

1 STEVE W. BERMAN
HAGENS BERMAN SOBOL SHAPIRO LLP
2 1301 Fifth Avenue, Suite 2900
Seattle, WA 98101
3 Telephone: (206) 623-7292
Facsimile: (206) 623-0594
4 Email: steve@hbsslaw.com

-and-

5 LEE M. GORDON (SBN 174168)
ELAINE T. BYSZEWSKI (SBN 222304)
6 HAGENS BERMAN SOBOL SHAPIRO LLP
700 South Flower Street, Suite 2940
7 Los Angeles, CA 90017-4101
Telephone: (213) 330-7150
8 Facsimile: (213) 330-7152
Email: lee@hbsslaw.com

9 BRUCE L. SIMON (SBN 96241)
10 ESTHER L. KLISURA (SBN 221171)
PEARSON, SIMON, SOTER, WARSHAW & PENNY, LLP
11 44 Montgomery Street, Suite 1430
San Francisco, CA 94104
12 Telephone: (415) 433-9000
Facsimile: (415) 433-9008
13 Email: bsimon@psswplaw.com

14 *Co-Lead Counsel for the Proposed Class*
[Additional Counsel Listed on Signature Page]

15
16
17 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
18 **COUNTY OF LOS ANGELES**
19 **CENTRAL CIVIL WEST COURTHOUSE**

20 Coordination Proceeding Special Title)	JCCP No. 4469
(California Rule of Court 1550(b)))	
21 iPOD NANO CASES)	<u>CLASS ACTION</u>
22 _____)	SECOND AMENDED CONSOLIDATED
)	CALIFORNIA COMPLAINT
23 This Document Relates To:)	(Asserting Class Claims on Behalf of a
24 ALL ACTIONS)	Nationwide Class)
25 _____)	<u>DEMAND FOR JURY TRIAL</u>

TABLE OF CONTENTS

Page

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION 2

II. JURISDICTION AND VENUE..... 2

III. THE PARTIES 3

 A. Plaintiffs..... 3

 B. Defendant Apple Inc..... 4

 C. Doe Defendants..... 4

 D. Agency / Aiding and Abetting..... 4

IV. FACTUAL ALLEGATIONS 5

 A. Background of Apple’s iPod Product Line..... 5

 B. Apple Unveils The iPod Nano 5

 C. Apple’s Uncoated First Generation iPod Nano Is Defective 6

 D. Plaintiffs’ Experiences..... 7

 E. Apple Has Failed Honor Its Warranties 8

V. CLASS ACTION ALLEGATIONS 9

VI. FIRST CAUSE OF ACTION
(Breach of Express Warranty In Violation Of Cal. Civ. Code § 1790 *et seq.*
and Cal. Comm. Code § 2313) 12

VII. SECOND CAUSE OF ACTION
(Breach of Implied Warranty Pursuant to Cal. Civ. Code § 1790 *et seq.*
and Cal. Comm. Code § 2314) 13

VIII. THIRD CAUSE OF ACTION
(Unjust Enrichment) 14

IX. FOURTH CAUSE OF ACTION
(Violations of Civil Code § 1750 *et seq.*)..... 15

X. FIFTH CAUSE OF ACTION
(Violations of Business & Professions Code § 17500 *et seq.*)..... 16

XI. SIXTH CAUSE OF ACTION
(Violations of Business & Professions Code § 17200 *et seq.*)..... 17

XII. PRAYER FOR RELIEF 18

XIII. DEMAND FOR JURY TRIAL 19

1 Plaintiffs CAREY CALADO, ROXANNE POVIO, CLARK SIOSON, JOHN VALENCIA,
2 SAMUEL ALLRED, HURR BAQRI, JASON MOSCHELLA, DAVID SINGER, ELI KAHAN,
3 LEONARD RAPPEL, and DANNY WILLIAMSON (“Representative Plaintiffs”), bring this
4 action on behalf of themselves and on behalf of all others similarly situated in the United States,
5 together with Plaintiffs ROBERTO ISLAS DURAND and BEN JENNINGS solely as individuals
6 on their own behalf (“Individual Plaintiffs”) (collectively the Representative Plaintiffs and
7 Individual Plaintiffs are referred to herein as “Plaintiffs”), against Defendant APPLE INC.
8 (hereinafter “Apple” or “Defendant”) and allege as follows:

9 **I. INTRODUCTION**

10 1. This consumer class action arises from Apple’s design, manufacture, distribution,
11 marketing, and sale of the iPod Nano. The iPod Nano is among Apple’s very successful iPod line
12 of portable, digital music players. The iPod Nano is a premium music player that retailed between
13 \$199 and \$249. Contrary to Apple’s representations, the uncoated First Generation iPod Nano is
14 defective because normal and reasonable use of the product, including the use advertised by Apple,
15 results in severe scratches on the device’s screen. Plaintiffs would not have purchased iPod Nanos
16 and/or paid as much for them had they known the truth about the product and have suffered an
17 ascertainable loss. Plaintiffs bring this action on behalf of themselves and all other similarly
18 situated individuals who purchased an uncoated First Generation iPod Nano in the United States.

19 **II. JURISDICTION AND VENUE**

20 2. This Court has jurisdiction over this civil action pursuant to Code of Civil Procedure
21 section 410.10. The Representative Plaintiffs seek damages on behalf of themselves and all others
22 similarly situated in the United States. The Individual Plaintiffs seek damages on behalf of
23 themselves.

24 3. Venue is proper in this Court because, among other things, some of the common
25 acts and transactions described herein occurred within the County, and Apple conducts substantial
26 business within the County.

1 16. Plaintiff Danny Williamson is a resident of Louisiana. He purchased a defective
2 iPod Nano in or about September 2005.

3 17. Plaintiff Roberto Islas Durand is a resident of Mexico. He purchased a defective
4 iPod Nano in or about September 2005.

5 18. Plaintiff Ben Jennings is a resident of the United Kingdom. He purchased a
6 defective iPod Nano in or about September 2005.

7 **B. Defendant Apple Inc.**

8 19. Defendant Apple Inc. (formerly known as Apple Computer, Inc. and referred to
9 herein as "Apple") is a publicly traded corporation with worldwide corporate headquarters and
10 principal place of business in Cupertino, California. Apple designs, manufactures, markets,
11 distributes, and sells personal computers, laptops, consumer electronics, networking and
12 connectivity products, computer software, applications, and Internet products and technologies.
13 Apple sells its products, including iPod Nanos, over the Internet and at its numerous retail stores,
14 including 42 retail stores in California.

15 **C. Doe Defendants**

16 20. Except as described herein, Plaintiffs are ignorant of the true names of Defendants
17 sued as Does 1 through 50, inclusive, and the nature of their wrongful conduct, and therefore sue
18 these Defendants by such fictitious names. Plaintiffs will seek leave of the Court to amend this
19 complaint to allege their true names and capacities when ascertained.

20 **D. Agency / Aiding and Abetting**

21 21. At all times herein mentioned, Defendants, and each of them, were an agent or joint
22 venturer of each of the other Defendants, and in doing the acts alleged herein, were acting within
23 the course and scope of such agency. Each Defendant had actual and/or constructive knowledge of
24 the acts of each of the other Defendants, and ratified, approved, joined in, acquiesced and/or
25 authorized the wrongful acts of each co-Defendant, and/or retained the benefits of said wrongful
26 acts.

