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ALAMEDA COUNTY

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF ALAMEDA

14
 15 JOSEPH CARLOTTI, individually and on
 16 behalf of all others similarly situated,


17 Plaintiff,

18 v.

19 ASUS COMPUTER INTERNATIONAL
 20 (NORTH AMERICA) INC.; ASUSTEK
 21 COMPUTER INC., and DOES 1-50,

22 Defendants.

Case No:

 18903641

UNLIMITED CIVIL CASE

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

23
 24 Plaintiff Joseph Carlotti, individually and on behalf of all others similarly situated, brings
 25 this class action against Defendants ASUS Computer International (North America) Inc.,
 26 ASUSTeK Computer Inc., and Does 1 through 50, inclusive. The following allegations are based
 27 upon information and belief, including the investigation of Plaintiff's counsel, unless stated oth-
 28 erwise.

FILED BY FAX

SUMMARY OF THE ACTION

1
2 1. This consumer class action arises from misrepresentations and a defect affecting
3 all ASUS ROG Strix GL502VS and GL502VSK laptops (collectively, the “Laptops”), which
4 were jointly designed, manufactured, marketed, warranted, distributed and sold by Defendants
5 ASUS Computer International (North America) Inc. and ASUSTeK Computer Inc.

6 2. Marketed as portable laptops with a powerful graphical processor suited for gam-
7 ing and video editing, the Laptops contain a uniform defect, which causes: (1) the Laptops’ bat-
8 tery to drain during use, even when the Laptop is connected to an electrical outlet; (2) significant
9 reductions in computational performance when low on battery power, or when the battery is re-
10 moved, even if the Laptop is connected to an electrical outlet; and (3) accelerated degradation of
11 the Laptops’ batteries (the “Power Defect”).

12 3. As a result of consumer complaints from owners of the Laptops, which suffered
13 from the Power Defect, Defendants distributed at least two software updates, neither of which
14 remedied the Power Defect. Defendants also repeatedly promised – and then failed to deliver – a
15 permanent hardware fix for the Power Defect, apparently because they found prohibitive the cost
16 of providing laptops that performed as represented.

17 4. Warranty repairs related to the Power Defect have proven useless because Defen-
18 dants replace defective components with identical and equally defective components.

19 5. The Power Defect renders the Laptops unfit and unusable for their ordinary pur-
20 pose for use in gaming or video editing, well within their reasonable expected lifespans.

21 6. Defendants also misrepresented the nature of the Laptops’ cooling systems, which
22 are a material feature of the Laptops. Because the powerful components in the Laptops generate
23 significant heat, complex cooling solutions are required to prevent overheating and component
24 damage. Defendants represented that the Laptops’ possessed two independent cooling systems for
25 the Laptops’ computational processing unit (“CPU”) and graphics processing unit (“GPU”) (col-
26 lectively, the “processors”). Defendants further represented that this independent cooling system
27 “maximizes cooling efficiency” to give the Laptops “stability required for intense gaming ses-
28 sions.” These representations were false in two regards: First, the Laptops’ cooling system is not
independent; the same copper tubes that draw heat away from the GPU are used to draw heat

1 from the CPU. Second, the Laptops' cooling system does not give Laptops the stability required
2 for intense gaming sessions. To the contrary, the Laptops run much hotter than competing Lap-
3 tops using the same processors. As a result, the Laptops' suffer from reduced durability and per-
4 formance.

5 7. As a direct and proximate result of the Power Defect, Defendants' misrepresenta-
6 tions concerning the Laptops' cooling system, and Defendants' unfair and deceptive practices,
7 Plaintiff, and those similarly situated, have suffered injury in fact and incurred damages, such as
8 diminished use, durability and performance of the Laptops and diminished battery durability and
9 battery life of the Laptops' batteries. Plaintiff accordingly seeks redress for Defendants' breaches
10 of express and implied warranties and violations of consumer protection law.

11 JURISDICTION AND VENUE

12 8. This action is brought by Plaintiff pursuant, *inter alia*, to the California Civil Code
13 section 1750 and California Business and Professions Code sections 17200, *et seq.* Plaintiff and
14 Defendants are "persons" within the meaning of the California Business and Professions Code,
15 section 17201.

16 9. The injuries, damages and/or harm upon which this action is based, occurred or
17 arose out of activities engaged in by Defendants within, affecting, and emanating from, the State
18 of California.

19 10. Defendants have engaged, and continue to engage, in substantial and continuous
20 business practices in the State of California, including in the City of and County of Alameda.

21 11. In accordance with California Civil Code Section 1780(d), Plaintiff files herewith
22 a declaration attached as Exhibit A establishing that Defendants are doing business in Alameda,
23 California.

24 12. Plaintiff accordingly alleges that jurisdiction and venue are proper in this Court.

25 PARTIES

26 13. Plaintiff Joseph Carlotti ("Plaintiff") is, and at all times alleged in this Class Ac-
27 tion Complaint was, an individual and resident of Rocklin, California.

28

1 14. Defendant ASUS Computer International (North America) Inc. (“ASUS (North
2 America)”) is a California corporation with its principal place of business at 800 Corporate Way,
3 Fremont, CA 94539.

4 15. Defendant ASUSTeK Computer Inc. (“ASUSTek”) is a Taiwanese corporation
5 with its headquarters at No. 15, Li-Te Road, Peitou, Taipei 112, Taiwan. ASUSTeK is the parent
6 of ASUS (North America). ASUSTeK is primarily engaged in the design, research and develop-
7 ment, and sales of computers, computer components, tablet PCs, smart phones and other handheld
8 devices. ASUSTeK earned approximately \$13.3 billion in revenue in 2016.

9 16. On information and belief, ASUSTeK manufactured and warranted the Laptops
10 and ASUS (North America) was responsible for promoting, marketing, advertising, and servicing
11 the warranties for Laptops sold in the United States.

12 17. The true names and capacities of Defendants sued as Does 1 through 50, inclusive,
13 are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names pursuant to
14 section 474 of the California Code of Civil Procedure. Plaintiffs will seek leave of Court to
15 amend this Class Action Complaint when said true names and capacities have been ascertained.

16 18. The Parties identified in paragraphs 14, 15, and 17 of this Class Action Complaint
17 are collectively referred to hereafter as “Defendants.”

18 19. At all times herein mentioned, each Defendant was the agent, servant, representa-
19 tive, officer, director, partner or employee of the other Defendant and, in doing the things herein
20 alleged, was acting within the scope and course of his/her/its authority as such agent, servant, rep-
21 resentative, officer, director, partner or employee, and with the permission and consent of each of
22 the other Defendant.

23 20. At all times herein mentioned, each Defendant was a member of, and engaged in, a
24 joint venture, partnership and common enterprise, and acting within the course and scope of, and
25 in pursuance of, said joint venture, partnership and common enterprise.

26 21. At all times herein mentioned, the acts and omissions of each Defendant concurred
27 and contributed to the various acts and omissions of each and all of the other Defendant in proxi-
28 mately causing the injuries and damages as herein alleged.

1 31. On December 28, 2017, Plaintiff received a Laptop that Defendants said had been
2 repaired. Though the power adapter had been replaced with a functional one, the Laptop still suf-
3 fered from the Power Defect.

4 32. On January 7, 2018, Plaintiff posted on Defendants' online service forum to re-
5 quest further assistance concerning the Power Defect. He received no response.

6 33. On January 16, 2018, Plaintiff posted a second request for assistance on Defen-
7 dants' online service forum and received a response the following day instructing him to contact
8 "Bill@ASUS" via private message. Plaintiff did so and received no response.

9 34. On January 24, 2018, frustrated by the lack of response from Defendants, Plaintiff
10 posted on Defendants' online service forum that he would be pursuing a different avenue of sup-
11 port if he did not receive a response. That same day he received a response from Defendants' rep-
12 resentative requesting additional details about his Laptop and its service history. Plaintiff
13 provided that information and did not get a response.

14 35. On February 1, 2018, Plaintiff again posted on Defendants' online service forum
15 that he had yet to receive a response. His post went unanswered.

16 36. On February 8, 2018, Plaintiff posted a complaint with the Better Business Bureau
17 ("BBB"). This triggered a formal response from Defendants through the BBB. Over the course of
18 the next two months, Defendants requested detailed information from Plaintiff, which required im
19 to engage in time consuming investigatory work. Plaintiff provided full responses to all of Defen-
20 dants' requests.

