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16 *Attorneys for Plaintiffs and the Class*

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18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**
20 **(SAN JOSE DIVISION)**

21 NATHAN NYGREN, STEPHEN
SHIFFLETTE and AMY FROMKIN, on
22 behalf of themselves and all others similarly
situated,

23 Plaintiffs,

24 v.

25 HEWLETT-PACKARD COMPANY, a
26 Delaware corporation,

27 Defendant.

CASE NO. 07-05793 JW

CLASS ACTION

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES,
RESTITUTION AND INJUNCTIVE
RELIEF**

DEMAND FOR JURY TRIAL

1 Plaintiffs Nathan Nygren, Stephen Shifflette and Amy Fromkin (“Plaintiffs”),
2 individually and on behalf of the Class and Subclasses defined below, bring this action for
3 damages, restitution and injunctive relief against defendant, Hewlett-Packard Company (“HP” or
4 “Defendant”), demanding a trial by jury, and complain and allege as follows:

5 **I. INTRODUCTION**

6 1. Defendant Hewlett-Packard Company, one of the world’s leading manufacturers
7 of computers, knowingly sold its Pavilion notebook computers, Series 6000 and 9000 and
8 Presario Series 6000, also known as the DV 6000, V6000 and DV 9000 notebooks (referred to
9 collectively as “HP Notebook Computers”) with defective and malfunctioning wireless access
10 features, including a heat cycling design that interferes with wireless access and causes the
11 wireless feature to fail.

12 2. This lawsuit is brought on behalf of consumers who relied on HP’s representations
13 that its HP Notebook Computers would have wireless access, and seeks compensation for HP’s
14 deceptive practices.

15 **II. JURISDICTION AND VENUE**

16 3. This Court has jurisdiction over this action pursuant to the Class Action Fairness
17 Act, and particularly, 28 U.S.C. § 1332(d)(2), as the matter in controversy exceeds \$5,000,000.00
18 and this is a class action in which some members of the class of plaintiffs are citizens of a state
19 that is different from the principal place of business of Defendant.

20 4. Venue is proper in this District, and in particular the San Jose Division, under 15
21 U.S.C. §§ 15, 22, and 26 and 28 U.S.C. § 1391(b) and (c), because HP maintains its headquarters,
22 transacts business, maintains offices, or is otherwise found within this District; and the
23 Defendant’s unlawful acts giving rise to Plaintiffs’ claims occurred, and a substantial portion of
24 the affected trade and commerce described below has been carried out in this District. See also
25 Exhibit A to this Complaint.

1 **III. THE PARTIES**

2 **A. Plaintiffs**

3 5. Plaintiff Nathan Nygren, an individual, is a resident of Wisconsin. He purchased
4 his HP notebook computer, an HP Pavilion DV6110US Notebook, for personal, family or
5 household use on January 14, 2007. He reasonably expected that the wireless features would last
6 five years without material failure. On or about September 14, 2007, the wireless feature failed
7 on Plaintiff Nygren’s computer. To attempt to remedy the issue he undertook a variety of steps
8 suggested by HP’s technical support group, none of which solved the problem. HP then sent him
9 a new wireless card. Installation of the new wireless card did not solve the problem either. HP
10 has refused Plaintiff’s request to refund his purchase price or replace his notebook computer with
11 one without the design defect that affects the wireless access and other related aspects of the
12 computers.

13 6. Plaintiff Stephen Shifflette, an individual, is a resident of Goochland County,
14 Virginia. He purchased an HP6140US, serial number CCNF640102T, for personal, family, or
15 household use in October 2006 at a CompUSA store. He reasonably expected that the wireless
16 features would last five years without material failure. On or about December 17, 2007, the
17 wireless capabilities on the computer began to malfunction. Plaintiff Shifflette bought an
18 external wireless device to enable his computer to connect to wireless networks but it did not
19 work. Plaintiff Shifflette visited HP’s website and contacted HP support personnel, spending
20 hours unsuccessfully attempting to remedy the problem. HP has not refunded his purchase price
21 or replaced his Notebook Computer with one without the design defect that affects the wireless
22 access and other related aspects of the computer.

