

Hassan A. Zavareei (CA Bar No. 181547)
Sophia J. Goren (CA Bar No. 307971)
Kyra A. Taylor (*pro hac vice* forthcoming)
TYCKO & ZAVAREEI LLP
1828 L Street, NW, Suite 1000
Washington, DC 20036
Telephone: (202) 973-0900
Facsimile: (202) 973-0950

Annick Persinger (CA Bar No. 272996)
TYCKO & ZAVAREEI LLP
483 Ninth St, Suite 200
Oakland, CA 94607
Telephone: (510) 254-6808
Facsimile: (202) 973-0950

E. Powell Miller (*pro hac vice*)
Sharon S. Almonrode (*pro hac vice*)
Mahde Y. Abdallah (*pro hac vice*)
THE MILLER LAW FIRM, P.C.
950 West University Drive, Suite 300
Rochester, Michigan 48307
248.841.2200
248.652.2852 *facsimile*

Greg F. Coleman (*pro hac vice*)
Adam A. Edwards (*pro hac vice*)
Mark E. Silvey (*pro hac vice*)
GREG COLEMAN LAW
First Tennessee Plaza
800 S. Gay Street, Suite 1100
Knoxville, TN 37929
(865) 247-0080

Counsel for Plaintiffs and the Proposed Classes

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

DEONN MORGAN, LYDIA ZEPEDA,
SOPHIA IVY, KELLY OKOROCHA,
JENNIFER ZIELINSKI, CHRISTOPHER
BIZZELLE, AND DANA RODENBECK
individually and on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

APPLE INC.,

Defendant.

Case No. 3:17-cv-05277-RS

(JURY TRIAL DEMANDED)

**FIRST AMENDED CLASS ACTION
COMPLAINT**

FIRST AMENDED CLASS ACTION COMPLAINT

1. Plaintiffs Deonn Morgan, Lydia Zepeda, Sophia Ivy, Kelly Okorochoa, Jennifer Zielinski, Christopher Bizzelle, and Dana Rodenbeck (“Plaintiffs”), on behalf of themselves and all others similarly situated, bring this Class Action Complaint against defendant Apple Inc. (“Apple” or “Defendant”). Plaintiffs, by their attorneys, make the following allegations pursuant to the investigation of their counsel and based upon information and belief, except as to allegations specifically pertaining to themselves and their counsel, which are based on personal knowledge:

NATURE OF THIS ACTION

2. Plaintiffs challenge Defendant’s practices in connection with their marketing, advertising and sale of the defective Powerbeats 2 and Powerbeats 3 headphones (“Powerbeats”).

3. In a widespread advertising and marketing campaign, Apple touts that its costly Powerbeats (which retail for \$199.95) are “Sweat & Water Resistant,” and employs world-famous professional athletes, including LeBron James and Serena Williams, to promote its Powerbeats in commercials as heavy-duty headphones suited for workouts that can withstand rough treatment and exposure to the elements. In numerous places, including the packaging of the headphones, Defendant represents that Powerbeats 2 have a six-hour rechargeable battery and that the Powerbeats 3 have a twelve-hour battery life. In further support of these representations, Apple also claims that Powerbeats are “BUILT TO ENDURE” and are the “BEST HEADPHONES FOR WORKING OUT.”

4. But these costly headphones are neither “built to endure” nor “sweat & water resistant” and certainly do not have a battery that lasts anywhere close to six or twelve hours. Instead, these headphones are made of shoddy sub-standard materials and contain a design defect that causes the battery life to diminish and eventually stop retaining a charge. Often, after minimal usage, sometimes only days or weeks, the Powerbeats stop accepting a charge and the indicator light blinks red or fails to turn on at all. Then, the Powerbeats will either not power on at all, or will only power on for minutes at a time. Thousands of users have experienced this identical defect with their Powerbeats after less than a year of use.

5. Plaintiffs and many consumers like them have all experienced the same defect—rapidly diminishing battery life and eventual failure to retain a charge—after using the Powerbeats during

14. Plaintiff Deonn Morgan is a resident of Oakland, California.

15. Plaintiff Christopher Bizzelle is a resident of Schertz, Texas.

16. Plaintiff Dana Rodenbeck is a resident of Loves Park, Illinois.

17. Defendant Apple is a California corporation with its headquarters and principal place of business in Cupertino, California. Apple designs, manufactures and markets a range of personal computers, mobile communication and media devices, portable digital music players, and personal electronics, including headphones. Apple sells its products globally through its retail stores, online stores, direct sales force, wholesalers, retailers, and value-added resellers. As of January 2016, Apple had over 450 retail stores. In May 2014, Apple bought Beats Music and Beats Electronics for approximately \$3 billion. Beats Electronics manufactured popular headphones, speakers, and audio software.

JURISDICTION AND VENUE

18. This Court has original jurisdiction over this civil action under 28 U.S.C. § 1332(d) because this action is a class action filed under Rule 23 of the Federal Rules of Civil Procedure, the amount in controversy exceeds \$5,000,000 and there are members of the Class who are citizens of a different state than the Defendant Apple.

19. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because Apple is a resident of Cupertino, California, which is located in this District. Additionally, venue is proper in this District because Named Plaintiff Deonn Morgan resides and purchased the product at issue in this lawsuit in Alameda County California, within this District.

CLASS ACTION ALLEGATIONS

20. Plaintiffs bring this action on behalf of themselves and the class defined as follows:

All persons residing in the United States who purchased Powerbeats 2 or Powerbeats 3 headphones primarily for personal, family or household purposes, and not for resale.

21. In the alternative, Plaintiffs Deonn Morgan and Lydia Zepeda brings this action on behalf of themselves and the members of a subclass comprised of:

All persons residing in the State of California who purchased Powerbeats 2 or Powerbeats 3 headphones primarily for personal, family or household purposes, and not for resale.

1 22. In the alternative, Plaintiff Jennifer Zielinski brings this action on behalf of herself and
2 the members of a subclass comprised of:

3 All persons residing in the State of Pennsylvania who purchased
4 Powerbeats 2 or Powerbeats 3 headphones for primarily personal, family
5 or household purposes, and not for resale.

6 23. In the alternative, Plaintiff Kelly Okorochoa brings this action on behalf of himself and
7 the members of a subclass comprised of:

8 All persons residing in the State of Louisiana who purchased Powerbeats
9 2 or Powerbeats 3 headphones for primarily personal, family or
10 household purposes, and not for resale.

11 24. In the alternative, Plaintiff Ivy Sophia brings this action on behalf of herself and the
12 members of a subclass comprised of:

13 All persons residing in the State of Florida who purchased Powerbeats 2
14 or Powerbeats 3 headphones for primarily personal, family or household
15 purposes, and not for resale.

16 25. In the alternative, Plaintiff Christopher Bizzelle brings this class action on behalf of
17 himself and a subclass comprised of:

18 All persons residing in the State of Texas who purchased
19 Powerbeats 2 or Powerbeats 3 headphones for primarily personal,
20 family or household purposes, and not for resale.

21 26. In the alternative, Plaintiff Dana Rodenbeck brings this class action on behalf of herself
22 and a subclass comprised of:

23 All persons residing in the State of Illinois who purchased
24 Powerbeats 2 or Powerbeats 3 headphones for primarily personal,
25 family or household purposes, and not for resale.

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

- a. Whether the Powerbeats are defective;
- b. Whether the Powerbeats are defectively designed and/or manufactured;

- c. Whether the Powerbeats are made of materials of poor-quality or are the result of poor workmanship;
- d. Whether Apple's claim that the Powerbeats are "sweat & water resistant" is deceptive;
- e. Whether Apple's claim that the Powerbeats 2 has a 6 hour rechargeable battery is deceptive;
- f. Whether Apple's claim that the Powerbeats 3 has up to 12 hours of battery life is deceptive;
- g. Whether Apple's claim that the Powerbeats are "BUILT TO ENDURE" is deceptive;
- h. Whether Apple's claim that the Powerbeats are durable enough to withstand "working out" is deceptive;
- i. Whether Apple breached express warranties relating to the Powerbeats;
- j. Whether Apple breached the implied warranty of merchantability relating to the Powerbeats;
- k. Whether Apple breached the implied warranty of fitness for particular purpose relating to Powerbeats;
- l. Whether Apple was unjustly enriched by receiving moneys in exchange for Powerbeats that were defective;
- m. Whether Apple should be ordered to disgorge all or part of the ill-gotten profits it received from the sale of the defective Powerbeats;
- n. Whether Plaintiffs and the class are entitled to damages, including compensatory, exemplary, and statutory damages, and the amount of such damages;
- o. Whether Apple should be enjoined from continuing to sell defective Powerbeats that do not live up to Apple's advertising and marketing claims; and
- p. Whether Apple engaged in unfair, unconscionable, or deceptive trade practices by selling and/or marketing defective Powerbeats.

28. Members of the class and subclasses are so numerous that joinder is impracticable.

While the exact number of class members is unknown to Plaintiffs, it is believed that the class comprises thousands of members geographically disbursed throughout the United States.

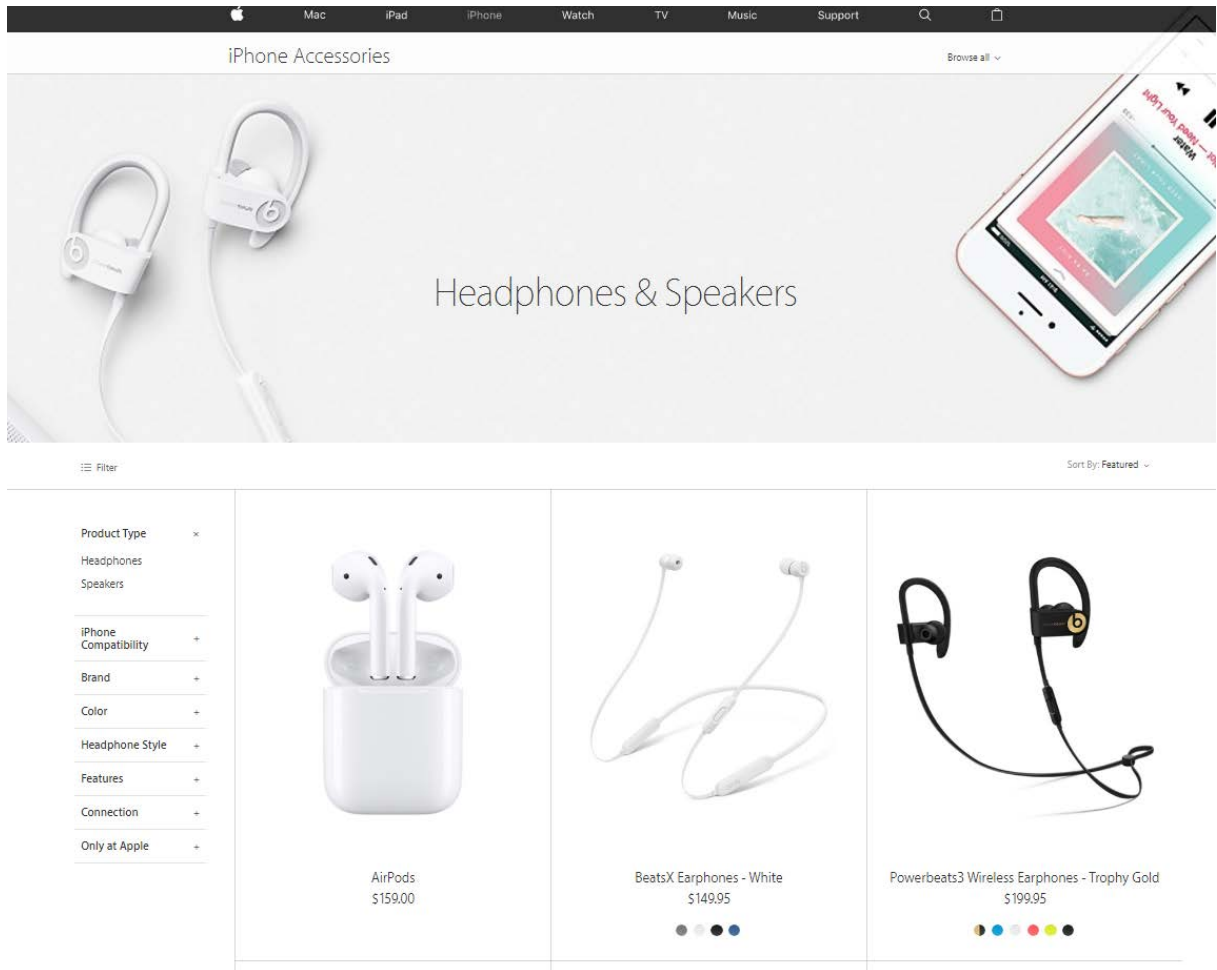
1 Electronics, had seized 60% of the \$100-plus headphone market share. Around that time, when asked
2 which headphones they next planned to purchase, 46% of all teens reported they planned to buy Beats.
3 Recognizing the company as a potential source of substantial revenue in a growing market, Apple
4 acquired Beats Music and Beats Electronics for approximately \$3 billion in May 2014.

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

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

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27 ¹ Lauren Schwahn, *Powerbeats3 Wireless vs. Powerbeats2 Wireless*, Nerdwallet (September 29, 2016)
28 <https://www.nerdwallet.com/blog/shopping/powerbeats3-wireless-vs-powerbeats2-wireless-headphones-comparison/>.

