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**THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

LATANYA SIMMONS and KEVIN TOBIN,
individually and on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

APPLE INC.,

Defendant.

17CV312251

Case No.

(JURY TRIAL DEMANDED)

CLASS ACTION COMPLAINT

Plaintiffs LaTanya Simmons and Kevin Tobin (“Plaintiffs”), on behalf of themselves and all others similarly situated, bring this Class Action Complaint against defendant Apple Inc. (“Apple” or “Defendant”) and in support allege as follows:

NATURE OF THIS ACTION

1. Plaintiffs challenge Defendant’s actions in connection with their marketing, advertising and sale of the defective Powerbeats 2 and Powerbeats 3 headphones (“Powerbeats”).
2. In widespread advertising and marketing campaigns, Apple touts that its costly Powerbeats (which retail for \$199) are “**BUILT TO ENDURE**” and are the “**BEST HEADPHONES FOR WORKING OUT.**” Apple repeatedly emphasizes that its Powerbeats are

1 “**Sweat & Water Resistant,**” and employs world-famous professional athletes, including LeBron
2 James and Serena Williams, to promote its Powerbeats in commercials as heavy-duty headphones
3 suited for workouts that can withstand rough treatment and exposure to the elements.

4 3. But these costly headphones are neither “built to endure” nor “sweat & water
5 resistant.” Instead, these shoddy headphones contain a design defect that causes them to stop
6 retaining a charge. After minimal usage, sometimes only days or weeks, the Powerbeats often stop
7 accepting a charge and the indicator light blinks red. Then, the Powerbeats will either not power on
8 at all, or will only power on for minutes at a time. Upon information and belief, thousands of users
9 have experienced this identical defect with their Powerbeats after less than a year of use.

10 4. Plaintiffs and many consumers like them have all experienced the same defect—the
11 failure to retain a charge—after using the Powerbeats during exercise or other light activity. But
12 despite numerous consumer complaints, Apple has not publicly acknowledged the defect or
13 attempted to fix it. Instead, when consumers attempt take advantage of Apple’s one-year warranty
14 and return the Powerbeats for a new pair, Apple sends refurbished replacement Powerbeats that
15 often contain the exact same defect. Many consumers, including Plaintiffs, have been through
16 several pairs of Powerbeats only to experience the same defect each time. Consumers are therefore
17 caught in a vicious cycle: use, malfunction, replacement, repeat.

18 5. Apple continues to promote and market its faulty Powerbeats, and continues to profit
19 handsomely from their sale. In so doing, Apple has defrauded the public and cheated its consumers,
20 including Plaintiffs.

21 6. The ability to retain a charge and power on is a material feature of the product.
22 Powerbeats do not work, and are worthless, unless they are able to retain a charge.

23 7. Reasonable consumers expect that high-end Bluetooth headphones will continue to
24 function after minimal use. Reasonable consumers, including Plaintiffs, would not have purchased
25 Powerbeats had they known of this design defect.

26 8. As a result of the defect in the Powerbeats, Plaintiffs and the proposed class have
27 suffered damages. They purchased Powerbeats that they would not otherwise have bought had they
28

1 known of the existence of the defect. Moreover, they bought defective Powerbeats that are not worth
2 the price that they paid.

3 **THE PARTIES**

4 9. Plaintiff LaTanya Simmons is a resident of Sacramento, California.
5 10. Plaintiff Kevin Tobin is a resident of Yuba City, California.
6 11. Defendant Apple is a California corporation with its headquarters and principal place
7 of business in Cupertino, California. Apple designs, manufactures and markets a range of personal
8 computers, mobile communication and media devices, portable digital music players, and personal
9 electronics, including headphones. Apple sells its products globally through its retail stores, online
10 stores, direct sales force, wholesalers, retailers, and value-added resellers. As of January 2016, Apple
11 had over 450 retail stores. In May 2014, Apple bought Beats Music and Beats Electronics for
12 approximately \$3 billion. Beats Electronics manufactured popular headphones, speakers, and audio
13 software.

14 **JURISDICTION AND VENUE**

15 12. This Court has jurisdiction over this matter because the amount in controversy
16 exceeds \$25,000.

17 13. Venue is proper in this District pursuant to CCP § 395(a) because Apple is a resident
18 of Cupertino, California, which is located in this District.

19 **CLASS ACTION ALLEGATIONS**

20 14. Plaintiffs bring this action on behalf of themselves and the class defined as follows:
21 All persons residing in the state of California who purchased
22 Powerbeats 2 or Powerbeats 3 headphones for primarily personal,
23 family or household purposes, and not for resale.

24 15. The questions here are ones of common or general interest class such that there is a
25 well-defined community of interest among the class members. These questions predominate over
26 questions that may affect only individual class members because Apple has acted on grounds
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generally applicable to the class. Such common legal or factual questions include, but are not limited to:

- (a) Whether the Powerbeats are defective;
- (b) Whether the Powerbeats are defectively designed and/or manufactured;
- (c) Whether Apple's claim that the Powerbeats are "sweat & water resistant" is deceptive;
- (d) Whether Apple breached express warranties relating to the Powerbeats;
- (e) Whether Apple breached the implied warranty of merchantability relating to the Powerbeats;
- (f) Whether Apple was unjustly enriched by receiving moneys in exchange for Powerbeats that were defective;
- (g) Whether Apple should be ordered to disgorge all or part of the ill-gotten profits it received from the sale of the defective Powerbeats;
- (h) Whether Plaintiffs and the class are entitled to damages, including compensatory, exemplary, and statutory damages, and the amount of such damages;
- (i) Whether Apple should be enjoined from selling and marketing its defective Powerbeats; and
- (j) Whether Apple engaged in unfair, unconscionable, or deceptive trade practices by selling and/or marketing defective Powerbeats.

16. The parties are numerous such that joinder is impracticable. While the exact number of class members is unknown to Plaintiffs, it is believed that the class comprises thousands of members. The class is ascertainable and readily identifiable from information and records in the possession of Apple.

17. It is impracticable to bring Class members' individual claims before the Court. Class treatment permits a large number of similarly situated persons or entities to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of evidence, effort, expense, or the possibility of inconsistent or contradictory judgments that numerous

individual actions would engender. The benefits of the class mechanism, including providing injured persons or entities with a method for obtaining redress on claims that might not be practicable to pursue individually, substantially outweigh any difficulties that may arise in the management of this class action.

18. Plaintiffs' claims are typical of the members of the class, as all members of the class are similarly affected by Apple's actionable conduct. Plaintiffs and all members of the class purchased defective Powerbeats—defects that make the Powerbeats worthless. In addition, Apple's conduct that gave rise to the claims of Plaintiffs and members of the class (*i.e.* delivering defective Powerbeats, making false claims with respect to the Powerbeats, and breaching warranties respecting the Powerbeats) is the same for all members of the class.

