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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL BRANCH

FRED GREAVES, DAVE GATLEY, individu-)
ally and on behalf of all others similarly situ-)
ated,)

Plaintiffs,)

vs.)

APPLE COMPUTER, INC. a California corpo-)
ration; and DOES 1 through 50, inclusive,)

Defendants.)

Case No.: 37-2007-00066199-CU-BT-CTL

COMPLAINT FOR

- (i) DECEPTIVE ADVERTISING;
- (ii) UNFAIR COMPETITION;
- (iii) VIOLATION OF CLRA;
- (iv) MISREPRESENTATION;
- (v) DECLARATORY JUDGMENT

CLASS ACTION

JURY TRIAL DEMANDED

Plaintiffs, individually and on behalf of all others similarly situated, allege upon personal knowledge as to their own acts and on information and belief based on investigation of counsel as to all other matters as follows:

NATURE OF ACTION

1. In approximately January to early February of 2006, Apple computer, Inc. ("Apple") unveiled its new line of notebook computers consisting of the MacBook (hereinafter, "MacBook")

1 and the MacBook Pro. The MacBook was released in early May of 2006. Apple marketed the
2 MacBook as having display capabilities far superior to that of other portable computers.

3 2. According to Apple, a MacBook and a MacBook Pro can make “your ideas more
4 enlightening, with a sharp, high-resolution screen” allowing the viewer to “[s]ee blacker blacks,
5 whiter whites, and many more colors in between on a brilliant 15.4 inch 1440-by-900-pixel or 17-
6 inch, 1680-by-1050-pixel digital display,” allowing the user to “[e]njoy a nuanced view **simply**
7 **unavailable on other portables.**” (emphasis added).

8 3. The Technical Specifications for the MacBook state that the display is a “13.3-inch (di-
9 agonal) glossy widescreen. TFT display with support for **millions of colors.**” (emphasis added)
10 The Technical Specifications for the 15-inch MacBook Pro state that the display is a “15.4-inch
11 (diagonal) TFT display, support for **millions of colors**; optional glossy widescreen display.” (em-
12 phasis added). The Technical Specifications for the 17-inch MacBook Pro state that the display is
13 a “17-inch (diagonal) TFT display, support for **millions of colors**; optional glossy widescreen dis-
14 play.” (emphasis added)

15 4. Apple’s advertising on its website asserts that using a software application known as
16 “Aperture” on the family of Mac computers, the user has the “ultimate photographer’s work-
17 station.” Because Aperture is supported by every member of the Mac family of computers, and
18 thus can be run “on every desktop—from Mac mini to iMac to Mac Pro—and every notebook—
19 including both the MacBook and the MacBook Pro,” Aperture can be run “at home or in your stu-
20 dio” allowing the user to “take all your photos with you on location or to a client’s office.”

21 5. In the Operating System (OS) so highly touted by Apple as being “state of the art” and
22 substantially superior to that of the Windows Operating System utilized on personal computers, in
23 the “Systems Preferences” options available to an OS user, in the menu allowing a user to select
24 “Display” preferences, among the choices available to a user for colors, a user can choose among

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1 various options including “256 colors,” “Thousands,” and “Millions,” as though to suggest that the
2 colors being displayed on a MacBook or a MacBook Pro are in actuality in the “Millions.”

3 6. Within weeks of when Apple first began to sell MacBooks, purchasers started com-
4 plaining that the display was substandard. Many purchasers observed that the display was
5 “grainy.” Others complained that the display was “sparkly.” Some purchasers observed distract-
6 ing lines at different points on the display screen. Some purchasers noted that in certain programs
7 capable of displaying color spectra that banding appears in the display of the gradients. A large
8 number of such purchasers contacted Apple for relief, to no avail. Many such dissatisfied purchas-
9 ers were chastised by Apple agents and employees for being too picky about their assessments of
10 the quality of the display. Other dissatisfied purchasers were told that they were imagining the
11 complained about defects. Dissatisfied purchasers have posted their complaints on a discussion
12 forum hosted by Apple though it appears that Apple has engaged in substantial editing of the posts
13 on the discussion forum.¹ In fact, the editing by Apple has resulted in the actual purgation of
14 critical posts, which has occurred on numerous occasions.

15 7. Since then, customer complaints about the display issues have begun to appear in large
16 numbers on various other websites.²

17 8. MacBook and MacBook Pro users who rely on the accuracy of displays for various
18 graphic uses, such as photography find that the color displays on those computers, even at the
19 highest resolutions, are unreliable for editing purposes.

20 9. The reality is that notwithstanding Apple’s misrepresentations and suggestions that its
21 MacBook and MacBook Pro display “millions of colors,” the displays are only capable of display-
22 ing the illusion of millions of colors through the use of a software technique referred to as “dither-
23

24 ¹ <http://discussions.apple.com/thread.jspa?threadID=770044&tstart=0>

25 ² <http://forums.macnn.com/69/powerbook-and-macbook-pro/316439/macbook-pro-15-grainy->
26 [matte-display/3/](http://forums.macnn.com/69/powerbook-and-macbook-pro/316439/macbook-pro-15-grainy-matte-display/3/)

1 ing,” which causes nearby pixels on the display to use slightly varying shades or colors that trick
2 the human eye into perceiving the desired color even though it is not truly that color. The extent to
3 which a particular make of computer is capable of “dithering” is a function of the sophistication of
4 the programming of the software. For example, in the case of the MacBook and the MacBook Pro,
5 because of the uniqueness of these computers to be able to run both Apple’s OS operating system,
6 and the PC’s Microsoft Windows operating system, it is possible to compare the quality of the dis-
7 play between the two operating systems. In the case of the display that the MacBook and the
8 MacBook Pro produces using the Microsoft Windows operating system at all resolution levels is
9 superior to the display that those same computers display using Apple’s OS operating system.