21 37. On February 9, 2018, Defendants issued another RMA for Plaintiff's Laptop.
22 Plaintiff sent his Laptop to Defendants in March 2018.

23 38. On or about March 31, 2018, Plaintiff received a replacement Laptop from Defen-
24 dants.

25 39. The replacement Laptop also possesses, and exhibits symptoms of, the Power De-
26 fect.

27 40. On April 13, 2018, more than two months after he filed the BBB complaint, De-
28 fendants' representative informed Plaintiff that the Power Defect was simply the "normal func-
tion" of the Laptop.

1 41. On April 30, 2018, diagnostic software Plaintiff installed on his Laptop indicated
2 that the battery of Plaintiff's third Laptop, which was approximately one-month old, had lost 8%
3 of its total capacity.

4 42. Had Plaintiff known of the Power Defect and/or Defendants' misrepresentations
5 concerning the Laptops' cooling system, he would not have purchased the Laptop, or he would
6 have paid less for it.

7 43. Plaintiff still wishes to purchase a Windows-based laptop computer that can be
8 used for heavy or "high-end" gaming, video-editing, and similar purposes. He intends to purchase
9 such devices from Defendants and from and their competitors in the future. Without purchasing
10 and using the laptops sold by Defendants however, Plaintiff will be unable to determine if Defen-
11 dants' representations about the power and functionality of those laptops are true and whether
12 there are undisclosed defects in the device, such as the Power Defect, that make the laptops unfit
13 for ordinary use. For the same reasons, Plaintiff will be unable to make informed comparisons
14 among market prices for Defendants' products and similar products marketed by their competi-
15 tors. He therefore is likely to suffer future harm from Defendants' conduct in the absence of the
16 injunctive relief sought herein.

17 COMMON FACTUAL ALLEGATIONS

18 **A. THE ASUS GL502VS AND GL502VSK GAMING LAPTOPS**

19 44. ASUSTeK is the fourth-largest manufacturer of personal computers in the world.
20 Among other things, ASUSTeK designs and manufactures desktop and laptop computers for vid-
21 eo gaming enthusiasts. Defendants designate these computers with the "Republic of Gamers" or
22 "ROG" label and the "Strix" label.

23 45. The ASUS ROG Strix GL502VS is a gaming laptop that Defendants started selling
24 in August 2016 for a starting price of \$1,600. The GL502VSK is an identical laptop save for a
25 newer Intel central processing unit ("CPU").

26 46. The Laptops were designed and marketed as laptops that would to enable "users to
27 enjoy high-end gaming from anywhere."

28 47. Defendants advertised the GL502VS as a laptop that is "ready to game anytime,
anywhere" and which "delivers efficient and powerful performance, and is ideal for heavy gam-

1 ing or productive multitasking.”¹ Defendants promised that the GL502VS would provide the
2 “perfect balance of power and portability.”

3 THE PERFECT BALANCE OF POWER AND 4 PORTABILITY

5 <https://www.asus.com/us/ROG-Republic-Of-Gamers/ROG-GL502VS/> (last visited May 2, 2018).

6 48. Defendants also represented that the GL502 offered “unmatched performance,”
7 which “gives you efficient, powerful performance for heavy gaming or productive multitasking
8 such as live streaming and video editing.”



19 (Id.)

20 49. Because PC games are graphically intensive, gaming computers like the Laptops
21 use sophisticated processors called graphical processing units (“GPUs”) to accelerate the creation
22 of images for output to a display device. The GPU plays a larger role than any other component in
23 determining the computer’s ability to display games at both high resolutions and frame rates (the
24 number of frames of graphical images displayed on the screen per second). The Laptops includes
25 the NVIDIA GeForce GTX 1070 GPU (the “GTX 1070”).

26 50. The GL502VS Laptops include an external 180-watt power supply unit (“PSU”),
27 and the GL502VSK Laptops include an external 230-watt PSU. The PSUs transmit electricity to
28 the Laptops from electrical outlets.

¹ <https://dlcdnimgs.asus.com/News/pLwQdVAITd1c2bKj> (last visited May 2, 2018).

1 51. Each of the Laptops contain an identical 4-cell lithium-ion battery.

2 52. A page on Defendants' website called "ASUS Battery Information Center," pro-
3 vides that the lithium-ion batteries used in its laptops are expected to retain around 80% of their
4 original battery capacity after 300 charge cycles, or after about a year of use. *See*
5 <https://www.asus.com/support/article/604/> (last visited May 2, 2018). Defendants warn that high
6 or low ambient temperatures may negatively affect battery performance, resulting in a loss of up
7 to 70% of battery charge capacity. Batteries are "especially susceptible" to heat damage, which
8 can cause chemical reactions that can prematurely wear down batteries, causing them to lose ca-
9 pacity faster.

10 **B. THE POWER DEFECT**

11 53. The Laptops are uniformly defective in that their internal components cannot draw
12 enough current from an electrical outlet to fully power the Laptops when performing graphically
13 intensive tasks. As a result, tasks like gaming and video editing force the Laptops to simultane-
14 ously draw current from the outlet and the battery, thereby causing the battery to drain when it
15 should be charging.

16 54. The Power Defect arises from Defendants' use of inadequate materials in the Lap-
17 tops' internal power components. Competing laptops with nearly identical components, including
18 the GTX 1070, do not suffer from the Power Defect.

19 55. Because of the Power Defect, when a Laptop is plugged in to an electrical outlet
20 but low on battery power, or the battery is removed, the Laptop experiences significant perform-
21 ance reductions ("throttling"). Measured tests performed by owners indicate performance reduc-
22 tions of up to 15%, including reduced frame rates (the number of frames of graphics that are
23 displayed on the monitor per second), graphical glitches, and other manifestations of reduced
24 computing power from throttling.

25 56. Laptop batteries, like all rechargeable batteries, lose capacity as they are dis-
26 charged and recharged over time. Because the Power Defect forces the Laptops' battery into a
27 near-constant cycle of discharging and recharging, the Power Defect accelerates the loss of bat-
28 tery capacity. The Laptops' diminished battery capacity then causes the batteries to require even
more frequent recharges, thereby exacerbating their already-diminished capacity, and making the

1 Laptops increasingly likely to experience throttling, even when plugged in. The rapid deteriora-
2 tion of the Laptops' batteries due to the Power Defect and insufficient cooling as described above
3 thus causes performance losses, reduced usefulness and portability, and increases the maintenance
4 cost of the Laptops due to more frequent battery purchases.

5 **C. DEFENDANTS' FAILURE TO DISCLOSE OR REPAIR THE POWER DEFECT**

6 57. Defendants knew that the Laptops could not achieve peak graphical performance
7 on outlet power alone and therefore designed the Laptops to supplement outlet power with battery
8 power. Defendants did not, however, disclose this information to consumers who were making
9 their purchasing decisions. A reasonable consumer would assume that a laptop plugged into a live
10 outlet would gain, or at a minimum maintain, battery charge instead of losing battery charge.

11 58. On November 9, 2016, a purchaser of the Laptop started an a discussion thread re-
12 garding the Power Defect on the online forum hosted by Defendants. Titled "GL502VS Discharg-
13 ing while Plugged-in," the thread remains active to this day with more than 670 posts (the "Power
14 Defect Thread").

15 59. On November 11, 2016, an ASUS employee account posted a response in the
16 Power Defect Thread that stated that he had "passed this issue to our related personnel."²

17 60. In February 2017, a different ASUS employee account posted a response in the
18 Power Defect Thread that the Power Defect issue had been "escalated" and that the ASUS "note-
19 book team" was looking into the Power Defect.

20 61. Later that month, Defendants distributed a software update purportedly designed to
21 remedy the Power Defect. The update did not remedy the Power Defect.

22 62. In March 2017, Defendants issued a second software update purportedly designed
23 to remedy the Power Defect. The second update also failed to remedy the Power Defect, with
24 Laptop owners reporting battery losses of up to 20% an hour in Laptops being used while con-
25 nected to outlet power.

26 63. In May 2017, an ASUS employee posted a response on the Power Defect Thread
27 stating that a solution to the Power Defect was in its final testing stage.

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² <https://rog.asus.com/forum/showthread.php?88742-GL502VS-Discharging-while-Plugged-in&viewfull=1#post616195> (last visited May 2, 2018).