23 7. Plaintiff Amy Fromkin, an individual, is a resident of Broward County, Florida.
24 She purchased an HP DV6000 Notebook Computer, serial number CNF72759W1, for personal,
25 family, or household use, on August 6, 2007 at Circuit City in Pembroke Pines, Florida. She
26 reasonably expected that the wireless feature would last five years without material failure.
27 Within a year of purchase, the computer’s battery was not accepting a charge. The computer said
28 “plugged in not charging.” She called for warranty service, packed up the computer and sent it

1 in. HP sent it back to her with a new battery. After HP returned the computer, still within a year
2 of purchase, the wireless connection malfunctioned and failed. The computer did not maintain its
3 wireless connection to her wireless router, even though she was in the same room as the router,
4 and her mother's Dell computer in the same room remained consistently connected wirelessly to
5 the router. Ms. Fromkin's computer would not connect to the wireless signal and she therefore
6 could not connect to the Internet. To attempt to fix the problem, she bought a new D-Link router.
7 The new router did not fix the wireless problem so she called HP support and spent a long time
8 troubleshooting the unit. They reset the router, added and deleted the device in the control panel,
9 and re-booted the computer. The wireless problem was still not fixed. She arranged for HP to
10 send a warranty return box, and the support person said he thought they needed to replace the
11 motherboard. She sent the computer to HP and it came back with a note saying HP had installed
12 a new BIOS. After a short period of time, and still within the warranty period, the same wireless
13 problems recurred. Again, Ms. Fromkin returned the computer to HP in a warranty return box.
14 This time it came back with a note saying HP could not find anything wrong with it. Despite
15 HP's claim that it could not detect the problem, Ms. Fromkin continues to experience failures and
16 malfunctioning of the wireless feature as described above. HP has not refunded her purchase
17 price or replaced her Notebook Computer with one without the design defect that affects the
18 wireless access and other related aspects of the computer.

19 **B. Defendant Hewlett-Packard Company**

20 8. Defendant Hewlett-Packard Company is a publicly traded corporation with
21 worldwide corporate headquarters in Palo Alto, California.

22 **IV. CLASS ACTION ALLEGATIONS**

23 9. Plaintiffs bring this action on behalf of themselves, and, pursuant to Federal Rules
24 of Civil Procedure 23(a) and (b)(3), on behalf of the following Class and Consumer Subclass and
25 Warranty Subclass ("class or classes"):

26 **Class**

27 **All persons and entities who since January 1, 2007 purchased**
28 **or leased HP Pavilion Series 6000 and 9000 and Presario Series**
6000 notebook computers, also referred to as the DV6000,
V6000 and DV 9000 series of computers. Excluded from the

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Class are (1) employees of the defendant, including its officers or directors; and (2) defendant’s affiliates, subsidiaries, or co-conspirators.

Consumer Subclass

All Class members who purchased or leased for personal, family or household purposes, HP Pavilion Series 6000 and 9000 and Presario Series 6000 notebook computers, also referred to as the DV6000, V6000 and DV 9000 series of computers.

Warranty Subclass

All Class members whose HP Pavilion Series 6000 and 9000 and Presario Series 6000 notebook computers, also referred to as the DV6000, V6000 and DV 9000 series of computers, experienced failure of wireless capability within a year of purchase.

10. Class members are sufficiently numerous and geographically dispersed throughout the United States that joinder of all Class members is impracticable. Information as to the identity of the Class members can be determined from records maintained by the Defendant and its agents. Fed.R.Civ.P.23(a)(3).

11. Plaintiffs’ claims are typical of, and not antagonistic to, the claims of the other Class members and, by asserting their claims, Plaintiffs will also advance the claims of all members of the Class who were damaged by the same wrongful conduct of HP. The relief sought is common to the Class. Fed.R.Civ.P. 23(a)(3).

