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8 *Attorneys for Defendant*  
 APPLE INC.

10  
 11 UNITED STATES DISTRICT COURT  
 12 NORTHERN DISTRICT OF CALIFORNIA  
 13 SAN JOSE DIVISION

14  
 15 IN RE MAGSAFE APPLE POWER ADAPTER  
 LITIGATION

Case No. C 09-01911 JW

**CLASS ACTION**

**ANSWER TO FIRST AMENDED  
 CONSOLIDATED CLASS ACTION  
 COMPLAINT**

**DEMAND FOR JURY TRIAL**

Judge James Ware, Courtroom 8  
 Complaint Filed: January 19, 2010  
 Trial Date: None Set

1 Defendant APPLE INC. (“Apple”), by and through its attorneys, answers the Complaint  
2 filed by Plaintiffs Naotaka Kitagawa, Jr., Timothy J. Broad, Jesse Reisman, Tracey Hackwith,  
3 and Michael Martin (“Plaintiffs”) as follows:

#### 4 NATURE OF THE ACTION

5 1. Responding to paragraph 1 of the Complaint, Apple states that Plaintiffs purport to  
6 bring a nationwide class action on behalf of purchasers of Apple’s 85W MagSafe Power Adapter  
7 (“85W Adapter”) and Apple’s 60W MagSafe Power Adapter (“60W Adapter”) (hereinafter,  
8 collectively, “MagSafe Adapters”) against Apple. Apple denies that class treatment is  
9 appropriate. Except as expressly stated, Apple denies each and every averment contained in  
10 paragraph 1. Apple denies that Plaintiffs or the members of the purported class have been injured  
11 or damaged in any way and further denies that Plaintiffs or the members of the purported class are  
12 entitled to relief of any kind.

13 2. Responding to paragraph 2 of the Complaint, Apple states that the URL cited,  
14 <http://www.apple.com/store>, is part of an Apple website and that the website speaks for itself.  
15 Except as expressly stated, Apple denies each and every averment contained in paragraph 2.

16 3. Responding to paragraph 3 of the Complaint, Apple states that MagSafe Adapters  
17 are sold with MacBook and MacBook Pro computers (hereinafter, collectively, “MacBooks”) and  
18 that Apple sells no other adapters that are compatible with MacBooks. Apple further states that it  
19 currently markets and sells MagSafe Adapters. Insofar as the averments in paragraph 3 state  
20 conclusions of law, no response thereto is required. Except as expressly stated, Apple denies  
21 each and every averment contained in paragraph 3.

22 4. Responding to paragraph 4 of the Complaint, Apple states that Plaintiffs purport to  
23 bring a class action on behalf of themselves and all other similarly situated. Apple denies that  
24 class treatment is appropriate. Apple further states that Plaintiffs purport to state claims under the  
25 California Unfair Competition Law, Business and Professions Code §§ 17200, *et seq.* (“UCL” or  
26 “§ 17200”), the California Consumers Legal Remedies Act, Civil Code §§ 1750, *et seq.*  
27 (“CLRA”), the Magnuson-Moss Warranty Act, 15 U.S.C. § 2310(d)(1), the Song-Beverly  
28 Consumer Warranty Act, Civil Code § 1790, *et seq.* (“Song-Beverly”), as well as for breach of

1 express warranty, breach of implied warranties, negligence, unjust enrichment, untrue and  
2 misleading advertising in violation of California Business and Professions Code §§ 17500, *et*  
3 *seq.*, and injunctive and declaratory relief. Apple states that Plaintiffs purport to seek damages  
4 and equitable relief. Except as expressly stated, Apple denies each and every averment contained  
5 in paragraph 4. Apple denies that Plaintiffs or the members of the purported class have been  
6 injured or damaged in any way and further denies that Plaintiffs or the members of the purported  
7 class are entitled to relief of any kind.