1 64. On June 05, 2017, the same employee account again posted on the Power Defect
2 Thread that a solution was almost ready for distribution.

3 65. On June 30, 2017, the same employee account posted on the Power Defect Thread
4 that the promised solution “can’t be offered due to an insufficient material supplies issue that
5 can’t be fulfilled within a reasonable period of time and additional technical issues.” The post
6 then recommended that all users affected by the Power Defect “consider[] going with a different
7 series ROG notebook or an ASUS gaming series notebook.” The employee account then closed
8 the discussion thread.

9 66. On July 18, 2017, the same employee account reopened the Power Defect Thread
10 “only to allow users who have been successful with this process to share.” Users who did not
11 have a success story were told: “DO NOT post in this thread or in any other thread and follow the
12 process by sending me a private message.” The request for success stories received no responses.

13 67. On September 11, 2017, the same employee account posted on the Power Defect
14 Thread that Defendants were “preparing an alternative solution which will require RMA [return
15 merchandise authorization] to replace the motherboard.” Defendants’ promise of motherboard
16 replacements went unfulfilled.

17 68. On November 7, 2017, a moderator of Defendants’ forums modified the first post
18 of the Power Defect Thread to link to the June 30, 2017 Defendants’ statement that hardware re-
19 pairs “can’t be offered due to an insufficient material supplies issue that can’t be fulfilled within a
20 reasonable period of time and additional technical issues.”³

21 69. During this entire time period, Defendants continued to sell the Laptops, never
22 disclosing to prospective purchasers that the Laptops contained a hardware defect that Defendants
23 could not fix by a software update and refused to fix through a costlier hardware revision.

24 70. Because Defendants have not developed a remedy to the Power Defect, warranty
25 service for the Power Defect is futile and misleading. Though Defendants continue to accept war-
26 ranty claims for Laptops impacted by the Power Defect, Defendants are well-aware that they are

27 _____
28 ³ See <https://rog.asus.com/forum/showthread.php?88742-GL502VS-Discharging-while-Plugged-in&viewfull=1#post616000> (last visited May 2, 2018); and
<https://rog.asus.com/forum/showthread.php?88742-GL502VS-Discharging-while-Plugged-in&p=658857&viewfull=1#post658857> (last visited May 2, 2018).

1 not actually offering or providing a remedy for the Power Defect and that any repairs they offer
2 and provide will be ineffective at resolving the Power Defect. Laptops sent in for warranty serv-
3 ice related to the Power Defect are returned to their owners containing identically defective
4 components that manifest the identical Power Defect.

5 **D. DEFENDANTS MISREPRESENTED THE LAPTOPS' COOLING SYSTEM**

6 71. Heat management is of particular concern in laptops designed for gaming or video
7 editing. That is because laptops designed for gaming and video editing require powerful CPUs
8 and GPUs, like the GTX 1070, which generate significant amounts of heat during use.

9 72. In desktop computers, GPUs like the GTX 1070 are typically sold as a graphics
10 card, which is nearly a foot long and includes a large heatsink to draw heat off the GPU and at
11 least two large cooling fans to cool the heatsink. These GPU-specific cooling solutions are in ad-
12 dition to cooling systems used to cool other components of the desktop computer.

13 73. Because most laptops do not have room to accommodate the large graphics cards
14 on which the desktop version of the GTX 1070 is embedded, laptop manufacturers who opt to use
15 GPUs like the GTX 1070 are forced to install the GPU directly on to the laptop's motherboard
16 and develop a proprietary GPU cooling solution that fits the layout of the laptop.

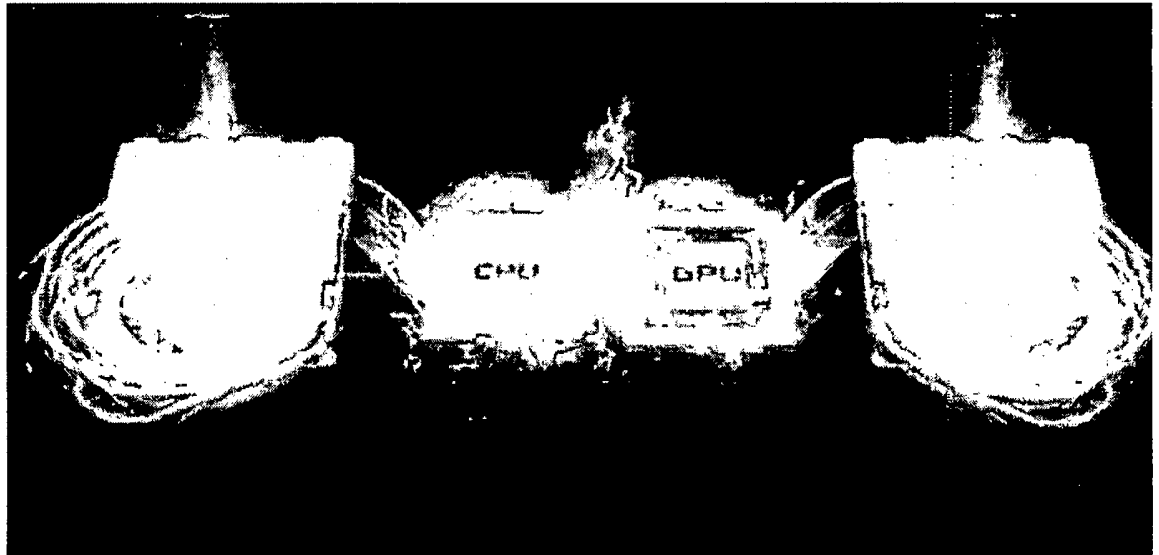
17 74. A laptop unable to adequately cool the GTX 1070 will suffer in performance and
18 durability. The performance will suffer because the GTX 1070 will programmatically reduce its
19 computational speed when excessive temperatures are detected, leading to significant and notice-
20 able reductions in the laptop's graphical performance. The laptop's durability will suffer because
21 prolonged exposure to heat reduces the operational life of almost every component in a laptop,
22 including the GPU and battery.

23 75. Accordingly, a laptop manufacturer's proprietary GPU cooling system is a mate-
24 rial feature for consumers. Gaming laptop manufacturers like Defendants are aware of this fact
25 and trade on their laptop cooling designs.

26 76. With the Laptops, Defendants promoted an "intelligent thermal design," using a
27 "Hyper Cool Duo-Copper cooling system," which used heat pipes and two fans to "cool the CPU
28 and GPU independently." Defendants' marketing materials stated that this design "maximizes

1 cooling efficiency to give ROG Strix GL502 the stability required for intense gaming marathons.”
2 <https://www.asus.com/us/ROG-Republic-Of-Gamers/ROG-GL502VS/> (last visited May 2, 2018).

3 77. The following image, which has since been removed, accompanied those represen-
4 tations:

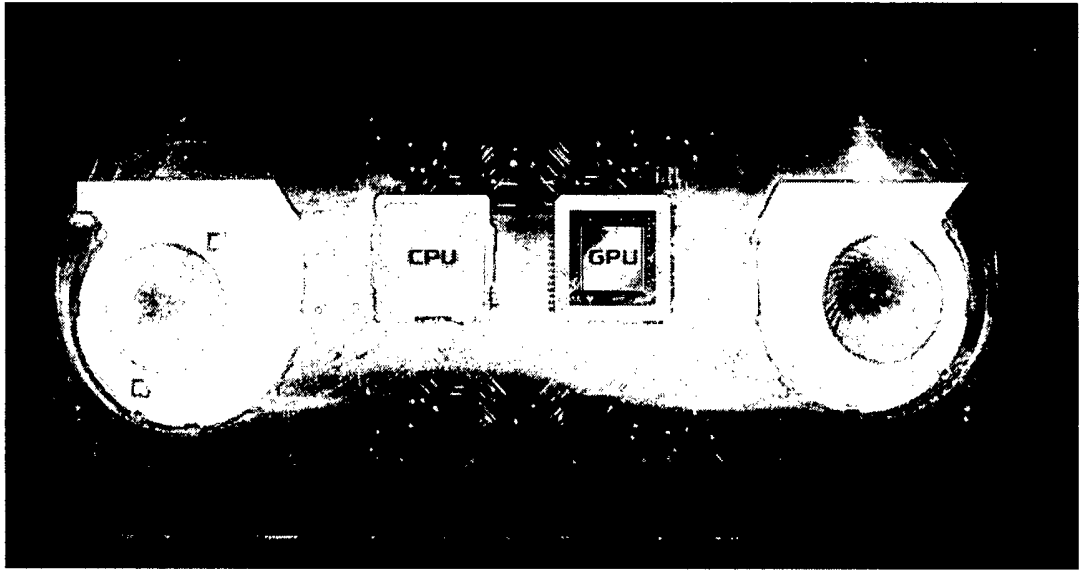


15 78. The image portrays an independent cooling system, whereby the Laptops' CPU
16 and GPU are connected to separate heatsinks and separate cooling fans by a separate set of copper
17 heat pipes. The impression created by this image is that heat generated from each processor is
18 conducted away from the processor by an independent system of copper heat pipes.