12. The common legal and factual questions which do not vary from Class member to Class member and which may be determined without reference to individual circumstances of any Class member include, but are not limited to, the following:

a. Whether the HP Notebook Computers suffer from a common defect that causes the wireless capability to fail during its reasonable expected life, including, often, in the first year of purchase;

b. Whether Defendant has undertaken a common business practice of knowingly selling to the public HP Notebook Computers with a design defect that would cause the wireless capability to fail and harm other aspects of the computer as well;

1 c. Whether Defendant engaged in unfair, unlawful and/or fraudulent business
2 practices;

3 d. Whether HP's representations that its notebook computers have wireless
4 capability are material to a reasonable consumer;

5 e. Whether Defendant's material misrepresentations constitute unfair
6 competition and unfair, deceptive, untrue or misleading advertising;

7 f. Whether Defendant failed to disclose material facts about the HP
8 Notebook Computers that it was obligated to disclose;

9 g. Whether Defendant's statements about the wireless capabilities of its
10 Notebook Computer created express warranties with Plaintiffs and the Warranty Subclass that
11 Defendant breached;

12 h. Whether Class members are entitled to monetary recovery including
13 punitive damages, restitution, and injunctive relief, and the proper measure, nature and extent of
14 such relief; and

15 13. These common questions and others predominate over questions, if any, that
16 affect only individual members of the Class. Fed.R.Civ.P.23(a)(3)

17 14. Plaintiffs and their counsel will fairly and adequately represent the interests of the
18 Classes in that Plaintiffs are typical purchasers of HP Notebook Computers. There is no material
19 conflict with any other member of the Classes that would make class certification inappropriate.
20 Plaintiffs have retained attorneys experienced in the prosecution of consumer class actions and
21 Plaintiffs intend to prosecute this action vigorously. Fed.R.Civ.P.23(a)(3)

22 15. A class action is superior to other available methods for the fair and efficient
23 adjudication of this controversy because individual litigation of the claims of all Class members
24 is impracticable. Even if every Class member could afford individual litigation, the court system
25 could not. It would be unduly burdensome on the courts if individual litigation of numerous
26 cases would proceed. By contrast, the conduct of this action as a class action, with respect to
27 some or all of the issues presented in this Complaint, presents fewer management difficulties,
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1 conserves the resources of the parties and of the court system, and protects the rights of each
2 Class member. Fed.R.Civ.P.23(a)(3)

3 16. Prosecution of separate actions by individual Class members would create the risk
4 of inconsistent or varying adjudications, establishing incompatible standards of conduct for the
5 Defendant and would magnify the delay and expense to all parties and to the court system
6 resulting from multiple trials of the same complex factual issues. Fed.R.Civ.P.23(a)(3)

7 17. Injunctive relief is appropriate as to the Class as a whole because Defendant has
8 acted or refused to act on grounds generally applicable to the Class. Fed.R.Civ.P.23(a)(3)

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

13 V. FACTUAL ALLEGATIONS

14 19. Notebook computers, as opposed to desktop computers, are designed for mobility
15 and convenience. One of the primary uses of a notebook computer is for remote access to the
16 Internet using a wireless connection. A reasonable consumer expects that HP Notebook
17 Computers will have reliable wireless access for five years, and does not expect that HP
18 Notebook Computers will come with a serious and common design defect that will frequently
19 cause wireless capability to fail before that expected lifetime, often within the first year, as well
20 as harming other related aspects of the computers, such as the battery.

21 20. The HP Notebook Computers suffer from a common defect that causes a
22 substantial number of these HP Notebook Computers' wireless capability to fail within the first
23 five years, including during the first year of use, rendering these computers unable to connect
24 remotely with the Internet. The fix that HP offers through the extension of its warranty does not
25 adequately remedy the heat cycling design defect that causes the wireless failure and other related
26 problems, including shortened battery life.

1 21. Plaintiffs are informed and believe that HP was aware of the design defect before
2 Plaintiffs purchased their HP Notebook Computers. On or about October 22, 2007, posted an
3 entry on HP Total Care website:

4 Hi, it's Anna from HP Total Care,

5 I'm sorry some of you are having trouble with your wireless
6 WLAN not detecting your wireless network and not displaying in
7 your device manager. The issue appears to affecting AMD based
8 DV 6000, V6000, and DV 9000 notebooks running Microsoft
9 Windows Vista. We've got a BIOS update and some instructions
10 on getting this resolved. If the BIOS update does not resolve the
11 issue, please contact HP support and we will facilitate a repair.

12 22. The BIOS update was not effective and class members were without recourse as
13 the eighty-four (84) pages of customer complaints attest to on an HP forum website (as of
14 November 12, 2007). See
15 <http://forums1.itrc.hp.com/service/forums/bizsupport/questionanswer.do?threadID=11364>. Nor
16 is the issue limited to HP Notebook Computers running Microsoft Windows Vista. The customer
17 complaints identify manifestations of the defect that occur on HP Notebook Computers running
18 Microsoft Windows XP and XP Professional. The customer complaints describe situations
19 where the defect manifested itself before the release of Microsoft Windows Vista.