1 26. Apple actively markets and encourages iPod users to utilize the iTunes service with
2 their iPods. Upon information and belief, the vast majority of iPod purchasers sign up with iTunes
3 and make purchases through iTunes.

4 27. Apple typically charges \$0.99 for each downloaded song and \$9.99 for each
5 downloaded album. Songs purchased through the iTunes software are encoded so that they can
6 only be played on iPod devices, and cannot be directly transferred from one iPod device to another.

7 **B. Apple Unveils the iPod Nano**

8 28. After months of publicity and speculation about Apple's next lucrative product in its
9 iPod line, Apple introduced the iPod Nano on September 7, 2005.¹

10 29. During a widely televised press conference, Steve Jobs, the Chief Executive Officer
11 of Apple, introduced the Nano by pulling the device out of the coin pocket of his jeans,
12 emphasizing that the product is small, convenient and durable enough to be carried in pockets. A
13 photograph from this press conference is attached hereto as *Exhibit A*.

14 30. The iPod Nano is .27 inches thick and weighs 1.5 ounces. It is one-fifth the size of
15 standard iPod models and features a bright color screen. Apple advertised that the iPod Nano's
16 "*ultra-portable design fits into even the smallest pocket* making it easy to take iPod Nano to the
17 gym, in the car, traveling, commuting or anywhere you go." See Apple's September 7, 2005 Press
18 Release, attached hereto as *Exhibit B*.

19 31. Apple explicitly marketed the glossy and sleek iPod Nanos for their aesthetic
20 appeal. In its marketing campaign, Apple proclaimed that the iPod Nano is the "*most fashionable*
21 and wearable iPod ever," the "ultimate fashion and sports accessory," and the "*perfect* combination
22 of *innovative design*, storage capacity and ease of use." Apple described its iPod Nano as having a
23 "*gorgeous* color screen" and a "*stunning, high-resolution color screen.*" Apple's print and
24 television campaigns reinforced this message by displaying glossy, unscratched iPod Nanos that

25 ¹ The iPod Nano initially was made with an uncoated plastic faceplate. In or about January
26 2006, Apple began selling iPod Nanos with a protective coating applied to each faceplate.
27 Thereafter, First Generation iPod Nanos were discontinued to make room for Second, Third, and
28 Fourth Generation models. *This action relates only to the uncoated First Generation Nanos.*

1 are not in any protective case or sleeve.

2 32. Consumers who purchased iPod Nanos paid a premium for its good looks because
3 iPod Nanos cost more than most other portable, digital music players with comparable amounts of
4 song storage capacity. Introduced in time for the 2005 holiday shopping season, Apple sold over
5 15 million iPods in the first quarter of the fiscal year 2006, fueled by sales of the iPod Nano.

6 **C. Apple's Uncoated First Generation iPod Nano is Defective**

7 33. Within the first week after it was released, consumers and technology critics found a
8 defect with the premium music player. Merely carrying the device in a pocket, a use expressly
9 advertised by Apple, causes scratches that make text and pictures displayed on the screen difficult
10 to read or illegible. The iPod Nano is useless if a consumer is unable to read the screen. One of
11 the heavily promoted features of the iPod Nano was its brilliant color screen and ability to store
12 and display album covers and pictures.

13 34. Scratching alone is an equally fundamental flaw because the iPod Nano was
14 marketed for its appearance and style and sold for a premium because of these purported qualities.
15 The scratches negate the aesthetic features and benefits upon which Apple based its marketing of
16 the product. Contrary to Apple's representations, the iPod Nano is not "beautiful" or "gorgeous" if
17 it is scratched.

18 35. Apple failed to disclose and concealed from Plaintiffs and Class members that
19 normal use of the iPod Nano, including use as advertised, would result in severe scratches such
20 that the device would no longer have a gorgeous and "stunning, high-resolution screen," or even be
21 functional.

22 36. Furthermore, although customers expect to be able to download and carry around
23 their music for several years, the iPod was designed to have a relatively short useful life lasting
24 only one to two years. Normal wear and tear will easily render the device inoperable. This
25 information was not disclosed to the customer. Replacing the device is the only solution.

1 37. Myriad reports of the defects were reported in the media within the first few weeks
2 of the iPod Nano's release. These reports include:

- 3 a. Apple Admits Problems With iPod Nano, Guardian Unlimited
4 (September 26, 2005);
- 5 b. Concerns Mount Over iPod Nano LCD Durability, AppleInsider
6 (September 26, 2005);
- 7 c. Mystifying Nano Screen Issue, OreillyNet.com (September 26, 2005);
- 8 d. Vendor Issue Blamed for Apple Nano Screen Problems, Ars Technica, LLC
9 (September 27, 2005);
- 10 e. Apple Admits to iPod Nano Faults, BBC News (September 28, 2005);
- 11 f. iPod Nano Scratches and Breaks, Mp3.com (September 30, 2005);
- 12 g. Apple Confirms iPod Nano Screen Problems, Designtecnica
13 (September 28, 2005); and
- 14 h. Scratches Mar New iPod's Beauty, Wall Street Journal (October 6, 2005).

15 **D. Plaintiffs' Experiences**

16 38. Each Plaintiff purchased iPod Nanos shortly after the product's release. They
17 reasonably believed that the iPod Nano was durable enough to put into a pocket, briefcase or
18 backpack and retain its sleek aesthetics. Consistent with the defects reported in the press, each of
19 the Plaintiffs' iPod Nanos became scratched and the clarity of the screen compromised within
20 weeks of purchase. A photograph of Plaintiff Sioson's defective iPod Nano is attached hereto as
21 *Exhibit C*.

22 **E. Apple Has Failed To Honor Its Warranties**

23 39. Normal and reasonable use of the product, including the use advertised by Apple,
24 results in severe scratches, rendering the device unsightly and the screen unreadable.

25 40. Apple is, and was, aware of the defects in the uncoated First Generation iPod Nano.
26 According to an AppleInsider.com article published on September 26, 2005 (attached as *Exhibit*

1 D), Apple “appears to be deleting comments concerning broken iPod Nano LCD screens as they
2 appear” on Apple’s own website. “Still, one thread dedicated to the iPod Nano includes nearly 500
3 messages chronicling the ease in which the LCD can become severely scratched or damaged.”

4 41. In some cases, Apple charges a restocking fee for returned products. Any fee
5 charged for returning the uncoated First Generation iPod Nano would be improper because
6 customers who have been sold a defective product should not be charged for its repair or
7 replacement.

8 42. Moreover, the replacement may itself be a used or previously defective model that
9 Apple has refurbished, rather than a new iPod Nano.

10 43. Many iPod Nano owners had no choice but to accept the defective product or, if
11 applicable, request a replacement because abandoning the defective product would leave them
12 unable to utilize songs they have downloaded from Apple’s iTunes store, which sells songs (\$.99)
13 and videos (\$1.99) that may only be played on the iPod portable device.

14 44. Meanwhile, for several months, Apple failed to address, much less resolve, the
15 important issue of how to remedy the iPod Nano’s susceptibility to excessive scratches.

16 45. Furthermore, Apple refused to refund the purchase price of the iPod Nano to
17 Plaintiffs and other dissatisfied consumers.