37. Apple aggressively markets the Powerbeats 3. On Apple's website, on the "Music Accessories" page, the Powerbeats 3 headphones are the third product listed.



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

39. Apple's aggressive marketing is effective. As of July 2016, Beats brought in more revenue from Bluetooth headphones than any other company in the market. In terms of revenue, Beats controlled nearly half of the Bluetooth headphone market. And in terms of unit sales, Beats controlled over a quarter of the market.

40. Beats are also highly profitable for Apple. From Apple's perspective, Beats are a perfect combination: cheap to make, but expensive to buy. By way of example, a recent article in the Motley Fool estimates Beats Solo headphones cost Apple only \$16.89 to make—yet they retail for \$199.95.

This is a markup of over 1000%.

41. Because Beats are cheaply constructed and/or contain a design defect, despite the high price tag, they repeatedly break.

A. Apple Ensures That Consumers Encounter It's Battery-Life, and Sweat Resistant Representations to Promote Sales of Powerbeats

42. Apple uniformly misrepresents Powerbeats' battery life, and misrepresents that they are sweat and water resistant. Labels, websites, and shelf tags alike make the exact same representations.

43. With respect to battery life, Apple represents on the Apple and Beats websites, as well as on product packaging, that the Powerbeats 2 has a "6 hour rechargeable battery" and that Powerbeats 3 has "UP TO 12 HR BATTERY LIFE." Despite Apple's and Beat's representations, neither the Powerbeats 2 nor the Powerbeats 3 headphones have a battery that can be consistently used for anywhere close to 6 or 12 hours, respectively, without further charging.²

² In Defendant's "UP TO 12 HR BATTERY LIFE" claim, the "12 HR" provides what is known in consumer research as an "anchor." The "Up to" is known in the same research as an "adjustment." However, research has shown that adjustments like "Up to" are insufficient and lead to estimates that are biased in the direction of the initial anchor point—12 Hrs. (Slovic, Fischhoff, and Lichtenstein, 1982); (Biswas and Burton 1994) (when asked what the maximum amount of the discount that would be expected when the "save up to 40%" option was presented, 80% of the respondents estimated that the maximum level of the actual discount would be 40-49%). In other words, consumers are biased toward the 12 Hr anchor from the statement "up to 12 Hrs" and interpret it to mean that they would get 12 hours of battery life. Apple's headphones, which fail to hold a charge for long, and then not at all, do not provide the expected 12 hours of battery life. As a result, Apple's representations are false and misleading to consumers. Defendant's earlier claim that Powerbeats 2 had a "6 hour rechargeable battery" included only the 6 hour anchor and no "adjustment." Apple's headphones, which fail to hold a charge for long, and then not at all, do not provide the expected 6 hours of battery life. As a result, Apple's representations are false and misleading to consumers.

44. With respect sweat and water resistance, Apple uniformly makes the same “sweat and water resistance” claim on Powerbeats 2 and 3 packaging, as well as on the Apple and Beats websites. But those representations are false and misleading because Powerbeats malfunction during exercise or even when exposed to mild humidity—thus, they are not sweat or water resistant.

45. The Beats webpage emphasized Powerbeats 2 headphones battery’s ability as follows:

Powerbeats² Wireless have a rechargeable battery that offers 6 hours of playback time. Average time to fully charge your earphones is 90 minutes.

46. The Beats webpage makes a similar plug for Powerbeats 3 headphones, stating that the new technology “brings 12 hours of battery life”:

Up To 12 Hours Of Battery Life

Keep the hours of training coming as Powerbeats³ Wireless are now powered for the long haul with the efficiency of the Apple W1 technology, which brings 12 hours of battery life, 5-minute Fast Fuel, and seamless setup and switching for your Apple devices.

47. The Beats site further touts Powerbeats sweat and water resistance:

Sweat & Water Resistant

Rain, sweat or shine-these water
resistant earphones push you
further and handle tough
training.

48. As shown in the following example, the representations about battery life and sweat and water resistance for Powerbeats 3 on Apple.com are consistent with the representations on the Beats-specific website:

Highlights

Connect via Class 1 Bluetooth with your device for wireless workout freedom

Up to 12 hours of battery life to power through multiple workouts

With Fast Fuel, a 5-minute charge gives you 1 hour of playback when battery is low

Sweat and water resistance to handle tough training

49. To drive the point home about long battery life and moisture resistance, the Beats and Apple Store websites also represent that Powerbeats 3 have batteries that can be used without charging for hours so “you’re free to push through the most challenging workouts.”

Power meets endurance

Bring on the hours of training because Powerbeats3 Wireless are now powered for the long haul with the efficiency of the Apple W1 chip. With up to 12 hours of battery life and an optimized design for improved comfort and immersive sound, you’re free to push through the most challenging workouts. Sweat and water resistance provides the necessary durability for strenuous workouts and weather.

50. Apple also specifically markets Powerbeats as “sporty” and intended for use while working out. Apple boasts on the Beats homepage: “BEST HEADPHONES FOR WORKING OUT: POWERBEATS3 WIRELESS.”

51. As shown below, Apple includes identical messages about battery life and sweat and water resistance on product packaging.

52. The Powerbeats 2 box states in four languages that Powerbeats 2 have a “6 Hour Rechargeable Battery” and that they are “Sweat and Water Resistant”



53. On the front of Powerbeats 3 packaging, Apple includes the phrase “12 Hr” in large bold contrasting print in its representation that Powerbeats 3 have “UP TO 12 HR BATTERY LIFE.”

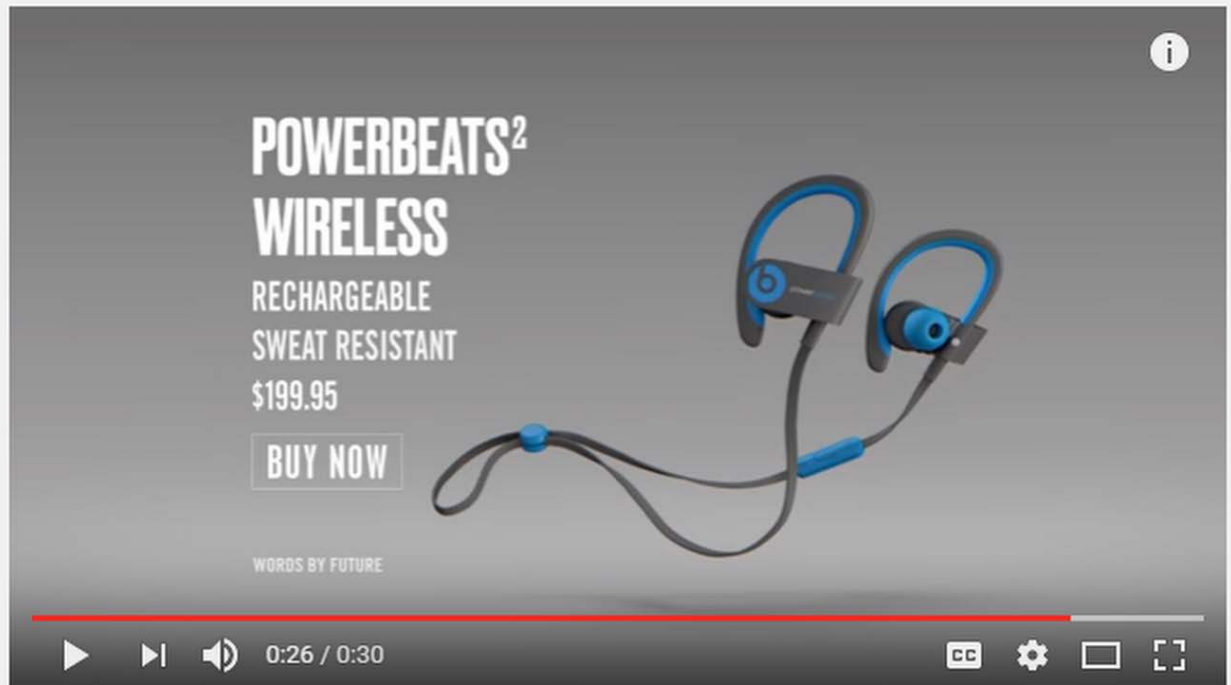


54. The back of the Powerbeats 3 box reiterates that they purportedly have up to 12 hours of battery life and also includes the false claim that they are “sweat and water resistant.”

55. Apple ensures that its retailers uniformly promote the same battery life and sweat and water resistance messages at consumers’ point of purchase. By way of example, online retailers, including, but not limited, hsn.com (the Home Shopping Network), bestbuy.com, Amazon.com, target.com, Walmart.com, Costco.com, kohls.com, dickssportinggoods.com, sears.com, AT&T.com

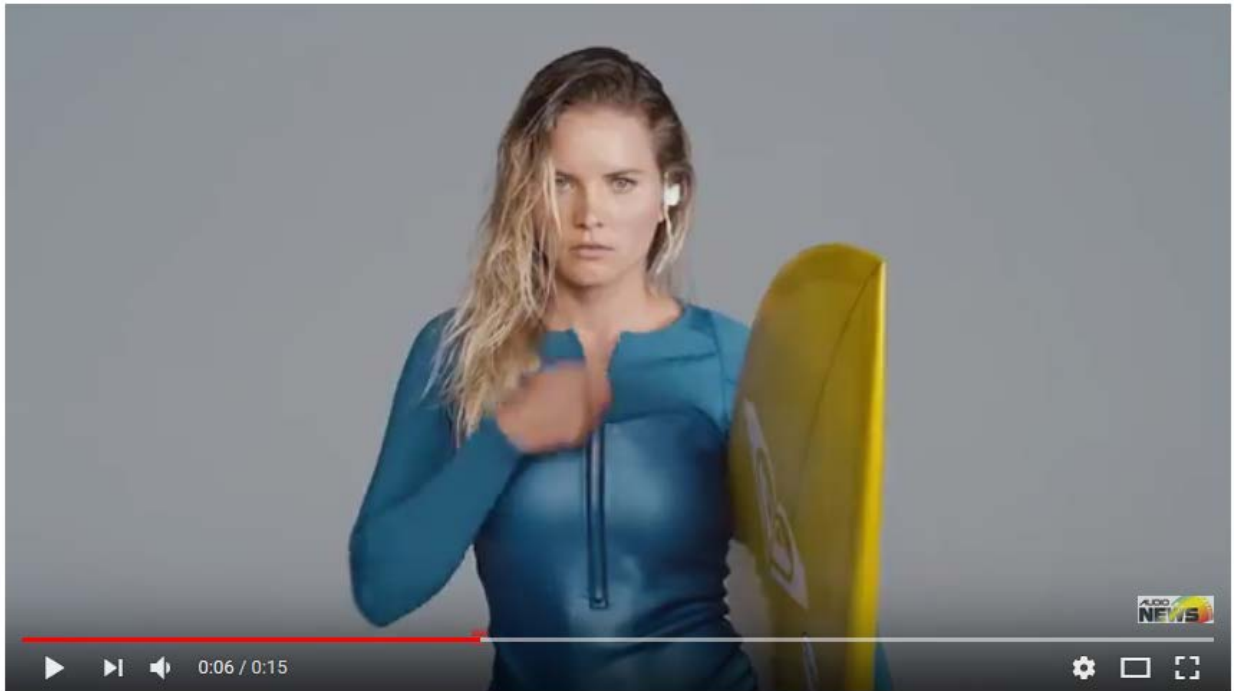
1 and T-mobile.com, all include the identical “6 hour” and “up to 12 hour” battery life, and “sweat and
2 water resistant” representations on their sites. Displays on shelves at Best Buy and Costco make those
3 same representations.

4 56. Commercials online and on television further reiterate how the Powerbeats have 6 or 12
5 hours of battery life, and that they are sweat and water resistant.



