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11 SUPERIOR COURT OF CALIFORNIA
12 COUNTY OF SACRAMENTO

DEPARTMENT
ASSIGNMENTS

Case Management 35
Law and Motion 54
Minors Compromise 40

13 CHAD HERRON, individually, on behalf of)
14 himself and all others similarly situated,)

15 Plaintiffs,)

16 vs.)

17 BEST BUY CO. INC., a Minnesota corporation;)
18 TOSHIBA AMERICA INFORMATION)
19 SYSTEMS, INC., a California corporation; and)
20 DOES 1-100, inclusive)

21 Defendants.)

CASE NO.

CLASS ACTION COMPLAINT FOR:

1. VIOLATIONS OF CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT; AND
2. VIOLATIONS OF CALIFORNIA'S UNFAIR COMPETITION LAW.

DEMAND FOR A JURY TRIAL

STONEBARGER LAW
A Professional Corporation

1 Plaintiff Chad Herron ("Plaintiff"), on behalf of himself and all others similarly situated,
2 and demanding a jury trial, complains and alleges of Defendants Best Buy Co. Inc. ("Best Buy"),
3 Toshiba America Information Systems, Inc. ("Toshiba"), and DOES 1 through 100, inclusive
4 (collectively "Defendants") as follows:

5 **I.**

6 **INTRODUCTION**

7 1. This is a consumer class action against Defendants on behalf of Plaintiff and all
8 similarly situated individuals who have purchased a Toshiba brand laptop computer or notebook
9 from Best Buy (either in a retail store or on its website), and who were exposed to the
10 representation that the Toshiba brand laptop or notebook would have a battery life of "up to" a
11 specified number of hours (the "Laptops").

12 2. Specifically, the present case arises from Defendants' failure to disclose to
13 Plaintiff and the Class that the represented "up to" battery life is a number without any realistic
14 correlation to the battery life that a consumer can reasonably expect to experience; but rather,
15 reflects the potential battery life when the Laptop is tested with: (i) its screen set to 60 nits; (ii)
16 its Wi-Fi, Bluetooth, and other wireless functions disabled; and (iii) its main processor chip set to
17 5% to 7.5% of its normal capacity.

18 3. Accordingly, while Defendants represent that that battery life in the Laptops are
19 "up to" a specified maximum number of hours, Defendants entirely omit and fail to inform
20 consumers how this battery life duration was determined, that the represented battery life was
21 based upon testing which bore no relation to how a consumer would actually use the Laptop, and
22 under standard or default settings and configurations, the actual battery life was substantially less
23 than that which was represented by Defendants.

24 4. As a result of Defendants' conduct as alleged herein, Defendants have reaped
25 significant profits, and Plaintiff and the Class have suffered actual damages in that they were
26 induced to purchase the Laptops and pay more for the Laptops than they would have had
27 Defendants' not falsely represented that the Laptops had a battery life that was substantially more
28 than the Class member could reasonably expect to experience.

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II.

JURISDICTION AND VENUE

5. Best Buy is a Minnesota corporation with its principal place of business in Minnesota. Best Buy has conducted business throughout California, including the County of Sacramento, which has caused both obligations and liabilities of Best Buy to arise in the County of Sacramento.

6. Toshiba is a California corporation with its principal place of business in Irvine, California. Toshiba has conducted business throughout California, including the County of Sacramento, which has caused both obligations and liabilities of Toshiba to arise in the County of Sacramento.

7. The amount in controversy exceeds the jurisdictional minimum of this Court.

III.

PARTIES

A. Plaintiff Chad Herron

8. Plaintiff Chad Herron is an individual over the age of eighteen (18) years old and who is and was, at all times mentioned herein, a resident of the state of Sacramento County in the State of California.

9. In or about January 2010, Plaintiff went to Best Buy's retail store in Folsom, California to select and purchase a new laptop computer for his personal, household or family use. While determining which brand and model of laptop to purchase, Plaintiff looked at the different laptops on display in Best Buy's retail store. Various brands of laptops were being sold, including but not limited to Dell, Hewlett-Packard, Toshiba, Sony, and Samsung.

10. Each laptop computer contained a Best Buy product tag which represented, among other features, the battery life for each laptop on display as being "Up To" a specific number of hours (or fraction thereof).

11. Plaintiff looked at each product tag and decided to purchase the Toshiba Satellite L505 based substantially on his reliance on the representation that the battery life for that model was "up to 3.32 hours."

1 12. Plaintiff reasonably believed that the represented battery life of "up to 3.32 hours"
2 was reflective of how long Plaintiff could expect his Laptop to operate when being powered
3 solely by its battery.

4 13. Plaintiff's belief was based largely on the fact that there was no disclaimer,
5 qualifier, or any other language on the product tag indicating that the represented battery life was
6 determined while the Laptop was tested with: (i) its screen set to 60 nits; (ii) its Wi-Fi,
7 Bluetooth, and other wireless functions disabled; and (iii) its main processor chip set to 5% to
8 7.5% of its normal capacity.

9 14. In the years since Plaintiff purchased his Laptop, he has never once achieved even
10 close to the represented 3.32 hours of battery life.