19 79. The actual cooling system used in the Laptops materially differs from those in De-
20 fendants' representations and images. On information and belief, the Laptops contain one set of
21 copper heat pipes that are responsible not only for conducting heat from the CPU and GPU, but
22 also from other heat-generating components within the Laptops.

23 80. As the image below shows, Defendants recently changed the image it uses to detail
24 the Laptops' cooling system. Defendants removed the copper heat pipes from the image, thereby
25 confirming that the original image creates a misleading impression of an independent cooling sys-
26 tem.

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10 <https://www.asus.com/us/ROG-Republic-Of-Gamers/ROG-GL502VS/> (last visited May 2, 2018).

11 81. An independent cooling system for the CPU and GPU is a desirable feature to con-
12 sumers, and it is a feature offered by computers that directly compete with the Laptops.

13 82. Consumers have reported the Laptops' tendency to run extremely hot, often at
14 temperatures of up to 90 degrees Celsius – or 194 degrees Fahrenheit – as well as reductions in
15 performance when the Laptops reach these temperatures.

16 CLASS ALLEGATIONS

17 83. Plaintiff brings this lawsuit on behalf of himself and all similarly situated indi-
18 viduals and entities, pursuant to California Code of Civil Procedure § 382. The proposed Class
19 and Subclass are defined as follows:

20 **The Class**

21 All persons in the United States who purchased one or more ASUS
22 GL502VS or GL502VSK laptops.

23 **The California Subclass**

24 All members of the Class who made their purchase in California.

25 84. The Class and California Subclass are referred to collectively herein as the “Pro-
26 posed Classes.”

27 85. Excluded from the Proposed Classes are Defendants' officers, directors, legal rep-
28 resentatives, successors, and assigns; any entity in which Defendants have a controlling interest;
and judicial officers to whom this case is assigned and their immediate family members.

1 86. Plaintiff reserves the ability to modify the definition of the Proposed Classes be-
2 fore the Court determines whether class certification is warranted.

3 87. *Numerosity.* The Proposed Classes consist of thousands of owners of Laptops,
4 making joinder of each Proposed Class member impracticable. The Proposed Classes are pres-
5 ently ascertainable by reference to objective criteria and based upon records within Defendants'
6 possession.

7 88. *Commonality and Predominance.* Common questions of law and fact exist for
8 each of the causes of action and predominate over questions affecting only individual Proposed
9 Class members. Questions common to the Proposed Classes include:

- 10 a.) Whether the Laptops were defective at the point of sale;
- 11 b.) Whether the Power Defect substantially reduces the value of the Laptops;
- 12 c.) Whether Defendants knew or should have known of the Power Defect but
13 failed to disclose it to consumers;
- 14 d.) Whether a reasonable consumer would consider the Laptops' Power Defect to
15 be material;
- 16 e.) Whether Defendants misrepresented the Laptops' cooling system;
- 17 f.) Whether Defendants misrepresented the Laptops' ability to perform under
18 heavy computational loads;
- 19 g.) Whether Defendants' misrepresentations concerning the Laptops' cooling solu-
20 tion were material to a reasonable consumer;
- 21 h.) Whether Defendants' conduct was unlawful;
- 22 i.) Whether Defendants acted negligently, recklessly, and/or with intent to de-
23 ceive;
- 24 j.) Whether Defendants breached implied warranties relating to the Laptops;
- 25 k.) Whether Plaintiff and Proposed Class members overpaid for their Laptops as a
26 result of the defects alleged herein;
- 27 l.) Whether Plaintiff and Proposed Class members are entitled to damages and
28 other monetary relief, and, if so, in what amount; and

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m.) Whether Plaintiff and Proposed Class members are entitled to equitable relief, including restitution or injunctive relief.

89. *Typicality.* Plaintiff's claims are typical of the claims of the Proposed Classes. Plaintiff, like all Proposed Class members, purchased a Laptop that contains the Power Defect and Defendants' "independent" cooling solution. Plaintiff, like all California Subclass members purchased the Laptop in California. Each Proposed Class member's claims arise from the same Power Defect and conduct of Defendants. All Proposed Class members were exposed to the same misrepresentations and omissions.

90. *Adequacy.* Plaintiff will fairly and adequately protect the interests of the Proposed Classes. Plaintiff's interests do not conflict with the interests of Proposed Class members, and he has retained counsel experienced in prosecuting class action and consumer protection litigation.

91. *Superiority.* A class action is superior to individual adjudications of this controversy. Litigation is not economically feasible for individual Proposed Class members because the amount of monetary relief available to individual plaintiffs is insufficient in the absence of the class action procedure. Separate litigation could yield inconsistent or contradictory judgments and increase the delay and expense to all parties and the court system. A class action presents fewer management difficulties and provides the benefits of a single adjudication, economy of scale, and comprehensive supervision by a single court.

92. *Class Injunctive Relief.* Class certification also is appropriate because the prosecution of separate actions by individual Proposed Class members would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for Defendants; the prosecution of separate actions by individual Proposed Class members would create a risk of adjudication of their rights that, as a practical matter, would be dispositive of the interests of other Proposed Class members not parties to such adjudications or would substantially impair or impede other Proposed Class members' ability to protect their interests; and Defendants have acted and refused to act on grounds that apply generally to the Proposed Class such that final injunctive relief or declaratory relief is warranted with respect to the Proposed Class as a whole.

1 **CAUSES OF ACTION**

2 **FIRST CLAIM FOR RELIEF**
3 **BREACH OF EXPRESS WARRANTY**

4 93. Plaintiff incorporates the above allegations by reference.

5 94. Plaintiff asserts this claim on behalf of the Class.

6 95. In the alternative, this claim is brought on behalf of the California Subclass, pursu-
7 ant to California Commercial Code §§ 2100, *et seq.*, as well as the common law.

8 96. Each of the Defendants is a “merchant” and “seller” as those terms are defined un-
9 der the Uniform Commercial Code (“U.C.C.”) and by the respective state statutes under which
10 Plaintiffs alternatively plead this claim. *E.g.*, Cal. Comm. Code §§ 2103 and 2104.

11 97. Plaintiff and the class members were “buyers” of “goods” as defined under the
12 U.C.C. and by the respective state statutes under which Plaintiff alternatively asserts this claim.
13 *E.g.*, Cal. Comm. Code §§ 2103.

14 98. Defendants created an express warranty within the meaning of the U.C.C. and the
15 respective state statutes under which Plaintiff alternatively assert this claim.

16 99. In particular, Plaintiff, and those similarly situated, who purchased the Laptops re-
17 ceived materially similar, if not identical, written warranties from Defendants. Defendants’ writ-
18 ten product warranties list ASUSTeK as the warrantor. ASUS (North America services
19 ASUSTeK’s written warranties for Laptops sold in the United States. The Laptops’ written war-
20 ranties state, in pertinent part, in similar or identical terms, as follows:

21 ASUS warrants the Product to be free from defects in workmanship and materials for
22 the Warranty Period. The Warranty does not cover bundled accessories, which were
23 delivered together with the Product such as: cables, bag, mouse etc. If the Product fails
24 during normal and proper use within the Warranty Period, ASUS, at its discretion, will
25 repair or replace the defective parts of the Product, or the Product itself, with new or
26 reconditioned parts or products that are functionally equivalent or superior to those
27 originally supplied.⁴

28 100. The warranty term for the Laptops is one year, commencing on the date of pur-
chase.

⁴ https://bacchus.asus.com/support/images/upload/warranty/us_Notebook.pdf?ga=2.81008468.259799699.1515389027-1366314139.1515389027 (last visited May 2, 2018).