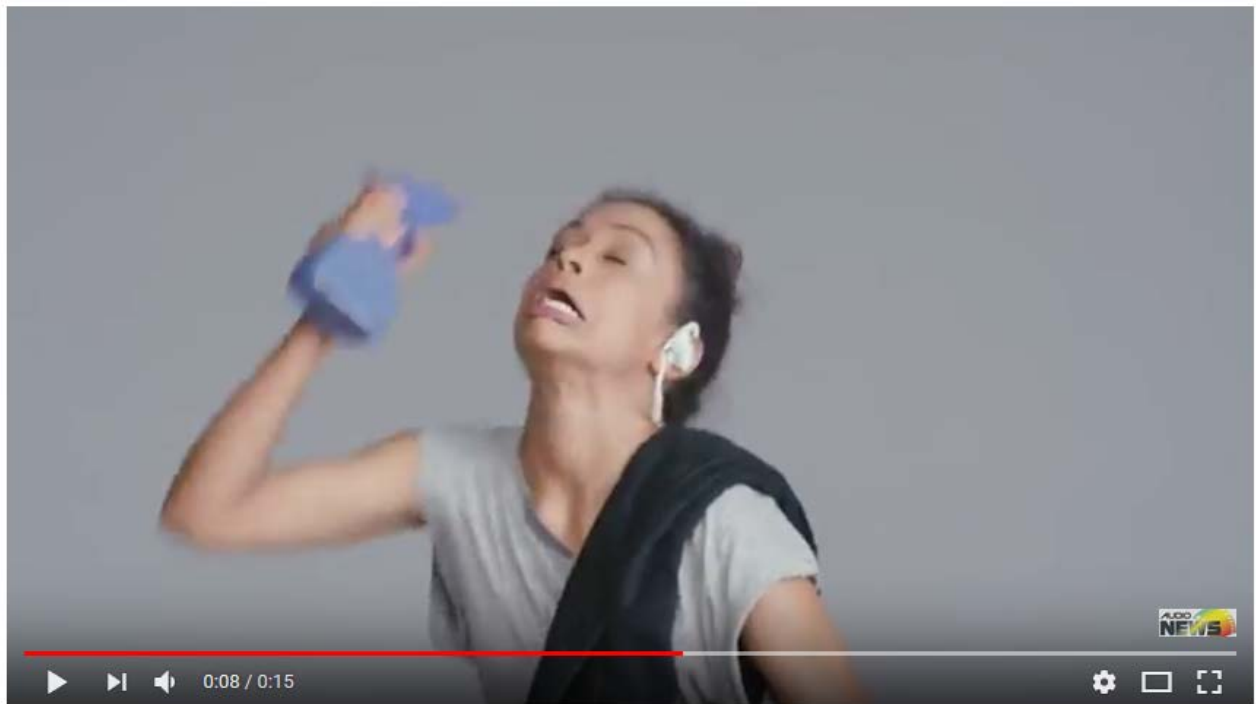
18 Cam's Prayer: My Way featuring Future | Beats by
19 Dre

1 57. One of the advertisements actually depicts a consumer preparing to go surfing with the
2 Powerbeats on:



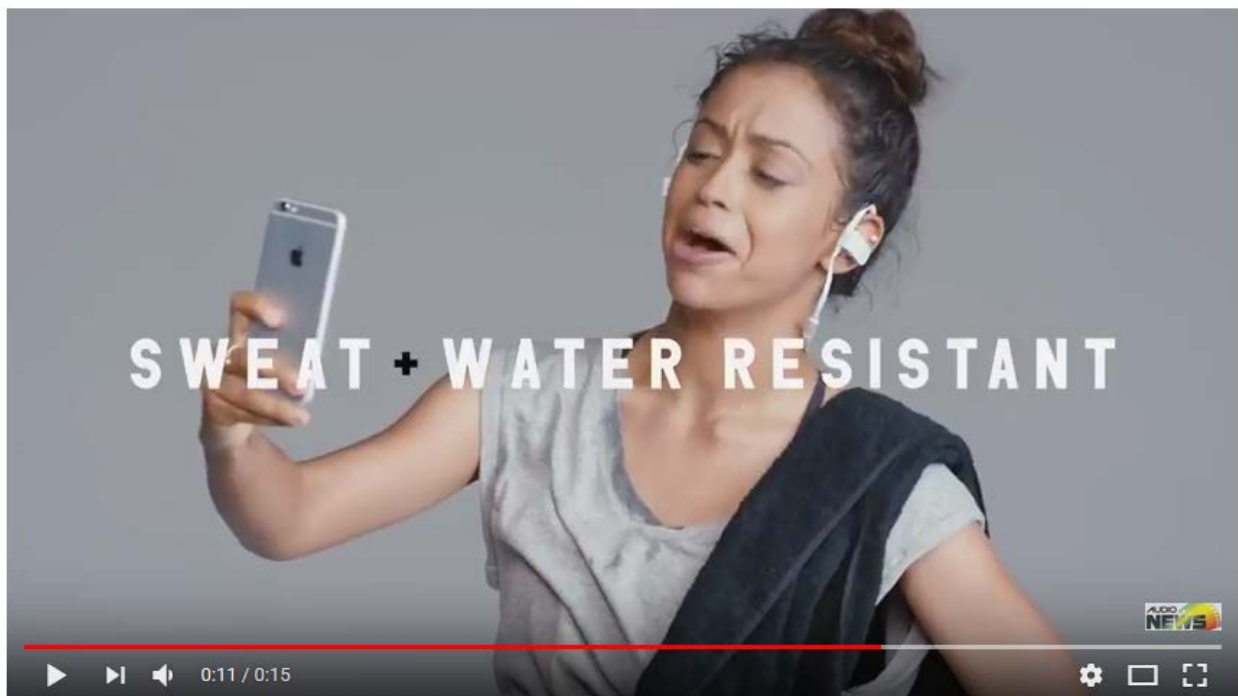
14 Beats By Dre _ Powerbeats3 Wireless _ #GotNoStrings Mashup-audio news
15
16
17
18
19
20
21
22
23
24
25
26
27
28

58. The same video then shows another customer spraying herself with water while wearing the Powerbeats:



Beats By Dre _ Powerbeats3 Wireless _ #GotNoStrings Mashup-audio news

60. The video then concludes with the bold sweat and water resistance claim:



Beats By Dre _ Powerbeats3 Wireless _ #GotNoStrings Mashup-audio news

1 61. Apple advertisements show professional athletes such as Lebron James, Serena
2 Williams, Cam Newton, Zou Shiming, Mario Gotze, Matt Giteau, Simone Biles, Leticia Bufoni, Louie
3 Lopez, and Luan Oliveira using the headphones while exercising. The commercials show the athletes
4 engaging in weight training, aerobic activity, running, skateboarding, and gymnastics while wearing the
5 headphones. The advertisements routinely show professional athletes drenched in sweat, using their
6 Powerbeats.

62. Apple's print advertisements of the Powerbeats contain the same battery life and sweat resistant representations. Like other advertising, the print ads also emphasize their "sportiness." Apple claims the Powerbeats 2 were "inspired by LeBron James," were "designed with . . . the athlete in mind."

POWERBEATS² WIRELESS

PERFORMANCE. POWER. FREEDOM.

RISE TO PERFECTION

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

MORE FREEDOM. MORE POWER.

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

DESIGNED TO ENDURE

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

MUSIC YOU CAN FEEL

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

DESIGNED TO PERFORM

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

WHAT'S IN THE BOX

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

DETAILS

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

B. Powerbeats Do Not Function as Advertised

63. A virtually unending stream of consumer complaints, and the experiences of the Plaintiffs that bring this action, puts the lie to Apple's uniform advertising. One consumer succinctly summarized the problem:

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

64. Indeed, as that consumer rightfully points out, the problem is *not only* that Apple sells a shoddy and defectively designed product—and that Apple falsely and deceptively markets that product as “sweat and water resistant” and with a 6-12 hours battery life—it is that Apple attempts to cover up the defect rather than acknowledge or fix it. When consumers complain about the Powerbeats' malfunction, Apple either gives them the run-around, or sends them another pair of headphones under the warranty—which often contain the exact same defect. Several users (including Jennifer Zielinski, Sophia Ivy, Kelly Okorochoa, Christopher Bizzelle) have gone through multiple pairs of Powerbeats only to experience the exact same defect every time: after minimal use, the Powerbeats fail to maintain a charge.

65. Contrary to Apple's repeated misrepresentations, neither the Powerbeats 2 nor the Powerbeats 3 were “BUILT TO ENDURE.” Instead, the Powerbeats' batteries last for shorter and shorter periods of time over the first weeks and months of use, eventually rendering them useless. The Powerbeats contain a common design defect, manufacturing defect and/or are shoddily constructed with poor materials that cause them to fail to retain a charge after minimal use, particularly after exercise or exposure to humid or moist conditions, including sweat.

66. As a result of this glaring problem, on Apple's own website from March 23, 2016³ the Powerbeats 2 headphone received an average of 2 stars out of 5 based on 589 consumers' reviews. Of

³ March 23, 2016 version of Apple's webpage archived on the Way Back Machine at <http://web.archive.org/web/20160323182928/http://www.apple.com/shop/product/MHBE2AM/A/beats-powerbeats2-wireless-in-ear-headphones>

* * *

* * *

* * *

* * *

4:17-cv-5277

1 advertised for... Yet they continue to die after a few week's use. For
2 the price, this is highly frustrating and not worth the investment.

3 * * *

4 1 month and they won't turn on. Based on the reviews I have seen here,
5 this is a common problem, but for a quality product that i spent \$200
6 on, I would expect a lot more. Very frustrating.

7 * * *

8 These headphones are garbage. I got them and two months later they
9 will charge, or at least show it is charged. They turn on and at exactly 45
10 seconds cut off.

11 * * *

12 Now on 3rd replacement pair... same story with each, after
13 about a month just stops turning on despite full charge. Once
14 can be put down to chance but three times together with all the
15 other reviews means an inherent flaw...

16 67. Consumers have slammed the Powerbeats 3 repeatedly, giving the headphones an
17 average of 1.5 stars out of 5, based on 676 reviews on Apple's website.⁴ In fact, 480 out of 676
18 consumers have given the headphones a one-star rating. (In contrast, the Apple brand AirPods
19 earphones have 557 reviews with only 40 consumers giving the earphones a one star rating.) A
20 common theme emerges among consumers' complaints: the Powerbeats are not sweat resistant and
21 contain a defect causing them to fail to retain a charge.

22 I was willing to give them a chance ... God, I was so wrong! 3 pairs later
23 I said "enough is enough, gimme my money back!" The minute you
24 sweat, these headphones DIE. Complete lie that they are sweat and
25 water resistant. They're advertised as working out headphones, utter
26 garbage. I wish they worked, because the sound was actually really good.
27 But the material is rubbish. Apple you should be ashamed. Just
28

29 ⁴ Powerbeats3 Wireless Earphones – Black (September 11, 2017) <https://www.apple.com/us-hed/shop/product/ML8V2LL/A/powerbeats3-wireless-earphones-black?fnode=081ea5e3f76c4a3f14bb86ce2703beb8c183ca6d1d1e68b8fd5dc36c280d12408dfc899a77eb2cee26ed3a135692a5fca5991677f954f6a554c46cd3caf41936c73a28ef083fc0794746900f05d7bcd8f6a848f9d54ceaf8faa7b3746fa2fc31c69b2d5986534f4053227860e1ed11b47e15fefc14cf9b9e182b03e51bb711a>
30 a

1 disgustingly bad. I would give this a zero star rating. Avoid this product
2 at all costs! Thank me later!

3 * * *

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

7 * * *

8 2 sets died already within the first month. The sweat proof statement is a
9 fat lie.

10 * * *

11 4th replacement. I have had to send mine in and were replaced all
12 for exactly the same issue. They just don't charge anymore. Each
13 time it gets replaced with a new one and lasts about 1 or 2
14 months, then it happens gain. Bad quality product this is.

15 * * *

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

19 * * *

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

25 * * *

26 My first pair last less than a month before they malfunctioned (wouldn't
27 charge up, couldn't be recognized by laptop). Asked at the retailer
28 whether he'd seen problems with the model. His answer was vague
enough to have me a little worried.

2nd pair just died and I have experienced all the various problems
mentioned in these posts, most werr recoverable, but as of yesterday
they will not power down after charging and so are flat when I want to
use them, also not able to pair with phone or recognised by laptop (even
is connected by cable). Resetting the unit achieves nothing. i so want
these to work but clearly they do not and clearly it is a design flaw.

Poorly implemented product. Not sure why Apple is not acting. Class action anyone?

68. Similarly, on Beats' own website, the Powerbeats 3 headphones have received only a 2.02 out of 5 rating from 125 customers.⁵ Again, many of these customers complain vociferously about the same failure to hold a charge and battery defects:

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

* * *

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

* * *

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

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

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

⁵ Powerbeats3 Wireless (September 11, 2017) <https://www.beatsbydre.com/earphones/powerbeats3-wireless>.

THE EXPERIENCES OF THE NAMED PLAINTFFS

A. Deonn Morgan

70. Deonn Morgan purchased Powerbeats 2 for her teenage son at a Best Buy Store in May 2016 for \$139.99 before taxes.

71. Prior to her purchase in May 2016, Ms. Morgan saw commercials for the Powerbeats headphones in which professional athletes, including LeBron James, were using the headphones while engaging in rigorous exercise. After she saw commercials, in May 2016, Ms. Morgan went to a Best Buy store to purchase Powerbeats 2 headphones. At the store, a display had information about Powerbeats, including that it was sweat and water resistant and would last for hours. The box she purchased said the same thing. She relied on Apple's representations that Powerbeats were both "sweat & water resistant," "built to endure," and could be used for hours without recharging. Ms. Morgan purchased her headphones in reliance on these misrepresentations.

72. The Powerbeats 2 headphones Ms. Morgan purchased in May 2016 stopped working and became unusable after her son used them for a wide-variety of activities. In or around November 2016, Ms. Morgan contacted and returned her headphones to Apple, who sent her a replacement pair of Powerbeats headphones. That pair of Powerbeats 2 headphones began to malfunction soon after receipt and normal use. Ms. Morgan's son used both the original and replacement pairs of headphones while doing a wide-variety of activities.

73. Had Ms. Morgan known of the Powerbeats' failure to hold a charge and battery defects, she would not have purchased them, or would have paid significantly less for them.

74. Additionally, had Ms. Morgan known Powerbeats were not "sweat & water resistant," did not have a battery that would last 6 hours, and/or were not "built to endure," she would not have purchased them or would have paid significantly less for them.

75. If Powerbeats functioned as advertised, Ms. Morgan would purchase Powerbeats in the future. If the Court were to issue an injunction ordering Apple to comply with advertising and warranty laws, Plaintiff would likely purchase Powerbeats again in the near future. Indeed, Ms. Morgan attempted to replace the Powerbeats headphones because she wanted a functioning pair that lived up to Defendant's representations.

