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APPLE INC.
8 f/k/a APPLE COMPUTER, INC.

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN DIEGO - CENTRAL DISTRICT
12

13 WILLIAM J. GILLIS, JR., on behalf of himself
14 and All Others Similarly Situated and on Behalf
of the General Public,

15 Plaintiff,

16 v.

17 APPLE COMPUTER, INC., AT&T, and DOES 1
18 through 10,

19 Defendants.

Case No. 37-2008-00090743-CU-
BT-CTL

**DEFENDANT APPLE INC.'S
ANSWER TO FIRST AMENDED
COMPLAINT**

First Amended Compl. filed:
September 5, 2008
Trial Date: None set

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21 Defendant Apple Inc., f/k/a Apple Computer, Inc., ("Apple"), answers the First Amended
22 Complaint ("First Amended Complaint") filed by Plaintiff William J. Gillis, Jr. ("Plaintiff") as
23 follows:

24 **GENERAL DENIAL**

25 Pursuant to section 431.30(d) of the California Code of Civil Procedure, Apple denies each,
26 every and all allegations of the First Amended Complaint, and the whole thereof, and denies that
27 Plaintiff and/or the putative class are entitled to any recovery or relief sought or alleged by reason of
28 any act, omission or conduct on the part of Apple.

1 **AFFIRMATIVE DEFENSES**

2 Apple does not, by stating the matters set forth in these defenses, allege or admit that it has
3 the burden of proof and/or persuasion with respect to any of these matters, and does not assume the
4 burden of proof or persuasion as to any matters to which Plaintiff has the burden of proof or
5 persuasion.

6 **FIRST AFFIRMATIVE DEFENSE**

7 **(Failure to State A Claim – All Causes of Action)**

8 1. The First Amended Complaint, and each and every cause of action therein, fails to
9 state facts sufficient to constitute a cause, or causes, of action against Apple.

10 **SECOND AFFIRMATIVE DEFENSE**

11 **(Complaint Uncertain, Vague, and Ambiguous)**

12 2. The First Amended Complaint and the allegations thereof are uncertain, vague, and
13 ambiguous.

14 **THIRD AFFIRMATIVE DEFENSE**

15 **(Apple’s Practices Not Unlawful)**

16 3. Apple alleges that to the extent that Plaintiff proves that Apple conducted any of the
17 activities alleged in the First Amended Complaint, those activities conformed with and were pursuant
18 to any and all applicable statutes and regulations and were not unlawful.

19 **FOURTH AFFIRMATIVE DEFENSE**

20 **(Apple’s Practices Not Unfair)**

21 4. Apple alleges that to the extent that Plaintiff proves that Apple conducted any of the
22 activities alleged in the First Amended Complaint, those activities were not and are not unfair within
23 the meaning of the California Business & Professions Code §§ 17200, *et seq.* and §§ 17500, *et seq.*

24 **FIFTH AFFIRMATIVE DEFENSE**

25 **(Apple’s Practices Not Deceptive or Misleading)**

26 5. Any statements made by Apple were truthful and accurate and were not misleading or
27 deceptive or likely to mislead or deceive Plaintiff or the purported class, and could not have been
28

1 reasonably understood by Plaintiff or any member of the purported class in a manner that was
2 misleading or deceptive or likely to mislead or deceive.

3 **SIXTH AFFIRMATIVE DEFENSE**

4 **(Improper Class Action)**

5 6. Plaintiff's claims, and those of the purported class, are barred because this action is
6 not properly maintainable as a class action as alleged by Plaintiff, and Plaintiff is not a proper class
7 representative.

8 **SEVENTH AFFIRMATIVE DEFENSE**

9 **(No Injury in Fact or Loss of Money or Property)**

10 7. Apple alleges on information and belief that Plaintiff and the members of the
11 purported class have not sustained the required injury in fact and/or lost the requisite money or
12 property necessary to confer standing pursuant to California Business & Professions Code §§ 17200,
13 *et seq.*

14 **EIGHTH AFFIRMATIVE DEFENSE**

15 **(No Injury or Damage)**

16 8. Apple denies that Plaintiff or any member of the purported class have suffered any
17 injury or damage whatsoever, and further denies that it is liable to Plaintiff or any member of the
18 purported class for any of the injury or damage claimed or for any injury or damage whatsoever.

19 **NINTH AFFIRMATIVE DEFENSE**

20 **(Alleged Injury or Damage Caused by Others)**

21 9. To the extent that Plaintiff and/or the purported class suffered injury or damage, which
22 Apple denies, such injury or damage was caused by the action or conduct of others, not of Apple.