11 15. Plaintiff paid more for his Laptop than he would have paid had the material fact
12 not been concealed or omitted that the battery life for his Laptop was calculated with: (i) its
13 screen set to 60 nits; (ii) its Wi-Fi, Bluetooth, and other wireless functions disabled; and (iii) its
14 main processor chip set to 5% to 7.5% of its normal capacity.

15 **B. Defendant Best Buy Co. Inc.**

16 16. Plaintiff is informed and believes, and on that basis alleges, that Defendant Best
17 Buy is a corporation organized under the laws of the State of Minnesota with its principal place
18 of business in Minnesota. At all times mentioned herein, Best Buy operates retail stores under
19 the name Best Buy throughout the state of California, including Sacramento County.

20 **C. Defendant Toshiba America Information Systems, Inc.**

21 17. Plaintiff is informed and believes, and on that basis alleges, that Defendant
22 Toshiba America Information Systems, Inc. is a corporation organized under the laws of the
23 State of California with its principal place of business in Irvine, California. At all times
24 mentioned herein, Toshiba sells various consumer products both through its website and to third
25 party retailers such as Best Buy throughout the State of California, including Sacramento
26 County.

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1 **D. Doe Defendants**

2 18. Plaintiff is unaware of the true names, capacities, or basis for liability of
3 Defendants Does 1 through 100, inclusive, and therefore sues said Defendants by their fictitious
4 names. Plaintiff will amend his complaint to allege their true names, capacities, or basis for
5 liability when the same have been ascertained. Plaintiffs are informed and believe, and on that
6 basis allege, that Defendants Does 1 through 100, inclusive, and each of them, are in the some
7 manner liable to Plaintiff and/or are proper and necessary parties to this action in light of the
8 relief requested.

9 **E. Aiding and Abetting**

10 19. Plaintiff is informed and believes, and on that basis alleges, that all Defendants,
11 including fictitious Doe Defendants, were at all relevant times acting as actual agents,
12 conspirators, ostensible agents, partner and/or joint venturers and employees of all other
13 Defendants, and on that all acts alleged herein occurred within the course and scope of said
14 agency, employment, partnership, and joint venture, conspiracy or enterprise, and with the
15 express and/or implied permissions, knowledge, consent, authorization and ratification of their
16 Co-Defendants; however, each of these allegations are deemed "alternative" theories whenever
17 doing so would result in a contradiction with the other allegations.

18 **V.**

19 **FACTUAL ALLEGATIONS**

20 20. Each year, consumers purchase hundreds of thousands of laptop computers and
21 notebooks in the United States, including the State of California.

22 21. Portability is one of the key features for consumers purchasing a laptop or
23 notebook computer, as consumers often take their laptops and notebooks to locations without
24 electrical outlets, such as coffee shops, college classes, airplanes, commuter trains, and public
25 parks.

26 22. When a consumer uses a laptop computer or notebook without an electrical outlet
27 power source, the computer uses the electrical power from the laptop's built-in computer battery.
28 Accordingly, the battery life of laptops and notebooks is one of the primary factors consumers

1 consider when determining which laptop to purchase.

2 23. As aptly stated by Ketan Pandya, head of AMD-based products at Dell,
3 "Customers expect the advertised battery life to reflect the way they really use the product." ¹

4 **A. MobileMark 2007**

5 24. MobileMark 2007 ("MM07") is a benchmark test created in 2008 by Business
6 Application Performance Corp. ("BAPCo") to measure battery life in laptop computers and
7 notebooks.

8 25. BAPCo is a non-profit consortium of leading computer manufacturers,
9 semiconductor manufacturers and software publishers. Its members include AMD, Apple,
10 ARCintuition, Atheros Communications, CNET, Compaq, Dell, Hewlett-Packard, Intel, Lenovo,
11 Microsoft, NVIDIA, Toshiba, VIA Technologies, VNU Business Publications Limited (UK),
12 ZDNet, and Ziff Davis Media.

13 26. When measuring a laptop computer or notebook's battery life using MM07,
14 standard protocol requires the computer screen to be set to "60 nits." A "nit" is a unit of
15 luminance. A standard Liquid Crystal Display ("LCD") computer monitor has a brightness of
16 approximately 240 to 300 nits. Setting the computer monitor brightness to 60 nits is akin to
17 setting the brightness to 20% to 30% of its normal level. In some lighting conditions, setting the
18 screen to 60 nits makes the screen barely readable.

19 27. Furthermore, MM07 does not specify whether Wi-Fi, Bluetooth, and other
20 wireless devices must be turned on during testing. As a result, MM07 testing is performed when
21 the computer's Wi-Fi, Bluetooth, and other wireless functions are disabled so that the computer
22 is not drawing power from the battery to perform these functions.

23 28. MM07 testing is also performed when the main processor chip is set to 5% to
24 7.5% of its normal capacity. When a computer's processor is at 5% to 7.5% of its capacity the
25 computer is essentially running in an idle state.

26 29. With each of the foregoing "adjustments" in place, MM07 then tests the
27 computer's battery life under three separate performance measures:

28 _____
¹ <http://www.thedailybeast.com/newsweek/2009/06/18/hurry-up-and-type.html>.

