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20 And the Proposed Plaintiff Class

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA CLARA

16 JACK BRANNING, JAMES SEYBERT, ) CASE NO. 1-05-CV-045719  
17 STACEY BLEVINS, JACK CASSIN, ROBERT )  
18 ALLEN, DOMINGO VASQUEZ, KURT ) Assigned for All Purposes to:  
19 BRUNEMAN, SIECHERT & SYN N dba ) Hon. Jamie Jacobs-May, Dept. 4  
20 TECHSOURCE, JOE WEINGARTEN dba )  
21 WEINGARTEN GALLERY, RICK ZUEHLKE ) THIRD AMENDED CLASS ACTION  
22 dba WEINGARTEN GALLERY, and PAMELA ) COMPLAINT FOR MONEY DAMAGES,  
23 ROGERS dba HORIZON RESOURCES and ) RESTITUTION AND INJUNCTIVE  
24 HORIZON COMPUTER RESOURCES, INC. ) RELIEF  
25 individually and on behalf of all others similarly )  
26 situated, )  
27 Plaintiffs, )  
28 v. )  
29 APPLE COMPUTER, INC., and DOES )  
30 1-25, inclusive, )  
31 Defendants. )  
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**PARTIES**

Plaintiffs, Jack Branning, James Seybert, Stacey Blevins, Jack Cassin, Robert Allen, Domingo Vasquez, Kurt Bruneman, Siechert & Synn dba Techsource, Joe Weingarten dba Weingarten Gallery, Rick Zuehlke dba Weingarten Gallery, and Pamela Rogers dba Horizon Resources and Horizon Computer Resources, Inc. on behalf of themselves and all others similarly situated, and demanding trial by jury, complain and allege upon information and belief as follows:

**INTRODUCTION**

1. This consumer protection action is brought to remedy violations by Defendant Apple Computer, Inc., of state consumer protection statutes, and common law violations in connection with its course of conduct over the last ten years in the manufacture, sale, marketing, and distribution of computer products, service contracts, and repair services to U.S. consumers and Apple resellers. Defendant employs misleading representations and has failed to disclose material information in its sale, servicing, and repair of said products. For example, Defendant claims to sell certain products as new when in fact they are used. Defendant has also improperly calculated the time period of their express warranties and their AppleCare service contracts, such that said warranties and service contracts expire prematurely.

2. Defendant is part of the computer industry that has experienced rapid growth over the past decade and is now a multi-billion dollar industry. In fact, Defendant's net sales reached \$8,279,000,000 in fiscal year 2004. Yet, Defendant's marketing, advertising, and distribution of its computer products and repair services are deceptive, misleading and injurious to consumers and resellers.

3. Defendant is and has been aware of its conduct. Thus, Defendant knowingly and recklessly engaged in certain wrongful conduct and withheld important information from consumers and Apple resellers in conscious disregard of their rights and Defendant's responsibilities. Such actions were, in whole or in part, undertaken to preserve Defendant's extraordinary revenues from computer related sales and thus constitutes fraud, malice, and oppression directed against consumers and resellers of Defendant's products and services.

**JURISDICTION AND VENUE**



1 authorized resellers and service providers of Apple computer related products and services  
2 (resellers). Reseller Plaintiffs have been damaged by the acts alleged herein.

3 **B. Defendant**

4 7. Defendant Apple Computer, Inc., manufactures, markets or sells computer related  
5 products and services. Defendant transacts substantial business throughout the United States and in  
6 the State of California. Defendant's principal place of business and executive offices are located at 1  
7 Infinite Loop, in Cupertino, California. Specific consumer acts complained of, which are the  
8 gravamen of this consumer action, occurred, in the County of Santa Clara. During the period of time  
9 covered by this Complaint, Defendant engaged in the business of, among other things, designing,  
10 manufacturing, marketing, selling, advertising, distributing, promoting or otherwise placing into the  
11 stream of commerce, directly or indirectly, its computer products and services in the State of  
12 California and the entire United States.

13 8. The true names and capacities, whether individual, corporate, associate,  
14 representative, or otherwise of Defendants named herein as DOES 1-25 are unknown to Plaintiffs at  
15 this time, and are therefore sued by such fictitious names pursuant to Code of Civil Procedure § 474.  
16 Plaintiffs will amend this Complaint to allege the true names and capacities of DOES 1 through 25  
17 when Plaintiffs have such information. Each of the DOES 1-25 is in some manner legally responsible  
18 for the violations of law alleged herein.

19 **CONSPIRACY, AGENCY, JOINT VENTURE, ALTER EGO**

20 9. Each of the Defendants named herein, including DOES 1-25, acted as the co-  
21 conspirator, agent, joint venturer or alter ego of or for the other Defendants with respect to the acts,  
22 violations, and common course of conduct alleged herein or is otherwise liable.

23 10. The acts charged in this Complaint as having been done by Defendants and the DOE  
24 Defendants were authorized, ordered, or done by their officers, agents, employees, or  
25 representatives, while actively engaged in the management of the Defendants' businesses or affairs.

26 11. Pursuant to Code of Civil Procedure § 382, Civil Code § 1780, and Business and  
27 Professions Code § 17200 *et seq.*, Plaintiffs bring this action individually and on behalf of all  
28 consumers and resellers similarly situated.



1 Any Apple reseller in the United States who sold at retail Apple  
2 computer products, Apple service, AppleCare service contracts,  
3 and/or repair services directly or indirectly at any time between  
4 January 1, 1995, through the present (hereinafter “Class Period”).  
5 Specifically excluded from the Reseller Class are the Defendants herein,  
6 officers, directors and employees of Defendants, and any entity in  
7 which the Defendants have a controlling interest; the affiliates, legal  
8 representative, heirs, attorneys at law, attorneys in fact or assignees of  
9 the Defendants; and any federal, state or local government entity. Also  
10 specifically excluded are any judge, justice, or judicial officer presiding  
11 over this matter and the members of their immediate families and  
12 judicial staffs.

13 14. This action has been brought and may be properly maintained as a class action,  
14 pursuant to the provisions of Code of Civil Procedure § 382, because there is a well-defined  
15 community of interest in the litigation and the two proposed classes are easily ascertainable.

16 15. Numerosity: Each Class is so numerous that the individual joinder of all members is  
17 impracticable under the circumstances of this case. While the exact number of class members in each  
18 class are unknown to Plaintiffs at this time, based upon the amount of trade and commerce in Apple  
19 computer products and services, Plaintiffs are informed and believe that billions of dollars worth of  
20 Apple computer products and services are sold annually to millions of consumers and thousands of  
21 resellers. Joinder of all members of each Plaintiff Class is not practicable.

22 16. Common Questions Predominate: Common questions of law and fact exist as to all  
23 members of each Plaintiff Class and predominate over any questions which affect only individual  
24 members of the class. These common questions of law and fact include, without limitation:

- 25 a. Whether Defendants’ violated the Cartwright Act;
- 26 b. Whether Defendants’ violated the Unfair Practices Act;
- 27 c. Whether Defendants’ business acts or practices violated the Unfair  
28 Competition Law, §§ 17200 *et seq.* of the California Business and Professions Code (“UCL”);

1 d. Whether Defendants' conduct violated the Consumers Legal Remedies Act, §  
2 1750 *et seq.* of the California Civil Code ("CLRA");

3 e. Whether Defendants' misappropriated trade secrets;

4 f. Whether Defendants' breached the confidentiality provisions of the Apple  
5 authorized reseller and Apple authorized service provider contracts;

6 g. Whether Defendant breached its contracts with consumers or resellers;

7 h. Whether Defendant is liable for other causes of action;

8 i. The class-wide nature of Defendants' course of conduct;

9 j. The amount of additional revenues and profits obtained by Defendants  
10 attributable to their unlawful conduct;

11 k. The appropriate nature of class-wide equitable relief including injunctions for  
12 corrective and remedial action;

13 l. Whether the members of each Plaintiff Class are entitled to restitution as a  
14 result of Defendants' conduct and, if so, what is the proper measure and appropriate formula to be  
15 applied in determining such restitution;

16 m. Whether the members of each Plaintiff Class have sustained damages as a  
17 result of Defendants' conduct and, if so, what is the proper measure and appropriate formula to be  
18 applied in determining such damages; and

19 n. Whether the members of each Plaintiff Class are entitled to punitive and  
20 exemplary damages as a result of Defendants' acts of fraud, malice and oppression or in conscious  
21 disregard of the rights of Plaintiffs and each Plaintiff Class, and, if so, what is the proper amount of  
22 such punitive and exemplary damages.

23 17. Typicality: Plaintiffs' claims are typical of the claims of the members of the  
24 respective Plaintiff Class because Plaintiffs and each member of the respective Plaintiff Class  
25 purchased, directly or indirectly, Apple computer products and services sold by one or more of the  
26 Defendants, for their own use or for resale, suffering injuries and damages arising out of the  
27 Defendants' common course of conduct in violation of the law as alleged herein.

28 18. Adequacy: Plaintiffs will fairly and adequately protect the interests of the members of

1 each Plaintiff Class. Plaintiffs are indirect or direct purchasers of Apple computer products and  
2 services during the Class Period for their own use or for resale, and thus are adequate representatives  
3 of each respective Plaintiff Class. Plaintiffs have no interests that are adverse to the interests of  
4 absent class members. Plaintiffs have retained counsel who have substantial experience in the  
5 prosecution of complex class action and consumer protection litigation.

6 19. Superiority: A class action is superior to other available means for the fair and  
7 efficient adjudication of this controversy since individual joinder of all members of each Plaintiff  
8 Class is impracticable. Class action treatment will permit a large number of similarly situated persons  
9 to prosecute their common claims in a single forum simultaneously, efficiently, and without the  
10 unnecessary duplication of effort and expense that numerous individual actions would engender.  
11 Furthermore, as the monetary injuries suffered by each individual members of the class may be  
12 relatively small, the expenses and burden of individual litigation would make it difficult or impossible  
13 for members to individually redress the wrongs done to them. Additionally, an important public  
14 interest will be served by addressing the matter as a class action. The cost to the court system of  
15 adjudication of such individualized litigation would be substantial. Individualized litigation would  
16 also present the potential for inconsistent or contradictory judgments.

17 20. Plaintiffs are unaware of any difficulties that are likely to be encountered in the  
18 management of this action that would preclude its maintenance as a class action.

19 **FIRST CAUSE OF ACTION**

20 **For Violation of the Unfair Competition Law, California**

21 **Business and Professions Code §§ 17200 *et seq.***

22 **(On Behalf Of The Consumer Class For Unfair, Unlawful, and Deceptive Business Practices**  
23 **Against All Defendants)**

24 21. Plaintiffs Branning, Bruneman, Vasquez, Seybert, Cassin, Allen, and Blevins, on  
25 behalf of themselves and all consumers similarly situated, reallege, as if fully set forth herein, each  
26 and every allegation contained in Paragraphs 1 through 20 hereof.

27 22. Unlawful Prong: Plaintiffs may plead and/or prove violation of any law under the  
28 unlawful prong. “The unlawful practices prohibited by section 17200 are any practices forbidden by

1 law, be it civil or criminal, federal, state, or municipal, statutory, regulatory, or court-made.”  
2 *Saunders v. Superior Court* (1994) 27 Cal.App.4<sup>th</sup> 832, at pp. 838-839.

3 23. All of Defendants’ marketing, advertising, publicity, promotional and sales and repair  
4 efforts including, but not limited to, that as described herein, constitutes unfair competition, in  
5 violation of California Business and Professions Code §§ 17200 *et seq.*, the Unfair Competition Law  
6 (“UCL”). Defendants have and continue to engage in conduct that is unlawful, through a pattern of  
7 misrepresentations and concealments that mislead and deceive the public with respect to the true  
8 nature of its products and services, by a pattern of failing to inform consumers and by misleading the  
9 consumer about the efficacy of its products and services through false and misleading statements and  
10 wrongful policies, procedures and acts.

11 24. Beginning at a time unknown to Plaintiffs, but believed to go back at least 10 years,  
12 Defendant Apple Computer has engaged in a practice of selling used and/or refurbished Apple  
13 products to the consuming public as new Apple products, and charging the consuming public the  
14 price for a new Apple product, thereby overcharging its customers substantial sums of money.

15 25 Apple engaged in the practice of selling plaintiffs used Apple products as new  
16 according to the following:

17 a. On November 8, 2003, Plaintiff Domingo Vasquez paid the purchase price for  
18 one *brand new* Power Mac G5 (Serial Number “S/N” YM339KCHNVB). On July 7, 2004, Plaintiff  
19 Vasquez discovered his Apple product was a used or previously sold product.

20 b. On October 20, 2005, Plaintiff Jack Cassin paid the purchase price for one  
21 *brand new* Apple Powerbook G4, 15-inch Double Layer SD (S/N W85427FLSWZ). Plaintiff Cassin  
22 discovered this machine had a repair history on the Apple product dated 2 days before the date he  
23 purchased the Apple product.

24 c. On April 20, 2004, Plaintiff James Seybert paid the purchase price for one  
25 *brand new* Apple Powerbook G4, 12-inch DVi (S/N UV3434W8PHK). Plaintiff Seybert discovered  
26 his Apple product was a used or previously sold product.

27 d. On April 20, 2004, Plaintiff Kurt Bruneman paid the purchase price for one  
28 *brand new* Apple iMac G4, 800MHz Superdrive (S/N W8306ZBRN3U). Plaintiff Bruneman

1 discovered his Apple product was a used or previously sold product.

2 e. On December 6, 2002, Plaintiff Stacey Blevins paid the purchase price for one  
3 *brand new* Apple Powerbook G4, 667MHz (S/N QT1490CSKVB). Plaintiff Blevins discovered her  
4 Apple product was a used or previously sold product.