19. Plaintiffs will fairly and adequately protect the interests of the class because they have no interests antagonistic to, or in conflict with, the class that Plaintiffs seeks to represent. Furthermore, Plaintiffs have retained counsel experienced and competent in the prosecution of complex class action litigation.

20. Plaintiffs know of no difficulty to be encountered in the maintenance of this action that would preclude its maintenance as a class action.

21. Apple has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

FACTUAL BACKGROUND

22. The high-end headphone industry is a huge market, predicted to exceed \$25 billion in sales by 2024. From the beginning in 2006, Dr. Dre's Beats headphones have dominated that market. Endorsed by celebrities such as LeBron James and Lady Gaga, Beats headphones catapulted in popularity and quickly became a must-have status symbol. By 2014, the eight-year-old company, Beats Electronics, had seized 60% of the \$100-plus headphone market share. Around that time, when asked which headphones they next planned to purchase, 46% of all teens reported they planned to buy Beats. Recognizing the company as a potential source of substantial revenue in a growing

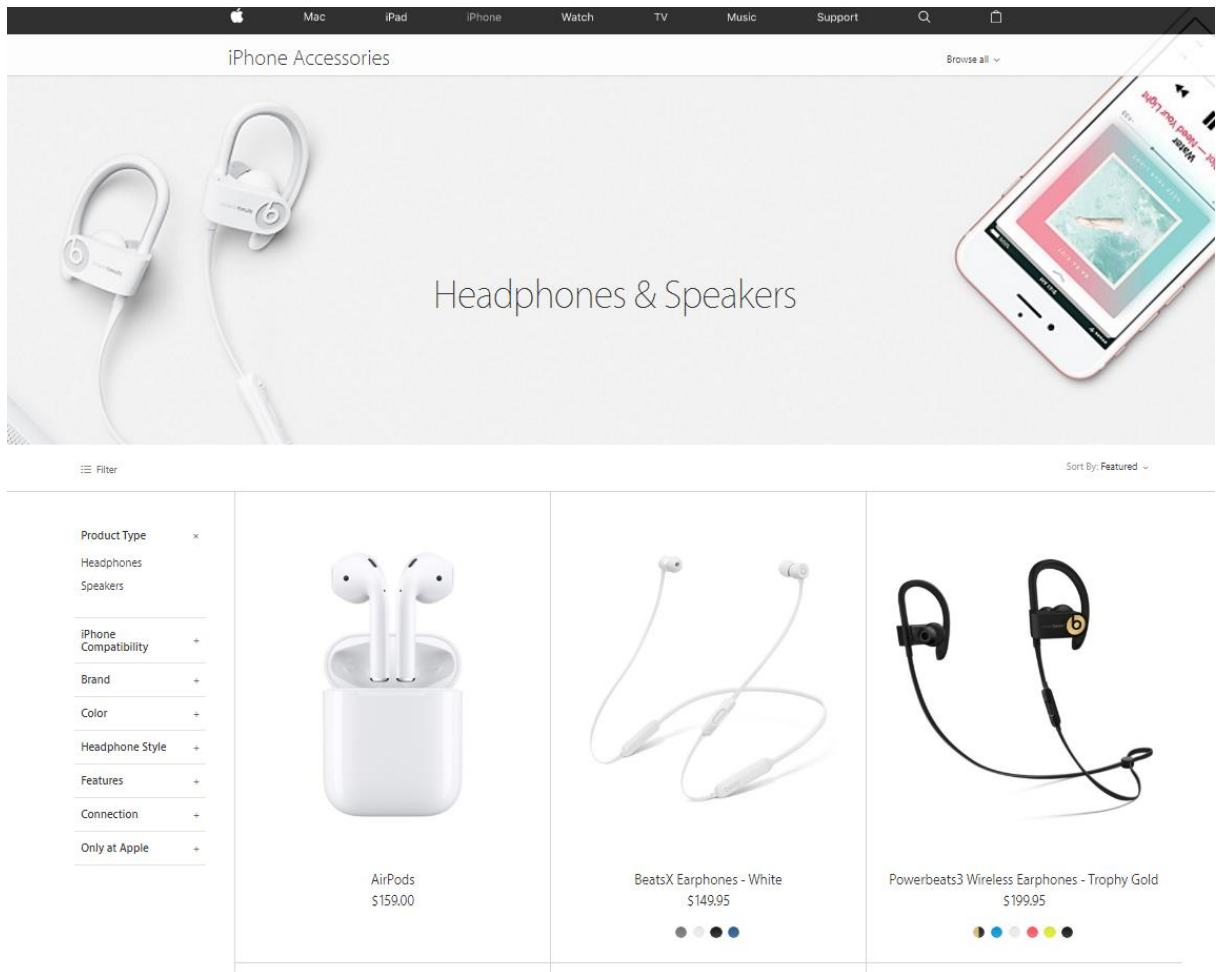
1 market, Apple acquired Beats Music and Beats Electronics for approximately \$3 billion in May
2 2014.

3 23. The Powerbeats 2 and Powerbeats 3 are two types of wireless Bluetooth headphones
4 in the Apple/Beats line. LeBron James is, in fact, credited as a co-creator of Powerbeats. And when
5 the company sold to Apple in 2014, Mr. James reportedly received \$30 million in cash and stock for
6 his role in developing and promoting the Beats headphones.

7 24. The Powerbeats 2 were released in June 2014, and the Powerbeats 3 replaced its
8 older version in October 2016. According to at least one published comparison of the two
9 headphones, “the two [headphones] are virtually identical.”¹ Indeed, “[t]hese Beats headphones
10 share almost every feature.” *Id.*

11 25. Apple aggressively markets the Powerbeats 3. On Apple’s website, on the “Music
12 Accessories” page, the Powerbeats 3 headphones are the third product listed.

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27 ¹ Lauren Schwahn, *Powerbeats3 Wireless vs. Powerbeats2 Wireless*, Nerdwallet, September 29,
28 2016.



26. Apple pushed the sale of Powerbeats in conjunction with the sale of its iPhone 7. The iPhone 7—unlike all previous iPhones and unlike every other brand of smartphone sold—does not include a headphone jack and therefore requires the use of Bluetooth headphones. Although Apple unveiled the iPhone 7 in September 2016, and intended to unveil its own Bluetooth headphones, the AirPods, simultaneously, reported manufacturing problems delayed the release of the AirPods until December 2016, causing consumers in the interim to scramble to find a replacement. That replacement was very often Powerbeats, which were sold by Apple and cell phone carriers, including AT&T and Verizon.