18 46. When consumers complained, Apple told them to purchase, at their own expense, a
19 case to protect the iPod Nano from scratches or to use plastic polish to lessen the appearance of
20 scratches to the iPod Nano. No warning of the iPod Nano’s susceptibility to scratches, or the
21 necessity for the consumer to purchase additional products, was given prior to the sale of millions
22 of these iPod Nanos.

23 47. Apple’s refusal to cure this problem breaches its one year warranty, which
24 “warrants the iPod and iSight product against defects in materials and workmanship for a period of
25 one (1) year from the date of original purchase (‘Warranty Period’).” A copy of the warranty is
26 attached to this Complaint as *Exhibit E*.

1 purchasers, and geographically dispersed throughout the nation, and that joinder of all Class
2 members is impracticable. The information as to the identity of the Class members can be
3 substantially determined from records maintained by Defendant and its agents such as sales
4 records, registration records, warranty agreements, warranty claim records, and public notification.

5 52. The Representative Plaintiff claims are typical of, and not antagonistic to, the claims
6 of the other Class members because the Representative Plaintiffs are owners of uncoated First
7 Generation iPod Nanos and by asserting their claims, they will also advance the claims of all
8 members of the Class who were damaged by the same wrongful conduct of Apple and their co-
9 conspirators as alleged herein, and the relief sought is common to the Class.

10 53. The common legal and factual questions which do not vary from Class member to
11 Class member as to uncoated First Generation iPod Nanos, and which may be determined without
12 reference to individual circumstances of any Class member include, but are not limited to, the
13 following:

- 14 a. Whether Apple misled consumers through its marketing and descriptions of
15 the iPod Nano;
- 16 b. Whether the iPod Nano is defective and susceptible to scratching as a result
17 of such defect;
- 18 c. Whether the iPod Nano's vulnerability to scratching is a design defect;
- 19 d. Whether the iPod Nano's vulnerability to scratching is a manufacturing
20 defect;
- 21 e. Whether Apple knew or should have known that the iPod Nano is vulnerable
22 to severe scratching;
- 23 f. Whether Apple knew or should have known that the iPod Nano is designed
24 for a useful life of only one or two years;
- 25 g. Whether Apple concealed from Plaintiffs and the Class the true nature of the
26 iPod Nano's case, screen, and useful life;

- 1 h. Whether Apple had a duty to Plaintiffs and the Class to disclose the true
2 nature of the iPod Nano's case, screen and useful life;
- 3 i. Whether the facts concealed by Apple from Plaintiffs and the Class are
4 material facts;
- 5 j. Whether, as a result of Apple's concealment of and/or failure to disclose
6 material facts, Plaintiffs and the Class acted to their detriment by purchasing
7 iPod Nanos and iTunes;
- 8 k. Whether Apple engaged in unfair competition when it represented that the
9 iPod Nano had characteristics that it does not actually have;
- 10 l. Whether the iPod Nano fails to perform in accordance with the reasonable
11 expectations of ordinary consumers;
- 12 m. Whether Plaintiffs and the Class are entitled to compensatory damages, and
13 the amount of such damages; and
- 14 n. Whether Apple should be ordered to disgorge, for the benefit of the Class,
15 all or part of its ill-gotten profits received from the sale of iPod Nanos,
16 and/or to make full restitution to Plaintiffs and members of the Class.

17 54. These common questions and others predominate over questions, if any, that affect
18 only individual members of the Class.

19 55. The claims of the Representative Plaintiffs are typical of the claims of the Class.
20 There are no material conflicts with any other member of the Class that would make class
21 certification inappropriate. The Representative Plaintiffs and their counsel will fairly and
22 adequately represent the interests of the Class. The Representative Plaintiffs have retained
23 attorneys experienced in the prosecution of class actions, including complex cases and consumer
24 actions, and the Representative Plaintiffs have prosecuted this action vigorously.

25 56. A class action is superior to other available methods for the fair and efficient
26 adjudication of this controversy because individual litigation of the claims of all Class members is
27
28

1 impracticable. Even if every Class member could afford individual litigation, the court system
2 could not. It would be unduly burdensome on the courts if individual litigation of numerous cases
3 would proceed. By contrast, the conduct of this action as a class action, with respect to some or all
4 of the issues presented in this Complaint, presents fewer management difficulties, conserves the
5 resources of the parties and of the court system, and protects the rights of each Class member.

6 57. Prosecution of separate actions by individual Class members would create the risk
7 of inconsistent or varying adjudications, establishing incompatible standards of conduct for
8 Defendant, and would magnify the delay and expense to all parties and to the court system
9 resulting from multiple trials of the same complex factual issues.

10 58. Injunctive relief is appropriate as to the Class as a whole because Defendant has
11 acted or refused to act on grounds generally applicable to the Class.

12 59. Whatever difficulties may exist in the management of the class action will be
13 greatly outweighed by the benefits of the class action procedure, including, but not limited to,
14 providing Class members with a method for the redress of claims that may not otherwise warrant
15 individual litigation.

16 60. The Individual Plaintiffs, Roberto Islas Durand and Ben Jennings, are included here
17 only as individuals asserting their individual claims, and not as representatives of any Class
18 members.

19 VI. FIRST CAUSE OF ACTION

20 (Breach of Express Warranty In Violation Of 21 Cal. Civ. Code § 1790 *et seq.* and Cal. Comm. Code § 2313)

22 61. Plaintiffs incorporate and reallege, as though fully set forth herein, each of the
23 paragraphs set forth above.

24 62. Apple's iPod Nanos are consumer goods as defined in Cal. Civ. Code § 1791(a).

25 63. Defendant Apple issued written warranties to Plaintiffs and the Class wherein
26 Defendant warranted that its iPod Nano music players were fit for the purpose for which they were
27 intended, and were free of defects.
28

1 purchased uncoated First Generation iPod Nano music players from Apple and/or Apple-
2 authorized retailers. Plaintiffs and the Class relied on Apple's superior skill and judgment to
3 manufacture and sell products suitable for the purpose for which they are intended.

4 73. Defendant impliedly warranted that its iPod Nano is merchantable, fit for the
5 purpose for which it is intended and free of defects. Plaintiffs and the Class are the intended
6 beneficiaries of Defendant's implied warranties.

7 74. Plaintiffs and the Class have performed all conditions, covenants and promises
8 required to be performed on their part in accordance with the warranties.

9 75. Defendant breached the warranties by undertaking the wrongful acts herein alleged.

10 76. As a result of Defendant's breach of the warranty, Plaintiffs and the Class have
11 suffered economic losses and other general, consequential and specific damages, including the
12 amount paid for their defective iPod Nano, according to proof.

13 77. Plaintiffs are entitled to an award of attorneys' fees and costs pursuant to Cal. Civ.
14 Code § 1791(a).

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

16 **VIII. THIRD CAUSE OF ACTION**

17 **(Unjust Enrichment)**

18 78. Plaintiffs incorporate and reallege, as though fully set forth herein, each of the
19 paragraphs set forth above.

20 79. As a direct and proximate result of Defendant's misconduct as set forth above,
21 Defendant has been unjustly enriched.

22 80. Specifically, Defendant sold a defective product to consumers at a premium price
23 and then refused to replace or repair the defective product. This has resulted in Defendant's
24 wrongful receipt of profits and injury to Plaintiffs and the Class.