1 a. "DVD Test" - a DVD movie is played until the battery dies (significant battery
2 usage);

3 b. "Productivity Test" - the software directs the computer to perform common office
4 activities, including document management, data processing, file management and rich content
5 creation (the middle-of-the-road scenario); and

6 c. "Reading Test" - an automated script pretends to read a PDF document pausing
7 two minutes on each page (minimal battery usage).

8 30. MM07 does not provide an "overall" rating; rather, the computer is given three
9 scores, one for each category (DVD, Productivity, and Reader). The laptop manufacturer or
10 retailer may choose which score to report to consumers.

11 **B. Criticism of the Use of MobileMark 2007**

12 31. In March 2009, AMD, a leading computer chip manufacturer which supplies
13 processing chips, conveyed that MM07 was flawed in that the benchmark bore no resemblance
14 to the real-life and everyday uses of laptop computers and notebooks and contained several
15 loopholes which allowed laptop computer manufacturers to game the system and make
16 exaggerated battery life claims.²

17 32. Patrick Moorhead, Senior Vice President and Chief Marketing Officer for AMD,
18 which was a member of BAPCo until 2011, stated in a Newsweek Magazine article on March 12,
19 2009, "The issue is we are not being entirely honest with users about what PC battery life they
20 can expect to actually experience. There's only three endings to this story. Either the industry
21 regulates itself, or the FTC steps in and regulates us, or we get hit with a class action."³

22 33. AMD has made several different proposals to BAPCo to eliminate the current
23 fraudulent and misleading reporting of battery life. One proposal was to use the 3DMark06, a
24 still-flawed but more realistic battery life standard. Neither the 3DMark06 proposal, or any other
25 alternative proposal, has ever been approved or adopted by BAPCo due to objections by its
26 members. Citing confidentiality, BAPCo has refused to publish the AMD proposals and the
27

28 ² <http://www.thedailybeast.com/newsweek/2009/06/18/hurry-up-and-type.html>.

³ *Id.*

1 minutes of its meetings.

2 34. BAPCo has also refused to publish the results of all three tests (DVD,
3 Productivity, and Reading) for the laptops that have been tested under the MM07 benchmark.

4 **C. Toshiba's Fraudulent and Deceptive Practices**

5 35. Toshiba is an international manufacturer of laptop computers and notebooks.
6 Toshiba tests its laptops and notebook's battery life using MM07.

7 36. When reporting the battery life of each laptop to third party retailers, such as Best
8 Buy, Toshiba specifically conveys to the retailer the results of each Laptop's battery life based
9 upon the Laptop's MM07 results. Toshiba conveys the results of the Laptop's MM07 test with
10 the intention and desire that these third party retailers will, in turn, represent to consumers these
11 results.

12 37. Toshiba's use of the results from MM07 is misleading and deceptive as the results
13 fail to disclose that the potential battery life was derived when: (i) the Laptops' screens are set to
14 60 nits; (ii) the Laptops' Wi-Fi, Bluetooth, and other wireless functions are disabled; and (iii) the
15 Laptops' main processor chip is set to 5% to 7.5% of its normal capacity, and thus, do not
16 accurately or fairly represent the battery life that a consumer can expect to actually experience.

17 38. Toshiba knows and understands the misleading nature of the results it provides to
18 third party retailers and otherwise publicizes to consumers but continues to make false and
19 deceptive claims of battery life based upon this standard. The clear intent of Toshiba in choosing
20 to represent its Laptops' battery lives in this manner is to mislead consumers into believing that
21 the Laptops have a far longer battery life than the consumer can expect to actually experience.

22 39. Toshiba, at no time and by no means, disclosed to Plaintiff and the Class that the
23 representations of its Laptops' battery lives were based on a false and deceptive standard and that
24 the Laptops' actual battery lives were substantially less than that represented by Toshiba. This
25 omission was material because a reasonable consumer would deem the representation of a
26 laptop's battery life important in determining whether to purchase a laptop, especially
27 considering that battery life is a primary factor consumers consider in making their purchase.

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1 40. As a result of Toshiba's failure to convey these material facts, Toshiba
2 fraudulently, unfairly, and unlawfully caused Plaintiff and the Class to believe that they would
3 experience a much greater battery life in the Laptops they purchased than they could realistically
4 expect.

5 41. Toshiba was under a duty to Plaintiff and the Class to disclose the aforementioned
6 facts because: (a) Toshiba has exclusive knowledge of those material facts not known or
7 reasonably accessible to Plaintiff and the Class; (b) Toshiba actively concealed material facts
8 from Plaintiff and the Class; and (c) Toshiba made partial representations to Plaintiff and the
9 Class that were misleading because the material facts set forth in paragraph 37 were not
10 disclosed.

11 42. Toshiba engaged in a successful and illegal fraud on California consumers in
12 which it deliberately, intentionally, and fraudulently caused California consumers to believe that
13 that they would experience a much greater battery life in the Laptops than they could realistically
14 expect by failing to disclose that the potential battery life was derived while: (i) the Laptops'
15 screens are set to 60 nits; (ii) the Laptops' Wi-Fi, Bluetooth, and other wireless functions are
16 disabled; and (iii) the Laptops' main processor chip is set to 5% to 7.5% of its normal capacity.

