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(ENDORSED)  
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KIRI TORRE  
Chief Executive Officer/Clerk  
Superior Court of CA County of Santa Clara  
BY B. CHOPOFF DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA CLARA

MACADAM COMPUTER, INC., A CALI-  
FORNIA CORPORATION, AND TOM SANTOS,  
AN INDIVIDUAL, SUING INDIVIDUALLY  
AND/OR ON BEHALF OF THE GENERAL  
PUBLIC,

PLAINTIFFS,

v.

APPLE COMPUTER, INC. AND DOES 1  
THROUGH 50, INCLUSIVE,

DEFENDANTS.

) CASE NUMBER: CV 813373

) FOURTH AMENDED COMPLAINT FOR DAMAGES,  
) INJUNCTIVE RELIEF, RESTITUTION AND EQ-  
)UITABLE RELIEF:

- ) 1. BREACH OF CONTRACT
- ) 2. COMMON COUNTS
- ) 3. QUANTUM MERUIT
- ) 4. ACCOUNT STATED
- ) 5. OPEN BOOK
- ) 6. INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE
- ) 7. NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE
- ) 8. MISAPPROPRIATION OF TRADE SECRETS
- ) 9. ACCOUNTING
- ) 10. FRAUD
- ) 11. NEGLIGENT MISREPRESENTATION
- ) 12. UNFAIR COMPETITION IN VIOLATION OF BUS. & PROF. CODE § § 17200 ET SEQ
- ) 13. FALSE ADVERTISING
- ) 14. AIDING, ABETTING, INDUCING/CONSPIRING IN VIOLATION OF BUS. & PROF. CODE § § 17200 ET SEQ. AND 17500 ET SEQ.
- ) 15. VIOLATION OF CARTWRIGHT ACT § § 16720 ET SEQ.
- ) 16. TRADE LIBEL
- ) 17. DEFAMATION
- ) 18. VIOLATION OF THE SONG-BEVERLY CONSUMER WARRANTY ACT
- ) 19. VIOLATION OF CONSUMER LEGAL REMEDIES ACT § § 1750 - 1756 ET SEQ.
- ) 20. VIOLATION OF UNRUH ACT & CIVIL CODE § 51 ET SEQ.

**BY FAX**

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20. VIOLATION OF *UNRUH ACT & CIVIL CODE § 51 ET SEQ.*

Plaintiffs allege as separate and distinct causes of action:

**For A First & Distinct Cause Of Action  
Breach Of Contract  
(As Against Defendant Apple Computer, Inc. and Does 1 through 50, inclusive by Plaintiff  
MACadam Computer, Inc.)**

1. The true names and capacities of Defendants Does 1 through 50, inclusive, are unknown to Plaintiffs. Plaintiffs are informed and believe that Does 1 through 50 inclusive are citizens of the State of California and/or of the United States and are authorized to do business in the State of California and participated in, inter alia, the contracting with Plaintiffs, making representations and promises to Plaintiffs and participating in the matters alleged herein. Plaintiffs thereby sue said Defendants by such fictitious names. Plaintiffs are presently unaware of all of the facts giving rise to a cause of action against the Defendants, actually or fictitiously named in this pleading. Plaintiffs will amend this Complaint to properly include their true names, status and capacities and all relevant and otherwise appropriate facts when the same are properly and adequately ascertained pursuant to *Code Civ. Proc. § 474 et seq.*

2. Each of the Defendants are responsible for the circumstances, predicaments, detriment, liability, occurrences, acts and omissions alleged herein and that Plaintiffs' damages were proximately caused by the Defendants' conduct, acts and omissions and on going conduct, acts and omissions. At all relevant times the Defendants were the agents, servants, supervisorial and/or managerial personnel with appropriate authority, and/or employees of each other, acting within the course and scope of their agency, service and employment, with the encouragement, knowledge, acquiescence, consent, direction, approval, control and ratification of each other and were aiding and abetting each other. All acts, omissions and conduct alleged herein are within the relevant time periods allowed for redress of grievance as a matter of law.

3. Plaintiff *MACadam Computer, Inc.* ("*MACadam*") is a California corporation in good standing, properly formed, licensed and authorized to do business and has executed, filed and published all appropriate business and/or legal documents or papers including any fictitious business name papers required of it under any applicable law, ordinance, governmental rule and/or regulation.

1 It, at all times herein mentioned, was engaged in the business of procuring, selling and servicing *Apple*  
2 computers and other *Apple* computer related software and peripherals. In addition it was and is at all  
3 times a long time *Apple* Reseller and Service Provider as well as *Apple* Authorized Specialist. *MAC-*  
4 *adam* has been purchasing *Apple* products from *Apple* and/or *Apple*'s duly authorized distributors  
5 for approximately ten (10) years. Plaintiff Tom Santos ("*Santos*") is an individual and the president,  
6 a director of and the primary shareholder of *MACadam*. Santos is the prime contact between *MAC-*  
7 *adam* and *Apple* and has been the personal focus of *Apple*'s actions as herein alleged. Santos is a  
8 California resident at all relevant times herein alleged. Among the requirements of Defendant *Apple*,  
9 its Specialists such as Plaintiff *MACadam*, must sell at least 70% of its volume in *Apple*-branded  
10 products.

11 4. Defendant *Apple* Computer, Inc. ("*Apple*" or any similar term) by its conduct and actions has  
12 entered written and/or oral agreements with Plaintiffs as herein alleged in San Francisco, California as  
13 well as other locations within the State of California and/or other locations within the United States.  
14 The agreements with *Apple* require, among other things, Plaintiffs to sue *Apple* in either the Superior  
15 Court of the State of California in and for the County of Santa Clara and/or the United States District  
16 Court for the Northern District of California. The contracts further provide that "*both parties waive*  
17 *any objection to the jurisdiction of and venue in such courts.*" *Apple* therefore has no right having  
18 waived the right to insist or otherwise require the removal of this lawsuit from the jurisdiction and  
19 venue of the California Superior Court in and for the County of Santa Clara. The contracts were pre-  
20 pared by *Apple* and are contracts of adhesion, having been prepared on a "*take it or leave it*" basis by  
21 *Apple* after having required Plaintiffs to invest heavily into its business with *Apple* and devote its ef-  
22 forts exclusively to the sales and service of *Apple* products and customers who use said products.  
23 *Apple* is in a stronger bargaining position than Plaintiffs by means of its size, economic might and  
24 position vis a vis Plaintiffs. When Plaintiff sought to negotiate more acceptable terms, *Apple* rejected  
25 any discussion out of hand and refused all proposals. *MACadam* is an exclusive *Apple* dealer and  
26 cannot reasonably be expected to shut down a long term *Apple* business without harm to itself, its  
27 customers and/or employees. The contracts in question must be reasonably interpreted in the Plain-  
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1 tiffs' favor as against *Apple* in the event of any reasonable ambiguity or dispute. The waiver of any  
2 right to object to jurisdiction was drafted by *Apple* and placed within the contract in question and it  
3 therefore has no right to challenge either or both the jurisdiction and/or venue of the Superior Court  
4 of the State of California in and for the County of Santa Clara having both written and explained its  
5 contracts to Plaintiffs as alleged by Plaintiffs.

6 5. Plaintiffs at all times herein mentioned were doing business in San Francisco, California with a  
7 principle place of business located in San Francisco, California and at all relevant times was doing  
8 business wherein this contract was made, entered and to be performed with *Apple* in San Francisco,  
9 California. The *Santa Clara Superior Court* was the forum in which this action is and was venued  
10 which is in this Judicial District whereupon *Apple's* obligations with Plaintiffs arose could be adjudi-  
11 cated per the written contracts attached hereto. Additionally the acts and omissions of *Apple* as  
12 against Plaintiffs were done in San Francisco, California and/or other locations within the State of  
13 California and/or the United States and were, in any event, subject to the laws and jurisdiction of the  
14 State of California.

15 6. *Apple* is a California corporation, per Plaintiffs' information and belief, doing business in San  
16 Francisco, California and throughout the United States and has its principle place of business and/or  
17 offices in Cupertino, California, and in doing the things herein alleged did in fact do them or omitted  
18 to do them when otherwise required to perform such duties and or acts in California and/or elsewhere  
19 such as to subject it to jurisdiction of all courts in the State of California.

20 7. On or about January 30, 2000 Plaintiffs entered into a written contract and/or contracts (effec-  
21 tive date April 1, 2000) with *Apple* and/or such other contracts as proven at the time of trial to act as  
22 an "*Apple Authorized Service Provider*" in accordance with the laws of the State of California which  
23 will hereinafter be singularly and collectively referred to as the "*contract*." Said agreement(s) and/or  
24 its predecessors and/or successors per Plaintiffs' information and belief have been in force and effect  
25 and renewed for approximately at least the past 10 years and is currently in full force and effect.  
26 Plaintiffs were and are long time authorized *Apple* Resellers, Service Providers as well *Apple* Author-  
27 ized Specialists. The series of agreements relate to the sale and/or service of *Apple* products and re-  
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1 new on a yearly basis. The terms have been essentially unchanged since *Apple* and Plaintiffs under-  
2 took to do business together. All three agreements as amended and/or renewed will be referred to  
3 herein collectively as the contract although separate portions thereof may be referenced as Exhibits A,  
4 *B* and/or *C* collectively. All three agreements are and were contemporaneously executed by the par-  
5 ties and are part and parcel of each other and cannot reasonably be interpreted without cross-  
6 referencing the other. All three agreements were prepared by *Apple* on a “take it or leave it” basis  
7 and are therefore contracts of adhesion for which any ambiguities and/or inconsistencies are to be  
8 construed as against *Apple* in favor of Plaintiffs. *Apple* has allowed over the passage of time custom  
9 in the industry to supply various terms and/or interpretation. A copy of said contract, (*Apple Author-*  
10 *ized Service Provider*) or at least such portion or portions of said contract as *Apple* has provided to  
11 Plaintiffs, is attached hereto as Exhibit A.

12 8. On or about January 30, 2000 Plaintiffs entered into a written contract and/or contracts (effec-  
13 tive date April 1, 2000 ) with *Apple* and/or such other contracts as proven at the time of trial to act as  
14 an “*Authorized Apple Reseller*” in accordance with the laws of the State of California which will  
15 hereinafter be singularly and collectively referred to as the “*contract.*” A copy of said contract, or at  
16 least such portion or portions of said contract as *Apple* has provided to Plaintiffs, is attached hereto as  
17 Exhibit *B*. Exhibit *B* must be read and understood with Exhibit *A* and Exhibit *C*.

18 9. On or about February 20, 2001 Plaintiffs entered into a written contract and/or contracts with  
19 *Apple* and/or such other contracts as proven at the time of trial to act as an “*Apple Authorized Spe-*  
20 *cialist*” in accordance with the laws of the State of California which will hereinafter be singularly and  
21 collectively referred to as the “*contract.*” A copy of said contract, or at least such portion or portions  
22 of said contract as *Apple* has provided to Plaintiffs, is attached hereto as Exhibit *C*. Exhibit *C* must be  
23 read and understood with Exhibit *A* and Exhibit *B*.

24 10. Each preceding and/or succeeding agreement referenced herein is substantially the same as  
25 such similar agreement and/or agreements previously and subsequently signed by Plaintiffs and *Ap-*  
26 *ple* and each of the above referenced Exhibits individually and collectively will be referred to as the  
27 “*Contract.*” Attached hereto as Exhibit *D* is a true and correct copy of *Apple*’s “*Ethics*” policy en-  
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1 titled “*Ethics and the Way We Do Business Worldwide*” to formulate and interpret its actions and  
2 results and contracts with Plaintiffs *MACadam* and others. The “*Ethics*” policy is currently pub-  
3 lished on Apple’s own website. It is a restatement of *Apple*’s current and former policies which *Ap-*  
4 *ple* at all relevant times has relied upon for the formation and interpretation of its contracts and the  
5 governance of its conduct. As such it is part and parcel of *Apple*’s contracts with Plaintiff and re-  
6 quired reading for an understanding of the conduct described herein.

7 11. Plaintiffs fully performed each act required of Plaintiffs under the terms of their Contracts  
8 with *Apple* save as to anything that *Apple* excluded and/or waived and/or made impossible to perform  
9 by *Apple*. Prior to entering into said Contracts, Plaintiffs and *Apple* fully reviewed Plaintiffs’ circum-  
10 stances and qualifications and the needs of the local consumers.

11 12. Plaintiff was assured by *Apple* prior to the execution of each contract and throughout their  
12 durations that Plaintiffs were and would be a needed and respected member of the *Apple* Team and  
13 that *Apple* would work with Plaintiffs to make sure Plaintiffs’ efforts on *Apple*’s behalf were profit-  
14 able for Plaintiffs and that Plaintiffs would continue to receive a steady flow of products, current  
15 popular products as well as highly constrained products and would receive full and timely support in  
16 acting as an authorized Service Provider, Reseller and/or Specialist. In *Apple*’s “ethics” policy *Ap-*  
17 *ple* confirmed that it would trust Plaintiff with “*dignity and respect.*” *Apple* informed Plaintiffs that  
18 they would compete on a “*level playing field*” with the *Apple* stores acting as “*showrooms*” which  
19 would not cannibalize business from the existing sales channels, including Plaintiffs. Additionally  
20 Plaintiffs were told in referencing the “*showrooms*” and “*level playing field*” concepts that “*all*  
21 *ships would rise with the tide*” by Steve Jobs and others starting on or about July 2001 and con-  
22 tinuing thereafter. At least one such remark was sent via e-mail by Steve Jobs instructing channel di-  
23 rectors at *Apple* to utilize such terminology when communicating with *Apple* Resellers, Specialists  
24 and/or Service Providers . *Apple* repeatedly professed that “*Apple is committed to integrity in all of*  
25 *its dealings with employees, customers and the general public*” (Exhibit D, page 15).

26 13. Within the last four years, *Apple* has opened, operated, done business as, managed and ad-  
27 vertised, per Plaintiffs’ information and belief, a separate and distinct division of *Apple* stores respon-  
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1 sible for retail rather than manufacturing, wholesaling and/or repair. *Apple* previously was not in-  
2 volved in the “*brick and mortar*” retail distribution and/or retail market for *Apple* computers and re-  
3 lated products. *Apple’s* retail outlets, for instance, provide proprietary repair services on a retail basis  
4 to end users at prices that can be or are lower than the wholesale price that *Apple* will effectuate the  
5 same repairs for its wholesale customers including Plaintiffs who send *Apple* equipment back to *Ap-*  
6 *ple* for finished repairs for their customers. The *Apple* retail division, however, formulated and  
7 opened a number of *Apple* retail stores that are in direct competition with *Apple* Resellers, Service  
8 Providers and Specialists including Plaintiffs. *Apple* has developed and brought an on-line retail  
9 store into operation that is in direct competition with *Apple* Resellers and Specialists including Plain-  
10 tiffs. By opening and operating the on-line retail stores and *Apple* owned brick and mortar retail  
11 stores, *Apple* is acting as a manufacturer, wholesaler and distributor as well as direct seller and retailer  
12 with a direct sales program competing directly with Plaintiffs and all channels including *Apple* them-  
13 selves.

14 14. On or about the dates of each of the contracts, which have been successively and repeatedly  
15 renewed over the years, both preceding and succeeding the signing of Exhibits A, B and C, attached  
16 hereto, *Apple* has often and repeatedly breached each of said Contracts with individual incidents as  
17 well as on an ongoing basis by failing to reasonably provide merchandise, goods, services and sup-  
18 port for *Apple* products sold and/or serviced by Plaintiffs, using alternative supply channels to engage  
19 in predatory practices, making contact and dealing with *Apple* unduly complicated, difficult and un-  
20 reasonable, concealing and otherwise failing to disclose proper sums and/or services due to Plaintiffs  
21 and/or their customers, failing to provide accurate accountings as well as those required by *Apple’s*  
22 “*Ethics*” policy (page 7, item F), calling for “*All business and accounting transactions to be fully*  
23 *and accurately described,*” failing to ship merchandise and/or provide support, failing to pay Plain-  
24 tiffs the proper sums due and seeking to and actually by-pass Plaintiffs to deal directly with Plain-  
25 tiffs’ customers to thereby obtain, take and have the benefits of additional profits and direct sales by  
26 circumventing Plaintiff altogether and discouraging said customers from doing business with *MAC-*  
27 *adam*, failing to honor rebates, offering rebates that were anti-competitive and/or *Apple* exclusive, re-  
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1 fusing to comply with Apple’s Ethics Policy at page 3, item E entitled “*Resellers*” which prohibited  
2 the “*granting of discriminatory prices*”, providing software and firmware updates that deactivated  
3 non-*Apple* branded RAM causing further customer complaints and allowing *Apple* to sell customers  
4 unnecessary *Apple*-branded merchandise at high prices and with inferior warranties because the *non-*  
5 *Apple* branded RAM “*didn’t work*” and to unduly prejudicially criticize Plaintiffs to their customers,  
6 and seek to take Plaintiffs’ customers as *Apple*’s own. *Apple* further breached its contracts by re-  
7 circulating defective parts, representing and/or distributing used or refurbished equipment as new,  
8 telling Plaintiff’s customers that Plaintiff deceived them by selling the used, refurbished or previously  
9 registered equipment as new when the fault lay with *Apple*. *Apple* further breached its contract by  
10 constantly selling merchandise as new which it then shorted warranty coverages on, thereby damaging  
11 both end users and Plaintiff when providing warranty service that should have been paid for by *Apple*.  
12 *Apple* further breached its contract by routinely providing incorrect diagnoses and/or inappropriate  
13 and/or unnecessary “*technical support*.” When faced with a known problem *Apple* would deny its  
14 existence, fail to honor its warranty and/or other obligations to Plaintiff and consumers to avoid recall  
15 and/or repair costs. *Apple* further breached its contracts by penalizing dealers when there were multi-  
16 ple defects in equipment *Apple* supplied by lowering compensation and/or ratings for repair services  
17 that Plaintiff had to take into account when providing warranty and other service. *Apple* further  
18 breached its contracts by refusing to honor warranty labor reimbursements for “*dead on arrival*”  
19 (“*DOA*”) or “*inoperable on first use*” (“*IUFU*”) forcing Plaintiff and those in Plaintiff’s position  
20 facilitating the repair to absorb *Apple*’s defective merchandizing costs all to Plaintiff’s proximate  
21 damage. *Apple* further breached its contracts by artificially and unfairly depriving Plaintiffs of nor-  
22 mal and reasonable contract prices by failing to apply proper credits, inappropriately applying sales  
23 tax when none was due all to Plaintiffs’ proximate detriment and damage and/or engaging in other  
24 such acts, activities, omissions and the like, all to Plaintiff’s direct and proximate damage on an on-  
25 going basis. *Apple* repeatedly breached the contract and refused to conform its conduct to apply rea-  
26 sonable interpretation to its Contracts adopting instead unreasonable, deceptive, unfair, false and/or  
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1 fraudulent interpretations to unreasonably and/or improperly benefit *Apple*, penalize, damage and/or  
2 harm Plaintiff and/or *Apple* dealers and/or its or their customers.