25 81. Additionally, Defendant has reaped substantial profit from the aggressive marketing
26 and sales of its iTunes software downloads which can only be played on iPod devices. Defendant's
27
28

1. iTunes have resulted in additional sales of new or replacement Nanos, thereby resulting in
2 Defendant's wrongful receipt of profits and injury to Plaintiffs and the Class.

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

4 **IX. FOURTH CAUSE OF ACTION**

5 **(Violations of Civil Code § 1750 *et seq.*)**

6 82. Plaintiffs incorporate and reallege, as though fully set forth herein, each of the
7 paragraphs set forth above.

8 83. The Consumers Legal Remedies Act, Civil Code Section 1750 *et seq.* (hereinafter
9 "CLRA") was designed and enacted to protect consumers from unfair and deceptive business
10 practices. To this end, the CLRA sets forth a list of unfair and deceptive acts and practices in Civil
11 Code Section 1770.

12 84. The CLRA applied to Defendant's actions and conduct described herein because it
13 extends to the sale of goods or services for personal, family or household use.

14 85. At all relevant times, Plaintiffs and members of the Class were "consumers" as that
15 term is defined in Civil Code Section 1761(d).

16 86. The transactions from which this action arises include transactions involving the
17 sale or lease of goods or services for personal, family or household purposes within the meaning of
18 Civil Code Section 1761.

19 87. Defendant's practices in connection with the marketing and sale of the uncoated
20 First Generation iPod Nano violate the CLRA in at least the following respects:

- 21 a. In violation of Section 1770(a)(5), Defendant knowingly misrepresented the
22 character, uses and benefits of the iPod Nano;
- 23 b. In violation of Section 1770(a)(7), Defendant knowingly misrepresented the
24 standard and quality of the iPod Nano;
- 25 c. In violation of Section 1770(a)(9), Defendant has knowingly advertised the
26 iPod Nano with the intent not to sell them as advertised; and

1 d. In violation of Section 1770(14), Defendant knowingly misrepresented the
2 legal rights, obligation, or remedies involved in the purchase and sale of
3 iPod Nanos.

4 88. Defendant's failure to disclose and knowing concealment of the iPod Nano's defects
5 are omissions and concealments of material fact that constitute unfair and/or deceptive business
6 practices in violation of Civil Code Section 1770(a).

7 89. By letter dated November 17, 2005, Plaintiff Clark Sioson provided Defendant with
8 notice and opportunity to cure its violations; Defendant failed to do so.

9 90. Defendant's conduct was a substantial factor in causing damages to the Plaintiffs
10 and the Class, including but not limited to:

- 11 a. A full refund or an exchange for a new and non-defective product;
- 12 b. The cost of shipping and handling for the refund or exchange; and
- 13 c. Reimbursement of the full cost of any aftermarket products purchased in an attempt
14 to prevent the iPod Nano from failing or its defects from manifesting.

15 91. Plaintiffs and the Class seek to recover actual damages and punitive damages from
16 Defendant.

17 92. Plaintiffs are also entitled to an award of attorneys' fees and costs pursuant to Civil
18 Code Section 1780(d).

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

20 **X. FIFTH CAUSE OF ACTION**

21 **(Violations of Business & Professions Code § 17500 et seq.)**

22 93. Plaintiffs incorporate and reallege, as though fully set forth herein, each of the
23 paragraphs set forth above.

24 94. Defendant's use of various forms of advertising media to advertise, call attention to
25 or give publicity to the sale of their goods and services, and other practices, as set forth above,
26 which are not as advertised or as otherwise represented, constitutes unfair competition, unfair,
27
28

1 deceptive, untrue or misleading advertising, under Business & Professions Code Section 17500 *et*
2 *seq.* These advertisements and practices have deceived, and are likely to deceive, the consuming
3 public, in violation of those sections.

4 95. Defendant's business acts and practices, as alleged herein, have caused injury to
5 Plaintiffs, the Class, and the public.

6 96. Plaintiffs and the Class are entitled to restitution and/or other equitable relief in light
7 of the practices described herein.

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

9 **XI. SIXTH CAUSE OF ACTION**

10 **(Violations of Business & Professions Code § 17200 *et seq.*)**

11 97. Plaintiffs incorporate and reallege, as though fully set forth herein, each of the
12 paragraphs set forth above.

13 98. Defendant has engaged in unfair competition within the meaning of California
14 Business & Professions Code Section 17200 *et seq.* because Defendant's conduct is misleading,
15 unfair and illegal as herein alleged. Plaintiffs were injured by Defendant's conduct.

16 99. Defendant's wrongful business acts constituted a course of conduct of unfair
17 competition because Defendant is selling its products and marketing them in a manner that is likely
18 to deceive the public, and Plaintiffs suffered actual harm as a result.

19 100. Defendant's business practices, and each of them, are unfair because they offend
20 established public policy and/or are immoral, unethical, oppressive, unscrupulous and/or
21 substantially injurious to consumers in that consumers are led to believe that the iPod Nano has
22 qualities and withstands uses that it does not. Consumers are further injured when Apple refuses to
23 replace or repair the defective device.

24 101. Defendant's business practices are unlawful because the conduct constitutes a
25 breach of warranty, false marketing and advertising, as well as the other causes of action herein
26 alleged.

1 permitted by law;

2 8. For special damages according to proof on certain causes of action;

3 9. Prejudgment interest at the maximum rate;

4 10. Costs of the proceedings herein;

5 11. Reasonable attorneys' fees as allowed by statute;

6 12. A declaration of financial responsibility on the part of Apple for the cost of
7 notifying all Class members of the available options to replace scratched iPod
8 Nanos; and

9 13. All such other and further relief as the Court deems just and proper.

10 **XIII. DEMAND FOR JURY TRIAL**

11 Plaintiffs on behalf of themselves and all others similarly situated hereby request a jury trial
12 on the claims so triable.

13
14 DATED: November 4, 2008

15 HAGENS BERMAN SOBOL SHAPIRO LLP

16
17 By  _____

LEE M. GORDON

18 ELAINE T. BYSZEWSKI (SBN 222304)
19 700 South Flower St., Suite 2940
20 Los Angeles, CA 90017-4101
21 Telephone: (213) 330-7150
22 Facsimile: (213) 330-7152
23 lee@hbsslaw.com

24 STEVE W. BERMAN
25 HAGENS BERMAN SOBOL SHAPIRO LLP
26 1301 Fifth Avenue,
27 Suite 2900
28 Seattle, WA 98101
Telephone: (206) 623-7292

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

REED R. KATHREIN (SBN 139304)
HAGENS BERMAN SOBOL SHAPIRO LLP
715 Hearst Avenue, Suite 202
Berkeley, CA 94710
Tel: (510) 725-3000
Fax: (510) 725-3001

DAVID P. MEYER
MARNIE LAMBERT
DAVID P. MEYER & ASSOCIATES CO., LPA
1320 Dublin Road, Suite 100
Columbus, OH 43215
Tel: (614) 224-6000
Fax: (614) 224-6066

Attorneys for Representative Plaintiffs Carey Calado, Roxanne Povio, Samuel Allred, Hurr Baqri, Jason Moschella, and David Singer; Attorneys for Individual Plaintiffs Ben Jennings and Roberto Islas Durand; and Co-Lead Counsel for the Proposed Class

