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FILED
San Francisco County Superior Court

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CLERK OF THE COURT
BY: Chelene Johnson Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

CGC-18-571553

EDWARD BREKHUS, an
individual, on behalf of himself, the
general public, and those similarly
situated,

Plaintiff,

v.

ASUS COMPUTER
INTERNATIONAL,

Defendant.

Case No. _____

Unlimited Civil Case

Class Action Complaint for Fraud,
Deceit, and/or Misrepresentation;
Violation of the Consumer Legal
Remedies Act; False Advertising;
Negligent Misrepresentation; Unfair,
Unlawful, and Deceptive Trade
Practices; Breach of Implied Warranty;
and Violation of the Song-Beverly
Consumer Warranty Act

Jury Trial Demanded

1 Edward Brekhus, by and through his counsel, brings this Class Action
2 Complaint against Defendant, on behalf of himself, and those similarly situated,
3 for fraud, deceit, and/or misrepresentation; violation of the Consumer Legal
4 Remedies Act; false advertising; negligent misrepresentation; unfair, unlawful,
5 and deceptive trade practices; breach of express warranty; and violation of the
6 Song-Beverly Consumer Warranty Act. The following allegations are based upon
7 information and belief, including the investigation of Plaintiff's counsel, unless
8 stated otherwise.

9 Introduction

10 1. This case concerns laptop computers that were marketed and sold by
11 ASUS as including Universal Serial Bus ("USB") 3.0 "Gen 1" ports (hereinafter
12 referred to as the "Purported USB 3.0 Laptops.") ASUS specifically marketed,
13 advertised and represented to consumers that the USB ports of the Purported USB
14 3.0 Laptops were capable of transferring data at rates of 5 gigabits (Gb) per
15 second.

16 2. ASUS's representations are false. As Plaintiff discovered after
17 purchasing a Purported USB 3.0 Laptop advertised with a data transfer rate of
18 5Gb/s, the USB ports are incapable of transferring data at anywhere near the
19 speeds advertised. Rather, the USB ports are capable of transferring data at a rate
20 of only about 2,160 megabits/second—less than half as fast as advertised.

21 3. In fact, the USB ports on the Purported USB 3.0 Laptops are not really
22 USB 3.0 ports. The USB 3.0 specification states that Gen 1 USB 3.0 hosts must
23 be capable of transferring data at a "SuperSpeed" rate of 5 gigabits/second. As
24 stated above, the USB ports of the Purported USB 3.0 Laptops—even when
25 operating at their highest speeds—only transfer data at less than half of the
26 required 5 gigabits/second rate.

Parties

4. Edward Brekhus is, and at all times alleged in this Class Action Complaint was, an individual and a resident of California. Mr. Brekhus currently resides in San Francisco, California.

5. Defendant ASUS Inc. is a corporation incorporated under the laws of the state of California, having its principal place of business in Fremont, California.

Jurisdiction and Venue

6. This action is brought by Plaintiff pursuant, inter alia, to the California Business and Professions Code, section 17200, et seq. Plaintiff and Defendant are “persons” within the meaning of the California Business and Professions Code, section 17201.

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

8. Defendants have engaged, and continue to engage, in substantial and continuous business practices in the State of California, including in the City of San Francisco and County of San Francisco.

9. In accordance with California Civil Code Section 1780(d), Plaintiff files herewith a declaration establishing that he purchased an ASUS laptop X Series X555UB-NH51 computer on Newegg.com, while residing in San Francisco, California.

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

Substantive Allegations

11. The market for laptop computers is fiercely competitive. Laptop manufacturers continually attempt to gain market share by introducing the latest cutting-edge features that are attractive to consumers. One such feature is the inclusion of one or more “USB 3.0” ports—data ports (otherwise known as “hosts”)—that comply with Revision 3.0 of the USB specification.

A. The USB Specification and its Data Transfer Rate Requirements

12. The USB specification was developed by a number of companies that collectively formed the USB Implementers Forum, Inc. (“Implementers Forum”), a non-profit corporation organized for the purposes of developing and distributing specifications and other documents that augment, enhance, or extend the USB specification.

13. The Implementers Forum released the USB 1.0 specification in 1996. The USB 1.0 specification specified two data transmission modes: (i) “Low-Bandwidth” (providing 1.5 megabits/s); and (ii) “Full-Bandwidth” (providing 12 megabits/s).

14. In April 2000, the Implementers Forum released the USB 2.0 specification, which added a third data transmission mode: “Hi-Speed” (providing 480 megabits/s).

15. On November 12, 2008, the Implementers Forum released the USB 3.0 specification, which added a fourth data transmission mode: “SuperSpeed” (providing 5 gigabits/s). As described in the most recent version of the USB specification, “USB 3.0 was the USB community’s response and provided users with the ability to move data at rates up to 450MB/s while retaining backward

compatibility with USB 2.0.” The term “SuperSpeed” is expressly defined by the USB 3.0 specification as being “USB operation at 5 Gbps”:¹

Term/Abbreviation	Definition
SuperSpeed	USB operation at 5 Gbps.

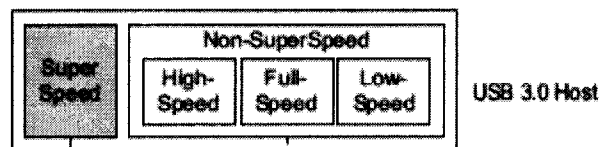
3.1.4 USB 3.0 Architecture Summary

USB 3.0 is a dual-bus architecture that incorporates USB 2.0 and a SuperSpeed bus. Table 3-1 summarizes the key architectural differences between SuperSpeed USB and USB 2.0.

Table 3-1. Comparing SuperSpeed to USB 2.0

Characteristic	SuperSpeed USB	USB 2.0
Data Rate	SuperSpeed (5.0 Gbps)	low-speed (1.5 Mbps), full-speed (12 Mbps), and high-speed (480 Mbps)

16. The USB 3.0 Specification refers to the USB ports of personal computers—like the laptop computers at issue here—as “hosts.” Like all USB 3.0-compliant devices, hosts must be capable of transferring data at rates corresponding to all four data transfer modes, including SuperSpeed:



17. The Implementers Forum owns the trademarks to a number of logos corresponding to USB. One such logo is the “SuperSpeed USB Trident” logo:



The USB Logo Usage Guidelines state: “The SuperSpeed USB Trident Logo is for use with product that signals at 5 Gbps” (i.e., 5 gigabits/second) (*Id.*) The

¹ “Mbit/s” refers to Megabits per second. A Megabit (which is different from a “Megabyte”) is equivalent to 125 kilobytes.

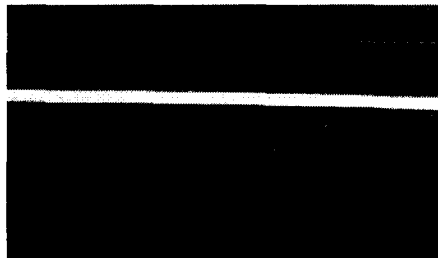
1 Guidelines further state that the logo can be used only with a product “based on
2 and compliant with the USB 3.0 and USB 3.0 Gen1 specifications.” (*Id.*)

3 **B. ASUS’s Purported USB 3.0 Laptops**

4 18. ASUS has marketed and sold dozens of laptop computers that
5 purportedly have USB 3.0 ports.

6 19. ASUS repeatedly represents on its website that the Purported USB 3.0
7 Laptops’ USB 3.0 ports are ten times faster than USB 2.0 ports. That
8 representation, which Mr. Brekhus saw before purchasing the laptop and relied on
9 in making his purchasing decision, is false. The USB 2.0 specification requires a
10 transfer rate of 480 Mbit/s. Ten times that rate—4,800 Mbit/s—is not achievable
11 by the ASUS USB 3.0 Laptops under any circumstances.

12 20. ASUS also included various versions of the USB Trident Logo next to
13 the USB ports of the Purported USB 3.0 Laptops. The following photograph is of
14 the model plaintiff purchased:



20 Although the photograph above does not show it as clearly as would be seen by a
21 consumer viewing an actual laptop, the SuperSpeed Trident Logo appears on the
22 left side of each USB port above.

23 21. As set forth below (*inter alia*, see *supra*, ¶¶ 27-39), Plaintiff saw these
24 representations prior to making his purchase, and relied on them in making his
25 purchase.
26

1 22. ASUS sells the Purported USB 3.0 Laptops through various retailers,
2 including both brick-and-mortar retailers and online retailers.

3 23. To promote the sale of the Purported USB 3.0 Laptops, ASUS provides
4 to all such retailers information relating to the laptops. ASUS represents to all its
5 retailers that the Purported USB 3.0 Laptops have USB 3.0 ports that are ten times
6 faster than USB 2.0 ports.

7 24. ASUS makes these statements and representations to retailers with the
8 knowledge and intent that the retailers will present this information to consumers.

9 25. At no time did ASUS inform consumers or its retailers that the
10 Purported USB 3.0 Laptops do not have USB 3.0 ports.

11 26. At no time did ASUS inform consumers or its retailers that the USB
12 ports of the Purported USB 3.0 Laptops are incapable of transferring data at the 5
13 gigabits/second rate required by the USB 3.0 specification, let alone the faster
14 rates advertised by ASUS for some models of the Purported USB 3.0 Laptops.

15 **C. Plaintiff's Purchase of a Purported USB 3.0 Laptop and Discovery**
16 **That It Lacks USB 3.0 Ports**

17 27. In late 2015, Plaintiff was shopping for a new laptop. He was
18 specifically looking for a highly portable laptop that could transfer data to and
19 from external USB 3.0 storage devices. Plaintiff researched his options using a
20 variety of resources available on the Internet, including ASUS's website.

21 28. One of the laptops advertised on ASUS's website was the ASUS X
22 Series X555UB-NH51. Plaintiff saw the representation on ASUS's website that
23 the X Series had USB 3.0 ports, capable of transferring data ten times faster than
24 USB 2.0 ports. Plaintiff also saw the product specifications on the website, stating
25 that the laptop had two USB 3.0 ports.
26

1 29. The inclusion of USB 3.0 ports, along with the advertised rapid transfer
2 rate of these ports, was important to Plaintiff because he intended to access and
3 transfer large files from external USB 3.0 storage devices.

4 30. In reliance on Defendant's representations, Plaintiff purchased the X
5 Series, in November 29, 2015, from Newegg.com.

6 31. After purchasing and using the X Series, Plaintiff discovered that the
7 laptop's purported USB 3.0 ports are incapable of achieving the 5.0
8 gigabits/second data transfer rates required by the USB 3.0 specification and
9 advertised by ASUS.

10 32. Plaintiff's investigator independently verified Plaintiff's discovery that
11 the X Series' purported USB 3.0 ports transfer files at rates far below the USB 3.0
12 specification.

13 33. In 2018, Plaintiff's investigator obtained the same model of laptop that
14 plaintiff had purchased (i.e., the ASUS X Series X555UB-NH51), for the
15 purposes of testing the transfer speed of the laptop's USB ports. The tests revealed
16 that the transfer rate was, at best, only 2,160 megabits (i.e., 2.16 gigabits) per
17 second. That rate is only about 43% as fast as the 5 gigabit/second speed required
18 by the USB 3.0 specification and advertised by ASUS for the X Series.