3 15. *Apple* further breached its contract by denying that *MACadam* was an authorized *Apple* Re-  
4 seller or Service Provider when it as in fact such an authorized reseller as well as making similar dis-  
5 paragements to other authorized Resellers and Service Providers unfairly disparaging Plaintiff and  
6 has on different occasions advised *MACadam's* customers as well as potential new customers not to  
7 patronize *MACadam*, inventing non-existent disputes or controversies to deter *MACadam* from re-  
8 ceiving the benefit of doing business with its customers and deny it an income therefrom.

9 16. *Apple* further breached the contract with Plaintiff by claiming that contrary to permissions  
10 and public website access available to any website users that *MACadam* wrongfully investigated *Ap-*  
11 *ple's* wrongdoing when requested to do so by *Apple* and also required under *Apple's* "*Ethics*" poli-  
12 cies and thereafter wrongfully terminated the contracts between *Apple* and *MACadam* contrary to  
13 among other things *Apple's* explicit policy of "*no retaliation for bringing these matters to the atten-*  
14 *tion of Apple.*"

15 17. Additionally, *Apple* breached the Contract by failing to be properly or otherwise licensed  
16 and/or registered to repair electronic equipment. *Apple* also breached the contract by charging Plain-  
17 tiffs for repairs when not licensed, failing to provide necessary, agreed upon and/or proper credits  
18 when credits were due to Plaintiffs, failing to acknowledge communications in a timely manner, mis-  
19 representing the nature and quality of the equipment sold or repairs made, failing to acknowledge  
20 known problems in equipment, not providing proper documentation relating to such repairs or modi-  
21 fications, failing to notify Plaintiff, dealers and/or end users of known defects in equipment and/or  
22 software, failing to honor warranties, failing to extend warranties when warranties were tolled during  
23 repair periods, modifying warranties for no apparent reason other than for *Apple's* benefit and with-  
24 out consideration or consent, withholding parts, service and repairs even when fully covered by war-  
25 ranty, altering or modifying warranty dates, deleting or modifying claims and repair information in-  
26 cluding histories, falsifying records, altering or modifying purchase dates, entering false dates for  
27 service coverages or failing to enter them at all, shorting Plaintiffs and/or consumers on warranty  
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1 and/or service benefits, reducing warranty and/or periods, disputing warranty and/or contract coverage  
2 without a proper basis to do so, failing to provide complimentary telephone support, failing to replace  
3 and/or indemnify Plaintiffs or customers for used or refurbished computers sold and/or otherwise  
4 provided by *Apple* as new or in failing to act in a prompt and/or timely manner in doing so, failing to  
5 acknowledge receipt of returned service merchandise, parts shipments and/or equipment, shipping re-  
6 placement parts and/or equipment that was defective. *Apple's* conduct and the effect of *Apple's* false  
7 claim of not receiving parts was to generate fees for *Apple* and wipe out labor credits due to *Plaintiff*.  
8 When equipment was repaired by *Apple* including at its unlicensed facilities, *Apple* failed and/or re-  
9 fused to provide Plaintiffs and/or *Plaintiff's* customers with proper estimates, invoices, receipts, work  
10 notices, lists of defective parts, the return of allegedly defective parts, the documentation of repairs,  
11 compliance with the *California Code of Regulations §§ 2721 et seq.*, *Business & Professions Code*  
12 *§§ 9814, 9842, 9844, 9847 et seq.* and *Civil Code § 2858.1 et seq.* This made it difficult, if not im-  
13 possible, for Plaintiffs or end users to even determine whether subsequent defects were covered under  
14 *Apple* warranties or whether the specific parts had failed again. This type of behavior generated con-  
15 sistent bogus parts charges and fraudulent billings from *Apple* to its dealers. All of this at all relevant  
16 times proximately damaged *Plaintiff*.

17 18. *Apple* further breached the Contract by agreeing to accept warranty repairs then altering the  
18 terms to *Apple's* benefit thereby depriving Plaintiffs of compensation for its services while at the  
19 same time over billing Plaintiffs and/or end users. *Apple* has or had at all relevant times a record  
20 keeping system that either obliterated to failed to make records and thereby proximately deprived  
21 Plaintiffs of compensation, all to *Plaintiff's* damage. *Apple* implemented unreasonable methods of  
22 accounting which were tedious, unduly time consuming, adversarial and inaccurate. Then, claiming  
23 that warranty repairs were not covered, *Apple* would at times change warranty repair status from “*ac-*  
24 *cepted/in warranty*” to “*pending status*” or “*out of warranty*” status after the repairs had been  
25 completed. *Plaintiff* was then billed contrary to its agreement with *Apple*. *Apple* arbitrarily and capri-  
26 ciously altered terms of warranties to deprive both *Plaintiff* and its customers of warranty benefits.  
27 *Apple* refused to extend warranty coverage as required by law while equipment was in for repairs and  
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1 failed and/or refused to provide reasonably expected warranty benefits to Plaintiff and Plaintiff's  
2 customers thereby further breaching its contracts with Plaintiffs and causing further damages and ir-  
3 reparable harm.

4 19. *Apple* further breached its contract at relevant times by failing to register *AppleCare* Protec-  
5 tion Plan agreements and/or by failing to accurately register *AppleCare* agreements which *Apple* re-  
6 quired its dealers to sell, all to Plaintiff's proximate damage. This also caused damage to consumers  
7 who would also look to Plaintiff for assistance and/or indirectly having sold such *Apple* products to  
8 them in the first place relying upon *Apple*.

9 20. *Apple* further breached its contract at relevant times by failing and refusing to compensate  
10 Plaintiff for recovering data under *AppleCare* repairs.

11 21. *Apple* further breached its contract by failing to provide "*priority telephone support service*"  
12 and provide prompt turnaround service for both Plaintiff and end users.

13 22. *Apple* consistently failed and refused on an ongoing basis at relevant times to correctly ac-  
14 count to Plaintiffs and Plaintiff's customers for the correct warranty coverages even when repeatedly  
15 notified, thereby establishing an ongoing pattern and practice by *Apple* relative to the non-honoring of  
16 its agreements with Plaintiffs, dealers and its customers, and giving rise to repeated and ongoing  
17 breaches of contract and damages based thereon.

18 23. *Apple* repeatedly represented and pledged at relevant times to fix "*service*" by promising  
19 needed and anticipated upgrades which never happened in a timely fashion or at all. *Apple* acknowl-  
20 edged that it had at all relevant times actual knowledge of the problems referenced above called to its  
21 attention which unfairly and fraudulently benefited *Apple*. *Apple* did not effectuate "*repairs*" or cor-  
22 rect the problem with service, citing its intent to do so, but all the while expressing the need for Plain-  
23 tiffs to proceed as a "*team player*", keeping its ill-gotten benefits and articulating the claim that  
24 Plaintiffs were the "*only ones*" having such troubles when in reality *Apple* routinely engaged in such  
25 unfair, unlawful, fraudulent and/or illegal business practices, all to Plaintiff's damage. This same ex-  
26 cuse was then discovered to have been given to other *Apple* dealers when they in turn brought to *Ap-*  
27 *ple's* attention the same or similar discovered abuses and/or breaches of contract and other duties.  
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1           24. *Apple* repeatedly set up quotas for Plaintiff and other *Apple* dealers which would, in part, de-  
2 termine the benefits that the dealer would earn from doing business with *Apple*. The benefits in-  
3 cluded compensation to be paid for volume of purchases. *Apple* then would fail to ship product to  
4 Plaintiff and/or other *Apple* dealers at key times preventing Plaintiff from meeting its volume obliga-  
5 tions while supplying the same to itself and then lowering compensation that otherwise would have  
6 been earned. *Apple* withholds products and continues withholding newly announced and/or popular  
7 products at key times, all the while supplying the same to itself, all to Plaintiff's detriment and dam-  
8 age.

9           25. *Apple* further breached its contract at relevant times by repeatedly requiring Plaintiffs to audit  
10 *Apple*'s records having devised accounting tactics and techniques designed to obfuscate the process,  
11 create forfeitures and avoid payment of funds due to Plaintiffs. The audit process was cumbersome  
12 and would take undue acts of time and thereafter would require multiple follow ups. *Apple* would not  
13 pay corrected amounts absent additional follow up, thereby cheating Plaintiff out of funds which it  
14 had by then conceded were due to Plaintiff.

15           26. *Apple* further breached its contract at relevant times by penalizing Plaintiffs if merchandise  
16 *Apple* sent to Plaintiffs was found to be defective and Plaintiff sought returns or exchanges. *Apple*  
17 would often provide limits and impose additional restrictions on Plaintiff as its dealers or other chan-  
18 nels. *Apple* refused to accept defective products in disregard of its contract and obligation to provide  
19 merchantable products. Plaintiffs would be left with a product for which *Apple* required payment or  
20 had already received payment even though Plaintiff did not receive the product as represented. *Apple*  
21 avoided payment for repairs, and Plaintiffs would not be able to sell the product as new. To insist  
22 upon suitable working equipment would adversely impact on other areas of compensation required to  
23 be paid by *Apple* under the terms of the contract. Had *Apple* tested the finished goods and/or devices  
24 supplied, defective products would not have been shipped.

25           27. Further, *Apple* has often and repeatedly at relevant times accepted orders and payment for  
26 equipment from Plaintiffs, then failed to ship parts and/or equipment forcing Plaintiff or its customers  
27 to again purchase parts and/or equipment from *Apple*, all the while *Apple* having use of Plaintiffs'  
28

1 payments for said parts and/or equipment causing Plaintiffs have to refund their customers' pay-  
2 ments. *Apple* has also failed to inform Plaintiffs of promotions whereby Plaintiffs could buy parts  
3 and/or equipment at a lesser cost while keeping and failing to credit Plaintiffs for funds sent, required  
4 Plaintiffs to order parts and/or equipment without disclosing that it was not shipping.

5 28. *Apple* further at relevant times breached the Agreements by, among other things: failing to  
6 acknowledge communications in a timely manner or even communicating in a meaningful manner re-  
7 sponsive to the enquiry or resolving the problem, misrepresenting to Plaintiffs the availability of *Ap-*  
8 *ple* products misrepresenting *Apple's* intentions regarding *Apple* retail stores and by misrepresenting  
9 the fact that *Apple* retail stores are not in competition with existing *Apple* resellers when in fact the  
10 *Apple* stores were at all relevant times in competition with Plaintiffs and other such stores.

11 29. *Apple* further breached its contract at relevant times by discriminating against Plaintiffs by  
12 manipulating allocations of product to adversely impact Plaintiff by providing special priority alloca-  
13 tion and treatment to the *Apple* retail stores, contrary to law and avoiding fair trade and competition,  
14 while failing to timely provide products and services to Plaintiff.

15 30. *Apple* further breached its contract by disclosing confidential information concerning Plain-  
16 tiff to third parties without notifying Plaintiff in advance and/or obtaining its consent, all to Plaintiff's  
17 damage.

18 31. *Apple* has further breached the contract at relevant times by negotiating in bad faith and vio-  
19 lating the implied covenant of good faith and fair dealing by delaying Plaintiffs' benefits, calling for  
20 further unnecessary documentation, discussion and negotiation. Plaintiffs have negotiated with *Apple*  
21 at their demand, request and insistence, while *Apple* delayed payment to Plaintiffs of the benefits that  
22 Plaintiffs are entitled, claiming to need more time, further documentation, additional claims adjust-  
23 ment(s), discussions and/or negotiations. *Apple* has breached said contract by failing to provide  
24 benefits and services as required under the terms of said contract and/or denying the terms of the  
25 contract itself and protracting the adjustment and/or resolution process during which time *Apple*  
26 would retain use of the money and earn interest thereupon depriving Plaintiffs of the same.  
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1 Plaintiff has been directly and proximately damaged in said amount and/or such other amounts  
2 thereby proximately caused by Defendant and prays for judgment as herein below sought.

3 **Wherefore**, Plaintiff prays for judgment as hereinafter set forth and to the maximum permissible  
4 extent allowable by law:

5 **For A Third & Distinct Cause Of Action**  
6 **Quantum Meruit**  
7 **(As Against All Defendants by Plaintiff MACadam Computer, Inc.)**

8 38. Plaintiff refers to and incorporate by reference the allegations contained in paragraphs 1  
9 through thirty seven, inclusive herein above as though fully set forth herein.

10 39. Within the last two years, *Apple* became indebted to Plaintiff in the sum of \$71,327.21 for  
11 services, goods, material, labor, services, money and costs advanced for *Apple* by Plaintiff. *Apple*  
12 would benefit by unjust enrichment in not properly compensating Plaintiff as a result of receiving  
13 said benefits. This sum represents an undisputed sum and nothing more. Wherefore, Plaintiff has  
14 been directly and proximately damaged in said amount and/or such other amounts thereby proxi-  
15 mately caused by Defendant and prays for judgment as herein below sought.

16 **Wherefore**, Plaintiff prays for judgment as hereinafter set forth and to the maximum permissible  
17 extent allowable by law:

18 **For A Fourth & Distinct Cause Of Action**  
19 **Account Stated**  
20 **(As Against All Defendants by Plaintiff MACadam Computer, Inc.)**

21 40. Plaintiff refers to and incorporate by reference the allegations contained in paragraphs 1  
22 through thirty nine, inclusive herein above as though fully set forth herein.

23 41. Within the last four years *Apple* became indebted to Plaintiff in the sum of \$71,327.21 on the  
24 written account stated which was agreed to by *Apple*. This sum represents an undisputed sum and  
25 nothing more. Wherefore, Plaintiff has been directly and proximately damaged in said amount and/or  
26 such other amounts thereby proximately caused by Defendant and prays for judgment as herein be-  
27 low sought.

28 **Wherefore**, Plaintiff prays for judgment as hereinafter set forth and to the maximum permissible  
extent allowable by law:

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**For A Fifth & Distinct Cause Of Action  
Open Book  
(As Against All Defendants by Plaintiff MACadam Computer, Inc.)**

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42. Plaintiff refers to and incorporate by reference the allegations contained in paragraphs 1 through forty one, inclusive herein above as though fully set forth herein.

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43. Within the last four years *apple* became indebted to plaintiff in the sum of \$71,327.21 on open book account that was agreed to by *apple* with the plaintiff. This sum represents an undisputed sum and nothing more. Wherefore, Plaintiff has been directly and proximately damaged in said amount and/or such other amounts thereby proximately caused by Defendant and prays for judgment as herein set forth and to the maximum punishable extent allowable by law.

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**For A Sixth & Distinct Cause Of Action  
Intentional Interference with Prospective Economic Advantage  
(As Against Defendant Apple Computer, Inc. and Does 1 through 50, inclusive by Plaintiff MACadam Computers, Inc.)**

44. Plaintiffs incorporate by reference paragraphs one through forty three, inclusive, contained herein as if set forth in full herein.

45. During the time the contracts referenced above were in force, *Apple* knew that Plaintiffs customarily sold *Apple* hardware, software, equipment, consulting, warranty and/or repair services to Plaintiff's customers that represented a valuable asset to Plaintiffs. Plaintiffs took great efforts to develop and maintain its customer base and thereupon an ongoing, profitable and sustainable business that *Apple* repeatedly encouraged Plaintiffs to devote its ongoing efforts and financial resources so that *Apple* could sell more products including computers and software. During all relevant times alleged herein *Apple* sought to intentionally interfere with Plaintiff's prospective economic advantage. During the time that the agreements were in force and effect, *Apple* informed Plaintiffs that *Apple*, at least up to and until the beginning of April, 2003, would not directly solicit Plaintiffs' customers nor would do anything to adversely affect Plaintiffs' marketing or business and that *Apple's* goal was to increase overall market share while maximizing the value of Plaintiff's business and thereby its own as well.

46. *Apple* provided financial incentives for Plaintiffs to promote its sales of *Apple* products, hardware, software, service, parts and *AppleCare* warranties, thereby earn an income. *Apple* thereafter, at least during the last past 4 years preceding the filing of this lawsuit, sought to solicit Plaintiffs' cus-

1 tomers and disparage Plaintiffs to them alleging that Plaintiffs, in particular, and *Apple* dealers in gen-  
2 eral, could not be trusted or counted upon by *Apple* or its customers which were in fact Plaintiffs' cus-  
3 tomers. *Apple* discredited Plaintiffs, claimed that Plaintiff did non-authorized repair work, voided war-  
4 ranties, substituted improper parts and was ill informed and incompetent to perform services for its  
5 customers. This, in fact, had an adverse financial impact on Plaintiff's business and reputation and was  
6 designed to adversely and inappropriately affect Plaintiffs' profits and sales diverting the same to *Ap-*  
7 *ple*. Within at least the last two years, *Apple* has bypassed Plaintiffs directly and contacted Plaintiffs'  
8 customers or potential customers, made *Apple*-only offers in violation of *Apple*'s own "*Ethics*" policy  
9 referenced herein above (see Exhibit D), and/or State and Federal law, and provided discounts including  
10 "*instant,*" "*education,*" or rebates and special pricing not otherwise available to Plaintiff or non-  
11 qualified customers educational discounts in an anti-competitive manner designed to take away Plain-  
12 tiff's customers.