5 26. By selling used computers as new to the Plaintiffs and to the Plaintiff class,  
6 Defendant Apple Computer has violated sections 1770(a)(5) of the California Civil Code which  
7 prohibits “representing that goods or services have sponsorship, approval, characteristics,  
8 ingredients, uses, benefits, or quantities which they do not have . . .” Defendant Apple Computer  
9 has also violated section 1770(a)(6) of the California Civil Code by “representing that goods are  
10 original or new if they have deteriorated unreasonably or are altered, reconditioned, reclaimed, used or  
11 second hand.” Defendant Apple Computer in fact represents to consumers that it is selling the  
12 consumer a new Apple product at a new product price, when in fact, Defendant Apple Computer  
13 sells that consumer a used or refurbished Apple product instead. Defendant Apple Computer has  
14 also violated section 1770(a)(7) of the California Civil Code by “representing that goods or services  
15 are of a particular standard, quality or grade, or that goods are of a particular style or model, if they  
16 are of another.” Defendant Apple Computer represents to consumers that it is selling the consumer  
17 a new Apple product at a new product, price, when in fact, defendant Apple Computer sells the  
18 consumer a refurbished or a used Apple product instead. Defendant Apple Computer has also  
19 violated section 1770(a)(9) of the California Civil Code by “advertising goods or services with intent  
20 not to sell as advertised.” Defendant Apple Computer advertises new Apple products for sale at  
21 new product prices, and then sells the consumers used Apple product instead, but at the new  
22 product price. Defendant Apple Computer has also violated section 1770(a)(16) of the California  
23 Civil Code by “representing that the subject of a transaction has been supplied in accordance with a  
24 previous representation when it has not.” In this regard, Defendant Apple Computer represents to  
25 consumers, including the Plaintiffs, that it is supplying the consumers, including the Plaintiffs, with a  
26 new Apple product at a new product price, but instead Defendant Apple Computer supplies the  
27 consumers, including the Plaintiffs, with a used or refurbished Apple product, but at the new  
28 product price.

1           27       In addition, Defendant Apple represents to its customers that the customer has a one-  
2 year limited warranty on all new Apple products. However, Defendant Apple Computer has  
3 engaged in a business practice of shorting its customers on the Apple one-year limited warranty.  
4 Defendant Apple also sells to its customers an extended service contract called AppleCare.  
5 Defendant Apple represents to its customers that when they purchase an AppleCare extended  
6 service contract, they are buying three years of extended service for their new Apple product.  
7 However, Defendant Apple Computer has engaged in a business practice of shorting its customers  
8 on the three year AppleCare extended service contract. As a consequence, consumers who have  
9 purchased new Apple products with the one-year limited warranty and/or the three-year AppleCare  
10 extended service contract, have been wrongfully refused repair service by Defendant Apple  
11 Computer under the one-year limited warranty and/or the three year AppleCare extended service  
12 contract.

13           28.       Defendant Apple shorted Plaintiffs of entitled one-year limited warranty in each of  
14 these instances.

15           a.       On November 8, 2003, Plaintiff Domingo Vasquez paid the purchase price for  
16 one *brand new* Apple Power Mac G5 (S/N YM339KCHNVB). Apple's website indicated  
17 Plaintiff's Power Mac was purchased on October 15, 2003. Plaintiff Vasquez discovered the one-  
18 year limited warranty for his Power Mac expired on October 14, 2003—or 21 days less than the  
19 amount of days of which Plaintiff Vasquez was entitled.

20           b.       On May 12, 2004, Plaintiff Jack Branning paid the purchase price for one  
21 *brand new* Apple Cinema HD Display Monitor (S/N CY3380Z5LFA). Apple's website indicated  
22 Plaintiff's Cinema Display was purchased on December 12, 2003. Plaintiff Branning discovered the  
23 one-year limited warranty for his Cinema Display expired on December 11, 2004—or approximately  
24 6 months less than the amount of days of which Plaintiff Branning was entitled.

25           c.       On April 20, 2004, Plaintiff James Seybert paid the purchase price for one  
26 *brand new* Apple Powerbook G4, 12-inch DVi (S/N UV3434W8PHK). Apple's website indicated  
27 Plaintiff's Powerbook was purchased on January 20, 2004. Plaintiff Seybert discovered the one-year  
28 limited warranty for his Powerbook expired on January 19, 2005—or approximately 4 months less

1 than the amount of days of which Plaintiff Seybert was entitled.

2 d. On August 15, 2003, Plaintiff Kurt Bruneman paid the purchase price for one  
3 *brand new* Apple iMac G4 800 MHz Superdrive (S/N W8306ZBRN3U). Apple's website  
4 indicated Plaintiff's iMac was purchased on July 11, 2003. Plaintiff Bruneman discovered the one-  
5 year limited warranty for his iMac expired on July 10, 2004—or 35 days less than the amount of  
6 days of which Plaintiff Vasquez was entitled.

7 29. The foregoing outlines Defendant Apple's conduct and amounts to a violation of  
8 California's Song-Beverly Consumer Warranty Act.

9 30. Attached hereto as Exhibit A and incorporated herein by reference is a copy of select  
10 pages from the Apple store website of Defendant Apple Computer. Exhibit A indicates on page two  
11 thereof that the consumer can "get special deals and great prices on Apple certified refurbished  
12 products." On page three of Exhibit A, Defendant Apple Computer advertises new models of the  
13 PowerBook G4. For example, a new 12-inch: 1.5 GHz G4 is advertised a price of \$1,499. A new  
14 15-inch: 1.67 GHz G4 is advertised at a price of \$1,999. On page six on Exhibit A, a refurbished 12-  
15 inch: 1.5 GHz G4 shows that the original price new was \$1,499 but the refurbished price was only  
16 \$1,199. Page seven of Exhibit A shows that a refurbished 15-inch: 1.67 GHz G4 had an original  
17 price new of \$2,299, but that the refurbished price was only \$1,599, a difference of \$700. The last  
18 page of Exhibit A shows that all Apple hardware products, including clearance and refurbished  
19 products, carry a one-year limited warranty against defects and materials in workmanship. It also  
20 states that a consumer may review a copy of the limited warranty on new products, including its  
21 limitations and exclusions, before purchase, by clicking the appropriate link.

22 31. During the same time period, Defendant Apple has also engaged in the business  
23 practice of failing to toll the warranty period when a consumer's Apple product is under warranty  
24 and under repair by Defendant Apple Computer as required by the Song-Beverly Consumer  
25 Warranty Act.

26 32. Defendant Apple Computer has violated sections 17500 *et seq.* of the California  
27 Business and Professions Code by falsely advertising and representing to the consumers, including  
28 the Plaintiffs, that Defendant Apple Computer will sell a new Apple product to a consumer at a new

1 product price, when in fact, Defendant Apple Computer sells the consumer, including the Plaintiffs,  
2 a used or refurbished Apple product, but at a new product price.

3 33. Defendant Apple Computer has violated section 17531 *et seq.* of the California  
4 Business and Professions Code by selling used computers to the consuming public, including the  
5 Plaintiffs, as if they were new computers, and concealing from the consumers, including the  
6 Plaintiffs, the fact that Defendant Apple Computer was selling them a used or refurbished computer.

7 34. The Defendant Apple Computer has sold some of the consumer Plaintiffs used or  
8 refurbished computers as new computers. Defendant Apple Computer has shorted other consumer  
9 Plaintiffs with respect to their one-year limited warranty and/or their three year AppleCare extended  
10 service contract. Defendant Apple Computer has refused to provide some of the consumer  
11 Plaintiffs with repair service on their Apple products when the Apple products were under either  
12 the one-year limited warranty, or the three-year AppleCare extended service contract. In addition,  
13 Apple has:

- 14 a. operated repair facilities for computers which are unlicensed;
- 15 b. operated repair facilities for iPODS which are unlicensed;
- 16 c. operated unlicensed facilities for service contract sellers and administration;
- 17 d. failed to maintain adequate records of repair;
- 18 e. failed to provide proper documentation of estimates, service, and repair for  
19 which they contracted;
- 20 f. failed to honor express warranties; and
- 21 g. failed to honor its obligations under the AppleCare service contract.

22 35 Defendant Apple also violated California Business and Professions Code §§ 17200, *et*  
23 *seq.*, because it has engaged in a course or pattern, to the present, of unfair business practices.

24 36. On Defendant Apple Computer's website, it is stated that certain new Apple  
25 products can be obtained for a certain price, and that price is published on the website. On the same  
26 Apple website, Defendant also advertises refurbished Apple product for sale at a price below of the  
27 price of the same Apple product purchased as a new product. The consumer Plaintiffs and the  
28 Plaintiff class entered into individual agreements with Defendant Apple to purchase new Apple

1 product at the new product price. However, instead of receiving the new Apple products from the  
2 Defendant, the Plaintiffs and the Plaintiff class received used and refurbished Apple product.  
3 Instead of the Plaintiff class receiving the new Apple products that they paid the new product price  
4 for, said Plaintiffs and Plaintiff class received from Defendant Apple used and refurbished Apple  
5 product for which Defendant Apple charges a price that is much lower than the new Apple product  
6 price.

7 37. For instance,

8 a. With respect to Plaintiff Robert Allen, Defendant Apple sold twelve (12) used  
9 or refurbished Apple iPod products to Plaintiff Robert Allen.

10 b. On November 27, 2004, Plaintiff Allen purchased for his grandchildhldren via  
11 the Apple Online Store (Web Order # W10160801), among other things, five (5) *brand new*  
12 *personalized*<sup>1</sup> iPod Mini's; five (5) *brand new* 40 GB iPod Photo; and two (2) *brand new*  
13 *personalized* 20 GB iPod Click Wheels

14 c. Instead of receiving brand new Apple iPod products, Plaintiff Allen received  
15 twelve (12) used or refurbished Apple iPods which were either scratched upon opening a sealed box  
16 containing the Apple product or engraved with a name other than the one Plaintiff Allen requested.

17 38. On the same Apple website, Defendant Apple Computer represented to the  
18 Plaintiffs, the Plaintiff class and to the world that Defendant Apple provides a one-year limited  
19 warranty on all new Apple products purchased by consumers. However, Defendant Apple  
20 Computer has in fact shorted Plaintiffs and Plaintiff class on the length of its one-year limited  
21 warranty. In other words, instead of having a limited warranty on new Apple products for an entire  
22 year, the Plaintiffs and the Plaintiff class were given a limited warranty by Defendant Apple  
23 Computer that covered new Apple products for less than the one-year represented.

24 39. Defendant Apple Computer offers its AppleCare protection plan to consumers on  
25 Apple's website. One version is found at page eleven of Exhibit A, where it is stated "**AppleCare**  
26 **Protection Plan for iMac/eMac extends the complimentary coverage on your iMac or eMac to**  
27 **three years of world-class support and service.**" This statement by Defendant Apple is a

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28 <sup>1</sup> "personalized" means each iPod is customized whereby an individual's name would be engraved onto the iPod.

1 misrepresentation of the length of the service coverage under the AppleCare extended service  
2 contract. The AppleCare extended service contract is in fact two years in duration. This false  
3 representation was made to the consumer Plaintiffs and to the Plaintiff class. Furthermore,  
4 Defendant Apple Computer has concealed from the consumer Plaintiffs and the Plaintiff class the  
5 fact that the AppleCare extended service contract is only for two years rather than three years.  
6 Furthermore, Defendant Apple Computer has shorted the consumer Plaintiffs and the Plaintiff class  
7 with respect to the length of the AppleCare extended service contract. Rather than providing two  
8 years of extended service under the AppleCare extended service contract, Defendant Apple  
9 Computer has given the consumer Plaintiffs and the Plaintiff class less than two years of extended  
10 service under the AppleCare extended service contract.

11 40. Defendant Apple has given the Consumer Plaintiffs less than Apple's express  
12 warranty and service coverage under the AppleCare Protection Plan when it engaged in the following:

13 a. Declined to activate Plaintiff Domingo Vasquez' AppleCare Protection Plan  
14 he purchased on July 7, 2004 (AppleCare Agreement Number 534010814055).

15 b. Denied Plaintiff Jack Branning any coverage under the AppleCare Protection  
16 Plan he purchased on May 12, 2004 (AppleCare Agreement Number 534041908493).

17 41. The foregoing acts and omissions of Defendant Apple Computer, as set forth  
18 hereinabove, constitute and continue to constitute unfair business practices within the meaning of  
19 section 17200 *et seq.* of the California Business and Professions Code.

20 42. The effect on Plaintiffs and upon the Plaintiff class of Defendant Apple selling them  
21 used computers as if they were new computers is that the Plaintiff and the Plaintiff class were  
22 overcharged for the Apple product purchased. The effect of Defendant Apple Computer shorting  
23 Plaintiffs and the Plaintiff class with respect to the one-year limited warranty and the AppleCare  
24 extended service contract is that the Plaintiffs and the Plaintiff class were unable to obtain repairs of  
25 their new Apple products under warranty or the AppleCare extended service contract, and as a  
26 consequence, the Plaintiffs and the Plaintiff class lost the use of their new Apple products during the  
27 time that Defendant Apple Computer refused to provide service repairs even though the service  
28 repairs were covered either under the one-year limited warranty or under the AppleCare extended

1 service contract.

2 43. As a direct result of the conduct of the Defendant--whether unlawful, unfair, or  
3 deceptive--as herein alleged, Plaintiffs and the Plaintiff class have been overcharged for Apple  
4 products purchased either directly from Defendant Apple Computer or from Apple resellers with  
5 respect to the difference in the price of a new Apple product versus the price of a refurbished Apple  
6 product. In addition, the Plaintiffs and the Plaintiff class have paid for a one-year limited warranty  
7 and a three year AppleCare extended service contract, but they have been shorted both by Defendant  
8 Apple Computer. Plaintiffs and the Plaintiff class have been denied warranty repair service with  
9 respect to Apple products either under the limited one-year Apple warranty or under the three year  
10 AppleCare extended service contract. As a result, Plaintiffs and the Plaintiff class have been  
11 deprived of the use of their Apple products during the time that Defendant Apple Computer refused  
12 to provide repair service under warranty.

13 44. Plaintiffs have suffered an injury in fact and have lost money or property as a result  
14 of Defendants' business acts, omissions and practices as alleged herein.

15 45. Plaintiffs, and all consumers similarly situated, accordingly are entitled to equitable  
16 relief including injunctive relief, remedial or corrective action, full restitution and/or disgorgement.

17 46. Plaintiffs seek class certification of this cause of action as a class action, on behalf of  
18 all consumers similarly situated, pursuant to CCP § 382.