27. Apple's aggressive marketing is effective. As of July 2016, Beats brought in more revenue from Bluetooth headphones than any other company in the market. In terms of revenue,

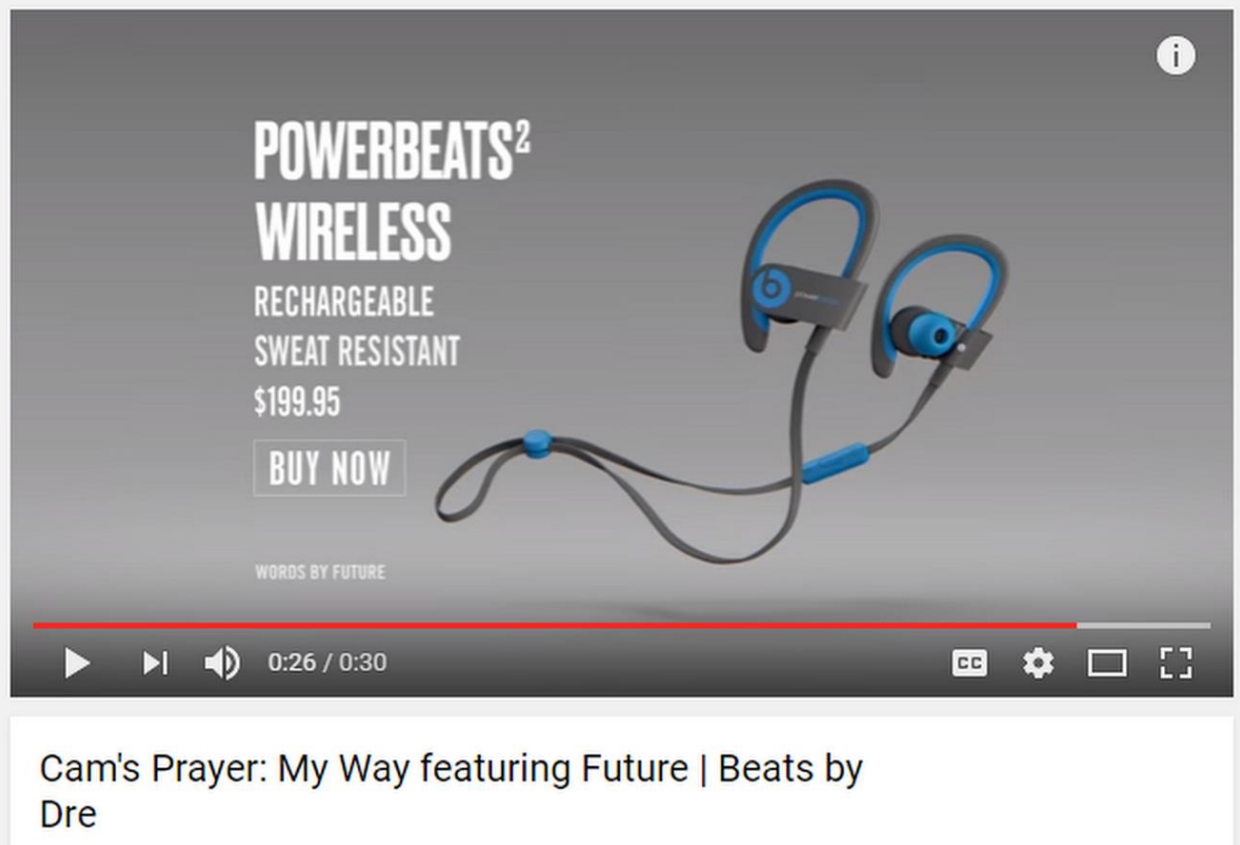
1 Beats controlled nearly half of the Bluetooth headphone market. And in terms of unit sales, Beats
2 controlled over a quarter of the market.

3 28. Beats are also highly profitable for Apple. From Apple’s perspective, Beats are a
4 perfect combination: cheap to make, but expensive to buy. By way of example, a recent article in the
5 Motley Fool estimates Beats Solo headphones cost Apple only \$16.89 to make—yet they retail for
6 \$199. *This is a markup of over 1000%.*

7 29. Because Beats are cheaply constructed, despite the high price tag, they repeatedly
8 break.

9 30. **Apple specifically markets Powerbeats as “sporty” and intended for use while**
10 **working out.** Apple boasts on the Beats homepage: **“BEST HEADPHONES FOR WORKING**
11 **OUT: POWERBEATS3 WIRELESS.”** But those representations are false and misleading because
12 Powerbeats malfunction during exercise because they are not sweat or water resistant.

13 31. Indeed, Apple makes several representations designed to promote the idea that
14 Powerbeats are water and sweat-resistant and can be used while working out. In reference to the
15 Powerbeats 3, Apple advertises: “To fuel multiple workouts, elevate your training with powerful,
16 dynamic sound and up to 12 hours of battery life.” In big bold letters on the Powerbeats 3
17 homepages, Apple claims: **“Sweat & Water Resistant.”** Apple elaborates, “Rain, sweat or shine-
18 these water resistant earphones push you further and handle tough training.”



32. One of the advertisements actually depicts a user spraying water all over herself (and her Powerbeats) during a workout:



1 33. Other advertisements show professional athletes drenched in sweat, using their
2 Powerbeats:



16 34. Apple’s advertisements of the Powerbeats uniformly emphasize their “sportiness.”
17 Apple claims the Powerbeats 2 were “inspired by LeBron James,” were “designed with . . . the
18 athlete in mind,” and are “sweat and water resistant.”
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POWERBEATS² WIRELESS

PERFORMANCE. POWER. FREEDOM.



RISE TO PERFECTION

Records are meant to be broken. Inspired by LeBron James, Powerbeats² Wireless was designed to defy the ordinary while catapulting athletes towards their relentless pursuit of perfection. Lightweight and engineered with the power of dual-driver acoustics, the reimagined wireless earphones deliver the premium sound and performance needed to propel you through rigorous workouts. Backed by the King himself, the next level of performance, power, and freedom has arrived.

MORE FREEDOM. MORE POWER.

From the street to the court, Powerbeats² Wireless gives you the freedom to take your workout anywhere. Wireless Bluetooth gives you the ability to connect up to 30 feet to your Bluetooth enabled device—allowing you to move freely and stay focused on your workout. A rechargeable battery with 6-hour playback gives you the power to endure to the end. If you're on empty, a 15-minute quick charge delivers an extra hour of non-stop playback.

DESIGNED TO ENDURE

Don't let sweat stop you. Powerbeats² Wireless is IPX4 sweat and water resistant from the ear bud to the tangle free cable wrap around, with over-molding on the RemoteTalk™ control wrap around cable for a no-slip grip when changing volume, switching tracks, and making hands free calls.

MUSIC YOU CAN FEEL

Add power to your workout playlist. Dual-driver acoustics power music through each ear bud delivering a great listening experience with a customized fit.

DESIGNED TO PERFORM

We designed it with you, the athlete, in mind. Powerbeats² Wireless is lightweight and compact with a flexible earhook, providing a comfortable and secure fit.