13 47. *Apple* would, did and does misrepresent to the consumer the nature of its *AppleCare* warranty  
14 as sold by the Resellers, Specialists and/or Service Providers, telling the consumers and end users that  
15 if *Apple* sells its *AppleCare* warranty to them directly, they are "*100% covered*" for all parts and labor  
16 but if Plaintiffs, including similarly situated Resellers, Specialists and Service Providers sell the identi-  
17 cal warranty product, that such customers and consumers are not "*100% covered*". *Apple* seeks unfair  
18 advantage, while stifling competition all the while negatively impacting Plaintiffs' business, contractual  
19 and economic relationships and advantages based thereon.

20 48. In addition, within the last four years *Apple* has opened a number of *Apple* retail stores that are  
21 in direct competition with *Apple* Resellers, *Apple* Service Providers and *Apple* Specialists including  
22 Plaintiffs or those in a similar position to Plaintiffs, and does not compete as herein alleged on a level  
23 playing field. Furthermore, within the last four years, *Apple* has created an on line retail store that is in  
24 direct competition with *Apple* Resellers, *Apple* Service Providers and *Apple* Specialists, including Plain-  
25 tiffs, after promising not to do so requesting Plaintiff to invest heavily in its business, *Apple* technology,  
26 training and overall infrastructure and thereafter depriving Plaintiffs and others of product availability  
27 and allocation. *Apple* has engaged in other activities such as delaying shipments or changing orders to  
28 reflect non-ordered equipment. *Apple* has engaged in unfair and deceptive business and/or accounting

1 practices and as a result thereof, inter alia, have amassed unlawful profits and/or ill gotten gains that  
2 need to be disclosed and thereafter disgorged as a result of the unlawful anti-competitive practices and  
3 violations of California's Unfair Competition laws.

4 49. During the time the contracts herein were in force, *Apple* knew that Plaintiffs customarily pro-  
5 vided repair and support services to customers who had purchased equipment from Plaintiffs' store,  
6 and that a valuable business relationship existed between Plaintiffs and its customers arising from the  
7 sales of computers, peripherals, software, books and repair services. *Apple* sought to intentionally inter-  
8 fere with said relationship and benefit directly thereby, all to Plaintiffs' detriment proximately causing  
9 Plaintiffs' damage. Among other things *Apple* would, for example, replace perfectly good, functioning,  
10 non-*Apple* branded RAM chips, informing the end user that the dealer (Plaintiffs) had sold the custom-  
11 ers defective RAM. *Apple's* "upgraded" firmware had specifically affected non-Apple branded RAM,  
12 the normal operation of consumer and dealer thereby enabling *Apple* to sell additional products includ-  
13 ing *Apple*-branded RAM to the consumer. *Apple* would return the chips when there was no need for  
14 them to be removed from the customer's computer, asserting that the chips had a defect or were not  
15 compatible with *Apple* computers when they were not defective or incompatible and *Apple* would then  
16 seek to sell additional *Apple*-branded products directly bypassing the *Apple* Reseller, Specialist and/or  
17 Service Provider whereupon Plaintiff's customers would return to Plaintiff's store seeking refunds and  
18 venting frustration with Plaintiff's alleged misconduct. *Apple* also would regularly misbill Plaintiffs  
19 and/or customers for data backup services that were unnecessary. *Apple* would erase the hard drives if  
20 not paid a fee or make repairs without completing any necessary prior requested repairs given at Plain-  
21 tiffs' instruction and/or conduct repairs contrary to Plaintiff's and/or customer's express instructions  
22 and/or exceed authority, all to Plaintiff's general damages. *Apple* would blame Plaintiffs for the erasure  
23 of computer drives if Plaintiffs or its customers balked at the need for such services. Additionally when  
24 offering to lease equipment to customers, *Apple's* credit representatives would direct business to *Ap-*  
25 *ple's* store on line and/or retail store, failing and refusing to credit Plaintiff or its dealers with their  
26 profits for setting up the transaction. *Apple* deceived Plaintiff's customers to believe that it was fol-  
27 lowing through on the transaction undertaken by Plaintiff and its customers when it fact it was redi-  
28 recting the sale to *Apple* itself and excluding Plaintiff, all to Plaintiff's proximate damage.

1 50. *Apple* knew of the above described business relationships existing between Plaintiff and its  
2 customers.

3 51. As Plaintiffs and/or its customers registered *Apple* equipment and software, *Apple* would seek  
4 to disparage and/or otherwise discredit Plaintiffs and sell directly to Plaintiffs' customers. When  
5 Plaintiffs' customers registered their equipment with *Apple*, *Apple* used the information to bypass  
6 Plaintiffs and directly contact, solicit and sell Plaintiffs' customers. Yet when Plaintiffs and/or its cus-  
7 tomers requested a warranty repair, *Apple* would refuse replacements or reimbursements or tell Plain-  
8 tiffs' customers that if they had purchased the equipment directly from *Apple* that they would have di-  
9 rectly and immediately exchanged the equipment. In addition, in directly contacting, soliciting and at-  
10 tempting to sell to Plaintiffs' customers through warranty information, *Apple* enticed customers away  
11 from Plaintiffs through predatory practices, including discounts and/or special offers that were not  
12 made available to Plaintiffs, as well as disparaging Plaintiffs and other *Apple* resellers, specialists and  
13 service providers.

14 52. *Apple* entered into a pattern and practice of directly contacting Plaintiffs' customers and in-  
15 forming them that they would get better purchase prices, repair service and/or access to repair parts by  
16 placing their service directly with *Apple*, rather than through Plaintiffs, informing Plaintiff's customers  
17 that Plaintiffs were not fully qualified to perform repairs on customers' equipment, that Plaintiffs did  
18 not have access to the appropriate replacement parts to repair customers equipment and/or that Plain-  
19 tiffs were to blame for the innumerable delays, which in fact were caused by multiple incidents of ship-  
20 ping mistakes made by *Apple*. *Apple* also solicited purchases directly from Plaintiffs' customers espe-  
21 cially after Plaintiffs' customers and/or Plaintiffs made warranty claims for repairs. *Apple* enticed  
22 Plaintiffs' customers away for its own benefit, damaging Plaintiff. *Apple* called Plaintiffs' customers  
23 and solicited them to directly purchase new equipment, software, peripherals and/or service warranty  
24 policies (inter alia *Apple* Care) bypassing Plaintiffs and taking sales and/or profits that would otherwise  
25 belong to and/or be made by Plaintiffs.

26 53. During the time the Agreements were in force, *Apple* was to provide Plaintiffs with various  
27 electronic parts, modules and/or equipment, required for repairs and service for Plaintiffs' customers.  
28 *Apple's* failure to furnish said parts, modules, and/or equipment in a timely and professional manner

1 subjected Plaintiffs to customer complaints and loss of goodwill. *Apple* could reasonably foresee that  
2 this damage would occur to Plaintiffs by failing to timely ship the necessary parts, modules and/or  
3 equipment.

4 54. *Apple's* false, unfair, unlawful and/or fraudulent representations, actions and omissions to act  
5 when otherwise required constituted an unfair trade practice in violation of *Bus. & Prof. Code § 17200*.  
6 During said practices *Apple* repeatedly stated including through Phil Hunter (Regional Account Execu-  
7 tive for *Apple* Sales), Jeff Hansen (in charge of Phil Hunter and *Apple* Sales), Jeff Davis (Regional Ac-  
8 count Representative), Paddy Wong (Manager of Operations of *Apple* Sales Group), Bob Call (Inside  
9 Sales), Rick Balastrasse (in charge of *AppleCare* Protection Plans and various service activities) and  
10 others that Plaintiffs were the only one having such troubles with *Apple* and then denying that *Apple*  
11 was engaging in such conduct stating that *Apple* had not heard of any such problems from other *Apple*  
12 dealers and/or service providers when in fact they repeated the same litany and deceptive conduct as a  
13 general pattern and practice of business.

14 55. On multiple dates, not known to Plaintiffs specifically at this time, but subject to proof at trial  
15 and within the relevant dates of this litigation, many customers placed their repair, software and/or  
16 equipment requests directly with *Apple*, rather than with Plaintiffs as a result of *Apple's* conduct.

17 56. As a proximate result of *Apple's* pattern and practice, Plaintiffs have suffered monetary and  
18 other damage in an amount uncertain but subject to proof at trial. The damages occasioned by *Apple*  
19 were foreseeable and the actions of *Apple* directly affected Plaintiffs' business. In spite of calling to  
20 *Apple's* attention the consequences of its conduct *Apple* continued nonetheless thereby damaging  
21 Plaintiffs further.

22 57. The aforementioned acts of *Apple* were willful, oppressive, fraudulent and/or malicious within  
23 the meaning of California law and *Civil Code § 3294 et seq.* entitling Plaintiffs to punitive damages.

24 58. *Apple* threatens to and unless restrained, will continue to disrupt the business relationship with  
25 Plaintiffs' customers, to Plaintiffs' great and irreparable injury, for which damages alone would not  
26 afford adequate relief or compensate for the injury to Plaintiffs' business reputation and goodwill.

27 59. As a direct and proximate result of *Apple's* conduct, Plaintiffs have suffered damages in an  
28 amount to be proven at the time of trial, but not less than \$7,500,000.

1           60. *Apple* has engaged in unfair, dishonest, fraudulent, illegal and deceptive business and/or ac-  
2 counting practices and as a result thereof, inter alia, has amassed unlawful profits and/or ill gotten gains  
3 that need to be disclosed and thereafter disgorged as a result of the unlawful competition practices and  
4 violation of the *Unfair Competition Laws*.

5           61. During the time the Contracts referenced were in force *Apple* reassured Plaintiffs that it would  
6 not solicit Plaintiffs' customers and would only use information provided by Plaintiffs for appropriate  
7 warranty and related purposes that would not interfere with Plaintiffs' economic relationship with its  
8 customers and prospective business advantage.

9           62. Repeatedly, and contrary to *Apple's* representations and assurances, *Apple* has stated to Plain-  
10 tiffs' customers that Plaintiffs were not an authorized *Apple* dealer and that Plaintiffs' customers  
11 should only deal directly with *Apple*. *Apple* has represented to Plaintiffs' customers that in purchasing  
12 computer equipment not only does *Apple* give better service but also that *Apple* does not switch logic  
13 boards or other equipment passing off inferior equipment as *Apple* products. *Apple* also sought to en-  
14 tice customers away from Plaintiffs by predatory practices, including making discounts not available to  
15 Plaintiffs available to Plaintiffs' customers to remove them from Plaintiffs' normal economic base,  
16 opening and offering different channels of commerce to Plaintiffs' customers designed to directly  
17 compete and interfere with Plaintiffs' ability to transact business with its customers on a competitive  
18 basis. *Apple's* "*Ethics*" policy prohibits *Apple* actions in these instances.

19           63. These delays would cause Plaintiffs to repeatedly call *Apple*. *Apple* would delay responses. By  
20 delaying communications or providing inconsistent and/or non-accurate responses, Plaintiffs' custom-  
21 ers would call *Apple* directly whereupon *Apple* would solicit Plaintiffs' customers informing said cus-  
22 tomers that they would have received better service, pricing and encountered less problems if they had  
23 gone to *Apple* directly. *Apple* unlawfully and unfairly solicited Plaintiffs' customers all to Plaintiffs'  
24 detriment and to *Apple's* benefit.

25           64. On multiple dates, not known specifically at this time, but subject to proof at trial, many custom-  
26 ers placed their repair, software and/or equipment requests directly with *Apple*, rather than with Plain-  
27 tiffs as a result of *Apple's* conduct.



1 nomic value from not being generally known to the public or to other persons who can obtain economic  
2 value from its disclosure or use and because it is the subject of reasonable efforts by Plaintiffs to  
3 maintain its secrecy.

4 69. Pursuant to Paragraph 6 of the Agreements between Plaintiffs and *Apple*, the *trade secrets* de-  
5 scribed in the preceding paragraph constitute “*Confidential Information*” which may not be utilized by  
6 *Apple* for any purpose other than the limited purposes for which such information is expressly required  
7 by the Agreements. *Apple* provides in Exhibit D that: “*Apple expects its employees to respect the*  
8 *confidentiality of Apple information and the information of third parties, including our customers and*  
9 *our vendors*” ... “*The company’s continued success and growth depends on our ability to preserve*  
10 *the confidentiality of our confidential, proprietary and trade secret information, as well as that of oth-*  
11 *ers in our possession. Each Apple employee has the duty to respect and protect the confidentiality of*  
12 *all such information.*” ... “*No Apple employee, employee of a temporary agency, or independent con-*  
13 *tractor shall use or disclose to any other party any confidential, proprietary, and trade secret infor-*  
14 *mation in Apple’s possession belonging to a third party unless authorized by the third party to do*  
15 *so.*” *Apple* has disclosed it has confidential, proprietary and/or trade secret information in its posses-  
16 sion belonging to MACadam.

17 70. Paragraph 16 of Plaintiff’s Agreement with *Apple* provides: ““*Confidential Information*”  
18 *means information disclosed by either party to the other, including but not limited to the terms and*  
19 *conditions of this Agreement, any non-public information relating to the other party’s research, devel-*  
20 *opment, proprietary technology, product and marketing plans, finances, personnel, business opportu-*  
21 *nities, pricing, and customer lists, but not including information that becomes public knowledge except*  
22 *to the extent made public in violation of this Agreement.*”

23 71. Pursuant to the Agreements representation by *Apple* including the “*Ethics*” policy, Plaintiffs  
24 disclosed such “*Confidential Information*” and “*trade secrets*” to *Apple*, concerning Plaintiffs’ cus-  
25 tomers, business prospects and employees by various means, including, inter alia, the following:  
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- 1 a. *Apple* took confidential information from Plaintiffs as well as other *Apple* Authorized Resellers,  
2 Specialists and Service Providers to use in order to open *Apple* retail stores that would compete  
3 with Plaintiffs;
- 4 b. *Apple* requested confidential customer information from Plaintiffs and/or *Apple* Resellers, Spe-  
5 cialists and Service Providers only to appropriate the business for itself;
- 6 c. Plaintiffs engaged in marketing to various business customers and prospects which had been  
7 identified by Plaintiffs utilizing the assistance of *Apple* technical and sales support personnel.  
8 By virtue of the joint sales calls made by Plaintiffs and *Apple* personnel, the identities of certain  
9 key customers and prospects of Plaintiffs, and the key contact and decision making personnel at  
10 each of those customers and prospects were made known to *Apple*;
- 11 d. With respect to each *Apple* computer or product repaired by Plaintiffs, Plaintiffs were required  
12 to submit to *Apple* information which identified persons who owned *Apple*-branded equipment  
13 which was then appropriated by *Apple* for sales and solicitation purposes by *Apple*;
- 14 e. With respect to each so-called “*priority back orders*,” Plaintiffs were required to, and did,  
15 identify each customer for whom the product in question was ordered and, in the case of busi-  
16 ness customers, were usually required to identify the department to which the item was being  
17 sold;
- 18 f. When Plaintiffs placed orders with its *Apple* authorized wholesalers *Ingram Micro* or *Tech*  
19 *Data*, which were to be drop-shipped directly to the customer, Plaintiffs provided the name and  
20 address of the customer directly to *Apple* distributors. Plaintiffs are informed and believe, and  
21 based thereon allege that the distributor shared this customer information with *Apple* at *Apple*’s  
22 request and that *Apple* thereafter directed marketing and sales efforts to these customers; and
- 23 g. Pursuant to the terms of the Agreements, including mandatory training requirements and the re-  
24 quirement that Plaintiffs employ *Apple*-certified technicians and specialists, and by virtue of the  
25 repeated visits made by *Apple*’s designated representatives to Plaintiffs’ store location, *Apple*  
26 had knowledge of the names and in some cases the addresses and telephone numbers of Plain-  
27

1           tiffs' key employees and/or per Plaintiff's information and belief has used this resource to lure  
2           trained personnel from *Apple* Resellers, Specialists and Service Providers.

3           72. Pursuant to the Agreements, *Apple* also received *Confidential Information* directly from Plain-  
4           tiffs' customers at the time that they registered their warranties with *Apple* and/or submitted manufac-  
5           turer's rebate information. The software loaded on *Apple* computers caused a dialogue box requesting  
6           personal information to be displayed the first time that customer launched the new hardware and/or  
7           systems. *Apple* did not use the information to register equipment or track warranties but rather to take  
8           advantage of Plaintiffs to sell further *Apple*-branded equipment, services and/or software. Plaintiffs are  
9           informed and believe, and based thereon allege, that the bulk of the customers who purchased *Apple*  
10          computers registered their warranties with *Apple* as required and indicated that they purchased their  
11          computer from Plaintiffs or other *Apple* Resellers or Specialists. Plaintiffs encouraged its customers to  
12          register their warranties with *Apple* in the reasonable expectation, based on its Agreements and under-  
13          standings with *Apple*, that such information would be kept confidential and that *Apple* would not di-  
14          rectly solicit Plaintiffs' customers based upon the information submitted to *Apple* through the warranty  
15          registration processes. Furthermore, in offering manufacturer's rebates for purchases made through  
16          *Apple* Resellers and *Apple* Specialists, which affirmatively required that purchasers submit identifying  
17          information and the purchase details, *Apple* impliedly represented to Plaintiffs and to other *Apple* Re-  
18          sellers and to *Apple* Specialists that *Apple* would not utilize the identities of the purchasers in order to  
19          directly solicit them.