19 **SECOND CAUSE OF ACTION**

20 **For Violation of the Consumer Legal Remedies Act,**

21 **California Civil Code §§ 1750 *et seq.***

22 **(On Behalf Of The Consumer Class Against All Defendants)**

23 47. Plaintiffs Branning, Bruneman, Vasquez, Seybert, Cassin, Allen, and Blevins, on  
24 behalf of themselves and on behalf of all consumers similarly situation, reallege as though fully set  
25 forth herein, each and every allegation contained in Paragraph 1 through 46 hereof.

26 48. Beginning of the time unknown to the Plaintiffs, but at least within the last 10 years,  
27 Defendant Apple Computer advertised on its Apple website new Apple products for sale at specific  
28 new product prices. The consumer Plaintiffs and the Plaintiff class entered into individual purchase

1 agreements with Defendant Apple for the purchase of new Apple product at the new Apple product  
2 prices. Defendant Apple Computer also advertised refurbished Apple products for sale on the same  
3 Apple website, at refurbished product prices. The refurbished product prices were generally \$300 to  
4 \$900 less than new product prices. Instead of shipping the consumer Plaintiffs and the consumer  
5 class the new Apple products called for in the individual purchase agreements, Defendant Apple  
6 instead shipped to the consumer Plaintiffs and to the Plaintiff class used and/or refurbished Apple  
7 products while still charging the consumer Plaintiffs and the Plaintiff class new product prices.  
8 Thus, Defendant Apple substantially overcharged the consumer Plaintiffs and the Plaintiff class for  
9 the used or refurbished Apple product which was actually delivered by Defendant Apple instead of  
10 new Apple product.

11 49. Beginning at a time at least 10 years ago and continuing to the present, Defendant  
12 Apple advertised to the consuming public, including the consumer Plaintiffs and the Plaintiff class,  
13 that it provided a one-year limited warranty on all new Apple products purchased by a consumer.  
14 However, instead of the consumer Plaintiffs and the Plaintiff class receiving a one-year limited  
15 warranty from Defendant Apple, said Defendant shorted the consumer Plaintiffs and the Plaintiff  
16 class on their limited warranties, whereby the consumer Plaintiffs and the Plaintiff class received  
17 substantially less than a one-year limited warranty.

18 50. Beginning at a time at least 10 years ago and continuing to the present, Defendant  
19 Apple represented to the consuming public, including the consumer Plaintiffs and the Plaintiff class,  
20 that the AppleCare protection plan extended the coverage on new Apple products for three years of  
21 support and service. This representation by Defendant Apple Computer was false. The consumer  
22 Plaintiffs and the Plaintiff class received less than two years of repair service and support under their  
23 AppleCare extended service contracts with Defendant Apple.

24 51. Defendant Apple misrepresented the AppleCare Protection Plan by the following.

25 a. Plaintiff Domingo Vasquez (“Vasquez”) purchased an Apple Power Mac G5  
26 (Serial Number “S/N” YM339KCHNVB) (“Plaintiff’s Power Mac”) on November 8, 2003.

27 b. Plaintiff Vasquez purchased, within the period during which the one-year  
28 limited warranty was in effect on Plaintiff’s Power Mac, purchased the AppleCare Protection Plan

1 on July 7, 2004.

2 c. Defendant Apple received payment for the AppleCare Protection Plan  
3 (“AppleCare”), but did not at any time deliver a Proof of Coverage or Certificate of Coverage which  
4 evidenced Plaintiff’s Power Mac was or is covered by AppleCare.

5 d. In fact, according to Defendant Apple’s own website—located at URL  
6 <http://www.apple.com/support/> --under the section entitled “About Your Support Coverage,”  
7 Apple’s records indicated that the estimated purchase date of Plaintiff’s Power Mac was October  
8 15, 2003. Apple uses the estimated purchase date as the actual purchase date for purpose of  
9 calculating the coverage period.

10 e. Additionally, Apple’s website informed Plaintiff Vasquez that coverage for  
11 his Power Mac under the AppleCare would end on October 15, 2006, and not November 8, 2006  
12 which latter date is three years from the actual purchase date of Plaintiff’s Power Mac.

13 52. By engaging in the foregoing acts set forth above, Defendant Apple has violated  
14 section 1770(a)(6) of the California Civil Code by representing that the Apple products purchased  
15 by the consumer Plaintiffs and the Plaintiff class were original or new when in fact said Apple  
16 products were reconditioned, used, or second hand. By engaging in the foregoing acts, Defendant  
17 Apple also violated section 1770(a)(7) of California Civil Code by representing that Apple products  
18 sold to the consumer Plaintiffs and the Plaintiff class were of a particular standard, quality, or grade  
19 to wit, that the Apple products were new products, when in fact, the Apple products were in fact  
20 refurbished or used. By engaging in the foregoing acts, Defendant Apple Computer has violated  
21 section 1770(a)(9) of the California Civil Code by advertising new Apple products for sale at a new  
22 product price, but with the intent to sell used or refurbished Apple product instead, but at the new  
23 Apple product price. By engaging in the foregoing acts, Defendant Apple Computer has violated  
24 section 1770(a)(16) of the California Civil Code by representing that new Apple product sold to the  
25 consumer Plaintiffs and to the Plaintiff class under individual purchase agreements at the new  
26 product price was in fact a new Apple product, and the fact of the matter was that it was not a new  
27 Apple product, but rather a refurbished or used Apple product that was provided by Defendant  
28 Apple under the individual purchase agreements.

1           53. Defendant Apple Computer has violated section 1770(a)(5) of the California Civil  
2 Code by representing that the Apple limited warranty was one year in duration, and that the  
3 AppleCare extended service contract was three years in duration, when in fact the limited Apple  
4 warranty was less than one year in duration, and the AppleCare extended service contract was less  
5 than two years in duration. This same conduct by Defendant Apple with respect to the one-year  
6 limited warranty agreement and the AppleCare extended service contract also violate section  
7 1770(a)(7) of the California Civil Code, section 1170(a)(9) of the California Civil Code, and section  
8 1770(a)(16) of the California Civil Code.

9           54. Pursuant to Civil Code § 1782(a), on or about February 17, 2005, Plaintiffs, through  
10 counsel, made a written demand on behalf of themselves and the potential Plaintiff Class that  
11 Defendants' cease and desist their unlawful conduct and offer to make appropriate restitution,  
12 correction or remedy, including but in no way limited to, giving notice to all persons who purchased  
13 the products and services and giving such other notice as may be required under Civil Code § 1782.  
14 Defendants' failed to agree as provided by law to cease and desist, to give proper notice or to offer to  
15 make proper restitution in any manner. Pursuant to Civil Code § 1782(d), the Plaintiffs pray for  
16 compensatory and punitive damages under the CLRA on behalf of themselves and all similarly  
17 situated U.S. consumers, in an amount according to proof at trial.

18           55. As a direct result of the foregoing violations of the California Consumer Legal  
19 Remedies Act by the Defendant, the consumer Plaintiffs and the Plaintiff class have suffered actual  
20 damages as a result of being overcharged for Apple product and by having lost the use of their Apple  
21 products when Defendant Apple refused to provide repair service for the consumer Plaintiffs and the  
22 Plaintiff class under either the one year warranty or the AppleCare extended service contract. The  
23 consumer Plaintiffs and the Plaintiff class have suffered actual damages in an amount as yet  
24 unknown, but which will be proven at trial.

25           56. Defendants' acts, statements, representations, policies and procedures as described  
26 hereinabove, were knowingly deceptive, and were made with conscious disregard of the effects upon  
27 consumers. Defendants were required by law to make adequate disclosure of the true effects of its  
28 goods and services to potential consumers. Defendants' failed to do so in order to conceal their

1 misrepresentations, and non-disclosures, and to induce customers to purchase products and services  
2 from Defendants. Accordingly, Defendant Apple engaged in acts of fraud, malice, and/or oppression  
3 or in conscious disregard of the rights or safety of the consumer Plaintiffs and the Plaintiff class, and  
4 therefore, an award of punitive damages is justified to make an example of the Defendant, to punish  
5 Defendant, and to deter Defendant, and others, from engaging in the same or similar conduct.

### 6 **THIRD CAUSE OF ACTION**

#### 7 **(On Behalf Of The Consumer Class For Fraud and Deceit Against All Defendants)**

8 57. Plaintiffs Branning, Bruneman, Vasquez, Seybert, Cassin, Allen, and Blevins, on  
9 behalf of themselves and on behalf of all consumers similarly situated, reallege, as if fully set forth  
10 herein, each and every allegation contained in Paragraphs 1 through 56 hereof.

11 58. On a continuous basis for the last several years, Defendant Apple Computer has  
12 advertised new product for sale for new product prices on its Apple website. More specifically,  
13 Defendant Apple Computer represented on its Apple website that it would sell a consumer a  
14 particular new Apple product at a specific new product price. More specifically, Defendant Apple  
15 Computer represented that if a consumer paid a new product price for a specific new Apple product,  
16 that it would in fact be shipped that new product by Defendant Apple. These representations by  
17 Apple were in fact false, and known by Apple to be false. One such instance is Plaintiff Robert  
18 Allen who purchased 12 new iPods for his grandchildren and received used or refurbished iPods.

19 59. Defendant Apple Computer concealed from the consumer Plaintiffs and the Plaintiff  
20 class the true facts. The true facts were that even though the consumer Plaintiffs and the Plaintiff  
21 class had ordered and paid for a new Apple product, Defendant Apple would instead supply the  
22 consumer Plaintiffs and the Plaintiff class with a used or refurbished Apple product.

23 60. Defendant Apple intended that the consumer Plaintiffs and the Plaintiff class rely  
24 upon the false misrepresentations set forth in either the Apple website or Apple product packaging.  
25 The consumer Plaintiffs and the Plaintiff class reasonably relied upon Defendant's  
26 misrepresentations in the Apple website they agreed to enter into individual purchase agreements to  
27 purchase new Apple product at new product prices. Plaintiffs also reasonably relied on  
28 representations by Defendant Apple that unopened and sealed Apple packaging contained *new*

1 Apple products.

2 61. Defendant Apple also misrepresented to consumer Plaintiffs and to the Plaintiff class  
3 in its Apple website that the limited warranty provided with a purchase of new Apple products was  
4 one year in duration. Defendant Apple also misrepresented to the consumer Plaintiffs and the  
5 Plaintiff class that the AppleCare extended service contract was three years in duration. When  
6 Defendant Apple made the foregoing representations in its Apple website, it knew those  
7 representations to be false. The true facts were that the limited Apple warranty that was supposed  
8 to be a one year duration, was less than one year in duration. The AppleCare extended service  
9 contract that was represented to be three years in duration was in fact less than two years in  
10 duration. Defendant Apple intentionally concealed these facts from the consumer Plaintiffs and the  
11 Plaintiff class. One such instance is Plaintiff Domingo Vasquez as previously stated herein.

12 62. Defendant Apple intended that the consumer Plaintiffs and the Plaintiff class rely  
13 upon the misrepresentations that it made with respect to the duration of the Apple limited warranty  
14 agreement and the AppleCare extended service contract. The consumer Plaintiffs and the Plaintiff  
15 class did in fact reasonably rely upon the misrepresentations of Defendant Apple, since the  
16 consumer Plaintiffs and the Plaintiff class obtained the one-year limited warranty and purchased the  
17 AppleCare extended service contract.

18 63. As a direct result of the fraud and deceit of the Defendant, as herein alleged, the  
19 consumer Plaintiffs and the Plaintiff class were injured in that they were overcharged by Defendant  
20 Apple for Apple products, and they lost the use of their Apple products during the time in which  
21 Defendant Apple refused to provide repair service under the one-year limited warranty and/or the  
22 AppleCare extended service contract.

23 64. In doing the acts heretofore mentioned, Defendant Apple Computer acted  
24 maliciously, fraudulently, oppressively, and/or in conscious disregard of the rights of the consumer  
25 Plaintiffs and the Plaintiff class. The acts of the Defendant were despicable in that Defendant  
26 intended to take money away from the consumer Plaintiffs and the Plaintiff class and stick that  
27 money in its own pocket, while knowing full well that it was not entitled to that money. The  
28 consumer Plaintiffs and the Plaintiff class seek exemplary and punitive damages against the

1 Defendant in an amount to be determined at the trial of this matter.

2 **FOURTH CAUSE OF ACTION**

3 **(On Behalf Of The Consumer Class For Conversion Against All Defendants)**

4 65. Plaintiffs Branning, Bruneman, Vasquez, Seybert, Cassin, Allen, and Blevins, on  
5 behalf of themselves and on behalf of all consumers similarly situated, reallege, as if fully set forth  
6 herein, each and every allegation contained in Paragraphs 1 through 64 hereof.

7 66. Beginning at a time at least 10 years ago and continuing to the present time, Defendant  
8 Apple Computer entered into individual purchase agreements with the consumer Plaintiffs and  
9 members of the Plaintiff class for the purchase of new Apple product at new product prices for said  
10 Apple product. The consumer Plaintiffs and members of the Plaintiff class paid the new product  
11 prices for the Apple products purchased pursuant to the individual purchase agreements.

12 67. Instead of shipping or delivering to the consumer Plaintiffs and each member of the  
13 Plaintiff class the new Apple products they had purchased pursuant to the individual purchase  
14 agreements, Defendant Apple Computer shipped or delivered instead refurbished and used Apple  
15 products to the consumer Plaintiffs and to each member of the Plaintiff class. The prices for said  
16 refurbished or used Apple products ranged from \$300 to \$900 less per Apple product than the new  
17 product prices for the same Apple products. As a consequence, the consumer Plaintiffs and each of  
18 the Plaintiff class were overcharged by \$300 to \$900 for each Apple product purchased.

19 68. The consumer Plaintiffs and each member of the Plaintiff class had ownership and a  
20 right to possess the amount of money by which they were intentionally overcharged by Defendant  
21 Apple Computer.

