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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

RUSS SEMERAN on behalf of himself and
all others similarly situated,

Plaintiff,

v.

BLACKBERRY CORPORATION., a
Delaware corporation; and DOES 1 through
10, inclusive,

Defendants.

CASE NO.

CLASS ACTION COMPLAINT FOR:

- 1. Violations of New Jersey’s Consumer Fraud Act, N.J.S.A. § 56:8-2, et seq. and Substantially Similar Law of Certain Other States;**
- 2. Breach Of Express Warranties;**
- 3. Breach Of Implied Warranties;**
- 4. Violations of Magnuson Moss Warranty Act, 15 U.S.C. § 22301, et seq.**
- 5. Negligent Misrepresentation**
- 6. Unjust Enrichment**

JURY TRIAL DEMANDED

All allegations in this Complaint are based upon information and belief, except those allegations that pertain to Plaintiff, which are based on personal knowledge. Plaintiff’s information and belief are based upon, *inter alia*, Plaintiff’s own investigation and the investigation conducted by Plaintiff’s attorneys. Each allegation in this Complaint either has evidentiary support or, alternatively, is likely to have evidentiary support after a reasonable opportunity for further investigation and/or discovery. Plaintiff alleges as follows:

I. THE PARTIES

(Local Rule 10.1)

1. The names and addresses of the named parties to this action are (1) Russ

1 Semeran (“Plaintiff”) of Bergen County, New Jersey; (2) Blackberry Corporation (“Blackberry”
2 or “Defendant”), a corporation of the State of Delaware with a principal place of business in
3 Ontario, Canada.

4 **II. THE NATURE OF THE ACTION**

5 2. Plaintiff brings this action for actual damages, equitable relief, including
6 restitution, injunctive relief, and disgorgement of profits, and all other relief available on behalf
7 of himself and all similarly-situated individuals and entities (the “Classes” or “Class Members”)
8 who purchased a Blackberry Cellular “Smart” Telephone Devices from Defendant containing
9 numerous defects including, but not limited to, (1) randomly merging the consumer’s contacts
10 thereby rendering their contact list useless; (2) failure of the photo application to permit the user
11 to manage the size and resolution of photographs for the purposes of emailing; and (3) failure to
12 support the Yahoo! Calendar (collectively the “Defects”). The complaints also contend that the
13 cellular “smart” telephone devices require repairs, which fail to correct the Defects. Upon
14 information and belief, these Defects exists in the Blackberry Cellular “Smart” Telephone
15 Devices running the BlackBerry 10 mobile operating system including but not limited to model
16 numbers Z30, Z10, Z3, Q10, Q5, P'9982, and P'9983 (“Blackberry 10 Series Cellular
17 Telephones”).

18 3. All of the claims asserted herein arise out of Blackberry’s design, manufacture,
19 warranting, advertising and selling of the Blackberry 10 Series Cellular Telephones.

20 4. Blackberry knew, or was reckless in not knowing, that the Blackberry 10 Series
21 Cellular Telephones contained Defects and would therefore would not perform as promised.
22 Blackberry had sole and exclusive possession of this knowledge.

23 5. Notwithstanding this knowledge, Blackberry made uniform and material
24 misrepresentations and uniformly concealed material information in its marketing, advertising,
25 and sale of the Blackberry 10 Series Cellular Telephones, which Blackberry knew to be
26 defective, both at the time of sale and on an ongoing basis.

27 6. At all times, in every communication, Blackberry made uniform written
28 misrepresentations to and/or uniformly concealed from Plaintiff, the members of the Classes

1 and everyone in the chain of distribution the Defect in the Blackberry 10 Series Cellular
2 Telephones, and failed to remove the Blackberry 10 Series Cellular Telephones from the
3 marketplace or take adequate remedial action. Instead, Blackberry sold and serviced Plaintiff's
4 Blackberry 10 Series Cellular Telephones even though it knew, or was reckless in not knowing,
5 that the Blackberry 10 Series Cellular Telephones were defectively designed and would
6 ultimately result in Plaintiff's and the members of the Classes' inability to use their Blackberry
7 10 Series Cellular Telephones, for its intended purpose during the time Plaintiff and the
8 members of the Classes reasonably expected they would have use of the Blackberry 10 Series
9 Cellular Telephones.

10 7. The Blackberry 10 Series Cellular Telephones have in fact failed prematurely,
11 whether within or outside of Case applicable warranty periods.