10 10. Plaintiffs, who recently purchased MacBooks believing them to be state of the art note-
11 book computers running a superior, more stable operating system, and with the capability to gener-
12 ate the most brilliant, vibrant, notebook computer display of any notebook computer on the market,
13 including the ability to display “millions of colors” bring this action individually and on behalf of
14 all others situated to require Apple to (i) resolve the past, present, and future issues that Apple’s
15 misrepresentation inherent defect has created concerning MacBooks already sold; (ii) cease selling
16 defective laptops; and (iii) provide other appropriate relief.

17 **PARTIES**

18 11. At all times herein mentioned, plaintiff, FRED GREAVES, (hereinafter referred to as
19 “GREAVES”) is and was a resident of the State of California, County of San Diego. He recently
20 purchased a new Apple MacBook and has experienced the inferior color displays of the type com-
21 plained of herein. Specifically, plaintiff Greaves purchased a MacBook in approximately May of
22 2006 and a MacBook Pro in approximately June of 2006.

23 12. At all times herein mentioned, plaintiff, DAVE GATLEY, (hereinafter referred to as
24 “GATLEY”) is and was a resident of the State of California, County of San Diego. He recently
25 purchased a new Apple MacBook and has experienced the inferior color displays of the type com-
26

1 plained of herein. Specifically, plaintiff GATLEY purchased a MacBook in approximately June of
2 2006 and a MacBook Pro in approximately late November to early December of 2006.

3 13. Apple Computer, Inc. ("Apple") is a California corporation whose headquarters and
4 principal place of business are in Cupertino, California. Apple designs, manufactures, and markets
5 personal computers and related software, among other things. Apple's products and services in-
6 clude a portfolio of consumer and professional software applications, among which is Apple's OS
7 operating system, Aperture photography software, and DVD Studio Pro Software. Apple sells its
8 software (including Aperture and DVD Studio Pro) world wide through Apple's website, its own
9 retail stores, and by other means.

10 14. The true names and capacities of the defendants named herein as DOES 1 through 50,
11 inclusive, whether individual, corporate, or otherwise, are currently unknown to plaintiffs, who
12 therefore sue said defendants by such fictitious names. Plaintiffs will amend this complaint to
13 show true names and capacities when they have ascertained.

14 15. At all times relevant hereto, each of the respective defendants, including those desig-
15 nated as DOES, were and are the agents, servants, and employees of each other or in the alternative
16 were acting in a common conspiracy, each with the other, in performing the acts herein complained
17 of, acted within the course and scope of their respective agency and employment or in the further-
18 ance of said conspiracy, or in the alternative aided and abetted the other defendants in performing
19 the acts complained of herein.

20 **GENERAL ALLEGATIONS**

21 **Apple's Advertising**

22 16. According to Apple, a MacBook Pro can make "your ideas more enlightening, with a
23 sharp, high-resolution screen" allowing the viewer to "[s]ee blacker blacks, whiter whites, and
24 many more colors in between on a brilliant 15.4 inch 1440-by-900-pixel or 17-inch, 1680-by-1050

25 ///

1 -pixel digital display,” allowing the user to “[e]njoy a nuanced view **simply unavailable on other**
2 **portables.**” (emphasis added)³

3 17. According to Apple, “**Positively brilliant.** Thanks to a 13.3-inch glossy widescreen
4 display, MacBook provides the perfect combination of pixels and portability. Photos feel crisper.”⁴

5 18. According to Apple, by using its software application known as “Aperture” on the
6 family of Mac computers, a user has the “ultimate photographer’s workstation.” Because Aperture
7 is supported by every member of the Mac family of computers, and thus can be run “on every
8 desktop—from Mac mini to iMac to Mac Pro—and every notebook—including both the MacBook
9 and the MacBook Pro,” Aperture can be run “at home or in your studio” allowing the user to “take
10 all your photos with you on location or to a client’s office.”⁵

11 Technical Specifications

12 19. The Technical Specifications for the MacBook state that the display is a “13.3-inch (di-
13 agonal) glossy widescreen. TFT display with support for **millions of colors.**” (emphasis added)⁶

14 20. The Technical Specifications for the 15-inch MacBook Pro state that the display is a
15 “15.4-inch (diagonal) TFT display, support for **millions of colors**; optional glossy widescreen dis-
16 play.” (emphasis added). The Technical Specifications for the 17-inch MacBook Pro state that the
17 display is a “17-inch (diagonal) TFT display, support for **millions of colors**; optional glossy wide-
18 screen display.” (emphasis added)⁷

21 ³ www.apple.com/macbookpro/graphics.html

22 ⁴ www.apple.com/macbook/macbook.html

23 ⁵ www.apple.com/aperture/

24 ⁶ www.apple.com/macbookpro/specs.html

25 ⁷ id.

1 21. Examples of complaints about the quality of the MacBook and MacBook Pro display
2 abound on Apple's own website, although posters have also complained that Apple has taken it
3 upon itself to edit many of the posts and has even gone to the lengths of "taking down" entire
4 threads devoted to the subject. Some of those examples are produced below:

5 a. "it is not only the color banding and gradient stuff. Hook up a ACD and
6 you will see that the color is W off if i edit a pict in aperture on my mbp17 and then
7 preview it on my 23acd i vomit ! This is **no** PRO computer !"

8 b. "It looks like the mega post was rubbed out...Thanks Apple...now I have to
9 start a new one to update posters involved in the old one...I figured it would go after
10 the latest posts got a bit fiery...Disappointment, is too nice a word..."

11 "My update on my situation is as follows:

12 "As posted in the previous thread that has been deleted, after returning my 15" MBP
13 C2D #3 due to my displeasure with the display and overall dissatisfaction with how
14 my local Apple Store handled the whole situation, I purchased a brand new 17" MBP
15 CD from a third party. I received it yesterday. Due my sour experience with the MBP
16 C2D line, I have not even cracked this new one open. I'm not really sure if I want go
17 down the road again...There it sits in the next room...will I win or will I lose?"