WHAT'S IN THE BOX

- Powerbeats² Wireless earphones with RemoteTalk™ wrap around cable
- Hard shell carrying case
- Universal micro USB cable
- Cable management clip
- Quick Start Guide

DETAILS

Priced at \$199.95, Powerbeats² Wireless comes in Black, Red, and White. Available at beatsbydre.com.



35. And on the Amazon Powerbeats 2 page, Apple again claims the Powerbeats headphones are meant for workouts:

Powerbeats² Wireless was designed to defy the ordinary while catapulting athletes towards unparalleled performance. Lightweight and engineered with the power of dual-driver acoustics, the reimagined wireless earphones deliver

the premium sound and performance needed to propel you through rigorous workouts.

BUILT TO ENDURE

Don't let sweat stop you. Powerbeats² Wireless is IPX4 sweat and water resistant from the earbud to the tangle-free wrap around cable, with over-molding on the RemoteTalkTM for a no-slip grip when changing volume, switching tracks, and making hands-free

36. But a virtually unending stream of consumer complaints puts the lie to Apple's advertising. One consumer succinctly summarized the problem:

These are NOT SWEAT PROOF... Mine stopped working after 6.5 months ... replacement worked for another 4 months ... and got those replaced which lasted 5 months ... warranty expired on replacements after 3 months ... so now I'm stuck with a dud ... expected better from Beats !

37. Indeed, as that consumer rightfully points out, the problem is *not only* that Apple sells a defective product—and that Apple misleadingly and deceptively markets that product as “sweat and water resistant” when it is demonstrably not—it is that Apple attempts to cover up the defect rather than acknowledge or fix it. When consumers complain about the Powerbeats' malfunction, Apple either gives them the run-around, or sends them a refurbished pair of headphones under the warranty—which often contain the exact same defect. Several users (including Mrs. Simmons) have gone through multiple pairs of Powerbeats only to experience the exact same defect every time: after minimal use, the Powerbeats fail to maintain a charge.

38. Contrary to Apple's repeated misrepresentations, neither the Powerbeats 2 nor the Powerbeats 3 were “**BUILT TO ENDURE.**” Instead, the Powerbeats contain a common design and/or manufacturing defect that cause them to fail to retain a charge after minimal use, and particularly after exercise.

39. As a result of this glaring defect, on the Amazon page, the Powerbeats 2 headphone received only a 3.4 stars out of 5 from 4,913 customers. Many of those customers complain about the failure-to-charge defect:

Bought these on June, they started failing just after 2 months... now after 3 months they won't even turn on, when I connect them to charge them it will stay with red light for hours. I also try connecting them

1 and troubleshooting using beats webpage (not very useful) nothing
2 happened and they are up to date according to the site. Also try
3 workaround which is try a reset holding power button and low volume
4 button... nothing happened. Waste of money.

5 * * *

6 I am on my third pair of these in less than 1 year. First, let me say that
7 I use them everyday for running in the threadmill 3 miles for about 1
8 hour each day and I sweat a lot. My first pair would not turn off after 4
9 months... Which I continued to use by charging them everyday until 1
10 week later they died completely. My second pair wouldn't charge after
11 3 months. And my current pair's volume control knob on the left side
12 wire fell off first, then I glued it back together and now 2 weeks later
13 they won't turn on, even when plugged into charger. I am annoyed to
14 say the least because these are not cheap. My guess is that they are not
15 sweat proof. I own a pair of Bose active buds, which have far superior
16 sound quality and noise reduction but they are not wireless. I have
17 ordered some cheap wireless headphones and I hope they last longer
18 than these \$100+ beats

19 * * *

20 I am on my third pair in 7 months. I buy a \$20 pair at the drugstore and
21 they last longer than that. I bought an Apple product for the
22 performance and quality, neither of which this delivers. They aren't
23 exceptionally comfortable, but I only wear them to run. I use them 3-4
24 times a week, when they work. Same thing happens every time, I get
25 2-3 months of use then they just shut off one day and won't ever turn
26 back on no matter how long they are charged. Then I spend 2 weeks
27 working with Apple "care", in quotations because they used to give
28 care but have gone downhill over the last couple of years, because they
make you jump through hoops to fix on your own. Hello, they won't
even power on, why would you ask me to reboot them? Finally, I have
to wait for a box to be sent, then mail them in, then weeks later get a
replacement pair. Then the whole cycle starts over again. I have been a
faithful Apple zealot, but this product is making my loyalty dissipate.
We have Apple TVs connected in every media room, I work on a Mac,
i travel with my iPad, all out cell phones are iPhones, we've drink the
koolaid, but Apple has refused to handle this product's faulty design
with any solid customer service. I used to love Apple, I still love many
product lines, but spend your money elsewhere, this product line is a
bust and customer support is on the downslope.

29 * * *

1 Bought this as a Christmas gift and is already broken. Will not work.
2 There has been no abuse, just normal use. Very disappointed. Will not
3 buy again

4 * * *

5 It's been one year exactly since I purchased these and already they are
6 broken. Sound quality was great until it just stopped working. Very
7 disappointed for the price that I paid, why would I pay that amount
8 again if it's going to break in another year.

9 * * *

10 I loved these. Bought them in December 2015 and they are broken by
11 March. Won't turn on even after trouble shooting etc. disappointed.
12 Update. I bought my husband a pair a few months before mine broke
13 and now his headphones are broken-same thing won't charge or turn
14 on. So very disappointed in the beats products will never spend the
15 money on this disposable junk again

16 * * *

17 Okay, here it goes, I hate my Beats wireless headphones, they are a
18 dog!!!!!! This is the third time my Powerbeats 2 Wireless Headphones
19 have crapped out within a year. Today at the gym was the last straw. I
20 wouldn't take a replacement free pair that were hand delivered to my
21 home. The headphones are good for about 2-4 weeks of everyday use.
22 The customer service was at best spotty. I had to go through a hula
23 hoop to get them replaced the second time. My only regret is that I
24 couldn't rate them a zero on the review. I believe a 1 star is too
25 generous!!!! I just dropped them in the trash. I'm almost relieved that
26 I won't have to suck up to customer service for a 4th time.

27 40. On Apple's own website, too, consumers have slammed the Powerbeats 3
28 repeatedly, giving the headphones an average of 2 stars out of 5, based on 502 reviews. In fact, 328
out of 502 consumers have given the headphones a one-star rating. (In contrast, the Apple brand
AirPods earphones have 403 reviews with only 31 consumers giving the earphones a one star rating.)
Again, a common theme emerges among consumers' complaints: the Powerbeats contain a defect
causing them to fail to retain a charge.