17 **D. Best Buy's Fraudulent and Deceptive Practice**

18 43. In Best Buy's retail stores, each laptop computer and notebook has a Best Buy
19 "product tag" which contains the price and a brief description of the features of the laptop or
20 notebook. One prominent feature is "Battery."

21 44. After the word "Battery," the product tag lists the laptop's battery life as being "up
22 to" a specified number of hours. Best Buy represented Plaintiff's Laptop battery life to be "up to
23 3.32 hours."

24 45. There is not any explanation as to how the "up to" hours was calculated or
25 determined on the product tag or elsewhere.

26 46. Likewise on Best Buy's website, each laptop computer is described by its
27 "specifications" which includes, among others, processor speed, screen size, and system memory
28 (RAM). Also included with each laptop's "specifications" is each laptop's battery life which is

1 represented as being "up to" a specified number of hours (or fraction thereof).

2 47. The represented battery life information is a hyperlink that when clicked upon
3 displays the following information in a pop-up box:

4 **Battery Life**

5 Battery life tested using MobileMark 2007. Battery life will vary depending on
6 the product configuration, product model, applications loaded on the product,
7 power management setting of the product, and the product features used by the
customer. As with all batteries, the maximum capacity of this battery will
decrease with time and usage.

8 48. Other than the statement that the Laptop's battery life was tested using
9 MobileMark 2007 (for which no information is provided), there is not any explanation as to how
10 the "up to" hours was calculated or any other information.

11 49. Best Buy's use of the results from MM07 is misleading and deceptive as the
12 results fail to disclose that the potential battery life was derived when: (i) the Laptops' screens
13 are set to 60 nits; (ii) the Laptops' Wi-Fi, Bluetooth, and other wireless functions are disabled;
14 and (iii) the Laptops' main processor chip is set to 5% to 7.5% of its normal capacity, and thus,
15 do not accurately or fairly represent the battery life that a consumer can expect to actually
16 experience.

17 50. Best Buy, at no time and by no means, disclosed to Plaintiff and the Class that the
18 representations of its Laptops' battery lives were based on a false and deceptive standard and that
19 the Laptops' actual battery lives were substantially less than that represented by Best Buy. This
20 omission was material because a reasonable consumer would deem the representation of a
21 laptop's battery life important in determining whether to purchase a laptop, especially
22 considering that battery life is a primary factor consumers consider in making their purchase.

23 51. As a result of Best Buy's failure to convey these material facts, Best Buy
24 fraudulently, unfairly, and unlawfully caused Plaintiff and the Class to believe that they would
25 experience a much greater battery life in the Laptops they purchased than they could realistically
26 expect.

27 52. Best Buy was under a duty to Plaintiff and the Class to disclose the material facts
28 because: (a) Best Buy has exclusive knowledge of those material facts not known or reasonably

1 accessible to Plaintiff and the Class; (b) Best Buy actively concealed material facts from Plaintiff
2 and the Class; and (c) Best Buy made partial representations to Plaintiff and the Class that were
3 misleading because the material facts set forth in paragraph 49 were not disclosed.

4 53. Best Buy engaged in a successful and illegal fraud on California consumers in
5 which it deliberately, intentionally, and fraudulently caused California consumers to believe that
6 that they would experience a much greater battery life in the Laptops than they could realistically
7 expect by failing to disclose that the potential battery life was derived while: (i) the Laptops'
8 screens are set to 60 nits; (ii) the Laptops' Wi-Fi, Bluetooth, and other wireless functions are
9 disabled; and (iii) the Laptops' main processor chip is set to 5% to 7.5% of its normal capacity

10 VI.

11 CLASS ALLEGATIONS

12 54. Plaintiff brings this class action against Defendant, pursuant to California Code of
13 Civil Procedure section 382, on behalf of the following ascertainable statewide Classes:

14 Class: All individuals who, in the State of California, purchased a Laptop from
15 Best Buy at any time during the four (4) year period preceding the filing of this
16 Complaint through the present, and who were exposed to any representation that
the Laptop would have a battery life of "up to" a specified number of hours (the
"Class").

17 CLRA Subclass: All individuals who, in the State of California, purchased for
18 personal, family, or household purposes, a Laptop from Best Buy at any time
19 during the three (3) year period preceding the filing of this Complaint through the
present, and were exposed to any representation that the Laptop would have a
battery life of "up to" a specified number of hours (the "CLRA Subclass").⁴

20 Excluded from the Class are: Defendants, their officers, directors and employees, and any entity
21 in which either Toshiba or Best Buy has a controlling interest, the agents, affiliates, legal
22 representatives, heirs, attorneys at law, attorneys in fact or assignees thereof.

23 55. Throughout discovery in this litigation, Plaintiff may find it appropriate and/or
24 necessary to amend the definition of the Class. Plaintiff will formally define and designate a
25 class definition when they seek to certify the Class alleged herein.

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27
28 ⁴ Plaintiff is a representative and member of both the Class and the CLRA Subclass. Because all members of the
CLRA Subclass are also members of the Class, both will be referred to as the "Class" unless otherwise noted.