18 "I'll let you know...meanwhile I hope Apple is working diligently behind the scenes
19 to smooth this issue out for all who are unhappy with the quality of their displays..."

20 c. "hey scott, seems like they've been taking down a lot of the post that deal
21 with display issues. Too bad you're exp. with apple store went sour. Mine was good.
22 The manager even let me open up some boxes in the store and all of them had
23 brighter bottoms. I'm not sure about banding because couldn't run test.

24 "I went through like 5 of them. 4 17" and 1 15". Then got a call from apple and they
25 claimed I was the first to report that problem, which I thought was BS.

26 "So I figured I order one online. I just ordered one today. I hope this one goes well.

"Hmmm...what build week is your boxed one? I saw some posts with build weeks at
48 saying it was perfect. I'm hoping I get one of those.

"I'll keep u guys posted."

1 d. "It's the latest C2D. I just went by tekserve and went in to see their 17". It
2 was the same model display as mine but was more evenly illuminated BUT had a
3 much more visible bright strip at the bottom. Then I walked by Best Buy and went in
4 to look at their PC laptops. I couldn't check very carefully, but the initial impression
5 of most of them was that they were quite evenly illuminated, had no grain (only one
6 sony vaio had grain) and had relatively good viewing angles. Even the cheapo sub-
7 \$600 had at least as good if not better display than apple's \$2800 17" mbp.

8 "I think I'm just going to wait a little and then take it in. I'm so tired of dealing with
9 Apple at this point that I don't have the energy or time to continue even though
10 they've done everything they possibly could have done to help me. The sad truth of
11 the matter is that currently they simply don't have a pro laptop that has a high quality
12 display so there's nothing more they can do until they change the LCD manufacturer
13 or fix the QC problem. And there's nothing more I can do since I intend to continue
14 to use mac os.

15 "Interestingly, the nice PC displays were just like the macbooo display: bright, crisp
16 whites, smooth solids. So the cheapest apple portable currently has the best dis-
17 play.....there's something wrong here. I wrote a feedback letter to Apple and submit-
18 ted it through the site - hope everybody who has opinions about this does the same,
19 otherwise there's little hope that something will get fixed."

20 e. "Every other issue aside, the banding is not a defect as such. It's actually a
21 feature :D

22 "Serious, the banding is just a hardware limitation of the screens. For faster response
23 times and possibly lower cost screens, Apple used 6 bit instead of 8 bit screens (don't
24 get that confused with the 32 bit, 24 bit etc settings in preferences)."

25 f. "For everyday stuff - web development, email, word processing, and so on -
26 it's fine; but for post-processing photographs it's almost totally useless, as the uneven
illumination makes it impossible to judge accurately what the finished image will
look like. In short, it's not a pro' spec' screen."

g. "I collected my replacement MBP last week; same problem with the un-
evenly lit display, though the bright area at the bottom of the screen was far less no-
ticeable. I called Apple again & the person in Tech Support said he needed to speak
to someone & would call me back. When he did, he offered a repair, replacement or
refund & seemed to be pushing the refund as the best option. I couldn't help getting
the impression that they are used to MBP's being returned for this reason and just ac-
cept it without any 'within spec' nonsense.

///

1 "I took the refund & decided to delay buying a laptop in the hope that Apple will sort
2 this out. I went to the Apple store in London & looked at the MBP 17" machines on
3 display. They all had uneven lighting. I spoke to someone about this & he said he'd
4 heard nothing about it, so I selected a grey desktop & showed him. He agreed that the
5 lighting was uneven & that it would be unsuitable for a professional photographer.
6 He switched the desktop on his machine to grey & agreed it was just as bad, but said
7 he'd never noticed it. He suggested I talk to their photography expert, but he was
8 busy demonstrating Aperture & I thought it would achieve little.

9 "I went around some shops to look at PC laptops & didn't see any that were obvi-
10 ously as bad as the MBP's - though they usually have very distracting desktop pat-
11 terns, which tend to hide the problem. I saw some with very good screens. Right now
12 I can't face up to buying my first PC in almost 15 years, & I'd rather use Aperture
13 than Lightroom, but ultimately I'll need to get a new laptop. I know I can't work with
14 Apple's current 'pro' models."

15 h. "Can you give more info on this please? Apple specifications for the MBP
16 17" state the display supports millions of colours, and the card simultaneously sup-
17 ports full native resolution on the built-in display and up to 2560 by 1600 pixels on
18 an external display, both at millions of colours."

19 i. "Thanks, but that's a very long thread, full of speculation, I'll try to read
20 through it when I have time.... Apple certainly claim the card and display are BOTH
21 capable of displaying millions of colours, which is NOT the same as dithering with a
22 6 bit display."

23 j. "Their claim is not just for the card, but the DISPLAY as well. That's why
24 I'm questioning all this. Read the Technical Overview PDF on their web site. It's very
25 clear.

26 "Display: '17-inch (diagonal) TFT widescreen display with support for millions of
colors'

"Card: 'Extended desktop and video mirroring: Simultaneously supports full native
resolution on the built-in display and up to 2560 by 1600 pixels on an external dis-
play, both at millions of colors'

"See what I mean?"

"BTW, I don't need a lesson on what 'pro's' buy... and the MBP isn't aimed at gamers,
hence the 'Pro' in the name."

1 k. "Two points:

2 "- there is plenty of evidence that these are all 6-bit displays. I checked my 17" dis-
3 play with a windows profiling software that shows exactly the make and characteris-
4 tics of the display: 6 bit. Others have done the same with the 15.4" displays. If you
5 check all major manufacturers (AU optronics, Chimei, Samsung, LG-Philips) you'll
6 find that none of them have 8-bit laptop displays available for any amount of money!