20          73. *Apple* acquired the *trade secrets* of Plaintiffs under a contractual and implied common law duty  
21          to maintain the secrecy of such information and not to utilize such information for the benefit of *Apple*  
22          to the competitive disadvantage of Plaintiff.

23          74. Plaintiffs are informed and believe, and based thereon allege, that *Apple* wrongfully utilized and  
24          misappropriated the *trade secrets* of Plaintiffs by engaging in the following acts among others:

- 25          a. Commencing on or about August, 2000 *Apple* began directly soliciting resellers' employees to  
26          accept employment at *Apple* retail stores; and

1 b. Beginning at some date between May, 2001 and January, 2002 (the exact date being unknown to  
2 Plaintiffs, who first discovered such conduct in February, 2002), *Apple* began directly contact-  
3 ing and soliciting Plaintiffs' customers, by mail, telephone or e-mail, to purchase *Apple* comput-  
4 ers, software and related products directly from in direct breach of the provisions of the Agree-  
5 ments utilizing *Confidential Information* and Plaintiffs' *trade secrets*. Plaintiffs are informed  
6 and believe, and based thereon allege, that as a direct and proximate result of the wrongful so-  
7 licitation of its customers by *Apple* utilizing *Confidential Information* an the *trade secrets* of  
8 Plaintiffs, Plaintiffs lost customers and/or sales

9 c. Beginning in April 2003, *Apple* sought, on a take it or leave it basis, to require Plaintiff and other  
10 Resellers, Specialists and Service Providers to give up all right to their established customer  
11 bases as a result of this lawsuit or forfeit the right to do any business with *Apple*, thereby pro-  
12 viding an unconscionable choice of losing the proprietary information and established trade  
13 contacts or losing the entire business.

14 75. *Apple*, in a conscious and reckless disregard of Plaintiffs' ownership of the *Confidential In-*  
15 *formation* and *trade secrets* described above have willfully and maliciously misappropriated Plaintiffs'  
16 *trade secrets* in violation of *Civil Code § 3426 et seq.* and unless enjoined by this Court, will continue  
17 to do so in the future.

18 76. As a direct and proximate result of the misappropriate of Plaintiffs' *Confidential Information*  
19 and *trade secrets*, *Apple* has been unjustly enriched from the uncompensated use of Plaintiffs' *trade*  
20 *secrets* and Plaintiffs have been damaged in an amount to be proven at trial, but believed to be not less  
21 than the sum of \$7,500,000. Plaintiffs seek recovery of such amounts, or in the alternative, the recovery  
22 of reasonable royalties for the unauthorized use of Plaintiffs' *trade secrets*, together with prejudgment  
23 interest thereon in accordance with the provisions of *California Civil Code §§ 3287(a) and 3291*.

24 77. Plaintiffs are informed and believe, and based thereon allege that in doing the acts alleged  
25 herein, *Apple* acted in conscious and intentional disregard for the contractual and property rights of  
26 Plaintiffs and with the intent to deprive Plaintiffs of its property and to convert such property to the  
27 benefit of *Apple*. *Apple* acted with oppression, fraud, and/or malice so as to entitle Plaintiffs to recover  
28

1 punitive and exemplary damages against *Apple* deemed by the trier of fact to be sufficient to punish,  
2 deter, and make an example of *Apple* in an amount up to two times the compensatory damage amount  
3 pursuant to *California Civil Code § 3426.3(c)*. Plaintiffs are informed and believe, and based thereon  
4 allege that the acts of oppression, fraud and/or malice of *Apple*, as alleged above, were either committed  
5 by officers, directors, or managing agents of *Apple* or were authorized and/or ratified by *Apple*.

6 78. By virtue of *Apple's* continued unauthorized misappropriation of Plaintiffs' *trade secrets*,  
7 Plaintiffs have been and continue to be irreparably damaged. Accordingly, Plaintiffs additionally seek  
8 preliminary and permanent injunctive relief barring *Apple* and each of its agents and affiliates from  
9 utilizing in any manner Plaintiff's *Confidential Information* and *trade secrets*.

10 79. As a direct and proximate consequence of *Apple's* willful and malicious misappropriation of  
11 Plaintiffs' *trade secrets*, Plaintiffs have been required to retain the services of attorneys to represent  
12 them and to prosecute this action and Plaintiffs seek recovery of such expenses and attorney fees pur-  
13 suant to the provisions of *Civil Code § 3426.4*.

14 **For A Ninth & Distinct Cause Of Action**  
15 **Accounting**  
16 **(As Against Defendant Apple Computer, Inc. and Does 1 through 50, inclusive by**  
17 **Plaintiff MACadam Computer, Inc.)**

18 80. Plaintiffs incorporate by reference paragraphs one through seventy nine, inclusive, contained  
19 herein as if set forth in full herein.

20 81. The relationship between Plaintiffs and *Apple* is sufficiently complex and the calculation of  
21 damages is such that it cannot be done without an accounting.

22 82. Per Plaintiffs' information and belief a balance is due from *Apple* to Plaintiffs that can only be  
23 accurately ascertained by an accounting. *Apple's* interpretation of its contract has been unreasonable  
24 and one sided with *Apple* requiring repeated corrections of its records when it agrees to one thing and  
25 then allows others within its organization to profess a different understanding based on different facts  
26 or issues which *Apple* repeatedly and arbitrarily changes at its will. The \$71,327.21 referenced above  
27 represents an undisputed sum and nothing more.

28 83. *Apple* has failed to fully, adequately and/or properly account to Plaintiffs for the sums it owes to  
Plaintiffs. *Apple* is in possession of books, records and receipts that would accurately depict funds re-

1 received by *Apple* and disbursed by them with regard to the same and which are necessary to determine  
2 profits and/or other sums due to Plaintiffs.

3 84. Plaintiffs have asked *Apple* to provide an accurate accounting but *Apple* has failed and/or re-  
4 fused to provide one, instead insisting that Plaintiff handle the accounting issues for it and thereafter  
5 rejecting or ignoring Plaintiff's claim – the information upon which it was based. When *Apple* was  
6 confronted with its own conduct irregularities it would simply keep all “*self-disputed*” funds and avoid  
7 responding to further communication on the subject.

8 85. Plaintiffs are informed and believe that *Apple* has obfuscated its accounting and misrepresented  
9 sums either owed by *Apple* to Plaintiffs. Instances include failing to account for parts returned to *Ap-*  
10 *ple*, downgrading the amounts paid on warranty repairs improperly, charging Plaintiffs higher prices for  
11 parts, service and so forth than *Apple* charges the general public or their own *Apple* retail stores, delay-  
12 ing resolution of disputes for over 60 days and then claiming forfeiture and further delaying resolution  
13 for over one year while negotiating the dispute and then claiming a Statute of Limitations defense while  
14 such conduct and claims are neither appropriate and/or lawful. *Apple* would force Plaintiff on a daily  
15 basis to spend excessive and disproportionate amounts of time to unendingly “*resolve*” its problems  
16 and cause Plaintiff's employees to waste up to 4 hours on “*hold*” while being transferred from one  
17 representative to another without placing Plaintiff in touch with someone who either had sufficient  
18 knowledge or would accept responsibility for responding to the problem, let alone the call. When in-  
19 formed that Plaintiff would receive a call back, routinely no such thing occurred. Such actions are bur-  
20 densome, oppressive, annoying, fraudulent, intentional, despicable and make prompt or any reasonable  
21 and/or proper resolution impossible.

22 86. The exact amount of profits and/or proceeds due to Plaintiffs and/or obtained by *Apple* as a re-  
23 sult of *Apple's* conduct cannot be determined without an accounting. The use of the equitable powers  
24 of the Court are required for the accounting. An accounting is therefore necessary. Plaintiffs are with-  
25 out an adequate legal remedy without said accounting.

26 **Wherefore**, Plaintiffs pray for judgment as hereinafter set forth and to the maximum permissible  
27 extent allowable by law.

**For A Tenth & Distinct Cause Of Action**  
**Fraud**  
**(As Against Defendant Apple Computer, Inc. and Does 1 through 50, inclusive by**  
**Plaintiff MACadam Computer, Inc.)**

87. Plaintiffs incorporate by reference Paragraphs one through eighty six, inclusive, as if set forth in full herein as well as all relevant paragraphs following this Cause of Action.

88. At or prior to the time of entering into the Contracts and thereafter while seeking to implement the terms of the contracts or renew them, *Apple* made written and oral representations and promises to Plaintiffs that *Apple* would promptly perform as promised in the contract, that *Apple* would provide full and equitable allocations of product, would trust plaintiff and all *Apple* Resellers, Specialists and Service Providers as respected and valued partners and keep all of them, including plaintiffs, apprised of all materials and pertinent facts and events. The representations were made by *Apple's* executives including Mitch Mandich (Senior Vice President of Worldwide Sales); Tim Cook (Executive Vice President of Worldwide Sales and Operations); Jeff Hansen (Senior Director of Channel Sales and Distribution); Phil Hunter (Regional Account Executive); Dave Garcia (Vice President of Service); Grant Gordon (Vice President of Service); Mark Wilhelm (Vice President of Worldwide Service); Sabrina Fitz-Reid (Manager of Technical Service Provider Support); Farrell Farhoudi (Senior Manager of *AppleCare*); Rick Balastrase (Manager of *AppleCare* Services); Les Neufeld (Field Service Representative); Richard Steinmetz (Field Services Representative); Amy Dominguez (Field Service Representative); Paddy Wong (Manager *Apple* Specialists); John Love (Senior Director of Worldwide Sales); and Steve Jobs (Chief Executive Officer), *Apple* made said representations and promises for the purpose of inducing Plaintiffs and each of them to enter into said contracts with *Apple* calling for Plaintiffs to serve as *Apple* Resellers, Specialists and/or Service Providers and remain as *Apple* Resellers, Specialists and/or Service Providers. The representations by *Apple* were as herein referenced during all relevant times herein alleged and unknown to *Apple*. The representations were made to Tom Santos at *MACadam* Computer in San Francisco, California and in some instances were made to Tom Santos at *Apple* Dealer meetings which were calendared by *Apple* at locations and times *Apple* chose across the country for its various meetings called by it such as at Austin, Texas; Phoenix, Arizona; Las Vegas, Nevada; Scottsdale, Arizona; Cupertino, California; San Francisco, California; at the Airport Hyatt Hotel at the San Francisco

1 International Airport, California; and New York City, New York when *Apple* held dealer meetings and  
2 the like. *Apple*, per Plaintiff's information and belief, video taped and/or otherwise recorded the meet-  
3 ings as well as prepared the agenda, the presentations, handouts, if any, and would presumptively have  
4 such information relating to such meetings with in its archives, files and/or business records. Each of  
5 the *Apple* representatives, officers, managers, sales persons and so forth routinely confirmed what they  
6 and the other persons, some or all, would repeat to Mr. Santos throughout the referenced time periods.  
7 The consistency and repetition of such statements was such that they were not always recorded and  
8 based upon the working relationships of Tom Santos with *Apple*, they could and were reasonably and  
9 justifiably relied upon.

10 89. The promises and representations made include, among others:

11 a. On or about December 2, 1998, June 10, 1999, August 6, 1999, August 12, 1999, December 19,  
12 2000 and on other dates using e-mails from Les Neufeld and also speaking with him telephoni-  
13 cally as well as in-person meetings in San Francisco, California, Las Vegas, Nevada , Cupertino,  
14 California and Austin, Texas, Plaintiff, through Mr. Santos, met and spoke with Mr. Neufeld  
15 about on-going service facilitation issues and discrepancies. Mr. Neufeld stated that they would  
16 be suitably and promptly addressed. He discussed his role at *Apple* as a field service represen-  
17 tative and stated that he had the power and authority to resolve service problems and that Apple  
18 wanted to resolve all such problems, if any existed. Mr. Neufeld discussed the over billings,  
19 denial of warranties, modules not received, misidentified modules, billing for sales tax, *Apple-*  
20 *Care* denials and *AppleCare* Protection Plan problems. Mr. Neufeld discussed what he termed  
21 "system problems" and stated they would be fixed, Plaintiff and dealers would, according to  
22 Mr. Neufeld, have "excellent" service which would positively affect Plaintiff and Plaintiff's  
23 customers. He, among other things, explained warranties and indicated that *MACadam* was the  
24 only one with a problem Mr. Neufeld promised that Apple would simply access and honor war-  
25 ranties whether extended or limited resulting in better service and dealers getting paid for this  
26 work. This was not done. Mr. Neufeld promised on August 12, 1999, for example, that *Apple*  
27 was investing "seven hundred million dollars" or whatever it took to be a world class service  
28

1 organization, to fix the problems and *Apple* service would be the number one service organiza-  
2 tion in the world. He promised that Plaintiff and other *Apple* Service Providers would not have  
3 the problem that they had experienced and would be able to provide *Apple* service and warranty  
4 repairs without fear of not being timely paid or suffering from the numerous problems afflicting  
5 them as a result of *Apple*'s conduct. These representations were repeated time and time again  
6 without factual basis or follow-through. Mr. Neufeld even came to MACadam Computer on  
7 dates that he chose while working for *Apple* and sought to have Plaintiffs sell more *Apple*-  
8 branded equipment, service and software, explaining that it would pay Plaintiff for all service re-  
9 pairs in a prompt manner and at the agreed contract price without the problems that Plaintiff was  
10 experiencing as an authorized *Apple* Service Provider. Mr. Neufeld would regularly come to  
11 the MACadam retail store once or twice per quarter from 1998 through his tenure as an outside  
12 *Apple* liaison or at least up to and including December 19, 2000. After that date he became an  
13 *Apple* outside business development executor responsible for giving *Apple* market share with  
14 non-traditional *Apple* customers. Mr. Neufeld repeated these representations including to the  
15 present. Mr. Neufeld repeatedly represented on each of the occasions and places noted that he  
16 would take care of all repair problems such as acknowledgement of receipt of parts to avoid  
17 double or multiple billings of parts to Plaintiff and others similarly situated. The problems were  
18 not corrected and Mr. Neufeld would represent that they would be corrected and that Plaintiff  
19 and others were the only one with the problems. *Apple* did not count. *Apple* consistently ac-  
20 cepted parts that were returned but billed Plaintiff, stating that they had received such parts and  
21 then refused to correct the billings, acknowledge receipt of returned products or pay labor. As  
22 many times as Mr. Neufeld was told of the problems he would promise repair, state refunds  
23 would be made and then fight remuneration or payment and deny acceptance of goods even  
24 though Plaintiff had the shipping invoices from *Apple*'s chosen common carrier and delivery  
25 service.

- 26 b. Consistently since 1994, Rick Balastrasse has repeatedly communicated with *MACadam* Com-  
27 puters in person, at MACadam, on the telephone and so forth about on-going problems that are  
28

1 still in place. On December 6, 2001, through written e-mail and oral comments, for instance,  
2 Rick Balastrasse promised to escalate the existing problems in logging in on the *Apple* com-  
3 puter system that Plaintiff's business depended upon and that it would be promptly repaired.  
4 Mr. Balastrasse had made prior and subsequent representations that the matters would be taken  
5 care of in an effort to satisfy Plaintiff and others acting in Plaintiff's position to remain as *Ap-*  
6 *ple* dealers and to assuage problems. In late 1999 Rick Balastrasse met with Grant Gordon, Les  
7 Neufeld, Chris McDermott, Jolene Woo, Tom Santos at *Apple's* headquarters in Cupertino,  
8 California to discuss over-billings. Grant Gordon, Les Neufeld and Rick Balastrasse promised  
9 to fix the problem, admitted that they and *Apple* knew about the problem for years but that *Ap-*  
10 *ple* had not remedied it. At a meeting at or about two weeks later at *Apple's* headquarters in  
11 Cupertino with Mr. Santos, Les Neufeld, Grant Gordon or Rick Balastrasse *Apple* agreed to re-  
12 fund money due *MACadam*, resolve all billing problems with *MACadam* and pay sums wrong-  
13 fully withheld by *Apple*. Each of *Apple's* representatives at the meeting promised to have the  
14 problems rectified and keep *MACadam's* business. While *Apple* paid certain previously un-  
15 paid service invoices, the total sums due were not paid and the problems not resolved. Jeff  
16 Hanson and/or others represented to Mr. Santos when confronted with ongoing problems to re-  
17 search and document them for *Apple* so that they could remedy them. Instead, upon doing  
18 what was asked of him, *MACadam* was deauthorized, thereby causing it proximate damages.