19 34. All tests described above were performed on the X Series as it existed
20 after being taken out of the box. No other applications were running on the X
21 Series when the tests were performed. No other hardware devices were connected
22 to the X Series. Accordingly, the investigator's tests show how the X Series'
23 purported USB 3.0 ports operate in the best-case scenario under normal use.

24 35. Had Plaintiff known that the X Series' USB data transfer rates were so
25 slow, or that they were not in compliance with the USB 3.0 specification, he
26 would not have paid as much for the X Series.

1 36. As a result of ASUS's misrepresentations, Plaintiff has sustained an out
2 of pocket loss in, at a minimum, the difference in price between an X Series with
3 the USB 3.0 specification and one with a USB 2.0 specification, which could be
4 established using regression techniques such as hedonic regression to analyze
5 market prices of various laptop computers with USB 3.0 and/or USB 2.0 ports
6 and/or survey techniques such as conjoint analysis.

7 37. Plaintiff intends to purchase ASUS products in the future and
8 specifically wishes to purchase an ASUS computer with a USB 3.0 complaint port
9 so that he can benefit from the higher transfer speeds. He therefore is likely to be
10 deceived again by any misrepresentations with respect to the USB capabilities of
11 such ASUS products. Plaintiff will be unable to determine whether such
12 representations are false without purchasing and testing such ASUS products.

13 38. Before ASUS released its Purported USB 3.0 Laptops, it tested the
14 speed of their USB ports, and was aware of the transfer rates of which they were
15 capable. ASUS—one of the world's largest manufacturers of consumer
16 electronics—would not release a product without first testing each of its
17 components.

18 39. In addition, the USB Implementers Forum, of which ASUS is a board
19 member, requires manufacturers to ensure that their devices actually conform with
20 the USB 3.0 specification, which includes testing the speed of those devices. (*See*,
21 *e.g.*, Ex. B at 1-2 ("Adopters [of the USB 3.0 specification] can demonstrate
22 compliance with the specification through the testing program as defined by the
23 USB Implementers Forum.") Accordingly, ASUS knew that the purported USB
24 3.0 ports were incapable of achieving speeds anywhere near the 5 gigabits/second
25 speed that it advertised and that was required by the USB 3.0 specification.
26

Class Allegations

40. In addition to his individual claims, Plaintiff brings this action as a class action pursuant to section 382 of the California Code of Civil Procedure and section 1781 of the California Civil Code on behalf of a Class consisting of all persons, natural or otherwise, who, while residing in California, purchased a Purported USB 3.0 Laptop between November 21, 2014 and the present.

41. Excluded from the Class are ASUS, its affiliates, successors and assigns, officers and directors, and members of their immediate families.

42. The proposed Class is so numerous that joinder of all members is impracticable. The precise number of members in the Class is not yet known to Plaintiff, but he estimates that it is well in excess of 1,000 people.

43. There are questions of law and fact that are common to the Class, including, but not limited to, the following:

- whether the USB ports of the Purported USB 3.0 Laptops are capable of transferring data at the rates advertised by ASUS;
- whether the USB ports of the Purported USB 3.0 Laptops are capable of the data transfer speeds required by the USB 3.0 specification;
- whether ASUS misled class members by representing that the USB ports of the Purported USB 3.0 Laptops are capable of the data transfer speeds required by the USB 3.0 specification;
- whether ASUS misled class members by representing that the USB ports of the Purported USB 3.0 Laptops are capable of transferring data up to 10 times faster than the rates called for by the USB 2.0 specification;
- whether the USB Ports of the Purported USB 3.0 Laptops are actually USB 3.0 ports, as defined by the Implementers Forum's USB 3.0 Specification;
- whether ASUS breached its obligations to the class;
- whether ASUS engaged in the alleged conduct knowingly, recklessly, or negligently;

- the amount of revenues and profits ASUS received and/or the amount of monies or other obligations lost by class members as a result of such wrongdoing;
- whether class members are entitled to injunctive relief and other equitable relief and, if so, what is the nature of such relief; and
- whether class members are entitled to payment of actual, incidental, consequential, exemplary, and/or statutory damages plus interest, and if so, what is the nature of such relief.

44. Plaintiff's claims against ASUS are typical of the claims of the Class because Plaintiff and all other members of the class purchased a Purported USB 3.0 Laptop with the same attendant advertising, warranties, and web-based representations and documentation. With respect to the class allegations, Plaintiff was subject to the exact same business practices and written representations.

45. Plaintiff will fairly and adequately protect the interests of the Class.

46. Plaintiff has demonstrated his commitment to the case, has diligently educated himself as to the issues involved, and to the best of his knowledge does not have any interests adverse to the proposed class.

47. The questions of law and fact common to the members of the class predominate over any questions affecting only individual members.

48. A class action is superior to other available methods for a fair and efficient adjudication of this controversy as many members of the proposed class have damages arising from ASUS's wrongful course of conduct which would not be susceptible to individualized litigation of this kind, including, but not limited to, the costs of experts and resources that may be required to examine the business practices in question.

49. Given the relative size of damages sustained by the individual members of the Class, the diffuse impact of the damages, and homogeneity of the issues, the interests of members of the Class individually controlling the prosecution of separate actions is minimal.

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1 54. ASUS further concealed, suppressed, and omitted material facts that
2 would have revealed that the Purported USB 3.0 Laptops do not, in fact, have
3 USB 3.0 ports or “SuperSpeed” ports, and that the USB ports of the Purported
4 USB 3.0 Laptops are not, in fact, capable of transferring data at the Advertised
5 Speeds.

6 55. In addition, ASUS represented to all retailers of the Purported USB 3.0
7 Laptops, including online retailers (including Newegg.com), and brick-and-mortar
8 retailers, that the Purported USB 3.0 Laptops include USB 3.0 “SuperSpeed”
9 ports, and that the ports are capable of transferring data at the Advertised Speeds.
10 ASUS made these representations by providing to such retailers specifications of
11 the Purported USB 3.0 Laptops, stating that the laptops have USB 3.0 ports
12 capable of transferring data at the Advertised Speeds. ASUS further concealed,
13 suppressed, and omitted material facts that would have revealed that the Purported
14 USB 3.0 Laptops did not, in fact, contain USB 3.0 ports capable of transferring
15 data at Advertised Speeds or the rates required by the USB 3.0 Specification.

16 56. ASUS made these representations to retailers with the knowledge and
17 intent that the retailers (such as Best Buy) would represent to Plaintiff, and others
18 similarly situated, that the Purported USB 3.0 Laptops include USB 3.0
19 “SuperSpeed” ports capable of transferring data at the Advertised Speeds.

20 57. ASUS’s representations—both those made directly to consumers on
21 ASUS’s website and on the product, and those made indirectly to consumers
22 through retailers—were false, and ASUS knew that the representations were false
23 when it made them. In particular, as described above (*supra*, ¶¶ 38-39), ASUS
24 tested the speed of its purported USB 3.0 ports, and confirmed that the ports were
25 incapable of achieving the Advertised Speeds.

26 58. ASUS’s misrepresentations and omissions were material at the time
they were made. They concerned material facts that were essential to the analysis

1 undertaken by Plaintiff and those similarly situated as to whether to purchase the
2 Purported USB 3.0 Laptops.

3 59. Plaintiff and those similarly situated reasonably relied to their detriment
4 on ASUS's representations—both those that ASUS made directly to them, and
5 those that ASUS made indirectly to them through retailers. Specifically, Plaintiff
6 and those similarly situated purchased Purported USB 3.0 Laptops because they
7 believed that they had USB 3.0 ports, and that the ports were capable of achieving
8 the Advertised Speeds. This reliance was reasonable because Plaintiff and those
9 similarly situated could not test whether the laptops' USB ports were actually
10 USB 3.0 ports prior to purchasing them.

11 60. Had Plaintiff and those similarly situated been adequately informed and
12 not intentionally deceived by ASUS, they would have acted differently by,
13 without limitation, not purchasing (or paying less for) the Purported USB 3.0
14 Laptops.

15 61. ASUS had a duty to inform members of the Class at the time of their
16 purchase that the Purported USB 3.0 Laptops did not have USB 3.0 "SuperSpeed"
17 ports; that the USB ports on the laptops were incapable of transferring data at the
18 Advertised Speeds. In making its representations and omissions, ASUS breached
19 its duty to class members. ASUS also gained financially from, and as a result of,
20 its breach.

21 62. By and through such fraud, deceit, misrepresentations and/or
22 omissions, ASUS intended to induce Plaintiffs and those similarly situated to alter
23 their position to their detriment. Specifically, ASUS fraudulently and deceptively
24 induced Plaintiffs and those similarly situated to, without limitation, to purchase
25 the Purported USB 3.0 Laptops.

26 63. As a direct and proximate result of ASUS's misrepresentations and
omissions, Plaintiffs and those similarly situated have suffered damages. In

1 particular, Plaintiffs seek to recover on behalf of themselves and those similarly
 2 situated the amount of the price premium they paid (i.e., the difference between
 3 the price consumers paid for the Purported USB Laptops and the price they would
 4 have paid but for Defendant's misrepresentations), in an amount to be proven at
 5 trial using econometric or statistical techniques such as hedonic regression or
 6 conjoint analysis.

7 64. ASUS's conduct as described herein was willful and malicious and was
 8 designed to maximize ASUS's profits even though ASUS knew that it would
 9 cause loss and harm to Plaintiffs and those similarly situated.

10 **Plaintiff's Second Cause of Action**
 11 **(Violation of the Consumers Legal Remedies Act,**
California Civil Code § 1750, et seq.)
 12 **On Behalf of Himself and the Class**

13 65. Plaintiff realleges and incorporates by reference the paragraphs of this
 14 Class Action Complaint as if set forth herein.

15 66. This cause of action is brought pursuant to the California Consumers
 16 Legal Remedies Act, California Civil Code § 1750, et seq. ("CLRA").

17 67. ASUS's actions, representations and conduct have violated, and
 18 continue to violate the CLRA, because they extend to transactions that are
 19 intended to result, or which have resulted, in the sale of goods to consumers.

20 68. Plaintiff and other members of the class are "consumers" as that term is
 21 defined by the CLRA in California Civil Code § 1761(d).

22 69. The products that Plaintiff and similarly situated members of the class
 23 purchased from ASUS are "goods" within the meaning of California Civil Code §
 24 1761.

25 70. By engaging in the actions, representations, and conduct set forth in
 26 this Class Action Complaint, ASUS has violated, and continue to violate,
 §§ 1770(a)(2), 1770(a)(3), 1770(a)(4), 1770(a)(5), 1770(a)(7), and 1770(a)(9) of

1 the CLRA. In violation of California Civil Code §1770(a)(2), ASUS
2 misrepresented the approval or certification of goods. In violation of California
3 Civil Code §1770(a)(3), ASUS misrepresented the certification by another. In
4 violation of California Civil Code §1770(a)(4), ASUS used deceptive
5 representations in connection with goods. In violation of California Civil Code
6 §1770(a)(5), ASUS represented that goods have approval, characteristics, uses,
7 benefits, and qualities that they do not have. In violation of California Civil Code
8 §1770(a)(7), ASUS's acts and practices constitute improper representations that
9 the goods and/or services it sells are of a particular standard, quality, or grade,
10 when they are of another. In violation of California Civil Code §1770(a)(9),
11 ASUS advertised goods with intent not to sell them as advertised.