B. Lydia Zepeda

76. Lydia Zepeda purchased her Powerbeats 3 from Costco.com while sitting with her boyfriend at the computer in Corona, California in May of 2017 for \$149.99 before taxes.

77. Prior to reviewing the Costco website, she saw ads in workout magazines that made representations that Powerbeats were sweat and water resistant and had up to 12 hours of battery. She had also visited a Best Buy store and spoke with an employee who repeated Apple's messages that Powerbeats were sweat and water resistant and had a very long battery life. Additionally, Ms. Zepeda watched commercials featuring Serena Williams exercising while wearing the Powerbeats headphones. While Ms. Zepeda made her purchase on Costco.com, she read on the Costco.com website that Powerbeats 3 had up to 12 hours of battery life and that the headphones were sweat and water-resistant. Ms. Zepeda relied on these representations.

78. Ms. Zepeda purchased her Powerbeats 3 to listen to music while exercising at the gym. When she purchased the headphones, she believed Powerbeats 3 could withstand use during exercise after seeing Apple's representations that the Powerbeats 3 were sweat and water resistant. Ms. Zepeda also believed Apple's representations that the Powerbeats 3's batteries could last for 12 hours of use.

79. Ms. Zepeda used the Powerbeats as directed, including while she exercised. Ms. Zepeda used her Powerbeats while running, cycling, and weightlifting.

80. Ms. Zepeda was able to use her Powerbeats 3 headphones for 7 weeks before they began failing to retain a charge, eventually failing to turn on at all.

81. Ms. Zepeda called Apple to request a replacement pair of headphones, but Apple representatives told her that the headphones were not covered by the manufacturer's warranty. Apple refused to replace the headphones.

82. Had Ms. Zepeda known of the Powerbeats' failure to hold a charge and battery defects, she would not have purchased them or would have paid significantly less for them.

83. Additionally, had Ms. Zepeda known Powerbeats were not "sweat & water resistant," did not have a battery that would last 12 hours, and/or were not suitable to use while exercising, she would not have purchased them.

1 84. If Powerbeats functioned as advertised, Ms. Zepeda would purchase Powerbeats in the
2 future because she would still like to have functioning Powerbeats for her workouts. If the Court were
3 to issue an injunction ordering Powerbeats to comply with advertising and warranty laws, Plaintiff
4 would likely purchase Powerbeats again in the near future.

5 **C. Sophia Ivy**

6 85. Sophia Ivy purchased her Powerbeats 2 headphones from the Home Shopping
7 Network in a four-part installment plan for \$199.95 before taxes in December 2014.

8 86. Prior to purchase, Ms. Ivy viewed the Powerbeats 2 headphones on Target's website.
9 There, she saw that the Powerbeats 2 were sweat resistant and had a battery that would last for 6 hours.
10 Ms. Ivy also saw the Powerbeats 2 headphones on the Home Shopping Network's website. On the
11 Home Shopping Network's website, Ms. Ivy saw that the Powerbeats 2 were sweat resistant and had a
12 battery that would last for 6 hours.

13 87. After she viewed the representations on the Home Shopping Network's website,
14 including that the Powerbeats 2 were sweat resistant and had a battery that would last for 6 hours, Ms.
15 Ivy called the Home Shopping Network and purchased Powerbeats 2 headphones.

16 88. Ms. Ivy purchased the headphones to use while exercising. She purchased the
17 Powerbeats 2 based on her belief that the headphones were suitable for exercising and were durable.
18 Ms. Ivy relied on Apple's representations that the Powerbeats headphones were sweat and water
19 resistant when deciding to purchase the Powerbeats 2 headphones. She also relied on Apple's
20 representations that the Powerbeats 2 had a 6 hour battery.

21 89. Ms. Ivy used the Powerbeats as directed, including to exercise. Ms. Ivy regularly used
22 her Powerbeats during the three to four-mile walks that she takes as often as possible—and at least a
23 few times a week on warm, humid evenings.

24 90. Ms. Ivy's Powerbeats broke after four months of use. In mid-2015, Ms. Ivy's
25 Powerbeats would not hold a charge for longer than a few minutes. Eventually, the headphones would
26 fail to turn on.

1 91. Ms. Ivy contacted Apple, who sent her a replacement pair of Powerbeats 2. The
2 replacement Powerbeats 2 failed within 10 months. The replacement Powerbeats 2 failed to hold a
3 charge and would not stay on.

4 92. Ms. Ivy received numerous replacement Powerbeats 2 headphones that also failed to
5 work as warranted. Because Powerbeats are cheaply constructed with poor materials, Ms. Ivy also
6 received Powerbeats 2 replacements where the plastic ear piece snapped off during normal use. Ms. Ivy
7 continued contacting Apple as the numerous replacement Powerbeats 2 headphones Apple sent her
8 continued to fail to charge or would fail to turn on due to a defect in the headphones.

9 93. Ms. Ivy requested a refund for her defective Powerbeats 2 headphones, but Apple
10 representatives told her they would only send replacement Powerbeats 2 headphones.

11 94. In May of 2017, Ms. Ivy called Apple again to receive another replacement for the most
12 recent pair of broken Powerbeats 2 headphones. Apple refused to replace her headphones, telling her
13 that they were out of warranty.

14 95. Had Ms. Ivy known that the Powerbeats 2 contained the failure to hold a charge and
15 battery defects, she would not have purchased them or would have paid significantly less for them.

16 96. Had Ms. Ivy known Powerbeats 2 were not “sweat & water resistant,” did not have a
17 battery that would last 6 hours, and/or were not suitable to use while exercising, she would not have
18 purchased them or would have paid significantly less for them.

19 97. If Powerbeats functioned as advertised, Ms. Ivy would purchase Powerbeats in the
20 future. If the Court were to issue an injunction ordering Apple to comply with advertising and warranty
21 laws, Plaintiff would likely purchase Powerbeats again in the near future. Indeed, Ms. Ivy made multiple
22 attempts to replace the Powerbeats headphones because she wanted a functioning pair that lived up to
23 Apple’s representations.

24 **D. Jennifer Zielinski**

25 98. Jennifer Zielinski purchased a pair of Powerbeats 2 headphones in April of 2016 from a
26 T-Mobile store in Pennsylvania for \$199.99 before taxes.

27 99. Prior to purchase, Ms. Zielinski visited the Beats website where she saw that the
28 Powerbeats 2 headphones were sweat resistant and had a 6 hour battery life.

100. Prior to purchase, Ms. Zielinski saw a Powerbeats commercial that featured Cam Newton exercising rigorously and sweating while wearing Powerbeats 2 headphones and which stated that the headphones were sweat resistant. Images from the commercial are included below.



Cam Newton and 2 Chainz presented by Beats by Dre



Cam Newton and 2 Chainz presented by Beats by Dre



Cam Newton and 2 Chainz presented by Beats by Dre

101. Ms. Zielinski purchased her Powerbeats 2 headphones at the T-Mobile store in Pennsylvania. She saw on the box at the register that the headphones were sweat and water resistant and that they had a 6 hour battery.

102. Ms. Zielinski purchased the Powerbeats 2 headphones because she wanted a pair of wireless headphones that could withstand sweat from an aerobic workout. When purchasing the headphones, Ms. Zielinski relied on Apple's representations that the Powerbeats 2 were sweat and water resistant. Additionally, while purchasing the headphones, Ms. Zielinski relied on Apple's representations that the battery of the Powerbeats 2 could last for six hours.

103. Ms. Zielinski used her Powerbeats as directed and often while exercising.

104. Within approximately 3 weeks of purchase, after Ms. Zielinski finished exercising and sweating on a Stairmaster aerobic exercise machine, Ms. Zielinski discovered that her Powerbeats 2 headphones would not retain a charge and would not turn on. Ms. Zielinski returned to the T-Mobile Store and received a replacement pair of Powerbeats 2 headphones.

105. Within approximately 3 months of receiving the replacement pair of Powerbeats 2, Ms. Zielinski's replacement Powerbeats 2 stopped charging and would not turn on. Ms. Zielinski went to an

1 Apple store, where the Apple employee sent her headphones out for repair. Apple sent another
2 replacement set of Powerbeats 2 headphones to Ms. Zielinski's house.

3 106. Ms. Zielinski received multiple additional replacement Powerbeats 2 headphones from
4 Apple after each would proceed to fail in the same way: failing to hold a charge and eventually failing to
5 turn on.

6 107. When Ms. Zielinski requested that Apple honor its one-year manufacturer's warranty,
7 Apple representatives told Ms. Zielinski that Powerbeats 2 cannot withstand heavy sweating.

8 108. Had Ms. Zielinski known that the Powerbeats 2 contained the failure to hold a charge
9 and battery defects, she would not have purchased them or paid significantly less for them.

10 109. Had Ms. Zielinski known Powerbeats 2 were not "sweat & water resistant," did not
11 have a battery that would last 6 hours, and/or were not suitable to use while exercising, she would not
12 have purchased them or paid significantly less for them.

13 110. If Powerbeats functioned as advertised, Ms. Zielinski would purchase Powerbeats in the
14 future. If the Court were to issue an injunction ordering Apple to comply with advertising and warranty
15 laws, Plaintiff would likely purchase Powerbeats again in the near future. Indeed, Ms. Zielinski made
16 numerous attempts to replace the Powerbeats headphones because she wanted a functioning pair that
17 lived up to Defendant's representations.

18 **E. Kelly Okorochoa**

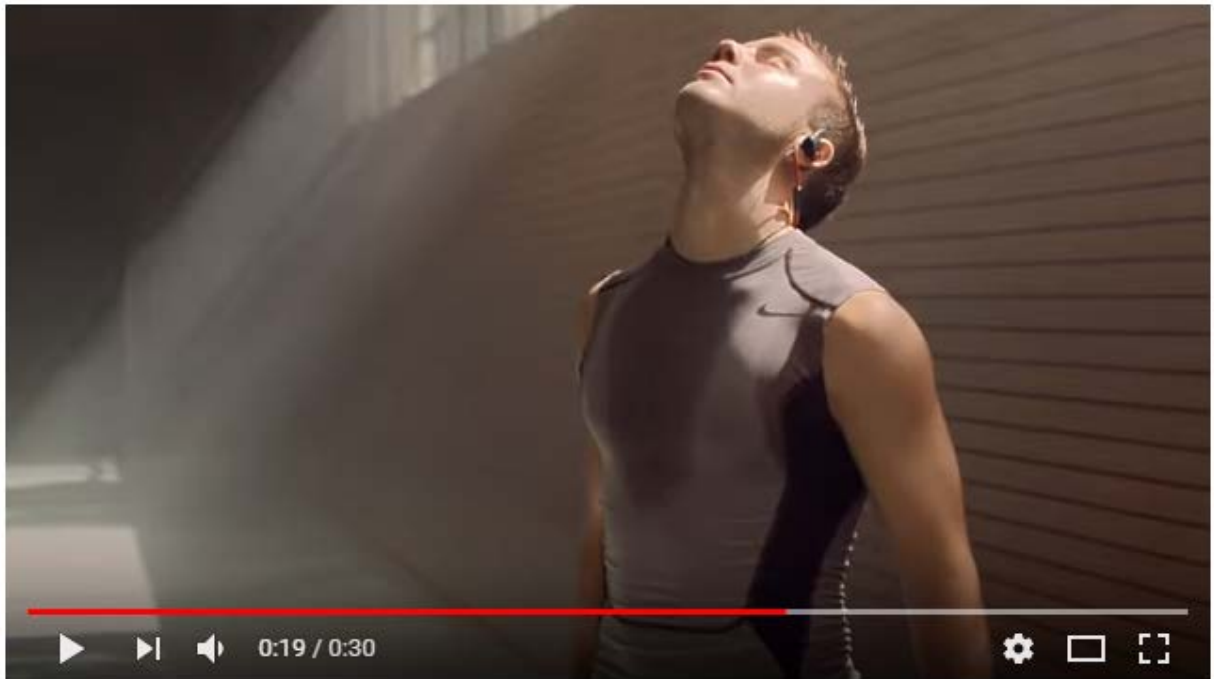
19 111. Kelly Okorochoa purchased his first pair of Powerbeats 2 headphones from a Best Buy
20 store for \$199.99 (before taxes) in March 2016.

21 112. Prior to purchasing his first pair of Powerbeats 2 headphones, Mr. Okorochoa looked at
22 the Beats website which said that the Powerbeats 2 were sweat resistant and had a battery that would
23 last 6 hours.

113. Also prior to purchase, Mr. Okorocho saw a Powerbeats 2 commercial which featured athletes using the headphones while rigorously exercising and sweating. Images from the commercial he saw are below.



"Ain't No Game" by Beats by Dre | Powerbeats2 Wireless



"Ain't No Game" by Beats by Dre | Powerbeats2 Wireless

1 114. When Mr. Okorochoa bought his first pair of Powerbeats 2 headphones at the Best Buy
2 store in Lake Charles, Louisiana, the box was located in a locked glass display case in the store. The
3 display included information about Powerbeats, such as that it was sweat and water resistant and had a
4 6 hour battery. Mr. Okorochoa asked an employee to get him a pair of Powerbeats 2 headphones. After
5 unlocking the glass display case, the Best Buy gave Mr. Okorochoa another plastic locked box containing
6 the Powerbeats 2 to take to the cashier. Mr. Okorochoa could see the Powerbeats 2 in the glass box and
7 saw that the box said that the Powerbeats 2 were sweat resistant and had a 6 hour battery life.