1 56. The members of the Class are so numerous that joinder of all members is
2 impracticable. While the exact number of Class members is unknown to Plaintiff at this time,
3 such information can be ascertained through appropriate discovery and from records maintained
4 by Defendant and its agents.

5 57. There is a well-defined community of interest among the Class because common
6 questions of law and fact predominate, Plaintiff's claims are typical of the members of the Class,
7 and Plaintiff can fairly and adequately represent the interests of the Class.

8 58. Common questions of law and fact exist as to all members of the Class and
9 predominate over any questions affecting solely individual members of the Class. Among the
10 questions of law and fact common to the class are, but not limited to, the following:

11 a. Whether Toshiba conducted testing of its Laptops' battery lives using
12 MM07;

13 b. Whether Toshiba represented the Laptops' battery lives using the results
14 from its MM07 testing to consumers and third party retailers;

15 c. Whether Toshiba fraudulently concealed from and/or failed to disclose to
16 Plaintiff and the Class that the represented battery life was calculated when: (i) the Laptops'
17 screens are set to 60 nits; (ii) the Laptops' Wi-Fi, Bluetooth, and other wireless functions are
18 disabled; and (iii) the Laptops' main processor chip is set to 5% to 7.5% of its normal capacity;

19 d. Whether Toshiba fraudulently concealed from and/or failed to disclose to
20 Plaintiff and the Class that the test results under MM07 does not accurately measure the battery
21 life that a consumer could reasonably expect to experience;

22 e. Whether Toshiba had a duty to Plaintiff and the Class to disclose that
23 when arriving at the represented battery life the: (i) the Laptops' screens are set to 60 nits; (ii) the
24 Laptops' Wi-Fi, Bluetooth, and other wireless functions are disabled; and (iii) the Laptops' main
25 processor chip is set to 5% to 7.5% of its normal capacity;

26 f. Whether the facts relating to the Laptops that were concealed and/or
27 otherwise not disclosed to Plaintiff and the Class by Toshiba were material facts;

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1 g. Whether as a result of Toshiba's concealment and/or failure to disclose
2 those material facts, Plaintiff and the Class acted to their detriment by purchasing the Laptops;

3 h. Whether Toshiba engaged in unfair competition and/or unfair deceptive
4 acts and/or practices in violation of California's Consumer Legal Remedies Act;

5 i. Whether Toshiba's acts or practices were illegal, unfair, or fraudulent
6 within the meaning of California Business and Professions Code section 17200 *et. seq.*;

7 j. Whether Plaintiff and the Class are entitled to compensatory damages,
8 restitution, and the amounts thereof respectively against Toshiba;

9 k. Whether Toshiba should be ordered to disgorge, for the benefit of Plaintiff
10 and the Class, all or part of its ill-gotten profits received from the sale of the Laptops, and/or to
11 make full restitution to Plaintiff and the Class members;

12 l. Whether Best Buy represented to Plaintiffs and the Class that the Laptops
13 had a battery life of "up to" a specific number of hours (or fraction thereof);

14 m. Whether Best Buy's representation as to the Laptop's battery life to
15 Plaintiff and the Class was based on the results of the Laptop's MM07 results;

16 n. Whether Best Buy fraudulently concealed from and/or failed to disclose to
17 Plaintiff and the Class that the represented battery life was calculated when: (i) the Laptops'
18 screens are set to 60 nits; (ii) the Laptops' Wi-Fi, Bluetooth, and other wireless functions are
19 disabled; and (iii) the Laptops' main processor chip is set to 5% to 7.5% of its normal capacity;

20 o. Whether Best Buy fraudulently concealed from and/or failed to disclose to
21 Plaintiff and the Class that the test results under MM07 does not accurately measure the battery
22 life that a consumer could reasonably expect to experience;

23 p. Whether Best Buy had a duty to Plaintiff and the Class to disclose that
24 when arriving at the represented battery life the: (i) the Laptops' screens are set to 60 nits; (ii) the
25 Laptops' Wi-Fi, Bluetooth, and other wireless functions are disabled; and (iii) the Laptops' main
26 processor chip is set to 5% to 7.5% of its normal capacity;

27 q. Whether the facts relating to the Laptops that were concealed and/or
28 otherwise not disclosed to Plaintiff and the Class by Best Buy were material facts;

1 r. Whether as a result of Best Buy's concealment and/or failure to disclose
2 those material facts, Plaintiff and the Class acted to their detriment by purchasing the Laptops;

3 s. Whether Best Buy engaged in unfair competition and/or unfair deceptive
4 acts and/or practices in violation of California's Consumer Legal Remedies Act;

5 t. Whether Best Buy's acts or practices were illegal, unfair, or fraudulent
6 within the meaning of California Business and Professions Code section 17200 *et. seq.*;

7 u. Whether Plaintiff and the Class are entitled to compensatory damages,
8 restitution, and the amounts thereof respectively against Best Buy; and

9 v. Whether Best Buy should be ordered to disgorge, for the benefit of
10 Plaintiff and the Class, all or part of its ill-gotten profits received from the sale of the Laptops,
11 and/or to make full restitution to Plaintiff and the Class members.