7 "- I just booted into windows and, indeed, there are NO gradient issues under win-
8 dows XP running either bootcamp or parallels. That is great news since it means that
9 there is something wrong with the software/firmware and the way the dithering is
10 being executed. If gradients could look like they do under windows XP, I'd be per-
11 fectly satisfied.

12 "- I can't help wonder if the problem with the uneven backlighting is caused not by
13 poor displays, but by assembly/design of the macbook pro itself. I don't know enough
14 about display technology to comment on this, but I can't imagine that we'd see this
15 kind of variation between displays of the same make/model unless it had something
16 to do with how the displays were handled/assembled AFTER they left the LCD
17 manufacturer. Or has the LCD industry completely given up on producing quality
18 products??"

19 l. "Well, the display issues have been documented on wikipedia!

20 "they include:

21 "** French rumour site Macbidouille[21] posted an article claiming that Apple had
22 temporarily stopped the production of the Macbook Pro probably in response to the
23 display issues.

24 "**There have been numerous reports of unsatisfactory display quality in the
25 Macbook Pro 15", including uneven backlighting, grainy display, very narrow view-
26 ing angles, and failing backlight.

27 "**Display color depth in models of the Macbook Pro has been revealed to be limited
28 to 6 bit (screen models 9C60, 9C61 and 9C62, corresponding to latest 15" and 17"),
29 resulting in color banding and inaccurate gradient rendering.[22]

30 "frank

31 "

32 p.s. found doing a search on google of macbook pro poor display ..."

33 m. "I have a MacBook and a 17 MacBook Pro (both core duo) and both with
34 really bad screens. I am a photographer and bought both planning to use them for

1 photo editing but have found that the banding and noise makes it difficult to do that.
2 It seems to be even worse if you use any sort of a Spyder or GretagMacbeth device to
3 profile your laptop.

4 "Apple keeps replacing screens on both laptops and of course one is as bad as the
5 next.

6 "Here is the irony... if I boot into XP using Boot Camp, the dithering and banding
7 and noise goes away. The screens look beautiful in XP (on both the MB and MBP)...
8 so there is a possibility that this is some sort of a driver issue, but why wouldn't Ap-
9 ple just step up and fix it instead of dragging this out for all of us that bought the high
10 end machines???"

11 22. Other examples of complaints about the quality of the MacBook and MacBook Pro
12 display are prevalent on other websites. Some of those examples at
13 forums.appleinsider.com/showthread.php?t=63804 are produced below:

14 a. "I am suspicious it is 6-bit because the specs just says 'millions of colours' but
15 doesn't directly say 16.7, which implies that it might be 16.2 dithered..

16 "The reason I suspect this is because I think I can see subtle color banding.. (subtle).

17 "Anyone know?"

18 b. "6 bits per channel (18 bit color) would make it 262,144 colors. You'd know. It
19 would look like ass.

20 "Even with full 24 bit, you'll still see some banding. That doesn't go away until
21 around 10 or 12 bits per channel."

22 23. From the website, forums.macnn.com/69/powerbook-and-macbook-
23 pro/316439/macbook-pro-15-grainy-matte-display/3/, the following comments can be viewed:

24 a. "The 18-bit thing is simple. Each "pixel" on your LCD screen is actually made up
25 of 3 subpixels: red, green, and blue, very close together. In "millions of colors" mode,
26 each of these subpixels should have 256 possible values, from 0 (off) to 255 (full
bright). This is 8 bits per subpixel ($2^8 = 256$) also known as 24-bit color, for a total
of $2^{24} = 16,777,216$ displayable colors.

"Some cheaper/faster desktop LCD displays (and, apparently, notebook displays) are
only capable of displaying 6 bits per subpixel, or 18-bit color, totalling $2^{18} =$

1 262,144 colors. I didn't know the MBP had one of these unfortunate displays, but ap-
2 parently it's common.

3 "Dithering is placing a lower number of colors in a certain pattern to trick your eye
4 into seeing a higher number of colors. This is done by the video card automatically.
5 So, -if- this theory is correct, the speckled pattern is coming from normal dithering.

6 "Now apparently the x1600 is supposed to do "temporal dithering" which involves
7 altering the color of -the same pixel-, quickly enough to mitigate the pattern effect
8 you're going to get from dithering. From what I can tell from the message board
9 threads, this is stuck in freeze-frame (or the dithering is just really bad) due to a video
10 BIOS bug.

11 "The problem is, who knows if this is the actual issue, and if it is, it was apparently
12 fixed a while ago, so why would they ship like this? Also, it means everyone should
13 be seeing this issue, unless some people got 24-bit displays (unlikely).

14 "Regardless, this gives some cause for hope. Thanks"

15 b. "When is Apple going to release a bios update? This is very embarrassing to Ap-
16 ple, which advertises its computers to be made for media people working with
17 graphics etc. We have been waiting for a fix for almost a year now. I can't use my
18 MacBook Pro for work because the graphics quality is appalling."

19 c. "I just returned my 15" C2D MBP matte because the screen was so bad.

20 "As a replacement I got a 17" C2D MBP glossy. The screen is good, but not perfect:

21 "- the backlight is strong in the bottom

22 "- color resolution is very bad in red, with noticeable discontinuities in a color gradi-
23 ent, somewhat better in green and blue

24 "- white background is not completely "silent", there is a small amount of glare on it

25 "All in all, I'm happy with it, although I had expected more for the price. Not sure
26 though if there actually are any better screens available for laptops."

24. Due to a large number of customer complaints, including complaints on Apple's own
website and on the discussion forum\ that Apple owns, it is apparent that Apple is well aware of the

1 problem at issue. Nevertheless, at no time did Apple make the buying public aware of or even ac-
2 knowledge the defect or alter its advertisements, photos, representation, and other marketing mate-
3 rial. Apple deliberately and wrongfully chose easy profits over responsibility to its purchasers.