12 71. Specifically, ASUS's acts and practices lead consumers to believe that
13 the Purported USB 3.0 Laptops contain USB 3.0 "SuperSpeed" ports, and that the
14 laptops' USB ports are capable of transferring data at the Advertised Speeds. To
15 the contrary, the Purported USB 3.0 Laptops do not have USB 3.0 ports, and the
16 laptops' USB ports are incapable of transferring data at the Advertised Speeds.

17 72. Plaintiff requests that this Court enjoin ASUS from continuing to
18 employ the unlawful methods, acts and practices alleged herein pursuant to
19 California Civil Code § 1780(a)(2). If ASUS is not restrained from engaging in
20 these types of practices in the future, Plaintiff and other members of the class will
21 continue to suffer harm.

22 73. CLRA § 1782 NOTICE. On or around March 26, 2018, Plaintiff,
23 provided ASUS with notice and demand that within thirty (30) days from that
24 date, ASUS correct, repair, replace or otherwise rectify the unlawful, unfair, false
25 and/or deceptive practices complained of herein. ASUS failed to do so.
26 Accordingly, Plaintiff seeks, pursuant to California Civil Code § 1780(a)(3), on
behalf of himself and those similarly situated class members, compensatory

1 damages, punitive damages and restitution of any ill-gotten gains due to
2 Defendants' acts and practices.

3 74. Plaintiff also requests that this Court award him costs and reasonable
4 attorneys' fees pursuant to California Civil Code § 1780(d).

5 **Plaintiff's Third Cause of Action**
6 **(False Advertising, Business and Professions Code § 17500, et seq. ("FAL"))**
7 **On Behalf of Himself and the Class**

8 75. Plaintiff realleges and incorporates by reference the paragraphs of this
9 Class Action Complaint as if set forth herein.

10 76. Beginning at an exact date unknown to Plaintiff, but within three (3)
11 years preceding the filing of the Class Action Complaint, ASUS has made untrue,
12 false, deceptive and/or misleading statements in connection with the advertising
13 and marketing of the Purported USB 3.0 Laptops.

14 77. ASUS has made representations and statements (by omission and
15 commission) that lead reasonable consumers to believe that the Purported USB
16 3.0 Laptops have USB 3.0 ports that are capable of transferring data at the
17 Advertised Speeds. ASUS, however, deceptively failed to inform consumers that
18 (i) the Purported USB 3.0 Laptops do not have USB 3.0 ports; and (ii) the USB
19 ports of the Purported USB 3.0 Laptops are incapable of transferring data at the
20 Advertised Speeds.

21 78. Plaintiff and those similarly situated relied to their detriment on
22 ASUS's false, misleading and deceptive advertising and marketing practices. Had
23 Plaintiff and those similarly situated been adequately informed and not
24 intentionally deceived by ASUS, they would have acted differently by, without
25 limitation, paying less for the Purported USB 3.0 Laptops.

26 79. ASUS's acts and omissions are likely to deceive the general public.

80. ASUS engaged in these false, misleading and deceptive advertising and
marketing practices to increase its profits. Accordingly, ASUS has engaged in

1 false advertising, as defined and prohibited by section 17500, et seq. of the
2 California Business and Professions Code.

3 81. The aforementioned practices, which ASUS as used, and continues to
4 use, to its significant financial gain, also constitute unlawful competition and
5 provide an unlawful advantage over ASUS's competitors as well as injury to the
6 general public.

7 82. Plaintiff seeks, on behalf of those similarly situated, full restitution of
8 monies, as necessary and according to proof, to restore any and all monies
9 acquired by ASUS from Plaintiff, the general public, or those similarly situated by
10 means of the false, misleading and deceptive advertising and marketing practices
11 complained of herein, plus interest thereon.

12 83. Plaintiff seeks, on behalf of those similarly situated, an injunction to
13 prohibit ASUS from continuing to engage in the false, misleading and deceptive
14 advertising and marketing practices complained of herein. The acts complained of
15 herein occurred, at least in part, within three (3) years preceding the filing of this
16 Class Action Complaint.

17 84. Plaintiff and those similarly situated are further entitled to and do seek
18 both a declaration that the above-described practices constitute false, misleading
19 and deceptive advertising, and injunctive relief restraining ASUS from engaging
20 in any such advertising and marketing practices in the future. Such misconduct by
21 ASUS, unless and until enjoined and restrained by order of this Court, will
22 continue to cause injury in fact to the general public and the loss of money and
23 property in that ASUS will continue to violate the laws of California, unless
24 specifically ordered to comply with the same. This expectation of future
25 violations will require current and future customers to repeatedly and
26 continuously seek legal redress in order to recover monies paid to ASUS to which
ASUS is not entitled. Plaintiff, those similarly situated and/or other consumers

1 nationwide have no other adequate remedy at law to ensure future compliance
2 with the California Business and Professions Code alleged to have been violated
3 herein.

4 85. As a direct and proximate result of such actions, ASUS and the other
5 members of the Class have suffered, and continue to suffer, injury in fact and have
6 lost money and/or property as a result of such false, deceptive and misleading
7 advertising in an amount which will be proven at trial, but which is in excess of
8 the jurisdictional minimum of this Court.

9 **Plaintiff's Fourth Cause of Action**
10 **(Negligent Misrepresentation)**
11 **On Behalf of Himself and the Class**

12 86. Plaintiff realleges and incorporates by reference the paragraphs of this
13 Class Action Complaint as if set forth herein.

14 87. In selling its Purported USB 3.0 Laptops to consumers, ASUS made
15 false and misleading statements that the Purported USB 3.0 Laptops have USB
16 3.0 ports that are capable of transferring data at the Advertised Speeds. ASUS,
17 however, deceptively failed to inform consumers that (i) the Purported USB 3.0
18 Laptops do not have USB 3.0 ports; and (ii) the USB ports of the Purported USB
19 3.0 Laptops are incapable of transferring data at the Advertised Speeds.

20 88. These representations were material at the time they were made. They
21 concerned material facts that were essential to the decision of Plaintiff and those
22 similarly situated regarding how much to pay for the Purported USB 3.0 Laptops.

23 89. ASUS made identical misrepresentations and omissions to members of
24 the Class regarding the Purported USB 3.0 Laptops.

25 90. ASUS should have known its representations to be false, and had no
26 reasonable grounds for believing them to be true when they were made.

91. By and through such negligent misrepresentations, ASUS intended to
induce Plaintiff and those similarly situated to alter their position to their

1 detriment. Specifically, ASUS negligently induced Plaintiff and those similarly
2 situated, without limitation, to purchase the Purported USB 3.0 Laptops at the
3 price they paid.

4 92. Plaintiff and those similarly situated reasonably relied on ASUS's
5 representation. Specifically, Plaintiff and those similarly situated paid as much as
6 they did for the Purported USB 3.0 Laptops, because ASUS had represented that
7 the laptops have USB 3.0 ports that are capable of transferring data at the
8 Advertised Speeds.

9 93. Because they reasonably relied on ASUS's false representations,
10 Plaintiff and those similarly situated were harmed in the amount of the price
11 premium they paid (i.e., the difference between the price consumers paid for the
12 Purported USB Laptops and the price they would have paid but for Defendant's
13 misrepresentations), in an amount to be proven at trial using econometric or
14 statistical techniques such as hedonic regression or conjoint analysis.

15 **Plaintiff's Fifth Cause of Action**
16 **(Unfair, Unlawful and Deceptive Trade Practices,**
17 **Business and Professions Code § 17200, et seq.)**
18 **On Behalf of Himself and the Class**

19 94. Plaintiff realleges and incorporates by reference the paragraphs of this
20 Class Action Complaint as if set forth herein.

21 95. Within four (4) years preceding the filing of this Class Action
22 Complaint, and at all times mentioned herein, ASUS has engaged, and continues
23 to engage, in unfair, unlawful and deceptive trade practices in California by
24 carrying out the unfair, deceptive and unlawful business practices outlined in this
25 Class Action Complaint. In particular, ASUS has engaged, and continues to
26 engage, in unfair, unlawful and deceptive trade practices by, without limitation,
the following:

- a. falsely and deceptively representing to Plaintiff, and those similarly situated, that the Purported USB 3.0 Laptops have USB 3.0 ports that are capable of transferring data at the Advertised Speeds;
- b. failing to inform Plaintiff, and those similarly situated, that the Purported USB 3.0 Laptops do not have USB 3.0 ports, and that the laptops' USB ports are incapable of transferring data at the Advertised Speeds;
- d. engaging in misrepresentation as described herein;
- e. violating the CLRA as described herein; and
- f. violating the FAL as described herein.

96. Plaintiff and those similarly situated relied to their detriment on ASUS's unfair, deceptive and unlawful business practices. Had Plaintiff and those similarly situated been adequately informed and not deceived by ASUS, they would have acted differently by, without limitation, paying less for the Purported USB 3.0 Laptops.

97. ASUS's acts and omissions are likely to deceive the general public.

98. ASUS engaged in these unfair practices to increase its profits. Accordingly, ASUS has engaged in unlawful trade practices, as defined and prohibited by section 17200, et seq. of the California Business and Professions Code.

99. The aforementioned practices, which ASUS has used to its significant financial gain, also constitute unlawful competition and provides an unlawful advantage over ASUS's competitors as well as injury to the general public.

100. As a direct and proximate result of such actions, Plaintiff and the other members of the Class have suffered and continue to suffer injury in fact and have lost money and/or property as a result of such deceptive, unfair and/or unlawful trade practices and unfair competition in an amount which will be proven at trial, but which is in excess of the jurisdictional minimum of this Court. Among other

1 things, Plaintiff and the class lost the amount of the price premium they paid (i.e.,
2 the difference between the price consumers paid for the Purported USB Laptops
3 and the price they would have paid but for Defendant's misrepresentations), in an
4 amount to be proven at trial using econometric or statistical techniques such as
5 hedonic regression or conjoint analysis;

6 101. Plaintiff seeks, on behalf of those similarly situated, a declaration that
7 the above-described trade practices are fraudulent and unlawful.

8 102. Plaintiff seeks, on behalf of those similarly situated, an injunction to
9 prohibit ASUS from offering the Purported USB 3.0 Laptops within a reasonable
10 time after entry of judgment, unless the ASUS modifies its website and other
11 marketing materials to remove the misrepresentations and to disclose the omitted
12 facts. Such misconduct by ASUS, unless and until enjoined and restrained by
13 order of this Court, will continue to cause injury in fact to the general public and
14 the loss of money and property in that Defendants will continue to violate the
15 laws of California, unless specifically ordered to comply with the same. This
16 expectation of future violations will require current and future consumers to
17 repeatedly and continuously seek legal redress in order to recover monies paid to
18 ASUS to which ASUS was not entitled. Plaintiff, those similarly situated and/or
19 other consumers have no other adequate remedy at law to ensure future
20 compliance with the California Business and Professions Code alleged to have
21 been violated herein.

22 **Plaintiff's Sixth Cause of Action**
23 **(Breach of Express Warranty)**
24 **On Behalf of Himself and the Class**

25 103. Plaintiff realleges and incorporates by reference the paragraphs of this
26 Complaint as if set forth herein.