22 69. Defendant Apple engaged in the foregoing according to the following facts:

23 a. On November 8, 2003, Plaintiff Domingo Vasquez paid the purchase price for  
24 one *brand new* Power Mac G5 (Serial Number "S/N" YM339KCHNVB). On July 7, 2004, Plaintiff  
25 Vasquez discovered his Apple product was a used or previously sold product. Defendant Apple has  
26 not refunded to Plaintiff the difference in price of a new Apple Power Mac G5 and the used Apple  
27 Power Mac G5 which Plaintiff received.

28 b. On October 20, 2005, Plaintiff Jack Cassin paid the purchase price for one

1 *brand new* Apple Powerbook G4, 15-inch Double Layer SD (S/N W85427FLSWZ). Plaintiff Cassin  
2 discovered this machine had a repair history on the Apple product dated 2 days before the date he  
3 purchased the Apple product. Defendant Apple has not refunded to Plaintiff the difference in price  
4 of a new Apple Powerbook G4, 15-inch Double Layer SD and the used Apple Powerbook G4, 15-  
5 inch Double Layer SD which Plaintiff received.

6 c. On April 20, 2004, Plaintiff James Seybert paid the purchase price for one  
7 *brand new* Apple Powerbook G4, 12-inch DVi (S/N UV3434W8PHK). Plaintiff Seybert discovered  
8 his Apple product was a used or previously sold product. Defendant Apple has not refunded to  
9 Plaintiff the difference in price of a new Apple Apple Powerbook G4, 12-inch DVi and the used  
10 Apple P Apple Powerbook G4, 12-inch DVi which Plaintiff received.

11 d. On April 20, 2004, Plaintiff Kurt Bruneman paid the purchase price for one  
12 *brand new* Apple iMac G4, 800MHz Superdrive (S/N W8306ZBRN3U). Plaintiff Bruneman  
13 discovered his Apple product was a used or previously sold product. Defendant Apple has not  
14 refunded to Plaintiff the difference in price of a new Apple iMac G4, 800MHz Superdrive and the  
15 used Apple iMac G4, 800MHz Superdrive which Plaintiff received.

16 e. On December 6, 2002, Plaintiff Stacey Blevins paid the purchase price for one  
17 *brand new* Apple Powerbook G4, 667MHz (S/N QT1490CSKVB). Plaintiff Blevins discovered her  
18 Apple product was a used or previously sold product. Defendant Apple has not refunded to  
19 Plaintiff the difference in price of a new Apple Powerbook G4, 667MHz and the used Apple  
20 Powerbook G4, 667MHz which Plaintiff received.

21 f. On November 8, 2003, Plaintiff Domingo Vasquez paid the purchase price for  
22 one *brand new* Apple Power Mac G5 (S/N YM339KCHNVB). Apple's website indicated  
23 Plaintiff's Power Mac was purchased on October 15, 2003. Plaintiff Vasquez discovered the one-  
24 year limited warranty for his Power Mac expired on October 14, 2003—or 21 days less than the  
25 amount of days of which Plaintiff Vasquez was entitled.

26 g. On May 12, 2004, Plaintiff Jack Branning paid the purchase price for one  
27 *brand new* Apple Cinema HD Display Monitor (S/N CY3380Z5LFA). Apple's website indicated  
28 Plaintiff's Cinema Display was purchased on December 12, 2003. Plaintiff Branning discovered the

1 one-year limited warranty for his Cinema Display expired on December 11, 2004—or approximately  
2 6 months less than the amount of days of which Plaintiff Branning was entitled.

3 h. On April 20, 2004, Plaintiff James Seybert paid the purchase price for one  
4 *brand new* Apple Powerbook G4, 12-inch DVi (S/N UV3434W8PHK). Apple’s website indicated  
5 Plaintiff’s Powerbook was purchased on January 20, 2004. Plaintiff Seybert discovered the one-year  
6 limited warranty for his Powerbook expired on January 19, 2005—or approximately 4 months less  
7 than the amount of days of which Plaintiff Seybert was entitled.

8 i. On August 15, 2003, Plaintiff Kurt Bruneman paid the purchase price for one  
9 *brand new* Apple iMac G4 800 MHz Superdrive (S/N W8306ZBRN3U). Apple’s website  
10 indicated Plaintiff’s iMac was purchased on July 11, 2003. Plaintiff Bruneman discovered the one-  
11 year limited warranty for his iMac expired on July 10, 2004—or 35 days less than the amount of  
12 days of which Plaintiff Vasquez was entitled.

13 70. Defendant Apple Computer engaged in the wrongful act of intentionally overcharging  
14 the consumer Plaintiffs and the Plaintiff class for the purpose of converting the specific amount of  
15 money overcharged to the possession of Defendant Apple Computer, and with the intent to  
16 permanently deprive the consumer Plaintiffs and the Plaintiff class of said money. At no time has  
17 Defendant Apple Computer acknowledged its wrongful act of conversion, and at no time has  
18 Defendant Apple Computer offered to return the amount of money overcharged to the consumer  
19 Plaintiffs and to the Plaintiff class.

20 71. At no time did any of the consumer Plaintiffs or any member of the Plaintiff class  
21 consent to Defendant Apple Computer intentionally overcharging them for Apple product.

22 72. As a direct result of the conversion of money belonging to the consumer Plaintiffs and  
23 to members of the Plaintiff class, said Plaintiffs have been damaged by the amount of the intentional  
24 overcharge of money by Defendant Apple Computer.

25 73. In doing the acts alleged herein, Defendant Apple acted maliciously, fraudulently,  
26 oppressively, and/or in conscious disregard of the rights of the Plaintiffs. The acts of Defendant  
27 Apple Computer in intentionally overcharging the Plaintiffs for Apple products were despicable acts  
28 that were designed to obtain money which rightfully belonged to the Plaintiffs, and to place that

1 money into the possession of Defendant Apple Computer with an intent on the part of the  
2 Defendant to permanently deprive the Plaintiffs of the money. As a consequence, Plaintiffs are  
3 entitled to an award of exemplary and punitive damages in an amount to be determined at the trial of  
4 this matter.

### 5 **FIFTH CAUSE OF ACTION**

#### 6 **(On Behalf Of The Consumer Class For Breach Of Contract Against All Defendants)**

7 74. Plaintiffs Branning, Bruneman, Vasquez, Seybert, Cassin, Allen, and Blevins, on  
8 behalf of themselves and on behalf of all consumers similarly situated, reallege, as if fully set forth  
9 herein, each and every allegation contained in Paragraphs 1 through 73 hereof.

10 75. At various times during the last 10 years, some of the consumer Plaintiffs, as stated  
11 herein, and some of the members of the consumer Plaintiff class entered into purchase agreements  
12 evidenced by writings, such as receipts, with Defendant Apple Computer for the purchase of new  
13 Apple products from Defendant Apple Computer at new product prices. The terms of the purchase  
14 agreement include the implied representations that Defendant Apple Computer was obligated to  
15 provide the new Apple product ordered, and the consumers, including some of the consumer  
16 Plaintiffs, were obligated to pay the new product price for the Apple products in question.

17 76. One such Plaintiff, Robert Allen entered into an express agreement with Apple  
18 (Exhibit B) to purchase twelve (12) new Apple iPods. (Web Order NumberW10160801). Another  
19 Plaintiff, Jack Cassin purchased a new Powerbook G4.

20 77. Plaintiffs Robert Allen and Jack Cassin, and Plaintiff Class Members similarly  
21 situated, performed their obligations under the purchase agreements by paying to Defendant Apple  
22 the new product price that was called for under said purchase agreements.

23 78. Defendant Apple Computer breached each and every one of the purchase agreements  
24 in question by failing to provide the consumers, including some of the consumer Plaintiffs, with the  
25 new Apple products that were ordered. Instead, Defendant Apple Computer provided to the  
26 consumers, including some of the consumer Plaintiffs, refurbished or used Apple products.

27 79. At the same time that some of the consumer Plaintiffs and some of the members of  
28 the consumer class entered into purchase agreements with Defendant Apple Computer, said

1 consumers also entered into a limited warranty agreement with Defendant Apple Computer. Under  
2 the written terms of the limited warranty agreement, the limited warranty was to be one year in  
3 duration.

4 80. The Plaintiffs' performed each and every obligation that they were required to  
5 perform under the limited warranty agreement with the Defendant.

6 81. Defendant Apple Computer breached the implied warranty agreement with the  
7 consumers and some of the consumer Plaintiffs by "shorting" the consumers, including some of the  
8 consumer Plaintiffs, with respect to the duration of the limited warranty. In other words, Defendant  
9 Apple Computer breached the limited warranty agreement by refusing to acknowledge that the  
10 limited warranty was to be one year in duration.

11 82. Plaintiffs Domingo Vasquez, James Seybert, and other members of Plaintiff class  
12 consumers entered into a written AppleCare extended service agreement with Defendant Apple.  
13 (AppleCare Agreement Numbers 534010814055 and 534041796549 for Plaintiffs Vasquez and  
14 Seybert, respectively). The duration of the AppleCare extended service agreement was for two  
15 years. Under the agreement, Defendant Apple was obligated to provide repair service and support  
16 to the consumers and some of the consumer Plaintiffs for a period of two years.

17 83. Plaintiffs Domingo Vasquez, James Seybert, and other members of Plaintiff class  
18 consumers performed all of the obligations that they were required to perform under the AppleCare  
19 extended service agreement.

20 84. Defendant Apple Computer has breached the AppleCare extended service agreement  
21 by refusing and failing to acknowledge its obligation to provide repair service and support for two  
22 years to the consumers and to some of the consumer Plaintiffs. Defendant Apple Computer  
23 breached the AppleCare extended service agreement by "shorting" consumers and some of the  
24 consumer Plaintiffs with respect to duration of the obligation of Defendant Apple Computer to  
25 provide repair service and support.

26 85. As a direct result of the breaches of contract by Defendant Apple Computer, as  
27 herein alleged, the consumer Plaintiffs and some members of the consumer class were damaged in  
28 substantial amounts, the exact amount of which has yet to be ascertained.

**SIXTH CAUSE OF ACTION**

**Violation of Business and Professions Code §§ 17500 *et seq.***

**(On Behalf Of The Consumer Class Against All Defendants)**

86. The consumer Plaintiffs, on behalf of themselves and on behalf of all consumers similarly situated, reallege, as if fully set forth herein, each and every allegation contained in Paragraphs 1 through 85 hereof.

87. Section 17500 of the California Business and Professions Code makes it unlawful for any person, firm, corporation or association, or any employee thereof, with the intent to induce the public to enter into any obligation, to make or disseminate or cause to be made or disseminated in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

88. Defendant Apple Computer has violated Section 17500 of the California Business and Professions Code in several respects. In Apple Computer's Internet website and on Apple product packaging, Defendant Apple falsely advertises that new Apple product will be sold to consumers at certain new product prices. The truth is that Apple sells refurbished or used Apple product to consumers, including the consumer Plaintiffs, while charging said consumers the new product price, thereby overcharging said consumers. Defendant Apple Computer has further violated Section 17500 of the California Business and Professions Code by making untrue or misleading statements on Apple's Internet website and/or on Apple product packaging to the effect that the limited warranty that Defendant Apple provides to purchasers of new Apple product is one year in duration. The true fact of the matter is that the Apple limited warranty is less than one year in duration. Defendant Apple has further violated Section 17500 of the California Business and Professions Code by advertising on Apple Computer's Internet website and on the AppleCare product packaging that the AppleCare extended service agreement provides repair service and support to consumers who purchase the AppleCare extended service agreement for a period of three years in duration. This statement by Defendant Apple is untrue and misleading since Defendant

1 Apple Computer refuses to honor its obligation to provide repair service and support to consumers  
2 for a period of three years.

3 89 Each of the members of Plaintiff Class Consumers, including Robert Allen, Domingo  
4 Vasquez, Stacey Blevins, James Seybert, Jack Branning, Jack Cassin, and Kurt Bruneman relied on  
5 these Apple's untrue and misleading statements disseminated via Apple's Internet website and/or  
6 Apple product packaging.

7 90. As a direct result of the foregoing facts, Plaintiffs and the consumer class have  
8 suffered injury in fact, and have lost money or property as a result of the Defendant's business acts,  
9 omissions, and practices as alleged herein.

10 91. Pursuant to the provisions of Section 17535 of the California Business and  
11 Professions Code, Plaintiffs, and all consumers similarly situated, are entitled to injunctive relief, and  
12 to be restored any money or property, which may have been acquired by Defendant Apple  
13 Computer by means of the violations of Section 17500 of the California Business and Professions  
14 Code, as herein alleged.

15 **SEVENTH CAUSE OF ACTION**

16 **For violation of the Song-Beverly Consumer Warranty Act,**

17 **California Civil Code §§ 1790, *et seq.***

18 **(On Behalf Of The Consumer Class Against All Defendants)**

19 92. Plaintiffs, on behalf of themselves and all consumers similarly situated, reallege, as if  
20 fully set forth herein, each and every allegation contained in Paragraphs 1 through 91 hereof.

21 93. Defendant has breached the provisions of the Song Beverly Act as to consumers,  
22 including but not limited to failure to toll warranty periods when a product is under repair and failed  
23 to maintain adequate records for repairs. For instance:

24 a. On April 20, 2004, Plaintiff James Seybert purchased an Apple Powerbook  
25 G4 12-inch DVi (S/N UV3434W8PHK). He also purchased AppleCare Protection Plan on the  
26 same day (AppleCare Agreement Number 534041796549). Apple's records indicated Plaintiff  
27 Seybert's estimated purchase date of his machine was January 20, 2004. Apple's calculation of the  
28 coverage period under the AppleCare Protection Plan is based on Apple's estimated purchase date—

1 irrespective of Plaintiff's actual date of purchase. Apple shorted Plaintiff Seybert's warranty  
2 coverage, under the AppleCare Protection Plan he purchased, by 4 months. Apple failed to toll the  
3 number of days Plaintiff Seybert did not receive AppleCare coverage for his machine in accordance  
4 with the Song-Beverly Consumer Warranty Act.