8 115. Mr. Okorochoa purchased his Powerbeats 2 to use while working out. Mr. Okorochoa
9 relied on Apple's representations that the headphones were sweat resistant and were durable enough to
10 withstand a workout. Mr. Okorochoa also relied on Apple's representations that the battery of the
11 Powerbeats 2 headphones could last for hours.

12 116. Mr. Okorochoa used his Powerbeats 2 while exercising, which he does for an hour a day
13 most days a week.

14 117. By August 2016, the Powerbeats 2 became defective and would stop holding a charge
15 and/or would stop turning on entirely.

16 118. Mr. Okorochoa contacted Apple, who sent him a pair of replacement Powerbeats 2 in
17 exchange for the defective headphones.

18 119. By December 2016, the replacement headphones stopped holding a charge and then
19 stopped turning on entirely.

20 120. Mr. Okorochoa believed that the problems with his first pair of Powerbeats 2 were a
21 fluke. Believing that the Beats brand produced high quality headphones, he thought the problem with
22 his Powerbeats 2 would be remedied if he purchased another pair.

23 121. Mr. Okorochoa, who wanted high-quality headphones that could withstand use while
24 exercising, purchased a second pair of Powerbeats 2 from the Best Buy store in Lake Charles, Louisiana
25 in January of 2017. He believed that they would not contain the same problems as the first pair of
26 Powerbeats 2 he purchased in March of 2016, and that, this time, they would be sweat and water
27 resistant and would hold a charge for 6 hours
28

122. When Mr. Okorochoa purchased his second pair of Powerbeats 2 headphones from Best Buy, he went to the shelf where the Powerbeats 2 were located, which included information about Powerbeats, such as that they are sweat and water resistant and have a 6 hour batter. Mr. Okorochoa then retrieved a card with a picture of the headphones and representations that the Powerbeats 2 were sweat resistant and had a 6 hour battery. Mr. Okorochoa looked at the card and read the description of the Powerbeats 2. He then took the card to the Best Buy register, where he purchased the headphones and the Best Buy employees provided him with a box of Powerbeats 2 headphones, which included the same representations. Mr. Okorochoa relied on Apple's representations that the headphones were sweat resistant and were durable enough to withstand a workout. Mr. Okorochoa also relied on Apple's representations that the battery of the Powerbeats 2 headphones could last for hours.

123. By June of 2017, the Powerbeats 2 headphones Mr. Okorochoa purchased in January of 2017 failed to turn on.

124. Had Mr. Okorochoa known that Powerbeats 2 were defective and/or were the result of the use of poor materials and workmanship, he would not have purchased them or would have paid significantly less for them.

125. Had Mr. Okorochoa known Powerbeats 2 were not "sweat & water resistant," did not have a battery that would last 6 hours, and/or were not suitable to use while exercising, he would not have purchased them or would have paid significantly less for them.

126. If Powerbeats functioned as advertised, Mr. Okorochoa would purchase Powerbeats in the future. If the Court were to issue an injunction ordering Apple to comply with advertising and warranty laws, Plaintiff would likely purchase Powerbeats again in the near future. Indeed, Mr. Okorochoa purchased Powerbeats 2 on two separate occasions because he wanted a functioning pair that lived up to Defendant's representations.

F. Christopher Bizzelle

i) Mr. Bizzelle's Purchase of Powerbeats 2

127. Christopher Bizzelle bought a pair of Powerbeats on sale from a Best Buy store in Texas on January 21, 2016 for \$139.99 before taxes.

1 128. When purchasing the Powerbeats 2 from the Best Buy store in Selma, Texas, Mr.
2 Bizzelle found the Powerbeats 2 on the shelf with a security sensor wrapped around the box. He read
3 the box, including the representations that the Powerbeats 2 are sweat-resistant and have a 6 hour
4 battery life. He also saw LeBron James glistening with sweat on the side of the Powerbeats 2 box, which
5 furthered his belief that they would be sweat and water resistant when he used them while mountain
6 biking. Relying on these representations, he purchased the Powerbeats 2 headphones.

7 129. Mr. Bizzelle intended to use the Powerbeats 2 while exercising. After he purchased
8 Powerbeats 2, Mr. Bizzelle used his Powerbeats 2 headphones as directed, including while mountain
9 biking and exercising at the gym.

10 130. By May 2016, Mr. Bizzelle's Powerbeats 2 headphones would not take a charge and
11 would not turn on. Mr. Bizzelle contacted Apple, who sent a pair of replacement headphones. Within
12 weeks, the replacement Powerbeats 2 headphones broke again. Mr. Bizzelle received over 5
13 replacement headphones, with each breaking in the same way: failing to charge and eventually failing to
14 turn on.

15 131. At one point, when Mr. Bizzelle had received multiple Powerbeats 2 headphones which
16 had broken, he asked an Apple customer service representative what was wrong with the headphones.
17 Mr. Bizzelle remembers that the Apple representative explained that he believed that the issue was
18 sweat damaging the Powerbeats.

19 132. After over 5 pairs of Powerbeats 2 headphones had broken by failing to take a charge
20 and failing to turn on, Mr. Bizzelle gave up on trying to replace his Powerbeats 2 headphones. Mr.
21 Bizzelle, frustrated with the broken Powerbeats 2, tossed them in the trash as he believed they were
22 useless.

23 133. Had Mr. Bizzelle known that Powerbeats 2 headphones contain the failure to hold a
24 charge and battery defects, he would not have purchased them or would have paid significantly less for
25 them.

26 134. Had Mr. Bizzelle known Powerbeats 2 headphones were not "sweat & water resistant,"
27 did not have a battery that would last 6 hours, and/or were not suitable to use while exercising, he
28 would not have purchased them or would have paid significantly less for them.

1 *ii) Mr. Bizzelle's Purchase of Powerbeats 3*

2 135. When Apple released Powerbeats 3, Mr. Bizzelle believed that Apple had fixed the
3 defects and construction problems with Powerbeats 2 headphones in the new generation of
4 Powerbeats. Mr. Bizzelle believed that Apple and Beats were high quality brands that would not
5 continue to sell a pair of headphones that were poorly constructed or that contained a defect that
6 rendered them unsuitable for use.

7 136. Since he still wanted headphones that were sweat and water resistant and that would last
8 for hours while he was mountain biking, Mr. Bizzelle purchased Powerbeats 3 on sale in a Costco store
9 for \$129.99 before taxes on December 1, 2017. At Costco, he found a shelf tag that highlighted the
10 purported capabilities of the headphones, including that their battery lasted up to 12 hours and that
11 they were sweat & water resistant. After looking at the shelf, Mr. Bizzelle retrieved a placard that had a
12 picture of the Powerbeats on it to take to the register to make his purchase. Mr. Bizzelle believed and
13 relied on Apple's representations that the Powerbeats 3 were sweat-resistant and had a battery that
14 could last for 12 hours when he purchased the headphones.

15 137. Mr. Bizzelle purchased the Powerbeats 3 headphones to wear while mountain biking
16 and exercising, as he believed that the problem with the Powerbeats 2 headphones would be fixed in
17 the Powerbeats 3 headphones.

18 138. Like his Powerbeats 2 headphones, Mr. Bizzelle used his Powerbeats 3 headphones as
19 directed, including while mountain biking and while exercising.

20 139. By June 2017, the Powerbeats 3 headphones Mr. Bizzelle purchased would not take a
21 charge and would not turn on.

22 140. Mr. Bizzelle returned the broken Powerbeats 3 to Costoco and received replacement
23 Powerbeats 3 headphones.

24 141. By November 2017, the replacement Powerbeats 3 headphones failed and would not
25 take a charge and would not turn on.

26 142. Mr. Bizzelle contacted Apple for another pair of replacement Powerbeats 3
27 headphones. Apple sent a pair of replacement Powerbeats 3 headphones.
28

1 143. Had Mr. Bizzelle known that Powerbeats 3 headphones were not “sweat & water
2 resistant,” did not have a battery that would last 6 hours, and were not suitable to use while exercising,
3 he would not have purchased them or would have paid significantly less for them.

4 144. If the Powerbeats functioned as advertised, Mr. Bizzelle would purchase Powerbeats
5 headphones in the future. If the Court were to issue an injunction ordering Apple to comply with
6 advertising and warranty laws, Plaintiff would likely purchase Powerbeats again in the near future.
7 Indeed, Mr. Bizzelle purchased the Powerbeats 3 hoping that Apple had corrected the problem in
8 Powerbeats 2, and spent a significant amount of his time seeking replacements for his Powerbeats
9 headphones.

10 **G. Dana Rodenbeck**

11 145. Plaintiff Dana Rodenbeck purchased 3 pairs of Powerbeats 2 headphones in August
12 2015 from Amazon.com while at her home in Loves Park, Illinois. She purchased a white pair for
13 \$149.00, a black pair for \$148.00, and a red pair for \$142.00 before taxes.

14 146. Prior to purchase, Mrs. Rodenbeck viewed the Powerbeats 2 headphones on Apple’s
15 website and saw that they were sweat resistant and had a 6 hour battery life. When buying the
16 Powerbeats 2 headphones on Amazon.com, Mrs. Rodenbeck also saw that the Amazon.com said that
17 the Powerbeats 2 were sweat resistant and had a 6 hour battery life. She relied on those representations
18 and bought three pairs of Powerbeats based on those representations. She bought them so that her
19 husband, son, and daughter could use them while exercising at the gym. Mrs. Rodenbeck knew that her
20 husband, son, and daughter worked out at the gym multiple times a week.

21 147. Immediately after purchase, Mrs. Rodenbeck and her family noticed that the
22 Powerbeats’ battery life did not last for six hours, even after being charged for the recommended
23 amount of time.

24 148. By August 2016, all three sets of headphones failed to hold a charge and would not turn
25 on.

26 149. Mrs. Rodenbeck called Apple to request that Apple fix the headphones. Apple sent Mrs.
27 Rodenbeck three pairs of replacement Powerbeats 3 headphones.
28

regard to its conflicts of laws provisions.” Although the Terms of Service do not directly apply to this dispute—because it does not relate to consumers’ access to or use of the Beats website—this provision demonstrates Apple’s awareness and agreement that California law should apply to most disputes between consumers and Apple relating to the Beats product line.

159. Alternatively, Plaintiffs plead state law claims from each respective state where each named plaintiff resides to govern the state subclass each Named Plaintiff represents.

CAUSES OF ACTION

A. EXPRESS WARRANTY CLAIMS

COUNT I

(Breach of Express Warranty—Magnuson Moss Warranty Act— On Behalf of the Nationwide Class and Each Subclass)

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

161. Powerbeats are consumer products as defined in 15 U.S.C. § 2301(1).

162. Plaintiffs and Class Members are consumers as defined in 15 U.S.C. § 2301(3).

163. Apple is a supplier and warrantor as defined in 15 U.S.C. §§ 2301(4) and (5).

164. Apple provided Plaintiffs and Class Members with “written warranties” within the meaning of 15 U.S.C. § 2301(6).

165. 15 U.S.C. § 2310(d)(3)(C) is satisfied because Plaintiffs properly invoke jurisdiction under the Class Action Fairness Act (“CAFA”).

166. Apple breached the express warranty by refusing to honor the express warranty to replace or repair, free of charge, any defective Powerbeats and by instead providing Plaintiffs and the Class with only a temporary fix: new or refurbished Powerbeats which contained the same defect. At no time has Apple offered a permanent or adequate repair or replacement of the defective Powerbeats.

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

168. Moreover, Apple expressly warranted that Powerbeats 2 has a “6 hour rechargeable battery” and that Powerbeats 3 has “UP TO 12 HR BATTERY LIFE.”

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

170. Apple breached this express warranty by delivering Powerbeats that do not deliver as promised and fail to withstand minimal amounts of moisture and fail to retain their charge for six or twelve hours.

171. At the time the Powerbeats were sold, Apple knew of the defects they possessed and offered an express warranty with no intention of honoring said warranties with respect to the known defects.

172. Despite repeated demands by Plaintiffs and Class Members that Apple repair or replace the defective Powerbeats, Apple has refused to provide a permanent fix. Apple’s refusal to provide an adequate repair or replacement violates 15 U.S.C. § 2304.

173. Although notice is not required, where, as here, consumers purchase a product from a retailer rather than a manufacturer, when Plaintiffs contacted Apple concerning the problems with their headphones, Apple was afforded a reasonable opportunity to cure its breach of the express warranty, but failed to do so.

174. As a direct and proximate result of Apple’s breach of its express written warranties, Plaintiffs and Class Members have been damaged in an amount to be proven at trial.