104. This cause of action is brought pursuant to California Commercial
Code § 2100, et seq. as well as the common law.

1 105. Plaintiff, and those similarly situated, were “buyers” of goods as
2 defined in California Commercial Code § 2103.

3 106. ASUS is a “seller” and “merchant” as those terms are defined in
4 California Commercial Code §§ 2103 and 2104.

5 107. The terms of ASUS’s Limited Warranty for hardware products such as
6 the Purported USB 3.0 Laptops state that “ASUS warrants that the ASUS
7 Hardware Products that you have purchased or leased from ASUS are free from
8 defects in materials or workmanship under normal use during the Limited
9 Warranty Period.”

10 108. The SuperSpeed USB Trident Logo is an important marketing tool on
11 laptop computers. It conveys a message to consumers that the USB port can
12 achieve superior data transfer rates unavailable on devices without it. In
13 particular, the USB Logo Usage Guidelines state: The USB Logo Usage
14 Guidelines state: “The SuperSpeed USB Trident Logo is for use with product that
15 signals at 5 Gbps.

16 109. ASUS’s decision to utilize the SuperSpeed USB Trident logo on the
17 Purported USB 3.0 Laptops is an affirmation to consumers that the associated
18 ports are USB 3.0 compliant.

19 110. The following representations of ASUS were all factors in the decision
20 of Plaintiff and those similarly situated to purchase the Purported USB 3.0 Laptop
21 at the price they paid, and became part of the basis for the transaction: (i)
22 representations on its website (e.g., in the product specifications) that the
23 Purported USB 3.0 Laptop included USB 3.0 Ports; (ii) representations on its
24 website that the Purported USB 3.0 Laptop had USB ports capable of transferring
25 data at the Advertised Speeds; and (iii) representations on the laptop itself (i.e.,
26 the SuperSpeed USB Trident logo, printed next to USB ports on the laptop).

1 111. Via each of these representations, ASUS affirmed that the Purported
2 USB 3.0 Laptops met the USB 3.0 standards and, in doing so, expressly
3 warranted them as such.

4 112. As set forth above (*inter alia*, see *supra*, ¶¶ 12-26), the Purported USB
5 3.0 Laptops do not, in fact, meet the USB 3.0 requirements.

6 113. ASUS breached these terms because the Purported USB 3.0 Laptops
7 are defective in that the USB ports, under the laptops' normal user, are incapable
8 of transferring data at the 5 gigabits per second speed required by the USB 3.0
9 Specification.

10 114. ASUS's representations became part of the basis of the bargain in the
11 purchases by Plaintiff, and those similarly situated, of ASUS's products, and thus
12 qualify as "express warranties" as defined by section 2313 of the California
13 Commercial Code in connection with the sale of goods to Plaintiff and those
14 similarly situated.

15 115. The defects in the Purported USB 3.0 Laptops were not apparent at the
16 time of purchase, because ASUS (i) printed the USB Trident logo next to the USB
17 ports on the Purported USB 3.0 Laptops; (ii) failed to disclose that the Purported
18 USB 3.0 Laptops did not have USB 3.0 ports; and (iii) failed to disclose that the
19 USB ports of the Purported USB 3.0 Laptops were incapable of transferring data
20 at the 5 gigabits per second rate required by the USB 3.0 specification.

21 116. As a result of ASUS's sale of the Purported USB 3.0 Laptops that do
22 not perform as warranted and are unfit for normal use, Plaintiff, and those
23 similarly situated, have suffered damages in the amount of the price premium paid
24 (i.e., the difference between the price consumers paid for the Purported USB
25 Laptops and the price they would have paid but for Defendant's
26 misrepresentations), in an amount to be proven at trial using econometric or
 statistical techniques such as hedonic regression or conjoint analysis.

Plaintiff's Seventh Cause of Action
(Violation of the Song-Beverly Consumer Warranty Act,
Civil Code §§ 1790, *et seq.*)
On Behalf of Himself and the Class

117. Plaintiff realleges and incorporates by reference the paragraphs of this Complaint as if set forth herein.

118. This cause of action is brought pursuant to the Song-Beverly Consumer Warranty Act, California Civil Code §§ 1790, *et seq.* (the "Act").

119. Plaintiff and those similarly situated were "buyers" of "consumer goods" as those terms are defined under California Civil Code section 1791. The Purported USB 3.0 Laptops sold to Plaintiff, and those similarly situated, are "consumer goods" as defined in the Act.

120. ASUS is a "manufacturer" as that term is defined in section 1791 of the Act.

121. An implied warranty of merchantability arose out of and was related to ASUS's sale of the Purported USB 3.0 Laptops.

122. ASUS breached the implied warranty of merchantability. The Purported USB 3.0 Laptops purchased by Plaintiff and those similarly situated are not merchantable because they would not pass without objection in the trade under the contract description.

123. As described in detail above (*inter alia*, see *supra*, ¶¶ 12-26), the Purported USB 3.0 Laptops would not pass without objection in the trade as a laptop computer with USB 3.0 ports compliant with the USB 3.0 specification. In particular, the USB 3.0 Laptops are not capable of transferring data over USB ports at the Advertised Speeds as represented by ASUS and provided in the contract description. In fact, the USB ports of the Purported USB 3.0 Laptops transfer data at rates that are far below the 5 gigabits per second speed required by the USB 3.0 Specification. The ability to transfer data in accordance with the

1 USB 3.0 Specification is a critical feature for purchasers of laptops, particularly
2 because the USB ports on laptops are frequently the only type of ports provided to
3 allow the laptops to communicate with external storage devices.

4 124. Additionally, the Purported USB 3.0 Laptops are not merchantable
5 because they do not conform to the promises or affirmations of fact made on the
6 laptops themselves that they have USB 3.0 ports. ASUS made promises and
7 affirmations of fact concerning the character and quality of the Purported USB 3.0
8 Laptops to Plaintiff and those similarly situated as a part of the contract of sale of
9 the laptops.

10 125. Specifically, ASUS represented to Plaintiff and those similarly situated
11 that the Purported USB 3.0 Laptops contained USB 3.0 ports capable of
12 transferring data at the Advertised Speeds. ASUS provided specifications on its
13 website stating that the Purported USB 3.0 Laptops contained USB 3.0 ports
14 capable of transferring data at the Advertised Speeds. ASUS also represented that
15 the Purported USB 3.0 Laptops had USB 3.0 ports by printing the USB Trident
16 logo next to the USB ports on the Purported USB 3.0 Laptops

17 126. ASUS also made statements and representations to its agents, retailers
18 of the Purported USB 3.0 Laptops, including online retailers (such as
19 Newegg.com), and brick-and-mortar retailers, that the laptops contain USB 3.0
20 ports capable of transferring data at the Advertised Speeds. ASUS made these
21 representations by providing retailers specifications of the Purported USB 3.0
22 Laptops, stating that the Purported USB 3.0 Laptops contain USB 3.0 ports
23 capable of transferring data at the Advertised Speeds, and by printing the USB
24 Trident logo next to the USB ports on the Purported USB 3.0 Laptops, which
25 were displayed out of the package by brick-and-mortar retailers.
26

1 127. ASUS made these representations to retailers with the intent that the
2 retailers (such as Best Buy) would represent to Plaintiff, and others similarly
3 situated, that the Purported USB 3.0 Laptops contain USB 3.0 ports.

4 128. The retailers acted as ASUS's agent for purposes of providing ASUS's
5 statements and representations to consumers such as Plaintiff.

6 129. As a result of ASUS's sale of defective products that do not perform as
7 warranted and are unfit for normal use, Plaintiff, and those similarly situated have
8 suffered damages in the amount of the price premium paid (i.e., the difference
9 between the price consumers paid for the Purported USB Laptops and the price
10 they would have paid but for Defendant's misrepresentations), in an amount to be
11 proven at trial using econometric or statistical techniques such as hedonic
12 regression or conjoint analysis.

13 130. Plaintiff, and those similarly situated, have suffered and will continue
14 to suffer damages as a result of ASUS's failure to comply with its warranty
15 obligations. Accordingly, Plaintiff, and those similarly situated, are entitled to
16 recover such damages under the Song-Beverly Act, including damages pursuant
17 to Civ. Code §§ 1791.1(d) and 1974.

18 131. ASUS's breaches of warranty, as set forth above, were willful.
19 Accordingly, a civil penalty should be imposed upon ASUS in an amount not to
20 exceed twice the amount of actual damages.

21 **Prayer for Relief**

22 WHEREFORE, Plaintiff prays for judgment as follows:

23 A. On Cause of Action Number 1 against Defendant and in favor of Plaintiff
24 and the other members of the Class:

- 25 1. An award of compensatory damages in the amount of the price
26 premium paid (i.e., the difference between the price consumers paid

1 for the Purported USB Laptops and the price they would have paid
2 but for Defendant's misrepresentations), in an amount to be proven
3 at trial using econometric or statistical techniques such as hedonic
4 regression or conjoint analysis; and

- 5 2. An award of punitive damages, the amount of which is to be
6 determined at trial.

7 B. On Cause of Action Number 2 against Defendant and in favor of Plaintiff
8 and the other members of the Class:

- 9 1. an award of actual damages, the amount of which is to be
10 determined at trial;
11 2. for injunctive relief pursuant to, without limitation, the California
12 Business & Professions Code §§ 17200, et seq. and 17500, et seq. and
13 injunctive relief pursuant to California Civil Code section 1780;
14 3. an award of punitive damages, the amount of which is to be
15 determined at trial; and
16 4. an award of statutory damages as provided by Civil Code section
17 1780(b), the amount of which is to be determined at trial.

18 C. On Causes of Action Numbers 3 and 5 against Defendant and in favor of
19 Plaintiff and the other members of the Class:

- 20 1. For restitution of the price premium paid (i.e., the difference
21 between the price consumers paid for the Purported USB Laptops
22 and the price they would have paid but for Defendant's
23 misrepresentations), in an amount to be proven at trial using
24 econometric or statistical techniques such as hedonic regression or
25 conjoint analysis, pursuant to, without limitation, the California
26 Business & Professions Code §§ 17200, et seq. and 17500, et seq.;

1 and

- 2 2. for declaratory and injunctive relief pursuant to, without limitation,
3 the California Business & Professions Code §§ 17200, et seq. and
4 17500, et seq.

5 D. On Cause of Action Number 4 against Defendant and in favor of Plaintiff
6 and the other members of the Class:

- 7 1. An award of compensatory damages, the amount of which is to be
8 determined at trial; and

9 E. On Cause of Action Numbers 6 and 7 against Defendant and in favor of
10 Plaintiff and the other members of the Class:

- 11 1. An award of compensatory damages, in the amount of the price
12 premium paid (i.e., the difference between the price consumers paid
13 for the Purported USB Laptops and the price they would have paid
14 but for Defendant's misrepresentations), in an amount to be proven
15 at trial using econometric or statistical techniques such as hedonic
16 regression or conjoint analysis;
17 2. An award of punitive damages, the amount of which is to be
18 determined at trial; and
19 3. An award of statutory damages according to proof.

20 **Jury Trial Demanded**

21 Plaintiff demands a trial by jury.

22 Respectfully submitted,

23 Dated: November 21, 2018

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9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO

12 EDWARD BREKHUS, an
13 individual, on behalf of himself, the
14 general public, and those similarly
situated,

15 Plaintiff,

16 v.