19 c. Misrepresenting to Plaintiffs the availability of new *Apple* products by stating among other  
20 things, that such products were unavailable while directly providing *Apple* stores with such  
21 products or that Plaintiff would shortly receive such products when Plaintiffs did not. Theses  
22 statements were made by Phil Hunter and Jeff Hansen, among others. Phil Hunter is the re-  
23 gional account executive for *Apple* whose responsibility is and was to care for and manage  
24 Plaintiffs' account and business dealings including product order with *Apple*. Jeff Hansen is  
25 the director and in charge of the *Apple "Specialist"* channel which Plaintiffs belong to. Jeff  
26 Hansen is in charge of marketing and the administration of *Apple* specialists such as Plaintiffs.  
27 Both Mr. Hansen and Mr. Hunter were to take care of issues involving merchandising, product  
28

1 allocation, special pricing issues, warranty issues and the like. The representations were made  
2 on May 18, 2001 when *Apple* began to open its retail stores. Steve Jobs, *Apple's* CEO, repre-  
3 sented on May 16, 2001 that the *Apple* stores would not conflict with *Apple's* 3000 dealers.  
4 This was untrue as *Apple* later admitted in its *Securities and Exchange* Filings, including its  
5 2002 *Form 10K* wherein *Apple* noted that its own stores cannibalized its dealer network of  
6 which Plaintiffs are a part;

- 7 d. Misrepresenting to Plaintiffs that they would not directly contact, solicit and/or deal directly  
8 with Plaintiffs' customers as their own thereby bypassing Plaintiffs and without payment of  
9 profits and fees to Plaintiffs as required under the contract;
- 10 e. Misrepresenting to Plaintiffs *Apple's* intentions on an ongoing basis to continue to open and  
11 supply competing *Apple* retail stores with products that are unavailable to Plaintiffs. Mitch  
12 Mandich, *Apple's* Vice President of Sales, stated on June 3, 1999, via e-mail to Plaintiffs that  
13 *Apple* would not be opening retail stores. He stated to Plaintiffs and others "*Apple* does not  
14 understand retail. There are no plans to open *Apple* stores." Based on this statement Plaintiffs  
15 continued to invest in its business to sell and service *Apple* products comfortable in the asser-  
16 tion that it would not suffer from unfair competition from *Apple*. By way of example, this  
17 statement was repeated by others at *Apple* as well;
- 18 f. Promising on an ongoing and repeated basis starting from the past three years preceding the fil-  
19 ing of this suit until the present to honor warranties of merchandise, goods, and services sold by  
20 Plaintiffs and/or by agreeing to accept warranty repairs then altering the terms to *Apple's* benefit  
21 thereby depriving Plaintiffs of compensation for its services. *Apple* set up a record keeping  
22 system that obliterated records for Plaintiffs and thereby deprived Plaintiffs of its compensation  
23 and a method of accounting for such compensation all the while establishing that warranty re-  
24 pairs were covered by warranty and Plaintiffs would be so compensated and later change war-  
25 ranty repairs to a pending status while billing Plaintiffs contrary to Plaintiffs' agreement with  
26 *Apple* for parts. This ongoing course of conduct and representations have gone on to the pre-  
27 sent. The representations were made to Tom Santos at San Francisco, California;

1 g. Misrepresenting necessary, agreed upon and/or proper credits when credits were due to  
2 Plaintiffs while promising to provide accurate and proper credits. *Apple* by failing to accurately  
3 account took funds due and belonging to Plaintiffs and its dealers refusing to reimburse them.  
4 These statements have been made continuing to the present by the persons referenced herein  
5 and by *Apple's* own accounting department . These statements have been made to Tom Santos  
6 and *MACadam Computer's* accounting personnel at *MACadam Computer* in San Francisco,  
7 California;

8 h. Misrepresenting the true nature and quality of the equipment sold while promising to  
9 disclose accurate and true information relating to the same. This includes the shipping of soft-  
10 ware and/or equipment that has known defects. When Plaintiffs, through Tom Santos, would  
11 repeatedly call *Apple* Technical Support about System 10.2 issues, *Apple* support personnel (all  
12 of them) routinely would decry any problems relating to System 10.2 adversely affecting or  
13 damaging the operation IMAC-DV for instance. The representations are ongoing and have oc-  
14 curred in San Francisco, California with *Apple's* employees speaking to Tom Santos and others  
15 at Plaintiffs' place of business;

16 i. Misrepresenting and failing to acknowledge receipt of returned equipment while prom-  
17 ising to do so. These representations are and were, including to the present, made by *Apple* on  
18 its Website. On at least a monthly basis, Richard Steinmetz, Les Neufield, Rick Balastrasse,  
19 Jeff Davis, Phil Hunter, Jeff Hansen, Sabrina Fitz-Reed, Bob Call, Joel Atsman, Dave Garcia,  
20 Darleen Bryant, Craig Cormier, Grant Gordon, John Brandon the billing inquiries section at  
21 *Apple.com*, *Apple* Technical Support Administration denied that Plaintiffs had returned equip-  
22 ment when Plaintiffs did so and Sheila Gwynne would, throughout the past 4 years, sign re-  
23 ceipts with Airborne Express for *Apple* at *Apple's* Elk Grove, California facility acknowledging  
24 receipt of merchandise while *Apple's* sales and administrative staff would deny the problems  
25 which meant that Plaintiffs would be denied credit or payments. Each of the above noted per-  
26 sons were officers, agents and/or employees of *Apple*, each acting within the course and scope  
27  
28

1 of his or her employment and each serving a managerial capacity with authority to make such  
2 representations and solve such problems;

3 j. Promising to represent the true status of warranties, credits and equipment while misrep-  
4 resenting the same. Each of the above referenced persons has represented monthly while em-  
5 ployed by *Apple*, including in addition thereto the *Apple* Specialist Service or Sales Advisory  
6 Board created by *Apple* that *Apple* correctly logs warranty dates when in fact they do not.  
7 Plaintiffs thereafter when denied payments for work have tracked *Apple's* warranty disclosures  
8 based on its acknowledgements to them and Plaintiffs' sales records and has learned that *Apple*  
9 does not factually represent warranty periods to Plaintiffs thereby depriving Plaintiffs and oth-  
10 ers of compensation for repairs completed under warranty;

11 k. Promising to appropriately reimburse Plaintiffs for warranty work performed by Plain-  
12 tiffs on behalf of *Apple* and/or failing to acknowledge warranty status while work is being per-  
13 formed thereby causing Plaintiffs significant time and expense to prove warranty status all the  
14 while misrepresenting the same;

15 l. Representing that the designation of *Apple* Specialist would be considered and repre-  
16 sented by *Apple* to the general public as the highest level of *Apple* Service Provider available to  
17 consumers while requiring heavy investment of time, energy and funds while explaining to the  
18 public that its specialists were sales associates at its retail stores who worked along side "*gen-*  
19 *iuses*" who could perhaps actually answer the customers' questions;

20 m. Representing to Plaintiffs and others that *Apple* and *Apple* owned retail stores would not  
21 target Plaintiffs' market of potential customers and clients.

22 All such promises, representations and warranties were repeatedly so as to be common matters of  
23 knowledge made throughout the three-year period preceding the filing of this Complaint up to and in-  
24 cluding the deauthorization of Plaintiffs. The representations were made to Tom Santos, President and  
25 majority shareholder of MACadam. Plaintiffs relied upon said representations and promises, entered  
26 into said Contract, performed, invested money, time, energy and effort all to Plaintiffs' detriment and  
27 damage according to proof at time of trial as permitted by operation of law.

1           90. The representations were made for a period of time equaling and/or exceeding the four (4)  
2 years last past to encourage Plaintiffs to enter into and perform the contracts herein alleged and to re-  
3 frain from taking actions against *Apple* by Les Neufeld (field service representative), Rick Balastrasse,  
4 Phil Hunter (Regional Account Executive), Jeff Hansen (Director of *Apple* Specialist Channel), Grant  
5 Gordon (Vice President of Service), Dave Garcia (Vice President of Service), Sabrina Fitz-Reed (In  
6 charge of Technical Service Provider Support), Richard Steinmetz (Field Service Representative) and  
7 others. *Apple* is fully aware of its representations and per Plaintiffs' information and belief based upon  
8 what the above named personnel have informed Plaintiffs through *Santos*, MACadam has relied on  
9 *Apple's* statements, representations and/or promises to Plaintiffs and such reliance under the circum-  
10 stances is reasonable by *Apple* to Plaintiffs including Tom Santos.

11           91. *Apple*, despite its representations to the contrary, never, at any time, intended to comply with  
12 those representations, as evidenced by their consistent refusal to do so, and untimely and/or partial  
13 and/or inadequate performances when *Apple* did perform, and made said representations with the intent  
14 to defraud Plaintiffs. *Apple's* representations were false in that it not only concealed information but  
15 affirmatively misled Plaintiffs and thereafter admitted to misleading Plaintiffs and misrepresenting the  
16 facts and others herein alleged and as to be proven at time of trial. Alternatively, when said statements,  
17 representations and/or promises were made *Apple* and/or the above named personnel knew or should  
18 have known that their statements, representations and/or promises and/or lack of information and/or  
19 reasonable belief in the truth of their representations. Under the circumstances known to Plaintiffs,  
20 Plaintiffs' reliance on the promises of *Apple* as herein alleged was reasonable. *Apple* appeared to be a  
21 major computer company with generally credible products and a loyal following. *Apple* advertised its  
22 products and made a good appearance in the marketplace.

23           92. At the time that *Apple* concealed the above-material facts from Plaintiffs, *Apple*, per *Apple's* rep-  
24 resentations to Plaintiffs purported to owe Plaintiffs a fiduciary like duty and, by virtue thereof, a confi-  
25 dential relationship existed between *Apple* and Plaintiffs. In addition, at the time of the concealment of  
26 the above-alleged material facts by *Apple*, *Apple* knew that such material facts were not known to Plain-  
27 tiffs and/or were not readily accessible to Plaintiffs. Therefore, *Apple* owed a duty to disclose such  
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1 material facts, as alleged above, to Plaintiffs, but did not do so. The misrepresentations and/or failures  
2 to disclose when a duty to disclose existed proximately caused the resulting damages alleged herein.

3 93. *Apple* represented that they would properly respond to orders, assist Plaintiffs in filling them  
4 and properly fill them. In failing to do so *Apple* indicated through its representatives including Steve  
5 Jobs and the above referenced personnel that it was aware that its systems to serve dealers were not  
6 functioning properly and that *Apple* would be fixing the system and requested Plaintiffs and other *Ap-*  
7 *ple* authorized retail sales dealers, specialists and service center personnel to work with *Apple* to achieve  
8 repairs to its system (and therefore inter alia not sue it, rely upon it and act as a team player). Plaintiffs  
9 and each of the classes of personnel served by the systems were made aware that they depended upon  
10 *Apple* for product and good will without which they easily could be put out of business.

11 94. At the time that *Apple* failed to disclose to Plaintiffs the material facts set forth herein, *Apple* in-  
12 tentiously concealed and suppressed such facts from Plaintiffs with the intent to induce Plaintiffs to  
13 participate in the agreement between Plaintiffs and *Apple* including, inter alia, the fact that they lacked  
14 any reasonable information and/or belief in the truth and veracity of the statements, representations  
15 and/or promises made by them in the agreements, and to induce Plaintiffs to continue to do business  
16 with *Apple* when *Apple* was profiting by its misdeeds that it would and did not intend to correct all the  
17 while unjustifiably profiting thereby. Said conducts, acts and omissions are and/or have been of an on  
18 going nature and *Apple* has breached their duty of fair dealing and good faith owed to Plaintiffs by  
19 other acts and omissions which the Plaintiffs are currently unaware of.

20 95. Plaintiffs were, at the time of the concealment of the material facts alleged above, unaware of  
21 those facts, and, had they known of such facts, would not have become affiliated with *Apple*, opened a  
22 store dedicated to selling, supporting and serving *Apple* computers and *Apple* products and the like or  
23 warranted the time, effort, energy and money required to do the same. Said conducts, acts and omis-  
24 sions are and/or have been of an on going nature. *Apple* has breached their duty of fair dealing and  
25 good faith owed to Plaintiffs by these and other acts and omissions which the Plaintiffs are currently  
26 unaware of, but intend to seek leave of the court to amend where appropriate.

1           **Wherefore**, Plaintiffs pray for judgment as hereinafter set forth and to the maximum permissible  
2 extent allowable by law.

3                                   **For An Eleventh & Distinct Cause Of Action**  
4                                   **Negligent Misrepresentation**  
5                                   **(As Against Defendant Apple Computer, Inc. and Does 1 through 50, inclusive by**  
6                                   **Plaintiffs MACadam Computer, Inc.)**

7           96. Plaintiffs incorporate by reference paragraphs one through ninety eight, inclusive, contained  
8 herein as if set forth in full herein.

9           97. The acts, conduct and omissions referenced above were negligent. *Apple* and its agents, ser-  
10 vants and/or employees, as an alternative theory to explain the facts alleged to the above cause of action,  
11 lacked the actual information to make such representations and/or the actual belief in the truth of the  
12 representations noted above. As a result, they misrepresented the information alleged and/or concealed  
13 material facts from Plaintiffs who relied upon their statements and representations thereby changing  
14 their position to all Plaintiffs' detriment and proximately suffering damages thereby. *Apple* and its  
15 agents, servants and/or employees made such representations without a reasonable basis for believing in  
16 the truthfulness of such representations with the intent to induce Plaintiffs to rely thereupon and in fact  
17 Plaintiffs did alter their position, all to their detriment and proximate harm. In seeking to placate Plain-  
18 tiffs by making such statements and representations, *Apple* made Plaintiffs' circumstances worse by  
19 seeking to assure Plaintiffs in the truth of its then current statements and representations without taking  
20 the time, trouble or effort to verify the truth an by causing Plaintiffs to rely and thereby act upon such  
21 statements to its detriment.

22                                   **For A Twelfth & Distinct Cause Of Action**  
23                                   **Unfair Competition - Violation of Bus. & Prof. Code § § 17200 et seq.**  
24                                   **(As Against Defendant Apple Computer, Inc. and Does 1 through 50, inclusive by**  
25                                   **Plaintiffs MACadam Computer, Inc. and Tom Santos)**

26           98. Plaintiffs incorporate by reference paragraphs one through one hundred, inclusive, contained  
27 herein as if set forth in full herein.

28           99. Plaintiffs are suing both in their individual capacity and on behalf of the general public based on  
public interest as private attorneys general. The purpose of Plaintiffs acting as an attorney general and  
bringing such claims, inter alia, is to require *Apple* to cease and desist all unfair business activities.

1 Joinder of all persons so affected by *Apple's* unfair practices is impractical in that they are too numer-  
2 ous .

3 100. There are questions of law and fact common to Plaintiffs and consumers so affected that  
4 predominate over any questions affecting only individuals including whether *Apple* has engaged in un-  
5 fair, unlawful, untrue, fraudulent and/or deceptive business practice and; whether by its conduct *Apple*  
6 has engaged in unfair, unlawful, deceptive, untrue and/or misleading advertising and whether as a result  
7 of *Apple's* misconduct Plaintiffs and the general public including *Apple's* consumers are entitled to eq-  
8 uitable relief and damages and further, the amount and nature of such relief.

9 101. By engaging in the acts, conduct and omissions alleged *Apple* has committed one or more  
10 acts of unfair competition within the meaning of *Bus. & Prof. Code § 17200 et seq* and/or *§17500 et*  
11 *seq.*

12 102. *Apple's* acts and practices complained of herein have harmed Plaintiffs and those similarly  
13 situated and/or are likely to deceive reasonable members of the consuming public.

14 103. Plaintiffs, on behalf of themselves and California consumers, seek restitution, injunctive re-  
15 lief and all other relief allowed under *Bus. & Prof. Code § 17200 et seq* and/or *§17500 et seq.*

16 104. Beginning at an exact date unknown to Plaintiffs but at least since the last four (4) years  
17 preceding the filing of this lawsuit, *Apple* has committed acts of unfair competition, as defined by *Bus.*  
18 *& Prof. Code § 17200 et seq* and/or false advertising under *§17500 et seq*, by engaging inter alia in the  
19 following practices:

- 20 a. *Apple* on numerous occasions exceeding two instances, knowingly billed amounts to its dealers  
21 and/or consumers which it knew or should have known were not lawfully owing to *Apple*, and  
22 collected and/or sought to collect and/or impound such funds belonging to Plaintiffs and/or  
23 other authorized *Apple* dealers as referenced above and/or consumers for these bills;
- 24 b. Misleading consumers into believing that the *AppleCare* Protection Plan will cover service  
25 and/or repairs of all defective components found in the *Apple* Notebook and/or Desktop Com-  
26 puter products sold by either it or an authorized *Apple* Reseller/Dealer, when notwithstanding  
27 *Apple's* claims, such claims are and were false and/or are likely to deceive reasonable consum-  
28 ers if such complained of conduct is not abated forthwith;

- 1 c. Altering the warranty coverages after Plaintiff and/or consumers purchased *Apple*-branded  
2 equipment and/or *AppleCare* Protection Plans to deprive Plaintiffs and/or consumers of war-  
3 ranty benefits;
- 4 d. Failing to provide adequate and/or any disclosure regarding the extent of service protec-  
5 tion/coverage a consumer will receive through purchase of the *AppleCare* Protection Plan. This  
6 failure causes reasonable consumers to believe that the coverage/protection available through the  
7 *AppleCare* Protection Plan is more extensive than it is in actuality. Reasonable consumers are  
8 likely to be deceived by *Apple*'s failure to provide such adequate disclosure. This is an ongoing  
9 problem which *Apple* has not adequately or at all addressed;
- 10 e. Repeatedly and systematically failing to perform its obligations under the service contract created  
11 by the *AppleCare* Protection Plan and/or misdiagnosing repairs in an effort to mislead and de-  
12 ceive consumers into paying for service repairs instead of receiving the free repairs promised by  
13 the *AppleCare* Protection Plan;
- 14 f. Wrongfully removing third party [non-*Apple* branded products] components from computers  
15 sent to *Apple* and Does 1 through 50, inclusive by consumers for service under the *AppleCare*  
16 Protection Plan and falsely claiming that said components are defective. *Apple* and Does 1  
17 through 50, inclusive, do this as part of a scheme to induce consumers to purchase *Apple* com-  
18 puter components directly from *Apple*. Additionally, *Apple* and Does 1 through 50, inclusive  
19 falsely provide repair information to consumers relating to the removed third party compo-  
20 nent(s) and the defective component(s) that were/was the basis for sending the consumers'  
21 computer in for service;
- 22 g. Misleading consumers into believing that the length of the *AppleCare* Protection Plan is 3-years  
23 and thus, a consumer will obtain 4 full years of service coverage from *Apple* (3-years of *Apple-*  
24 *Care* Protection Plan plus one year standard limited warranty,) when notwithstanding *Apple*'s  
25 claims, the actual length of said Plan is significantly less than *Apple* reasonably suggests or im-  
26 plies to consumers.
- 27 h. Failing to provide sufficient disclosures under the *Song-Beverly Consumer Warranty Act* to  
28 consumers who order/subscribe to the *AppleCare* Protection Plan. This failure is apparently

1 most prevalent when consumers order the *AppleCare* Protection Plan via telephone. This fail-  
2 ure causes *Apple* to violate the *Song-Beverly Consumer Warranty Act* by failing to make rele-  
3 vant disclosures in accordance with §§ 1794.4(c)(1); 1794.4(c)(2); 1794.4(c)(4)(A);  
4 1794.4(c)(4)(D); 1794.4(c)(5)(F); 1794.4(c)(7); and/or 1794.4(c)(8). In addition, *Apple* has  
5 failed and continues to fail to comport with *Song-Beverly Consumer Warranty Act* §  
6 1794.41(a)(2);

- 7 i. *Apple* and Does 1 through 50, inclusive, breach the *Song-Beverly Warranty Act* by failing to per-  
8 form their obligations in accordance with the express provisions of the *AppleCare* Protection  
9 Plan;
- 10 j. *Apple* and Does 1 through 50, inclusive, have intentionally misrepresented to Plaintiffs, and those  
11 similarly situated, material facts regarding the service obligations created by the *AppleCare*  
12 Protection Plan;
- 13 k. *Apple* has concealed from Plaintiffs, and those similarly situated, material facts regarding the  
14 service obligations created by the *AppleCare* Protection Plan;
- 15 l. *Apple* competed unfairly by effecting repairs to computers and related peripherals for consum-  
16 ers, and charging such consumers money without complying with California rules and regula-  
17 tions requiring registration of such business laid down by the *Department of Consumer Affairs*  
18 *Bureau of Electronic and Appliance Repair*, which constitutes an unlawful, unfair and/or  
19 fraudulent business act or practice within the meaning of *Bus. & Prof. Code* § 17200;
- 20 m. *Apple* competed unfairly by effecting repairs to computers and related peripherals for consum-  
21 ers without complying with California rules and regulations requiring that the repairs made to  
22 computers belonging to consumers be documented so that consumer could determine what the  
23 repairs in fact really were and how the repairs would impact on the length of the customers’  
24 warranties and/or whether their *Apple*-branded equipment suffered from defects and design or  
25 build that would require *Apple* to recall or replace parts and/or products. This constitutes an  
26 unlawful, unfair and/or fraudulent business act and/or practice within the meaning of *Bus. &*  
27 *Prof. Code* § 17200.