20 23. On or about November 3, 2007, HP posted another entry on HP's Total Care
21 Website.

22 The reason for the BIOS fix is that the internal WLAN card may
23 not work because the signal amplitude on the internal bus to the
24 chipset is too low. As a result, the wireless card and the
25 motherboard cannot communicate. By downloading Softpaq
26 36551, it is possible to boost the amplitude of the signals on this
27 bus and thereby solve some WLAN issues.

28 Here is the link: <ftp://ftp.compaq.com/pub/softpaq/sp36501-37000/sp36551.exe>

 If the issue does not stem from low amplitude, it could also be an
issue between the system board and the wireless card as some have
pointed out on this board. That said, it is unlikely that replacing
the wireless card will solve the issue, so please do not do this.
Historically it is more likely that a system board issue would cause
this type of problem, than an issue with the wireless card. So, if
Softpaq 36551 doesn't help, the next step is to call 800-HP-Invent
for additional help.

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As mentioned earlier HP is working around the clock on this issue. Engineers are reading the posts and have actually printed them out to bring them into meetings to discuss them. So, please keep posting your feedback with as much detail as possible.

24. Examples of class members' problems as reflected in the customer complaints are as follows:

a. Rai Lynn Nov 5, 2007:

well I just got the new wireless card delivered and as expected it din't [sic] solve the problem.

The link for the BIOS is corrupted (well at least that how it appears to me after I have finished downloading it). I guess whats left now is back up my data (AGAIN!) And send it back. Just in case:

Pavilion dv9205us
AMD turion 64x2
Nvidia Geforce Go 6150

b. Gary Swain Nov 6, 2007:

I have a V3015NR with the AMD. My wireless is gone as well. I just got off the phone with tech Support and was told that since my warranty expired 3 weeks ago, I am on my own. They wanted to sign me up for phone support for \$99 a year, but that would not cover fixing the WLAN problem that so many are experiencing. Has anyone else encountered this problem? If so, what has been said or done? This is an obvious problem that HP recognizes and should address regardless to length of warranty coverage. Could this be a recall issue? I have tried everything from flashing the BOIS to reloading the drivers for the broadcom. I did manage to get the WIFI back up after removing the chipset and re-booting. I then put the chipset back in and re-booted in SAFE Mode. At the time, the chipset was found and installed. I then rebooted in normal mode and it worked until it went to sleep at which point, the WLAN disappeared from the system. Like all others, nothing in the device manager even though under system info, it's listed. This is my travel laptop and is used everyday for work. It needs to be fixed regardless of warranty.

c. Clair Jordan Nov 8, 2007:

Hi everyone,

Add me in to you [sic] list. I have a Pavillion dv6000 [sic]. Got it in Feb. My wireless went down in September. First HP said they would send me a new card. Then they said that I would have to send it in. Did that and got it back within a week and it worked great for about a month. Then I started having a problem with what I thought was my graphics/video card. After a week of trying to install new drivers and trying to unsuccessfully back up my laptop it will now not boot up at all. Tried draining out all the power, removing battery etc. no luck. So now it is on its way back to HP.

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Get this, I asked them if I could buy an extended warranty and they said they would not well me one cause my laptop had broken twice!!! I am so mad.

Hope we can escalate this further

d. Thomas C. Perconti Nov 9, 2007:

Dv9000ct owner (purchased in Jan 07) here experiencing the same problem since June/July 07 timeframe [sic]. The wifi adapter occasionally wakes up when coming out of suspend but that is pretty infrequent. I ended up purchasing a LinkSys USB wifi adapter (my expressCard slot is taken up by the HP TV Tuner card).

I heavily rely on my notebook and cannot afford to be without it for weeks while the system is sent out for repair, or HP were to send an identical replacement system and allow us to swap the drives, that would go a long way in minimizing the inconvenience. I am not pleased with the manner in which HP had been dragging their feet on this issue when it is painfully obvious that it is a pretty widespread problem.

I DIDN'T expect it from HP. I guess that I'm just an old IT warhorse that still remembers the world-class products, service and support that the HP name implied.