12 59. Plaintiff's claims are typical of those of the other Class members because Plaintiff,
13 like every other Class member, was exposed to virtually identical conduct.

14 60. Plaintiff will fairly and adequately represent and protect the interests of the Class
15 in that they have no disabling conflicts of interest that would be antagonistic to those of the other
16 members of the Class. Plaintiff seeks no relief that is antagonistic or adverse to the members of
17 the Class and the infringement of the rights and the damages they have suffered are typical of all
18 other Class members. Plaintiff has retained competent counsel, experienced in class action
19 litigation and consumer protection law.

20 61. The nature of this action and the nature of laws available to Plaintiff and the Class
21 make the use of the class action device a particularly efficient and appropriate procedure to
22 afford relief to Plaintiff and the Class for the wrongs alleged because:

23 a. The individual amounts of damages involved, while not insubstantial, are
24 such that individual actions or other individual remedies are impracticable and litigating
25 individual actions would be too costly;

26 b. If each Class member was required to file an individual lawsuit, the
27 Defendants would necessarily gain an unconscionable advantage since they would be able to
28 exploit and overwhelm the limited resources of each individual Class member with vastly

1 superior financial and legal resources;

2 c. The costs of individual suits could unreasonably consume the amounts that
3 would be recovered;

4 d. Proof of a common factual pattern which Plaintiff experienced is
5 representative of that experienced by the Class and will establish the right of each member of the
6 Class to recover on the cause of action alleged; and

7 e. Individual actions would create a risk of inconsistent results and would be
8 unnecessary and duplicative of this litigation.

9 62. Plaintiff and Class members have all similarly suffered irreparable harm and
10 damages as a result of Defendant's unlawful and wrongful conduct. This action will provide
11 substantial benefits to Plaintiff, the Class and the public because, absent this action, Plaintiff and
12 Class members will continue to suffer losses, thereby allowing Defendant's violations of law to
13 proceed without remedy, and allowing Defendant to retain proceeds of its ill-gotten gains.

14
15 **VII.**

16 **FIRST CAUSE OF ACTION**
17 **Violations of Consumer Legal Remedies Act**
18 **California Civil Code Section 1750 *et seq.***
19 **(On Behalf of the CLRA Subclass Against Defendant Toshiba)**

20 63. Plaintiff and the CLRA Subclass incorporate by reference each and every
21 preceding paragraph of this Complaint as if fully set forth herein.

22 64. California Civil Code section 1770(a) provides that it is unlawful to use unfair
23 methods of competition and unfair or deceptive acts or practices in a transaction intended to
24 result or which results in the sale or lease of goods or services to any consumer.

25 65. California Civil Code section 1770(a) prohibits, among other things, one to
26 "[r]epresent[] that goods or services have sponsorship, approval, characteristics, ingredients,
27 uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval,
28 status, affiliation, or connection which he or she does not have," to "[r]epresent[] 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 to "advertis[e] goods with intent not to sell them as

1 advertised." *See* Cal. Civ. Code section 1770(a)(5); (7); (9).

2 66. Toshiba violated California Civil Code sections 1770(a)(5), (7) and (9) by
3 reporting the Laptops' battery life to third party retailers using the results from the Laptops'
4 MM07 testing with the intention and desire that these third party retailers will convey to
5 consumers the Laptop's alleged battery life, while failing to disclose that the represented battery
6 life was derived under the following circumstances: (i) the Laptops' screens are set to 60 nits; (ii)
7 the Laptops' Wi-Fi, Bluetooth, and other wireless functions are disabled; and (iii) the Laptops'
8 main processor chip is set to 5% to 7.5% of its normal capacity; and (iv) the Laptop reads a PDF
9 document pausing two minutes on each page, and thus, do not accurately or fairly represent the
10 battery life that a consumer can expect to actually experience.

11 67. The foregoing facts were not disclosed and entirely omitted from any information
12 made available to Plaintiff and the CLRA Subclass and are material as a reasonable consumer
13 would deem the length of a laptop's battery life important in determining whether to purchase the
14 laptop.

15 68. Toshiba's deceptive practices, as alleged above, were specifically designed to, and
16 did, induce Plaintiff and the CLRA Subclass to purchase the Laptops. Toshiba engaged in
17 common scheme to deliberately omit from all publicly available information provided to Plaintiff
18 and the CLRA Subclass the material facts alleged herein regarding the Laptops' maximum
19 battery life.

20 69. Toshiba was under a duty to Plaintiff and the CLRA Subclass to disclose the
21 aforementioned facts because: (a) Toshiba has exclusive knowledge of those material facts not
22 known or reasonably accessible to Plaintiff and the CLRA Subclass; (b) Toshiba actively
23 concealed material facts from Plaintiff and the CLRA Subclass; and (c) Toshiba made partial
24 representations to Plaintiff and the CLRA Subclass that were misleading because the material
25 facts set forth in paragraph 69 were not disclosed.

26 70. Plaintiff and the CLRA Subclass reasonably and justifiably relied on Toshiba's
27 representations, and were ignorant to those omissions of the aforementioned material facts.
28 Plaintiff and the CLRA Subclass were induced to purchase the Laptops and pay more for the

1 Laptops then they would have had Toshiba not falsely represented that the Laptops had a battery
2 life that was substantially more than the CLRA Subclass member could reasonably expect to
3 experience.