### 8 **JURISDICTION AND VENUE**

9 5. Responding to paragraph 5 of the Complaint, Apple states that insofar as the  
10 averments in paragraph 5 state conclusions of law, no response thereto is required. Except as  
11 expressly stated, Apple denies each and every averment contained in paragraph 5.

12 6. Responding to paragraph 6 of the Complaint, Apple is without knowledge or  
13 information sufficient to form a belief as to the truth of the averments that the matter in  
14 controversy exceeds the jurisdictional amount. Except as expressly stated, Apple denies each and  
15 every averment contained in paragraph 6.

16 7. Responding to paragraph 7 of the Complaint, Apple states that its executive offices  
17 and corporate headquarters are located in Cupertino, California. Apple further states that it is  
18 incorporated in California and that it is registered to do business in the State of California. Apple  
19 states that it has promoted, marketed, distributed, and sold MagSafe Adapters in California.  
20 Insofar as the averments in paragraph 7 state conclusions of law, no response thereto is required.  
21 Except as expressly stated, Apple denies each and every averment contained in paragraph 7.

22 8. Responding to paragraph 8 of the Complaint, Apple states that it does business in  
23 the Northern District of California and that its headquarters are located in Santa Clara County,  
24 California. Insofar as the averments in paragraph 8 state conclusions of law, no response thereto  
25 is required. Except as expressly stated, Apple denies each and every averment contained in  
26 paragraph 8.

**INTRADISTRICT ASSIGNMENT**

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2 9. Responding to paragraph 9 of the Complaint, Apple states that insofar as the  
3 averments in paragraph 9 state conclusions of law, no response thereto is required. Apple further  
4 states that is without knowledge or information sufficient to form a belief as to the truth of the  
5 averments contained in paragraph 9 and on that basis denies the averments.

**PARTIES**

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7 10. Responding to paragraph 10 of the Complaint, Apple states that its records confirm  
8 that Plaintiff Naotaka Kitagawa purchased a MacBook computer in May of 2006. Except as  
9 expressly stated, Apple is without knowledge or information sufficient to form a belief as to the  
10 truth of the averments contained in paragraph 10 and on that basis denies the averments.

11 11. Responding to paragraph 11 of the Complaint, Apple states that its records confirm  
12 that Plaintiff Timothy J. Broad purchased a MacBook computer in September of 2006. Apple  
13 further states that its records reflect that Mr. Broad contacted Apple in December. Except as  
14 expressly stated, Apple is without knowledge or information sufficient to form a belief as to the  
15 truth of the averments contained in paragraph 11 and on that basis denies the averments.

16 12. Responding to paragraph 12 of the Complaint, Apple is without knowledge or  
17 information sufficient to form a belief as to the truth of the averments contained in paragraph 12  
18 and on that basis denies the averments.

19 13. Responding to paragraph 13 of the Complaint, Apple states that MacBook  
20 computers come equipped with a 60W Adapter. As to the remaining averments set forth in  
21 paragraph 13, Apple is without knowledge or information sufficient to form a belief as to the truth  
22 of such averments at this time and on that basis denies such averments.

23 14. Responding to paragraph 14 of the Complaint, Apple is without knowledge or  
24 information sufficient to form a belief as to the truth of the averments contained in paragraph 14  
25 and on that basis denies the averments.

26 15. Responding to paragraph 15 of the Complaint, Apple states that it is incorporated  
27 in California. Apple further states that its executive offices and corporate headquarters are  
28 located in Cupertino, Santa Clara County, California. Apple states that it is registered to do

1 business in the State of California and conducts business in the State of California. Apple further  
2 states that it is a publicly-traded company. Apple states that its 2008 Form 10-K lists net sales of  
3 over \$32 billion. Apple states that it markets and sells MacBooks throughout the United States,  
4 including in California. Except as expressly stated, Apple denies each and every averment  
5 contained in paragraph 15.

6 16. Responding to paragraph 16 of the Complaint, Apple is without knowledge or  
7 information sufficient to form a belief as to the truth of the averments contained in paragraph 16  
8 and on that basis denies the averments.