...hangining [sic] in there keeping hope alive...

e. TL Fin Nov 9, 2007:

HP dv6105us. Purchased mid October 2006. Wireless stopped working on the beginning of August 2007.

Since the 2nd of August, I've spent hours on the phone with support, with about 6 people. Ran all the 'fixes' with the first support person, no fix. Have gotten contradictory information from each person since.

I purchased a 2wire box in order to use this HP laptop. My old computer does not work with this system, so I have no back up....anyway.

Gave up & decided to send the compter [sic] back to HP. As of the 1st of this month, November, I have been expecting a shipping box, but it has not arrived. Now it is having difficulty starting, takes up to 20 minutes to get it going & my warranty is up. Is HP stalling on purpose?

Really, at this point, I'd like my money back! Or send me a new computer and I'll send this lemon back, ok, Jim? Please!

25. HP has failed to offer Plaintiffs and class members an adequate fix of the wireless capability problem. After Plaintiff Nathan Nygren repeatedly complained to HP and filed this action, HP extended its one-year limited warranty for an additional year to address "certain issues with the HP dv6000, dv9000 and Compaq v6000." On or about November 15, 2007, HP posted on its website, HP.com, a program with an extension of its limited warranty for some but not all HP Notebook Computers. The announcement included wireless failures among a list of other

1 failure symptoms for which HP agreed to extend its limited warranty from a period of one year to
2 two years from purchase. Plaintiffs are informed and believe that HP did not offer this limited
3 warranty extension to all class members. In addition, it did not address manifestations of the
4 defect that occur more than two years after purchase of the notebook computer, with the
5 exception of parts replaced as part of any warranty repair, for which HP provided a 90-day
6 limited warranty from the time of replacement. The limited warranty extension is not an
7 appropriate or adequate remedy for HP's defective computers and Plaintiffs are informed and
8 believe that HP still has not provided an adequate fix of the heat cycling design problems for
9 those customers who return their Notebook Computers under the warranty extension. Among
10 other things, the wireless capability still does not work reliably and the battery's life is
11 dramatically shortened by a still defective heat cycling design.

12 Here are some recent illustrative Internet postings by class members who continue to
13 experience wireless problems:

14 **Wayne Sallee**

15 Jun 13, 2008 13:21:15 GMT Unassigned

16 I sent my laptop in on 2008-04-23

17 It is now 2008-06-13 already having wireless problems. It's not
18 disappearing from the device manager yet, but it sometimes will be turned
19 off when I turn the computer on, and I have to click on the icon and turn it
20 back on.

21 The bios version is 3.E. I've got all of the other bios versions on my
22 computer but don't have that one. I can't find the download for it on HP.
23 Anybody remember where that version can be downloaded?

24 Wayne Sallee

25 **Joe Redding**

26 Jun 30, 2008 22:42:57 GMT Unassigned

27 I'm on my third major repair for this garbage laptop.

28 This time the service center lied about the repair they did.

The listed repairs were

replaced:

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battery

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heatsink fan
hard drive

When I turned the laptop on I got literally the same thing I sent it out with.

All of my settings are still there.

If they really replaced the motherboard why am I looking at the exact same desktop wallpaper I sent the laptop out with?

So basically they deliberately lied.

This is strike four already. At what point does this company hold themselves accountable for their horrible product? The hard drive they replaced was the secondary hard drive that didn't even have any issues.

The put a BLATANTLY used battery in this thing that isn't lasting anywhere near as long as a replaced battery should. Its literally faded to the point of being grey instead of black like it's supposed to be.

Not to mention the other problem it went in for, ac adapter failure, hasn't even been fixed.

\$1500 + paperweight.

Ruslan Galiev

Aug 14, 2008 19:01:50 GMT Unassigned

This is my second post sense feb 26 08, i sent my hp dv6646us to hp with the wifi problem. It came back in 3 days, they changed the mother boadr and thermal pad, ok. Wifi worked 3 days then stoped working again, same exact way and the hard drive failed. Sent it to hp 8 days later i just got it, replaced the mother board, hdd, lan card and thermal pad. It works for now but i left it on connected to the internet it went to sleep or the hibernate, came back 20 min later wifi is gone, the windows is popping up every 5-10 seconds and switches wireless on and off. Restart it so it works at the moment, ill give 3-5 days before it will break again. Will post the updates later.