- 1 n. *Apple* competed unfairly by effecting repairs to computers and related peripherals for consumers  
2 without complying with California rules and regulations requiring that *Apple* return replaced  
3 parts to the consumer as required by California law including but not limited to *Bus. & Prof.*  
4 *Code § 9843*.
- 5 o. *Apple* competed unfairly by effecting repairs to computers and related peripherals for consumers  
6 by failing to provide an initial written estimate to the consumer before performing any repairs in  
7 accordance with *Bus. & Prof. Code § 9844*.
- 8 p. *Apple* competed unfairly by effecting repairs to computers and related peripherals for consumers  
9 by making repairs in excess of amounts consented to by the consumer violating *Bus. & Prof.*  
10 *Code § 9844*.
- 11 q. *Apple* competed unfairly by effecting repairs to computers and related peripherals for consum-  
12 ers by failing to maintain true and accurate and/or some and/or all records required by *Bus. &*  
13 *Prof. Code § 9847.5* for a period of at least 4 years preceding this litigation up to and including  
14 the present.
- 15 r. *Apple* competed unfairly by effecting repairs to computers and related peripherals for consum-  
16 ers by failing to provide a receipt or claim check in compliance with *Calif. Code of Reg. §§*  
17 *2721 & 2773 et seq.*;
- 18 s. Seeking to monopolize all *Apple* business and drive out of business each of its Resellers, Spe-  
19 cialists and Service Providers including by utilizing their trade secrets and confidential informa-  
20 tion all to the dealers detriment in violation of the *Cartwright Act*;
- 21 t. Engaging in predatory practices;
- 22 u. Engaging in trade libel;
- 23 v. Violating the *Song-Beverly Consumer Warranty Act*;
- 24 w. *Apple* competed unfairly by effecting repairs to computers and related peripherals for consum-  
25 ers by failing to disclose the use of used parts used to repair computers.
- 26 x. *Apple* prepared and published a warranty designed to bypass California legal requirements as  
27 to repairs and conduct that it could and did engage when fixing computers and related periph-  
28 als.

- 1 y. *Apple* advertised and/or published to Plaintiffs and/or *Apple* Service Providers that units to be  
2 repaired by dealers were covered under warranty, and then refused to authorize payments for  
3 repairs based upon lack of warranty coverage;
- 4 z. *Apple* competed unfairly by advertising prices to its authorized dealers that it would then under-  
5 cut by agreeing to and selling computers, equipment and software at lesser prices than its  
6 authorized dealers could ever purchase the equipment for. *Apple* would among other things arti-  
7 ficially switch its sales to other channels such as its educational market to take sales away from  
8 its normal authorized dealer channels and/or inform consumers and/or end users that had they  
9 dealt with *Apple* directly that service would be better and prices more advantageous than from  
10 *Apple* Resellers, Specialists and/or Service Providers. *Apple* even opened its own chain of  
11 computer stores that unfairly received delivery of product when Plaintiffs and *Apple*'s other  
12 authorized dealers would not, being unfairly delayed by *Apple*, all the while *Apple* would be  
13 seeking to and did divert business away from Plaintiffs and authorized *Apple* Resellers, even  
14 granting customers exchange privileges;
- 15 aa. *Apple* competed unfairly by informing consumers that its *AppleCare* warranty would cover the  
16 cost and recovery of software and data when in fact it would not. Thereafter *Apple* is and was  
17 critical of its dealers for creating false expectations in its consumers and used the opportunity to  
18 obtain said consumers as *Apple* direct customers after the dealers had developed the business  
19 and contacts;
- 20 bb. *Apple* competed unfairly by informing customers that the *AppleCare* warranty would cover  
21 "wear & tear" but it does not. The written warranty makes no such provision and when *Ap-*  
22 *ple*'s consumers would raise the issue when such "warranty" issues became necessary, they  
23 were told that the warranty did not cover the "wear and tear" that *Apple* represented. *Apple*  
24 also unfairly and/or deceptively informed consumers that the *AppleCare* Protection Plan covers  
25 "everything" when purchased directly from *Apple*, as opposed to the *Apple* Reseller and/or  
26 Specialist, when it does not. *Apple* thereafter is and was critical of its dealers for allegedly  
27 "misinforming" consumers and used the opportunity to obtain said consumers as *Apple* direct  
28 customers after the dealer developed them as their business;

- 1 cc. *Apple* competed unfairly by promising prompt service which *Apple* dealers could not obtain and  
2 which *Apple* often does not provide, thereby unduly burdening the dealers;
- 3 dd. *Apple* competed unfairly by repeatedly returning unrepaired equipment as if it had been re-  
4 paired forcing the dealer and/or customers to repeatedly return it for repair and/or further serv-  
5 ice without compensation and/or proper results while often blaming the dealer as the reason for  
6 the problem;
- 7 ee. *Apple* competed unfairly by representing non-existent and/or inadequate website resources  
8 which are not available to end users and/or *Apple* Resellers, Specialists and Service Providers;
- 9 ff. *Apple* competed unfairly by adopting a pattern and practice of failing and refusing to provide  
10 payments, support, parts, service and/or benefits to end users and consumers including Resel-  
11 lers, Specialists and/or authorized Service Providers.

12 108. These acts and practices violate *Bus. & Prof. Code § 17200 et seq.* inter alia, in the following  
13 respects:

- 14 a. The act of billing its dealers for sums which it knew or should have known were not lawfully  
15 owing to *Apple*, and sending such bills by mail constitutes mail fraud, and a violation of the  
16 *Racketeering Influenced Corrupt Organizations (RICO) Act, 18 U.S.C. § § 1961 et seq.*, which  
17 is an unlawful business act or practice within the meaning of *Bus. & Prof. Code § 17200*;
- 18 b. The act and/or practice of undertaking repairs to computers and other electronic appliances and  
19 collecting remuneration therefore, without complying with the *Electronic and Appliance Repair*  
20 *Dealer Registration Law, Bus. & Prof. Code § § 9800 et seq.*, is an unlawful business act or  
21 practice within the meaning of *Bus. & Prof. Code § 17200*;
- 22 c. The act and practice of advertising that units to be repaired by dealers were covered under war-  
23 ranty, and then refusing to authorize payments for repairs based upon lack of warranty coverage  
24 is an unlawful business act or practice within the meaning of *Bus. & Prof. Code § 17200*;
- 25 d. The acts and/or practices alleged herein were false, fraudulent, unfair and/or unlawful all within  
26 the meaning of *Bus. & Prof. Code §§ 17200, 17500* and/or other provisions of California, state  
27 and/or federal law;
- 28

- 1 e. The business act and practices of *Apple* of advertising that units to be repaired by dealers are  
2 covered under warranty, and then refusing to authorize payments for repairs based upon lack of  
3 warranty coverage is likely to mislead the general public including dealers and, consequently, is  
4 an unfair, unlawful and/or fraudulent business act or practice within the meaning of *Bus. &*  
5 *Prof. Code §17200*;
- 6 f. *Apple's* acts of untrue and misleading advertising, as more fully set forth herein, are incorpo-  
7 rated by reference, and are, by definition, violations of *Bus. & Prof. Code § 17200 et seq* and §  
8 *17500 et seq.*

9 109. The harm to Plaintiffs and to members of the general public outweighs the utility of any of the  
10 alleged acts and practices of *Apple* and is an unfair, unlawful and/or fraudulent business act or practice  
11 within the meaning of *Bus. & Prof. Code §17200 et seq* and § *17500 et seq* and/or consists of unfair,  
12 untrue, false and/or misleading advertising.

13 110. The unlawful, unfair, false and fraudulent business practices and false and misleading adver-  
14 tising of *Apple*, as described above, present a continuing threat to members of the public in that repairs  
15 will not be made at prices quoted and/or that repairs will not be as required or proper and/or that con-  
16 sumers including Plaintiffs will not receive the benefits and promises represented or implied and/or  
17 protections of California law. Plaintiffs and other members of the general public have no other ade-  
18 quate remedy of law in that *Apple* will continue their unlawful, unfair, and/or fraudulent conduct unless  
19 enjoined to do so by this Court. Due to the type of claims advanced, it is unlikely that individual litiga-  
20 tion shall result for *Apple* and *Apple* will not fairly compensate California consumers and/or all en-  
21 joined parties about this litigation. Plaintiffs do not reasonably anticipated any difficulty in the man-  
22 agement of this litigation.

23 111. As a direct and proximate result of the aforementioned acts, *Apple* receives and continues to  
24 hold funds on an ongoing basis belonging to the dealers, consumers, end users and Plaintiffs which  
25 *Apple* is not rightfully entitled to do.

26 **Wherefore**, Plaintiffs pray for relief as set forth hereinafter.

27 **For A Thirteenth & Distinct Cause Of Action**  
28 **False Advertising – Violation of Bus. & Prof. Code § 17500**

1 (As Against Defendant Apple Computer, Inc. and Does 1 through 50, inclusive by Plaintiffs  
2 MACadam Computer, Inc. and Tom Santos)

3 112. Plaintiffs incorporate by reference paragraphs one through one hundred eleven, inclusive,  
4 contained herein as if set forth in full herein.

5 113. Beginning at an exact date unknown to Plaintiffs but at least since the last four (4) years pre-  
6 ceding the filing of this lawsuit, *Apple* has committed acts of untrue and misleading advertising, as de-  
7 fined by *Bus. & Prof. Code § 17500*, by engaging in the acts and practices alleged herein with intent to  
8 induce members of the public including Plaintiffs to purchase *Apple*-branded equipment and/or soft-  
9 ware and/or enter into business dealings and contracts with *Apple*.

10 a. *Apple* advertised inter alia that upon becoming an *Apple* Authorized Service Provider, Authorized  
11 *Apple* Reseller and/or *Apple* Authorize *Apple* Specialist *Apple* would provide proper remunera-  
12 tion for service and sales, when it knew its implementation policies to order equipment, service,  
13 provide warranty work would so burden the *Apple* Authorized Service Providers, Authorized  
14 *Apple* Reseller and/or *Apple* Authorize *Apple* Specialist including with the use of deception and  
15 delays that *Apple* would be able to unjustly take profits, unreasonably reduce payments, invent  
16 accounting disputes, delay services and product responses all the while taking money to which it  
17 was not entitled;

18 b. *Apple* advertised that computers and peripherals it caused to be manufactured would be covered  
19 by warranty, and then routinely denied, rejected or delayed warranty claims, requiring *Apple*  
20 Authorized Service Providers, Authorized *Apple* Reseller and/or *Apple* Authorize *Apple* Spe-  
21 cialist to bear the cost of proving that the equipment above mentioned should have been covered  
22 by the warranty;

23 c. *Apple* advertised that it would provide *Apple* Authorized Service Providers, Authorized *Apple*  
24 Reseller and/or *Apple* Authorize *Apple* Specialist with appropriate support when in fact *Apple*  
25 often required Plaintiffs to repeatedly communicate the same information to *Apple* on multiple  
26 occasions and/or require persons situated in Plaintiffs' position to do the same. The repetitive  
27 communication was meant to vex or obfuscate rather than resolve any issues between the par-

1 ties. Further, *Apple*'s repeated use of a convoluted ordering system made it difficult for Plain-  
2 tiffs to effectively communicate with *Apple* or service Plaintiffs customers and/or Plaintiffs.

3 114. Plaintiffs, on behalf of themselves and California consumers, seek restitution, injunctive relief  
4 and all other relief allowable under *Bus. & Prof. Code § 17500 et seq.*

5 115. As a direct and proximate result of the aforementioned acts, *Apple* received and continues to  
6 receive funds belonging to the dealers and to Plaintiffs. Wherefore, Plaintiffs pray for relief as set forth  
7 hereinafter. *Apple* acted with oppression, fraud and/or malice so as to entitle Plaintiffs to recover puni-  
8 tive and exemplary damages against *Apple* deemed by the trier of fact to be sufficient to punish, deter  
9 and make an example of *Apple* as permitted by operation of law and according to proof at the time of  
10 trial.

11 116. The acts of untrue and misleading advertising by *Apple* described herein present a continuing  
12 threat to members of the public in that members of the public will continue to become *Apple* Authorized  
13 Service Providers, Authorized *Apple* Reseller and/or *Apple* Authorize *Apple* Specialist. Plaintiffs and  
14 other members of the general public have no other adequate remedy of law in that *Apple* will continue  
15 the unlawful, unfair, fraudulent and/or misleading billing practices, and the unlawful, unfair, fraudulent  
16 and/or business practices described hereinabove.

17 **Wherefore**, Plaintiffs pray for relief as set forth hereunder.

18 **For a Fourteenth & Distinct Cause of Action**  
19 **Aiding and Abetting, Inducing, Conspiring to Violate Bus. & Prof. Code § § 17200 et seq.**  
20 **and § § 17500 et seq.**  
21 **(As Against Defendant Apple Computer, Inc. and Does 1 through 50, inclusive by Plaintiffs**  
22 **MACadam Computer, Inc. and Tom Santos)**

23 117. Plaintiffs incorporate by reference paragraphs one through one hundred sixteen, inclusive,  
24 contained herein as if set forth in full herein.

25 118. *Apple* knew and were aware of Doe Enterprises' unlawful, unfair or deceptive business prac-  
26 tices and untrue and misleading advertising alleged above by virtue of being involved in the billing, and  
27 promotional activities of *Apple*.

28 **Wherefore**, Plaintiffs pray for relief as set forth hereinafter.

1 **For A Fifteenth & Distinct Cause of Action**  
2 **Violation of Cartwright Act §§ 16720 et seq.**  
3 **(As Against Defendant Apple Computer, Inc. and Does 1 through 50, inclusive by Plain-**  
4 **tiffs MACadam Computer, Inc. and Tom Santos)**

5 119. Plaintiffs incorporate by reference paragraphs one through and one hundred eighteen, inclu-  
6 sive, contained herein as if set forth in full herein. The Plaintiffs in this action are customers, competi-  
7 tors, consumers, purchasers and/or others injured by the restraint of trade by *Apple* and therefore have  
8 standing to sue. *Apple* undertook to create its *Apple* Reseller, Specialist and Service Provider networks  
9 to promote, sell and service its products. Plaintiffs accepted their role as Resellers, Specialists and/or  
10 Service Providers and established their own business with their own funds, labors and efforts without  
11 unfair or any competition from *Apple*.

12 120. *Apple* and its partners and/or subsidiaries is engaged in the manufacture, wholesale distribu-  
13 tion and direct retail sale of *Apple* computers, *Apple* software, *Apple* peripherals and certain services  
14 such as extended warranties, repairs and service work. *Apple*, through its direct sales to the public  
15 through online stores, brick and mortar stores and otherwise, directly competes with Plaintiffs and other  
16 similarly situated *Apple* resellers with respect to retail sale of *Apple* computers, *Apple* software and such  
17 above mentioned.

18 121. The acts and omissions of Defendant *Apple* and its partners and/or subsidiaries not only vio-  
19 late the *Cartwright Act* but violate the unfair competition statues of California as well. *Apple* has acted  
20 in concert with FileMaker, CompUSA, Michael France and MacCenters, Kevin Anderson and Com-  
21 puter Stores Northwest, The Mac Store, Richard Haddock and Haddock's Computers, Mac Specialists  
22 and others currently unknown to Plaintiffs at this time.

23 122. As recognized in *United States v. Microsoft*, 84 F. Sup. 2d 9, 14-15 (D.D.C. 1999), aff'd 253  
24 F. 3<sup>rd</sup> 34, 51 (D.C. Cir. 2001) cert. Denied, 534 U.S. 952, 122 S. Ct. 350 (2001), *Apple* computers and  
25 *Apple* operating system software are a distinct and entirely separate product market from other personal  
26 computers. By virtue of the substantial differences in the *Apple* software, computers using the *Apple*  
27 operating system are unique and are not automatically interchangeable with computers utilizing Win-  
28 dows operating software. As a result, *Apple* computers and operating software are an entirely separate  
and distinct product market from other computer systems and operating software.