COUNT II
(Express Warranty—On Behalf of Nationwide Class, and in the Alternative and the California Subclass)

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

176. Apple’s one-year warranty states:

Apple’s one-year warranty states: Your Apple-branded or Beats-branded hardware product (“Product”) is warranted against defects in materials and workmanship for a period of ONE (1) YEAR from the date of original retail purchase (“Warranty Period”) when used in accordance with Apple’s user

1 manuals (refer to <https://www.apple.com/support/country>). Under this
2 warranty, you will be able to direct your claims to Apple even in situations where
3 you purchased the Apple Product from a third party. If a defect arises during the
4 Warranty Period, Apple, at its option will (1) repair the Product at no charge
5 using new parts or parts that are equivalent to new in performance and reliability,
6 (2) exchange the Product with a product with equivalent functionality formed
7 from new and/or previously used parts that are equivalent to new in performance
8 and reliability or with your consent, a product that is at least functionally
9 equivalent to the product it replaces, or (3) refund the original purchase price.

10 177. Apple violated this express warranty by repeatedly failing to repair or replace Plaintiffs'
11 defective Powerbeats, and instead providing Plaintiffs and the Class with only a temporary fix: new or
12 used Powerbeats that contained the same defect.

13 178. Plaintiffs' Powerbeats were also suffered from defects in materials and workmanship.
14 To give just one example, like many other consumers, Plaintiff Ivy's ear piece broke off during normal
15 use.

16 179. Additionally, by advertising that Powerbeats are "Sweat & Water Resistant," Apple
17 expressly warranted to Plaintiffs and Class members that the Powerbeats would continue to work, even
18 after exposure to moisture.

19 180. Furthermore, Apple expressly warranted that Powerbeats 2 has a "6 hour rechargeable
20 battery" and that Powerbeats 3 has "UP TO 12 HR BATTERY LIFE."

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

24 182. Apple breached this express warranty by delivering Powerbeats that do not deliver as
25 promised, do not have a battery that can last 6 or 12 hours, and fail to withstand minimal amounts of
26 moisture. Exposure to minimal moisture, normal use by consumers, sub-standard materials and
27 workmanship and/or problems with the battery, caused Powerbeats 2 and 3 to malfunction, including
28 by failing to hold a charge and eventually failing entirely.

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

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

COUNT III

(In the Alternative, Breach of Express Warranty on Behalf of Pennsylvania Subclass under 13 Pa. Stat. and Cons. Stat. Ann. § 2313, the Illinois Subclass under 810 Ill. Comp. Stat. Ann. 5/2-313, and the Florida Subclass Under Fla. Stat. Ann. § 672.313)

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

186. Apple's one-year warranty states:

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

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

188. By advertising that Powerbeats are "Sweat & Water Resistant," Apple expressly warranted to Plaintiffs and Class members that the Powerbeats would continue to work, even after exposure to moisture.

189. By advertising that Powerbeats 2 had a rechargeable battery with 6 hour playback and the Powerbeats 3 had a 12 hour battery life, Apple expressly warranted to Plaintiffs and Class members that Powerbeats' battery would last for hours and would not die without the ability to turn on.

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

191. Apple breached this express warranty by delivering Powerbeats that do not deliver as promised, fail to withstand minimal amounts of moisture, and neither has a battery that lasts for hours without recharging.

192. Plaintiffs Sophia Ivy and Jennifer Zielinski relied on Apple's express warranties regarding the characteristics and qualities of the Powerbeats.

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

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

COUNT IV
(In The Alternative, Breach of Express Warranty,
On Behalf Of The Texas Subclass)

195. Plaintiff Christopher Bizzelle re-alleges and incorporates each and every allegation set forth above as if fully written herein.

196. Defendant Apple is a "seller" within the meaning of Tex. Bus. & Com. Code § 2.103.

197. Powerbeats 2 and Powerbeats 3 headphones are "goods" within the meaning of Tex. Bus. & Com. Code § 2.105.

198. Plaintiff and the members of the subclass are "buyers" within the meaning of Tex. Bus. & Com. Code § 2.103.

199. Defendant Apple expressly warranted pursuant to Tex. Bus. & Com. Code § 2.313, via its user manuals, advertisements, internet and television commercials, websites, pamphlets, brochures, circulars, samples, and models, that the Powerbeats 2 and Powerbeats 3 are fit for the ordinary purpose in which such goods are used, and that they are "sweat resistant" and have a battery lasts for 6 hours and for 12 hours, respectively, which became part of the basis of the bargain in the sale of the Powerbeats 2 and Powerbeats 3 headphones.

200. Apple breached its express warranty because the Powerbeats 2 and 3 headphones contained a defect that made them inoperable and made them unfit for the ordinary purpose in which

1 such goods are used. Specifically, the Powerbeats 2 and 3 headphones contained defects that caused the
 2 headphones to stop holding a charge and eventually fail to turn on. Apple also breached its express
 3 warranty by failing to replace the defective Powerbeats 2 and Powerbeats 3 headphones with fully
 4 functional and working replacement headphones.

5 201. Apple has received sufficient and timely notice of the breaches of express warranty
 6 alleged herein. Despite this notice and Apple's knowledge, Apple refuses to honor its express
 7 warranties, even though it knows of the inherent defect in the Models.

8 202. Plaintiff and members of the subclass may be presumed to have relied upon Apple's
 9 representations that they would be supplied with a pair of headphones that had a battery that could last
 10 6 hours (Powerbeats 2) or 12 hours (Powerbeats 3) and could withstand being sweat upon during
 11 exercise.

12 203. Plaintiff would not have purchased or would have paid significantly less for the
 13 Powerbeats 2 and Powerbeats 3 headphones had he known that the headphones contained a defect that
 14 would cause them to fail to charge and eventually turn on and/or had they known that they could not
 15 withstand moisture or use during exercise.

16 **B. IMPLIED WARRANTY CLAIMS**

17 **COUNT V**

18 **(Breach of the California Song-Beverly Act – Implied Warranty of Merchantability— 19 On Behalf of Nationwide Class and California Subclass)**

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

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

23 206. Plaintiffs and members of the Class are "buyers" within the meaning of Cal. Civ. Code §
 24 1791(b).

25 207. Apple is a "manufacturer" of the Powerbeats within the meaning Cal. Civ. Code §
 26 1791(j).

27 208. Apple contracted with retailers so that the retailers could sell Powerbeats to consumers.
 28 Apple intended that consumers would be the end users of Powerbeats and that consumers would be
 the beneficiaries of its contracts with retailers to sell Powerbeats to consumers.

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

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

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

- (1) Pass without objection in the trade under the contract description;
- (2) Are fit for the ordinary purposes for which such goods are used;
- (3) Are adequately contained, packaged, and labeled; and
- (4) Conform to the promises or affirmations of fact made on the container or label.

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

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

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

214. Moreover, the Powerbeats are not adequately contained, packaged, and labeled because the labeling represents that they have a battery that can last 6 or 12 hours, when the battery does not last nearly that long.

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

216. Apple thus breached the implied warranty of merchantability.

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

218. As a direct and proximate result of Apple’s breach of the implied warranty of merchantability, Plaintiffs and the other Class members did not receive the benefit of their bargain and received goods with a defect and/or that were the product of poor quality materials and workmanship

1 that substantially impairs their value to Plaintiffs and Class members. Plaintiffs and Class members were
 2 damaged as a result of the defect in the Powerbeats, the product's malfunctioning, and the nonuse of
 3 their Powerbeats.

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

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

9
 10 **COUNT VI**
 11 **(Breach of the California– Implied Warranty of Fitness for a Particular Purpose**
 12 **On Behalf of Nationwide Class and California Subclass)**

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

15 222. Defendant marketed, distributed, and/or sold Powerbeats with implied warranties that
 16 it was fit for its particular purpose of use during exercise, and especially during sweaty exercise.

17 223. At the time of purchasing Powerbeats, Plaintiffs and the Class members intended to use
 18 Powerbeats during exercise.

19 224. Because Defendant extensively marketed Powerbeats as a product for use during
 20 exercise, Defendant knew at the time it sold Powerbeats to Plaintiffs and the Class members that the
 21 Plaintiffs and the Class members intended to use Powerbeats for that particular purpose.

22 225. Plaintiffs and the Class members relied on Defendant's skill and judgment to furnish
 23 goods suitable for use during exercise, and for resistance to sweat and water. Plaintiffs and the Class
 24 members purchased Powerbeats in reliance upon Defendant's implied warranties.

25 226. At the time that the Powerbeats were sold, Defendant knew or had reason to know that
 26 Plaintiffs and the Class members were relying on Defendant's skill and judgment to select or furnish a
 27 product capable of operating while exercising and after exposure to sweat or moisture.

28 227. As a direct and proximate cause of Defendant's breach of this implied warranty,
 Plaintiffs and Class members have been injured and harmed because: (a) they would not have

1 purchased the products on the same terms if the true facts were known concerning Powerbeats' design
 2 and/or the quality of materials and workmanship that produced Powerbeats; (b) they paid a price
 3 premium for the products due to Defendant's implied warranties; and (c) they did not receive a product
 4 that was fit for its particular purpose of use during exercise and/or after exposure to sweat and
 5 moisture.

6 7 **COUNT VII**

8 **(Violation of 15 U.S.C. § 2301 *et seq.*: The Magnuson-Moss Warranty Act—Implied 9 Warranty—On Behalf of the Nationwide Class and All State Subclasses)**

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

12 229. Plaintiffs bring this claim on behalf of the nationwide class and all of the subclasses.

13 230. The Powerbeats are "consumer products" within the meaning of 15 U.S.C. § 2301.

14 231. Plaintiffs and members of the class are "consumers" within the meaning of 15 U.S.C. §
 15 2301 because they are persons entitled under applicable state law to enforce against the warrantor the
 16 obligations of its express and implied warranties.

17 232. Apple is a "supplier" of the consumer products to consumers and a "warrantor" within
 18 the meaning of 15 U.S.C. § 2301.

19 233. Section 2310(d)(1) of Chapter 15 of the United States Code provides a cause of action
 20 for any consumer who is damaged by the failure of a warrantor to comply with a written or implied
 21 warranty.

22 234. Apple made written and implied warranties regarding the Powerbeats to Plaintiffs and
 23 members of the class within the meaning of 15 U.S.C. § 2301. Apple provided Plaintiffs and other class
 24 members with an implied warranty of merchantability within the meaning of the Magnuson-Moss
 25 Warranty Act, 15 U.S.C. § 2301(7).

26 235. Apple breached the implied warranty of merchantability because the Powerbeats were
 27 not fit for the ordinary purpose in which such goods are used. Specifically, the Powerbeats contained a
 28 defect that caused them not to retain a charge, particularly after use during exercise, rendering the
 Powerbeats unusable for their ordinary purpose.

236. Pursuant to 15 U.S.C. § 2310(e), Plaintiffs are entitled to bring this class action and are not required to give Apple notice and an opportunity to cure until such time as the Court determines the representative capacity of Plaintiffs pursuant to Rule 23 of the Federal Rules of Civil Procedure.

237. Plaintiffs' individual claims place into controversy an amount equal to or exceeding \$25.00. The amount in controversy of this entire action exceeds the sum of \$50,000.00, exclusive of interest and costs, computed on the basis of all claims to be determined in this lawsuit. Plaintiffs, individually and on behalf of the other Class members, seek all damages permitted by law, including diminution in value of their vehicles, in an amount to be proven at trial.

238. In addition, pursuant to 15 U.S.C. § 2310(d)(2), Plaintiffs and the other Class members are entitled to recover a sum equal to the aggregate amount of costs and expenses (including attorneys' fees based on actual time expended) determined by the Court to have reasonably been incurred by Plaintiffs and the other Class members in connection with the commencement and prosecution of this action.

239. Further, Plaintiffs and the Class are also entitled to equitable relief under 15 U.S.C. § 2310(d)(1) and damages as a result of Apple's violation of their written and/or implied warranties.

COUNT VIII

**(In the Alternative Implied Warranty of Merchantability
on Behalf of the State Subclasses for Pennsylvania Under 13 Pa. Con. Stat. Ann. § 2314,
the Illinois Subclass under 810 Ill. Comp. Stat. Ann. 5/2-314,
and Florida Under Fla. Stat. Ann. § 672.314)**

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

241. Apple is a "merchant" of headphones because Apple is a retail seller of electronic products and accessories and routinely sell a wide variety of headphones.

242. Apple is also the manufacturer of Powerbeats headphones.

243. Plaintiffs and members of the Class are "buyers" of the Powerbeats headphones because they purchased their headphones for personal use.

244. Apple impliedly warranted to Plaintiffs and Class members that its Powerbeats were “merchantable” within the common meaning of “merchantability” expressed in 13 Pa. Con. Stat. Ann. § 2314 and Fla. Stat. Ann. §672.314.

245. 13 Pa. Con. Stat. Ann. § 2314, Fla. Stat. Ann. §672.314, and 810 Ill. Comp. Stat. Ann. 5/2-314 require that merchantable goods:

- (1) pass without objection in the trade under the contract description; and
- (2) in the case of fungible goods, are of fair average quality within the description; and
- (3) are fit for the ordinary purposes for which such goods are used; and
- (4) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and
- (5) are adequately contained, packaged, and labeled as the agreement may require; and
- (6) conform to the promises or affirmations of fact made on the container or label if any.

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

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

248. The Powerbeats are not adequately contained, packaged, and labeled because the labeling represents that they are sweat & water resistant and have a battery which can last for up to 6 or 12 hours when the Powerbeats are in use, which are qualities they do not have.