Sheikh Hamid

Aug 17, 2008 00:26:39 GMT Unassigned

My V6133 is going in for repairs next week. Having a quick look at the earlier post it seems the new motherboard sometimes does not fix the problem. Is it possible to get a refund if it reoccurs?

Wayne Sallee

Aug 18, 2008 01:03:45 GMT Unassigned

@ sheikh hamid

You say that some of the replacement motherboards have not worked, but actually, nobody has had a replacement board last any length of time.

As for your 3rd situation, HP has a policy that after 3 strickes of the same problem you get a new computer. So tell that this is the third time of the

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same problem and that you want a new laptop with Intell instead of AMD.

Wayne Sallee

hpmcs
Aug 26, 2008 06:52:51 GMT Unassigned

Add me to the list. Started out with no wifi. Sent it in to HP for repairs and within two weeks it was having problems again. Now it wont charge the battery and wont run on ac power without the batter in and charged. I can get the battery to sloooooowly charge by leaving it plugged in and turned off, it will then run for short periods of time but quickly drains what little battery power there is.

Gary Swain
Sep 30, 2008 01:13:28 GMT Unassigned

My machine is sitting in Houston with a return date of Oct 25th. I sent the machine back for it's SECOND motherboard on September 18th. I was on hold for 1 HOUR and 37 MINUTES without anyone answering tonight to inquire as to why HP has to have my computer for 6 WEEKS! I use my machine for work and I am now forced to buy a new machine so I can work!

Julie Gwynn
Oct 14, 2008 14:08:19 GMT Unassigned

I too have a HP laptop bought in January 2007 on which the wireless has failed. I have been in correspondence with HP and find it totally unacceptable that they are unable to help the many people who are experiencing these problems (my serial number is not listed as being eligible for free repair). I think that there is a lot of evidence to show that this is a widespread problem and HP should be making more effort to repir [sic] the problem on ALL affected computers.

VI. FIRST CAUSE OF ACTION
(Violations of California Business & Professions Code § 17500 et seq.)

- 26. Plaintiffs incorporate and reallege all of the foregoing paragraphs.
- 27. Defendant's misleading advertising of the wireless capability of their Notebook

Computers constitutes misleading advertising under California Business & Professions Code § 17500 (the "False Advertisement Law"). The HP Pavilion notebook PC checklist available on the Internet states: "HP Pavilion notebooks come with a wireless LAN for complete mobility." The HP Presario notebook PC checklist available on the internet similarly states: "Compaq

1 Presario notebooks come with wireless LAN for complete mobility.” The product specifications
2 for the HP Pavilion dv6110us state:

3 **“Wireless Connectivity 802.11b/g WLAN”**

4 **“Security and Support:**

5 ...

6 Wireless Home Network”

7 Plaintiffs are informed and believe that these statements appear in most if not all product
8 specifications for the HP Notebook Computers. For example, the Maintenance and Service
9 Guide Presario V6000 Notebook PC, Document Part Number: 416630-003 provides at page 10:
10 “Integrated wireless support for Mini Card IEEE 802.11b and 802.11b/g WLAN device.” In fact,
11 as a result of a defective heat cycling design, many HP Notebook Computers lose any ability to
12 make wireless connections. Therefore, the advertisements are materially misleading and misled
13 Plaintiffs and the class members who relied on them and/or similar statements by HP that their
14 Notebook Computers had a wireless function.

15 28. Plaintiffs saw or heard the HP statements alleged in paragraph 27 and/or
16 substantially equivalent statements in HP’s advertising stating explicitly or implicitly that HP
17 Notebook Computers would provide wireless access. Plaintiffs relied upon these HP statements.
18 These statements were material to Plaintiffs and caused them to purchase their HP Notebook
19 Computers. Had Plaintiffs known that these statements were untrue, they would not have
20 purchased the computers. At all relevant times HP failed to disclose that its HP Notebook
21 Computers suffered from a design defect that caused these computers to prematurely lose their
22 wireless capabilities, to meet these product specifications, and to function as described. These
23 advertisements and practices have deceived Plaintiffs, and are likely to deceive the consuming
24 public, in violation of § 17500.

25 29. Defendant’s misleading advertisements have injured Plaintiffs, the Class, and the
26 public.