4 CLASS ACTION ALLEGATIONS

5 25. Plaintiffs bring this action as individuals and as a class action, pursuant to California
6 Code of Civil Procedure §382, on behalf of themselves and a California class of all others similarly
7 situated. The class is defined as follows:

8 All persons or entities in California who purchased a MacBook or MacBook Pro no
9 earlier than four years before the filing of this action. Excluded from the class are Apple's direc-
10 tors, officers, employees, and counsel.

11 26. Plaintiffs reserve the right to modify the class definition if appropriate.

12 27. Plaintiffs reasonably estimates that the class has thousands of members in diverse
13 locations and therefore is so numerous and geographically dispersed that joinder is impracticable.
14 Although the exact number of class members is presently unknown to plaintiffs, plaintiffs antici-
15 pate that defendants maintain detailed computerized records that are sufficient to determine the
16 number of class members and to ascertain their identities. The class is therefore readily ascertain-
17 able.
18

19 28. The disposition of the claims of plaintiffs and all other class members in a single ac-
20 tion will provide substantial benefits to the parties and the Court.

21 29. There exists a well-defined community of interest in the questions of law and fact
22 presented by this controversy, including an interest in not being subject to false advertising.

23 30. Questions of law and fact common to plaintiffs and other class members predominate
24 over questions that may affect only individual members, if any. Defendants have acted on grounds
25
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1 generally applicable to the entire class, thereby making final injunctive relief and corresponding
2 declaratory relief appropriate with respect to the class as a whole. Among the questions of law and
3 fact common to the class are the following:

4 (a) Whether Apples's advertising as alleged herein is likely to deceive;

5 (b) Whether Apple's practices as alleged herein are unfair;

6 (c) Whether plaintiffs and the class members are entitled to injunctive relief and ,
7 if so, what that relief should be; and

8 (d) What other forms of relief, if any, are appropriate to remedy the violation
9 complained of herein.

10 31. Plaintiffs are members of the class.

11 32. Plaintiffs' claims are typical if not identical to the claims of the other class members
12 because plaintiffs and all class members were affected by the same wrongful practice in which de-
13 fendants engaged, as alleged herein.

14 33. Plaintiffs will fairly and adequately protect the interest of members of the class.
15 The interests of plaintiffs are aligned with and not antagonistic to the interests of the class. Plain-
16 tiffs have engaged attorneys experienced in the prosecution of litigation involving consumer pro-
17 tection, false advertising, and class actions. Neither plaintiffs nor plaintiffs' attorneys have any
18 known conflict in undertaking this representation.

19 34. A class action is superior to the alternatives, if any, for the fair and efficient adjudica-
20 tion of the controversy alleged herein, for the following reasons (among others): Class treatment
21 will permit a large number of similarly situated persons to prosecute their common claims in a
22 single forum simultaneously, efficiently, and without duplication of evidence, effort and expense
23 that numerous individual actions would engender. This action will result in the orderly and expe-
24 ditious administration of claims. Uniformity of decisions – especially with respect to injunctive or
25 declaratory relief – will be assured, thereby avoiding the risk of inconsistent and varying determi-
26

1 nations. Prosecution of actions such as this in numerous forums would serve no purpose and
2 would promote dis-uniformity in the interpretation of California law.

3 35. Because any overpayment and/or other wrongs suffered by individual class members or
4 the relief to which each class member may be entitled is relatively small, the expense and burden of
5 individual litigation would make it difficult for the members of the class effectively to seek redress
6 individually for defendants' wrongful conduct.

7 36. Plaintiffs know of no difficulty that will be encountered in the management of this
8 litigation that would preclude its maintenance as a class action.

9 **THEORIES OF RELIEF**

10 Based on the facts alleged herein, plaintiffs are entitled to relief based on at least the follow-
11 ing theories.

12 **FIRST CAUSE OF ACTION**

13 **Violation of False Advertising Law**

14 **(Cal. Bus & Prof. Code S 17500 *et seq.*)**

15 37. Plaintiffs incorporate by reference all previous allegations as though set forth fully
16 herein.

17 38. California Business & Professions Code §17200, et seq. (the "UCL") prohibits unfair
18 competition. In this context, "unfair competition shall mean and include any unlawful, unfair or
19 fraudulent business act or practice..." Cal. Bus. & Prof. Code §17200.

20 39. The "unlawful" prong of the UCL permits a plaintiff to obtain relief from anything that
21 can properly be called a business practice and that at the same time is forbidden by law, regardless
22 of whether the underlying law provides for a private right of action.

23 40. The "unfair" prong of the UCL is intentionally broad, thus allowing courts maximum
24 discretion to prohibit new schemes to defraud. Outside of the competitor context, lower courts
25
26

1 have enunciated differing tests for unfairness under the UCL. One test is that the harm to the vic-
2 tim outweighs the justification of the alleged wrongdoer. A different test is that the defendant's
3 acts offend a public policy that is tethered to some statutory provision. Still another test is that the
4 defendant's acts constitute sharp practices.
5

6 41. The "fraudulent" prong of the UCL bears little resemblance to common-law fraud. The
7 test is whether the public is likely to be deceived.

8 42. Defendants and each of them have engaged and continue to engage in unlawful, unfair,
9 and/or fraudulent business acts or practices as alleged herein, in violation of the UCL.
10

11 43. Defendants, by their conduct and practices alleged herein, have committed and continue
12 to commit violations of Cal. Bus.& Prof. Code §17500 et seq. and Civil Code §1750 et seq. and
13 therefore are in violation of the "unlawful" prong of the UCL.

