark. *This is usually*  
8 *normal* and can occur when you plug any electrical appliance into a live outlet. If you are concerned  
9 about the spark you see when you plug your adapter into the wall, or if the spark comes from  
10 somewhere other than the blades of the plug, you can take your adapter (you don't need to take the  
11 computer) in to an Apple Authorized Service Provider or Apple Retail Store for evaluation."  
12 (emphasis added).

13 28. It is not just safety at issue here, but the cost to consumers to use their computers for  
14 the purposes for which they were intended. "I love my other apple products, but having to replace  
15 this at \$79.99 when it should not have to be replaced at all is not acceptable. I could tell this was not  
16 at all robust when I first started using it. I was quite careful and it just stopped working. Apple  
17 should either make this product hold up to real world use or sell it for a more affordable price."  
18 (Apple Online Store Customer Review - February 3, 2008.) Similarly, another customer complains,  
19 "I am very unhappy that the adapter of my MacBook is no longer functioning. I travel with my  
20 laptop a lot – after all, that is why I prefer laptops – and it seems that the adapter is not designed to  
21 hold up to a reasonable amount of use. After a year and a half it no longer functions and now I have  
22 to buy a new one for \$80! What is especially upsetting is that I feel that Apple should replace this at  
23 no cost as it is a defective design, not be making money off of their mistake, or else people may not  
24 choose to purchase a Mac next time." (Apple Online Store Customer Review - January 20, 2008.)

25 29. Of course, it is not just through Apple's online store that consumers are logging  
26 complaints about the MagSafe Adapter, the internet is rife with similar complaints. One consumer  
27 recently complained on [www.Amazon.com](http://www.Amazon.com):  
28

1 Just do a Google and you'll see the life of this adapter is about a year. Way too many  
2 incidents out there. Mine lasted exactly one year. One day I was charging my  
3 MacBook and I started to smell wires burning. It turned out to be the wire from this  
4 adapter, specifically where it attaches to the MacBook. The key is not to put \*any\*  
5 stress on the wire at all by letting it bend. Apparently the plastic is so cheaply made  
6 that eventually it will wear out and expose the wires to each other which is  
7 dangerous. Luckily my MacBook was not damaged, and I was there to unplug the  
8 adapter when it started to smolder. While I like the smart magnetic design, it's made  
9 quite shoddy. Of course the price is very high also at \$79!?! Ridiculous! When I  
10 went to the Apple store to replace my adapter, there was a 3 week wait as well! I was  
11 lucky to find one on Ebay for just under \$36. My best advice is not to put any  
12 tension on this wire because it obviously can't handle it, and I'd avoid leaving it  
13 charging alone simply because I don't trust it and I've Googled quite a few horror  
14 stories. Check out the apple store and you'll see all the reviews about sparks, smoke,  
15 melting , and fire.

16 (Amazon.com 85W Adapter Customer Review - November 14, 2007).<sup>13</sup>

17 30. To date, Apple has not taken action to remedy the defects [do we know this for  
18 sure?] in its MagSafe Adapters, or to offer any replacement product.

19 31. Apple faced the same complaints about overheating, fraying, smoking, sparking and  
20 premature failure with its predecessor adapter, the 65W Adapter for its PowerBook computer. Apple  
21 misleads its customers into thinking that it resolved those design problems in its representations that  
22 the MagSafe Adapter is better designed. "Mobile users will love the new MagSafe Power adapter  
23 featuring a magnetic DC plug that both ensures a tight connection and enables a clean break from the  
24 power port when there is undue tension. It prevents the MacBook Pro from being pulled off of a  
25 desk when the cord is accidentally tripped over, *and it protects the power cord from wear and  
26 tear.*"<sup>14</sup>

27 32. To ensure that its MagSafe Adapter would be fit for the ordinary or particular  
28 purposes for which the Adapter was intended, Apple should have adequately tested its MagSafe  
29 Adapter prior to releasing it for commercial sale. Had Apple exercised reasonable care in testing its