12 8. As a consequence of Blackberry's false and misleading statements and active
13 and ongoing concealment of the Defect, Plaintiff and the Class Members purchased and
14 currently own defective Blackberry 10 Series Cellular Telephones and have incurred damages.

15 9. Plaintiff assert claims on behalf of themselves and the Class Members under the
16 New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-2, et seq. (the "CFA") and similar state laws.
17 Plaintiff also asserts claims on behalf of himself and the Classes for fraudulent
18 concealment/nondisclosure, breach of implied and express warranties, and negligent
19 misrepresentation under New Jersey law.

20 III. THE PARTIES

21 10. Plaintiff Russ Semeran is, and at all times alleged in this Class Action Complaint
22 was, an individual and a resident of Bergen County, New Jersey. On June 5, 2013, he
23 purchased a new Blackberry 10 Series Cellular Telephone from TMobile in Paramus, New
24 Jersey for \$620.59 including tax and other charges.

25 11. At all times, Plaintiff followed the use and care instructions that were included
26 with his Blackberry 10 Series Cellular Telephones.

27 12. Soon after Plaintiff purchased his 10 Series Cellular Telephones phone, he
28 experienced the Defects alleged within all warranty periods. Prior to Plaintiff's purchase of the

1 Blackberry 10 Series Cellular Telephones, he was unaware of the Defects and defendant
2 Blackberry failed to warn or disclose the Defects to Plaintiff. Had Blackberry disclosed such
3 material facts, Plaintiff would not have purchased the 10 Series Cellular Telephones or paid the
4 prices he paid for the defective phone.

5 13. Plaintiff repeatedly tried to resolve the Defects prior to filing this action, all of
6 which failed to remedy the defect he has consistently experienced. Plaintiff complained to
7 Blackberry concerning the Defects. Indeed, Plaintiff interfaced with Defendant's technical
8 support, and the technical support of his wireless provider, T-Mobile, for several months.
9 Ultimately, Plaintiff was advised by Defendant that there was not a successful repair for the
10 Defects available.

11 14. To date, Plaintiff's Blackberry 10 Series Cellular Telephones does not function
12 as represented.

13 15. Plaintiff received a phone of lesser value than the Blackberry 10 Series Cellular
14 Telephones promised and has suffered and will continue to suffer ascertainable loss. The
15 difference in value between the product promised and the one received can be reasonably
16 quantified by a review of the cost of comparable Blackberry 10 Series Cellular Telephones by
17 Blackberry's competitors.

18 16. Blackberry Corporation ("Blackberry") is a Delaware corporation and has its
19 principal place of business located in Waterloo, Ontario, Canada. Its U.S. headquarters is
20 located in Irving, Texas. Blackberry Corporation is a registered corporation with the New
21 Jersey Secretary of State (Entity Number: 0100862227). Plaintiff is informed and believes, and
22 thereon alleges, that a substantial portion of the activities at issue in this Complaint occurred,
23 were conducted, and/or were directed and emanated from New Jersey.

24 17. Defendant Blackberry marketed and sold, and continues to market and sell, its
25 Blackberry 10 Series Cellular Telephones in the state of New Jersey and nationwide.
26 Blackberry has transacted, and continues to transact, business in New Jersey and nationwide
27 through the dissemination of advertisements for, and sale of, its Blackberry 10 Series Cellular
28 Telephones.

1 18. Defendant and DOES 1-10, and each of them, are responsible for the acts and
2 omissions of the others and are parties acting in active concert and participation with each other.
3 These parties have acted, and continue to act, in concert with each other, and have aided and
4 abetted each other, cooperated with each other in the planning of, participation in, and
5 facilitation of, the selling, marketing, promoting, and distributing Blackberry 10 Series Cellular
6 Telephones. Defendant and DOES are collectively referred to as “Defendants.”

7 19. Defendants are engaged in the manufacturing, labeling, advertising, promotion,
8 marketing, offering for sale, sale, and/or distribution of Blackberry 10 Series Cellular
9 Telephone to consumers throughout the State of New Jersey and nationwide. Defendants
10 advertise, promote, and offer for sale Blackberry 10 Series Cellular Telephones by way of the
11 internet, retail stores, and through other means.

12 **IV. JURISDICTION AND VENUE**

13 20. This court has subject matter jurisdiction over this action pursuant to the Class
14 Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2), because at least one class member is of
15 diverse citizenship from the Defendant, a corporation incorporated in the State of Delaware;
16 there are more than 100 Class Members nationwide; and the aggregate amount in controversy
17 exceeds \$5,000,000.