I was willing to give them a chance ... God, I was so wrong! 3 pairs
later I said "enough is enough, gimme my money back!" The minute
you sweat, these headphones DIE. ***Complete lie that they are sweat***

1 *and water resistant. They're advertised as working out headphones,*
2 *utter garbage.* I wish they worked, because the sound was actually
3 really good. But the material is rubbish. Apple you should be ashamed.
Just disgustingly bad. I would give this a zero star rating. Avoid this
product at all costs! Thank me later!

4 * * *

5 Not worth it at all. I am on my 5th replacement. They work for about a
6 week or two than die and will not power on. Forget the 12 hour life, I
7 get 30-45 minutes out of each charge.

8 * * *

9 2 sets died already within the first month. *The sweat proof statement*
10 *is a fat lie.*

11 * * *

12 This product is terrible, it stopped working just after 2 weeks of
13 buying it. It wont turn on and no light when charged, it's not sweat
resistant because if it is it should be still in working order.

14 * * *

15 I'm in total agreement with all the comments. im currently waiting for
16 apple to ship me my 3rd pair. same as everyone else... sweat a little
17 and they just die, dont charge, dont connect to my phone...nothing.
dont believe the hype. if these next ones go out on me also, im done
with beats!

18 * * *

19 My first pair last less than a month before they malfunctioned
20 (wouldn't charge up, couldn't be recognized by laptop). Asked at the
21 retailer whether he'd seen problems with the model. His answer was
vague enough to have me a little worried.
22 2nd pair just died and I have experienced all the various problems
23 mentioned in these posts, most werr recoverable, but as of yesterday
24 they will not power down after charging and so are flat when I want to
use them, also not able to pair with phone or recognised by laptop
(even is connected by cable). Resetting the unit achieves nothing. i so
25 want these to work but clearly they do not and clearly it is a design
26 flaw. Poorly implemented product. Not sure why Apple is not acting.
Class action anyone?

1 41. Similarly, on Beats' own website, the Powerbeats 3 headphones have received only a
2 2.87 out of 5 rating from 38 customers. Again, many of these customers complain vociferously about
3 the same failure-to-charge defect

4 I am a big user of all Apple product, which is why I bought these - but
5 I couldn't be more disappointed in this product. After 10 days of use,
6 the battery completely died and would not hold a charge. Even after
7 trying multiple charge sources/wires. On top of that, the support from
8 Apple to return these was even more off putting. I am embarrassed and
9 disappointed that Apple sells this in their stores - the quality of this
10 item is sub-par at best. I will not be supporting Beats products
11 anymore. First and last time buyer.

12 * * *

13 Great product whilst working. However after 6 months of use, they
14 suddenly stopped charging. I would plug the power in and the power
15 light flash's red for about 10 counts and then turns off. I cant get them
16 to power up. I found apple a little complex and slow to get warranty
17 issues fixed in the past, so hoping that this is easier this time. Check on
18 the web, plenty of people reporting the same issue with the power
19 beats ear plugs.

20 * * *

21 I am currently on my second pair which I might add, have stopped
22 working. My first pair was great until they would constantly shut off.
23 To my surprise the 2nd pair did the same thing. I also had the
24 Powerbeats wireless / and they did the exact same thing. I do not
25 recommend these if you are using them to work out.

26 42. Even editorial reviews of the product have identified the problem. On CNET.com,
27 for example, the review of the Powerbeats 3 headphones mentions the numerous consumer
28 complaints:

 One other point to note: we've heard plenty of anecdotal reports from owners
of the Powerbeats2 Wireless that they weren't the most durable in-ear
headphones you could buy. The Amazon user rating of 3.5 out of 5 stars (from
almost 5,000 people) reflects this, too. Beats says the new model is more
durable, but the company didn't specify what's changed on that front.

43. Numerous other consumers have complained about the defect alleged herein on various web forums, confirming that Plaintiffs' experiences are not just isolated instances of malfunction:

I purchased two pair of these strictly for running outdoors. The sound quality is great but I would not advise running with them if there is the possibility of them getting wet from sweat or rain. After only two months neither pair will hold a charge past a few miles. Did not last like I expected them to.

* * *

if you dont use in a gym setting (sweat) might be good 5th pair in a year trying to buy second pair keep them in rotation when they break

* * *

After 1.5 months of use my Beats stopped charging.

44. As Plaintiffs' experiences demonstrate, the failure-to-charge defect renders the Powerbeats unusable. As such, the Powerbeats fail to perform as advertised and Plaintiffs and Class members were deprived of the clear benefit of the bargain.

THE EXPERIENCES OF THE NAMED PLAINTFFS

A. LaTanya Simmons

45. Mrs. Simmons purchased a set of Powerbeats 2 from an AT&T store in June of 2016. Mrs. Simmons purchased the Powerbeats 2 specifically for her new iPhone 7, which did not have a headphones jack.

46. Prior to her purchase, in or around May or June of 2016, Mrs. Simmons went on the Apple website and saw that the Powerbeats were advertised to be “sweat & water resistant.” Mrs. Simmons purchased her headphones in reliance on this misrepresentation.

47. Mrs. Simmons's initial pair of Powerbeats lasted for four months, at which point she tried to charge them but they would not turn on. The headphones malfunctioned shortly after Mrs. Simmons had used them outside in the rain (based on her belief that they were water resistant). Mrs. Simmon's returned the headphones to Apple under the warranty and Apple subsequently sent her a replacement set of Powerbeats 2.

1 48. The replacement Powerbeats 2 only worked for three months until they displayed the
2 same defect as the initial pair she had purchased.

3 49. Had Mrs. Simmons known of the Powerbeats' design defect, she would not have
4 purchased them.

5 50. Additionally, had Mrs. Simmons known Powerbeats were not "sweat & water
6 resistant," she would not have purchased them or would have paid significantly less for them.

7 **B. Kevin Tobin**

8 51. Mr. Tobin purchased a pair of Powerbeats 2 in late 2015 from Best Buy, and a
9 second pair in early 2016 from Fry's Electronics.

10 52. Prior to his initial purchase in late 2015, Mr. Tobin saw commercials for the
11 Powerbeats headphones in which professional athletes were using the headphones while sweating
12 during exercise. From this commercial, Mr. Tobin understood the headphones were meant to be used
13 during exercise and therefore could withstand moisture. In addition, at the time of purchase at Best
14 Buy, Mr. Tobin saw an advertisement at the store which said the Powerbeats are "sweat & water
15 resistant." In reliance on both of these advertisements, Mr. Tobin purchased the headphones
16 believing them to be sweat and water resistant.

17 53. Within three months of their respective purchase, after Mr. Tobin had used the
18 headphones while sweating, each pair of headphones became unusable. Both headphones stopped
19 taking a charge and would not turn on.

20 54. Mr. Tobin returned to the Best Buy and Fry's Electronics where he purchased each
21 of the headphones, seeking a replacement. In each retail store explained he would need to return to
22 Apple to fix or replace the headphones. Mr. Tobin then went to the Apple Store twice to ask for
23 replacements of each set of Powerbeats 2 he purchased. The Apple store said, each time, that there
24 was nothing they could do. Mr. Tobin left Apple with two pairs of expensive, but useless,
25 headphones.