1 123. *Apple* and its co-conspirators are attempting to monopolize the market for retail sale of *Apple*  
2 computers, operating systems and related services in the United States including California and re-  
3 stricting trade by delaying shipping to Plaintiffs and/or other *Apple* dealers when in demand in order to  
4 force customers to purchase such items from Defendant *Apple*. In doing so, *Apple* is bypassing the  
5 dealers and taking dealer's customers as *Apple*'s own customers and to encourage in failing to ship  
6 products on time, establishing a disparity in *Apple* of pricing and disparaging its dealers as herein ref-  
7 erenced. Defendant *Apple* is seeking to restrain trade by failing to ship products and parts to Plaintiff  
8 and/or other retailers, *Apple* Resellers, Specialists and Service Providers in an effort to eliminate its  
9 trade channel for such persons or entities unfairly using them to increase *Apple*'s sales and/or prices  
10 while unfairly and unlawfully restricting competition.

11 124. Prior to November, 1997, *Apple* did not engage in the direct retail sale of *Apple* computer sys-  
12 tems and related services to consumers. Rather, *Apple* computer systems and related repair and war-  
13 ranty services were sold to end users exclusively through *Apple* Resellers, *Apple* Service Providers and  
14 *Apple* Specialists such as Plaintiffs. Beginning in November, 1997, and apparently pursuant to *Apple*'s  
15 ongoing scheme to monopolize the market for retail sales of *Apple* computers and related services, *Ap-*  
16 *ple* began selling *Apple* computer systems and related services directly to the public via direct online  
17 sales. In its most recent fiscal year, 2002, *Apple*'s direct online sales, including dealers and/or dis-  
18 tributors, were \$2.4 billion. This represented approximately 42% of *Apple*'s total worldwide sales of  
19 goods and services. In addition, during the same period, *Apple* made direct sales to educational institu-  
20 tions located in the United States which totaled \$1.205 billion, or approximately another 21% of *Ap-*  
21 *ple*'s worldwide revenue.

22 125. In furtherance of its scheme to monopolize the retail markets for *Apple* computer systems and  
23 related services, commencing in the latter half of its fiscal year 2001, *Apple* began opening retail stores  
24 in major population centers in direct competition with *Apple* Resellers, *Apple* Service Providers and *Ap-*  
25 *ple* Specialists such as Plaintiffs. By the end of the fiscal year 2002, *Apple* had opened 40 such stores,  
26 including four stores in Los Angeles County, and those stores accounted for \$283 million in net sales,  
27 or 4.93% of *Apple*'s worldwide sales for Fiscal Year 2002. By the end of the first quarter of its fiscal  
28 year 2003 (i.e. by December 28, 2002) *Apple* had opened 51 such stores, which accounted for \$148

1 million of *Apple's* net sales, or slightly more than 10% of *Apple's* worldwide revenues. At the present  
2 time additional stores are under construction in close proximity to Plaintiffs' store. By *Apple's* own  
3 estimate, prior to the end of December, 2002, *Apple* had opened retail stores within 15 miles of 30% of  
4 the U.S. population and was continuing to open new stores at a rapid rate. The *Apple* retail stores are  
5 deliberately targeted to, and concentrated in, large population centers and nearby to existing *Apple* Re-  
6 sellers, Specialists and Service Providers. When authorizing Resellers, Specialists and Service Provid-  
7 ers *Apple* refused to allow them to be located near each other to avoid prejudicial competition and inter-  
8 ference with one store to another. *Apple*, upon openings its stores, still refuses to allow new stores to  
9 open near each other or existing stores when it is convenient for *Apple* to open its own wholly owned  
10 and operated stores next to or nearby its existing dealers who then have trouble obtaining supplies,  
11 equipment, service and/or support and whose customers are contacted and provided with the derogatory  
12 information complained of herein. Plaintiffs are informed and believe and based thereon allege, that  
13 unless restrained or enjoined from restraining trade, *Apple* will continue to open additional retail stores  
14 in furtherance of this plan and scheme to monopolize both the U.S. and local markets for both whole-  
15 sale and retail sale of *Apple* computers and related services and continue restraining trade and dispar-  
16 aging its dealers.

17 126. Plaintiffs are informed and believe and based thereon allege that in addition to its 100% market  
18 share with respect to the manufacture and wholesale distribution of *Apple* computers and operating  
19 systems software, *Apple* substantially dominates the national and local markets for sales of *Apple* com-  
20 puters to end users (i.e. to educational purchasers and retail purchasers.)

21 127. In violation of *Business & Professions Code § 16720*, *Apple* has entered into contracts and  
22 combinations with *Apple* Resellers, *Apple* Service Providers and *Apple* Specialists such as Plaintiffs the  
23 purpose and intent of which were to create or carry out restrictions in trade or commerce; to restrict the  
24 sale certain *Apple* Computers and related warranty and repair services by *Apple* Resellers, *Apple* Service  
25 Providers and *Apple* Specialists such as Plaintiffs; to prevent or restrict competition between *Apple* and  
26 *Apple* Resellers, *Apple* Service Providers and *Apple* Specialists in the retail market for *Apple* computers  
27 and related repair and warranty service,; to facilitate *Apple's* attempted monopolization of all markets for  
28 *Apple* computers and related repair and warranty service; to eliminate all competition by the use of

1 predatory practices; and to eventually facilitate the increase and stabilization of the price of *Apple* com-  
2 puters and related repair and warranty service. Plaintiffs are informed and believe that *Apple* in further-  
3 ance of the foregoing scheme, has engaged in the following acts in restraint of trade and in violation of  
4 the provisions of the *Cartwright Act*.

5 128. Under the express threat of termination of all business relationships with *Apple* and the conse-  
6 quent shutdown of the businesses involved, *Apple* has coerced *Apple* Resellers, *Apple* Service Special-  
7 ists and *Apple* Specialists to enter into Reseller Agreements, Service Provider Agreements and Special-  
8 ist Agreements which contain terms imposed on adhesion basis which either expressly permit, or which  
9 *Apple* has unilaterally interpreted to permit, *Apple* to directly solicit the customers and clients of *Apple*  
10 Resellers, *Apple* Service Specialists and *Apple* Specialists for *Apple's* own account utilizing otherwise  
11 *confidential information* and *trade secrets* concerning those customers and clients which *Apple* re-  
12 quires to be submitted in order to provide warranty service.

13 129. Beginning in 2001, concurrently with the opening of the *Apple* retail stores, and in violation of  
14 its prior representations to Plaintiffs and the provisions of the agreements with Plaintiffs attached  
15 hereto, *Apple* began directly soliciting Plaintiffs' customers utilizing customer information and data that  
16 Plaintiffs' customers were directed to provide to *Apple* through product registration, to purchase *Apple*  
17 computers and related repair and warranty services directly from *Apple* through its retail stores rather  
18 than from Plaintiffs.

19 130. Beginning in or about March, 2003, *Apple* unilaterally imposed upon Plaintiffs and other  
20 similarly situated *Apple* Resellers, *Apple* Service Specialists and *Apple* Specialists new agreement terms,  
21 which were similarly presented in a coercive manner on a "*take it or leave it*" basis, which purport to  
22 require Plaintiffs' acknowledgement of and consent to *Apple's* direct solicitation and sale to Plaintiffs'  
23 customers based on information which *Apple* requires Plaintiffs to disclose to *Apple* as a condition of  
24 remaining an *Apple* Reseller, *Apple* Service Specialist and *Apple* Specialist. Plaintiffs vigorously ob-  
25 jected to the terms of the proposed new agreements, both orally and in writing, and attempted to inter-  
26 lineate the offending language from its latest set of agreements with *Apple* but *Apple*, through its coun-  
27 sel, informed Plaintiffs that unless they agreed to the entire agreement exactly as drafted Plaintiffs'  
28

1 agreements with *Apple* would be terminated. Plaintiffs, having no other choice than to accept *Apple's*  
2 demands or shut down their business, signed the agreements under protest.

3 131. In violation of *Business & Professions Code §§ 16720 & 17045* *Apple* has selectively with-  
4 held from Plaintiffs and other similarly situated *Apple* Resellers and *Apple* Specialists who are engaged  
5 in direct competition with the *Apple* retail stores and *Apple* online sales *Apple's* new and in demand  
6 most desired products such as the *Apple* G4 PowerBook computers, iMacs, iBooks, PowerMacs and  
7 other *Apple* products while simultaneously and continuously selling, shipping and stocking for sale the  
8 same items through *Apple* retail stores and through other preferred customers such as MicroWare-  
9 house, whose President was a member of the Board of Directors of *Apple*.

10 132. In violation of *Business & Professions Code § 17045* *Apple* has, per Plaintiff's information  
11 and belief, secretly extended to the *Apple* retail stores and to certain preferred providers such as  
12 CompUSA special prices on the purchase of *Apple* products which are not available to Plaintiffs and to  
13 others similarly situated for purchase of the identical items, for the purpose of restricting competition  
14 with *Apple* Resellers, Specialists and/or Service Providers and to facilitate *Apple's* intended monopoli-  
15 zation of the retail market for *Apple* computer products and related repair and warranty services.

16 133. In violation of *Business & Professions Code § 17040* *Apple* has sold *Apple* equipment, ex-  
17 tended warranties and Filemaker products (Filemaker is a wholly owned *Apple* subsidiary) to the *Apple*  
18 retail stores at prices substantially below the costs which were offered to Plaintiffs and to other resellers  
19 similarly situated while repeatedly stressing *Apple's* claim that all Resellers were competing with *Apple*  
20 retail stores on a level playing field.

21 134. In violation of *Business & Professions Code § 17043* and for the purpose of injuring *Apple*  
22 Resellers, *Apple* Service Providers and *Apple* Specialists and destroying competition in markets served  
23 or to be served by *Apple* retail stores, *Apple* has sold *Apple* computers and related services through the  
24 *Apple* retail stores at prices which are below Plaintiff's cost of doing business, as defined in *Business*  
25 *& Professions Code § 17026* as set forth in greater detail above.

26 135. Commencing concurrently with the opening of the *Apple* retail stores *Apple* and their agents,  
27 employees, sales associates and/or representatives have engaged in a regular pattern of trade libel and  
28

1 disparagement of Plaintiffs' business, service and products by falsely representing to prospective retail  
2 purchasers and to Plaintiffs' present and former customers that, among other things:

- 3 a.) Plaintiffs provide cheap and/or inferior parts to their customers as compared with the *Apple* re-  
4 tail stores;
- 5 b.) Plaintiffs provide an inferior level of service or no service at all as compared with the *Apple* re-  
6 tail stores;
- 7 c.) Plaintiffs are not certified and/or licensed by *Apple*;
- 8 d.) In violation of California law, the executive team at *Apple* headed by Steve Jobs directed *Apple's*  
9 inside sales personnel to refer potential new customers to the local *Apple* retail store first, sec-  
10 ond to CompUSA if no local *Apple* retail store was convenient and third to the local *Apple* spe-  
11 cialist, if and only if, the potential customer required a demonstration of the product; and
- 12 e.) Plaintiffs switch parts or modules and take components out of other machines to use in repairs,  
13 violating *Apple* warranties and providing customers with no recourse.

14 136. Plaintiffs are informed and believe and based thereon allege that *Apple* has purposefully en-  
15 gaged in the pattern of coercive and predatory conduct described above for the purpose of causing  
16 Plaintiffs and other similarly situated *Apple* Resellers, *Apple* Service Providers and *Apple* Specialists  
17 who are in direct competition with the *Apple* retail stores to either voluntarily forfeit the continued right  
18 to act as *Apple* Resellers, *Apple* Service Providers and *Apple* Specialists or to cause the eventual shut-  
19 down of such businesses through attrition and loss of clientele as a result of the predatory conduct de-  
20 scribed above. Plaintiffs are informed and believe and based thereon allege that the pattern of predatory  
21 conduct and coercive adhesion contracts have been deliberately chosen by *Apple* in lieu of simply ter-  
22 minating the contracts of all *Apple* Resellers, *Apple* Service Providers and *Apple* Specialists located in  
23 proximity to the present and planned *Apple* retail stores in the belief that directly terminating such con-  
24 tracts would result in the immediate commencement of criminal or civil anti-trust claims by various fed-  
25 eral and state agencies.

26 137. *Apple* has engaged in and is continuing to engage in the predatory acts and anti-competitive  
27 conduct describe above with a specific intent to monopolize the retail market for *Apple* computer sys-  
28 tems and related services both in the United States generally and in the State of California. By virtue of

1 *Apple's* total monopoly power with respect to the manufacturer and wholesale distribution of *Apple*  
2 products and its already existing substantial market shares for retail/end user sales, there is a dangerous  
3 probability that *Apple* will achieve monopoly power in relevant United States and California markets for  
4 the sale of *Apple* equipment and related services and software to end users.

5 138. As a direct and proximate result of the unlawful conduct of *Apple*, Plaintiffs have suffered  
6 economic damages. These damages include but are not limited to the loss of sales from Plaintiffs'  
7 former customers which were directly diverted by the predatory and unlawful solicitation of those cus-  
8 tomers by *Apple* utilizing *confidential information* provided to *Apple* by Plaintiffs and by the loss of  
9 sales from customers who were unable to purchase *Apple* products and services through Plaintiffs  
10 when *Apple* improperly withheld such items from Plaintiffs. In addition, Plaintiffs have been forced to  
11 purchase *Apple* computers and *Apple* warranty packages at prices higher than those charged to the *Ap-*  
12 *ple* retail stores and other favored customers. By virtue of the foregoing, Plaintiffs have suffered eco-  
13 nomic damages in an amount to be proven at trial, but believed to be not less than seven million five  
14 hundred thousand dollars (\$7,500,000.00). Pursuant to *Business & Professions Code § 16750*, Plain-  
15 tiffs are entitled to recover three times the amount of actual damages sustained and the attorney's fees  
16 and related expenses incurred in connection with this action.

17 **For a Sixteenth & Distinct Cause of Action**  
18 **Trade Libel**  
19 **(As Against Defendant Apple Computer, Inc. and Does 1 through 50, inclusive by Plaintiffs**  
20 **MACadam Computer, Inc. and Tom Santos)**

21 139. Plaintiffs refer to and incorporate by reference the allegations contained in paragraphs 1  
22 through one hundred thirty eight, inclusive herein above as though fully set forth herein.

23 140. *Apple* and its agents, employees, sales associates and/or representatives have a regular pattern  
24 of making disparaging and false statements about Plaintiffs and Plaintiffs' business, service and prod-  
25 ucts by misrepresenting that, among other things:

- 26 a. Plaintiffs and others similarly situated provide cheap and/or inferior parts to its customers as  
27 compared to the *Apple* retail stores;  
28 b. Plaintiffs as dealers use their own bundles of software which void the warranty;

- 1 c. Plaintiffs employed used equipment or took parts out of other computers to repair *Apple* prod-  
2 ucts which voids the *Apple* warranty;
- 3 d. Plaintiffs only use the term *Apple* “*Specialist*” and it has no meaning other than the word but  
4 when apple uses the term “*Specialist*” you can rely on *Apple*;
- 5 e. Plaintiffs lack the training to properly repair *Apple* equipment;
- 6 f. Plaintiffs generally do not have certified technicians and must refer all repairs directly back to  
7 *Apple*
- 8 g. Plaintiffs as dealers are just middlemen and provide no value to their customers
- 9 h. Plaintiffs and others similarly situated provide an inferior level of service or no service at all as  
10 compared to the *Apple* Retail stores;
- 11 i. Plaintiffs switch parts using non-*Apple*-approved and/or authorized parts to effectuate repairs;
- 12 j. Plaintiffs are not certified and/or licensed by *Apple* to fix computers;
- 13 k. Plaintiffs’ customers should not patronize Plaintiffs and/or that if Plaintiffs’ customers did, in  
14 fact, patronize Plaintiffs that purchases by such customers would not be authorized by *Apple*  
15 and that no warranties would exist on such purchases or be otherwise authorized;
- 16 l. Plaintiffs lack the knowledge and/or skill of similarly situated *Apple* personnel  
17 to effectuate repairs and therefore any repair or service would represent a lesser quality;
- 18 m. Plaintiffs are incompetent;
- 19 n. Plaintiffs are just out there trying to sell *Apple* equipment;
- 20 o. Plaintiffs cheat their customers;
- 21 p. Plaintiffs sell *AppleCare* Protection Plans that do not really cover *Apple* prod-  
22 ucts the same as the *AppleCare* Protection Plans that *Apple* sells. *Apple* claims that it “*guar-*  
23 *anteed 100%*” to fix all *AppleCare* warranty sales but that it will not under such warranties if  
24 sold by an *Apple* Reseller or Specialist;
- 25 q. Plaintiffs are middlemen and therefore customers should deal with *Apple* di-  
26 rectly to cut out the middleman for better deals;
- 27 r. Customers, if making a major purchase, should deal with *Apple* directly rather  
28 than with *Apple* Resellers and/or Specialists;

1 s. Plaintiffs Tom Santos and/or MACadam are computer hackers and/or have  
2 broken into *Apple's* website and have made illegal and/or unlawful accesses to *Apple's* records  
3 and/or files;

4 t. Plaintiffs switch out *Apple* parts from *Apple* products thereby harming their  
5 customers; and

6 u. By acting unscrupulously Plaintiffs defraud consumers. That by going to *Ap-*  
7 *ple* Resellers you really have to “*be aware of what you are getting.*” Such allegations and as-  
8 sertions imply that Plaintiffs are routinely in the habit of violating civil and criminal laws of the  
9 State of California including misdemeanors and felonies. Said allegations by *Apple*, among  
10 other things serve to publish defamatory statements per se to Plaintiffs’ customers and persons  
11 who otherwise reasonably and foreseeable would come into contact with Plaintiffs thereby un-  
12 justifiably dissuading such persons to avoid business and/or transactions with Plaintiffs and  
13 hurt and harm Plaintiffs’ reputation for integrity, competence and business dealings in the  
14 communities in which Plaintiffs and/or others similarly and foreseeable situated reside and/or  
15 conduct business.