### 9 DEFENDANT'S UNLAWFUL CONDUCT

10 17. Responding to paragraph 17 of the Complaint, Apple states that it was  
11 incorporated under the laws of the State of California in January 1977. Apple states that it  
12 currently designs, markets, distributes, and sells personal computers and related products and  
13 services through its online stores, its own retail stores, and authorized resellers. Except as  
14 expressly stated, Apple denies each and every averment contained in paragraph 17.

15 18. Responding to paragraph 18 of the Complaint, Apple states that MacBooks come  
16 equipped with MagSafe Adapters. Apple further states that it also sells MagSafe Adapters  
17 separately from MacBooks. Except as expressly stated, Apple denies each and every averment  
18 contained in paragraph 18.

19 19. Responding to paragraph 19 of the Complaint, Apple states that it markets  
20 MagSafe Adapters for use with MacBooks. Except as expressly stated, Apple denies each and  
21 every averment contained in paragraph 19.

22 20. Responding to paragraph 20 of the Complaint, Apple states that the URLs cited are  
23 part of an Apple website and that the website speaks for itself. Except as expressly stated, Apple  
24 denies each and every averment contained in paragraph 20.

25 21. Responding to paragraph 21 of the Complaint, Apple states that the URLs cited are  
26 part of an Apple website and that the website speaks for itself. Apple further states that its May  
27 16, 2006 Press Release speaks for itself. Except as expressly stated, Apple denies each and every  
28 averment contained in paragraph 21.

1           22.     Responding to paragraph 22 of the Complaint, Apple states that its June 5, 2007  
2 Press Release speaks for itself. Apple further states that the URL cited is part of an Apple  
3 website and that the website speaks for itself. Except as expressly stated, Apple denies each and  
4 every averment contained in paragraph 22.

5           23.     Responding to paragraph 23 of the Complaint, Apple states that the reference in  
6 paragraph 23 is a reference to part of an Apple website and that the website speaks for itself.  
7 Except as expressly stated, Apple denies each and every averment contained in paragraph 23.

8           24.     Responding to paragraph 24 of the Complaint, Apple states that the document  
9 attached to the Complaint as Exhibit A is a true and correct copy of the One (1) Year Limited  
10 Warranty for MagSafe Adapters that was in effect and provided to consumers during certain  
11 periods of time when Apple was selling the MagSafe Adapter. Apple states that the document  
12 speaks for itself. Apple denies that it has failed to satisfy its obligations under the One (1) Year  
13 Limited Warranty. Insofar as Plaintiffs' averments in paragraph 24 state conclusions of law, no  
14 response thereto is required. Except as expressly stated, Apple denies each and every averment  
15 contained in paragraph 24.

16           25.     Responding to paragraph 25 of the Complaint, Apple states that Exhibit B,  
17 attached to the Complaint, is a true and correct copy of a page from Apple's website entitled  
18 "Apple Portables: Troubleshooting MagSafe adapters." Apple states that the document speaks  
19 for itself. Insofar as Plaintiffs' averments in paragraph 25 state conclusions of law, no response  
20 thereto is required. Except as expressly stated, Apple denies each and every averment contained  
21 in paragraph 25.

22           26.     Responding to paragraph 26 of the Complaint, Apple states that in conjunction  
23 with the sale of MacBook computers, Apple includes a One (1) Year Limited Warranty. Apple  
24 further states that the document attached to the Complaint as Exhibit A is a true and correct copy  
25 of the One (1) Year Limited Warranty for MagSafe Adapters that was in effect and provided to  
26 consumers during certain periods of time when Apple was selling the MagSafe Adapter. Apple  
27 states that the document speaks for itself. Insofar as Plaintiffs' averments in paragraph 26 state  
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1 conclusions of law, no response thereto is required. Except as expressly stated, Apple denies  
2 each and every averment contained in paragraph 26.

3 27. Responding to paragraph 27 of the Complaint, Apple states that the URL cited is  
4 part of an Apple website and that the website speaks for itself. Except as expressly stated, Apple  
5 denies each and every averment contained in paragraph 27.