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

250. Apple thus breached the implied warranty of merchantability.

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

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

COUNT IX**(In the Alternative, Breach of Warranty Against Redhibitory Defects—
On Behalf of the Louisiana Subclass)**

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

254. La. Civ. Code. Ann. art. 2520 states:

A defect is redhibitory when it renders the thing useless, or its use so inconvenient that it must be presumed that a buyer would not have bought the thing had he known of the defect. The existence of such a defect gives a buyer the right to obtain rescission of the sale.

A defect is redhibitory also when, without rendering the thing totally useless, it diminishes its usefulness or its value so that it must be presumed that a buyer would still have bought it but for a lesser price. The existence of such a defect limits the right of a buyer to a reduction of the price.

255. Plaintiffs' and class members' headphones were rendered useless when the defect within the Powerbeats headphones prevented them from turning on before a year of use had elapsed.

256. Had Plaintiff Okorocho and class members known that the Powerbeats' defect could stop them from being turned on after being used for a year or less, Plaintiff and class members would have only purchased the Powerbeats at a lesser fee, if at all.

257. Under La. Civ. Code. Ann. art. 2545, "A seller who knows that the thing he sells has a defect but omits to declare it, or a seller who declares that the thing has a quality that he knows it does not have, is liable to the buyer for the return of the price with interest from the time it was paid, for the reimbursement of the reasonable expenses occasioned by the sale and those incurred for the preservation of the thing, and also for damages and reasonable attorney fees" minus credit for the use of the redhibitory product.

258. Apple is a seller of Powerbeats presumed to be aware of their redhibitory defects under Louisiana law. Pursuant to La. Civ. Code. Ann. art. 2545, Apple "is deemed to know that the thing [it] sells has a redhibitory defect when [it] is a manufacturer of that thing."

259. Alternatively, Apple had notice of the redhibitory defect when Plaintiff Okorocho and members of the Class contacted Apple to repair their Powerbeats 2 and Powerbeats 3 headphones because they were failing to hold a charge and were failing to turn on.

260. Apple breached their warranty against redhibitory products when it sold Powerbeats that would fail to turn on within one year of use or less.

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

COUNT X
(In The Alternative, Breach of Implied Warranty Of Merchantability,
On Behalf Of The Texas Subclass)

262. Plaintiff Christopher Bizzelle re-alleges and incorporates each and every allegation set forth above as if fully written herein.

263. Defendant Apple is a “merchant” within the meaning of Tex. Bus. & Com. Code § 2.104.

264. Powerbeats 2 and Powerbeats 3 headphones are “goods” within the meaning of Tex. Bus. & Com. Code § 2.105.

265. Plaintiff and the members of the subclass are “buyers” within the meaning of Tex. Bus. & Com. Code § 2.103.

266. Under Tex. Bus. & Com. Code §2.314,

[A] warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind...Goods to be merchantable must be at least such as[:]

(1) pass without objection in the trade under the contract description; and
 (2) in the case of fungible goods, are of fair average quality within the description; and

(3) are fit for the ordinary purposes for which such goods are used; and

(4) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(5) are adequately contained, packaged, and labeled as the agreement may require; and

(6) conform to the promises or affirmations of fact made on the container or label if any.

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

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

269. The Powerbeats are not adequately contained, packaged, and labeled because the

Powerbeats 2 box states that has a 6 hour battery, whereas the Powerbeats 3 box states that the battery lasts up to 12 hours which are qualities neither headphone has. Moreover, the Powerbeats 2 and 3 are not adequately contained, packaged, and labeled because their respective boxes both state that the headphones are sweat and water resistant, which they are not.

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

271. Apple thus breached the implied warranty of merchantability.

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

273. Apple's implied warranty that the Models were merchantable was part of the basis of the bargain between Apple and Plaintiff and members of the subclass.

274. Apple breached the implied warranty of merchantability because the Powerbeats 2 and Powerbeats 3 contained defects which rendered them inoperable and unfit for the ordinary purpose in which such goods are used. Specifically, the Powerbeats 2 and Powerbeats 3 contain a defect that makes them unable to hold a charge and makes them unable to turn on.

COUNT XI

(In the Alternative Implied Warranty of Fitness for a Particular Purpose on Behalf of the State Subclasses for Pennsylvania Under 13 Pa. Stat. and Cons. Stat. Ann. § 2315, the Illinois Subclass under 810 Ill. Comp. Stat. Ann. 5/2-315, Texas Under Tex. Bus. & Com. Code § 2.315 and Florida Under Fla. Stat. Ann. § 672.315)

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

276. Apple is a "merchant" of headphones because Apple is a retail seller of electronic products and accessories and routinely sell a wide variety of headphones.

277. Apple is also the manufacturer of Powerbeats headphones.

278. Plaintiffs and members of the Class are "buyers" of the Powerbeats headphones because they purchased their headphones for personal use.

279. Apple's one-year warranty does not exclude implied warranties of fitness for a particular purpose.

1 280. Apple advertised the Powerbeats 2 and Powerbeats 3 headphones as suitable for
2 wearing while exercising, claiming that both were “Sweat & Water Resistant,” “BUILT TO
3 ENDURE,” can be used “rain, sweat, or shine,” and are the “BEST HEADPHONES FOR
4 WORKING OUT.”

5 281. Apple advertised the Powerbeats 2 and Powerbeats 3 headphones by demonstrating
6 professional athletes such as Lebron James, Serena Williams, Cam Newton, Zou Shiming, Mario Gotze,
7 Matt Giteau, Simone Biles, Leticia Bufoni, Louie Lopez, and Luan Oliveira using the headphones while
8 exercising. The commercials show the athletes engaging in weight training, aerobic activity, running,
9 skateboarding, and gymnastics while wearing the headphones. The commercials also show the athletes
10 sweating significantly while wearing the Powerbeats headphones.

11 282. Apple knew that buyers would purchase Powerbeats 2 and Powerbeat 3 headphones for
12 the particular purpose of wearing them while engaging in exercise that would expose them to harsher
13 environments and stressors, specifically: exposure to heightened temperatures; the likelihood of
14 exposure to moisture through rain, humidity, or sweat; and the physical shocks involved in running,
15 weightlifting, jumping, or other aerobic activities.

16 283. The ordinary consumer does not have the electrical engineering or technological
17 background to know whether headphones can endure the volatility, heat, humidity, and sweat
18 commonly involved in a moderate to high intensity exercise session.

19 284. When purchasing the Powerbeats 2 and Powerbeats 3 headphones – headphones that
20 are more expensive than comparable, non-sweat or water resistant wireless headphones – Plaintiffs and
21 members of the class relied on Apple’s representations that the Powerbeats could withstand the stresses
22 of exercise.

23 285. The Powerbeats 2 and Powerbeats 3 headphones routinely break when used during
24 exercise.

25 286. Plaintiffs Zielinski, Ivy, Okorochoa, Bizzelle, Zepeda, and Rodenbeck and members of
26 the Class had their Powerbeats 2 and Powerbeats 3 headphones break after they were used to exercise.

27 287. Consequentially, Apple breached the implied warranty of fitness for a particular
28 purpose, specifically, that the Powerbeats 2 and 3 headphones would endure through the particular

purpose of being used while exercising and would be able to withstand the stressors and environments associated with exercise: heightened temperature, exposure to moisture, exposure to sweat, exposure to humidity, and heightened levels of shock associated with running, weightlifting, or jumping. The headphones did not withstand regular use during exercise.

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

289. As a direct and proximate result of Apple's breach of the implied warranty of fitness for a particular purpose, Plaintiffs and the other Class members did not receive the benefit of their bargain and received goods with a defect that substantially impairs their value to Plaintiffs and Class members. Plaintiffs and Class members were damaged as a result of the defect in the Powerbeats, the product's malfunctioning, the inability to use their Powerbeats while exercising, and the nonuse of their Powerbeats.

C. CONSUMER PROTECTION STATUTE CLAIMS

COUNT XII (Violation Of the CLRA—On Behalf of Nationwide Class)

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

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

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

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

294. Apple has engaged in unfair or deceptive trade practices that violated Cal. Civ. Code § 1770(a), as described above and below, by, among other things, failing to disclose the defective nature of the Powerbeats, representing that the Powerbeats had characteristics and benefits that they do not have (e.g., durability, endurance, battery life, that they are sweat and water resistant, the ability to use during workouts), representing that the Powerbeats were of a particular standard, quality, or grade

1 when they were of another, and advertising Powerbeats with the intent not to sell them as advertised.

2 *See* Cal. Civ. Code §§ 1770(a)(5), (a)(7), (a)(9).

3 295. Apple knew, should have known, or was reckless in not knowing that its products did
4 not have the qualities, characteristics, and functions it represented, warranted, and advertised them to
5 have.

6 296. Plaintiffs and Class members are reasonable consumers who expected that their
7 Powerbeats would work as represented.

8 297. As a result of Apple's conduct and unfair or deceptive acts or practices, Plaintiffs and
9 Class members suffered actual damages in that the Powerbeats do not function as represented and are
10 not worth the amount paid and Apple has deprived Plaintiffs and Class members the benefit of the
11 bargain.

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

14 299. On July 3, 2017, Apple received a letter that complied with Section 1782(d) of the
15 CLRA, which was prepared by Plaintiffs' counsel on behalf of Powerbeats purchasers as well as
16 similarly situated purchasers. The letter gave Defendant notice of the allegations in this complaint.
17 Apple failed to remedy the issues that gave rise to the allegations in this complaint—it has continued to
18 sell Powerbeats headphones, continued to market them as "sweat and water resistant," continued to
19 represent that they have a batter that lasts 6 or 12 hours, and continued to distribute defective
20 replacement Powerbeats. As a result, Plaintiffs request damages, restitution, injunctive relief, punitive
21 damages, and all other applicable relief under the CLRA, to provide compensation to Plaintiffs and
22 class members, and to stop Apple from continuing to engage in the aforementioned unfair and/or
23 deceptive acts or practices.

24 **COUNT XIII**
25 **(Violation Of the UCL—On Behalf of Nationwide Class)**

26 300. Plaintiffs re-allege and incorporate each and every allegation set forth above as if fully
27 written herein.
28

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

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

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

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

19 305. Apple knew, or reasonably should have known, that its Powerbeats were defective
 20 and/or the result of the use of poor material and workmanship, because they continuously received
 21 broken headphones from consumers, often several times from individual consumers. Despite the
 22 constant stream of returned Powerbeats, Apple continued to sell Powerbeats to the public. Apple knew,
 23 or reasonably should have known, of the defect because, in the normal course of business, Apple tracks
 24 headphones returned under its warranty and the complaints related to those problems and therefore
 25 must have noticed that there was an unusually high incidence of use of the limited warranty.

26 306. As a direct and proximate result of Apple’s unfair and deceptive practices, Plaintiffs and
 27 Class members suffered and will continue to suffer actual damages.
 28

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

308. Legal remedy alone will be insufficient to fully redress Plaintiffs' injuries and stop Apple from continuing in its unfair and deceptive conduct. Therefore, Plaintiffs and the Class seek equitable relief, including an order enjoining Apple's unfair or deceptive acts or practices, and an award of attorneys' fees and costs under Cal. Code of Civ. Proc. § 1021.5.

COUNT XIV
(In the Alternative, Violation of Florida Consumer Protection Laws—
On Behalf of Florida Subclass)

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

310. Fla. Stat. Ann. § 501.204(1) prohibits "Unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

311. Apple engaged in unfair and deceptive acts in violation of Fla. Stat. Ann. § 501.204 when Apple represented that the Powerbeats withstand sweat and water, when in fact they cannot; when Apple represented that the Powerbeats have a battery that can last for hours without recharging, when in fact they cannot; and, when in response to requests for replacement Powerbeats under Apple's warranty, Apple sent consumers headphones that contained the same defect.

312. Plaintiff Sophia Ivy and members of the class relied on Apple's misrepresentations when purchasing her Powerbeats headphones. Had she known that those misrepresentations were false, she and members of the class would not have purchased her Powerbeats headphones.

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

COUNT XV
(In the Alternative, Violation of Pennsylvania Consumer Protection Laws—
On Behalf of Pennsylvania Subclass)

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

1 315. 73 Pa. Stat. Ann. § 201-3 declares “unfair methods of competition” and “unfair or
2 deceptive acts or practices” unlawful. “Unfair methods of competition” and “unfair or deceptive acts or
3 practices” are defined by 73 Pa. Stat. Ann. §202-2(4) as “Representing that goods... have...
4 characteristics... uses, [or] benefits...that they do not have.”

5 316. Apple engaged in unlawful “unfair or deceptive acts or practices” and violated 73 Pa.
6 Stat. Ann. § 201-3 when it represented that the Powerbeats were water resistant and sweat proof, when
7 in fact they are not; when it represented that Powerbeats had a battery that would retain a charge for
8 hours, when in fact it could not; and when it represented that it would offer a replacement, repair, or
9 refund for defective Powerbeats if the product broke within a year of purchase, when instead it
10 provided similarly defective Powerbeats as a replacements.

11 317. 73 Pa. Stat. Ann. §201-9.2(a) states:

12 Any person who purchases or leases goods or services primarily for personal,
13 family or household purposes and thereby suffers any ascertainable loss of
14 money or property, real or personal, as a result of the use or employment by
15 any person of a method, act or practice declared unlawful by section 31 of this
16 act, may bring a private action to recover actual damages or one hundred
17 dollars (\$100), whichever is greater. The court may, in its discretion, award up
18 to three times the actual damages sustained, but not less than one hundred
19 dollars (\$100), and may provide such additional relief as it deems necessary or
20 proper. The court may award to the plaintiff, in addition to other relief
21 provided in this section, costs and reasonable attorney fees.