5 b. On December 6, 2002, Plaintiff Stacey Blevins purchased an Apple  
6 Powerbook G4 667MHz (S/N QT1490CSKVB.01). She purchased AppleCare Protection Plan on  
7 October 2, 2003 (AppleCare Agreement Number 534040826594). However, Apple did not activate  
8 Plaintiff Blevins AppleCare Protection Plan until several months after she purchased AppleCare.  
9 Apple shorted Plaintiff Blevins warranty coverage, under the AppleCare Protection Plan he  
10 purchased, by the number of days during which Apple failed to activate her AppleCare. In addition,  
11 Apple failed to toll the number of days Plaintiff Seybert did not receive AppleCare coverage for his  
12 machine in accordance with the Song-Beverly Consumer Warranty Act.

13 94. Plaintiffs Stacey Blevins and Jim Seybert, and each member of the class, have been  
14 damaged thereby.

15 95. Defendants' business acts, omissions and/or practices as alleged herein are of a  
16 common or general interest of many persons and/or the parties are so numerous that it is  
17 impracticable to bring them all before the Court.

18 96. Plaintiffs have suffered an injury in fact and have lost money or property as a result  
19 of Defendants' business acts, omissions and practices as alleged herein.

20 97. Plaintiffs, and all consumers similarly situated, accordingly are entitled to equitable  
21 relief including injunctive relief, remedial or corrective action, full restitution and/or disgorgement.

22 98. Plaintiffs seek class certification of this cause of action as a class action, on behalf of  
23 all consumers similarly situated, pursuant to CCP § 382.

#### 24 **EIGHTH CAUSE OF ACTION**

#### 25 **(On Behalf Of The Reseller Class For Breach of Contract Against All Defendants)**

26 99. The reseller Plaintiffs, on behalf of themselves and on behalf of all Apple resellers  
27 similarly situated, reallege, as if fully set forth herein, each and every allegation contained in  
28 Paragraphs 1 through 20 hereof.

1           100. The reseller Plaintiffs and members of the reseller class entered into written  
2 agreements with Defendant Apple Computer in order to become authorized Apple Resellers, Apple  
3 Specialists, and Apple Service Providers. Under the Apple Reseller Agreement and Contract for  
4 Participation in the Apple Specialist Program (“Apple Specialist Contract”) (attached hereto as  
5 Exhibit C is an Exemplar of an Apple contract for participation in the Apple Specialist Program and  
6 an Apple Authorized Reseller Agreement), Apple Resellers Siechert & Synn dba Techsource and  
7 others were obligated to comply with all practices and procedures, which is defined in the Apple  
8 Reseller agreement as “Apple’s then-current policies, practices and programs applicable to the  
9 Reseller’s appointment that govern Reseller’s performance under the Agreement which may be  
10 posted on the Apple channel website’s at the then-current address, and which are incorporated by  
11 this reference into this agreement.” Under the Apple Reseller Agreement, the reseller was required to  
12 purchase product only from an authorized Apple wholesaler, and, if qualified, directly from Apple.  
13 The written provisions of the Apple Reseller Agreement provides that “in order to qualify to  
14 purchase Products directly from Apple, Reseller must satisfy all requirements and perform all  
15 obligations of the Practices and Procedures applicable to or governing direct Reseller purchases of  
16 Products.” The written Apple Reseller Agreement further provides that “the price for Products  
17 purchased directly from Apple will be the price on the applicable authorized Apple Price List on the  
18 date that Apple ships the Products.” The written Apple Reseller Agreement further provides that  
19 “Apple warrants that any Products purchased directly from Apple for resale to Customers according  
20 to this Agreement will conform to the general descriptions on the Authorized Apple Price List.”

21           101. Furthermore, Defendant Apple breached the Authorized Apple Reseller U.S. Sales  
22 Agreement (“Reseller Agreement”) between the Plaintiff reseller class members, including Techsource  
23 and Weingarten Gallery, and itself in several ways, including but not limited to the following:  
24 Defendant Apple breached section 6, entitled “Confidentiality” of the Reseller Agreement (Exhibit  
25 C) by misappropriating Plaintiff reseller class members’ confidential customer information for  
26 Apple’s own benefit. Section 6 provides, in relevant part: “[n]either party will use the other’s  
27 Confidential Information except as required to achieve the objectives of this Agreement.”

28           102. Attached hereto as Exhibit D and incorporated herein by reference is a copy of the

1 “Apple Store for Resellers Terms and Conditions.” Defendant Apple Computer advised all Apple  
2 Resellers that the resellers must order new product from Defendant Apple Computer by Electronic  
3 Purchase Order online from the Apple Store for Resellers. Defendant Apple Computer also advised  
4 all Apple Resellers that refurbished or used product could not be purchased from Defendant Apple  
5 Computer by way of Electronic Purchase Order submitted to the Apple Store for Resellers.  
6 Defendant Apple Computer required refurbished or used product to be purchased from Defendant  
7 Apple by other than electronic means. Therefore, Defendant Apple Computer led all Apple  
8 Resellers to believe that any Apple Products shipped to Apple Resellers as a result of Electronic  
9 Purchase Order submitted to the Apple Store for Resellers would in fact be new Apple product, and  
10 not refurbished or used Apple product.

11 103. Pursuant to the written provisions of Defendant Apple Computer’s written  
12 agreements with its Apple Resellers, the Apple Resellers ordered new product from Defendant  
13 Apple by submitting Electronic Purchase Order to the Apple Store for Resellers. The reseller  
14 Plaintiffs and the reseller class paid new product prices for new Apple product ordered from  
15 Defendant Apple Computer pursuant to the “Authorized Apple Price List.”

16 104. With respect to the purchase of new product from Defendant Apple Computer, the  
17 Plaintiff resellers and members of the reseller class performed all obligations that they were required  
18 to perform under the written agreements with Defendant Apple.

19 105. Defendant Apple Computer breached its written agreements with the Plaintiff  
20 resellers and members of the reseller class by refusing to ship the new Apple products ordered and  
21 paid for by the Plaintiff resellers, including the members of the reseller class, and instead, Defendant  
22 Apple shipped refurbished and used Apple products which had not been ordered by the Plaintiff  
23 resellers and members of the reseller class.

24 106. As a direct result of the breach of contract by Defendant Apple Computer as set forth  
25 herein, Plaintiff resellers and the reseller class were damaged as a result of losing customers and  
26 paying new product prices for Apple products which were in fact refurbished and used. Plaintiffs  
27 have not as yet ascertained the amount of damages from the breach of contract by Defendant Apple,  
28 but believe that the amount of damages will vary between \$300 and \$900 per product purchased and

1 also be dependent on the amount of sales lost.

2 **NINTH CAUSE OF ACTION**

3 **For Violation of the Unfair Competition Law,**

4 **California Business and Professions Code §§17200 *et seq.***

5 **(On Behalf Of The Reseller Class For Unlawful Business Practices Against All Defendants)**

6 107. The reseller Plaintiffs, on behalf of themselves and on behalf of all Apple resellers  
7 similarly situated, reallege, as if fully set forth herein, each and every allegation contained in  
8 Paragraphs 1 through 20 and paragraphs 99 through 106 hereof.

9 108. Beginning at a time unknown to the reseller Plaintiffs, but believed to go back at least  
10 10 years, Defendant Apple Computer has engaged in a practice of selling used and/or refurbished  
11 Apple products to Apple Resellers as though they were new Apple products, and charging the  
12 Apple Resellers the price for a new Apple product, thereby overcharging its Apple Resellers  
13 substantial sums of money.

14 109. Defendant Apple Computer has advised all of the Apple Resellers, including the  
15 Plaintiff resellers, that in order for the resellers to obtain new Apple product for resale, the Apple  
16 Resellers are required to submit Electronic Purchase Orders to the Apple Store for Resellers. The  
17 Apple Resellers, including the reseller Plaintiffs, were advised by Defendant Apple Computer that  
18 they could not obtain used or refurbished Apple products by way of Electronic Purchase Order  
19 through the Apple Store for Resellers. A completely different procedure was established by  
20 Defendant Apple Computer in order for the Apple Resellers, including the reseller Plaintiffs to  
21 obtain refurbished or used Apple products. Thus, Defendant Apple Computer represented and led  
22 the Apple Resellers to believe that when they ordered new Apple products electronically by  
23 Electronic Purchase Order, that the Apple product shipped pursuant to those Electronic Purchase  
24 Orders by Defendant Apple Computer, would in fact be new Apple product.

25 110. Specifically, Plaintiff reseller Techsource purchased via Electronic Purchase Order one  
26 (1) *brand new* Apple iMac Flat Panel (S/N QT220351LF4) on June 18, 2002. Plaintiff Techsource  
27 received one (1) sealed and unopen box containing one Apple iMac Flat Panel. Upon sale to one of  
28 its customer, Techsource discovered the purchased Apple iMac was a used or refurbished product.

1           111. By selling used and refurbished computers as though they were new to the reseller  
2 Plaintiffs and to the reseller class, Defendant Apple Computer has violated Section 17500 *et seq.* of  
3 the California Business and Professions Code by falsely advertising and representing to the reseller  
4 Plaintiffs, including the reseller class, that when the Apple Resellers ordered new Apple products by  
5 way of Electronic Purchase Order from the Apple Store for Resellers, and paid the new product  
6 price, that Defendant Apple Computer will ship the new Apple product ordered and paid for. The  
7 true facts, however, are that Defendant Apple Computer ships used or refurbished Apple product in  
8 lieu of new Apple product, but still charges the new product price.

9           112. The reseller Plaintiffs and the reseller class entered into individual purchase  
10 agreements with Defendant Apple Computer to purchase new Apple product at new product prices.  
11 However, instead of receiving new Apple products ordered from Defendant, and for which the  
12 reseller Plaintiffs and the reseller class paid to Defendant Apple the new product price, Defendant  
13 Apple shipped to the reseller Plaintiffs and to the reseller class used and refurbished Apple product  
14 instead of the new Apple product ordered. Instead of the reseller Plaintiffs and the reseller class  
15 receiving the new Apple products that they paid the new product price for, said reseller Plaintiffs  
16 and the reseller class received from Defendant Apple used and refurbished Apple product for which  
17 Defendant Apple charges a price that is much lower than the new Apple product price.

18           113. The foregoing acts and omissions of Defendant Apple Computer, and other acts as set  
19 forth herein, constitute and continue to constitute unfair business practices within the meaning of  
20 Section 17200 *et seq.* of the California Business and Professions Code.

21           114. The effect on the reseller Plaintiffs and upon the reseller class of Defendant Apple  
22 shipping the Apple Resellers used Apple product when the Apple Resellers had ordered and paid  
23 for new Apple product is that the reseller Plaintiffs and the reseller class were overcharged for the  
24 Apple product purchased.

25           115. As a direct result of the conduct of the Defendant—whether unlawful, unfair, or  
26 deceptive--as herein alleged, the reseller Plaintiffs and the reseller class have been overcharged for  
27 Apple products with respect to a difference in the price of the new Apple product ordered versus  
28 the price of the refurbished or used Apple product that was shipped to the Apple Resellers.

1 116. The reseller Plaintiffs and the reseller class have suffered an injury in fact, and have  
2 lost money or property as a result of the unlawful business practices of the Defendant as alleged  
3 herein.

4 117. The reseller Plaintiffs and the reseller class are entitled to injunctive relief to enjoin the  
5 overcharges in the future, and for full restitution of the amounts of the overcharges, and for further  
6 relief as is equitable.

7 **TENTH CAUSE OF ACTION**

8 **(On Behalf Of The Reseller Class For Misappropriation**  
9 **Of Trade Secrets Against All Defendants)**

10 118. The reseller Plaintiffs, on behalf of themselves and on behalf of all Apple resellers  
11 similarly situated, reallege, as if fully set forth herein, each and every allegation contained in  
12 Paragraphs 1 through 20 and paragraphs 99 through 117 hereof.

13 119. Plaintiffs have at all material times owned and possessed certain confidential  
14 information concerning their businesses, including a confidential client list that includes, among other  
15 things, client information, such as contact information, telephone numbers, addresses, product  
16 purchase information, client service information and warranty information and a roster of Plaintiffs'  
17 employees and their key skills and qualifications. Such information constitutes a "trade secret"  
18 within the meaning of the Uniform Trade Secrets Act, California Civil Code § 3426.1(d), because  
19 such information derives independent economic value from not being generally known to the public  
20 or to other persons who can obtain economic value from its disclosure or use and because it is the  
21 subject of reasonable efforts by Plaintiffs to maintain its secrecy.

22 120. The written agreement between Defendant Apple Computer and the Apple Resellers  
23 provides as follows:

24 Neither party will use the other's Confidential Information except as  
25 required to achieve the objectives of this agreement, or will disclose  
26 such confidential information except to employees, agents, or  
27 contractors who have a need to know. Neither party will make any  
28 disclosure or statement in connection with this Agreement or a subject  
matter without the other's prior written consent.

Thus, pursuant to the reseller agreements between the reseller Plaintiffs and members of the reseller

1 class and Defendant Apple, the trade secrets described in the preceding paragraph constitute  
2 “confidential information” which cannot be utilized by Defendant Apple Computer for any purpose  
3 other than the limited purposes for which such information is expressly required by the reseller  
4 agreements.

5 121. Pursuant to the terms of the reseller agreements, Defendant Apple Computer obtained  
6 confidential customer lists from the Plaintiff resellers and from members of the reseller class. In  
7 violation of the reseller agreements and in violation of the “trade secrets” laws, Defendant Apple  
8 Computer utilized these confidential customer lists of the Apple Resellers to contact the Apple  
9 Reseller customers for the purpose of soliciting business for Apple Computer from among said  
10 reseller customers.

11 122. Defendants, and each of them, acquired the trade secrets of Plaintiffs under a  
12 contractual and implied common law duty to maintain the secrecy of such information and not to  
13 utilize such information for the benefit of Defendants to the competitive disadvantage of Plaintiffs.

14 123. Plaintiffs are informed and believe, and based thereon allege, that Defendants, and each  
15 of them, wrongfully utilized and misappropriated the trade secrets of Plaintiffs by engaging in at  
16 least the following acts among others:

17 a. Apple began directly contacting and soliciting Plaintiffs’ customers, by mail,  
18 by telephone and by email, to purchase Apple computers, software and related products directly  
19 from Apple and the Apple retail stores in direct breach of the provisions of the Agreements utilizing  
20 Confidential Information and Plaintiffs’ trade secrets. Plaintiffs are informed and believe, and based  
21 thereon allege, that as a direct and proximate result of the wrongful solicitation of its customers by  
22 Defendants utilizing Confidential Information and the trade secrets of Plaintiffs, Plaintiffs lost  
23 significant revenues.