23 **TENTH AFFIRMATIVE DEFENSE**

24 **(No Causation)**

25 10. To the extent that Plaintiff or the purported class suffered injury or damage, which
26 Apple denies, such injury or damage was not proximately caused by any conduct or inaction of
27 Apple, or was not foreseeable, or both.

1 **ELEVENTH AFFIRMATIVE DEFENSE**

2 **(No Reliance)**

3 11. Plaintiff's claims, and those of the purported class, are barred, in whole or in part,
4 because Plaintiff did not rely on the statement or omissions of which Plaintiff now complain in
5 purchasing the Apple iPhone 3G and, moreover, the alleged statements or omissions were not
6 material.

7 **TWELFTH AFFIRMATIVE DEFENSE**

8 **(Equitable Relief – Remedies)**

9 12. Plaintiff and the purported class are barred from asserting the claims for equitable
10 relief alleged in the First Amended Complaint because they have adequate remedies at law and/or the
11 equitable relief is neither necessary nor proper under applicable law.

12 **THIRTEENTH AFFIRMATIVE DEFENSE**

13 **(Failure to Mitigate)**

14 13. Plaintiff and the purported class have failed to mitigate their damages, if any.

15 **FOURTEENTH AFFIRMATIVE DEFENSE**

16 **(Good Faith)**

17 14. Plaintiff's claims, and those of the purported class, are barred in whole or in part,
18 because Apple at all times acted in good faith and did not directly or indirectly perform any act
19 whatsoever that would constitute a violation of any right of Plaintiff or the purported class or any
20 duty owed to Plaintiff or the purported class.

21 **FIFTEENTH AFFIRMATIVE DEFENSE**

22 **(Absence of Intent or Knowledge)**

23 15. Apple alleges that to the extent that Plaintiff proves that Apple conducted any of the
24 activities alleged in the First Amended Complaint, Plaintiff's claims, and those of the purported class,
25 are barred, in whole or in part, because Apple had no intention or knowledge, nor any reasonable
26 grounds to know, that any such activities were untrue or misleading.

1 SIXTEENTH AFFIRMATIVE DEFENSE

2 (Puffing)

3 16. Plaintiff's claims, and those of the purported class, are barred by the fact that the
4 alleged deceptive statements were such that no reasonable person in Plaintiff's position could have
5 reasonably relied on or misunderstood Apple's statements as claims of fact.

6 SEVENTEENTH AFFIRMATIVE DEFENSE

7 (Failure to Notify of Breach of Warranty)

8 17. Plaintiff failed to notify Apple of any breach of warranty within a reasonable time
9 after Plaintiff knew or should have known of any purported defect.

10 EIGHTEENTH AFFIRMATIVE DEFENSE

11 (Claims Barred By Written Warranty)

12 18. To the extent Plaintiff asserts claims on behalf of himself and/or the purported class
13 for remedies outside of Apple's One (1) Year Limited Warranty for the iPhone 3G, those claims are
14 barred.

15 NINETEENTH AFFIRMATIVE DEFENSE

16 (Warranties Were Limited)

17 19. Apple expressly limited any express warranty and any implied warranty that may have
18 been in existence or otherwise been created.

19 TWENTIETH AFFIRMATIVE DEFENSE

20 (Cure)

21 20. Plaintiff's claims, and those of the purported class, are barred, in whole or in part,
22 because, although Apple denies each and every claim of Plaintiff and the purported class and denies
23 that Apple engaged in wrongdoing or error of any kind, Apple has established an appropriate
24 correction, repair, replacement, or other remedy.

25 TWENTY-FIRST AFFIRMATIVE DEFENSE

26 (Estoppel)

27 21. The First Amended Complaint, and each of its purported causes of action, is barred, in
28 whole or in part, by the equitable doctrine of estoppel.

1 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

2 **(Unclean Hands)**

3 22. Plaintiff is barred by the doctrine of unclean hands from asserting any of the claims in
4 the First Amended Complaint.

5 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

6 **(Waiver)**

7 23. The First Amended Complaint, and each of its purported causes of action, is barred, in
8 whole or in part, by the doctrine of waiver.

9 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

10 **(Lack of Scienter)**

11 24. Apple alleges that to the extent that Plaintiff proves that Apple conducted any of the
12 activities alleged in the First Amended Complaint, Plaintiff's claims, and those of the purported class,
13 are barred, in whole or in part, because Apple had no intent or knowledge, nor any reasonable
14 grounds to know, that any such activities or omissions were unlawful, untrue, or misleading, nor did
15 Apple act with any intent that others rely upon such activities or omission.