6 28. Responding to paragraph 28 of the Complaint, Apple denies each and every  
7 averment set forth in paragraph 28.

8 29. Responding to paragraph 29 of the Complaint, Apple denies each and every  
9 averment contained in paragraph 29.

10 30. Responding to paragraph 30 of the Complaint, Apple denies each and every  
11 averment contained in paragraph 30.

12 31. Responding to paragraph 31 of the Complaint, Apple denies each and every  
13 averment contained in paragraph 31.

14 32. Responding to paragraph 32 of the Complaint, Apple states that as of January 20,  
15 2010, there are customer reviews on Apple's website. Except as expressly stated, Apple denies  
16 each and every averment contained in paragraph 32.

17 33. Responding to paragraph 33 of the Complaint, Apple denies each and every  
18 averment contained paragraph 33.

19 34. Responding to paragraph 34 of the Complaint, Apple states that its website  
20 includes a page entitled, "Apple Portables: Troubleshooting MagSafe adapters," and that the  
21 website speaks for itself. Except as expressly stated, Apple denies each and every remaining  
22 averment contained in paragraph 34.

23 35. Responding to paragraph 35 of the Complaint, Apple denies each and every  
24 averment contained in paragraph 35.

25 36. Responding to paragraph 36 of the Complaint, Apple denies that "the Internet is  
26 rife with . . . complaints about the MagSafe adapter." Apple states that it is without knowledge or  
27 information sufficient to form a belief as to the truth of the remaining averments of paragraph 36  
28 at this time, and on that basis denies each and every such averment.



1 information sufficient to form a belief as to the truth of such averments at this time, and on that  
2 basis denies the averments.

3 46. Responding to paragraph 46 of the Complaint, Apple is without knowledge or  
4 information sufficient to form a belief as to the truth of the averments contained in paragraph 46  
5 and on that basis denies the averments.

6 47. Responding to paragraph 47 of the Complaint, Apple states that as of January 20,  
7 2010, there are customer reviews on Apple's website. As to the remaining averments set forth in  
8 paragraph 47, Apple is without knowledge or information sufficient to form a belief as to the truth  
9 of such averments, and on that basis denies such averments.

10 48. Responding to paragraph 48 of the Complaint, Apple denies each and every  
11 averment contained in paragraph 48.

12 49. Responding to paragraph 49 of the Complaint, Apple denies each and every  
13 averment of paragraph 49. Apple denies that Plaintiffs or the members of the purported class  
14 have been injured or damaged in any way and further denies that Plaintiffs or the members of the  
15 purported class are entitled to relief of any kind.

16 **CLASS ACTION ALLEGATIONS**

17 50. Responding to paragraph 50 of the Complaint, Apple states that Plaintiffs purport  
18 to bring a class action against Apple. Apple denies that class treatment is appropriate.

19 51. Responding to paragraph 51 of the Complaint, Apple states that Plaintiffs purport  
20 to bring a class action against Apple. Apple denies that class treatment is appropriate. Apple  
21 states that Plaintiffs seek to exclude certain persons and entities from the purported class. Except  
22 as expressly stated, Apple denies each and every averment contained in paragraph 51.

23 52. Responding to paragraph 52 of the Complaint, Apple denies each and every  
24 averment contained in paragraph 52 and each and every averment contained in all subparagraphs  
25 of paragraph 52.

26 53. Responding to paragraph 53 of the Complaint, Apple states that it maintains  
27 address information for certain purchasers. Except as expressly stated, Apple denies each and  
28 every averment contained in paragraph 53.



1           63.     Responding to paragraph 63 of the Complaint, Apple states that Plaintiffs purport  
2 to bring a claim under the Consumer Legal Remedies Act, California Civil Code §§ 1750, *et seq.*  
3 Insofar as Plaintiffs' averments state conclusions of law, no response is required thereto. Except  
4 as expressly stated herein, Apple denies each and every averment of paragraph 63.