17 ASUS COMPUTER
INTERNATIONAL; ASUSTEK
COMPUTER, INC.

18 Defendants.

Case No. CGC-18-571553

Unlimited Civil Case

First Amended Class Action Complaint
for Fraud, Deceit, and/or
Misrepresentation; Violation of the
Consumer Legal Remedies Act; False
Advertising; Negligent
Misrepresentation; Unfair, Unlawful,
and Deceptive Trade Practices; Breach
of Implied Warranty; and Violation of
the Song-Beverly Consumer Warranty
Act

Jury Trial Demanded

1 Edward Brekhus, by and through his counsel, brings this First Amended
2 Class Action Complaint against Defendant, on behalf of himself, and those
3 similarly situated, for fraud, deceit, and/or misrepresentation; violation of the
4 Consumer Legal Remedies Act; false advertising; negligent misrepresentation;
5 unfair, unlawful, and deceptive trade practices; breach of express warranty; and
6 violation of the Song-Beverly Consumer Warranty Act. The following allegations
7 are based upon information and belief, including the investigation of Plaintiff's
8 counsel, unless stated otherwise.

9 **Introduction**

10 1. This case concerns laptop computers that were marketed and sold by
11 ASUS as including Universal Serial Bus ("USB") 3.0 "Gen 1" ports (hereinafter
12 referred to as the "Purported USB 3.0 Laptops.") ASUS specifically marketed,
13 advertised and represented to consumers that the USB ports of the Purported USB
14 3.0 Laptops were capable of transferring data at rates of 5 gigabits (Gb) per
15 second.

16 2. ASUS's representations are false. As Plaintiff discovered after
17 purchasing a Purported USB 3.0 Laptop advertised with a data transfer rate of
18 5Gb/s, the USB ports are incapable of transferring data at anywhere near the
19 speeds advertised. Rather, the USB ports are capable of transferring data at a rate
20 of only about 2,160 megabits/second—less than half as fast as advertised.

21 3. In fact, the USB ports on the Purported USB 3.0 Laptops are not really
22 USB 3.0 ports. The USB 3.0 specification states that Gen 1 USB 3.0 hosts must
23 be capable of transferring data at a "SuperSpeed" rate of 5 gigabits/second. As
24 stated above, the USB ports of the Purported USB 3.0 Laptops—even when
25 operating at their highest speeds—only transfer data at less than half of the
26 required 5 gigabits/second rate.

Parties

4. Edward Brekhus is, and at all times alleged in this Class Action Complaint was, an individual and a resident of California. Mr. Brekhus currently resides in San Francisco, California.

5. Defendant ASUS Computer International is a corporation incorporated under the laws of the state of California, having its principal place of business in Fremont, California.

6. Defendant ASUSTeK Computer Inc. (“ASUSTek”) is a Taiwanese corporation with its headquarters at No. 15, Li-Te Road, Peitou, Taipei 112, Taiwan. ASUSTeK is the parent of ASUS Computer International.

7. The Parties identified in paragraphs 5-6 of this Class Action Complaint are collectively referred to hereafter as “Defendant” or “ASUS”.

8. At all times herein mentioned, each Defendant was the agent, servant, representative, officer, director, partner or employee of the other Defendant and, in doing the things herein alleged, was acting within the scope and course of his/her/its authority as such agent, servant, representative, officer, director, partner or employee, and with the permission and consent of each of the other Defendant.

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

10. At all times herein mentioned, the acts and omissions of each Defendant concurred and contributed to the various acts and omissions of each and all of the other Defendant in proximately causing the injuries and damages as herein alleged.

11. At all times herein mentioned, each Defendant ratified each and every act or omission complained of herein.

inclusion of one or more “USB 3.0” ports—data ports (otherwise known as “hosts”)—that comply with Revision 3.0 of the USB specification.

A. The USB Specification and its Data Transfer Rate Requirements

20. The USB specification was developed by a number of companies that collectively formed the USB Implementers Forum, Inc. (“Implementers Forum”), a non-profit corporation organized for the purposes of developing and distributing specifications and other documents that augment, enhance, or extend the USB specification.

21. The Implementers Forum released the USB 1.0 specification in 1996. The USB 1.0 specification specified two data transmission modes: (i) “Low-Bandwidth” (providing 1.5 megabits/s); and (ii) “Full-Bandwidth” (providing 12 megabits/s).

22. In April 2000, the Implementers Forum released the USB 2.0 specification, which added a third data transmission mode: “Hi-Speed” (providing 480 megabits/s).

23. On November 12, 2008, the Implementers Forum released the USB 3.0 specification, which added a fourth data transmission mode: “SuperSpeed” (providing 5 gigabits/s). As described in the most recent version of the USB specification, “USB 3.0 was the USB community’s response and provided users with the ability to move data at rates up to 450MB/s while retaining backward compatibility with USB 2.0.” The term “SuperSpeed” is expressly defined by the USB 3.0 specification as being “USB operation at 5 Gbps”:¹

Term/Abbreviation	Definition
SuperSpeed	USB operation at 5 Gbps.

¹ “Mbit/s” refers to Megabits per second. A Megabit (which is different from a “Megabyte”) is equivalent to 125 kilobytes.

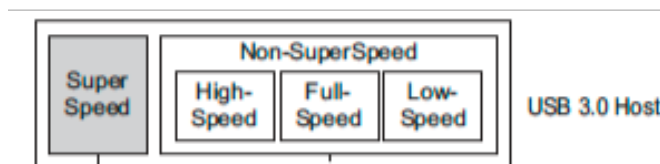
3.1.4 USB 3.0 Architecture Summary

USB 3.0 is a dual-bus architecture that incorporates USB 2.0 and a SuperSpeed bus. Table 3-1 summarizes the key architectural differences between SuperSpeed USB and USB 2.0.

Table 3-1. Comparing SuperSpeed to USB 2.0

Characteristic	SuperSpeed USB	USB 2.0
Data Rate	SuperSpeed (5.0 Gbps)	low-speed (1.5 Mbps), full-speed (12 Mbps), and high-speed (480 Mbps)

24. The USB 3.0 Specification refers to the USB ports of personal computers—like the laptop computers at issue here—as “hosts.” Like all USB 3.0-compliant devices, hosts must be capable of transferring data at rates corresponding to all four data transfer modes, including SuperSpeed:



25. The Implementers Forum owns the trademarks to a number of logos corresponding to USB. One such logo is the “SuperSpeed USB Trident” logo:



The USB Logo Usage Guidelines state: “The SuperSpeed USB Trident Logo is for use with product that signals at 5 Gbps” (i.e., 5 gigabits/second) (*Id.*) The Guidelines further state that the logo can be used only with a product “based on and compliant with the USB 3.0 and USB 3.0 Gen1 specifications.” (*Id.*)

B. ASUS’s Purported USB 3.0 Laptops

26. ASUS has marketed and sold dozens of laptop computers that purportedly have USB 3.0 ports.

27. ASUS repeatedly represents on its website that the Purported USB 3.0 Laptops’ USB 3.0 ports are ten times faster than USB 2.0 ports. That

1 representation, which Mr. Brekhus saw before purchasing the laptop and relied on
2 in making his purchasing decision, is false. The USB 2.0 specification requires a
3 transfer rate of 480 Mbit/s. Ten times that rate—4,800 Mbit/s—is not achievable
4 by the ASUS USB 3.0 Laptops under any circumstances.

5 28. ASUS also included various versions of the USB Trident Logo next to
6 the USB ports of the Purported USB 3.0 Laptops. The following photograph is of
7 the model plaintiff purchased:



13 Although the photograph above does not show it as clearly as would be seen by a
14 consumer viewing an actual laptop, the SuperSpeed Trident Logo appears on the
15 left side of each USB port above.

16 29. As set forth below (*inter alia*, see *supra*, ¶¶ 34-46), Plaintiff saw these
17 representations prior to making his purchase, and relied on them in making his
18 purchase.

19 30. ASUS sells the Purported USB 3.0 Laptops through various retailers,
20 including both brick-and-mortar retailers and online retailers.

21 31. To promote the sale of the Purported USB 3.0 Laptops, ASUS provides
22 to all such retailers information relating to the laptops. ASUS represents to all its
23 retailers that the Purported USB 3.0 Laptops have USB 3.0 ports that are ten times
24 faster than USB 2.0 ports.

25 32. ASUS makes these statements and representations to retailers with the
26 knowledge and intent that the retailers will present this information to consumers.

1 33. At no time did ASUS inform consumers or its retailers that the
2 Purported USB 3.0 Laptops do not have USB 3.0 ports.

3 34. At no time did ASUS inform consumers or its retailers that the USB
4 ports of the Purported USB 3.0 Laptops are incapable of transferring data at the 5
5 gigabits/second rate required by the USB 3.0 specification, let alone the faster
6 rates advertised by ASUS for some models of the Purported USB 3.0 Laptops.

7 **C. Plaintiff's Purchase of a Purported USB 3.0 Laptop and Discovery**
8 **That It Lacks USB 3.0 Ports**

9 35. In late 2015, Plaintiff was shopping for a new laptop. He was
10 specifically looking for a highly portable laptop that could transfer data to and
11 from external USB 3.0 storage devices. Plaintiff researched his options using a
12 variety of resources available on the Internet, including ASUS's website.

13 36. One of the laptops advertised on ASUS's website was the ASUS X
14 Series X555UB-NH51. Plaintiff saw the representation on ASUS's website that
15 the X Series had USB 3.0 ports, capable of transferring data ten times faster than
16 USB 2.0 ports. Plaintiff also saw the product specifications on the website, stating
17 that the laptop had two USB 3.0 ports.

18 37. The inclusion of USB 3.0 ports, along with the advertised rapid transfer
19 rate of these ports, was important to Plaintiff because he intended to access and
20 transfer large files from external USB 3.0 storage devices.

21 38. In reliance on Defendant's representations, Plaintiff purchased the X
22 Series, in November 29, 2015, from Newegg.com.

23 39. After purchasing and using the X Series, Plaintiff discovered that the
24 laptop's purported USB 3.0 ports are incapable of achieving the 5.0
25 gigabits/second data transfer rates required by the USB 3.0 specification and
26 advertised by ASUS.

1 40. Plaintiff's investigator independently verified Plaintiff's discovery that
2 the X Series' purported USB 3.0 ports transfer files at rates far below the USB 3.0
3 specification.

4 41. In 2018, Plaintiff's investigator obtained the same model of laptop that
5 plaintiff had purchased (i.e., the ASUS X Series X555UB-NH51), for the
6 purposes of testing the transfer speed of the laptop's USB ports. The tests revealed
7 that the transfer rate was, at best, only 2,160 megabits (i.e., 2.16 gigabits) per
8 second. That rate is only about 43% as fast as the 5 gigabit/second speed required
9 by the USB 3.0 specification and advertised by ASUS for the X Series.

10 42. All tests described above were performed on the X Series as it existed
11 after being taken out of the box. No other applications were running on the X
12 Series when the tests were performed. No other hardware devices were connected
13 to the X Series. Accordingly, the investigator's tests show how the X Series'
14 purported USB 3.0 ports operate in the best-case scenario under normal use.

15 43. Had Plaintiff known that the X Series' USB data transfer rates were so
16 slow, or that they were not in compliance with the USB 3.0 specification, he
17 would not have paid as much for the X Series.