16 v. 141. *Apple's* conduct and pattern of conduct was and is offensive and objec-  
17 tionable to Plaintiffs and would be to any persons in Plaintiffs’ business because the Segment  
18 misrepresents Plaintiffs’ business practices and exposes Plaintiffs to a negative light. Further-  
19 more, *Apple* exposed Plaintiffs to this publicity with malice in that *Apple* had actual knowledge  
20 of the falsity of their representations or, at a minimum, acted with reckless disregard for the  
21 truth or falsity of the representations.

22 . 142. *Apple* knew that the false statements would cause damage to Plaintiffs’ business and  
23 reputations. At all times mentioned herein, *Apple* knew that their conduct, as alleged herein, would harm  
24 or at a minimum pose a risk to harm to Plaintiffs’ business and good standing within the Northern  
25 California area.

26 . 143. *Apple* knew that the statements published by it were false and/or exhibited a reckless dis-  
27 regard over the falsity of the statements made. *Apple* published false and harmful statements to the in-  
28 terests of Plaintiff.

1 . 144. As a proximate result of the conduct of the *Apple* Plaintiffs have lost substantial income  
2 and business and have been damaged thereby in an amount subject to proof at the time of trial, but in an  
3 amount believed to be in excess of \$7,500,000.

4 . 145. *Apple*, unless restrained, will continue to defame and injure the Plaintiffs, the Plaintiffs'  
5 reputation and the Plaintiffs' business to great and irreparable injury for which damages would not af-  
6 ford adequate relief, in that they would not completely compensate for the injury to Plaintiffs' business  
7 reputation and goodwill.

8 **Wherefore**, Plaintiffs pray for relief as set forth hereinafter.

9 **For a Seventeenth & Distinct Cause of Action**  
10 **Defamation**  
11 **(As Against Defendant Apple Computer, Inc. and Does 1 through 50, inclusive by Plain-**  
12 **tiffs MACadam Computer, Inc. and Tom Santos)**

13 146. Plaintiffs refer to and incorporate by reference the allegations contained in paragraphs 1  
14 through one hundred and forty five, inclusive herein above as though fully set forth herein.

15 147. On or about August 8, 2003, *Apple* and its agents, employees, sales associates and/or repre-  
16 sentatives defamed Plaintiffs by publishing, on the *Apple* Sales Web (Article L308114-US) and noti-  
17 fied all Resellers, Specialists and warranty Service Providers that “*MACadam was caught repeatedly*  
18 *attempting to electronically access confidential Apple data on other customers. They continued their*  
19 *attempts to access this confidential customer information after being warned by Apple that their re-*  
20 *seller agreement would be terminated if such inappropriate behavior continued. As a result of these*  
21 *repeated offenses, Apple has notified MACadam that their contract is terminated.*” Plaintiff also al-  
22 leged that its dealers including Plaintiffs were cheating the public and *Apple* Computer users as herein  
23 alleged.

24 148. The allegations and publication of *Apple* is untrue in that *Apple* knew that it was untrue at the  
25 time of publication. *Apple* requested Plaintiffs to provide it with data concerning various acts of  
26 wrongdoing brought to its attention by Plaintiffs. After asking Plaintiffs to obtain the information in  
27 the guise of correcting its systems, *Apple* used such research to be exclusively provided to *Apple* to in-  
28 stead accuse Plaintiffs of computer hacking and obtaining illegal and/or unprofessional entry to its

1 computers when there was nothing illegal or unprofessional about Plaintiff's research which was to  
2 have been and/or was provided exclusively to *Apple* to correct the problems that *Apple* had created.

3 149. By publishing the information on *Apple's* website it was sent, read and understood in its de-  
4 famatory sense by numerous third parties including *Apple* resellers, specialists and warranty repair per-  
5 sons. As computer dealers, repair and sales persons such allegations are disparaging and defamatory.  
6 Further, by repeatedly calling customers developed by Plaintiffs and stating that Plaintiff's customers  
7 could not feel secure in business dealings with them, Defendant *Apple* disparaged and defamed Plain-  
8 tiffs. *Apple* has failed and refused to retract its publications in spite of requests by Plaintiff for *Apple* to  
9 do so.

10 150. *Santos* is well known in the *Apple* community and is known to be the owner and president of  
11 MACadam. He is known for, among other things, to be the owner and President of *MACadam*. He is  
12 known to question *Apple's* untoward and/or illegal practices which have been alleged herein. *Apple*, in  
13 seeking to discredit him, alleged that he was caught seeking confidential *Apple* data on other customers  
14 and/or to any activities of either or both Plaintiffs is and/or was lawful but broadcast to all *Apple* dealers  
15 to discredit Plaintiffs and serve as a basis to act in a retaliatory manner making it difficult for Plaintiffs  
16 to obtain further information about *Apple's* predatory practices, given the false appearance of violation  
17 of law, imply that Plaintiffs are computer hackers and portray them in a false and fraudulent manner.  
18 The words used by *Apple* are actionable per se.

19 151. As a direct and proximate result, Plaintiffs have lost business, suffered reduced esteem and  
20 *Santos* has suffered from humiliation, embarrassment and emotional distress.

21 152. The publication was willful, intentional, fraudulent, burdensome, oppressive and/or malicious.  
22 It was made with evil motive and malice, with the intent to injure, disgrace and defame Plaintiffs with the  
23 statements.

24 **For an Eighteenth & Distinct Cause of Action**  
25 **Violation of Song-Beverly Consumer Warranty Act, Cal. Civil Code § 1790 et seq.**  
26 **(As Against Defendant Apple Computer, Inc. and Does 1 through 50, inclusive by Plain-**  
27 **tiffs MACadam Computer, Inc. and Tom Santos)**

28 153. Plaintiffs refer to and incorporate by reference the allegations contained in paragraphs 1  
through one hundred fifty two, inclusive herein above as though fully set forth herein.

1 154. *Apple* has violated the *Song-Beverly Consumer Warranty Act*. The products referenced are  
2 by and large partially or wholly consumer goods within the meaning of *Civil Code § 1791(a)*. The *Ap-*  
3 *pleCare* Protection Plan referenced herein is a service contract within the meaning of *Civil Code §*  
4 *1794.4*.

5 155. Plaintiffs have purchased *Apple* consumer goods for their personal use while residing in Cali-  
6 fornia and which are part of this litigation. Plaintiffs are also third party beneficiaries of the *AppleCare*  
7 warranties and/or protection plans in that they are hired and paid to effectuate covered repairs. *Apple*,  
8 by changing its warranties, coverages and duties, thereby forces Plaintiffs to repair its products and rep-  
9 resent it to the public while failing to pay Plaintiff or provide support for Plaintiff to take care of the  
10 warranty which Plaintiff is obligated to do.

11 156. Plaintiffs are informed and believe, and based thereon allege that *Apple*, within the four years  
12 last past violated the provisions of the *Song-Beverly Consumer Warranty Act, Cal. Civil Code § 1790*  
13 *et seq.* by, among other things:

- 14 a. Failing to make available to Plaintiffs sufficient functional parts to effect repairs in violation of  
15 *Cal. Civil Code § 1793.03* and thereby interfering with Plaintiffs' warranty and service con-  
16 tracts with existing customers, as alleged above;
- 17 b. Failing to provide compliance with §§ 1792 through 1795.7 of the *Song-Beverly Consumer*  
18 *Warranty Act*;
- 19 c. Failing to label repair invoices as required by §§ 1793.1(a)(1) & (2) of the *Song-Beverly Con-*  
20 *sumer Warranty Act*;
- 21 d. Failing to have appropriate, current or any valid licenses at repair facilities;
- 22 e. Repeatedly violating the *Song-Beverly Consumer Warranty Act*;
- 23 f. Repeatedly failing to cooperate with the *California Bureau of Electronic Repairs*;
- 24 g. Repeatedly failing to make disclosures under the *Song-Beverly Consumer Warranty Act*;
- 25 h. By virtue of *Apple's* refusal to accept defective products back from Plaintiffs, *Apple's* failure to  
26 acknowledge receipt of returned equipment; *Apple's* record keeping system and "scoring"  
27 system with respect to repairs, and *Apple's* failure to appropriately reimburse Plaintiffs for war-  
28 ranty work performed by Plaintiffs, all as alleged above, *Apple*, depriving Plaintiffs of appropri-



1 provided written ways to *Apple* to correct its conduct. The warning is a precondition to filing suit. De-  
2 fendant *Apple* has not corrected or remedied any of the complaints when given such notice and has pro-  
3 ceeded on an ongoing basis to continue such conduct, thereby continuing to proximately damage Plain-  
4 tiffs. Plaintiff therefore sues said Defendant and seeks recovery of damages for all violations occurring  
5 within the three years preceding this lawsuit.

6 162. Each Plaintiff had purchased *Apple* Computer equipment from *Apple*. Each was deprived of  
7 warranty coverage and/or repairs. This included *AppleCare* Protection Plan modules not received, *Ap-*  
8 *pleCare* Protection Plan not being properly or at all started, consistent mis-billings, accounting prob-  
9 lems, consistent defective replacement parts, excessive delays in receiving telephone support, misrepre-  
10 sentations as to what *AppleCare* Protection Plan warranties covered and what they did not including  
11 non-existent differences in coverage based upon whether *Apple* sold the product directly or not, lack of  
12 responsiveness in returned telephone calls, backlog of available parts, lack of testing of parts repaired  
13 by *Apple*, dispatch issues, mis-identification of parts, failure to document repairs, consistent third party  
14 RAM and other RAM issues and so forth. Plaintiffs repeatedly notified and communicated with *Apple*.  
15 *Apple* acknowledged receipt of said notices and promised to resolve said problems. Among the pur-  
16 chases made were those personally for each Plaintiff intended for Plaintiffs' own use. Additional  
17 transactions and purchases were made for Plaintiffs' customers in addition to services and purchases  
18 made by each Plaintiff individually for their own use.

19 163. Over 30 days lapsed since the filing of Plaintiff's original notice to *Apple* and *Apple* has  
20 failed to address said problems. Plaintiffs and each of them had notified *Apple* as early as 1995 of said  
21 problems but *Apple* has failed to address them. Thereafter, Plaintiffs repeatedly notified *Apple* includ-  
22 ing as herein alleged of the issues confronting each Plaintiff and *Apple*. While conceding the merit of  
23 Plaintiffs' complaints *Apple* failed to fully and/or at all address the issues to correct the problems.

24 164. In addition to Plaintiffs' communications with *Apple*, numerous other persons and *Apple*  
25 dealers each communicated the same or similar complaints to *Apple*. *Apple* has had more than substan-  
26 tial opportunity to correct the problems alleged herein but has repeatedly failed and refused to do so.  
27 *Apple*'s own legal staff as well as other employees at *Apple* agreed orally and in writing that the com-  
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plaints communicated to *Apple* were justified and that *Apple*'s accounting and responses were “*confusing and Apple was overfilling in repairs.*” While conceding the “*logistical nightmare*” that *Apple* confronts its consumers with, *Apple* has failed and refused to address the situation in a manner designed to correct it.

165. *Apple* violated the *California Consumer Legal Remedies Act, Civil Code §§ 1750 et seq*, including § 1770(8) *inter alia*, by disparaging Plaintiffs' goods, services and/or business by false or misleading representations of fact and/or § 1770(19) by maintaining unconscionable provisions in contracts thereby entitling Plaintiffs to costs and attorneys fees according to proof as allowed by law at the time of trial.

**For a Twentieth & Distinct Cause of Action  
Violation of Unruh Act and Civil Code § 51 et seq.  
(As Against Defendant Apple Computer, Inc. and Does 1 through 50, inclusive by Plaintiff MACadam Computer, Inc.)**

166. Plaintiff refers to and incorporate by reference the allegations contained in paragraphs 1 through one hundred sixty five, inclusive herein above as though fully set forth herein.

167. *Apple* has wrongfully and unlawfully excluded Plaintiff Tom Santos from access to and use of its public web sites and have sought to restrict his use and that of *MACadam* to that which is other and less than allowed to all other persons including the general public who are given access to the web site by *Apple*. *Apple* falsely claimed among other things that Plaintiffs crashed its web services when in fact *Apple* services were Microsoft Windows NT systems that routinely needed to be shut down and re-started for normal maintenance purposes. To cover up its restrictions, *Apple* claimed that Plaintiffs were hackers who crashed the website when in truth and fact Plaintiffs were not. Defendant sought to retaliate against Plaintiff for uncovering wrongdoings by *Apple* and calling the same to *Apple*'s attention. Plaintiff even obtained the consent of *Apple* to disclose information to it to enable *Apple* to correct billing and warranty problems occasioned by *Apple* that appear to represent in an ongoing pattern, practices and process which deprived Plaintiffs and Plaintiffs' customers from receiving the benefits of *Apple* warranty and protection plan services.

168. Further as a result of his status as a whistle blower, Defendant *Apple* has deauthorized Plaintiff *MACadam* as a duly authorized *Apple* Specialist, Reseller and Service Provider and unlawfully retali-

1 ated against Plaintiffs *MACadam* and Tom Santos as well, denying them not only access to *Apple's*  
2 website but access to equal service and availability of goods.

3 169. *Apple* acted with knowledge of the affect that its conduct was having on whistle blowers and/or  
4 other authorized *Apple* Resellers, Specialists and Service Providers. *Apple* acted in a retaliatory manner  
5 to discriminate against Plaintiff for exercising statutory and/or other legal rights contrary to public pol-  
6 icy.

7 170. *Apple* has no just cause to discriminate against Plaintiffs. *Apple* has sought to restrict Plain-  
8 tiff's use because it believes that Plaintiffs are whistle blowers who have access the web site only to  
9 learn of unfair, unlawful, fraudulent, and illegal practices by *Apple* which have violated California law  
10 and public policy. To deter Plaintiff from obtaining such otherwise publicly available information  
11 and/or deter Plaintiffs from suing *Apple*, *Apple* has deauthorized Plaintiff *MACadam* as a Reseller,  
12 Specialist and Service Provider and has sought to destroy it as an economic entity, thereby adversely  
13 affecting both Plaintiffs.

14 171. As a result of *Apple's* intentional conduct towards Plaintiffs, *Apple* has directly and proxi-  
15 mately caused Plaintiff Tom Santos emotional distress in amounts according to proof at the time of  
16 trial.

17 172. As a result of *Apple's* conduct towards Plaintiffs, Plaintiffs are entitled to exemplary and pu-  
18 nitive damages in such amounts as are allowed by operation of law and according to proof at the time of  
19 trial.

### 20 **Demand for Jury Trial**

21 A jury trial in the above entitled matter is hereby demanded. As to those matters not conclusively entitle  
22 trial, an advocacy jury is requested.

### 23 **Prayer for Relief**

24 **Wherefore**, without expressly waiving any rights herein and reserving all rights allowable at law,  
25 Plaintiffs pray for judgment according to proof as allowed by operation of law against each Defendant  
26 as follows:  
27

- 1 1. For the sum of \$7,500,000.00 and such other general damages, compensation and relief ac-  
2 cording to proof at the time of trial as permitted by operation of law for Plaintiffs *MACadam*  
3 *Computers, Inc.* and Tom Santos individually;
- 4 2. For all such damages, compensation and relief according to proof at the time of trial as permit-  
5 ted by operation of law on behalf of Plaintiffs and all others similarly situated and so affected;
- 6 3. For all special and/or consequential damages for Plaintiffs as permitted by operation of law  
7 and according to proof at the time of trial as permitted by operation of law;
- 8 4. In the alternative, in accordance with *Code Civ. Proc. § 425.10*, Plaintiffs pray for judgment in  
9 the sum of ten million dollars in addition to and/or in lieu of any other damages sought herein  
10 in the event of a default. This request conforms to due process requirements for default judg-  
11 ments under California law is not offered to determine diversity under *United States Constitu-*  
12 *tion, Article III, § 2* and *28 U.S.C. § 1332*.
- 13 5. For specific performance as sought and/or pleaded herein above according to proof at the time  
14 of trial as permitted by operation of law;
- 15 6. Pursuant to *Bus. & Prof. Code §§ 17203 and 17535* and the equitable and/or statutory pow-  
16 ers of this Court, Plaintiffs pray that *Apple* be preliminarily and permanently enjoined from  
17 retaliating against Plaintiffs, and enjoined to cease the unlawful, unfair and/or fraudulent busi-  
18 ness acts or practices described herein above and that *Apple* be ordered to restore to the gen-  
19 eral public all funds acquired by means of any act or practice declared by this Court to be un-  
20 lawful or fraudulent or to constitute unfair competition under the *Bus. & Prof. Code §§ 17200*  
21 *et seq.*, or untrue or misleading advertising under *§ 17500 et seq.*
- 22 7. For injunctive relief as appropriate including Temporary Restraining Orders, Preliminary In-  
23 junctions and/or Permanent Injunctions.
- 24 8. For interest at the rate of 10 percent per annum or as permitted by operation of law;
- 25 9. For costs of suit herein incurred as permitted by operation of law according to proof;
- 26 10. For prejudgment interest as permitted by operation of law according to proof at the time of  
27 trial;

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- 11. For reasonable attorneys fees and costs as permitted by operation of law according to proof at the time of trial;
- 12. For an accounting;
- 13. For punitive damages and/or the enforcement of all penalties as is appropriate in such amounts sufficient to deter and make an example of Defendants according to proof at the time of trial as permitted by operation of law;
- 14. For such other and further relief as the court may deem just and proper and as permitted by operation of law.

Dated:

\_\_\_\_\_  
Marcus Daniel Merchasin  
Attorney at Law