1 101. At all relevant times, including prior to and at the time of their purchases of Lap-
2 tops, Plaintiff and Class members relied on the promises in Defendants' express warranty. These
3 promises were part of the basis of the bargain connected with these transactions for the sale of
4 goods, and thus qualify as "express warranties" as defined by the U.C.C.

5 102. Defendants breached their express warranty by:

6 a. selling Plaintiff and Class members Laptops with interdependent cooling
7 systems after representing that the GPU and CPU were independently cooled;

8 b. selling Plaintiff and Class members Laptops containing defective materials
9 responsible for the Power Defect, which was substantially certain to cause the Laptops to fail to
10 function properly; and

11 c. failing to adequately repair or replace Laptops affected by the Power De-
12 fect.

13 103. Defendants did not furnish an effective remedy to Plaintiff and Class members.
14 Despite opportunities to honor the promises in its express warranty, Defendants failed to provide
15 Plaintiff and Class members with conforming Laptops free of defects.

16 104. Plaintiff and Class members experienced the Power Defect within the warranty pe-
17 riod. In breach of its express warranty, Defendants failed to inform Plaintiff and Class members
18 that the Laptops contained defective materials and workmanship and failed to repair the defective
19 Laptops.

20 105. Defendants breached their express warranty that promised to repair and correct
21 manufacturing, materials or workmanship defects, and to provide Laptops conforming to the war-
22 ranty. To date, Defendants have not repaired or adjusted, and has been unable to repair or adjust,
23 the Power Defect in the Laptops.

24 106. Through advertisements, public statements, and other statements disseminated
25 through print and online media, Defendants expressly warranted several attributes and qualities of
26 the Laptops by representation as detailed above, such as:

27 a. "ideal for heavy gaming or productive multitasking;"

28 b. "efficient, powerful performance for heavy gaming or productive multi-
tasking such as live streaming and video editing;" and

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c. “maximizes cooling efficiency to give ROG Strix GL502 the stability required for intense gaming marathons.”

107. Class members were exposed to and relied on the foregoing statements when they decided to buy the Laptops. Accordingly, Defendants’ express warranties formed part of the basis of the bargain that was reached when Plaintiff and Class members purchased their Laptops.

108. Defendants breached these express warranties because the Laptops did not, in fact, permit “heavy gaming” or “productive multitasking” and because the Laptops suffered from the Power Defects and throttling. Defendants failed to adequately repair or replace Plaintiff’s and Class members’ Laptops when they reported that they suffered from the Power Defects during the warranty period. Despite reasonable opportunities to honor the promises in their express warranties, Defendants failed to provide Plaintiff and Class members with conforming, non-defective Laptops.

109. Defendants received timely notice of the breaches experienced by Plaintiff and Class members. Defendants were provided notice of the Power Defect by complaints lodged by consumers before or within a reasonable amount of time after the allegations of the Power Defect became public, including but not limited to, via the Power Defect Thread.

110. Plaintiff and Class members used their Laptops in a manner consistent with the Laptops’ operating instructions. Plaintiff and Class members performed their duties under the terms of the foregoing express warranties or have been excused from such performance as a result of Defendants’ conduct described herein.

111. Any attempt by Defendants to disclaim or limit their express warranties vis-à-vis consumers would be inappropriate under these circumstances. Any such asserted limitation is unconscionable and unenforceable because Defendants knowingly sold a defective product without informing consumers and because Defendants failed to honor their express promises.

112. As a direct and proximate result of Defendants’ breaches of express warranty, Plaintiff and Class members have suffered economic damages, including costly repairs, loss of use, replacement costs, substantial loss in value and resale value of the Laptops, and other harm.

1 **SECOND CLAIM FOR RELIEF**

2 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**

3 113. Plaintiff incorporates the above allegations by reference.

4 114. Plaintiff asserts this claim on behalf of the Class. In the alternative, this claim is
5 brought on behalf of the California Subclass.

6 115. Each of the Defendants is a “merchant” as defined under the U.C.C. and by the re-
7 spective state statutes under which Plaintiff alternatively asserts this claim.

8 116. The Laptops are “goods” as defined under the U.C.C. and by the respective state
9 statutes under which Plaintiff alternatively brings this claim, including the Song-Beverly Con-
10 sumer Warranty Act, Cal. Civ. Code §§ 1790, *et seq.* and the Consumer Legal Remedies Act, Cal.
11 Civ. Code § 1761(a).

12 117. Defendants impliedly warranted that the Laptops were of a merchantable quality.
13 The law implies a warranty that the Laptops were merchantable in the relevant transactions. The
14 Laptops, when sold and at all times thereafter, were not in merchantable condition and are not fit
15 for the ordinary purpose for which gaming laptops are used.

16 118. At the point of sale, the Laptops contained unseen manufacturing or materials de-
17 fects whose manifestation renders the product inoperable during its useful life. The defects in the
18 Laptops existed when the Laptops left Defendants’ possession and rendered them unfit for their
19 ordinary and intended purpose. At all relevant times, including when the Laptops entered the
20 stream of commerce and were purchased by Plaintiff and Class members, the Laptops were defec-
21 tive and substantially certain to fail.

22 119. Defendants breached the implied warranty of merchantability because the Laptops
23 are not of a merchantable quality, but instead contained the Power Defect. Had Plaintiff and Class
24 members known of the defect in the Laptops, they would not have purchased their Laptops, or
25 would have paid less for them.

26 120. Plaintiff and Class members were in privity of contract with Defendants by virtue
27 of their interactions with Defendants. Alternatively, privity of contract need not be established,
28 and is not required, because Plaintiff and Class members are the intended third-party beneficiaries
of the implied warranties and other contracts between Defendants and the retailers who sold the

1 Laptops. Defendants' warranties were designed for the benefit of consumers who purchased the
2 Laptops.

3 121. Plaintiff furnished Defendants an opportunity to cure their breach of warranty, to
4 no avail. Defendants have refused to recall, adequately repair, replace, or refund the purchase
5 price of failed Laptops.

6 122. Any attempt by Defendants to disclaim the implied warranty of merchantability
7 imposed by law would be inappropriate, particularly given the parties' unequal bargaining power
8 and Defendants' exclusive knowledge of the Power Defect and true quality of the Laptops.

9 123. The strict time limit of Defendants warranty period is also unconscionable and was
10 inadequate to protect Plaintiff and Class members. Among other things, Plaintiff and Class mem-
11 bers had no meaningful choice in determining the one-year time limit, the terms of which unrea-
12 sonably favored Defendants. A gross disparity in bargaining power existed between Defendants
13 and Class members, and Defendants knew (or exercising due diligence should have known) that
14 the Laptops were defective at the time of sale and that the Laptops would fail well before their
15 useful lives.

16 124. Plaintiff and Class members have complied with any and all obligations under the
17 implied warranty of merchantability or otherwise have been excused from such compliance by
18 reason of Defendants' conduct described herein.

19 125. Defendants' breach of the implied warranty of merchantability damaged Plaintiff
20 and Class members in an amount to be determined at trial.

21 **THIRD CLAIM FOR RELIEF**
22 **VIOLATIONS OF THE MAGNUSON-MOSS WARRANTY ACT,**
23 **15 U.S.C. §§ 2301, *et seq.* ("MMWA")**

24 126. Plaintiff incorporates the above allegations by reference.

25 127. Plaintiff asserts this claim on behalf of the Class. In the alternative, this claim is
26 brought on behalf of the California Subclass.

27 128. Plaintiff and Class members are "consumers" within the meaning of the MMWA.
28 15 U.S.C. § 2301(3).

129. The Laptops are "consumer products" within the meaning of the MMWA. 15
U.S.C. § 2301(1).

1 130. Each of the Defendants is a “supplier” and “warrantor” within the meaning of the
2 MMWA. 15 U.S.C. § 2301(4)-(5).

3 131. Section 2310(d) of the MMWA provides a cause of action for consumers harmed
4 by the failure of a warrantor to comply with a written or implied warranty.