18 21. The court has personal jurisdiction over the parties because of Blackberry’s
19 many and important contacts with the State of New Jersey. Defendant has an office and
20 conducts substantial business in New Jersey, has had systematic and continuous contacts with
21 New Jersey, promotes its products in New Jersey, puts its Blackberry 10 Series Cellular
22 Telephones into the stream of commerce in New Jersey and has agents and representatives that
23 can be found in New Jersey.

24 22. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part
25 of the events giving rise to the claims occurred out of this District, and Blackberry’s conduct
26 has injured Class Members residing in this District. Blackberry transacts business and maintains
27 a principal place of business within this District. Accordingly, this court has jurisdiction over
28 this action and venue is proper in this Judicial District.

1 ///

2 **V. GENERAL ALLEGATIONS**

3 **Blackberry's 10 Series Cellular Telephone Product Line**

4 23. BlackBerry 10 is a proprietary mobile operating system developed by
5 BlackBerry Limited for its BlackBerry line of smartphone and tablet handheld devices.

6 24. The BlackBerry 10 mobile operating system is based on the QNX operating
7 system, which is popular in industrial computers and used in many car computers.

8 25. The Blackberry 10 Series Cellular Telephones were first made available in or
9 about January of 2013.

10 26. Amongst the features of the Blackberry 10 operating system is BlackBerry®
11 Link ("BB Link"). This feature allows users to sync and organize music, documents, photos,
12 and videos between a Blackberry10 device and a computer. It is compatible with Mac and PC,
13 and supports iTunes and Windows Media Player. Syncs are done over Wi-Fi or USB.
14 BlackBerry Link also facilitates device switches from Android and iOS as well as BB10
15 software updates. Link transfers contacts, files, calendars, tasks, bookmarks, alarm clocks,
16 SMS, phone logs, WLAN profiles and other information between devices.

17 27. Devices running BlackBerry 10 include the Z30, Z10, Z3, Q10, Q5, P'9982 and
18 P'9983 models of "smart" cellular telephones.

19 **Defects in the Blackberry 10 Series Cellular Telephones**

20 28. Plaintiff and the members of the Classes use their Blackberry 10 Series Cellular
21 Telephones for business and personal use and perform such tasks as placing and receiving
22 telephone calls, drafting, sending and receiving emails and accessing the internet.

23 29. At all relevant times, Plaintiff and the members of the Classes have used their
24 Blackberry 10 Series Cellular Telephones in a foreseeable manner and in the manner in which
25 they were intended to be used.

26 30. Upon information and belief, the Blackberry 10 Series Cellular Telephones are
27 defective in its design and manufacturing in that they have design defects in their software
28 rendering them unusable and inoperable for critical functions.

1 31. Specifically, the contact application randomly merges contacts store in the phone
2 thereby rending users unable to make calls by retrieving their contacts through the device.
3 Many users have complained to Blackberry about this defect on the company's website support
4 forum:

5 I'm having the exact same problem. I have my work email added, twitter, facebook,
6 and some local contacts (which I copied to my SIM card but the Z10 has since
7 wiped all of them from the contact app, or at least nothing shows up when you
8 narrow the focus to SIM contacts).

9
10 The Blackberry is merging sometimes up to 3 totally different unrelated people with
11 completely different information, names, etc, into single contacts.

12 Example:

13 Contact A: Dad

14 Contact B: Lisa

15 Contact C: Jon Snow

16 Final merged contact:

17 Dad Snow

18 Dad's cell number becomes the work number for new contact "Dad Snow"

19 Lisa's home phone becomes this new contacts cell number

20 Original Jon Snow's email address remains the email address for this new contact.

21 None of these people are related or share any similar information at all.

22 The "automatically merging" and "linking" is very very wonky and a terrible
23 execution of an otherwise good idea. This happens randomly, without me doing
24 anything. I have a Z10 running 10.1.0.2014. It doesn't seem to affect my
25 "enterprise" email contacts (from Exchange).

26 RobBrodofske

27 07-10-2013 11:52 AM

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Edited 07-10-2013 11:55 AM¹

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This was happening to me constantly.... This is DEFINITELY a problem within BB10. It's crazy that a system would allow any kind of automatic linking of contacts.

rambo47

07-10-2013 09:55 PM

.....

I am also having this problem. I have 3 accounts that sync contacts wirelessly (Office 365). Random merges occur WITHIN the same account, and also ACROSS accounts. The contacts that merge (may be as many as 40 links to one original contact) do not seem to have anything specific in common and they are absolutely NOT meant to be merged.