5           64.     Responding to paragraph 64 of the Complaint, Apple denies each and every  
6 averment contained in paragraph 64 and each subparagraph thereof.

7           65.     Responding to paragraph 65 of the Complaint, Apple denies each and every  
8 averment contained in paragraph 65.

9           66.     Responding to paragraph 66 of the Complaint, Apple states that it received a  
10 CLRA demand letter from attorney Helen I. Zeldes on behalf of Plaintiffs Kitagawa, Broad, and  
11 Reisman by certified mail on April 16, 2009. Except as expressly stated, Apple denies each and  
12 every averment contained in paragraph 66.

13           67.     Responding to paragraph 67 of the Complaint, Apple states that Plaintiffs seek  
14 actual damages and punitive damages. Except as expressly stated, Apple denies each and every  
15 averment contained in paragraph 67. Apple denies that Plaintiffs or the members of the purported  
16 class have been injured or damaged in any way and further denies that Plaintiffs or the members  
17 of the purported class are entitled to relief of any kind.

18           68.     Responding to paragraph 68 of the Complaint, Apple states that Plaintiffs seek  
19 injunctive relief. Apple denies that Plaintiffs or any member of the purported class suffered  
20 injury or damage, and further denies that Plaintiffs or any member of the purported class are  
21 entitled to injunctive relief or to relief of any kind. Except as expressly stated, Apple denies each  
22 and every averment contained in paragraph 68.

23           69.     Responding to paragraph 69 of the Complaint, Apple denies each and every  
24 averment of paragraph 69. Apple denies that Plaintiffs or the members of the purported class  
25 have been injured or damaged in any way and further denies that Plaintiffs or the members of the  
26 purported class are entitled to relief of any kind.

1 **THIRD CAUSE OF ACTION**  
2 **(Violations of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2310(d)(1))**

3 70. Responding to paragraph 70 of the Complaint, Apple realleges and incorporates by  
4 reference each and every preceding paragraph of this Answer as if fully set forth herein.

5 71. Responding to paragraph 71 of the Complaint, Apple states that insofar as  
6 Plaintiffs' averments in paragraph 71 state conclusions of law, no response thereto is required.  
7 Except as expressly stated, Apple denies each and every averment contained in paragraph 71.

8 72. Responding to paragraph 72 of the Complaint, Apple states that insofar as  
9 Plaintiffs' averments in paragraph 72 state conclusions of law, no response thereto is required.  
10 Except as expressly stated, Apple denies each and every averment contained in paragraph 72.

11 73. Responding to paragraph 73 of the Complaint, Apple denies each and every  
12 averment contained in paragraph 73.

13 74. Responding to paragraph 74 of the Complaint, Apple states that insofar as  
14 paragraph 74 states conclusions of law, no response thereto is required. Apple denies that the  
15 MagSafe Adapters are defective. Except as expressly stated, Apple denies each and every  
16 remaining averment contained in paragraph 74.

17 75. Responding to paragraph 75 of the Complaint, Apple states that insofar as  
18 paragraph 75 states conclusions of law, no response thereto is required. Apple denies that the  
19 MagSafe Adapters are dangerously designed and/or manufactured. Except as expressly stated,  
20 Apple denies each and every remaining averment contained in paragraph 75.

21 76. Responding to paragraph 76 of the Complaint, Apple states that insofar as  
22 paragraph 76 states conclusions of law, no response thereto is required. Apple denies that the  
23 MagSafe Adapters are defective. Except as expressly stated, Apple denies each and every  
24 remaining averment contained in paragraph 76.

25 77. Responding to paragraph 77 of the Complaint, Apple states that insofar as  
26 paragraph 77 states conclusions of law, no response thereto is required. Apple denies that the  
27 MagSafe Adapters are defective. Except as expressly stated, Apple denies each and every  
28 remaining averment contained in paragraph 77.



1 89. Responding to paragraph 89 of the Complaint, Apple denies each and every  
2 averment contained in paragraph 89.