5 132. Defendants’ express warranties are written warranties within the meaning of Sec-
6 tion 2301(6) of the MMWA. The Laptops’ implied warranties are accounted for under Section
7 2301(7) of the MMWA. Defendants cannot disclaim implied warranties under the MMWA be-
8 cause Defendants knowingly sold a defective product without informing consumers about the de-
9 fects

10 133. As set forth herein, Defendants breached their warranties with Plaintiff and Class
11 members. Additionally, 15 U.S.C. § 2304(d) provides in pertinent part:

12 [T]he warrantor may not assess the consumer for any costs the
13 warrantor or his representatives incur in connection with the re-
14 quired remedy of a warranted consumer product. . . . [I]f any inci-
15 dental expenses are incurred because the remedy is not made
16 within a reasonable time or because the warrantor imposed an un-
17 reasonable duty upon the consumer as a condition of securing
18 remedy, then the consumer shall be entitled to recover reasonable
19 incidental expenses which are so incurred in any action against the
20 warrantor.

21 134. The Laptops share common defects and are prone to failure in that they experience
22 performance degradation and battery degradation caused by the Power Defect.

23 135. Despite demands by Plaintiff and Class members for Defendants to pay the ex-
24 penses associated with diagnosing and repairing the defective Laptops, Defendants routinely re-
25 fuse to do so.

26 136. Despite promises by Defendants that they would repair the Power Defect with
27 firmware or software updates or hardware fixes, Defendants have failed to perform on those
28 promises.

 137. Defendants also breached the implied warranty of merchantability as alleged here-
in by offering for sale and selling Laptops that were not in merchantable condition at the time
they were sold. The Laptops were not merchantable because, when sold, they contained latent de-

1 facts which cause the Laptops to suffer from significant performance reductions, the inability to
2 charge during use, increased power consumption, and degraded battery life and durability.

3 138. Any disclaimer of implied warranties by Defendants was unconscionable due to
4 the parties' unequal bargaining power and Defendants' exclusive knowledge of the Power Defect
5 and true quality of the Laptops.

6 139. Defendants' attempts to disclaim or limit the implied warranty of merchantability
7 vis-à-vis consumers are unconscionable and unenforceable. Defendants' unilateral warranty limi-
8 tations are unenforceable because Defendants knowingly sold a defective product without inform-
9 ing consumers about the defects. Moreover, the remedies offered by Defendants to buyers were
10 unfair, inadequate, and unconscionable. Fairness requires invalidating the disclaimer of the im-
11 plied warranty of merchantability in Defendants' form document.

12 140. As a direct and proximate result of Defendants' breaches of implied and express
13 warranties pursuant to 15 U.S.C. § 2310(d)(1), Plaintiff and Class members have suffered dam-
14 ages in an amount to be proven at trial.

15 141. Plaintiff and Class members would suffer economic hardship if they returned their
16 Laptops but did not receive the return of all payments made by them. Because Defendants refuse
17 to acknowledge any revocation of acceptance and return immediately any payments made, Plain-
18 tiff and Class members have not reaccepted their Laptops by retaining them.

19 142. The amount in controversy for Plaintiff's individual claims meets or exceeds the
20 sum of \$25. The amount in controversy of this action exceeds the sum of \$50,000, exclusive of
21 interest and costs, computed on the basis of all claims proposed to be adjudicated in this lawsuit.

22 143. Plaintiff and Class members are entitled to recover damages as a result of Defen-
23 dants' breaches of warranties.

24 144. Plaintiff and Class members are also entitled to seek costs and expenses, including
25 reasonable attorneys' fees, under the MMWA. 15 U.S.C. § 2310(d)(2).

26 **FOURTH CLAIM FOR RELIEF**
27 **DECEIT AND FRAUDULENT CONCEALMENT**

28 145. Plaintiff incorporates the above allegations by reference.

146. Plaintiff asserts this claim on behalf of the Class. In the alternative, this claim is
brought on behalf of the California Subclass.

1 147. Defendants made false representations concerning the performance and quality of
2 the Laptops, and the quality of the Defendants' brand. Further, Defendants concealed and sup-
3 pressed material facts concerning the performance and quality of the Laptops, the quality of the
4 Defendants' brand, the Laptops' cooling capabilities, and the Power Defect. Defendants knew, or
5 in the exercise of reasonable diligence should have known, of the Power Defect and misrepresen-
6 tations of the cooling capabilities, but failed to disclose these facts prior to or at the time it mar-
7 keted Laptops and sold them to consumers. Defendants engaged in this concealment in order to
8 increase sales of its Laptops.

9 148. Plaintiff and Class members had no reasonable way of knowing that Defendants'
10 representations were false and misleading, or that Defendants had omitted to disclose highly im-
11 portant details relating to the Laptops' cooling system and the Power Defect. Plaintiff and Class
12 members did not and could not reasonably discover Defendants' deception on their own.

13 149. Defendants had a duty to disclose the true performance of the Laptops because the
14 scheme and its details were known and accessible only to Defendants; Defendants had superior
15 knowledge and access to the relevant facts; and Defendants knew these facts were neither known
16 to, nor reasonably discoverable by, Plaintiff and the Class members. Defendants also had a duty
17 to disclose the Power Defect and cooling capabilities because they made many general, partial
18 representations about the qualities of the Laptops.

19 150. Defendants still have not made full and adequate disclosures and continue to de-
20 fraud consumers by concealing material information regarding the true performance of Laptops.

21 151. Plaintiff and Class members were unaware of the omitted material facts and would
22 not have acted as they did, in that they would not have purchased the Laptops, had they known of
23 the facts Defendants suppressed. Plaintiff and Class members' actions in purchasing Laptops
24 were justified. Defendants were in exclusive control of the material facts and such facts were not
25 reasonably known to the public, Plaintiff, or Class members.

26 152. Plaintiff and Class members relied to their detriment upon Defendants' representa-
27 tions, fraudulent misrepresentations, and material omissions regarding the quality of Laptops, the
28 Laptops' cooling system, and the Power Defect in deciding to purchase their Laptops.

1 153. Plaintiff and Class members sustained damage as a direct and proximate result of
2 Defendants' deceit and fraudulent concealment. Among other damages, Plaintiff and Class mem-
3 bers did not receive the value of the premium price they paid for their Laptops. Plaintiff and Class
4 members would not have purchased Laptops had they known of the Laptops' tendency to over-
5 heat or manifest the Power Defect.

6 154. Defendants' acts were done maliciously, oppressively, deliberately, with intent to
7 defraud, and in reckless disregard of Plaintiff's and Class members' rights and well-being, to en-
8 rich Defendants. Defendants' conduct warrants an assessment of punitive damages in an amount
9 sufficient to deter such conduct in the future, which amount is to be determined according to
10 proof.

11 **FIFTH CLAIM FOR RELIEF**
12 **UNJUST ENRICHMENT**

13 155. Plaintiff incorporates the above allegations by reference.

14 156. Plaintiff brings this cause of action on behalf of the Class. In the alternative, this
15 claim is brought on behalf of the California Subclass.

16 157. Plaintiff and Class members conferred a benefit on Defendants by purchasing the
17 Laptops.

18 158. The Laptops purchased by Plaintiff and the Class members did not provide the
19 promised performance and instead contained a uniform defect.

20 159. Under these circumstances, retention by Defendants of revenues traceable to the
21 Laptops is unjust and inequitable.

22 160. Plaintiff and Class members are entitled to restitution of their losses. Defendants
23 should be required to disgorge their ill-gotten gains.

24 **SIXTH CLAIM FOR RELIEF**
25 **VIOLATIONS OF THE CONSUMERS LEGAL REMEDIES ACT,**
26 **CALIFORNIA CIVIL CODE §§ 1750, *et seq.* ("CLRA")**

27 161. Plaintiff incorporates the above allegations by reference.

28 162. Plaintiff brings this cause of action on behalf of the California Subclass.

163. Defendants' actions, representations and conduct have violated, and continue to
violate the CLRA, because they extend to transactions that are intended to result, or which have
resulted, in the sale or lease of goods or services to consumers.

1 164. Plaintiff and other California Subclass members are “consumers” as that term is
2 defined by the CLRA. Cal. Civ. Code § 1761(d).

3 165. The Laptops that Plaintiff and the California Subclass members purchased were
4 “goods” within the meaning of the CLRA. Cal. Civ. Code § 1761(a).