4 71. As a direct and proximate result of Toshiba's violations of the CLRA as alleged
5 herein, Plaintiff and the Subclass have been injured by, including but not limited to, the
6 following:

7 a. The infringement of their legal rights as a result of being subjected to the common
8 course of conduct alleged herein;

9 b. Plaintiff and the CLRA Subclass were induced to purchase the Laptops and pay
10 more for the Laptops than they would have had they been fully informed of Toshiba's acts,
11 omissions, misrepresentations, practices and nondisclosures as alleged in this Class Action
12 Complaint, in violation of *inter alia*, the CLRA.

13 72. Plaintiff seeks an order awarding restitution or disgorgement of Toshiba's
14 revenues and profits from the sale of the Laptops.

15 73. Prior to filing this Class Action Complaint, Plaintiff timely served Toshiba with
16 notice of its violation of the CLRA by certified mail, return receipt requested. Toshiba failed to
17 provide appropriate relief for its violations of the CLRA. As such, Plaintiff has therefore
18 complied with the 30-day notice period required by California Civil Code section 1782(a). *See*
19 Exhibit 'A'.

20 74. As of the date of filing this Class Action Complaint, Plaintiff has not received
21 responses from Defendant that agreed to provide for the relief requested in his letter. As a result,
22 Defendant has failed to provide appropriate relief for its violations of the CLRA, and Plaintiff
23 and the CLRA Subclass are entitled to recover actual damages, punitive damages, attorneys' fees
24 and costs, and any other relief the Court deems proper.

25 WHEREFORE, Plaintiff and the CLRA Subclass pray for relief as set forth below.

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VII.

SECOND CAUSE OF ACTION
Violations of Consumer Legal Remedies Act
California Civil Code Section 1750 *et seq.*
(On Behalf of the CLRA Subclass Against Defendant Best Buy)

75. Plaintiff and the CLRA Subclass incorporate by reference each and every preceding paragraph of this Complaint as if fully set forth herein.

76. California Civil Code section 1770(a) provides that it is unlawful to use unfair methods of competition and unfair or deceptive acts or practices in a transaction intended to result or which results in the sale or lease of goods or services to any consumer.

77. California Civil Code section 1770(a) prohibits, among other things, one to "[r]epresent[] that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have," to "[r]epresent[] 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 to "advertis[e] goods with intent not to sell them as advertised." *See* Cal. Civ. Code section 1770(a)(5); (7); (9).

78. Best Buy violated California Civil Code sections 1770(a)(5), (7) and (9) when it represented the battery life of the Laptops on its product tags and on its website while failing to disclose that the represented battery life was derived under the following circumstances: (i) the Laptops' screens are set to 60 nits; (ii) the Laptops' Wi-Fi, Bluetooth, and other wireless functions are disabled; and (iii) the Laptops' main processor chip is set to 5% to 7.5% of its normal capacity; and (iv) the Laptop reads a PDF document pausing two minutes on each page, and thus, do not accurately or fairly represent the battery life that a consumer can expect to actually experience.

79. The foregoing facts were not disclosed and entirely omitted from any materials made available to Plaintiffs and the CLRA Subclass by Best Buy and are material as a reasonable consumer would deem the length of a laptop's battery life important in determining whether to purchase the laptop.

1 80. Best Buy's deceptive practices, as alleged above, were specifically designed to,
2 and did, induce Plaintiff and the CLRA Subclass to purchase the Laptops. Best Buy engaged in
3 common scheme to deliberately omit from the information provided to Plaintiff and the CLRA
4 Subclass the material facts alleged herein regarding the Laptops' maximum battery life.

5 81. Best Buy was under a duty to Plaintiff and the CLRA Subclass to disclose the
6 material facts because: (a) Best Buy has exclusive knowledge of those material facts not known
7 or reasonably accessible to Plaintiff and the CLRA Subclass; (b) Best Buy actively concealed
8 material facts from Plaintiff and the CLRA Subclass; and (c) Best Buy made partial
9 representations to Plaintiff and the CLRA Subclass that were misleading because the material
10 facts set forth in paragraph 81 were not disclosed.

11 82. Plaintiff and the CLRA Subclass reasonably and justifiably relied on Best Buy's
12 representations, and were ignorant to those omissions of the aforementioned material facts.
13 Plaintiff and the CLRA Subclass were induced to purchase the Laptops and pay more for the
14 Laptops then they would have had Best Buy not falsely represented that the Laptops had a
15 battery life that was substantially more than the CLRA Subclass member could reasonably
16 expect to experience.

17 83. As a direct and proximate result of Best Buy's violations of the CLRA as alleged
18 herein, Plaintiff and the CLRA Subclass have been injured by, including but not limited to, the
19 following:

20 a. The infringement of their legal rights as a result of being subjected to the
21 common course of conduct alleged herein;

22 b. Plaintiff and the CLRA Subclass were induced to purchase the Laptops
23 and pay more for the Laptops then they would have had they been fully informed of Best Buy's
24 acts, omissions, misrepresentations, practices and nondisclosures as alleged in this Class Action
25 Complaint, in violation of *inter alia*, the CLRA.