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30 <sup>13</sup> [http://www.amazon.com/review/product/B000F0ELN2/ref=dp\\_top\\_cm\\_cr\\_acr\\_txt?%5Fencoding=UTF8&showViewpoints=1](http://www.amazon.com/review/product/B000F0ELN2/ref=dp_top_cm_cr_acr_txt?%5Fencoding=UTF8&showViewpoints=1)

31 <sup>14</sup> <http://www.amazon.com/Apple-MacBook-Laptop-MA091LL-SuperDrive/dp/B000BNHMIY>

1 MagSafe Adapter, it would have discovered that its MagSafe Adapters dangerously fray, spark,  
2 overheat, melt and prematurely fail.

3 33. Instead, Apple sold defective MagSafe Adapters to Plaintiffs and proposed class  
4 members that were not fit for their intended use.

5 34. Apple also could and should have tested alternative designs of its MagSafe Adapter  
6 to avoid these destructive side-effects. As noted, Apple has been aware of the weakness and defects  
7 in its “wrap around” cable design for years [perhaps we should be more general here and not limit to  
8 the wrap around design.

9 35. Furthermore, Apple continues to manufacture and sell its defective MagSafe  
10 Adapter even after it was informed by its own customers of the specific design defects alleged  
11 herein.

12 36. Apple profits enormously from the sales of its MagSafe Adapter, while Plaintiffs  
13 and proposed class members incur damages, including the price they paid to purchase the defective  
14 MagSafe Adapters and the costs to replace them.

15 **PLAINTIFFS’ ALLEGATIONS**

16 37. Plaintiffs are purchasers of Apple MacBook or MacBook Pro computers that were  
17 sold with related devices and peripherals, including a MagSafe Adapter.

18 38. Plaintiffs purchased and used the MagSafe Adapters, believing them to be  
19 reasonably safe to use for the purpose for which they were intended: powering and charging their  
20 portable computers.

21 39. Since purchasing these computers, Plaintiffs have had to replace their MagSafe  
22 Adapters because, when used as instructed and intended, their MagSafe Adapters sparked, frayed,  
23 melted, wires became exposed and/or they prematurely failed.

24 40. Plaintiffs learned that far from being the only one experiencing such problems with  
25 the MagSafe Adapters, there were hundreds of other similar customer complaints on Apple’s  
26 website.

27 41. In fact, Plaintiffs’ experiences with the MagSafe Adapter are typical of at least  
28 thousands of other Apple purchasers who have registered their complaints with Apple, and have

1 documented their problems with the MagSafe Adapters on various website forums dedicated to  
2 Apple products, including Apple's own website. The similarity of the user complaints about the  
3 MagSafe Adapter further evidences the uniformity of the product defects alleged herein.

4 42. Plaintiffs have suffered injury in fact and loss of money or property, and they have  
5 been damaged in the amount they paid for the defective replacement MagSafe Adapters they had to  
6 purchase to power and charge their MacBook or MacBook Pro laptop computers. Moreover, if no  
7 safe replacement Adapter exists, Plaintiffs have suffered damages in the amount of the full price they  
8 paid for their MacBook or MacBook Pro computers.

9 **CLASS ALLEGATIONS**

10 43. Plaintiffs bring this class action on behalf of themselves individually and all others  
11 similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure.

12 44. The proposed class consists of all consumers who purchased an Apple MagSafe  
13 60W Adapter or Apple MagSafe 85W Adapter from the time of their introduction in the marketplace  
14 through and including the date of class notice (the "Class").