26 55. Had Mr. Tobin known of the Powerbeats' design defect, he would not have
27 purchased them.

56. Additionally, had Mr. Tobin known Powerbeats were not “sweat & water resistant,” he would not have purchased them or would have paid significantly less for them.

COUNT I
(Express Warranty)

57. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

58. Apple's one-year warranty states:

Your Apple-branded or Beats-branded hardware product (“Product”) is warranted against defects in materials and workmanship for a period of ONE (1) YEAR from the date of original retail purchase (“Warranty Period”) when used in accordance with Apple’s user manuals (refer to <https://www.apple.com/support/country>). Under this warranty, you will be able to direct your claims to Apple even in situations where you purchased the Apple Product from a third party. If a defect arises during the Warranty Period, Apple, at its option will (1) repair the Product at no charge using new parts or parts that are equivalent to new in performance and reliability, (2) exchange the Product with a product with equivalent functionality formed from new and/or previously used parts that are equivalent to new in performance and reliability or with your consent, a product that is at least functionally equivalent to the product it replaces, or (3) refund the original purchase price.

59. Apple violated this express warranty by repeatedly failing to repair or replace Plaintiffs' defective Powerbeats, and instead providing Plaintiffs and the Class with only a temporary fix: new or refurbished Powerbeats which contained the same defect.

60. Additionally, by advertising that Powerbeats are “Sweat & Water Resistant,” Apple expressly warranted to Plaintiffs and Class members that the Powerbeats would continue to work, even after exposure to moisture.

61. Such statements became the basis of the bargain for Plaintiffs and other Class members because such statements are among the facts a reasonable consumer would consider material in the purchase of high-end sport headphones.

62. Apple breached this express warranty by delivering Powerbeats that do not deliver as promised and fail to withstand minimal amounts of moisture.

63. As a result of the foregoing breaches of express warranty, Plaintiffs and the Class have been damaged in that they purchased Powerbeats that could not perform as warranted; did not receive the benefit of the bargain of their Powerbeats purchase; and did not receive an adequate repair or replacement headphones under Apple's one-year warranty.

64. Plaintiffs and the class seek all damages permitted by law in an amount to be determined at trial.

COUNT II
(Breach of the Song-Beverly Act – Implied Warranty of Merchantability)

65. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

66. The Powerbeats are a "consumer good" within the meaning of Cal. Civ. Code § 1791(a).

67. Plaintiffs and members of the Class are "buyers" within the meaning of Cal. Civ. Code § 1791(b).

68. Apple is a "manufacturer" of the Powerbeats within the meaning Cal. Civ. Code § 1791(j).

69. Apple impliedly warranted to Plaintiffs and Class members that its Powerbeats were "merchantable" within the meaning of Cal. Civ. Code §§ 1791.1(a) and 1792; however, the Powerbeats do not have the quality that a buyer would reasonably expect, and were therefore not merchantable.

70. Cal. Civ. Code § 1791.1(a) states:

"Implied warranty of merchantability" or "implied warranty that goods are merchantable" means that the consumer goods meet each of the following:

- (1) Pass without objection in the trade under the contract description;
- (2) Are fit for the ordinary purposes for which such goods are used;
- (3) Are adequately contained, packaged, and labeled; and

(4) Conform to the promises or affirmations of fact made on the container or label.

71. The Powerbeats would not pass without objection in the trade because they do not perform as warranted because they fail to maintain a charge after minimal use.

72. Similarly, the Powerbeats' failure to maintain a charge after minimal use renders them unfit for ordinary purposes for which such goods are used.

73. The Powerbeats are not adequately contained, packaged, and labeled because the labeling represents that they are sweat & water resistant, which they are not.

74. For the same reason, the Powerbeats do not conform to the promises or affirmations of fact made on the container or label.

75. Apple thus breached the implied warranty of merchantability.

76. Notice of breach is not required because Plaintiffs and the other Class members did not purchase their Powerbeats directly from Apple.

77. As a direct and proximate result of Apple's breach of the implied warranty of merchantability, Plaintiffs and the other Class members did not receive the benefit of their bargain and received goods with a defect that substantially impairs their value to Plaintiffs and Class members. Plaintiffs and Class members were damaged as a result of the defect in the Powerbeats, the product's malfunctioning, and the nonuse of their Powerbeats.

78. Pursuant to Cal. Civ. Code §§ 1791.1(d) & 1794, Plaintiffs and Class members are entitled to damages and other legal and equitable relief including, at their election, the purchase price of their Powerbeats or the overpayment or diminution in value of their Powerbeats.

79. Pursuant to Cal. Civ. Code § 1794, Plaintiffs and the other Class members are entitled to costs and attorneys' fees.

COUNT III
(Violation Of the CLRA)

80. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

81. Apple is a "person" as defined by the CLRA. Cal. Civ. Code § 1761(c).

1 82. Plaintiffs and Class members are “consumers” within the meaning of the CLRA, as
2 defined by Cal. Civ. Code § 1761(d), who purchased one or more pairs of Powerbeats.

3 83. The CLRA prohibits “unfair or deceptive acts or practices undertaken by any person
4 in a transaction intended to result or which results in the sale or lease of goods or services to any
5 consumer[.]” Cal. Civ. Code § 1770(a).

6 84. Apple has engaged in unfair or deceptive trade practices that violated Cal. Civ. Code
7 § 1770(a), as described above and below, by, among other things, failing to disclose the defective
8 nature of the Powerbeats, representing that the Powerbeats had characteristics and benefits that they
9 do not have (e.g., durability, endurance, battery life, that they are sweat and water resistant, the
10 ability to use during workouts), representing that the Powerbeats were of a particular standard,
11 quality, or grade when they were of another, and advertising Powerbeats with the intent not to sell
12 them as advertised. *See* Cal. Civ. Code §§ 1770(a)(5), (a)(7), (a)(9).

13 85. Apple knew, should have known, or was reckless in not knowing that its products
14 did not have the qualities, characteristics, and functions it represented, warranted, and advertised
15 them to have.

16 86. Plaintiffs and Class members are reasonable consumers who expected that their
17 Powerbeats would work as represented.

18 87. As a result of Apple’s conduct and unfair or deceptive acts or practices, Plaintiffs
19 and Class members suffered actual damages in that the Powerbeats do not function as represented
20 and are not worth the amount paid and Apple has deprived Plaintiffs and Class members the benefit
21 of the bargain.

22 88. Plaintiffs and the Class seek an order enjoining Defendant’s unfair or deceptive acts
23 or practices, equitable relief, an award of attorneys’ fees and costs under Cal. Civ. Code § 1780(e).