18 44. As a result of ASUS's misrepresentations, Plaintiff has sustained an out
19 of pocket loss in, at a minimum, the difference in price between an X Series with
20 the USB 3.0 specification and one with a USB 2.0 specification, which could be
21 established using regression techniques such as hedonic regression to analyze
22 market prices of various laptop computers with USB 3.0 and/or USB 2.0 ports
23 and/or survey techniques such as conjoint analysis.

24 45. Plaintiff intends to purchase ASUS products in the future and
25 specifically wishes to purchase an ASUS computer with a USB 3.0 complaint port
26 so that he can benefit from the higher transfer speeds. He therefore is likely to be
deceived again by any misrepresentations with respect to the USB capabilities of

1 such ASUS products. Plaintiff will be unable to determine whether such
2 representations are false without purchasing and testing such ASUS products.

3 46. Before ASUS released its Purported USB 3.0 Laptops, it tested the
4 speed of their USB ports, and was aware of the transfer rates of which they were
5 capable. ASUS—one of the world’s largest manufacturers of consumer
6 electronics—would not release a product without first testing each of its
7 components.

8 47. In addition, the USB Implementers Forum, of which ASUS is a board
9 member, requires manufacturers to ensure that their devices actually conform with
10 the USB 3.0 specification, which includes testing the speed of those devices. (*See*,
11 *e.g.*, Ex. B at 1-2 (“Adapters [of the USB 3.0 specification] can demonstrate
12 compliance with the specification through the testing program as defined by the
13 USB Implementers Forum.”) Accordingly, ASUS knew that the purported USB
14 3.0 ports were incapable of achieving speeds anywhere near the 5 gigabits/second
15 speed that it advertised and that was required by the USB 3.0 specification.

16 **Class Allegations**

17 48. In addition to his individual claims, Plaintiff brings this action as a
18 class action pursuant to section 382 of the California Code of Civil Procedure and
19 section 1781 of the California Civil Code on behalf of a Class consisting of all
20 persons, natural or otherwise, who, while residing in the United States, purchased
21 a Purported USB 3.0 Laptop between November 21, 2014 and the present.

22 49. Excluded from the Class are ASUS, its affiliates, successors and
23 assigns, officers and directors, and members of their immediate families.

24 50. The proposed Class is so numerous that joinder of all members is
25 impracticable. The precise number of members in the Class is not yet known to
26 Plaintiff, but he estimates that it is well in excess of 500,000 people.

1 51. There are questions of law and fact that are common to the Class,
2 including, but not limited to, the following:

- 3 • whether the USB ports of the Purported USB 3.0 Laptops are
4 capable of transferring data at the rates advertised by ASUS;
- 5 • whether the USB ports of the Purported USB 3.0 Laptops are
6 capable of the data transfer speeds required by the USB 3.0
7 specification;
- 8 • whether ASUS misled class members by representing that the USB
9 ports of the Purported USB 3.0 Laptops are capable of the data
10 transfer speeds required by the USB 3.0 specification;
- 11 • whether ASUS misled class members by representing that the USB
12 ports of the Purported USB 3.0 Laptops are capable of transferring
13 data up to 10 times faster than the rates called for by the USB 2.0
14 specification;
- 15 • whether the USB Ports of the Purported USB 3.0 Laptops are
16 actually USB 3.0 ports, as defined by the Implementers Forum's
17 USB 3.0 Specification;
- 18 • whether ASUS breached its obligations to the class;
- 19 • whether ASUS engaged in the alleged conduct knowingly,
20 recklessly, or negligently;
- 21 • the amount of revenues and profits ASUS received and/or the
22 amount of monies or other obligations lost by class members as a
23 result of such wrongdoing;
- 24 • whether class members are entitled to injunctive relief and other
25 equitable relief and, if so, what is the nature of such relief; and
- 26 • whether class members are entitled to payment of actual, incidental,
consequential, exemplary, and/or statutory damages plus interest,
and if so, what is the nature of such relief.

52. Plaintiff's claims against ASUS are typical of the claims of the Class
because Plaintiff and all other members of the class purchased a Purported USB
3.0 Laptop with the same attendant advertising, warranties, and web-based
representations and documentation. With respect to the class allegations, Plaintiff
was subject to the exact same business practices and written representations.

1 53. Plaintiff will fairly and adequately protect the interests of the Class.

2 54. Plaintiff has demonstrated his commitment to the case, has diligently
3 educated himself as to the issues involved, and to the best of his knowledge does
4 not have any interests adverse to the proposed class.

5 55. The questions of law and fact common to the members of the class
6 predominate over any questions affecting only individual members.

7 56. A class action is superior to other available methods for a fair and
8 efficient adjudication of this controversy as many members of the proposed class
9 have damages arising from ASUS's wrongful course of conduct which would not
10 be susceptible to individualized litigation of this kind, including, but not limited
11 to, the costs of experts and resources that may be required to examine the business
12 practices in question.

13 57. Given the relative size of damages sustained by the individual members
14 of the Class, the diffuse impact of the damages, and homogeneity of the issues,
15 the interests of members of the Class individually controlling the prosecution of
16 separate actions is minimal.

17 58. There is no litigation already commenced, nor is there anticipated to be
18 subsequent litigation commenced by other members of the Class concerning
19 ASUS's alleged conduct. Consequently, concerns with respect to the maintenance
20 of a class action regarding the extent and nature of any litigation already
21 commenced by members of the Class are non-existent.

22 59. Plaintiff is unaware of any difficulties that are likely to be encountered
23 in the management of this Class Action Complaint that would preclude its
24 maintenance as a class action.
25
26

CAUSES OF ACTION

Plaintiff's First Cause of Action
(Fraud, Deceit and/or Misrepresentation)
On Behalf of Himself and the Class

60. Plaintiff realleges and incorporates by reference all preceding paragraphs of this complaint as if fully set forth herein.

61. As set forth above (*inter alia*, see *supra*, ¶¶ 25-33), ASUS represented to Plaintiff and those similarly situated that the Purported USB 3.0 Laptops include USB 3.0 ports. By engraving the SuperSpeed Trident Logo into the Purported USB 3.0 Laptops, ASUS also represented that the USB ports are “SuperSpeed” ports. Further, by claiming that the USB ports were “SuperSpeed” ports, ASUS represented that the ports could transfer data at the rate of 5 gigabits per second (i.e., the rate required by the USB 3.0 Specification). ASUS further represented that the USB 3.0 ports transfer data ten times faster than the 480 megabits per second rate required by the USB 2.0 specification (i.e., 4.8 gigabits per second). (As used herein, the term “Advertised Speeds” shall refer collectively to the 5.0 gigabits/second speed and the 4.8 gigabits/second speed advertised by ASUS.)

62. ASUS further concealed, suppressed, and omitted material facts that would have revealed that the Purported USB 3.0 Laptops do not, in fact, have USB 3.0 ports or “SuperSpeed” ports, and that the USB ports of the Purported USB 3.0 Laptops are not, in fact, capable of transferring data at the Advertised Speeds.

63. In addition, ASUS represented to all retailers of the Purported USB 3.0 Laptops, including online retailers (including Newegg.com), and brick-and-mortar retailers, that the Purported USB 3.0 Laptops include USB 3.0 “SuperSpeed” ports, and that the ports are capable of transferring data at the Advertised Speeds. ASUS made these representations by providing to such retailers specifications of

1 the Purported USB 3.0 Laptops, stating that the laptops have USB 3.0 ports
2 capable of transferring data at the Advertised Speeds. ASUS further concealed,
3 suppressed, and omitted material facts that would have revealed that the Purported
4 USB 3.0 Laptops did not, in fact, contain USB 3.0 ports capable of transferring
5 data at Advertised Speeds or the rates required by the USB 3.0 Specification.

6 64. ASUS made these representations to retailers with the knowledge and
7 intent that the retailers (such as Best Buy) would represent to Plaintiff, and others
8 similarly situated, that the Purported USB 3.0 Laptops include USB 3.0
9 “SuperSpeed” ports capable of transferring data at the Advertised Speeds.

10 65. ASUS’s representations—both those made directly to consumers on
11 ASUS’s website and on the product, and those made indirectly to consumers
12 through retailers—were false, and ASUS knew that the representations were false
13 when it made them. In particular, as described above (*supra*, ¶¶ 46-46), ASUS
14 tested the speed of its purported USB 3.0 ports, and confirmed that the ports were
15 incapable of achieving the Advertised Speeds.

16 66. ASUS’s misrepresentations and omissions were material at the time
17 they were made. They concerned material facts that were essential to the analysis
18 undertaken by Plaintiff and those similarly situated as to whether to purchase the
19 Purported USB 3.0 Laptops.

20 67. Plaintiff and those similarly situated reasonably relied to their detriment
21 on ASUS’s representations—both those that ASUS made directly to them, and
22 those that ASUS made indirectly to them through retailers. Specifically, Plaintiff
23 and those similarly situated purchased Purported USB 3.0 Laptops because they
24 believed that they had USB 3.0 ports, and that the ports were capable of achieving
25 the Advertised Speeds. This reliance was reasonable because Plaintiff and those
26 similarly situated could not test whether the laptops’ USB ports were actually
USB 3.0 ports prior to purchasing them.

1 68. Had Plaintiff and those similarly situated been adequately informed and
2 not intentionally deceived by ASUS, they would have acted differently by,
3 without limitation, not purchasing (or paying less for) the Purported USB 3.0
4 Laptops.

5 69. ASUS had a duty to inform members of the Class at the time of their
6 purchase that the Purported USB 3.0 Laptops did not have USB 3.0 “SuperSpeed”
7 ports; that the USB ports on the laptops were incapable of transferring data at the
8 Advertised Speeds. In making its representations and omissions, ASUS breached
9 its duty to class members. ASUS also gained financially from, and as a result of,
10 its breach.

11 70. By and through such fraud, deceit, misrepresentations and/or
12 omissions, ASUS intended to induce Plaintiffs and those similarly situated to alter
13 their position to their detriment. Specifically, ASUS fraudulently and deceptively
14 induced Plaintiffs and those similarly situated to, without limitation, to purchase
15 the Purported USB 3.0 Laptops.

16 71. As a direct and proximate result of ASUS’s misrepresentations and
17 omissions, Plaintiffs and those similarly situated have suffered damages. In
18 particular, Plaintiffs seek to recover on behalf of themselves and those similarly
19 situated the amount of the price premium they paid (i.e., the difference between
20 the price consumers paid for the Purported USB Laptops and the price they would
21 have paid but for Defendant’s misrepresentations), in an amount to be proven at
22 trial using econometric or statistical techniques such as hedonic regression or
23 conjoint analysis.

24 72. ASUS’s conduct as described herein was willful and malicious and was
25 designed to maximize ASUS’s profits even though ASUS knew that it would
26 cause loss and harm to Plaintiffs and those similarly situated.

Plaintiff's Second Cause of Action
(Violation of the Consumers Legal Remedies Act,
California Civil Code § 1750, et seq.)
On Behalf of Himself and the Class

73. Plaintiff realleges and incorporates by reference the paragraphs of this Class Action Complaint as if set forth herein.

74. This cause of action is brought pursuant to the California Consumers Legal Remedies Act, California Civil Code § 1750, et seq. ("CLRA").

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

76. Plaintiff and other members of the class are "consumers" as that term is defined by the CLRA in California Civil Code § 1761(d).