15 45. This action is properly brought as a class action for the following reasons:

16 (a) the proposed class is so numerous and geographically dispersed throughout  
17 the United States that the joinder of all class members is impracticable. While Plaintiffs do not  
18 know the exact number and identity of all class members, Plaintiff believes there are tens if not  
19 hundreds of thousands of class members;

20 (b) the disposition of Plaintiffs' and proposed class members' claims in a class  
21 action will provide substantial benefits to both the parties and the Court;

22 (c) the proposed class is ascertainable and there is a well-defined community of  
23 interest in the questions of law or fact alleged herein since the rights of each proposed class member  
24 were infringed or violated in the same fashion;

25 (d) there are questions of law and fact common to the proposed class which  
26 predominate over any questions that may affect particular class members. Such common questions  
27 include:

- 1 (i) Whether Defendant exercised reasonable care in testing its MagSafe  
2 Adapter prior to its release for commercial sale;
- 3 (ii) Whether Defendant's MagSafe Adapter is defective when used as  
4 directed, intended or in a reasonably foreseeable manner;
- 5 (iii) Whether feasible alternative safer formulations of the MagSafe  
6 Adapter were available;
- 7 (iv) Whether Defendant's MagSafe Adapter was fit for its intended  
8 purpose;
- 9 (v) Whether Apple has breached the implied warranty of fitness for a  
10 particular purpose;
- 11 (vi) Whether Apple has breached the implied warranty of  
12 merchantability;
- 13 (vii) Whether Apple has violated the Magnuson-Moss Warranty Act;
- 14 (viii) Whether Apple has acted negligently;
- 15 (ix) Whether Apple is strictly liable to Plaintiffs and the class and  
16 whether Apple failed to warn Plaintiffs and the class; [should this be 2 items?]
- 17 (x) Whether Apple has violated the Song-Beverly Act;
- 18 (xi) Whether Apple has violated the UCL;
- 19 (xii) Whether Apple has violated the CLRA;
- 20 (xiii) Whether Apple has received funds from Plaintiffs and class members  
21 that it unjustly received;
- 22 (xiv) Whether Plaintiffs and proposed class members have been harmed  
23 and the proper measure of relief; and
- 24 (xv) Whether Plaintiffs and proposed class members are entitled to an  
25 award of punitive damages, attorneys' fees and expenses against Defendant.
- 26 (e) Plaintiffs' claims are typical of the claims of the members of the proposed  
27 class.
- 28

1 (f) Plaintiffs will fairly and adequately protect the interests of the proposed class  
2 in that they have no interests antagonistic to those of the other proposed class members, and  
3 Plaintiffs have retained attorneys experienced in consumer class actions and complex litigation as  
4 counsel.

5 (g) A class action is superior to other available methods for the fair and efficient  
6 adjudication of this controversy for at least the following reasons:

7 (i) Given the size of individual proposed class member's claims and the  
8 expense of litigating those claims, few, if any, proposed class members could afford to or would  
9 seek legal redress individually for the wrongs Defendant committed against them and absent  
10 proposed class members have no substantial interest in individually controlling the prosecution of  
11 individual actions;

12 (ii) This action will promote an orderly and expeditious administration  
13 and adjudication of the proposed class claims, economies of time, effort and resources will be  
14 fostered and uniformity of decisions will be insured; and

15 (iii) Without a class action, proposed class members will continue to  
16 suffer damages, and Defendant's violations of law will proceed without remedy while Defendant  
17 continues to reap and retain the substantial proceeds of its wrongful conduct.

18 (iv) Plaintiffs know of no difficulty that will be encountered in the  
19 management of this litigation which would preclude its maintenance as a class action.

20 46. Plaintiffs seek damages and equitable relief on behalf of the proposed class on  
21 grounds generally applicable to the entire proposed class.

22 **FIRST CAUSE OF ACTION**

23 **(Violations of California Business and Professions Code § 17200)**

24 47. Plaintiffs re-allege and incorporate by reference the allegations contained in the  
25 paragraphs above as if fully set forth herein.

26 48. California Business & Professions Code § 17200 prohibits acts of unfair  
27 competition, which means and includes any "unlawful, unfair or fraudulent business act or practice"  
28 and any act prohibited by Cal. Bus. & Prof. Code § 17500.