1 30. Plaintiffs and the Class are entitled to relief, including full restitution of all
2 revenues obtained by Defendant from Plaintiffs and the Class as a result of such misleading
3 advertisements, and enjoining Defendant to cease and desist from its misleading advertising.

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

5
6 **VII. SECOND CAUSE OF ACTION**
7 **(Violations of Business & Professions Code § 17200 et seq. - -**
8 **Unfair Business Practices)**

8 31. Plaintiffs incorporate and reallege all of the foregoing paragraphs.

9 32. Defendant has engaged in unfair competition within the meaning of California
10 Business & Professions Code § 17200 et seq. because Defendant's conduct alleged above is
11 unfair.

12 33. Defendant's conduct constitutes an unfair business practice because Defendant is
13 marketing and selling its Notebook Computers in a manner likely to deceive the public, and
14 Plaintiffs relied on Defendant's representations and omissions and were deceived and have
15 suffered actual harm as a result.

16 34. Defendant's business practices are unfair because they offend established public
17 policy and are immoral, unethical, oppressive, unscrupulous and substantially injurious to
18 consumers in that consumers are led to believe that HP notebook computers can be reliably used
19 for wireless service when they cannot. In addition, when Plaintiffs and class members report
20 problems with their wireless service HP fails to provide an adequate fix. That is, HP fails to
21 provide consumers with a reliable computer without the design defects that impair the wireless
22 functions and other related aspects of the computers including the battery.

23 35. Plaintiffs have suffered a loss of money and property as a result of the wrongful
24 conduct here alleged. Defendant's unfair business practices have caused injury to Plaintiffs, the
25 Class, and the public.

26 36. Plaintiffs and the Class are entitled to relief, including full restitution of all
27 revenues obtained by Defendant from Plaintiffs and the Class as a result of such business acts or
28

1 practices, and an injunction that Defendant cease and desist from engaging in the unfair practices
2 alleged above.

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

4 **VIII. THIRD CAUSE OF ACTION**
5 **(Violation of Business & Professions Code § 17200 --**
6 **Unlawful Business Practice)**

7 37. Plaintiffs incorporate and reallege all of the foregoing paragraphs.

8 38. Defendant has engaged in an unlawful business practice within the meaning of
9 California Business & Professions Code § 17200 *et seq.* because Defendant's conduct violates
10 the California False Advertising Law, the California Consumers Legal Remedies Act and the
11 warranties created by HP's representation concerning the wireless function of its Notebook
12 Computers.

13 39. Defendant's unlawful business acts constituted, and constitute, a continuing course
14 of conduct of illegal business practices because Defendant is selling its products and marketing
15 them in a manner that is likely to deceive the public, and Plaintiffs, who relied on HP's
16 representations alleged in paragraph 27 and have suffered actual harm as a result.

17 40. Plaintiffs have suffered a loss of money and property as a result of the wrongful
18 conduct here alleged. Defendant's unlawful business practices have caused injury to Plaintiffs,
19 the Class, and the public.

20 41. Plaintiffs and the Class are entitled to relief, including full restitution of all
21 revenues obtained by Defendant from Plaintiffs and the Class as a result of such business acts or
22 practices, and an injunction that Defendant cease and desist from engaging in the unlawful
23 practices alleged above.

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

25 **IX. FOURTH CAUSE OF ACTION**
26 **(Violation of Business & Professions Code § 17200 - - Fraudulent Conduct)**

27 42. Plaintiffs incorporate and reallege all of the foregoing paragraphs.

28 43. Defendant has engaged in fraudulent conduct within the meaning of California
Business & Professions Code § 17200 *et seq.*

1 44. Defendant's wrongful business acts constituted, and constitute, a continuing course
2 of fraudulent conduct because Defendant is selling its products and marketing them in a manner
3 that is likely to deceive the public, and Plaintiffs relied on Defendant's misrepresentation and
4 have suffered actual harm as a result.

5 45. Plaintiffs are informed and believe that Defendant knew that its representations
6 regarding the HP Notebook Computers wireless capabilities were false.

7 46. Plaintiffs relied on Defendant's misrepresentation and suffered a loss of money
8 and property as a result of Defendant's fraudulent conduct. Defendant's fraudulent practices have
9 caused injury to Plaintiffs, the Class, and the public.