This results in a lot of handwork to unlink these contacts. If, for instance, contact A is incorrectly linked to contacts B, C, D, E, and F, I cannot just tap 'unlink' for B, C, D, E, and F and be done with it. If I do that, and then click 'save', that results in contact A being alright, and then having contact B still linked to C, D, E and F. So, I have to unlink contact B from contact A. Then press save, wait for that to take effect (number of links goes down by one). Then go back into the linked contacts and repeat for all linked contacts. You never know, nor can you see at a glance, which of your contacts has incorrect links, and there may be as many as 40 links to one contact. It is a hellish job.

To make matters worse, if I have successfully rearranged/unlinked my 500+ contacts, they may decide to spontaneously merge in obscure ways the next day.

Cvdburgh

11-25-2013 04:03 AM

¹ Complaints taken from <http://supportforums.blackberry.com/t5/BlackBerry-Q10/Contacts-app-randomly->

1 32. Additionally, the photo application provided on the Blackberry 10 Series
2 Cellular Telephones fails to permit the user to manage the size and resolution of photographs
3 for the purposes of emailing. Again, many users have taken to Blackberry's forum support
4 webpage to complaint of this defect:

5 You cant control the image size for pictures when sending as attachments in email.
6 In previous Os 6 & 7 you could select, "smaller, mid size, large or original". These
7 options are gone.

8 Shuvav

9 02-12-2013 01:52 PM

10

11 Wow amazing!! So anyone that uses their blackberry to send multiple photos in an
12 email is FORCED to send actual file sizes. Where is the old Dialogue for image size
13 (Original, Large, Medium, and small)? Hmm - Z10 camera only takes full size
14 images (not a bad thing). But are you ready to send an email with multiple photos at
15 say 10MB-25MB size. (when you are roaming??)

16
17 Another example of how blackberry took a properly functioning task from old OS
18 and completely FORGOT to keep it in the OS for BB10. How did Beta testers miss
19 ALL of the small things that are missing on the new OS? Wake up Blackberry!!!

20 Balfas²

21 02-26-2013 08:43 PM

22 edited 02-26-2013 08:49 PM

23 Help please

24 33. Additionally, the Blackberry 10 Series Cellular Telephones fail to support widely
25 utilized applications such as Yahoo Calendar. As the Yahoo! Help website explains:

26
27 [merging-contacts/td-p/2453487](#) (pages last viewed December 17, 2014)

28 ² <http://supportforums.blackberry.com/t5/BlackBerry-Z10/Cant-send-Pictures-in-smaller-size-format/td-p/2159571>

1 ... it is no longer possible to sync Yahoo Calendar with BlackBerry devices....

2 While syncing your Yahoo Calendar to your BlackBerry may have worked in the
3 past, this operation is no longer supported. If you are no longer able to sync your
4 Blackberry to your Yahoo Calendar, we apologize but we will not be able to assist
5 you with this issue. Yahoo and RIM BlackBerry are currently working on a
6 resolution to sync your Yahoo Calendar to your BlackBerry; we do not currently
7 have an estimated time on this resolution³.

8
9 34. Plaintiff and the Class Members reasonably expected Blackberry to disclose the
10 existence of the Defects that were known to Blackberry at the time of sale.

11 35. Because of the Defects, Plaintiff's Blackberry 10 Series Cellular Telephones
12 failed to perform as expected during their expected useful life, within or outside applicable
13 warranty periods.

14 36. The Defect rendered the Blackberry 10 Series Cellular Telephones unfit for the
15 ordinary purpose for which Blackberry 10 Series Cellular Telephones are sold at the time they
16 were sold to Plaintiff and members of the Classes.

17 37. The Blackberry 10 Series Cellular Telephones have uniform design defects as
18 well as manufacturing software defects.

19 38. In purchasing the Blackberry 10 Series Cellular Telephones, Plaintiff and the
20 members of the Classes legitimately expected them to operate in accordance with all of its
21 intended purposes.

22 39. The Defects presence are material because the defects cause the phones to
23 repeatedly freeze or turn off, causing Plaintiff and Class Members to miss phone calls, alerts,
24 messages, e-mails, and alarms, and frequently lose data due to the defect.