24 124. Defendants, and each of them, in conscious and reckless disregard of Plaintiffs’  
25 ownership of the Confidential Information and trade secrets described above have willfully and  
26 maliciously misappropriated Plaintiffs’ trade secrets in violation of Civil Code § 3426 *et seq.* and  
27 unless enjoined by this Court, will continue to do so in the future.

28 125. As a direct and proximate result of the misappropriation of Plaintiffs’ Confidential

1 Information and trade secrets, Defendants, and each of them, have been unjustly enriched from the  
2 uncompensated use of Plaintiffs' trade secrets and Plaintiffs have been damaged in an amount to be  
3 proven at trial. Plaintiffs seek recovery of such amounts, or in the alternative, the recovery of a  
4 reasonable royalties for the unauthorized use of Plaintiffs' trade secrets, together with prejudgment  
5 interest thereon in accordance with the provisions of California Civil Code §§ 3287(a) and 3291.

6 126. Plaintiffs are informed and believe, and based thereon allege, that in doing the acts  
7 alleged herein, Defendants, and each of them, acted in conscious and intentional disregard for the  
8 contractual and property rights of Plaintiffs and with the intent to deprive Plaintiffs of their  
9 property and to convert such property to the benefit of Defendants. Defendants, and each of them,  
10 acted with oppression, fraud, and/or malice so as to entitle Plaintiffs to recover punitive and  
11 exemplary damages against Defendants deemed by the trier of fact to be sufficient to punish, deter,  
12 and make an example of Defendants in an amount up to two times the compensatory damage amount  
13 pursuant to California Civil Code § 3426.3( c). Plaintiffs are informed and believe, and based thereon  
14 allege, that the acts of oppression, fraud and/or malice of each of the Defendants, as alleged above,  
15 were either committed by officers, directors, or managing agents of Defendants or were authorized  
16 and/or ratified by Defendants, and each of them.

17 127. By virtue of Defendants' continued unauthorized misappropriation of Plaintiffs'  
18 trade secrets, Plaintiffs have been and continue to be irreparably damaged. Accordingly, Plaintiffs  
19 seek preliminary and permanent injunctive relief barring Defendants and each of their agents and  
20 affiliates from utilizing in any manner Plaintiffs' Confidential Information and trade secrets.

21 128. As a direct and proximate consequence of Defendants' willful and malicious  
22 misappropriation of Plaintiffs' trade secrets, Plaintiffs have been required to retain the services of  
23 attorneys to represent them and to prosecute this action and Plaintiffs seek recovery of such  
24 expenses pursuant to the provisions of Civil Code § 3426.4.

### 25 **ELEVENTH CAUSE OF ACTION**

#### 26 **(On Behalf Of The Reseller Class For Fraud and Deceit Against All Defendants)**

27 129. The reseller Plaintiffs, on behalf of themselves and on behalf of all Apple resellers  
28 similarly situated, reallege, as if fully set forth herein, each and every allegation contained in

1 Paragraphs 1 through 20 and paragraphs 99 through 128 hereof.

2 130. The Plaintiff resellers and the reseller class have entered into a series of contracts with  
3 Defendant Apple Computer of one year duration. In other words, a new contract is entered into  
4 each year by the Defendant with each of the Apple Resellers. These one year contracts were  
5 prepared by Defendant Apple Computer and are contracts of adhesion, having been prepared on a  
6 “take it or leave it basis” by Defendant, after having required the Apple Resellers to invest heavily in  
7 their respective businesses with Defendant, and having devoted their efforts exclusively to the sale  
8 and service of Apple products and customers who use said products.

9 131. Between 1997 and January 1, 1999, Defendant developed plans to open its own retail  
10 stores in competition with the independent Apple Resellers, with the specific intent to drive the  
11 independent Apple Resellers out of business. The process of driving the Apple Resellers out of  
12 business was to take place over a period of years, since there was a limit upon the number of Apple  
13 retail stores that the Defendant could open during the course of a year. Defendant’s program to drive  
14 the independent Apple Resellers out of business was kept a secret from the independent Apple  
15 Resellers by Defendant. Not only did the Defendant keep secret from the independent Apple  
16 Resellers its intention to drive them out of business, Defendant Apple commenced a program of  
17 misrepresentations to the independent Apple Resellers, designed to persuade said independent  
18 Resellers that they could expect a very rosy future in doing business with the Defendant. The  
19 misrepresentations below were made to certain Apple resellers individually or in groups with the  
20 knowledge and expectation that such misrepresentations would be repeated to the reseller class and  
21 were intended to be relied upon by such class.

22 132. In 1999, Jeff Hansen was the senior director of channel sales and distribution for  
23 Defendant. On January 4, 1999, in an email, Jeff Hansen advised the Apple Specialists that “I can  
24 tell you we will do everything possible to give all Resellers the best business proposition possible to  
25 sell Apple solutions. ... You and hundreds of Apple Resellers nationwide are important to Apple  
26 and we appreciate your advocacy.” The foregoing was an intentional misrepresentation by  
27 Defendant designed to inspire Apple Resellers, to remain tied to Defendant Apple while in truth and  
28 in fact, Defendant Apple was planning the demise of all of its Resellers over time.

1 133. Phil Hunter was a regional account executive for Defendant Apple in the year 2000.  
2 In an email dated November 6, 2000, Phil Hunter falsely represented that Apple was devising a  
3 strategy in which the Apple Resellers and Apple Specialists would play a critical part. Tim Cook  
4 was the executive vice president of worldwide sales and operations for Defendant Apple. At a  
5 conference with Apple Resellers and Apple Specialists on October 25, 2000, Tim Cook false  
6 represented that Apple needed to make the Apple Specialists and Resellers feel valued and that they  
7 are important to Apple's future. Cook also falsely represented that Defendant Apple wanted the  
8 Apple Specialists and Apple Resellers to grow and expand. Cook stated that his views were shared  
9 by many at Defendant *Apple*, including Steve Jobs.  
10

11 134. After November, 2000, and prior to May, 2001, Apple Resellers discovered that  
12 Defendant was planning to open its own retail stores. The Apple Resellers were deeply concerned  
13 that the new Apple-owned retail stores would unfairly compete with the businesses of the Apple  
14 Resellers and perhaps cause the Apple Resellers to have to close its doors. In fact, many Resellers  
15 and Apple Specialists expressed this concern to Defendant Apple.  
16

17 135. On May 15, 2001, at a press conference, and in internal documents, Steve Jobs,  
18 Defendant's Chief Executive Officer, and Ron Johnson, another Apple executive, made  
19 misrepresentations directed to Apple Specialists and Apple Resellers that were designed to induce  
20 Apple Resellers and other Apple Specialists to enter into new contracts with the Defendant, and to  
21 hide Apple's intention of driving Apple Specialists and Apple Resellers out of business over time.  
22 Jobs and Johnson falsely represented to Apple Specialists and Apple Resellers that Defendant Apple  
23 would continue to provide an adequate supply of Apple products to the Apple Resellers and Apple  
24 Specialists, notwithstanding the opening of the Apple retail stores, and that Apple Retail Stores  
25 would in fact refer customers to resellers.  
26

27 136. Plaintiff resellers Siechert & Synn dba Techsource, Joe Weingarten dba Weingarten  
28

1 Gallery, Rick Zuehlke dba Weingarten Gallery, and Pamela Rogers dba Horizon Resources and  
2 Horizon Computer Resources, Inc and the reseller class reasonably relied on the statements made by  
3 Steve Jobs and Ron Johnson, and continued their professional relationships with Apple.

4 137. Also on May 15, 2001, Jobs and Johnson falsely represented to Apple Specialists and  
5 Apple Resellers that the new Apple retail stores would not cannibalize any sales from existing Apple  
6 Resellers and Apple Specialist stores. In fact, Jobs and Johnson falsely represented that the opening  
7 of the new Apple retail stores would benefit Apple Resellers and Apple Specialists. In that regard,  
8 Jobs and Johnson falsely stated: “Apple is strengthening its commitment to the channel by opening  
9 retail Apple stores. By doing so, Apple helps to promote awareness of the Macintosh platform and  
10 reach some of the 95% of the population that historically hasn’t even considered buying a Mac. In  
11 this sense, the retail Apple stores help Apple’s Resellers just as Apple’s national advertising  
12 campaigns do. Apple also intends to set the new gold standard of how Macs can and should be sold.  
13 Some Resellers may in fact have better ideas that market the Mac-type form in a superior manner,  
14 but if they don’t we want them to adopt our ideas and sales methods as their own and enjoy the  
15 success that results from doing so.”  
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18 138. Plaintiff resellers Siechert & Synn dba Techsource, Joe Weingarten dba Weingarten  
19 Gallery, Rick Zuehlke dba Weingarten Gallery, and Pamela Rogers dba Horizon Resources and  
20 Horizon Computer Resources, Inc and the reseller class reasonably relied on the statements made by  
21 Steve Jobs and Ron Johnson, and continued their professional relationships with Apple.  
22

23 139. On May 15, 2001, Jobs and Johnson further falsely represented to Apple Resellers  
24 and Apple Specialists the following: “Apple currently has around 5% market share in personal  
25 computers. This means that out of 100 computer users, 5 of them use Macs. Apple wants to  
26 convince those other 95 people that Macintosh offers a simpler, richer and more humanecentric  
27 computing experience. If by opening Apple stores the company can convince just 5 of those  
28

1 remaining 95 people to switch to Macs, Apple will double its market share. As the 25 Apple stores  
2 comprise just 1% of the 3,000 Reseller locations, a large part of a 100% market share increase goal  
3 would go to Apple Resellers.”

4 140. Also in May 15, 2001, Jobs and Johnson further falsely represented to the Apple  
5 Resellers and Apple Specialists the following: “It is not Apple’s strategy to approach its Resellers as  
6 sources for staffing Apple’s own stores. The Apple Resellers understood this to mean that Apple  
7 would not approach employees of Apple Resellers and Apple Specialists who seek to hire them  
8 away to staff Apple’s own retail stores.  
9

10 141 Plaintiff resellers Siechert & Synn dba Techsource, Joe Weingarten dba Weingarten  
11 Gallery, Rick Zuehlke dba Weingarten Gallery, and Pamela Rogers dba Horizon Resources and  
12 Horizon Computer Resources, Inc and the reseller class reasonably relied on the statements made by  
13 Steve Jobs and Ron Johnson, and continued their professional relationships with Apple.  
14

15 142. Also in May 15, 2001, Jobs and Johnson falsely represented to Apple Resellers and  
16 Apple Specialists as follows: “It is Apple’s goal to double its market share by convincing just five  
17 of the 95 people who aren’t currently Mac customers to buy a Macintosh. Achieving this goal would  
18 result in 25,000,000 additional customers. As the 25 Apple store locations comprise just 1% of the  
19 3,000 Reseller locations, a large part of a 100% market share increase goal would go to Apple’s  
20 Resellers.” Jobs further falsely represented on May 15, 2001 to Apple Resellers and Apple  
21 Specialists that “The new stores will not conflict with Apple’s relationships with more than 3,000  
22 dealers. Our stores represent less than 1% additional of the businesses selling the Company’s  
23 products.” Jobs falsely emphasized that Apple’s own retails stores would not compete with current  
24 Resellers. Jobs stated that Apple resells products through 3,000 locations and its 25 stores represent  
25 less than 1% of additional locations. Jobs also falsely represented that there were no plans for  
26 “Apple store only” products to be offered. He falsely represented that all products would be  
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1 available to all Resellers and Apple Specialists. Jobs specifically falsely represented that Apple's  
2 strategy was not to put Resellers out of business, but to work side by side with Resellers. Jobs  
3 falsely represented that Apple's retail stores would help *Apple* Resellers a lot by increasing exposure  
4 to the Mac platform.

5 143. On May 22, 2001, Steve Jobs and other Apple executives falsely represented to Apple  
6 Specialists and Apple Resellers that the *Apple* retail stores were not given any priority with respect  
7 to allocation of Apple products, and that there were no plans in the works to give them any priority  
8 allocation of Apple products.  
9

10 144. On October 5, 2001, Apple executive Ron Johnson responded to concerns from Apple  
11 Resellers and Apple Specialists that the Apple retail stores might upset Apple's relationship with its  
12 existing Apple Resellers and Apple Specialists. Johnson responded, "That won't happen. If Apple  
13 sticks to its pledge that the stores will bring in entirely new buyers to the Mac market. We've got to  
14 make sure that these are adding incremental volume to Apple and the Reseller channel."  
15

16 145. On October 6, 2001, in Palo Alto, California, Apple executives Phil Hunter, Jeff  
17 Hansen and Ron Johnson were present. They falsely represented to the Apple Resellers and Apple  
18 Specialists who were there that there was a level playing field and that all ships would rise with the  
19 tide, and that they were there to promote the Resellers and Apple Specialists.

20 146. At a May 29, 2002 Apple Specialist meeting in Cupertino, California, Apple  
21 executive Ron Johnson falsely represented to those Apple Resellers and Apple Specialists present  
22 that Apple stores pay the same for Apple product as Apple Specialists and Apple Resellers. He also  
23 falsely represented that Apple intended to improve the Reseller/Specialist channel business  
24 propositions. He also falsely represented that Apple would grow based upon taking business from  
25 the cataloguers, and not from Apple Specialists and Apple Resellers. Johnson also made a plea to  
26 the Apple Resellers and Apple Specialists that they should not quit doing business with Apple.  
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28

1 147. On June 24, 2002, John Brandon, an Apple executive, falsely represented to the  
2 Apple Resellers and Apple Specialists that Apple retail stores would not be given preferential  
3 treatment by the Defendant.

4 148. When the Apple executives made the foregoing representations to the Apple Resellers  
5 and Apple Specialists, said Apple executives knew that said representations were false.

6 149. Defendant Apple intended that the Apple Resellers rely upon the foregoing  
7 misrepresentations.