22 318. Plaintiffs and members of the class purchased Powerbeats for their personal use.

23 319. Plaintiffs and members of the class suffered an ascertainable loss of money where they
24 purchased Powerbeats under the misconception that the Powerbeats were sweat proof, water resistant,
25 and had a battery that could last for hours without recharging, when in fact they had none of those
26 characteristics.

27 320. Plaintiffs and members of the class relied on Apple’s misrepresentations regarding the
28 Powerbeats’ characteristics when deciding to purchase the headphones. Had they known that the
Powerbeats did not possess the characteristics Apple represented it had, they would have paid
significantly less for the Powerbeats, if they would have purchased them at all.

 321. As a result, Apple violated 73 Pa. Stat. Ann. § 201-3 and Plaintiffs are entitled to all

1 damages to be determined by law.

2 **COUNT XVI**

3 **(In the Alternative, Violation of Illinois Consumer Protection Laws— 4 On Behalf of Illinois Subclass 805 ILL. COMP. STAT. 505/1, *et seq.*)**

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

7 323. Plaintiff Dana Rodenbeck asserts this count on behalf of herself and the Illinois
8 subclass.

9 324. The Illinois Unfair Practices Act, 805 Ill. Comp. Stat. 505/2, *et seq.*, prohibits a
10 corporation from engaging in unfair or deceptive trade practices. The Act provides:

11 Unfair methods of competition and unfair or deceptive acts or practices,
12 including but not limited to the use or employment of any deception fraud,
13 false pretense, false promise, misrepresentation or the concealment,
14 suppression or omission of any material fact, with intent that others rely
15 upon the concealment, suppression or omission of such material fact, or the
16 use or employment of any practice described in Section 2 of the “Uniform
17 Deceptive Trade Practices Act,” approved August 5, 1965, in the conduct of
18 any trade or commerce are hereby declared unlawful whether any person has
19 in fact been misled, deceived or damaged thereby. In construing this section
20 consideration shall be given to the interpretations of the Federal Trade
21 Commission and the federal courts relating to Section 5 (a) of the Federal
22 Trade Commission Act.

23 325. At all relevant times, Powerbeats 2 and Powerbeats 3 have been available for purchase
24 by consumers through the State of Illinois.

25 326. At all relevant times, Defendants have been engaged in advertising, offering for sale,
26 selling and/or distributing Powerbeats 2 and Powerbeats 3 headphones directly or indirectly to the
27 residents of the State of Illinois.

28 327. Plaintiff Rodenbeck and members of the Illinois Subclass have purchased Powerbeats 2
and Powerbeats 3 for their own personal and/or household use.

328. At all relevant times, Defendants, in connection with their advertisements, offers for
sale, sales and distribution of Powerbeats 2 and Powerbeats 3 headphones, knowingly and purposefully
misrepresented, concealed, omitted, and/or suppressed the material fact that the Powerbeats 2 and
Powerbeats 3 headphones would be sweat resistant, would have a battery that would last for 6 hours or
12 hours, respectively, without needing recharging, and were suitable for wearing while exercising.

1 Defendants intended that Plaintiff Rodenbeck and members of the Illinois Subclass would rely upon
2 their misrepresentations, concealments, omissions and/or suppressions so that Plaintiff Rodenbeck and
3 members of the Illinois Subclass would purchase Powerbeats 2 and Powerbeats 3 headphones.
4 Defendants' packaging of Powerbeats 2 and Powerbeats 3 headphones makes false or misleading
5 representations that the Powerbeats 2 and Powerbeats 3 headphones had a battery that would last for 6
6 or 12 hours, respectively, without needing charging, were sweat resistant, and were suitable to use while
7 exercising, which tended to deceive, or deceived or misled, the consumers. In truth, the Powerbeats 2
8 and Powerbeats 3 headphones have a battery that fails to hold a charge, cannot be used for 6 hours or
9 12 hours, respectively, is not actually sweat resistant, and is not suitable to use while exercising.

10 329. The material misrepresentations and omissions alleged herein constitute deceptive and
11 unfair trade practices, in that they were intended to and did deceive Plaintiffs and the general public
12 into believing that the Powerbeats 2 and Powerbeats 3 had a battery that could last 6 or 12 hours,
13 respectively, were sweat resistant, and could be used while exercising.

14 330. Plaintiffs and members of the class relied on Apple's misrepresentations regarding the
15 Powerbeats' characteristics when deciding to purchase the headphones. Had they known that the
16 Powerbeats did not possess the characteristics Apple represented it had, they would have paid
17 significantly less for the Powerbeats, if they would have purchased them at all.

18 331. As a result of Defendant's deceptive and unfair acts, Plaintiff Rodenbeck and Illinois
19 Subclass members have been damaged in the amount of either the purchase price they paid for the
20 Powerbeats 2 and the Powerbeats 3 headphones or the difference between the premium price paid for
21 the Powerbeats 2 and Powerbeats 3 headphones and the price they would have paid had they known
22 that the Products were not fit for ordinary use in that they do not perform as advertised and rapidly
23 become inoperable.

24 332. Defendants' conduct offends established public policy, and is substantially injurious to
25 consumers.

26 333. Plaintiff Rodenbeck and Illinois Subclass members are entitled to damages in an amount
27 to be proven at trial, but not less than either the purchase price they paid for the Powerbeats 2 and
28 Powerbeats 3 headphones or the difference between the premium price paid for the Powerbeats 2 and

Powerbeats 3 headphones and the price they would have paid had they known that the headphones do not have the advertised battery life, are not sweatproof, and are not suitable for use while exercising.

334. Defendants should also be ordered to cease their deceptive advertising.

335. Plaintiff Rodenbeck and other consumers relied on the false or misleading packaging to their detriment.

336. As a result, Plaintiff Rodenbeck and Illinois Subclass members have been injured by Defendants' unlawful conduct.

D. COMMON LAW CLAIMS

COUNT XVII

(Common Law Fraud—On Behalf of Nationwide Class)

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

338. Apple engaged in fraudulent and deceptive conduct. As described above, Apple's conduct defrauded Plaintiffs and Class members, by intentionally leading them to believe, through affirmative misrepresentations, omissions, suppressions, and concealments of material fact, that the Powerbeats possessed important characteristics that they in fact do not possess—namely that they are sweat and water resistant—and inducing their purchases.

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

340. The foregoing misrepresentations were uniform across all Class members.

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

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

1 343. Apple's actions constitute "actual fraud" within the meaning of Cal. Civ. Code § 1572
2 because Apple did the following with the intent to deceive Plaintiffs and Class members and to induce
3 them to enter into their contracts:

- 4 a. Suggested that the Powerbeats can withstand sweat and water and heavy
5 exercise, even though it knew this to be not true;
- 6 b. Positively asserted that the Powerbeats are sweat & water resistant in a
7 manner not warranted by the information available to Apple;
- 8 c. Asserted that Powerbeats were "built to endure" and had a battery that
9 could last for hours without recharging when they knew this to be false;
- 10 d. Asserted that Powerbeats 2 had a rechargeable battery with 6 hour
11 playback and the Powerbeats 3 had a 12 hour battery life;
- 12 e. Suppressed the true nature of the Powerbeats' defect from Plaintiffs and
13 Class members;
- 14 f. Promised it would deliver Powerbeats that could withstand sweat, water,
15 and heavy workouts, with no intention of so doing; and
- 16 g. Promised it would deliver Powerbeats that could play sound for 6 to 12
17 hours, with no intention of so doing.

18 344. Apple's actions, listed above, also constituted "deceit" as defined by Cal. Civ. Code §
19 1710 because Apple willfully deceived Plaintiffs and Class members with intent to induce them to alter
20 their positions to their detriment by purchasing defective Powerbeats.

21 345. Apple's fraud and concealment was also uniform across all Class members; Apple
22 concealed from everyone the true nature of the failure to hold a charge and battery defects present in
23 the Powerbeats.

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

27 347. Apple's intentionally deceptive conduct induced Plaintiffs and Class members to
28 purchase Powerbeats and resulted in harm and damage to them.

REQUESTS FOR RELIEF

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

- A. Certify the Class pursuant to California Code of Civil Procedure Section 382;
- B. Award damages, including compensatory, exemplary, and statutory damages, to Plaintiffs and the class in an amount to be determined at trial;
- C. Grant restitution to Plaintiffs and the class and require Apple to disgorge its ill-gotten gains;⁶
- D. Permanently enjoin Apple from engaging in the wrongful and unlawful conduct alleged herein;
- E. Award punitive damages, to the extent permitted by law, in an amount to be determined at trial;
- F. Award Plaintiffs and the class their expenses and costs of suit, including reasonable attorneys' fees to the extent provided by law;
- G. Award Plaintiffs and the class pre-judgment and post-judgment interest at the highest legal rate to the extent provided by law; and
- H. Award all such further relief as the Court deems appropriate.

⁶ Plaintiffs and members of the class conferred a benefit upon Apple. Namely, Plaintiffs and members of the class paid money to Apple for the Powerbeats. Apple, however, retained that benefit under circumstances that make it unjust and inequitable for Apple to retain it without paying Plaintiffs and members of the class the value thereof. Specifically, Apple retained that benefit despite the fact that the Powerbeats were defective. When purchasing their Powerbeats, Plaintiffs and Class members reasonably believed that the Powerbeats would perform as advertised and as warranted and would continue to work and maintain a charge, even after exercise.

Plaintiffs and Class members received less than what they paid for in that the Powerbeats fail to maintain a charge after minimal use and therefore do not deliver as promised. Plaintiffs and Class members conferred a benefit on Apple by purchasing the Powerbeats. Had Plaintiffs and Class members known about Powerbeats' defect—which resulted in the Powerbeats becoming unusable within one year of purchase—they would not have purchased the Powerbeats or would have paid significantly less for them. Apple should therefore be required to disgorge all profits, benefits, and other such compensation it obtained through its wrongful conduct.

JURY DEMAND

Plaintiffs hereby demands a jury trial in the instant action.

Dated: December 20, 2017

Respectfully submitted,

/s/ Hassan A. Zavareei

Hassan A. Zavareei (CA Bar No. 181547)

Sophia J. Goren (CA Bar No. 307971)

Kyra A. Taylor (*pro hac vice* forthcoming)

TYCKO & ZAVAREEI LLP

1828 L Street, NW, Suite 1000

Washington, DC 20036

Telephone: (202) 973-0900

Facsimile: (202) 973-0950

hzavareei@tzlegal.com

sgoren@tzlegal.com

ktaylor@tzlegal.com

Annick Persinger (CA Bar No. 272996)

TYCKO & ZAVAREEI LLP

483 Ninth St, Suite 200

Oakland, CA 94607

Telephone: (510) 254-6808

Facsimile: (202) 973-0950

apersinger@tzlegal.com

E. Powell Miller (*pro hac vice*)

Sharon S. Almonrode (*pro hac vice*)

Mahde Y. Abdallah (*pro hac vice*)

THE MILLER LAW FIRM, P.C.

950 West University Drive, Suite 300

Rochester, Michigan 48307

248.841.2200

248.652.2852 *facsimile*

epm@miller.law

ssa@millerlawpc.com

mya@millerlawpc.com

Greg F. Coleman (*pro hac vice*)

Adam A. Edwards (*pro hac vice*)

Mark E. Silvey (*pro hac vice*)

GREG COLEMAN LAW

First Tennessee Plaza

800 S. Gay Street, Suite 1100

Knoxville, TN 37929

(865) 247-0080

greg@gregcolemanlaw.com

adam@gregcolemanlaw.com

mark@gregcolemanlaw.com

Attorneys for Plaintiffs and the putative class

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

DEONN MORGAN, LYDIA ZEPEDA,
SOPHIA IVY, KELLY OKOROCHA, and
JENNIFER ZIELINSKI, individually and on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

Apple Inc.,

Defendant.

Case No.

(JURY TRIAL DEMANDED)

DECLARATION

I, Lydia Zepeda, declare as follows:

1. I am a named plaintiff in this litigation.
2. I have personal knowledge of the matters set forth below except to those matters stated herein which are based on information and belief, which matters I believe to be true.
3. If called as a witness I could and would competently testify to the matters included herein.
4. I purchased a pair of Powerbeats3 headphones as described in the complaint.
5. I am informed and believe that venue is proper in this Court under California Civil Code § 1780(d) based on the fact that Apple Inc. is headquartered in this District.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed
on 9/11/2017, at Corona, Ca.

DATE

LOCATION

By: _____

DocuSigned by:
L. Zepeda
6A8A5EE545C54DC...

Lydia Zepeda

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

DEONN MORGAN, LYDIA ZEPEDA,
SOPHIA IVY, KELLY OKOROCHA, and
JENNIFER ZIELINSKI, individually and on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

Apple Inc.,

Defendant.

Case No.

(JURY TRIAL DEMANDED)

DECLARATION

I, Deonn Morgan, declare as follows:

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

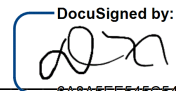
I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed

on 9/12/2017, at OAKLAND.

DATE

LOCATION

By: _____

DocuSigned by:

0A8A5EE545C34DC...

Deonn Morgan