77. The products that Plaintiff and similarly situated members of the class purchased from ASUS are "goods" within the meaning of California Civil Code § 1761.

78. By engaging in the actions, representations, and conduct set forth in this Class Action Complaint, ASUS has violated, and continue to violate, §§ 1770(a)(2), 1770(a)(3), 1770(a)(4), 1770(a)(5), 1770(a)(7), and 1770(a)(9) of the CLRA. In violation of California Civil Code §1770(a)(2), ASUS misrepresented the approval or certification of goods. In violation of California Civil Code §1770(a)(3), ASUS misrepresented the certification by another. In violation of California Civil Code §1770(a)(4), ASUS used deceptive representations in connection with goods. In violation of California Civil Code §1770(a)(5), ASUS represented that goods have approval, characteristics, uses, benefits, and qualities that they do not have. In violation of California Civil Code §1770(a)(7), ASUS's acts and practices constitute improper representations that the goods and/or services it sells are of a particular standard, quality, or grade,

1 when they are of another. In violation of California Civil Code §1770(a)(9),
2 ASUS advertised goods with intent not to sell them as advertised.

3 79. Specifically, ASUS's acts and practices lead consumers to believe that
4 the Purported USB 3.0 Laptops contain USB 3.0 "SuperSpeed" ports, and that the
5 laptops' USB ports are capable of transferring data at the Advertised Speeds. To
6 the contrary, the Purported USB 3.0 Laptops do not have USB 3.0 ports, and the
7 laptops' USB ports are incapable of transferring data at the Advertised Speeds.

8 80. Plaintiff requests that this Court enjoin ASUS from continuing to
9 employ the unlawful methods, acts and practices alleged herein pursuant to
10 California Civil Code § 1780(a)(2). If ASUS is not restrained from engaging in
11 these types of practices in the future, Plaintiff and other members of the class will
12 continue to suffer harm.

13 81. CLRA § 1782 NOTICE. On or around March 26, 2018, Plaintiff,
14 provided ASUS with notice and demand that within thirty (30) days from that
15 date, ASUS correct, repair, replace or otherwise rectify the unlawful, unfair, false
16 and/or deceptive practices complained of herein. ASUS failed to do so.
17 Accordingly, Plaintiff seeks, pursuant to California Civil Code § 1780(a)(3), on
18 behalf of himself and those similarly situated class members, compensatory
19 damages, punitive damages and restitution of any ill-gotten gains due to
20 Defendants' acts and practices.

21 82. Plaintiff also requests that this Court award him costs and reasonable
22 attorneys' fees pursuant to California Civil Code § 1780(d).

23 **Plaintiff's Third Cause of Action**
(False Advertising, Business and Professions Code § 17500, et seq. ("FAL"))
On Behalf of Himself and the Class

24 83. Plaintiff realleges and incorporates by reference the paragraphs of this
25 Class Action Complaint as if set forth herein.
26

1 84. Beginning at an exact date unknown to Plaintiff, but within three (3)
2 years preceding the filing of the Class Action Complaint, ASUS has made untrue,
3 false, deceptive and/or misleading statements in connection with the advertising
4 and marketing of the Purported USB 3.0 Laptops.

5 85. ASUS has made representations and statements (by omission and
6 commission) that lead reasonable consumers to believe that the Purported USB
7 3.0 Laptops have USB 3.0 ports that are capable of transferring data at the
8 Advertised Speeds. ASUS, however, deceptively failed to inform consumers that
9 (i) the Purported USB 3.0 Laptops do not have USB 3.0 ports; and (ii) the USB
10 ports of the Purported USB 3.0 Laptops are incapable of transferring data at the
11 Advertised Speeds.

12 86. Plaintiff and those similarly situated relied to their detriment on
13 ASUS's false, misleading and deceptive advertising and marketing practices. Had
14 Plaintiff and those similarly situated been adequately informed and not
15 intentionally deceived by ASUS, they would have acted differently by, without
16 limitation, paying less for the Purported USB 3.0 Laptops.

17 87. ASUS's acts and omissions are likely to deceive the general public.

18 88. ASUS engaged in these false, misleading and deceptive advertising and
19 marketing practices to increase its profits. Accordingly, ASUS has engaged in
20 false advertising, as defined and prohibited by section 17500, et seq. of the
21 California Business and Professions Code.

22 89. The aforementioned practices, which ASUS as used, and continues to
23 use, to its significant financial gain, also constitute unlawful competition and
24 provide an unlawful advantage over ASUS's competitors as well as injury to the
25 general public.

26 90. Plaintiff seeks, on behalf of those similarly situated, full restitution of
monies, as necessary and according to proof, to restore any and all monies

1 acquired by ASUS from Plaintiff, the general public, or those similarly situated by
2 means of the false, misleading and deceptive advertising and marketing practices
3 complained of herein, plus interest thereon.

4 91. Plaintiff seeks, on behalf of those similarly situated, an injunction to
5 prohibit ASUS from continuing to engage in the false, misleading and deceptive
6 advertising and marketing practices complained of herein. The acts complained of
7 herein occurred, at least in part, within three (3) years preceding the filing of this
8 Class Action Complaint.

9 92. Plaintiff and those similarly situated are further entitled to and do seek
10 both a declaration that the above-described practices constitute false, misleading
11 and deceptive advertising, and injunctive relief restraining ASUS from engaging
12 in any such advertising and marketing practices in the future. Such misconduct by
13 ASUS, unless and until enjoined and restrained by order of this Court, will
14 continue to cause injury in fact to the general public and the loss of money and
15 property in that ASUS will continue to violate the laws of California, unless
16 specifically ordered to comply with the same. This expectation of future
17 violations will require current and future customers to repeatedly and
18 continuously seek legal redress in order to recover monies paid to ASUS to which
19 ASUS is not entitled. Plaintiff, those similarly situated and/or other consumers
20 nationwide have no other adequate remedy at law to ensure future compliance
21 with the California Business and Professions Code alleged to have been violated
22 herein.

23 93. As a direct and proximate result of such actions, ASUS and the other
24 members of the Class have suffered, and continue to suffer, injury in fact and have
25 lost money and/or property as a result of such false, deceptive and misleading
26 advertising in an amount which will be proven at trial, but which is in excess of
the jurisdictional minimum of this Court.

Plaintiff's Fourth Cause of Action
(Negligent Misrepresentation)
On Behalf of Himself and the Class

94. Plaintiff realleges and incorporates by reference the paragraphs of this Class Action Complaint as if set forth herein.

95. In selling its Purported USB 3.0 Laptops to consumers, ASUS made false and misleading statements that the Purported USB 3.0 Laptops have USB 3.0 ports that are capable of transferring data at the Advertised Speeds. ASUS, however, deceptively failed to inform consumers that (i) the Purported USB 3.0 Laptops do not have USB 3.0 ports; and (ii) the USB ports of the Purported USB 3.0 Laptops are incapable of transferring data at the Advertised Speeds.

96. These representations were material at the time they were made. They concerned material facts that were essential to the decision of Plaintiff and those similarly situated regarding how much to pay for the Purported USB 3.0 Laptops.

97. ASUS made identical misrepresentations and omissions to members of the Class regarding the Purported USB 3.0 Laptops.

98. ASUS should have known its representations to be false, and had no reasonable grounds for believing them to be true when they were made.

99. By and through such negligent misrepresentations, ASUS intended to induce Plaintiff and those similarly situated to alter their position to their detriment. Specifically, ASUS negligently induced Plaintiff and those similarly situated, without limitation, to purchase the Purported USB 3.0 Laptops at the price they paid.

100. Plaintiff and those similarly situated reasonably relied on ASUS's representation. Specifically, Plaintiff and those similarly situated paid as much as they did for the Purported USB 3.0 Laptops, because ASUS had represented that the laptops have USB 3.0 ports that are capable of transferring data at the Advertised Speeds.

101. Because they reasonably relied on ASUS's false representations, Plaintiff and those similarly situated were harmed in the amount of the price premium they paid (i.e., the difference between the price consumers paid for the Purported USB Laptops and the price they would have paid but for Defendant's misrepresentations), in an amount to be proven at trial using econometric or statistical techniques such as hedonic regression or conjoint analysis.

Plaintiff's Fifth Cause of Action
(Unfair, Unlawful and Deceptive Trade Practices,
Business and Professions Code § 17200, et seq.)
On Behalf of Himself and the Class

102. Plaintiff realleges and incorporates by reference the paragraphs of this Class Action Complaint as if set forth herein.

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

- a. falsely and deceptively representing to Plaintiff, and those similarly situated, that the Purported USB 3.0 Laptops have USB 3.0 ports that are capable of transferring data at the Advertised Speeds;
- b. failing to inform Plaintiff, and those similarly situated, that the Purported USB 3.0 Laptops do not have USB 3.0 ports, and that the laptops' USB ports are incapable of transferring data at the Advertised Speeds;
- d. engaging in misrepresentation as described herein;
- e. violating the CLRA as described herein; and
- f. violating the FAL as described herein.

1 104. Plaintiff and those similarly situated relied to their detriment on
2 ASUS's unfair, deceptive and unlawful business practices. Had Plaintiff and those
3 similarly situated been adequately informed and not deceived by ASUS, they
4 would have acted differently by, without limitation, paying less for the Purported
5 USB 3.0 Laptops.

6 105. ASUS's acts and omissions are likely to deceive the general public.

7 106. ASUS engaged in these unfair practices to increase its profits.
8 Accordingly, ASUS has engaged in unlawful trade practices, as defined and
9 prohibited by section 17200, et seq. of the California Business and Professions
10 Code.

11 107. The aforementioned practices, which ASUS has used to its significant
12 financial gain, also constitute unlawful competition and provides an unlawful
13 advantage over ASUS's competitors as well as injury to the general public.

14 108. As a direct and proximate result of such actions, Plaintiff and the other
15 members of the Class have suffered and continue to suffer injury in fact and have
16 lost money and/or property as a result of such deceptive, unfair and/or unlawful
17 trade practices and unfair competition in an amount which will be proven at trial,
18 but which is in excess of the jurisdictional minimum of this Court. Among other
19 things, Plaintiff and the class lost the amount of the price premium they paid (i.e.,
20 the difference between the price consumers paid for the Purported USB Laptops
21 and the price they would have paid but for Defendant's misrepresentations), in an
22 amount to be proven at trial using econometric or statistical techniques such as
hedonic regression or conjoint analysis;

23 109. Plaintiff seeks, on behalf of those similarly situated, a declaration that
24 the above-described trade practices are fraudulent and unlawful.

25 110. Plaintiff seeks, on behalf of those similarly situated, an injunction to
26 prohibit ASUS from offering the Purported USB 3.0 Laptops within a reasonable

1 time after entry of judgment, unless the ASUS modifies its website and other
 2 marketing materials to remove the misrepresentations and to disclose the omitted
 3 facts. Such misconduct by ASUS, unless and until enjoined and restrained by
 4 order of this Court, will continue to cause injury in fact to the general public and
 5 the loss of money and property in that Defendants will continue to violate the
 6 laws of California, unless specifically ordered to comply with the same. This
 7 expectation of future violations will require current and future consumers to
 8 repeatedly and continuously seek legal redress in order to recover monies paid to
 9 ASUS to which ASUS was not entitled. Plaintiff, those similarly situated and/or
 10 other consumers have no other adequate remedy at law to ensure future
 11 compliance with the California Business and Professions Code alleged to have
 12 been violated herein.