14 44. Defendants, by their conduct and practices alleged herein, have engaged and continue to
15 engage in conduct and practices that cause considerable harm and injury in fact to plaintiffs and
16 members of the class, and have no justification whatsoever. Defendants' conduct and practices of-
17 fend a public policy of protecting members of the public from misleading advertising, the sale of
18 defective goods, and misrepresentations to consumer purchasers concerning the characteristics,
19 uses, benefits, standard, quality, or grade of merchandise, all of which are tethered to statutory pro-
20 visions. Defendants' modus operandi constitutes a sharp practice because Apple knows the exis-
21 tence and nature of the defect at issue yet refuses to acknowledge it, let alone recall the laptops and
22 fix the problem. Apple apparently hopes that its laptop purchasers will not spend the time, ex-
23 pense, and effort to pursue claims on an individual basis and Apple hopes to enrich itself with the
24 money it thus saves. Defendants are therefore in violation of the "unfair" prong of the UCL.
25
26

1 45. Defendants' conduct and practices alleged herein are likely to deceive because an
2 objectively reasonable purchaser to whom Apple's practices are directed would assume that defen-
3 dants will sell computers of merchantable quality and with the ability to truly display "millions of
4 colors" and to otherwise display colors in such a manner so that persons utilizing programs which
5 depend upon accurate displays of colors can rely upon such displays. Defendants are therefore in
6 violation of the "fraudulent" prong of the UCL.
7

8 46. Plaintiffs and the class members have suffered injury in fact and have lost money as a
9 result of defendants' violations of the UCL. Specifically, plaintiffs paid more for their computers
10 than the computers were worth and that they otherwise would have paid but for Apple's violations.
11

12 47. In addition, plaintiffs have suffered special damages in the nature of losses to their
13 business and livelihood associated with a loss of productivity in their professions all in amounts to
14 be proven at trial.

15 48. Plaintiffs reasonably believed that defendants' wrongful practices alleged herein are on-
16 going and continue to be a threat to plaintiffs and the class members.
17

18 49. Plaintiffs and the class are therefore entitled to injunctive relief, restitution, and/or dis-
19 gorgement in amounts to be proved at trial, and other relief as pleaded in the Prayer for Relief.

20 **SECOND CAUSE OF ACTION**

21 **Violation of Unfair Competition Law**

22 **(Cal. Bus. & Prof. Code §17200 et seq.)**

23 50. Plaintiffs incorporate by reference all previous allegations as though set forth fully
24 herein.

25 51. California Business & Professions Code §17200, et seq. (the "UCL") prohibits mislead-
26 ing advertising. Specifically, it is unlawful for any person "with intent directly or indirectly to dis-

1 pose of...personal property...to make or disseminate or cause to be made or disseminate from this
2 state before the public in any state...any statement, concerning that...personal property...or con-
3 cerning any circumstance or matter of fact connected with the proposed performance...thereof,
4 which is untrue or misleading, and which is known, or which by the exercise of reasonable care
5 should be known, to be untrue or misleading, or...with the intent to sell that personal property...as
6 so advertised.” Cal. Bus. & Prof. Code §17200. Any violation of this section is also a violation of
7 the UCL.

8 52. Apple has engaged in advertising and marketing of its MacBook-series laptops through-
9 out the United States, in print, on the Internet, on product boxes, by in-store displays, and by other
10 means. Apple’s intent in doing so was to directly or indirectly induce the purchase of such laptops.

11 53. Apple’s advertisements and marketing representations regarding the capability of the
12 MacBook-series laptops to display “millions of colors” allowing the user to “[e]njoy a nuanced
13 view simply unavailable on other portables,” are misleading as set forth more fully above.

14 54. At the time it made and disseminated the statements and pictures as alleged herein, Ap-
15 ple knew or should have known that the statements and pictures were untrue or misleading.

16 55. Apple withheld its knowledge that its MacBook-series laptops did not actually display
17 “millions of colors” allowing the user to “[e]njoy a nuanced view simply unavailable on other port-
18 ables.”

19 56. Plaintiffs suffered injury in fact and have lost money or property as a result of Apple’s
20 violations. Specifically, plaintiffs paid more for their computers than the computers were worth
21 and that they otherwise would have paid but for Apple’s violations.

22 57. In addition, plaintiffs have suffered special damages in the nature of losses to their
23 business and livelihood associated with a loss of productivity in their professions all in amounts to
24 be proven at trial.

1 58. Plaintiffs reasonably believe that defendants' wrongful practices alleged herein are on-
2 going and continue to be a threat to plaintiffs and the class members.

3 59. Plaintiffs and the class are therefore entitled to injunctive relief, restitution, and/or dis-
4 gorgement in amounts to be proved at trial, and other relief as pleaded in the Prayer for Relief.

5 **THIRD CAUSE OF ACTION**

6 **Violation of CLRA**

7 **(California Legal Remedies Act, Cal. Civ. Code §1750, et seq.)**

8 60. Plaintiffs incorporate by reference all previous allegations as though set forth fully
9 herein.

10 61. This claim arises under the Consumer Legal Remedies Act, Cal. Civ. Code §1750, et
11 seq. (the "CLRA").

12 62. Plaintiffs were a "consumer" as that term is defined in Civ. Code §1761(d), with respect
13 to the purchase of an Apple MacBook-series laptop.

14 63. Apple Mac-Book-series laptops constitute "goods" as that term is defined in Civ. Code
15 §1761(e).

16 64. Apple is a "person" as that term is defined in Civ. Code §1761(c).

17 65. Plaintiffs' purchases of Apple Mac-Book-series laptops constituted a "transaction" as
18 that term is define in Civ. Code §1761(e).

19 66. The CLRA provides in relevant part that "[t]he following unfair methods of competition
20 and unfair or deceptive acts or practices undertaken by any person in a transaction intended to re-
21 sult or which results in the sale or lease of goods or services to any consumer are lawful: "(5)
22 Representing that goods...have...approval, characteristics, ingredients, uses, benefits...which they
23 do not have, . . . (7) Representing that goods...are of a particular standard, quality or grade, or that
24 goods are of a particular style or model, if they are of another, . . . (9) Advertising goods...with
25 intent not to sell them as advertised, . . . (14) Representing that a transaction confers or involves
26

1 rights...which it does not have or involve, . . . (16) Representing that the subject of a transaction
2 has been supplied in accordance with a previous representation when it has not..." Civil Code
3 §1770 (a)(5),(7),(9),(14),(16).