10 47. Plaintiffs and the Class are entitled to relief, including full restitution of all
11 revenues obtained by Defendant from Plaintiffs and the Class as a result of such fraudulent
12 practices, and an injunction that Defendant cease and desist from engaging in the practices here
13 described.

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

15 **X. FIFTH CAUSE OF ACTION**
16 **(Breach of Express Warranty)**
17 **(Plaintiffs Nygren and Fromkin for Warranty Subclass)**

18 48. Plaintiffs incorporate and reallege all of the foregoing paragraphs.

19 49. In paragraph 27 above, HP warranted that "HP Pavilion notebooks come with a
20 wireless LAN for complete mobility" and that "Compaq Presario notebooks come with wireless
21 LAN for complete mobility." The product specifications and manuals state that the HP Notebook
22 Computers have wireless connectivity. These statements alleged in paragraph 27 created an
23 express warranty. Plaintiffs' breach of express warranty claim is not based on the Limited
24 Warranty document that accompanied the Notebook Computers but on the statements alleged in
25 paragraph 27 above.

26 50. Plaintiffs Nygren and Fromkin and the Warranty Subclass have performed all
27 conditions, covenants and promises required to be performed on their part in accordance with
28 these warranties. Plaintiffs relied on the representations in paragraph 27 that created the express
warranty and were damaged when they proved untrue.

1 business practices. To this end, the CLRA sets forth a list of unfair and deceptive acts and
2 practices in Civil Code § 1770.

3 59. The CLRA applies to Defendant's conduct as it was intended to result and did
4 result in the sale or lease of goods or services for personal, family or household use.

5 60. At all relevant times, Plaintiffs and members of the Consumer Subclass were
6 "consumers" as that term is defined in Civil Code Section 1761(d).

7 61. The transactions from which this action arises include transactions involving the
8 sale or lease of goods or services for personal, family or household purposes within the meaning
9 of Civil Code Section 1761.

10 62. Defendant's practices in connection with the marketing and sale of its HP
11 Notebook Computers violate the CLRA in at least the following respects:

12 a. In violation of Section 1770(a)(5), Defendant has represented that the HP
13 Notebook Computers have characteristics that they do not have;

14 b. In violation of Section 1770(a)(9), Defendant has advertised the HP
15 Notebook Computers with an intent not to sell them as advertised.

16 63. Defendant made the material misrepresentations alleged in Paragraph 27 above
17 and Plaintiffs relied on them. These affirmative statements about the wireless capabilities of HP
18 Notebook Computers created a duty to disclose that the computer has a design defect that affects
19 the wireless capability and that HP has no adequate fix for this important design defect. The
20 clear message of HP's representations was that its Notebook Computers had a reasonably reliable
21 wireless capability, not just a defective one. Defendant's failure to disclose and knowing
22 concealment that the HP Notebook Computers had defective wireless capabilities are omissions
23 and concealments of material fact that constitute unfair and/or deceptive business practices in
24 violation of Civil Code Section 1770(a).

25 64. Defendant's violations of Civil Code Section 1770 present a continuing threat to
26 members of the public in that Defendant is continuing to engage in the practices alleged above.

27 65. Plaintiffs have provided defendant with notice of its alleged violations of the
28 CLRA pursuant to Civil Code section 1782(a). HP failed to provide appropriate relief for its

1 violation of the CLRA within 30 days of the date of the notification letter. Accordingly,
2 Plaintiffs seek actual, statutory and punitive damages, in addition to equitable and injunctive
3 relief.

4 WHEREFORE, Plaintiffs and the Consumer Subclass pray for relief as set forth below.

5 **XII. PRAYER FOR RELIEF**

- 6 1. Certification of the proposed Class and Subclasses;
- 7 2. Restitution;
- 8 3. An injunction that Defendant cease and desist from engaging in the unfair,
9 unlawful, and/or fraudulent practices alleged in the Complaint;
- 10 4. Compensatory damages;
- 11 5. Statutory damages;
- 12 6. Prejudgment interest;
- 13 7. Costs and expenses;
- 14 8. Reasonable attorneys fees; and
- 15 9. All such other and further relief as the Court deems just and proper.

16 Dated: November 24, 2008

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XIII. JURY DEMAND

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

Dated: November 24, 2008

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