3 90. Responding to paragraph 90 of the Complaint, Apple denies each and every  
4 averment contained in paragraph 90.

5 91. Responding to paragraph 91 of the Complaint, Apple denies each and every  
6 averment contained in paragraph 91.

7 92. Responding to paragraph 92 of the Complaint, Apple denies each and every  
8 averment contained in paragraph 92.

9 93. Responding to paragraph 93 of the Complaint, Apple denies each and every  
10 averment contained in paragraph 93. Apple further denies that Plaintiffs or any member of the  
11 purported class suffered injury or damage, and further denies that Plaintiffs or any member of the  
12 purported class are entitled to relief of any kind.

13 **FIFTH CAUSE OF ACTION**  
14 **(Breach of Implied Warranty of Fitness for a Particular Purpose)**

15 94. Responding to paragraph 94 of the Complaint, Apple realleges and incorporates by  
16 reference each and every preceding paragraph of this Answer as if fully set forth herein.

17 95. Responding to paragraph 95 of the Complaint, Apple states that insofar as  
18 Plaintiffs' averments in paragraph 95 state conclusions of law, no response thereto is required.  
19 Except as expressly stated, Apple denies each and every averment contained in paragraph 95.

20 96. Responding to paragraph 96 of the Complaint, Apple states that insofar as  
21 Plaintiffs' averments in paragraph 96 state conclusions of law, no response thereto is required.  
22 Except as expressly stated, Apple denies each and every averment contained in paragraph 96.

23 97. Responding to paragraph 97 of the Complaint, Apple states that insofar as  
24 Plaintiffs' averments in paragraph 97 state conclusions of law, no response thereto is required.  
25 Except as expressly stated, Apple denies each and every averment contained in paragraph 97.

26 98. Responding to paragraph 98 of the Complaint, Apple states that insofar as  
27 paragraph 98 states conclusions of law, no response thereto is required. Apple denies that the  
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1 MagSafe Adapters are defective. Except as expressly stated, Apple denies each and every  
2 remaining averment contained in paragraph 98.

3 99. Responding to paragraph 99 of the Complaint, Apple states that insofar as  
4 Plaintiffs' averments in paragraph 99 state conclusions of law, no response thereto is required.  
5 Except as expressly stated, Apple denies each and every averment contained in paragraph 99.

6 100. Responding to paragraph 100 of the Complaint, Apple denies each and every  
7 averment contained in paragraph 100. Apple denies that Plaintiffs or the members of the  
8 purported class have been injured or damaged in any way and further denies that Plaintiffs or the  
9 members of the purported class are entitled to relief of any kind.

10 **SIXTH CAUSE OF ACTION**  
11 **(Breach of Implied Warranty of Merchantability)**

12 101. Responding to paragraph 101 of the Complaint, Apple realleges and incorporates  
13 by reference each and every preceding paragraph of this Answer as if fully set forth herein.

14 102. Responding to paragraph 102 of the Complaint, Apple states that insofar as  
15 Plaintiffs' averments in paragraph 102 state conclusions of law, no response thereto is required.  
16 Except as expressly stated, Apple denies each and every averment contained in paragraph 102.

17 103. Responding to paragraph 103 of the Complaint, Apple denies each and every  
18 averment contained in paragraph 103.

19 104. Responding to paragraph 104 of the Complaint, Apple denies each and every  
20 averment contained in paragraph 104.

21 105. Responding to paragraph 105 of the Complaint, Apple states that insofar as  
22 paragraph 105 states conclusions of law, no response thereto is required. To the extent that  
23 paragraph 105 contains factual averments, Apple denies that the MagSafe Adapters are defective.  
24 Except as expressly stated, Apple denies each and every remaining averment contained in  
25 paragraph 105.

26 106. Responding to paragraph 106 of the Complaint, Apple states that insofar as  
27 Plaintiffs' averments in paragraph 106 state conclusions of law, no response thereto is required.  
28 Except as expressly stated, Apple denies each and every averment contained in paragraph 106.