1           49.       Apple violated Cal. Bus. & Prof. Code § 17200's prohibition against engaging in an  
2 "**unlawful**" business act or practice by, *inter alia*, selling defective and non-merchantable MagSafe  
3 Adapter to Plaintiffs, proposed class members, and the general public, failing to use reasonable care  
4 to test its MagSafe Adapter prior to sale, and by continuing to sell its defective Adapter after  
5 learning that it caused sparking, fraying and premature failure when used as intended, in violation of  
6 Cal. Civ. Code §§ 1770(a), 1791, *et seq.*, Cal. Comm. Code §§ 2313 & 2314, U.C.C. § 2-313 & § 2-  
7 314, 15 U.S.C. § 2310(d)(1), and the common law, including the common law of negligence,  
8 implied warranty, breach of the covenant of good faith and fair dealing and breach of the duty to  
9 disclose.

10           50.       Plaintiffs reserve the right to allege other violations of law which constitute other  
11 unlawful business acts and practices. Such conduct is ongoing and continues to this date.

12           51.       The foregoing conduct also constitutes "**unfair**" business acts and practices within  
13 the meaning of Cal. Bus. & Prof. Code § 17200. Apple's practices offend public policy and are  
14 unethical, oppressive, unscrupulous and violate the laws stated. Further, such conduct is in violation  
15 of Cal. Civ. Code §§ 1770(a), 1791 *et seq.*, and the common law, including the common law of  
16 negligence, implied warranty, breach of the covenant of good faith and fair dealing and breach of  
17 the duty to disclose.

18           52.       Apple's conduct caused and continues to cause substantial injury to consumers and  
19 their property, including Plaintiffs and proposed class members. The gravity of Defendant's alleged  
20 wrongful conduct outweighs any purported benefits attributable to such conduct. There were also  
21 reasonably available alternatives to Apple to further its business interests, other than voluntarily  
22 placing its defective MagSafe Adapter into the stream of commerce.

23           53.       Plaintiffs and Class members have suffered injury in fact and have lost money and/or  
24 property as a result of Defendant's unfair and unlawful business practices and are therefore entitled to  
25 the relief available under Cal. Bus. & Prof. Code § 17200, *et seq.*, as detailed below.

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**SECOND CAUSE OF ACTION**

**(Violations of the Consumer Legal Remedies Act,  
California Civil Code § 1750 *et seq.*)**

54. Plaintiffs re-allege and incorporate by reference the allegations contained in the paragraphs above as if fully set forth herein.

55. This cause of action arises under the Consumers Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.* Plaintiffs are consumers as defined by Cal. Civ. Code § 1761(d). Apple's MagSafe Adapters constitute "goods" as defined by Cal. Civ. Code § 1761(a). At all times relevant hereto, Apple constituted a "person" as that term is defined in Cal. Civ. Code § 1761(a), and Plaintiffs and class members' purchases of the MagSafe Adapters constituted "transactions" as that term is defined in Cal. Civ. Code § 1761(b).

56. Apple violated and continues to violate the CLRA by engaging in the following deceptive practices specifically proscribed by Cal. Civ. Code § 1770(a), in transactions with Plaintiffs and class members that were intended to result or which resulted in the sale or lease of goods or services to consumers:

(a) In violation of Cal. Civ. Code § 1770(a)(5), Defendant's acts and practices constitute misrepresentations that the MagSafe Adapters in question have characteristics, benefits or uses which they do not have;

(b) In violation of Cal. Civ. Code § 1770(a)(7), Defendant has misrepresented that the MagSafe Adapters in question are of particular standard, quality and/or grade, when they are of another; and

(c) In violation of Cal. Civ. Code § 1770(a)(9), Defendant advertised the Adapters in question with the intent not to sell them as advertised or represented.

57. Apple has made uniform representations that its MagSafe Adapter is a high-quality product that will perform as represented. These representations, as set forth above, were false, deceptive, and/or misleading and in violation of the CLRA.

58. Pursuant to Cal. Civ. Code § 1782, Plaintiffs notified Apple in writing by certified mail of the particular violations of Cal. Civ. Code § 1770 alleged herein, and have demanded that

1 Apple rectify the problems associated with the actions detailed above and give notice to all affected  
2 consumers of its intent to so act. Plaintiffs sent this notice by certified mail, return receipt requested,  
3 to Apple's principal place of business.