16 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

17 **(Comparative Fault)**

18 25. Plaintiff's claims, and those of the purported class, are barred, in whole or in part, by
19 their own comparative fault.

20 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

21 **(Assumption of Risk)**

22 26. Plaintiff and/or any member of the purported class knowingly, willingly, and
23 voluntarily assumed the risk of all damages allegedly sustained, if any.

24 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

25 **(Contributory Negligence)**

26 27. Any and all events, happenings, injuries and damages set forth in the First Amended
27 Complaint were proximately caused and contributed to by the acts and/or omissions of Plaintiff
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1 and/or members of the purported class, and such acts and/or omissions totally bar or reduce any
2 recovery on the part of plaintiff and/or the purported class.

3 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

4 **(No Duty)**

5 28. Any recovery on the First Amended Complaint, or any claim for relief averred therein,
6 is barred to the extent Apple owed no duty to Plaintiff or to members of the purported class.

7 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

8 **(Performance of Duties)**

9 29. The First Amended Complaint, and each purported claim for relief alleged therein, are
10 barred because Apple fully performed any and all contractual and other duties, if any, owed to
11 Plaintiff and/or any member of the purported class.

12 **THIRTIETH AFFIRMATIVE DEFENSE**

13 **(Lack of Materiality)**

14 30. Plaintiff's claims, and those of the putative class, are barred, in whole or in part,
15 because the alleged statements and/or omissions were not material.

16 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

17 **(Lack of Privity)**

18 31. As to those causes of action based upon a breach of warranty, Plaintiff's claims, and
19 those of the purported class, are barred, in whole or in part, by lack of privity as required under the
20 warranty laws.

21 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

22 **(Lack of Standing)**

23 32. Apple alleges on information and belief that Plaintiff and the members of the
24 purported class lack standing.

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26 Apple reserves the right to assert other defenses as discovery progresses.

27 **PRAYER**

28 WHEREFORE, Apple prays for judgment as follows:

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- 1. That Plaintiff and the purported class take nothing by way of the First Amended Complaint;
- 2. That the First Amended Complaint be dismissed with prejudice and judgment entered in favor of Apple;
- 3. That Apple be awarded its costs of suit; and
- 4. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Apple hereby demands a trial by jury on all issues upon which trial by jury may be had.

Dated: October 6, 2008

PENELOPE A. PREOVOLOS
ANDREW D. MUHLBACH
HEATHER A. MOSER
MORRISON & FOERSTER LLP

By: 
PENELOPE A. PREOVOLOS

Attorneys for Defendant
APPLE INC.
f/k/a APPLE COMPUTER, INC.

1 PROOF OF SERVICE

2 I am employed in the County of San Diego, State of California. I am over the age of
3 eighteen years, and not a party to the within action. My business address is Morrison & Foerster,
12531 High Bluff Drive, Suite 100, San Diego, California 92130-2040.

4 On October 7, 2008, I served the within documents:

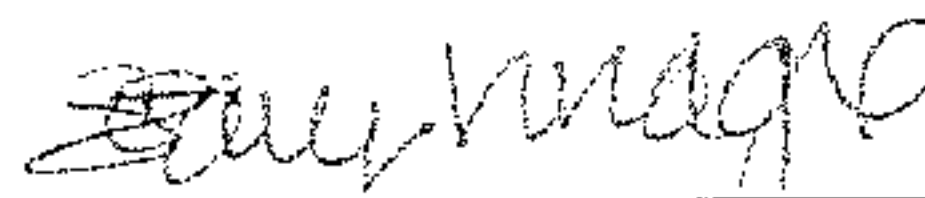
5 **DEFENDANT APPLE, INC.'S ANSWER TO FIRST AMENDED COMPLAINT**

- 6 (FAX) By transmitting via facsimile the document(s) listed above to the fax
7 number(s) set forth below.
- 8 (PERSONAL) By placing the document listed above in a sealed envelope for
9 personal delivery by Worldwide Attorney Services to the person(s) at the address(es)
10 set forth below.
- 11 (MAIL) By placing a copy of the document(s) listed above in a sealed envelope
12 with postage thereon fully prepaid, in the United States Mail at San Diego,
13 California addressed as set forth below.

14 Michael Ian Rott
15 David V. Hiden, Jr.
16 HIDEN, ROTT & OERTLE, LLP
17 2635 Camino del Rio South, Suite 306
18 San Diego, California 92108

- 19 (State) I declare under penalty of perjury under the laws of the State of California
20 that the above is true and correct.

21 Executed on October 7, 2008, at San Diego, California.

22 

23 _____
24 (Stacy Vinagre