24 89. Pursuant to Section 1782(d) of the CLRA, Plaintiffs reserve the right to amend this
25 Complaint to include a request for damages under the CLRA pursuant to Section 1782(a) of the
26 CLRA within thirty (30) days after the commencement of this cause of action for injunctive relief.
27 *See* Ex. A.

COUNT IV
(Violation Of the UCL)

90. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

91. California Business & Professions Code § 17200 prohibits acts of “unfair competition,” including any “unlawful, unfair or fraudulent business act or practice” and “unfair, deceptive, untrue or misleading advertising.” Apple’s conduct related to the sale of its defective Powerbeats violated each of this statute’s three prongs.

92. Apple committed an unlawful business act or practice in violation of Cal. Bus. & Prof. Code § 17200, *et seq.*, by their violations of the Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*, as set forth above, by the acts and practices set forth in this Complaint.

93. Apple committed unfair business acts and practices in violation of Cal. Bus. & Prof. Code § 17200, *et seq.*, when it sold Powerbeats that contained a defect causing them to fail to maintain a charge after minimal use; when it represented that the Powerbeats withstand sweat and water, when in fact they cannot; and, when in response to requests for replacement Powerbeats under Apple’s warranty, Apple sent consumers headphones that contained the same defect.

94. Apple committed fraudulent business acts and practices in violation of Cal. Bus. & Prof. Code § 17200, *et seq.*, when it affirmatively and knowingly misrepresented that the Powerbeats were durable and would withstand sweat and water, when in fact they cannot; and, when in response to requests for replacement Powerbeats under Apple’s warranty, Apple sent consumers headphones that contained the same defect. Apple’s representations and concealment of the defect are likely to mislead the public with regard to the true defective nature of the Powerbeats.

95. As a direct and proximate result of Apple’s unfair and deceptive practices, Plaintiffs and Class members suffered and will continue to suffer actual damages.

96. As a result of its unfair and deceptive conduct, Apple has been unjustly enriched and should be required to disgorge its unjust profits and make restitution to Plaintiffs and Class members pursuant to Cal. Bus. & Prof. Code §§ 17203 and 17204.

97. Plaintiffs and the Class further seek an order enjoining Apple's unfair or deceptive acts or practices, and an award of attorneys' fees and costs under Cal. Code of Civ. Proc. § 1021.5.

COUNT V
(Unjust Enrichment)

98. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

99. Plaintiffs and members of the class conferred a benefit upon Apple. Namely, Plaintiffs and members of the class paid money to Apple for the Powerbeats.

100. Apple, however, retained that benefit under circumstances that make it unjust and inequitable for Apple to retain it without paying Plaintiffs and members of the class the value thereof. Specifically, Apple retained that benefit despite the fact that the Powerbeats were defective.

101. When purchasing their Powerbeats, Plaintiffs and Class members reasonably believed that the Powerbeats would perform as advertised and as warranted and would continue to work and maintain a charge, even after exercise.

102. Plaintiffs and Class members received less than what they paid for in that the Powerbeats fail to maintain a charge after minimal use and therefore do not deliver as promised.

103. Plaintiffs and Class members conferred a benefit on Apple by purchasing the Powerbeats. Had Plaintiffs and Class members known about the defect, they would not have purchased Powerbeats or would have paid significantly less for them.

104. Apple should therefore be required to disgorge all profits, benefits, and other such compensation it obtained through its wrongful conduct.

COUNT VI (Common Law Fraud)

105. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully written herein.

106. Apple engaged in fraudulent and deceptive conduct. As described above, Apple's conduct defrauded Plaintiffs and Class members, by intentionally leading them to believe, through affirmative misrepresentations, omissions, suppressions, and concealments of material fact, that the

1 Powerbeats possessed important characteristics that they in fact do not possess—namely that they
2 are sweat and water resistant—and inducing their purchases.

3 107. Apple’s intentional and material misrepresentations included, among other things, its
4 advertising, marketing materials and messages, and other standardized statements claiming the
5 Powerbeats are designed for use during workouts, and built to withstand sweat and water.

6 108. The foregoing misrepresentations were uniform across all Class members.

7 109. The same extensive and widespread advertising campaign was promoted nationwide,
8 and all of the promotional materials contained the same material representations regarding the
9 Powerbeats’ ability to be used during exercise and ability to withstand sweat and water.

10 110. These representations were false, as detailed herein. Apple knew the representations
11 were false when it made them and thereby intended to defraud purchasers.

12 111. Apple’s actions constitute “actual fraud” within the meaning of Cal. Civ. Code §
13 1572 because Apple did the following with the intent to deceive Plaintiffs and Class members and to
14 induce them to enter into their contracts:

- 15 a. Suggested that the Powerbeats can withstand sweat and water and heavy exercise, even
16 though it knew this to be not true;
17 b. Positively asserted that the Powerbeats are sweat & water resistant in a manner not
18 warranted by the information available to Apple;
19 c. Suppressed the true nature of the defect from Plaintiffs and Class members; and
20 d. Promised it would deliver Powerbeats that could withstand sweat, water, and heavy
21 workouts, with no intention of so doing.

22 112. Apple’s actions, listed above, also constituted “deceit” as defined by Cal. Civ. Code
23 § 1710 because Apple willfully deceived Plaintiffs and Class members with intent to induce them to
24 alter their positions to their detriment by purchasing defective Powerbeats.

25 113. Apple’s fraud and concealment was also uniform across all Class members; Apple
26 concealed from everyone the true nature of the failure-to-charge defect.

1 114. Apple's misrepresentations and omissions were material in that they would affect a
2 reasonable consumer's decision to purchase Powerbeats. A reasonable consumer would not purchase
3 high-end headphones that stop being able to retain a charge after only minimal use.

4 115. Apple's intentionally deceptive conduct induced Plaintiffs and Class members to
5 purchase Powerbeats and resulted in harm and damage to them.

6 116. Plaintiffs believed and relied upon Apple's misrepresentations and concealment of
7 the true facts. Class members are presumed to have believed and relied upon Apple's
8 misrepresentations and concealment of the true facts because those facts are material to a reasonable
9 consumer's decision to purchase Powerbeats.

10 117. As a result of Apple's inducements, Plaintiffs and Class members sustained actual
11 damages including but not limited to receiving a product that fails to perform as promised and not
12 receiving the benefit of the bargain of their Powerbeats' purchases. If Plaintiffs and Class members
13 had known about the defect, they would not have purchased the Powerbeats or would have paid
14 significantly less for them. Apple is therefore liable to Plaintiffs and Class members in an amount to
15 be proven at trial.

16 118. Apple's conduct was systematic, repetitious, knowing, intentional, and malicious,
17 and demonstrated a lack of care and reckless disregard for Plaintiffs' and Class members' rights and
18 interests. Apple's conduct thus warrants an assessment of punitive damages under Cal. Civ. Code §
19 3294 and other applicable states' laws, consistent with the actual harm it has caused, the
20 reprehensibility of its conduct, and the need to punish and deter such conduct.