8 150. The Apple Resellers did in fact reasonably rely upon the foregoing misrepresentations  
9 made by the Apple executives. As a result of said reasonable reliance, the Apple Resellers continued  
10 to sign one-year Apple Reseller/Apple Specialist/Apple Service Provider agreements with Defendant  
11 Apple Computer, Inc. in the Years 2000 and beyond.

12 151. In addition to making the foregoing false representations to the Apple Resellers, the  
13 Defendant also intentionally concealed from the Apple Resellers the fact that the Defendant intended  
14 to drive the Apple Resellers out of business over a period of a few years.

15 152. The Apple Resellers were completely unaware of the fact that Defendant Apple  
16 Computer, Inc. intended to drive them out of business over a period of a few years. Commencing in  
17 the Year 2001, Defendant *Apple* commenced actions that were designed to drive the Apple Resellers  
18 out of business. Specifically, Defendant engaged in the following actions designed to drive Apple  
19 Resellers out of business:  
20  
21

22 (a) *Apple* placed *Apple* retail stores in close proximity to the store locations of Apple  
23 Resellers for the specific purpose of siphoning off Apple Resellers' customers, thereby reducing  
24 their sale and profitability;

25 (b) *Apple* intentionally failed and refused to provide the Apple Resellers with *Apple*  
26 merchandise, goods, services and support for *Apple* products sold and/or serviced by the Apple  
27

1 Resellers;

2 (c) *Apple* deliberately withheld from the Apple Resellers supplies of new *Apple* products,  
3 while making such products readily available to the public through *Apple* retail stores, the *Apple*  
4 online store, and *Apple* direct sales for the intended purpose of driving retail sales to *Apple* and away  
5 from *Apple* Resellers, *Apple* service providers and *Apple* Specialists.

6 (d) *Apple* misrepresented to the Apple Resellers the availability of new *Apple* products by  
7 stating, among other things, that such products were unavailable, while directly providing *Apple*  
8 retail stores, the *Apple* online store and *Apple* direct sales staff with such products;

9 (e) *Apple* bypassed the Apple Resellers to contact, solicit and deal directly with customers  
10 and prospects of the Apple Resellers, while utilizing confidential customer information of the Apple  
11 Resellers for such purpose;

12 (f) *Apple* failed and refused to properly honor warranties of merchandise, goods and  
13 services sold by the Apple Resellers and/or by agreeing to accept warranty repairs, then altering the  
14 terms to *Apple*'s benefit, thereby depriving the Apple Resellers of compensation for their services.  
15 In addition, *Apple* set up a record keeping system that obliterated records and/or made it difficult or  
16 impossible for the Apple Resellers to retrieve records from *Apple* and deprived the Apple Resellers  
17 of their compensation and a method of accounting for such compensation;

18 (g) *Apple* consistently failed to acknowledge and respond to communications to *Apple*  
19 from the Apple Resellers in a timely manner, when said resellers needed answers to critical  
20 questions;

21 (h) *Apple* failed and refused to provide proper credits to Apple Resellers when said  
22 credits were clearly due to the resellers.

23  
24  
25  
26 153. The effect of Defendant's conduct toward Apple Resellers and Specialists was to  
27 maximize sales for the *Apple* retail stores and the *Apple* online store at the expense of the *Apple*  
28

1 Resellers, *Apple* service providers and *Apple* Specialists by driving sales to the *Apple* retail stores  
2 and the *Apple* online stores by any and all means.

3 154. Defendant *Apple* did its utmost to prevent *Apple* Resellers from discovering the  
4 existence of the more favorable treatment that Defendant was providing to its own retail stores and  
5 its online store. When Defendant was asked by *Apple* Resellers and others as to whether *Apple* retail  
6 and online stores were getting more favorable treatment than *Apple* Specialists and *Apple* service  
7 providers, *Apple* repeatedly informed the *Apple* Resellers and Specialists that they were competing  
8 with *Apple* retail and online stores on a level playing field, thereby causing the *Apple* Resellers to  
9 believe that the *Apple* retail stores were not receiving favorable treatment from Defendant with  
10 respect to the sale of goods, services and referrals from *Apple*. Unfortunately, this was not true.

11 155. As a direct result of the intentional misrepresentations and the intentional  
12 concealment by *Apple* as heretofore alleged, the Plaintiff Resellers and the reseller class have been  
13 severely damaged in amounts which have not as yet been fully ascertained.

14 156. In doing the acts herein alleged, Defendant *Apple* Computer acted maliciously,  
15 fraudulently, oppressively, and/or in conscious disregard of the rights of the *Apple* Resellers. As a  
16 consequence, the *Apple* Resellers are entitled to exemplary and punitive damages from Defendant  
17 *Apple* Computer in an amount to be determined at the trial of this matter.

18  
19  
20 **TWELFTH CAUSE OF ACTION**

21 **(On Behalf Of The Reseller Class For Breach of the Implied Covenant of**  
22 **Good Faith And Fair Dealing Against All Defendants)**

23 157. The reseller Plaintiffs Siechert & Synn dba Techsource, Joe Weingarten dba  
24 Weingarten Gallery, Rick Zuehlke dba Weingarten Gallery, and Pamela Rogers dba Horizon  
25 Resources and Horizon Computer Resources, Inc., on behalf of themselves and on behalf of all  
26 *Apple* resellers similarly situated, reallege, as if fully set forth herein, each and every allegation  
27 contained in Paragraphs 1 through 20 and paragraphs 99 through 156 hereof.

1           158. There exists in each and every contract an implied covenant of good faith and fair  
2 dealing that no party to the contract will do anything to deprive any other party to the contract of the  
3 benefits of that contract. Defendant *Apple* has breached the implied covenant of good faith and fair  
4 dealing that exists in its reseller contract, its service contract, and its *Apple* specialist contract  
5 (Exhibit C) with the Apple Resellers as follows:

6           (a) *Apple* placed *Apple* retail stores in close proximity to Apple Reseller store  
7 locations with the specific purpose of siphoning off customers of the Apple Resellers, thereby  
8 reducing sales and profitability of said resellers;

9           (b) *Apple* failed to provide the Apple Resellers with *Apple* merchandise, goods,  
10 services and support for *Apple* products sold and/or serviced by the Apple Resellers;

11           (c) *Apple* deliberately withheld from Plaintiff supplies of new *Apple* products  
12 while making such products readily available to the public through *Apple* retail stores, the *Apple* on-  
13 line store, and *Apple* direct sales for the intended purpose of driving retail sales to *Apple* and away  
14 from *Apple* resellers, *Apple* service providers, and *Apple* specialists;

15           (d) *Apple* misrepresented to Apple Resellers the availability of new *Apple*  
16 products by stating among things that such products were unavailable, while directly providing  
17 *Apple* retail stores, the *Apple* on-line store and *Apple* direct sales staff with such products;

18           (e) *Apple* bypassed the Apple Resellers to contact, solicit and deal directly with  
19 the Apple Resellers' customers and prospects, utilizing the Apple Resellers' confidential customer  
20 information;

21           (f) *Apple* failed to properly honor warranties of merchandise, goods, and services  
22 sold by the Apple Resellers and/or by agreeing to accept warranty repairs then altering the terms to  
23 *Apple*'s benefit, thereby depriving the Apple Resellers of compensation for their services. *Apple* set  
24 up a record keeping system that obliterated records and/or made it difficult or impossible for the  
25 Apple Resellers to retrieve records from *Apple* and deprived the Apple Resellers of their  
26 compensation and a method of accounting for such compensation;

27           (g) *Apple* failed to acknowledge and respond to communications to *Apple* from  
28

1 the Apple Resellers in a timely manner;

2 (h) *Apple* failed to provide necessary, agreed upon and/or proper credits when  
3 said credits were due to the Apple Resellers;

4 (i) *Apple* misrepresented the nature and quality of the equipment sold to the  
5 Apple Resellers;

6 (j) *Apple* shipped replacement parts and/or equipment that were defective and  
7 then used the fact of the multiple defects to score Apple Resellers in such a manner as to the repairs  
8 and/or other needs, whereby Apple Resellers were paid artificially low costs for their services,  
9 depriving Apple Resellers of the normal and reasonable contract prices;

10 (k) *Apple* refused to accept defective products back from the Apple Resellers,  
11 which required the Apple Resellers to make the repairs when the product arrived at the Apple  
12 Resellers' retail store, and the product was not merchantable or working. Apple Resellers would be  
13 left with a product for which *Apple* required payment, but would not accept back, even though Apple  
14 Resellers did not receive an operational, merchantable product as required by the Apple Resellers,  
15 and as represented by *Apple*. *Apple* would seek to avoid payment of repairs, and Apple Resellers  
16 would not be able to sell the product as new, in spite of having purchased what was represented as a  
17 new product;

18 (l) *Apple* failed to appropriately reimburse the Apple Resellers for warranty work  
19 performed by Apple Resellers on behalf of *Apple*, and/or failed to acknowledge warranty status  
20 while work was being performed, thereby causing the Apple Resellers significant time and expense  
21 to prove the warranty status;

22 (m) *Apple* provided special treatment to *Apple's* retail stores by, among other  
23 things, accepting all defective and non-defective product returns from *Apple* resale stores and *Apple*  
24 on-line store at no charge, while refusing to accept defective or non-defective product returns from  
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1 the Apple Resellers;

2 (n) *Apple* provided early delivery of new products, display units and point of sale  
3 promotional materials to *Apple* retail stores while denying such new products, display units and  
4 point of sale promotional materials to the Apple Resellers;

5 (o) *Apple* sold *Apple* products and warranties to *Apple* retail stores and other  
6 favored resellers who were not directly competing with *Apple* retail stores at prices lower than those  
7 that were offered to the Apple Resellers;

8 (p) *Apple* sold *Apple* products and warranties through the *Apple* retail stores at a  
9 net loss, and operated the *Apple* retail stores at a net loss for the purpose of building the market share  
10 of the *Apple* retail stores at the expense of the Apple Resellers and other similarly situated *Apple*  
11 resellers, *Apple* service providers and *Apple* specialists;

12 (q) *Apple's* conduct toward Apple Resellers was to maximize sales at the *Apple*  
13 retail stores and *Apple* on-line store at the expense of *Apple* resellers, *Apple* service providers and  
14 *Apple* specialists by driving sales from the latter to the *Apple* retail stores by any and all means;

15 (r) From May, 2001 to the present time, *Apple* has intended to, and has given  
16 priority allocation of new *Apple* products to *Apple* retail stores and the *Apple* on-line store, and  
17 *Apple* has denied such new products to *Apple* resellers and *Apple* specialists located within the  
18 market area of *Apple* retail stores, for the express purpose of driving sales from the *Apple* resellers  
19 and *Apple* specialists to the *Apple* retail stores and *Apple* on-line store, in order to produce the public  
20 perception that *Apple* stores are the only place to go to buy *Apple* products;

21 (s) From May, 2001 to the present time, defendant *Apple* has sold *Apple*  
22 computers, hardware and related products and warranties at discounted prices through the *Apple*  
23 retail stores and *Apple* on-line store and has engaged in direct price competition with *Apple* resellers  
24 and *Apple* specialists, and has caused sales to be diverted to the *Apple* retail stores and/or *Apple* on-  
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1 line store which otherwise would have gone to *Apple* resellers and *Apple* specialists; and

2 (t) *Apple* has continued to disparage the Apple Resellers to their customers by  
3 making such statements as “Resellers sell used equipment as new; you get a better warranty if you  
4 buy directly from *Apple*; Resellers did unauthorized repair work, voided warranties, substituted  
5 improper parts and were ill-informed and incompetent to perform services for their customers; and  
6 told customers that certain Apple Resellers were not an authorized *Apple* dealer/reseller.”

7  
8 159. All of the aforementioned acts by Defendant *Apple* were done with the intent of  
9 taking customers and sales away from the Apple Resellers, causing the Apple Resellers to become  
10 unprofitable, and with the specific intent of driving the Apple Resellers out of business.

11 160. The Apple Resellers have performed all conditions, covenants and promises required  
12 to be performed on their part, except for those prohibited by the actions and conduct of Defendant  
13 *Apple*.

14 161. As a direct result of Defendant *Apple*'s breach of the implied covenant of good faith  
15 and fair dealing, the Apple Resellers have been damaged in an amount to be proven at the time of  
16 trial, but in an amount in excess of \$25,000.00.

17  
18 **THIRTEENTH CAUSE OF ACTION**

19 **Violation of Business and Professions Code § 16720(c) –**

20 **To Prevent Competition in the Sale of Merchandise**

21 **(On Behalf Of The Reseller Class Against All Defendants)**

22  
23 162. The reseller Plaintiffs Siechert & Synn dba Techsource, Joe Weingarten dba  
24 Weingarten Gallery, Rick Zuehlke dba Weingarten Gallery, and Pamela Rogers dba Horizon  
25 Resources and Horizon Computer Resources, Inc., on behalf of themselves and all resellers similarly  
26 situated, reallege, as if fully set forth herein, each and every allegation contained in Paragraphs 1  
27 through 20 hereof and paragraphs 99 through 161 hereof.  
28

1 a. Apple products are distinct from other computer products. More  
2 specifically, most Apple products are platformed on a different operating system than other personal  
3 computers (“PC”). Another reason rests on the fact that switching from Apple products to other  
4 PC products requires a large investment from the user. Based on the foregoing, users of Apple  
5 products become exclusively committed to Apple products. The market for Apple products is  
6 distinct and independent from the market for personal computer products. In fact, it was recognized  
7 in *United States v. Microsoft* that Apple computers and Apple operating system software are a  
8 distinct and entirely separate product market from other personal computers. 84 F.Supp.2d 9, 14-15  
9 (D.D.C. 1999), *aff’d* 253 F.3d 34, 51 (D.C. Cir. 2001) cert. denied, 534 U.S. 952, 122 S.Ct. 350  
10 (2001). Apple controls 100% of this market.  
11

12  
13 b. Independent resellers of Apple products sell said products almost  
14 exclusively—meaning these resellers only sell computer products designed and manufactured by  
15 Apple Computer.  
16

17 163. Beginning at a time unknown to Plaintiffs, and continuing to the present, Defendants  
18 combined, conspired or agreed to restrain or eliminate retail competition in the sale of Apple  
19 computers and/or accessories.  
20

21 164. In furtherance of the conspiracy, Plaintiffs are informed and believe and thereon allege  
22 that Defendants and unnamed co-conspirators, including but not limited to COMP USA and Fry’s  
23 Electronics (“Fry’s”), had meetings, discussions, or agreements between Apple and its co-  
24 conspirators for the purpose of insuring that competition in the retail market for Apple computers  
25 was restrained or eliminated. Also in furtherance of the conspiracy, said Defendants used their best  
26 efforts to insure that the prices advertised at retail to their customers were not below a certain  
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1 minimum price.