BRUCE L. SIMON (SBN 96241)
ESTHER L. KLISURA (SBN 221171)
PEARSON, SIMON, SOTER, WARSHAW & PENNY, LLP
44 Montgomery Street, Suite 1430
San Francisco, CA 94104
Telephone: (415) 433-9000
Facsimile: (415) 433-9008
bsimon@psswplaw.com

CLIFFORD H. PEARSON (SBN 108523)
GARY S. SOTER (SBN 67622)
PEARSON, SIMON, SOTER, WARSHAW & PENNY, LLP
15165 Ventura Boulevard, Suite 400
Sherman Oaks, CA 91403
Telephone: (818) 788-8300
Facsimile: (818) 788-8104

Attorneys for Clark Sioson and Co-Lead Counsel for the Proposed Class

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

HARVEY ROSENFELD (SBN 123082)
PAMELA PRESSLEY (SBN 180362)
CONSUMER WATCHDOG
1750 Ocean Park Blvd., Suite 200
Santa Monica, CA 90405
Telephone: (310) 392-0522
Facsimile: (310) 392-8874
Email: Harvey@consumerwatchdog.org

Attorneys for Clark Sioson

THOMAS D. MAURIELLO (SBN 144811)
LAW OFFICES OF THOMAS D. MAURIELLO
209 Avenida Fabricante, Suite 125
San Clemente, CA 92672
Tel: (949) 542-3555
Fax: (949) 606-9690
Email: tomm@maurlaw.com

LAWRENCE E. FELDMAN
LAWRENCE E. FELDMAN & ASSOC.
432 Tulpehocken Ave.
Elkins Park, PA 19027
Tel: (215) 885-3302
Fax: (215) 885-3303

BRYAN L. CLOBES
MILLER FAUCHER & CAFFERTY, LLP
18th and Cherry Streets
One Logan Square, Suite 1700
Philadelphia, PA 19103
Tel: 215-864-2800
Fax: 215-864-2810

SETH R. LESSER
KLAFTER OLSEN & LESSER LLP
1311 Mamaroneck Avenue, Suite 220
White Plains, New York 10605
Tel: (914) 997-5656
Fax: (914) 997-2444

Attorneys for Plaintiff John Valencia

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PHILIP BOHRER
SCOTT E. BRADY
BOHRER LAW FIRM
8712 Jefferson Highway
Suite B
Baton Rouge, LA 70809
Tel: 225-925-5297
Fax: 225-231-7000
Email: phil@bohrerlaw.com

RICHARD J. ARSENAULT
JOHN R. WHALEY
NESBLETT, BEARD & ARSENAULT
P. O. Box 1190
2220 Bonaventure Court
Alexandria, LA 71309-1190
Tel: 318-487-9874
Fax: 561-2591
Email: rarsenault@nbalawfirm.com

JOHN P. WOLFF, III
CHRISTOPHER K. JONES
KEOGH, COX & WILSON, LTD.
701 Main Street
Baton Rouge, LA 70802
cjones@kcwlaw.com
Phone: (225) 383-3796
Fax: (225) 343-9612

Attorneys for Plaintiff Danny Williamson

JEAN-MARC ZIMMERMAN
ZIMMERMAN, LEVI & KORSINSKY LLP
226 ST. Paul Street
Westfield, NJ 07090
Tel: 908-654-8000
Email: jmzimmerman@zlk.com

*Attorneys for Plaintiffs Eli Kahan and Leonard
Rappel*

EXHIBIT A



EXHIBIT A

EXHIBIT B

[iPod nano images](#)

Apple Introduces iPod nano

SAN FRANCISCO—September 7, 2005—Apple® today introduced the iPod® nano, a revolutionary full-featured iPod that holds 1,000 songs yet is thinner than a standard #2 pencil and less than half the size of competitive players. The iPod nano features an ultra-portable, lightweight design with a gorgeous color screen, Apple's patent pending Click Wheel and the ability to hold 1,000 songs or 25,000 photos. iPod nano works seamlessly with the iTunes® Music Store, the world's number one digital music service. The iPod nano is available immediately in a 4GB model priced at just \$249 and a 2GB model priced at just \$199, with both models available in stunning white or black designs.

"iPod nano is the biggest revolution since the original iPod," said Steve Jobs, Apple's CEO. "iPod nano is a full-featured iPod in an impossibly small size, and it's going to change the rules for the entire portable music market."

iPod nano is the perfect combination of innovative design, storage capacity and ease of use. Thinner than a standard #2 pencil and weighing only 1.5 ounces, iPod nano comes in two models—the 4GB iPod nano holds up to 1,000 songs and the 2GB iPod nano holds up to 500 songs. iPod nano features Apple's innovative Click Wheel for precise, one-handed navigation, and its ultra-portable design fits into even the smallest pocket making it easy to take iPod nano to the gym, in the car, traveling, commuting or anywhere you go.

The most fashionable and wearable iPod ever, the iPod nano features optional accessories including lanyard headphones, which integrate the headphone cables into the lanyard, so users can wear their iPod nano around their neck without dangling headphone cables. For customers looking to personalize their iPod nano with colors, an optional set of iPod nano Tubes in pink, purple, blue, green and clear offers fashionable protection in a sheer casing while enabling full operation of all functions including the Click Wheel. Optional armbands available in gray, pink, blue, red and green allow users to wear their iPod nano as the ultimate fashion and sports accessory.

iPod nano features the same 30-pin dock connector as the iPod and iPod mini, allowing it to work effortlessly with a wide range of over 1,000 accessories developed for iPod, including home stereo speakers and iPod car adapters for an incredible music experience at home or in the car.

Featuring seamless integration with the iTunes Music Store and the iTunes digital music jukebox, iPod nano includes Apple's patent pending Auto-Sync technology that automatically downloads a user's digital music collection, photos or Podcasts onto iPod nano and keeps it up-to-date whenever iPod nano is plugged into a Mac® or Windows computer using USB 2.0. With its stunning, high-resolution color screen, iPod nano allows users to display album art while playing music, view photo slideshows or play games in full color. iPod nano features up to 14 hours battery life* and completely skip-free playback, as well as new stopwatch, world clock and screen lock applications.

Pricing & Availability

The 4GB and 2GB white and black models of iPod nano for Mac or Windows are available worldwide immediately for a suggested retail price of \$249 (US) and \$199 (US) respectively, through the Apple Store® (www.apple.com), Apple's retail stores and Apple Authorized Resellers. All iPod nano models include earbud headphones, a USB 2.0 cable and a CD with iTunes for Mac and Windows computers.

New optional accessories designed for iPod nano with the following suggested retail prices include: Lanyard headphones for \$39 (US), armbands in five colors each for \$29 (US), dock for \$29 (US) and a set of iPod nano Tubes in five different colors for \$29 (US) and will be available within the next 30 days.

iPod nano requires a Mac with a USB 2.0 port and Mac OS® X version 10.3.4 or later and iTunes 4.9 (or later); or a Windows PC with a USB 2.0 port and Windows 2000, XP Home or Professional (SP2) and iTunes 4.9 (or later).

* Battery life and number of charge cycles vary by use and settings. See www.apple.com/batteries for more information. Music capacity is based on four minutes per song and 128-Kbps AAC encoding; photo capacity is based on iPod-viewable photos transferred from iTunes.