5 166. By engaging in the actions, representations and conduct set forth in this Class Ac-
6 tion Complaint, Defendants have violated, and continue to violate, § 1770(a)(2), § 1770(a)(5),
7 § 1770(a)(7), § 1770(a)(8), and § 1770(a)(9) of the CLRA. In violation of California Civil Code
8 §1770(a)(2), Defendants’ acts and practices constitute improper representations regarding the
9 source, sponsorship, approval, or certification of the goods they sold. In violation of California
10 Civil Code §1770(a)(5), Defendants’ acts and practices constitute improper representations that
11 the goods they sell have sponsorship, approval, characteristics, ingredients, uses, benefits, or
12 quantities, which they do not have. In violation of California Civil Code §1770(a)(7), Defendants’
13 acts and practices constitute improper representations that the goods they sell are of a particular
14 standard, quality, or grade, when they are of another. In violation of California Civil Code
15 §1770(a)(8), Defendants have disparaged the goods, services, or business of another by false or
16 misleading representation of fact. In violation of California Civil Code §1770(a)(9), Defendants
17 have advertised goods or services with intent not to sell them as advertised. Specifically, in viola-
18 tion of sections 1770 (a)(2), (a)(5), (a)(7) and (a)(9), Defendants’ acts and practices led consum-
19 ers to falsely believe that that they were purchasing laptops that were: (i) fit for “heavy gaming;”
20 (ii) had independent cooling systems; and (iii) were free of defects, when in fact, the Laptops had
21 interdependent cooling systems, suffered from the Power Defect, and are unfit for their ordinary
22 use of gaming. In violation of section 1770(a)(8), Defendants falsely or deceptively marketed and
23 advertised that, unlike laptops not specifically advertised as ideal for “heavy gaming,” the Lap-
24 tops are fit for heavy gaming, when in fact, the Laptops contain the Power Defect and are unfit
25 for their ordinary use of gaming. Further in violation of section 1770(a)(8), Defendants falsely or
26 deceptively marketed and advertised that, unlike laptops not specifically advertised as including
27 independent cooling systems, the Laptops had independent cooling systems, which in fact, the
28 Laptops included interdependent cooling systems that caused the Laptops to frequently overheat.

1 167. Plaintiff requests that this Court enjoin Defendants from continuing to employ the
2 unlawful methods, acts and practices alleged herein pursuant to California Civil Code
3 § 1780(a)(2). If Defendants are not restrained from engaging in these types of practices in the fu-
4 ture, Plaintiff and the California Subclass members will continue to suffer harm.

5 168. *CLRA § 1782 NOTICE*. Irrespective of any representations to the contrary in this
6 Class Action Complaint, Plaintiff specifically disclaims, at this time, any request for damages un-
7 der any provision of the CLRA. Plaintiff, however, hereby provides Defendants with notice and
8 demand that within thirty (30) days, Defendants correct, repair, replace or otherwise rectify the
9 unlawful, unfair, false and/or deceptive practices complained of herein. Defendants' failure to do
10 so will result in Plaintiff amending this Class Action Complaint to seek, pursuant to California
11 Civil Code § 1780(a)(3), on behalf of himself and the California Subclass members, compensa-
12 tory damages, punitive damages and restitution of any ill-gotten gains due to Defendants' acts and
13 practices. In particular, Plaintiff will seek to recover on behalf of himself and the California Sub-
14 class members the price premium paid for the Laptops, i.e., difference between the price consum-
15 ers paid for the Laptops and the price that they would have paid but for Defendants'
16 misrepresentations.

17 169. Plaintiff also requests that this Court award them costs and reasonable attorneys'
18 fees pursuant to California Civil Code § 1780(d).

19 **SEVENTH CLAIM FOR RELIEF**
20 **VIOLATIONS OF THE FALSE ADVERTISING LAW, CALIFORNIA BUSINESS AND**
21 **PROFESSIONS CODE §§ 17500, *et seq.* ("FAL")**

22 170. Plaintiff incorporates the above allegations by reference.

23 171. Plaintiff brings this cause of action on behalf of the California Subclass.

24 172. Beginning at an exact date unknown to Plaintiff, but within three (3) years preced-
25 ing the filing of the Class Action Complaint, Defendants made untrue, false, deceptive and/or
26 misleading statements in connection with the advertising and marketing of the Laptops.

27 173. Defendants made representations and statements (by omission and commission)
28 that led reasonable consumers to believe that they were purchasing laptops that were: (i) ideal for
"heavy gaming;" (ii) had independent cooling systems; and (iii) were free of defects, when in
fact, the Laptops had interdependent cooling systems, suffered from the Power Defect, and are

1 unfit for their ordinary use of gaming. Defendants deceptively failed to inform Plaintiff, and the
2 California Subclass members, of the interdependent cooling systems and the Power Defect that
3 rendered the Laptops unfit for their ordinary use of gaming.

4 174. Plaintiff and those similarly situated relied to their detriment on Defendants' false,
5 misleading and deceptive advertising and marketing practices. Had Plaintiff and those similarly
6 situated been adequately informed and not intentionally deceived by Defendants, they would have
7 acted differently by, without limitation, refraining from purchasing the Laptops or paying less for
8 them.

9 175. Defendants' acts and omissions are likely to deceive the general public.

10 176. Defendants engaged in these false, misleading and deceptive advertising and mar-
11 keting practices to increase its profits. Accordingly, Defendants have engaged in false advertising,
12 as defined and prohibited by section 17500, *et seq.* of the California Business and Professions
13 Code.

14 177. The aforementioned practices, which Defendants have used, and continue to use,
15 to their significant financial gain, also constitute unlawful competition and provide an unlawful
16 advantage over Defendants' competitors as well as injury to the general public.

17 178. As a direct and proximate result of such actions, Plaintiff and the other members of
18 the California Subclass have suffered, and continue to suffer, injury in fact and have lost money
19 and/or property as a result of such false, deceptive and misleading advertising in an amount which
20 will be proven at trial, but which is in excess of the jurisdictional minimum of this Court. In par-
21 ticular, Plaintiff and those similarly situated paid a price premium for the Laptops, i.e., the differ-
22 ence between the price consumers paid for the Laptops and the price that they would have paid
23 but for Defendants' misrepresentation.

24 179. Plaintiff seeks, on behalf of those similarly situated, restitution of the difference
25 between what Defendants acquired from Plaintiff, the general public, and/or the California Sub-
26 class, and what would have been acquired in absence of the false, misleading and deceptive ad-
27 vertising and marketing practices complained of herein, which amount will be proven at trial, plus
28 interest thereon.

1 180. Plaintiff seeks, on behalf of those similarly situated, a declaration that the above-
2 described practices constitute false, misleading and deceptive advertising.

3 181. Plaintiff seeks, on behalf of those similarly situated, an injunction to prohibit the
4 sale of the Laptops within a reasonable time after entry of judgment, unless packaging and mar-
5 keting is modified to remove the misrepresentations and to disclose the omitted facts. Such mis-
6 conduct by Defendants, unless and until enjoined and restrained by order of this Court, will
7 continue to cause injury in fact to the general public and the loss of money and property in that
8 the Defendants will continue to violate the laws of California, unless specifically ordered to com-
9 ply with the same. This expectation of future violations will require current and future consumers
10 to repeatedly and continuously seek legal redress in order to recover monies paid to Defendants to
11 which Defendants are not entitled. Plaintiff and the members of the California Subclass have no
12 other adequate remedy at law to ensure future compliance with the California Business and Pro-
13 fessions Code alleged to have been violated herein.

14 **SEVENTH CLAIM FOR RELIEF**
15 **VIOLATIONS OF THE SONG-BEVERLY CONSUMER WARRANTY ACT,**
16 **CALIFORNIA CIVIL CODE §§ 1790, *et seq.* (the "Act")**

17 182. Plaintiff incorporates the above allegations by reference.

18 183. Plaintiff brings this cause of action on behalf of the California Subclass.

19 184. Plaintiff, and the members of the California Subclass, were "buyers" of "consumer
20 goods" as those terms are defined in the Act. Cal. Civil Code § 1791. The Laptops sold to Plain-
21 tiff, and the members of the California Subclass, are "consumer goods" as defined in the Act.

22 185. Each of the Defendants was a "manufacturer" as that term is defined in section
23 1791 of the Act.