4 67. Defendants made and continue to make written and pictorial representations that the
5 MacBooks-series laptops display "millions of colors" allowing the user to "[e]njoy a nuanced view
6 simply unavailable on other portables.". These representations, as set forth above, were false
7 and/or misleading and were in violation of the CLRA.

8 68. Plaintiffs sent notice, pursuant to Civil Code §1782, via certified mail on
9 _____, 2007 to Apple Computer, Inc., 1 Infinite Loop, Cupertino, CA 95014 which was
10 received by _____ of Apple Computer., on _____, 2007, but which corre-
11 spondence was never responded to.

12 **FOURTH CAUSE OF ACTION**

13 **Misrepresentation**

14 69. Plaintiffs incorporates by reference all previous allegations as though set forth fully
15 herein.

16 70. In promoting their new MacBook series computers, Apple made pictorial and verbal
17 representations to plaintiffs and others that the MacBooks could display "millions of colors,"
18 allowing the user to "[e]njoy a nuanced view simply unavailable on other portables."

19 71. These representations were material because computers that look like the MacBooks
20 that Apple describes(ed) in pictures and words are more desirable for purchase, as Apple intended.

21 72. Apple either knew the representations were false, had no reasonable ground for be-
22 lieving then to be true, or asserted the representations in such a manner not warranted by the infor-
23 mation in Apple's possession.

24 73. Plaintiffs relied on such misrepresentations in purchasing the MacBooks from Apple;
25 and plaintiffs; reliance was justified because there was no reason to suspect that Apple would tout
26

1 the MacBooks' capabilities in a misleading manner. Plaintiffs were damaged as a result and paid
2 more for the MacBook than it was worth.

3 74. In addition, plaintiffs have suffered special damages in the nature of losses to their
4 business and livelihood associated with a loss of productivity in their professions all in amounts to
5 be proven at trial.

6 75. Plaintiffs and the class members are entitled to relief as pleaded in the Prayer for Relief.

7 **FIFTH CAUSE OF ACTION**

8 **Declaratory Judgment**

9 **(Cal. Code of Civ. Proc §1060)**

10 76. Plaintiffs incorporate by reference all previous allegations as though set forth fully
11 herein.

12 77. Under the Declaratory Judgment Act, California Code of Civil Procedure §1060, plain-
13 tiff and the class are entitled to a declaratory judgment that defendants' advertisements, descrip-
14 tions, and pictures with respect to the capability of the MacBook-series of laptops being able to
15 display "millions of colors," allowing the user to "[e]njoy a nuanced view simply unavailable on
16 other portables" were and are wrongful.

17 **PRAYER FOR RELIEF**

18 WHEREFORE plaintiffs, on behalf of themselves and all others similarly situated, pray for
19 the following relief against defendants:

- 20 A. An order certifying that this action may proceed as a class action;
- 21 B. Judgment in favor of plaintiffs and the class and against defendants;
- 22 C. Declarations that defendants' acts and practices alleged herein are wrongful;
- 23 D. An injunction enjoining defendants from directly or indirectly committing further
24 wrongful acts as alleged herein;

- 1 E. An order directing restitution or disgorgement in an allowable amount to be proved at
2 trial;
3 F. Compensatory and other forms of damages in an amount to be proved at trial;
4 G. Pre- and post-judgment interest to the maximum extent permissible;
5 H. An award to plaintiffs and the class members of their costs and expenses incurred in
6 this action, including reasonable attorneys' fees, to the extent permissible; and
7 I. Such other or further relief as the court may deem just or proper.

8 **JURY DEMAND**

9 Plaintiffs demand a trial by jury of all issues so triable.

10 Dated: May ____, 2007

11
12
13 PETER M. POLISCHUK, Attorney for Plaintiffs,
14 FRED GREAVES and DAVE GATLEY

15
16 MATTHEW R. MILLER for THE DREHER
17 LAW FIRM, Attorneys for Plaintiffs,
18 FRED GREAVES and DAVE GATLEY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 West Broadway	
MAILING ADDRESS: 330 West Broadway	
CITY AND ZIP CODE: San Diego, CA 92101	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 685-6151	
PLAINTIFF(S) / PETITIONER(S): Fred Greaves et.al.	
DEFENDANT(S) / RESPONDENT(S): Apple Computer Inc	
GREAVES VS. APPLE COMPUTER INC	
NOTICE OF CASE ASSIGNMENT	CASE NUMBER: 37-2007-00066199-CU-BT-CTL

Judge: Kevin A. Enright

Department: C-72

COMPLAINT/PETITION FILED: 05/03/2007

CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL REQUIREMENTS LISTED BELOW

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except: Small claims appeals, petitions, and unlawful detainers.

COMPLAINTS: Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SDSC CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.)

DEFAULT: If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS. SEE ADR INFORMATION PACKET AND STIPULATION.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION PURSUANT TO CCP 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SDSC CIV-359 PRIOR TO THAT HEARING

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827 BRANCH NAME: Central PLAINTIFF(S): Fred Greaves et.al. DEFENDANT(S): Apple Computer Inc SHORT TITLE: GREAVES VS. APPLE COMPUTER INC	<i>FOR COURT USE ONLY</i>
STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION PROCESS (CRC 201.9)	CASE NUMBER: 37-2007-00066199-CU-BT-CTL

Judge: Kevin A. Enright

Department: C-72

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution process. Selection of any of these options will not delay any case management time-lines.