25 40. The Defect are material because neither Plaintiff, Class Members, nor any
26 reasonable consumer would have purchased the defective Blackberry 10 Series Cellular

27 _____

28 ³ <https://help.yahoo.com/kb/mail/unable-sync-yahoo-calendar-blackberry-sln5817.html?impressions=true>

1 Telephones had they known of the Defects, and such phones would not pass without objection
2 in the trade or industry.

3 41. The Defects, which manifests during the expected useful life of the Blackberry
4 10 Series Cellular Telephones, both within and outside applicable warranty periods, is
5 substantially likely to prevent the Blackberry 10 Series Cellular Telephones from performing
6 their essential function, making it impossible for Plaintiff to use their Blackberry 10 Series
7 Cellular Telephones as intended during its expected useful life.

8 42. As a result of the Defects alleged herein, Plaintiff and the members of the
9 Classes have experienced failure of their Blackberry 10 Series Cellular Telephones, did not get
10 what they paid for, and have incurred actual damages.

11 **Defendants' Knowledge of the Defects in the Phone**

12 43. Before it sold the Blackberry 10 Series Cellular Telephones, Blackberry knew, or
13 was reckless in not knowing, that the Blackberry 10 Series Cellular Telephones contained
14 Defects including but not limited to, (1) randomly merging the consumer's contacts thereby
15 rending their contact list useless; (2) failure of the photo application to permit the user to
16 manage the size and resolution of photographs for the purposes of emailing; and (3) failure to
17 support the Yahoo! Calendar.

18 44. As detailed above, consumers have lodged complaints about their experiences
19 with the defects. Complaints about the defect have been posted by on various websites
20 including Defendants' own forums. Nevertheless, Defendants continued to market and sell
21 these phones without curing the Defects or disclosing their existence to consumers. Instead,
22 Blackberry refuses to properly address and rectify the problem and has failed and refused to
23 reimburse customers for damage, replacement, upgrades or repairs.

24 45. At all times relevant hereto, Defendants knew, and had reason to know, or should
25 have known, that the Blackberry 10 Series Cellular Telephones were negligently designed,
26 manufactured, assembled, inspected, marketed, advertised, promoted, sold, and/or distributed in
27 a defective condition, and were fully capable of taking remedial proper remedial action, but
28 failed and/or refused to do so.

1 46. Blackberry did not implement a plan to properly address the Defects and instead
2 manufactured and sold subsequent models that contained the same Defects.

3 47. Plaintiff and the other members of the Classes had, and have, no meaningful
4 choice in determining the time limits of the express and implied warranties. Moreover, a gross
5 disparity in bargaining power exists between Blackberry and the Plaintiff and other Class
6 Members.

7 48. Blackberry's attempts to limit the express and implied warranty to one year, as
8 well as its attempt to disclaim all implied warranties is unconscionable under these
9 circumstances

10 49. Blackberry knew, or should have known from its own warranty database, that the
11 repairs it recommended would not cure the Defects. Nonetheless, it refuses to refund all
12 customers or replace the Blackberry 10 Series Cellular Telephones with ones that function
13 properly.

14 50. Blackberry knew that consumers were unaware of the latent Defects and that
15 they reasonably expected the Blackberry 10 Series Cellular Telephone to properly perform such
16 tasks as placing and receiving telephone calls, drafting, sending and receiving emails and
17 accessing the internet. Blackberry also knew that customers expected Blackberry to disclose a
18 defect that would prevent the Blackberry 10 Series Cellular Telephone from performing their
19 function long before the end of their expected useful lives, and that such disclosure would
20 impact consumers' decision whether to purchase the Blackberry 10 Series Cellular Telephone.
21 Blackberry knew and intended for consumers to rely on its material omissions with regard to the
22 Defects when purchasing the Blackberry 10 Series Cellular Telephone.

23 51. As a result of Blackberry's uniform omissions and misrepresentations in its
24 marketing and advertising, Plaintiff believed that the Blackberry 10 Series Cellular Telephone
25 they purchased would operate without defects, and Plaintiff purchased a Blackberry Blackberry
26 10 Series Cellular Telephone in reliance on that belief.

27 **Defendants' Omission and Misrepresentations**

28 52. Blackberry failed to adequately design, manufacture, and/or test the Blackberry

1 10 Series Cellular Telephone to ensure that they were free from Defects, and/or knew, had
2 reason to know, or was reckless in not knowing of the Defects when it uniformly warranted,
3 advertised, marketed and sold the Blackberry 10 Series Cellular Telephone to Plaintiff and the
4 Classes.