21 **COUNT VII**
22 **(Negligence)**

23 119. Plaintiffs re-allege and incorporate each and every allegation set forth above as if
24 fully written herein.

25 120. Apple owed a duty to Plaintiffs and the Class to design, manufacture, market and sell
26 its Powerbeats with reasonable care and in a workmanlike fashion.

27 121. Apple breached that duty by designing and/or manufacturing Powerbeats that are
28 defective.

122. Plaintiffs and members of the Class suffered damages as a result of Apple's breach.

123. Apple's breach proximately caused damages to Plaintiffs and members of the Class.

REQUESTS FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, respectfully request that this Court:

A. Certify the Class pursuant to California Code of Civil Procedure Section 382;

B. Award damages, including compensatory, exemplary, and statutory damages, to Plaintiffs and the class in an amount to be determined at trial;

C. Grant restitution to Plaintiffs and the class and require Apple to disgorge its ill-gotten gains;

D. Permanently enjoin Apple from engaging in the wrongful and unlawful conduct alleged herein;

E. Award punitive damages, to the extent permitted by law, in an amount to be determined at trial;

F. Award Plaintiffs and the class their expenses and costs of suit, including reasonable attorneys' fees to the extent provided by law;

G. Award Plaintiffs and the class pre-judgment and post-judgment interest at the highest legal rate to the extent provided by law; and

H. Award all such further relief as the Court deems appropriate.

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Dated: June 26, 2017

Massan A. Zavarrei (CA 10/10/2019)
Sophia J. Goren (CA 10/10/2019)

Greg F. Coleman (*pro hac vice* forthcoming)
GREG COLEMAN LAW
First Tennessee Plaza
800 S. Gay Street, Suite 1100
Knoxville, TN 37929
(865) 247-0080
greg@gregcolemanlaw.com

28

EXHIBIT A

June 26, 2017

Via Certified Mail, Return Receipt Requested

Apple Inc.
1 Infinite Loop
Cupertino, California 95014

Apple Inc.
c/o C T Corporation System
818 W 7th ST Ste 930
Los Angeles CA 90017

Re: *Simmons and Tobin v. Apple Inc.*

To Whom It May Concern:

Our law firm represents Plaintiffs LaTanya Simmons and Kevin Tobin in the above-captioned case, filed on June 26, 2017 in the Superior Court of California County of Santa Clara. Under Cal. Civ. Code §1782, this letter is written in compliance with California Code of Civil Procedure §1021.5 and the Consumer Legal Remedies Act, California Civil Code §1750 *et seq.*, (“CLRA”). Please refer to the enclosed complaint for a full description of the allegations concerning Apple’s violations of the CLRA.

In short, this class action pertains to Apple Inc.’s sale of defective Powerbeats 2 and Powerbeats 3 headphones (“Powerbeats”). As Plaintiffs’ experiences demonstrate, Powerbeats routinely fail to hold a charge—or stop turning on at all—within months, or even weeks, of purchase. Apple advertises Powerbeats as water and sweat resistant, yet the headphones routinely malfunction even after being exposed to small amounts of moisture. When consumers return the defective Powerbeats to Apple pursuant to the one-year manufacturer’s warranty, Apple issues replacement headphones which demonstrate the same charging defect as the original headphones. Powerbeats continue to be sold in major retailers despite Apple’s awareness of the frequency at which they malfunction.

The conduct described herein violates Cal. Civ. Code §1770, subsection(a)(5) (“[r]epresenting that goods...have...characteristics...[or] uses...that they do not have”), subsection (a)(7) (“[r]epresenting that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another”), and subsection (a)(9) (“[a]dvertising goods or services with intent not to sell them as advertised”).

Accordingly, Plaintiffs request that Apple correct its violations on a class-wide basis by (1) discontinuing the practices outlined above; (2) extending the warranty for the defective



Powerbeats to no less than five years; (3) refunding Plaintiffs and other similarly situated consumers the full purchase price of the Powerbeats when they return a defective or malfunctioning set of Powerbeats to Apple; (4) providing a three-month, nationwide advertising campaign, subject to plaintiffs' final review and approval, that discloses to consumers that the Powerbeats are defective and consumers who have defective Powerbeats are entitled to a refund; and (5) providing a \$50 Apple Store gift card to each and every consumer who received more than two replacement Powerbeats to compensate consumers for their lost time and lost headphone usage.

If this is not done within 30 days of receipt of this letter, Plaintiffs will seek to amend their class-action lawsuit to seek restitution, actual damages, punitive damages, attorneys' fees, and costs under the CLRA.

Thank you for your cooperation and we look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Hassan A. Zavareei'.

Hassan A. Zavareei

Enclosure

EXHIBIT B

THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

LATANYA SIMMMONS ET AL. on
behalf of themselves and all others
similarly situated,

Plaintiffs,

vs.

APPLE, INC.

Defendant.

**CONSUMERS LEGAL REMEDIES
ACT VENUE DECLARATION**

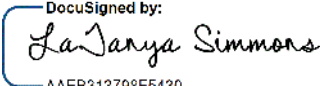
I, LaTanya Simmons, declare as follows:

1. I am a named plaintiff in this litigation.
2. I have personal knowledge of the matters set forth below except to those matters stated herein which are based on information and belief, which matters I believe to be true.
3. If called as a witness I could and would competently testify to the matters included herein.
4. I purchased a pair of Powerbeats2 headphones as described in the complaint.
5. I am informed and believe that venue is proper in this Court under California Civil Code § 1780(d) based on the fact that Apple Inc. is headquartered in this judicial district.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed on 6/25/2017, at Sacramento, CA.

DATE

LOCATION

By:  AAEB313798F5430...

LaTanya Simmons

EXHIBIT C

THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

LATANYA SIMMMONS ET AL. on
behalf of themselves and all others
similarly situated,

Plaintiffs,

vs.

APPLE, INC.

Defendant.

**CONSUMERS LEGAL REMEDIES
ACT VENUE DECLARATION**

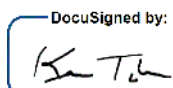
I, Kevin Tobin, declare as follows:

1. I am a named plaintiff in this litigation.
2. I have personal knowledge of the matters set forth below except to those matters stated herein which are based on information and belief, which matters I believe to be true.
3. If called as a witness I could and would competently testify to the matters included herein.
4. I purchased a pair of Powerbeats2 headphones as described in the complaint.
5. I am informed and believe that venue is proper in this Court under California Civil Code § 1780(d) based on the fact that Apple Inc. is headquartered in this judicial district.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed on 6/25/2017, at Yuba City CA.

DATE

LOCATION

By:  D27867E8C0A5449...

Kevin Tobin