Apple ignited the personal computer revolution in the 1970s with the Apple II and reinvented the personal computer in the 1980s with the Macintosh. Today, Apple continues to lead the industry in innovation with its award-winning desktop and notebook computers, OS X operating system, and iLife and professional applications. Apple is also spearheading the digital music revolution with its iPod portable music players and iTunes online music store.

Press Contacts:

<http://www.apple.com/pr/library/2005/sep/07ipodnano.html>

2/7/2006

EXHIBIT B

Tom Neumayr
Apple
(408) 974-1972
tneumayr@apple.com

Jaime Schopflin
Apple
(408) 974-3314
jaimes@apple.com

NOTE TO EDITORS: For additional information visit Apple's [PR website](#), or call Apple's Media Helpline at (408) 974-2042.

Apple, the Apple logo, Mac, Mac OS, Macintosh, iPod, iTunes and Apple Store are trademarks of Apple. Other company and product names may be trademarks of their respective owners.

[Home](#) > [Press info](#) > Press Release

Copyright © 2006 Apple Computer, Inc. All rights reserved

EXHIBIT C

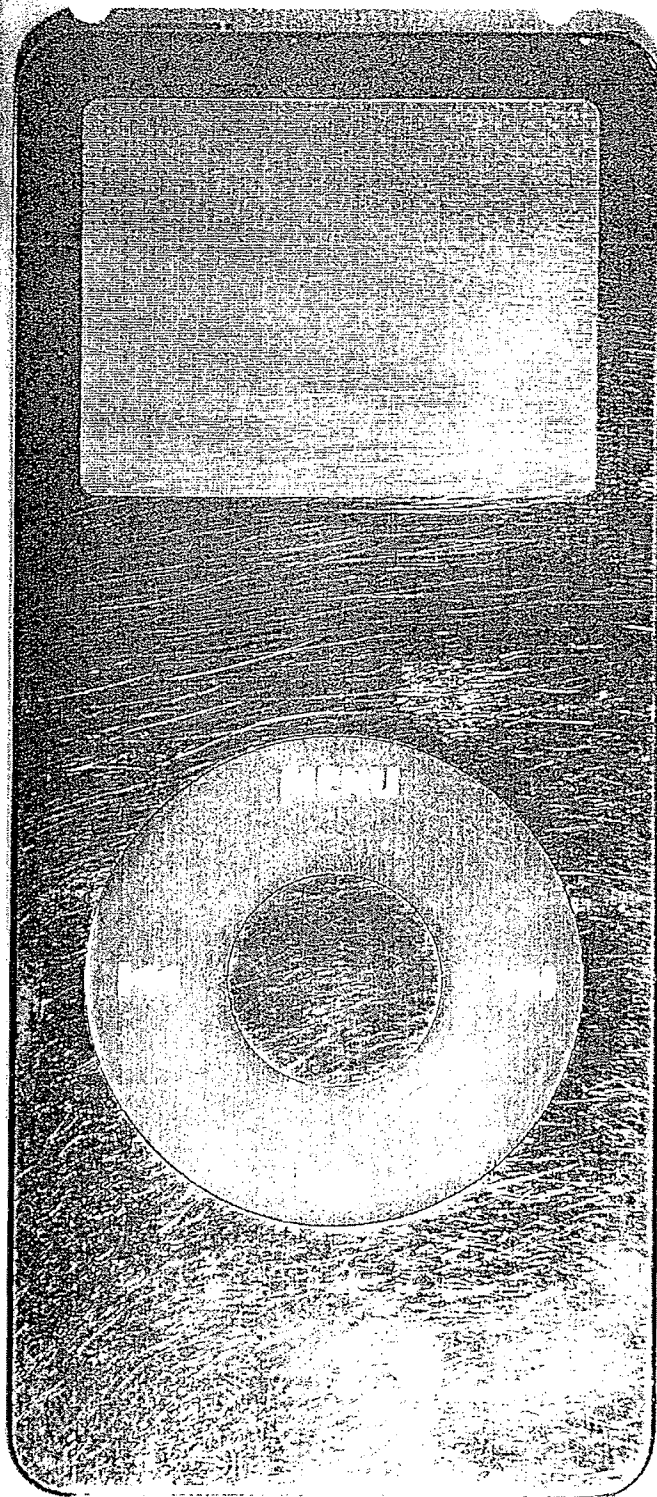


EXHIBIT C

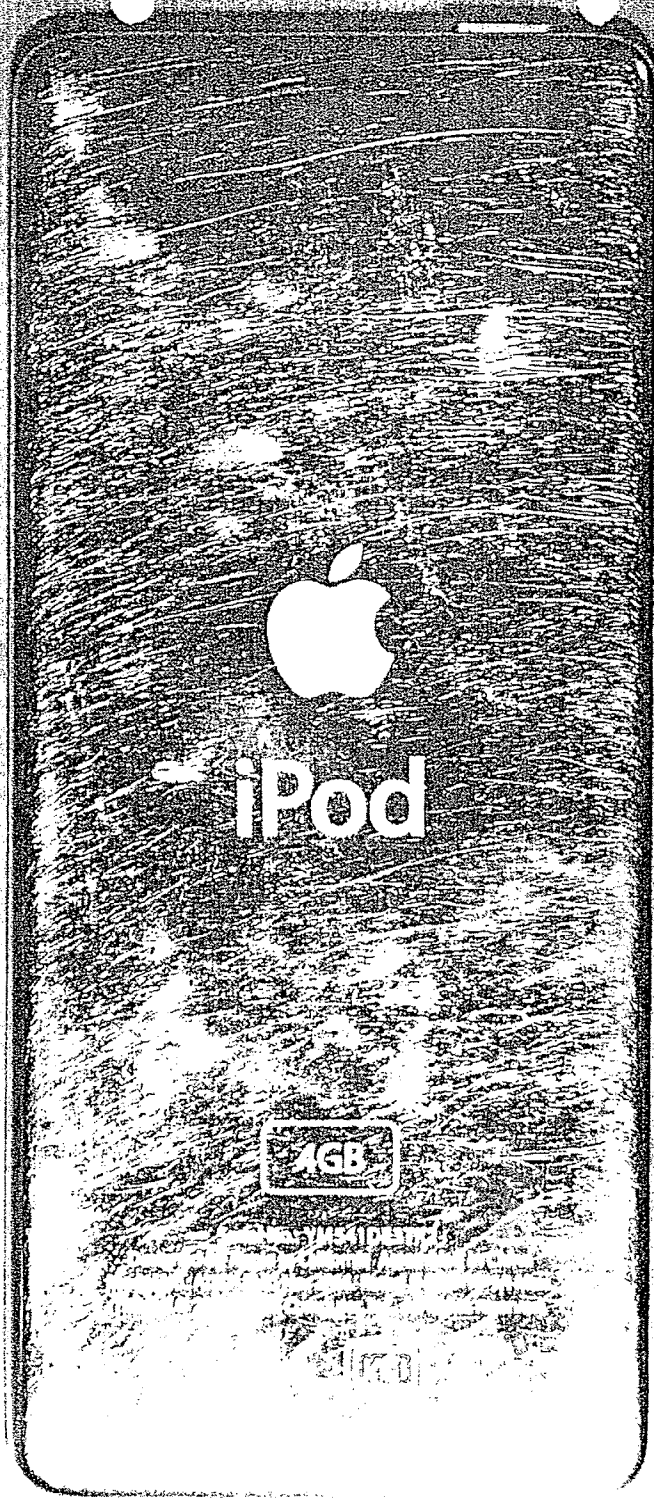


EXHIBIT D



AAPL: 60.32 (-0.83)

Search:

Home News Archives About Advertisements Make a Submission

Forum Chat Advertising Contact Us



Monday, September 26, 2005

Advertisements

Concerns mount over iPod nano LCD durability

By Kasper, Jade
Published: 04:00 PM EST

A significant number of early iPod nano adopters are waging concerns and complaints about the durability of new players, claiming the LCD screens are easily scratched or broken with minimal abuse.