4 59. Apple has failed to rectify or agree to rectify the problems associated with the  
5 actions detailed above and give notice to all affected consumers within 30 days after receipt of the  
6 Civil Code § 1782 notice, thus Plaintiffs seek actual damages and punitive damages for violation of  
7 the Act.

8 60. In addition, pursuant to Civil Code § 1780(a)(2), Plaintiffs are entitled to, and  
9 therefore seek, a Court order enjoining the above-described wrongful acts and practices that violate  
10 Cal. Civ. Code § 1770.

11 61. Plaintiffs and the class are also entitled to recover attorneys' fees, costs, expenses  
12 and disbursements pursuant to Cal. Civ. Code §§ 1780 and 1781.

### 13 **THIRD CAUSE OF ACTION**

#### 14 **(Violations of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2310(d)(1))**

15 62. Plaintiffs re-allege and incorporate by reference the allegations contained in the  
16 paragraphs above as if fully set forth herein.

17 63. By placing its MagSafe Adapter in the stream of commerce, Apple impliedly  
18 warranted that it was reasonably safe for its intended use, *i.e.*, to withstand usual wear as a portable  
19 device and to charge the computers without causing fraying, sparking or premature failure.

20 64. Apple's MagSafe Adapter is not merchantable. In breach of the implied warranty of  
21 merchantability and fitness for a particular purpose, Apple's MagSafe Adapter fails to charge  
22 properly, falls apart and causes sparking which is a safety hazard as well as causes damage to the  
23 computers.

24 65. Apple's MagSafe Adapter was not reasonably safe for its intended use when it left  
25 Defendant's control and entered the market.

26 66. The MagSafe Adapter defects were not open and/or obvious to consumers. Any  
27 purported limitation of the duration and scope of these warranties given by Apple is unreasonable,  
28 unconscionable and void, because Apple knew or recklessly disregarded the fact that the defect in

1 the MagSafe Adapter existed and might not be discovered, if at all, until the MagSafe Adapters had  
2 been used for a period of time longer than the period of any written warranty, and Apple willfully  
3 withheld information about the defect from purchasers of Apple computers. Moreover, due to the  
4 unequal bargaining power between the parties, Plaintiffs and the class members had no meaningful  
5 alternative to accepting Apple's attempted pro forma limitation of the duration of any warranties.

6 67. The dangerous design and manufacture of the MagSafe Adapter was, and is, an  
7 inherent safety-related defect which either was known or which should have been known to Apple to  
8 be a defect at the time plaintiffs and the class members purchased their Apple computers and  
9 Adapters.

10 68. The presence of this defect, and Apple's failure to warn of its presence or cure the  
11 defect, constitutes a breach of both the express and implied warranties.

12 69. Apple's knowledge of this inherent defect, through both Plaintiffs' 30-day demand  
13 letter, and through the complaints lodged on its own website about the Adapter, has given Apple  
14 more than a reasonable opportunity to cure the defect – an opportunity that Apple has failed and  
15 refused to take.

16 70. As a result, Plaintiffs and proposed class members have been damaged in, *inter alia*,  
17 the amount they paid to purchase and replace Apple's un-merchantable MagSafe Adapters, and if no  
18 safe replacement exists, in the amount they paid for their related Apple Computer, which relies on  
19 the MagSafe Adapter for its power and usage.

20 71. Pursuant to 15 U.S.C. § 2310(D) (2), Plaintiffs are also entitled to attorneys' fees  
21 and reimbursement of expenses.

#### 22 **FOURTH CAUSE OF ACTION**

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

24 72. Plaintiffs re-allege and incorporate by reference the allegations contained in the  
25 paragraphs above as if fully set forth herein.

26 73. By placing its MagSafe Adapter in the stream of commerce, Apple impliedly  
27 warranted that its Adapter was reasonably safe for its particular purpose, *i.e.*, to withstand usual wear  
28

1 as a portable device and to charge the computers without causing fraying, sparking or premature  
2 failure.