Plaintiff's Sixth Cause of Action
(Breach of Express Warranty)
On Behalf of Himself and the Class

13
 14
 15 111. Plaintiff realleges and incorporates by reference the paragraphs of this
 16 Complaint as if set forth herein.

17 112. This cause of action is brought pursuant to California Commercial
 18 Code § 2100, et seq. as well as the common law.

19 113. Plaintiff, and those similarly situated, were “buyers” of goods as
 20 defined in California Commercial Code § 2103.

21 114. ASUS is a “seller” and “merchant” as those terms are defined in
 22 California Commercial Code §§ 2103 and 2104.

23 115. The terms of ASUS’s Limited Warranty for hardware products such as
 24 the Purported USB 3.0 Laptops state that “ASUS warrants that the ASUS
 25 Hardware Products that you have purchased or leased from ASUS are free from
 26 defects in materials or workmanship under normal use during the Limited
 Warranty Period.”

1 116. The SuperSpeed USB Trident Logo is an important marketing tool on
2 laptop computers. It conveys a message to consumers that the USB port can
3 achieve superior data transfer rates unavailable on devices without it. In
4 particular, the USB Logo Usage Guidelines state: The USB Logo Usage
5 Guidelines state: “The SuperSpeed USB Trident Logo is for use with product that
6 signals at 5 Gbps.

7 117. ASUS’s decision to utilize the SuperSpeed USB Trident logo on the
8 Purported USB 3.0 Laptops is an affirmation to consumers that the associated
9 ports are USB 3.0 compliant.

10 118. The following representations of ASUS were all factors in the decision
11 of Plaintiff and those similarly situated to purchase the Purported USB 3.0 Laptop
12 at the price they paid, and became part of the basis for the transaction: (i)
13 representations on its website (e.g., in the product specifications) that the
14 Purported USB 3.0 Laptop included USB 3.0 Ports; (ii) representations on its
15 website that the Purported USB 3.0 Laptop had USB ports capable of transferring
16 data at the Advertised Speeds; and (iii) representations on the laptop itself (i.e.,
17 the SuperSpeed USB Trident logo, printed next to USB ports on the laptop).

18 119. Via each of these representations, ASUS affirmed that the Purported
19 USB 3.0 Laptops met the USB 3.0 standards and, in doing so, expressly
20 warranted them as such.

21 120. As set forth above (*inter alia*, see *supra*, ¶¶ 20-34, the Purported USB
22 3.0 Laptops do not, in fact, meet the USB 3.0 requirements.

23 121. ASUS breached these terms because the Purported USB 3.0 Laptops
24 are defective in that the USB ports, under the laptops' normal user, are incapable
25 of transferring data at the 5 gigabits per second speed required by the USB 3.0
26 Specification.

122. ASUS's representations became part of the basis of the bargain in the purchases by Plaintiff, and those similarly situated, of ASUS's products, and thus qualify as "express warranties" as defined by section 2313 of the California Commercial Code in connection with the sale of goods to Plaintiff and those similarly situated.

123. The defects in the Purported USB 3.0 Laptops were not apparent at the time of purchase, because ASUS (i) printed the USB Trident logo next to the USB ports on the Purported USB 3.0 Laptops; (ii) failed to disclose that the Purported USB 3.0 Laptops did not have USB 3.0 ports; and (iii) failed to disclose that the USB ports of the Purported USB 3.0 Laptops were incapable of transferring data at the 5 gigabits per second rate required by the USB 3.0 specification.

124. As a result of ASUS's sale of the Purported USB 3.0 Laptops that do not perform as warranted and are unfit for normal use, Plaintiff, and those similarly situated, have suffered damages in the amount of the price premium paid (i.e., the difference between the price consumers paid for the Purported USB Laptops and the price they would have paid but for Defendant's misrepresentations), in an amount to be proven at trial using econometric or statistical techniques such as hedonic regression or conjoint analysis.

Plaintiff's Seventh Cause of Action
(Violation of the Song-Beverly Consumer Warranty Act,
Civil Code §§ 1790, *et seq.*)
On Behalf of Himself and the Class

125. Plaintiff realleges and incorporates by reference the paragraphs of this Complaint as if set forth herein.

126. This cause of action is brought pursuant to the Song-Beverly Consumer Warranty Act, California Civil Code §§ 1790, *et seq.* (the "Act").

127. Plaintiff and those similarly situated were "buyers" of "consumer goods" as those terms are defined under California Civil Code section 1791. The

1 Purported USB 3.0 Laptops sold to Plaintiff, and those similarly situated, are
2 “consumer goods” as defined in the Act.

3 128. ASUS is a “manufacturer” as that term is defined in section 1791 of the
4 Act.

5 129. An implied warranty of merchantability arose out of and was related to
6 ASUS’s sale of the Purported USB 3.0 Laptops.

7 130. ASUS breached the implied warranty of merchantability. The Purported
8 USB 3.0 Laptops purchased by Plaintiff and those similarly situated are not
9 merchantable because they would not pass without objection in the trade under
10 the contract description.

11 131. As described in detail above (inter alia, see supra, ¶¶ 20-33), the
12 Purported USB 3.0 Laptops would not pass without objection in the trade as a
13 laptop computer with USB 3.0 ports compliant with the USB 3.0 specification. In
14 particular, the USB 3.0 Laptops are not capable of transferring data over USB
15 ports at the Advertised Speeds as represented by ASUS and provided in the
16 contract description. In fact, the USB ports of the Purported USB 3.0 Laptops
17 transfer data at rates that are far below the 5 gigabits per second speed required by
18 the USB 3.0 Specification. The ability to transfer data in accordance with the
19 USB 3.0 Specification is a critical feature for purchasers of laptops, particularly
20 because the USB ports on laptops are frequently the only type of ports provided to
allow the laptops to communicate with external storage devices.

21 132. Additionally, the Purported USB 3.0 Laptops are not merchantable
22 because they do not conform to the promises or affirmations of fact made on the
23 laptops themselves that they have USB 3.0 ports. ASUS made promises and
24 affirmations of fact concerning the character and quality of the Purported USB 3.0
25 Laptops to Plaintiff and those similarly situated as a part of the contract of sale of
26 the laptops.

1 133. Specifically, ASUS represented to Plaintiff and those similarly situated
2 that the Purported USB 3.0 Laptops contained USB 3.0 ports capable of
3 transferring data at the Advertised Speeds. ASUS provided specifications on its
4 website stating that the Purported USB 3.0 Laptops contained USB 3.0 ports
5 capable of transferring data at the Advertised Speeds. ASUS also represented that
6 the Purported USB 3.0 Laptops had USB 3.0 ports by printing the USB Trident
7 logo next to the USB ports on the Purported USB 3.0 Laptops

8 134. ASUS also made statements and representations to its agents, retailers
9 of the Purported USB 3.0 Laptops, including online retailers (such as
10 Newegg.com), and brick-and-mortar retailers, that the laptops contain USB 3.0
11 ports capable of transferring data at the Advertised Speeds. ASUS made these
12 representations by providing retailers specifications of the Purported USB 3.0
13 Laptops, stating that the Purported USB 3.0 Laptops contain USB 3.0 ports
14 capable of transferring data at the Advertised Speeds, and by printing the USB
15 Trident logo next to the USB ports on the Purported USB 3.0 Laptops, which
16 were displayed out of the package by brick-and-mortar retailers.

17 135. ASUS made these representations to retailers with the intent that the
18 retailers (such as Best Buy) would represent to Plaintiff, and others similarly
19 situated, that the Purported USB 3.0 Laptops contain USB 3.0 ports.

20 136. The retailers acted as ASUS's agent for purposes of providing ASUS's
21 statements and representations to consumers such as Plaintiff.

22 137. As a result of ASUS's sale of defective products that do not perform as
23 warranted and are unfit for normal use, Plaintiff, and those similarly situated have
24 suffered damages in the amount of the price premium paid (i.e., the difference
25 between the price consumers paid for the Purported USB Laptops and the price
26 they would have paid but for Defendant's misrepresentations), in an amount to be

1 proven at trial using econometric or statistical techniques such as hedonic
2 regression or conjoint analysis.

3 138. Plaintiff, and those similarly situated, have suffered and will continue
4 to suffer damages as a result of ASUS's failure to comply with its warranty
5 obligations. Accordingly, Plaintiff, and those similarly situated, are entitled to
6 recover such damages under the Song-Beverly Act, including damages pursuant
7 to Civ. Code §§ 1791.1(d) and 1974.

8 139. ASUS's breaches of warranty, as set forth above, were willful.
9 Accordingly, a civil penalty should be imposed upon ASUS in an amount not to
10 exceed twice the amount of actual damages.
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Prayer for Relief

WHEREFORE, Plaintiff prays for judgment as follows:

A. On Cause of Action Number 1 against Defendant and in favor of Plaintiff and the other members of the Class:

1. An award of compensatory damages in the amount of the price premium paid (i.e., the difference between the price consumers paid for the Purported USB Laptops and the price they would have paid but for Defendant's misrepresentations), in an amount to be proven at trial using econometric or statistical techniques such as hedonic regression or conjoint analysis; and
2. An award of punitive damages, the amount of which is to be determined at trial.

B. On Cause of Action Number 2 against Defendant and in favor of Plaintiff and the other members of the Class:

1. an award of actual damages, the amount of which is to be determined at trial;
2. for injunctive relief pursuant to, without limitation, the California Business & Professions Code §§ 17200, et seq. and 17500, et seq. and injunctive relief pursuant to California Civil Code section 1780;
3. an award of punitive damages, the amount of which is to be determined at trial; and
4. an award of statutory damages as provided by Civil Code section 1780(b), the amount of which is to be determined at trial.

C. On Causes of Action Numbers 3 and 5 against Defendant and in favor of Plaintiff and the other members of the Class:

1. For restitution of the price premium paid (i.e., the difference

between the price consumers paid for the Purported USB Laptops and the price they would have paid but for Defendant's misrepresentations), in an amount to be proven at trial using econometric or statistical techniques such as hedonic regression or conjoint analysis, pursuant to, without limitation, the California Business & Professions Code §§ 17200, et seq. and 17500, et seq.; and

2. for declaratory and injunctive relief pursuant to, without limitation, the California Business & Professions Code §§ 17200, et seq. and 17500, et seq.

D. On Cause of Action Number 4 against Defendant and in favor of Plaintiff and the other members of the Class:

1. An award of compensatory damages, the amount of which is to be determined at trial; and

E. On Cause of Action Numbers 6 and 7 against Defendant and in favor of Plaintiff and the other members of the Class:

1. An award of compensatory damages, in the amount of the price premium paid (i.e., the difference between the price consumers paid for the Purported USB Laptops and the price they would have paid but for Defendant's misrepresentations), in an amount to be proven at trial using econometric or statistical techniques such as hedonic regression or conjoint analysis;
2. An award of punitive damages, the amount of which is to be determined at trial; and
3. An award of statutory damages according to proof.

Jury Trial Demanded

1 Plaintiff demands a trial by jury.

2 Respectfully submitted,

3 Dated: April 26, 2019

GUTRIDE SAFIER LLP

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