1 purported class have been injured or damaged in any way and further denies that Plaintiffs or the  
2 members of the purported class are entitled to relief of any kind.

3 115. Responding to paragraph 115 of the Complaint, Apple denies each and every  
4 averment contained in paragraph 115. Apple denies that Plaintiffs or the members of the  
5 purported class have been injured or damaged in any way and further denies that Plaintiffs or the  
6 members of the purported class are entitled to relief of any kind.

7 **EIGHTH CAUSE OF ACTION**  
8 **(Negligence)**

9 116. Responding to paragraph 116 of the Complaint, Apple realleges and incorporates  
10 by reference each and every preceding paragraph of this Answer as if fully set forth herein.

11 117. Responding to paragraph 117 of the Complaint, Apple states that insofar as  
12 Plaintiffs' averments in paragraph 117 state conclusions of law, no response thereto is required.  
13 Except as expressly stated, Apple denies each and every averment contained in paragraph 117.

14 118. Responding to paragraph 118 of the Complaint, Apple states that insofar as  
15 Plaintiffs' averments in paragraph 118 state conclusions of law, no response thereto is required.  
16 Except as expressly stated, Apple denies each and every averment contained in paragraph 118.

17 119. Responding to paragraph 119 of the Complaint, Apple denies each and every  
18 averment contained in paragraph 119, Apple denies that Plaintiffs or the members of the  
19 purported class have been injured or damaged in any way and further denies that Plaintiffs or the  
20 members of the purported class are entitled to relief of any kind.

21 **NINTH CAUSE OF ACTION**  
22 **(Negligent Design and Failure to Warn)**

23 120. Responding to paragraph 120 of the Complaint, Apple realleges and incorporates  
24 by reference each and every preceding paragraph of this Answer as if fully set forth herein.

25 121. Responding to paragraph 121 of the Complaint, Apple denies each and every  
26 averment contained in paragraph 121.

27 122. Responding to paragraph 122 of the Complaint, Apple denies each and every  
28 averment contained in paragraph 122.







1 **AFFIRMATIVE DEFENSES**

2 As to affirmative defenses to the Complaint, Apple does not, by stating the matters set  
3 forth in these defenses, allege or admit that it has the burden of proof and/or persuasion with  
4 respect to any of these matters, and does not assume the burden of proof or persuasion as to any  
5 matters as to which Plaintiffs have the burden of proof or persuasion.

6 **FIRST AFFIRMATIVE DEFENSE**

7 **(Failure to State a Claim — All Causes of Action)**

8 1. The Complaint, and each and every cause of action therein, fails to state facts  
9 sufficient to constitute a cause, or causes, of action against Apple.

10 **SECOND AFFIRMATIVE DEFENSE**

11 **(Complaint Uncertain, Vague, and Ambiguous)**

12 2. The Complaint and the averments thereof are uncertain, vague, and ambiguous.

13 **THIRD AFFIRMATIVE DEFENSE**

14 **(Unclean Hands)**

15 3. Plaintiffs is barred by the doctrine of unclean hands from asserting any of the  
16 claims in the Complaint.

17 **FOURTH AFFIRMATIVE DEFENSE**

18 **(Statutes of Limitations)**

19 4. Plaintiffs' claims, and those of the purported class, alleged in the Complaint are  
20 barred by the applicable statutes of limitations.

21 **FIFTH AFFIRMATIVE DEFENSE**

22 **(Plaintiffs' Claims Barred)**

23 5. Apple alleges that Plaintiffs' claims that Apple engaged in unfair conduct in  
24 violation of California Business & Professions Code §§ 17200, *et seq.*, are barred by other  
25 provisions of state law.

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**SIXTH AFFIRMATIVE DEFENSE**

**(Failure to Plead Fraud/Misrepresentations with Particularity)**

6. Plaintiffs has failed to plead with particularity the circumstances constituting the alleged fraud/misrepresentations.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Warranties Were Limited)**

7. As to those causes of action based upon a breach of warranty, Apple expressly limited any express warranty and any implied warranty that may have otherwise been created or have been in existence.