24 186. An implied warranty of merchantability arose out of and was related to Defend-
25 ants' sales of the Laptops. Defendants have not validly disclaimed, excluded, or modified the im-
26 plied warranties, and any attempted disclaimer or exclusion of the implied warranties was and is
27 ineffective. Accordingly, under sections 1792 and 1792.1 of the Act, an implied warranty of fit-
28 ness and an implied warranty of merchantability arose out of and was related to each and every
sale of the Laptops. In particular, by operation of the law, the sale of the Defendants' products
includes an implied warranty that the Laptops would be usable for their intended and particular

1 purpose for at least one year after the products were sold. Accordingly, Defendants warranted, as
2 implied as a matter of law, that the Laptops would serve the particular purpose of a being suitable
3 for “heavy gaming” and “productive multitasking.”

4 187. Defendants breached the implied warranty of merchantability by selling defective
5 Laptops—i.e., Laptops suffering from the Power Defect. The Laptops were unfit for their ordi-
6 nary purpose at the time of sale because, their ordinary purpose was “heavy gaming” and “pro-
7 ductive multitasking,” both of which were prevented by the Power Defect.

8 188. Defendants also made “express warranties” (set forth above) as defined by
9 § 1791.2 of the Act in connection with the sales of consumer goods to Plaintiff and those simi-
10 larly situated. By manufacturing and selling Laptops with the Power Defect, Defendants breached
11 this written warranty because the Laptops were not free from defects in workmanship and materi-
12 als for the Warranty Period and were not suitable for “heavy gaming” or “productive multitask-
13 ing” because the Laptops suffered from the Power Defects and throttling.

14 189. As a result of Defendants’ sale of defective products that do not perform as war-
15 ranted and are unfit for normal use, Plaintiff, and those similarly situated, have suffered damages.

16 190. When consumers complained to Defendants during the warranty period that the
17 Laptops suffered from the Power Defect, Defendants failed to: (i) refund the purchase price of the
18 Laptops, and/or (ii) provide repairs to the Laptops to cure the Power Defect. Accordingly, Plain-
19 tiff and the California Subclass members have been unable to obtain appropriate relief in the form
20 of replacement, repair or restitution.

21 191. Plaintiff and the California Subclass members have performed all of the conditions
22 of the contract that they were required to perform.

23 192. Plaintiff and California Subclass members have suffered, and will continue to suf-
24 fer, damages as a result of Defendants’ failure to comply with its warranty obligations. Accord-
25 ingly, Plaintiff and California Subclass members are entitled to recover such damages under the
26 Act. Cal. Civ. Code §§ 1791.1(d) and 1974.

27 193. Defendants’ breaches of warranty, as set forth above, were wilful. Accordingly, a
28 civil penalty should be imposed upon Defendants in an amount not to exceed twice the amount of
actual damages.

EIGHTH CLAIM FOR RELIEF

VIOLATIONS OF THE UNFAIR, UNLAWFUL AND DECEPTIVE TRADE PRACTICES ACT, CALIFORNIA BUSINESS AND PROFESSIONS CODE §§ 17200, *et seq.* (“UCL”)

194. Plaintiff incorporates the above allegations by reference.

195. Plaintiff brings this cause of action on behalf of the California Subclass.

196. Within four (4) years preceding the filing of this Class Action Complaint, and at all times mentioned herein, Defendants have engaged, and continues to engage, in unfair, unlawful and deceptive trade practices in California by engaging in the unfair, deceptive and unlawful business practices outlined in this Class Action Complaint. In particular, Defendants have engaged, and continue to engage, in unfair, unlawful and deceptive trade practices by, without limitation, the following:

a. deceptively representing to Plaintiff and the California Subclass members that the Laptops were ideal for “heavy gaming;”

b. deceptively representing to Plaintiff and the California Subclass members that the Laptops had independent cooling systems;

c. failing to inform Plaintiff and the California Subclass members that the Laptops suffered from the Power Defect and were not fit for their ordinary use of gaming;

d. failing to inform Plaintiff and the California Subclass members that the Laptops has interdependent cooling systems and as a result the Laptops would overheat;

e. violating the CLRA as described herein;

f. violating the FAL as described herein;

g. engaging in fraud, deceit, and misrepresentation as described herein;

h. breach of express and implied warranties;

i. failing to replace, repair, or refund products that fail to conform with the implied warranties;

j. violating the Song-Beverly Act as described herein; and

k. violating the Magnuson-Moss Warranty Act as described herein.

197. Plaintiff and the California Subclass members relied to their detriment on Defendants’ unfair, deceptive and unlawful business practices. Had Plaintiff and the California Subclass

1 members been adequately informed and not deceived by Defendants, they would have acted dif-
2 ferently by not purchasing (or paying less for) the Laptops.

3 198. Defendants' acts and omissions are likely to deceive the general public.

4 199. Defendants engaged in these unfair practices to increase its profits. Accordingly,
5 Defendants have engaged in unlawful trade practices, as defined and prohibited by section 17200,
6 *et seq.* of the California Business and Professions Code.

7 200. The aforementioned practices, which Defendants have used to their significant fi-
8 nancial gain, also constitute unlawful competition and provide an unlawful advantage over De-
9 fendants' competitors as well as injury to the general public.

10 201. As a direct and proximate result of such actions, Plaintiff and the other members of
11 the California Subclass have suffered and continue to suffer injury in fact and have lost money
12 and/or property as a result of such deceptive and/or unlawful trade practices and unfair competi-
13 tion in an amount which will be proven at trial, but which is in excess of the jurisdictional mini-
14 mum of this Court. In particular, Plaintiff and those similarly situated paid a price premium for
15 the Laptops, i.e., the difference between the price consumers paid for the Laptops and the price
16 that they would have paid but for Defendants' misrepresentations.

17 202. Plaintiff seeks, on behalf of those similarly situated, a declaration that the above-
18 described trade practices are fraudulent and/or unlawful.

19 203. Plaintiff seeks, on behalf of himself and the California Subclass members, an in-
20 junction to prohibit the sale of the Laptops within a reasonable time after entry of judgment, un-
21 less packaging and marketing is modified to remove the misrepresentations and to disclose the
22 omitted facts. Such misconduct by Defendants, unless and until enjoined and restrained by order
23 of this Court, will continue to cause injury in fact to the general public and the loss of money and
24 property in that Defendants will continue to violate the laws of California, unless specifically or-
25 dered to comply with the same. This expectation of future violations will require current and fu-
26 ture consumers to repeatedly and continuously seek legal redress in order to recover monies paid
27 to Defendants to which Defendants were not entitled. Plaintiff and California Subclass members
28 have no other adequate remedy at law to ensure future compliance with the California Business
and Professions Code alleged to have been violated herein.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, on behalf of himself and the Class and Subclass defined
3 herein, respectfully requests that the Court:

4 A. Certify this case as a class action pursuant to California Code of Civil Procedure §
5 382, appoint the named Plaintiff to be the Class representative and the undersigned counsel to be
6 Class counsel;

7 B. Award Plaintiff and Class members appropriate monetary relief, such as actual or
8 punitive damages;

9 C. Award Plaintiff and Class members equitable, injunctive and declaratory relief as
10 appropriate under the applicable law, including restitution;

11 D. Award Plaintiff and Class members pre-judgment and post- judgment interest as
12 prescribed by law;

13 E. Award reasonable attorneys' fees and costs as permitted by law; and

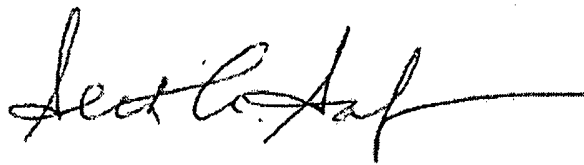
14 F. Enter such other and further relief as may be just and proper.

15 **DEMAND FOR JURY TRIAL**

16 Plaintiff hereby demands a jury trial on all issues so triable.

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18 Dated: May 3, 2018

GUTRIDE SAFIER LLP

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EXHIBIT A

I, Joseph Carlotti, declare:

1. I am the Plaintiff in this action. If called upon to testify, I could and would competently testify to the matters contained herein based upon my personal knowledge.

2. I submit this Declaration pursuant to California Code of Civil Procedure section 2215.5 and California Civil Code section 1780(d).

3. On August 23, 2017, Plaintiff purchased an ASUS GL502VSK laptop on Amazon.com while I was located in Rocklin, California.

4. I later learned that ASUS GL502VSK laptop was not suitable for gaming, frequently overheated, and suffered from an undisclosed power defect.

5. I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Executed this 3rd day of May 2018, in Rocklin, California.

Joseph Karaki Carlotti

Joseph Carlotti