The issue has spurred a flurry of first-hand reports from disgruntled customers on Apple's support forums and also fueled the creation of websites like www.flawedmusicplayer.com, which urge Apple recall the product.

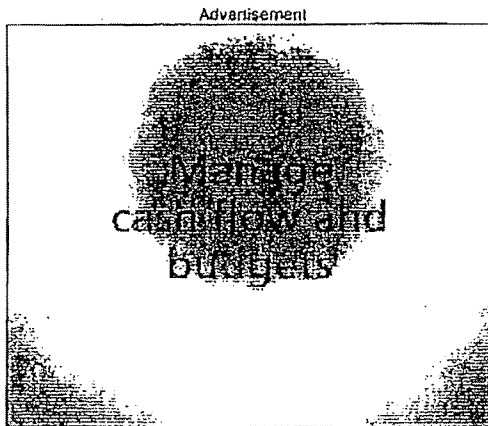
In an email to the website, one iPod nano owner wrote: "On Monday morning, I dropped it in my pocket on the way to work, and when I took it out to show it to all my friends, the LCD was cracked."

Another customer said: "Last night I broke my 2GB black iPod while it was simply sitting in my pocket. I was destroyed over it considering I sacrificed my whole paycheck for it."

Over on Apple's support forums, the company appears to be deleting comments concerning broken iPod nano LCD screens as they appear. Still, one thread dedicated to the iPod nano includes nearly 500 posts chronicling the ease in which the LCD can become severely scratched or damaged.

"I received my black 4GB nano on the 23rd (of Sept.) and already it looks like it's been through a sandpaper factory," said one customer. "Like many other users I have been very careful with it and it has not been in any pockets with anything else."

Says another customer, "I bought the black 2GB at Best Buy four days ago and have used it once. I held it in my hand and the thing looks awful. It was my first iPod and I am



CDW
The Power A

We get you the creative resources you need.

NEW Fujitsu Scanner for Mac
Quickly and easily digitize various document types

Now just **\$1159⁹⁵**

[More info](#)

FUJITSU
Offer subject to CDW's standard terms and conditions of sale. Available at CDW.com

EXHIBIT D

bummed."

The iPod nano's screen is arguably its most critical component, as it provides a means to navigate playlists and display full-color photos.

"The nano screen is just as vulnerable as any other iPod LCD, however I feel that the public impression is that you can carry these in your back pocket or just toss them inside of a book bag and not worry — this is far from the truth," said Ryan Arter, president of iPodResQ, a company which offers LCD replacement services for the nano.

Already iPodResQ is receiving more nano LCD repair requests than it had initially expected. As of last Thursday the company said it was dealing with hundreds of LCD damages, with demand steadily increasing from day to day.

"We replaced the first [iPod nano LCD] the day after they were released, and frankly I never anticipated that," Arter said. Demand for nano LCD repairs through iPodResQ has since escalated, causing a shortage of the replacement LCDs and forcing the company to raise the cost of its repair service from \$99 to \$145.

So far Apple has made no official comment on the issue and its retail store and phone support employees have told iPod nano owners that their LCD damage is not covered under warranty. Some customers are having a tough time digesting this response because they feel Apple had implied that the player was durable enough for everyday use and storage "in your pocket".

During the Sept. 7th unveiling of the iPod nano in San Francisco, Apple chief executive Steve Jobs pulled the player from his front pocket and declared: "1,000 songs in your pocket and impossibly small."

**\$150,000
MORTGAGE
FOR
\$483/MONTH**

**REFINANCE AND
SAVE \$1000S!
COMPARE UP TO 4
FREE OFFERS. ALL
CREDIT TYPES
ACCEPTED.**

{ [100 Comments](#) }

{ [Email Story](#) } { [Print](#) } { [Story Link](#) }

pickamortgage.com

Ads by ~~Google~~

[iPod Nano Cases Store](#)

Buy Quality iPod Nano Cases From An iPod Accessory Specialty Store!
www.theiStore.com

[iPod Repair Parts Store](#)

Both original and upgraded parts for all i-pod models - worldwide.
www.PodParts.com

[iPod Screen Replacement](#)

24hr LCD Repair on all iPods. We send packaging. LCD's in stock!
www.iPodResQ.com

[iPod Repair](#)

iPod repair headquarter. LCD, Hard Drive and Battery replacement.
www.minipec.com

Recent Articles

[UBS raises Apple estimates, says Intel Macs may come early](#)
[Over 1 million Windows to Mac converts so far in 2005?](#)
[PowerBook to gain iSight, iBook to go widescreen in 2006](#)
[Lugz sends Apple cease-and-desist over Eminem spot](#)
[CBS in talks with Apple over video content distribution](#)
[Fifth-generation iPod sales strong, outselling nano at some stores?](#)
[Apple releases AirPort Update 2005-001](#)
[Motorola SLVR L7 with iTunes and Bluetooth headset?](#)
[Apple store destined for Atlantic City](#)
[Jobs asks author: "Are you a nut case?"](#)
[Apple releases Mac OS X 10.4.3](#)
[New iPods drive QuickTime Pro, AppleCare sales](#)
[iPod demand rising heading into November](#)
[Apple sells over 1M videos in less than 20 days](#)
[Glass cube assembly begins at site of 5th Ave flagship store](#)
[Nvidia 7800 GT and Power Mac G5 Quad in final testing](#)
[iPod shuffle still selling well?](#)
[Apple to replace any 5G iPods that exhibit hardware failure](#)
[Apple execs rake in millions from stock options](#)
[Apple launches iTunes store in Australia](#)
[New Macs running 10.4.2, 10.4.3 due soon, more...](#)
[iPod nano owners sue Apple over screen issues](#)
[iPod video teardown reveals Broadcom video chip](#)
[Apple releases Pro Application Support 3.1, WaveBurner 1.1.2](#)
[Apple updates iTunes to version 6.0.1](#)
[Apple readies Australian iTunes music store \(again\)](#)
[Apple reduces Cinema Display pricing](#)
[Apple introduces Power Mac G5 Quad & Power Mac G5 Dual](#)
[Apple enhances PowerBooks with higher-res displays](#)
[Apple introduces Aperture](#)
[Apple quietly plans massive presence at PhotoPlus Expo](#)
[Apple media event to kick-off tomorrow at noon](#)
[First look at Apple's new iPod video \(photos\)](#)
[Former Elgato chief to head Apple Germany](#)
[Apple ships first video iPods, lanyard nano headphones](#)
[Apple abandons plans for third Manhattan store](#)
[Eminem iTunes ad airs on network television](#)
[Apple drops \\$3.8B investment plan with Samsung](#)
[Tim Cook named COO of Apple, Rubinstein to retire](#)
[Apple schedules special event for Oct. 19](#)

AppleInsider Market Place

Buy Adobe Software: Shop AtomicPark.com and save with free shipping and a 30-day happiness guarantee. Find great prices on all the latest Adobe Software titles.