**EIGHTH AFFIRMATIVE DEFENSE**

**(Failure to Notify of Breach of Warranty)**

8. As to those causes of action based upon a breach of warranty, Plaintiffs failed to notify Apple of any breach of warranty within a reasonable time after Plaintiffs knew or should have known of any purported breach.

**NINTH AFFIRMATIVE DEFENSE**

**(Waiver)**

9. The Complaint, and each of its purported causes of action, is barred, in whole or in part, by the doctrine of waiver.

**TENTH AFFIRMATIVE DEFENSE**

**(Estoppel)**

10. The Complaint, and each of its purported causes of action, is barred, in whole or in part, by the equitable doctrine of estoppel.

**ELEVENTH AFFIRMATIVE DEFENSE**

**(Comparative Fault)**

11. Plaintiffs' claims, and those of the purported class, are barred, in whole or in part, by their own comparative fault.

**TWELFTH AFFIRMATIVE DEFENSE**

1 **(Contributory Negligence)**

2 12. Any and all events, happenings, injuries and damages set forth in the Complaint  
3 were proximately caused and contributed to by the acts and/or omissions of Plaintiffs and/or  
4 members of the purported class, and such acts and/or omissions totally bar or reduce any recovery  
5 on the part of Plaintiffs and/or the purported class.

6 **THIRTEENTH AFFIRMATIVE DEFENSE**

7 **(No Injury or Damage)**

8 13. Apple denies that Plaintiffs, any member of the purported class, and/or any  
9 member of the general public has suffered any injury or damage whatsoever, and further denies  
10 that Apple is liable to Plaintiffs and/or any member of the purported class for any injury or  
11 damage claimed or for any injury or damage whatsoever.

12 **FOURTEENTH AFFIRMATIVE DEFENSE**

13 **(Alleged Injury or Damage Caused by Others)**

14 14. To the extent that Plaintiffs and/or the purported class suffered injury or damage,  
15 which Apple denies, such injury or damage was caused by the actions or conduct of others, not of  
16 Apple.

17 **FIFTEENTH AFFIRMATIVE DEFENSE**

18 **(Constitutional)**

19 15. The claims of Plaintiffs and the purported class are in contravention of Apple's  
20 rights under applicable clauses of the United States and California Constitutions, including  
21 without limitation the following provisions: (a) said claims constitute an impermissible burden  
22 on interstate commerce in contravention of Article I, Section 8, of the United States Constitution;  
23 (b) said claims violate Apple's right to Due Process under the Fourteenth Amendment to the  
24 United States Constitution; (c) said claims contravene the constitutional prohibition against vague  
25 and overbroad laws; (d) said claims contravene freedom of speech rights under the California  
26 Constitution and the First and Fourteenth Amendments to the United States Constitution; and  
27 (e) said claims contravene the Due Process Clause of the California Constitution.  
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**TWENTY-FIRST AFFIRMATIVE DEFENSE**

**(Lack of Article III Standing)**

21. Apple alleges on information and belief that Plaintiffs and the members of the purported class lack standing under Article III of the Constitution of the United States.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

**(Laches)**

22. The Complaint and each of its purported causes of action are barred, in whole or in part, by the doctrine of laches.

Apple reserves the right to assert other defenses as discovery progresses.

**PRAYER**

WHEREFORE, Apple prays for judgment as follows:

- 1. That Plaintiffs and the purported class take nothing by way of the Complaint;
- 2. That the Complaint be dismissed with prejudice and judgment be entered in favor of Apple;
- 3. That Apple be awarded its costs of suit; and
- 4. For such other and further relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Apple hereby demands a trial by jury on all issues upon which trial by jury may be had.

Dated: February 5, 2010

PENELOPE A. PREOVOLOS  
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By: /s/ Andrew D. Muhlbach  
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