3 74. Apple's MagSafe Adapter is not fit for its particular purpose. In breach of the  
4 implied warranty of fitness for a particular purpose, Apple's MagSafe Adapter fails to charge  
5 properly, falls apart and causes sparking, which is a safety hazard as well as a cause of damage to the  
6 computers.

7 75. Apple's MagSafe Adapter was not reasonably safe for its intended particular use  
8 when it left Defendant's control and entered the market.

9 76. The MagSafe Adapter defects were not open and/or obvious to consumers.

10 77. Any purported limitation of the duration and scope of the implied warranty of fitness  
11 for a particular purpose given by Apple is unreasonable, unconscionable and void, because Apple  
12 knew or recklessly disregarded that the defect in the MagSafe Adapter existed and might not be  
13 discovered, if at all, until the MagSafe Adapters had been used for a period of time longer than the  
14 period of any written warranty, and Apple willfully withheld information about the defect from  
15 purchasers of Apple computers. Moreover, due to the unequal bargaining power between the  
16 parties, Plaintiffs and class members had no meaningful alternative to accepting Apple's attempted  
17 pro forma limitation of the duration of any warranties.

18 78. As a result, Plaintiffs and proposed class members have been damaged in, *inter alia*,  
19 the amount they paid to purchase and replace Apple's unfit MagSafe Adapters, and if no safe  
20 replacement exists, in the amount they paid for their related Apple Computer, which relies on the  
21 MagSafe Adapter for its power and usage.

## 22 FIFTH CAUSE OF ACTION

### 23 (Breach of Implied Warranty of Merchantability)

24 79. Plaintiffs re-allege and incorporate by reference the allegations contained in the  
25 paragraphs above as if fully set forth herein.

26 80. By placing its MagSafe Adapter in the stream of commerce, Apple impliedly  
27 warranted that its Adapter was reasonably safe for its intended use, *i.e.*, to withstand usual wear as a  
28 portable device and to charge the computers without causing fraying, sparking or premature failure.







1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs pray this Court enter a judgment against Defendant that:

3 A. This action be certified and maintained as a class action under Rule 23 of the  
4 Federal Rules of Civil Procedure and certify the proposed class as defined;

5 B. Awards compensatory, statutory and/or punitive damages as to all Causes of Action  
6 where such relief is permitted;

7 C. Awards Plaintiffs and proposed class members the costs of this action, including  
8 reasonable attorneys' fees and expenses;

9 D. Orders Apple to immediately cease its wrongful conduct as set forth above; enjoins  
10 Apple from continuing to falsely market and advertise, conceal material information, and conduct  
11 business via the unlawful and unfair business acts and practices complained of herein; orders Apple  
12 to engage in a corrective notice campaign, and requires Apple to refund to Plaintiffs and all of the  
13 class members the funds paid to Apple for these defective products, including, if no reasonably safe  
14 replacement product exists, the full price paid for the subject computers;

15 E. Awards equitable monetary relief, including restitution and disgorgement of all ill-  
16 gotten gains, and the imposition of a constructive trust upon, or otherwise restricting the proceeds of  
17 Defendant's ill-gotten gains, to ensure that Plaintiffs and proposed class members have an effective  
18 remedy;

19 F. Awards pre-judgment and post-judgment interest at the legal rate; and

20 G. Such further legal and equitable relief as this Court may deem just and proper.

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1 **JURY DEMAND**

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

3  
4 DATED: May 21, 2009

ZELDES & HAEGGQUIST, LLP  
HELEN I. ZELDES  
ALREEN HAEGGQUIST

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6  
7 *s/ Helen I. Zeldes*

HELEN I. ZELDES

8  
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10 619/342-7878 (fax)

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13 **CERTIFICATION OF INTERESTED ENTITIES OR PERSONS**

14 Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the  
15 named parties, there is no such interest to report.  
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20 *s/ Helen I. Zeldes*

HELEN I. ZELDES, ATTORNEY OF  
RECORD FOR PLAINTIFFS  
TIMOTHY J. BROAD, JESSE REISMAN,  
NEOTAKA KITAGAWA, JR.,