26 84. Plaintiff seeks an order awarding restitution or disgorgement of Best Buy's
27 revenues and profits from the sale of the Laptops.

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1 85. Prior to filing this Class Action Complaint, Plaintiff timely served Best Buy with
2 notice of its violation of the CLRA by certified mail, return receipt requested. Best Buy failed to
3 provide appropriate relief for its violations of the CLRA. As such, Plaintiff has therefore
4 complied with the 30-day notice period required by California Civil Code section 1782(a). See
5 Exhibit 'B'.⁵

6 86. As of the date of filing this Class Action Complaint, Plaintiff has not received
7 responses from Best Buy that agreed to provide for the relief requested in his letter. As a result,
8 Best Buy has failed to provide appropriate relief for its violations of the CLRA, and Plaintiff and
9 the CLRA Subclass are entitled to recover actual damages, punitive damages, attorneys' fees and
10 costs, and any other relief the Court deems proper.

11 WHEREFORE, Plaintiff and the CLRA Subclass pray for relief as set forth below.

12 **VIII.**

13 **THIRD CAUSE OF ACTION**
14 **Violations of Unfair Competition Law**
15 **California Business and Professions Code section 17200 *et seq.***
16 **(On Behalf of the Class Against Defendant Toshiba)**

17 87. Plaintiff and the Class incorporate by reference each and every preceding
18 paragraph of this Complaint as if fully set forth herein.

19 88. Plaintiff has standing to bring this action under the UCL because he has suffered
20 injury in fact as a result of Toshiba's conduct and has lost money through his purchase of the
21 Laptop which he would not have done were it not for the material omissions by Toshiba.

22 89. Toshiba's representations made to third party retailers, which Toshiba intends to,
23 and do, be communicated to consumers regarding the Laptops' battery life constitute unfair
24 competition in violation of the UCL. Toshiba has engaged in conduct that is unlawful, unfair, or
25 fraudulent through a pattern of concealment of material facts that misleads and deceives the
26 public with respect to its Laptops' battery life.

27 90. The omissions and nondisclosures of Toshiba, as alleged herein, constitute unfair,
28 unlawful, and/or fraudulent business practices within the meaning of California Business and

⁵ Attached hereto as Exhibit 'C' is a venue declaration by Plaintiff Herron pursuant to Civil Code § 1780(d).

1 Professions Code section 17200 *et seq.*, including, but in no way limited to, violations of
2 California Civil Code section 1750 *et seq.*

3 91. Plaintiff and the Class are entitled to full restitution and/or disgorgement of
4 Toshiba's revenues and profits resulting from the sales of its Laptops.

5 WHEREFORE, Plaintiffs and the Class pray for relief as set forth below.

6 **VIII.**

7 **FOURTH CAUSE OF ACTION**
8 **Violations of Unfair Competition Law**
9 **California Business and Professions Code section 17200 *et seq.***
10 **(On Behalf of the Class Against Defendant Best Buy)**

11 92. Plaintiff and the Class incorporate by reference each and every preceding
12 paragraph of this Complaint as if fully set forth herein.

13 93. Plaintiff has standing to bring this action under the UCL because he has suffered
14 injury in fact as a result of Best Buy's conduct and has lost money through his purchase of the
15 Laptop which he would not have done were it not for the material omissions by Best Buy.

16 94. Best Buy's marketing, advertising, and sales of the Laptops constitute unfair
17 competition in violation of the UCL. Best Buy has engaged in conduct that is unlawful, unfair,
18 or fraudulent through a pattern of concealment of material facts that misleads and deceives the
19 public with respect to the Laptops' maximum battery life.

20 95. The omissions and nondisclosures of Best Buy, as alleged herein, constitute
21 unfair, unlawful, and/or fraudulent business practices within the meaning of California Business
22 and Professions Code section 17200 *et seq.*, including, but in no way limited to, violations of
23 California Civil Code section 1750 *et seq.*

24 96. Plaintiff and the Class are entitled to full restitution and/or disgorgement of Best
25 Buy's revenues and profits resulting from the sales of the Laptops.

26 WHEREFORE, Plaintiffs and the Class pray for relief as set forth below.

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IX.


PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all other similarly situated Class members, and on behalf of the general public, requests the following relief:

- A. That an order certifying the Class and the CLRA Subclass defined herein be entered designating Plaintiff as representative of said Class and CLRA Subclass and appointing Plaintiff's attorneys as Class Counsel;
- B. For actual damages in an amount according to proof;
- C. For compensatory damages in an amount according to proof;
- D. For restitution in an amount according to proof;
- E. For injunctive relief against Defendants under each cause of action;
- F. For other equitable relief;
- G. For attorneys' fees as provided by law;
- H. For prejudgment interest as provided by law;
- I. For costs of suit; and
- J. For such other and further relief as this Court deems just and equitable.

Dated: June 11, 2012

STONEBARGER LAW, APC

By: 

Gene J. Stonebarger
Richard D. Lambert
Attorneys for the Plaintiff and the Class