Online Storage - JBackup: JBackup offers secure online storage, online backup and remote access services for consumers and businesses, for Windows, Mac and Linux including handheld devices. Features include Network Drive Mapping using iDrive, Sharing and more!



Apple iMac G5
Desktop with 20"
M9250
Apple Computer



Refurb'd \$1,500.51!
\$350 Turntable for
iMac G5 and
Apple...
Rain Design, Inc.



KeySpan
USB Twin
Serial Adapter
for...
KeySpan
New \$89.99!



Macally USB
Mouse for
Imac
Original...
Macally
New \$13.75!

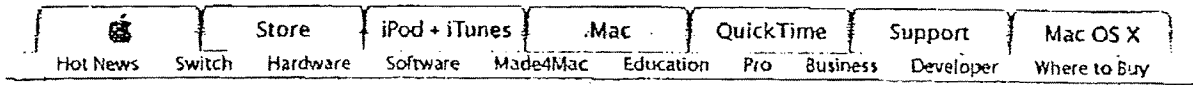
(Prices May Change)
[Privacy Information](#)

Hide your activity at WiFi
Hotspots with PublicVPN:
PublicVPN.com encrypts your Wi-Fi
connection, scrambling all the data you
send and receive at your Wi-Fi hotspot.
Shield your online activity from prying
eyes when you're out of the office with
our easy, secure, and affordable service.



AppleInsider © 1997-2004
Please review our [Privacy Policy](#).
Written/Edited/Compiled by the AppleInsider Staff.

EXHIBIT E



Apple One-Year Limited Warranty

WARRANTY COVERAGE

Apple's warranty obligations for the iPod and iSight are limited to the terms set forth below:

Apple Computer, Inc. ("Apple") warrants the iPod and iSight product against defects in materials and workmanship for a period of one (1) year from the date of original purchase ("Warranty Period").

If a defect arises and a valid claim is received by Apple within the Warranty Period, at its option, Apple will (1) repair the product at no charge, using new or refurbished replacement parts, (2) exchange the product with a product that is new or which has been manufactured from new or serviceable used parts and is at least functionally equivalent to the original product, or (3) refund the purchase price of the product.

If a defect arises and a valid claim is received by Apple after the first one hundred and eighty (180) days of the Warranty Period, a shipping and handling charge will apply to any repair or exchange of the product undertaken by Apple.

Apple warrants replacement products or parts provided under this warranty against defects in materials and workmanship from the date of the replacement or repair for ninety (90) days or for the remaining portion of the original product's warranty, whichever provides longer coverage for you. When a product or part is exchanged, any replacement item becomes your property and the replaced item becomes Apple's property. When a refund is given, your product becomes Apple's property.

EXCLUSIONS AND LIMITATIONS

This Limited Warranty applies only to the iPod and iSight products manufactured by or for Apple that can be identified by the "iPod" or "iSight" trademark, trade name, or logo affixed to it. This Limited Warranty does not apply to any non-Apple hardware product or any software, even if packaged or sold with the iPod or iSight product. Non-Apple manufacturers, suppliers, or publishers may provide a separate warranty for their own products packaged with the iPod or iSight product.

Software distributed by Apple under the Apple brand name is not covered under this Limited Warranty. Refer to Apple's Software License Agreement for more information.

Apple is not liable for any damage to or loss of any programs, data, or other information stored on any media contained within the iPod or iSight product, or any non-Apple product or part not covered by this warranty. Recovery or reinstallation of programs, data or other information is not covered under this Limited Warranty.

This warranty does not apply: (a) to damage caused by accident, abuse, misuse, misapplication, or non-Apple products; (b) to damage caused by service performed by anyone other than Apple; (c) to a product or a part that has been modified without the written permission of Apple; or (d) if any Apple serial number has been removed or defaced.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, THIS WARRANTY AND THE REMEDIES SET FORTH ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, REMEDIES AND

CONDITIONS, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED. APPLE SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IF APPLE CANNOT LAWFULLY DISCLAIM OR EXCLUDE IMPLIED WARRANTIES UNDER APPLICABLE LAW, THEN TO THE EXTENT POSSIBLE ANY CLAIMS UNDER SUCH IMPLIED WARRANTIES SHALL EXPIRE ON EXPIRATION OF THE WARRANTY PERIOD. No Apple reseller, agent, or employee is authorized to make any modification, extension, or addition to this warranty.


TO THE MAXIMUM EXTENT PERMITTED BY LAW, APPLE IS NOT RESPONSIBLE FOR DIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM ANY BREACH OF WARRANTY OR CONDITION, OR UNDER ANY OTHER LEGAL THEORY, INCLUDING ANY COSTS OF RECOVERING OR REPRODUCING ANY PROGRAM OR DATA STORED IN OR USED WITH THE APPLE PRODUCT, AND ANY FAILURE TO MAINTAIN THE CONFIDENTIALITY OF DATA STORED ON THE PRODUCT. APPLE SPECIFICALLY DOES NOT REPRESENT THAT IT WILL BE ABLE TO REPAIR ANY PRODUCT UNDER THIS WARRANTY OR MAKE A PRODUCT EXCHANGE WITHOUT RISK TO OR LOSS OF PROGRAMS OR DATA.

FOR CONSUMERS WHO HAVE THE BENEFIT OF CONSUMER PROTECTION LAWS OR REGULATIONS IN THEIR COUNTRY OF PURCHASE OR, IF DIFFERENT, THEIR COUNTRY OF RESIDENCE, THE BENEFITS CONFERRED BY THIS WARRANTY ARE IN ADDITION TO ALL RIGHTS AND REMEDIES CONVEYED BY SUCH CONSUMER PROTECTION LAWS AND REGULATIONS. TO THE EXTENT THAT LIABILITY UNDER SUCH CONSUMER PROTECTION LAWS AND REGULATIONS MAY BE LIMITED, APPLE'S LIABILITY IS LIMITED, AT ITS SOLE OPTION TO REPLACEMENT OR REPAIR OF THE PRODUCT OR SUPPLY OF THE REPAIR SERVICE AGAIN.

OBTAINING WARRANTY SERVICE

Please review the online help resources referred to in the accompanying documentation before seeking warranty service. If the product is still not functioning properly after making use of these resources, access the online website: www.apple.com/support for instructions on how to obtain warranty service.

Note: Before you deliver your product for warranty service it is your responsibility to backup all data, including all software programs. You will be responsible for reinstalling all data. Data recovery is not included in the warranty service and Apple is not responsible for data that may be lost or damaged during transit or a repair.

[Site Map](#) | [Search Tips](#) 

Visit the Apple Store online or at retail locations.
1-800-MY-APPLE

[Contact Us](#) | [Terms of Use](#) | [Privacy Policy](#)

Copyright © 2005 Apple Computer, Inc. All rights reserved.