- | | |
|---|---|
| <input type="checkbox"/> Court-Referred Mediation Program | <input type="checkbox"/> Court-Ordered Nonbinding Arbitration |
| <input type="checkbox"/> Private Neutral Evaluation | <input type="checkbox"/> Court-Ordered Binding Arbitration (Stipulated) |
| <input type="checkbox"/> Private Mini-Trial | <input type="checkbox"/> Private Reference to General Referee |
| <input type="checkbox"/> Private Summary Jury Trial | <input type="checkbox"/> Private Reference to Judge |
| <input type="checkbox"/> Private Settlement Conference with Private Neutral | <input type="checkbox"/> Private Binding Arbitration |
| <input type="checkbox"/> Other (specify): _____ | |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) _____

Alternate: (mediation & arbitration only) _____

Date: _____

Date: _____

Name of Plaintiff

Name of Defendant

Signature

Signature

Name of Plaintiff's Attorney

Name of Defendant's Attorney

Signature

Signature

(Attach another sheet if additional names are necessary). It is the duty of the parties to notify the court of any settlement pursuant to California Rules of Court, Rule 225. Upon notification of the settlement the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court and all un-served, non-appearing or actions by names parties are dismissed.

IT IS SO ORDERED.

Dated: 05/03/2007

JUDGE OF THE SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CASE NUMBER: 37-2007-00066199-CU-BT-CTL

CASE TITLE: Greaves vs. Apple Computer Inc

NOTICE TO LITIGANTS/ADR INFORMATION PACKAGE

You are required to serve a copy of this Notice to Litigants/ADR Information Package and a copy of the blank Stipulation to Alternative Dispute Resolution Process (received from the Civil Business Office at the time of filing) with a copy of the Summons and Complaint on all defendants in accordance with San Diego Superior Court Rule 2.1.5, Division II and CRC Rule 201.9.

ADR POLICY

It is the policy of the San Diego Superior Court to strongly support the use of Alternative Dispute Resolution ("ADR") in all general civil cases. The court has long recognized the value of early case management intervention and the use of alternative dispute resolution options for amenable and eligible cases. The use of ADR will be discussed at all Case Management Conferences. It is the court's expectation that litigants will utilize some form of ADR – i.e. the court's mediation or arbitration programs or other available private ADR options as a mechanism for case settlement before trial.

ADR OPTIONS

1) CIVIL MEDIATION PROGRAM: The San Diego Superior Court Civil Mediation Program is designed to assist parties with the early resolution of their dispute. All general civil independent calendar cases, including construction defect, complex and eminent domain cases are eligible to participate in the program. Limited civil collection cases are not eligible at this time. San Diego Superior Court Local Rule 2.31, Division II addresses this program specifically. Mediation is a non-binding process in which a trained mediator 1) facilitates communication between disputants, and 2) assists parties in reaching a mutually acceptable resolution of all or part of their dispute. In this process, the mediator carefully explores not only the relevant evidence and law, but also the parties' underlying interests, needs and priorities. The mediator is not the decision-maker and will not resolve the dispute – the parties do. Mediation is a flexible, informal and confidential process that is less stressful than a formalized trial. It can also save time and money, allow for greater client participation and allow for more flexibility in creating a resolution.

Assignment to Mediation, Cost and Timelines: Parties may stipulate to mediation at any time up to the CMC or may stipulate to mediation at the CMC. Mediator fees and expenses are split equally by the parties, unless otherwise agreed. Mediators on the court's approved panel have agreed to the court's payment schedule for county-referred mediation: \$150.00 per hour for each of the first two hours and their individual rate per hour thereafter. Parties may select any mediator, however, the court maintains a panel of court-approved mediators who have satisfied panel requirements and who must adhere to ethical standards. All court-approved mediator fees and other policies are listed in the Mediator Directory at each court location to assist parties with selection. **Discovery:** Parties do not need to conduct full discovery in the case before mediation is considered, utilized or referred. **Attendance at Mediation:** Trial counsel, parties and all persons with full authority to settle the case must personally attend the mediation, unless excused by the court for good cause.

2) JUDICIAL ARBITRATION: Judicial Arbitration is a binding or non-binding process where an arbitrator applies the law to the facts of the case and issues an award. The goal of judicial arbitration is to provide parties with an adjudication that is earlier, faster, less formal and less expensive than trial. The arbitrator's award may either become the judgment in the case if all parties accept or if no trial de novo is requested within the required time. Either party may reject the award and request a trial de novo before the assigned judge if the arbitration was non-binding. If a trial de novo is requested, the trial will usually be scheduled within a year of the filing date.

Assignment to Arbitration, Cost and Timelines: Parties may stipulate to binding or non-binding judicial arbitration or the judge may order the matter to arbitration at the case management conference, held approximately 150 days after filing, if a case is valued at under \$50,000 and is "at issue". The court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. In addition, if parties select an arbitrator from the court's panel, the court will pay the arbitrator's fees. Superior Court

3) SETTLEMENT CONFERENCES: The goal of a settlement conference is to assist the parties in their efforts to negotiate a settlement of all or part of the dispute. Parties may, at any time, request a settlement conference before the judge assigned to their case; request another assigned judge or a pro tem to act as settlement officer; or may privately utilize the services of a retired judge. The court may also order a case to a mandatory settlement conference prior to trial before the court's assigned Settlement Conference judge.

4) OTHER VOLUNTARY ADR: Parties may voluntarily stipulate to private ADR options outside the court system including private binding arbitration, private early neutral evaluation or private judging at any time by completing the "Stipulation to Alternative Dispute Resolution Process" which is included in this ADR package. Parties may also utilize mediation services offered by programs that are partially funded by the county's Dispute Resolution Programs Act. These services are available at no cost or on a sliding scale based on need. For a list of approved DRPA providers, please contact the County's DRPA program office at (619) 238-2400.

ADDITIONAL ADR INFORMATION: For more information about the Civil Mediation Program, please contact the Civil Mediation Department at (619) 515-8908. For more information about the Judicial Arbitration Program, please contact the Arbitration Office at (619) 531-3818. For more information about Settlement Conferences, please contact the Independent Calendar department to which your case is assigned. Please note that staff can only discuss ADR options and cannot give legal advice.