2 165. Specifically, Apple conspired or agreed with co-conspirators, including but not  
3 limited to COMP USA and Fry's, to sell its Apple products and AppleCare service contracts to said  
4 co-conspirators at prices significantly less than Apple sold same products and services to  
5 independent resellers. Moreover, Apple contracted with COMP USA to provide, in COMP USA  
6 stores, a direct presence of Apple in the form of a campaign, known as the "Apple Solutions  
7 Consultant" ("ASC") program. The ASC program essentially placed Apple-employed  
8 representatives in COMP USA stores as a form of direct sales for Apple. The purpose for Apple's  
9 initiative of the ASC program's development was to polarize sales of Apple products to Apple's  
10 direct revenue and away from independent resellers.  
11  
12

13 166. The purpose and effect of said combination, conspiracy or agreement was to restrain  
14 or eliminate competition from independent Apple resellers, and create an artificially higher perceived  
15 value for Defendants' products in the minds of the retail customers. In furtherance of the  
16 combination, conspiracy, or agreement, Defendants have engaged in other anti-competitive practices  
17 such as allocating products to themselves and their co-conspirators, to the exclusion of the  
18 independent resellers, incurring substantial losses on its retail operations in order to cannibalize  
19 customers from its independent resellers, providing millions of dollars in advertising and business  
20 development funds to its co-conspirators, terminating agreements with non-compliant resellers, and  
21 other actions to restrain or eliminate competition from the independent resellers. Defendant's acts  
22 were part of the willful acquisition of a monopoly and not the result of growth or development. As a  
23 result, the number of independent resellers has decreased, the dollar volume of business sales by such  
24 resellers has decreased substantially, consumer choice has been lessened, and free and open retail  
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1 price competition for Defendants' products has been restrained.

2 167. Plaintiffs, and each member of the class, have been damaged thereby.

3 168. Defendants' business acts, omissions and/or practices as alleged herein are of a  
4 common or general interest of many persons and/or the parties are so numerous that it is  
5 impracticable to bring them all before the Court.  
6

7 169. Plaintiffs have suffered an injury in fact and have lost money or property as a result  
8 of Defendants' business acts, omissions and practices as alleged herein.

9 170. Plaintiffs, and all resellers similarly situated, accordingly are entitled to equitable relief  
10 including injunctive relief, remedial or corrective action, treble damages, full restitution and/or  
11 disgorgement.  
12

13 171. Plaintiffs seek class certification of this cause of action as a class action, on behalf of  
14 all resellers similarly situated, pursuant to CCP § 382.  
15

16 **FOURTEENTH CAUSE OF ACTION**

17 **Violation of Business and Professions Code § 16720(e) –**

18 **Agreement Which Affects Price In Any Manner**

19 **(On Behalf Of The Reseller Class Against All Defendants)**

20 172. The reseller Plaintiffs Siechert & Synn dba Techsource, Joe Weingarten dba  
21 Weingarten Gallery, Rick Zuehlke dba Weingarten Gallery, and Pamela Rogers dba Horizon  
22 Resources and Horizon Computer Resources, Inc., on behalf of themselves and all resellers similarly  
23 situated, reallege, as if fully set forth herein, each and every allegation contained in Paragraphs 1  
24 through 20 and paragraphs 99 through 171 hereof.  
25  
26

27 173. Beginning at a time unknown to Plaintiffs, and continuing to the present, Defendants  
28

1 combined, conspired or agreed to restrain or eliminate retail competition in the sale of Apple  
2 computers and/or accessories by imposing a pricing guideline on all sales of Apple's products known  
3 as the "Minimum Advertised Price" ("MAP") policy. (Exhibit E).

4 174. Every Authorized Apple Reseller, including Plaintiff resellers Siechert & Synn dba  
5 Techsource, Joe Weingarten dba Weingarten Gallery, Rick Zuehlke dba Weingarten Gallery, and  
6 Pamela Rogers dba Horizon Resources and Horizon Computer Resources, Inc was contractually  
7 required to comply with Apple's MAP policy and procedures pursuant to their reseller contracts  
8 and/or Apple Specialists Contracts. (Exhibit C)

9 175. Apple's MAP policy operated in a way such that all resellers were left no alternative  
10 but to advertise all Apple products at or above Apple's determined minimum price, or otherwise,  
11 lose advertising funding or support from Apple.

12 176. Apple employed such minimum price advertising mechanism via agreement or  
13 contract with every Apple Authorized Reseller, including but not limited to chain stores such as  
14 COMP USA or Fry's.

15 177. By imposing this guideline on every Apple Authorized Reseller, Defendant ensured  
16 the price of its product was never advertised below Defendant's determined-pricing guidelines and  
17 free and open competition in the sales of Apple computers was restrained. Apple itself was not  
18 bound by these guidelines.

19 178. Defendant Apple's profits and revenues generated from the sale of its products are  
20 not the result of superior products or competition on the merits. Instead, Apple has been able to—  
21 to the detriment of resellers—artificially inflate the prices of its products, and thereby its profits, by  
22 implementing and maintaining its Minimum Advertising Price policy.

23 179. Plaintiffs, and each member of the Class, have been damaged thereby.

24 180. Defendants' business acts, omissions and/or practices as alleged herein are of a  
25 common or general interest of many persons and/or the parties are so numerous that it is  
26 impracticable to bring them all before the Court.

27 181. Plaintiffs have suffered an injury in fact and have lost money or property as a result  
28 of Defendants' business acts, omissions and practices as alleged herein.

1 182. Plaintiffs, and all resellers similarly situated, accordingly are entitled to equitable relief  
2 including injunctive relief, remedial or corrective action, treble damages, full restitution and/or  
3 disgorgement.

4 183. Plaintiffs seek class certification of this cause of action as a class action, on behalf of  
5 all resellers similarly situated, pursuant to CCP § 382.

## 6 **FIFTEENTH CAUSE OF ACTION**

### 7 **Common Law Monopoly**

#### 8 **(On Behalf Of The Reseller Class Against All Defendants)**

9 184. The reseller Plaintiffs Siechert & Synn dba Techsource, Joe Weingarten dba  
10 Weingarten Gallery, Rick Zuehlke dba Weingarten Gallery, and Pamela Rogers dba Horizon  
11 Resources and Horizon Computer Resources, Inc., on behalf of themselves and all resellers similarly  
12 situated, reallege, as if fully set forth herein, each and every allegation contained in Paragraphs 1  
13 through 20 and paragraphs 99 through 183 hereof.

14 185. Apple products are distinct from other computer products. More specifically, most  
15 Apple products are platformed on a different operating system than other personal computers  
16 (“PC”). Another reason rests on the fact that switching from Apple products to other PC products  
17 requires a large investment from the user. Based on the foregoing, users of Apple products become  
18 exclusively committed to Apple products. The market for Apple products is distinct and  
19 independent from the market for personal computer products. In fact, it was recognized in *United*  
20 *States v. Microsoft* that Apple computers and Apple operating system software are a distinct and  
21 entirely separate product market from other personal computers. 84 F.Supp.2d 9, 14-15 (D.D.C.  
22 1999), aff’d 253 F.3d 34, 51 (D.C. Cir. 2001) cert. denied, 534 U.S. 952, 122 S.Ct. 350 (2001). Apple  
23 controls 100% of this market.

24 186. Independent resellers of Apple products sell said products almost exclusively—  
25 meaning these resellers only sell computer products designed and manufactured by Apple Computer.

26 187. Apple Computer, Inc. initially opened its own retail stores in 2000. Since that time,  
27 Apple has competed directly with independent resellers. In opening these retail stores, Apple’s core  
28 objective is to isolate the independent resellers so as to put them out of business for the purpose of

1 consuming the significant majority of profits realized at the retail level of Apple products to itself.

2 188. Defendant Apple, through exercise of monopoly power in Apple products, has  
3 imposed practices on its independent resellers practices, without justification, which operate to  
4 exclude competition in the market for Apple products in order to reinforce, maintain, and increase its  
5 monopoly power. These practices have included, but have not been limited to: (a) isolating product-  
6 priority allocation only to its own stores with the objective to exclude its independent resellers; (b)  
7 offering its products to its own retail stores at a lower price than its independent resellers; (c) selling  
8 its own products in Apple retail stores at below the cost of purchasing the product, thereby  
9 operating some of said retail stores at a loss with the objective to eliminate competition with its  
10 independent resellers; (d) directing, through telemarketing, all consumer interest only to its own retail  
11 stores, and furthermore, disparaging the reputation of its independent resellers; (e) using contact  
12 information of its independent resellers' existing customer base for the purpose of funneling these  
13 customers to Apple's direct retail efforts—including its web-based and brick and mortar retail stores.

14 189. By employing these exclusionary practices, Defendant Apple has engaged in  
15 monopolization.

16 190. These exclusionary practices lack legitimate business justification, are not reasonably  
17 necessary to further any legitimate procompetitive purpose, and impair competition in an  
18 unnecessarily restrictive way.

19 191. As a direct and proximate result of defendant's acts of monopolization as alleged  
20 herein, plaintiffs and the members of Plaintiff Reseller Class have suffered actual damages in an  
21 amount to be proven at trial.

22 192. Defendant's acts of monopolization as described herein were intended to monopolize  
23 and suppress competition in the relevant market of Apple computers and computer-related products  
24 and consumer choice has been lessened. Plaintiffs pray for injunctive and equitable relief pursuant to  
25 common law.

26 193. In furtherance of the strong common law policy against monopolies, and providing for  
27 injunctive relief therefrom, Plaintiffs allege common law rights include recovery of damages for this  
28 conduct.

1 194. Defendant's acts of monopolization were and included acts of fraud, malice and  
2 oppression and were done with conscious disregard of the rights upon its independent resellers,  
3 including Plaintiffs. Accordingly, an award of punitive damages is justified in order to make an  
4 example of defendant, to punish defendant, and to deter defendant, and others, from engaging in the  
5 same or similar conduct. Plaintiffs seek and award of punitive damages in an amount according to  
6 proof at trial.  
7

8 **SIXTEENTH CAUSE OF ACTION**

9 **Violation of Business and Professions Code § 17045 –**

10 **To Provide the Secret Allowance of Rebates, Refunds, Commissions,**  
11 **Unearned Discounts, or Special Services to Certain Purchasers**  
12

13 **(On Behalf Of The Reseller Class Against All Defendants)**

14 195. The reseller Plaintiffs Siechert & Synn dba Techsource, Joe Weingarten dba  
15 Weingarten Gallery, Rick Zuehlke dba Weingarten Gallery, and Pamela Rogers dba Horizon  
16 Resources and Horizon Computer Resources, Inc., on behalf of themselves and all resellers similarly  
17 situated, reallege, as if fully set forth herein, each and every allegation contained in Paragraphs 1  
18 through 20 and paragraphs 99 through 194 hereof.  
19

20 196. The legislature enacted the Unfair Practices Act (UPA) to protect fair and honest  
21 competition, and declared that its provisions shall be liberally construed to promote its beneficial  
22 purposes. B&P § 17000-1. The California Supreme Court has concluded that history teaches that a  
23 primary concern in the enactment of the UPA was the protection of smaller independent retailers  
24 against unfair practices of large chain stores. *ABC International Traders, Inc. v. Matsushita Electric*  
25 *Corp.*, 14 Cal.4<sup>th</sup> 1247, 1261 (1997).  
26  
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1           197. Apple has engaged, and continues to engage, in a practice of affording other resellers,  
2 including, but not limited to, CompUSA and Fry's Electronics, secret discounts, allowances, rebates,  
3 and development funds which were not offered to Apple's independent resellers. For instance, upon  
4 information and belief, Plaintiffs herein allege that Apple contracted with resellers, such as Fry's  
5 Electronics ("Fry's"), wherein Apple would sell to Fry's at a substantial discount—not afforded to  
6 independent resellers—large orders of Apple products to Fry's for retail sale. These discounts were  
7 not afforded to independent resellers.  
8

9           198. Apple also engaged in practices of selling, to CompUSA, its AppleCare product-  
10 service contracts at a substantial discount. For example, Apple sold to CompUSA said AppleCare  
11 contracts at more than 50 percent less the retail price of AppleCare contracts. On the other hand,  
12 the price at which Apple sold AppleCare contracts to independent resellers was solely 70 percent of  
13 the retail price of AppleCare. By purchasing AppleCare contracts at such a substantial discount,  
14 CompUSA was able to absorb larger offered discounts, to consumers of Apple Products, than its  
15 independent reseller counterpart at the retail level.  
16  
17

18           199. *Apple* provided *Apple* paid employees to work free of charge in Comp USA retail  
19 stores, but no such *Apple* employees were provided to the Apple resellers.  
20

21           200. *Apple* accepted all defective products back from *Apple* retail stores, *Apple* on-line  
22 store, and preferred resellers, but did not allow the Apple Resellers to do the same, thereby causing  
23 Plaintiffs the expense of repairing the defective product, and then having to sell the repaired product  
24 as "used" instead of "new".  
25

26           201. *Apple* provided cooperative advertising allowances, sales promotions and market  
27 development funds to *Apple* retail stores, *Apple* on-line store, and preferred resellers that were not  
28 also provided to the Apple and other resellers.



**DEMAND FOR JURY**

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The Plaintiffs in this action hereby demand trial by jury.

LAW OFFICES OF ALEXANDER M. SCHACK

Dated: May 30, 2006

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Alexander M. Schack  
One of the Attorneys for Plaintiffs  
And the Proposed Plaintiff Class