5 53. Blackberry did not disclose to its customers the fact that the Defects existed at
6 the time of sale and that the Defects would render the Blackberry 10 Series Cellular Telephone
7 unable to perform their essential function well before the end of their expected useful lives. Nor
8 did Blackberry disclose that warranty or the recommended post-warranty repairs would not cure
9 or rectify the Defects in the Blackberry 10 Series Cellular Telephone.

10 54. Blackberry had the capacity to, and did, deceive consumers into believing that
11 they were purchasing Blackberry 10 Series Cellular Telephone that were free from defects and
12 could be used for business and personal use to perform such tasks as placing and receiving
13 telephone calls, drafting, sending and receiving emails and accessing the internet.

14 55. Blackberry actively concealed from and/or failed to disclose to Plaintiffs, the
15 Classes, and everyone, the true defective nature of the Blackberry 10 Series Cellular Telephone,
16 and failed to remove the Blackberry 10 Series Cellular Telephone from the marketplace or take
17 adequate remedial action. Blackberry represented that the Blackberry 10 Series Cellular
18 Telephone were free of defects even though it knew or was reckless in not knowing when it sold
19 the Blackberry 10 Series Cellular Telephone that they contained defects that would render them
20 unusable. Furthermore, Blackberry sold and serviced the Blackberry 10 Series Cellular
21 Telephone even though it knew, or was reckless in not knowing, that they were defective and
22 that Plaintiff and Class members would be unable to use the Blackberry 10 Series Cellular
23 Telephone for their intended purpose for the duration of their expected useful life Blackberry
24 had the capacity to, and did, deceive consumers into believing that they were purchasing
25 Blackberry 10 Series Cellular Telephone that were free from defects and could be used for
26 business and personal use to perform such tasks as placing and receiving telephone calls,
27 drafting, sending and receiving emails and accessing the internet.

28 56. Blackberry actively concealed from and/or failed to disclose to Plaintiffs, the

1 Classes, and everyone, the true defective nature of the Blackberry 10 Series Cellular Telephone,
2 and failed to remove the Blackberry 10 Series Cellular Telephone from the marketplace or take
3 adequate remedial action. Blackberry represented that the Blackberry 10 Series Cellular
4 Telephone were free of defects even though it knew or was reckless in not knowing when it sold
5 the Blackberry 10 Series Cellular Telephone that they contained Defects that would render them
6 unfit for their usual purposes. Furthermore, Blackberry sold and serviced the Blackberry 10
7 Series Cellular Telephone even though it knew, or was reckless in not knowing, that they were
8 defective and that Plaintiff and Class Members would be unable to use the Blackberry 10 Series
9 Cellular Telephone for their intended purpose for the duration of their expected useful life.

10 **Fraudulent Concealment**

11 57. Plaintiffs' claims arise in part out of Blackberry's fraudulent concealment of the
12 Defects. To the extent that Plaintiff's claims arise from Blackberry's fraudulent concealment,
13 there is no one document or communication, and no one interaction, upon which Plaintiff base
14 their claims. They allege that at all relevant times, including specifically at the time they
15 purchased their Blackberry 10 Series Cellular Telephone, Blackberry knew, had reason to
16 know, or was reckless in not knowing, of the Defects; Blackberry was under a duty to disclose
17 the Defects based upon its exclusive knowledge of it, its representations about its products, and
18 its concealment of the Defects; and Blackberry never disclosed the Defects to the Plaintiff or
19 anyone at any time or place or in any manner.

20 58. Plaintiff makes the following specific fraud allegations with as much specificity
21 as possible given that access to all of the information necessary to establish the identity of the
22 responsible individuals employed at Blackberry who concealed the defects and precisely when
23 Blackberry became aware of the problems with the Blackberry 10 Series Cellular Telephone
24 can only be obtained after Plaintiff has the opportunity to conduct discovery as this information
25 is exclusively in the possession of Blackberry. Data from the Defendant's database and its
26 internal support division, which is exclusively within Blackberry's control, will enable Plaintiff
27 to provide greater specificity in detailing the fraud allegations:

28 (a) Who: Blackberry concealed the Defects from Plaintiff, the Classes, and

1 everyone in the chain of distribution. Plaintiff and the Classes are unaware of, and
2 therefore unable to identify, the true names and identities of those individuals at
3 Blackberry responsible for such decisions.

4 (b) What: Blackberry knew, or had reason to know, at the time it sold the
5 Blackberry 10 Series Cellular Telephone, or was reckless in not knowing, the fact that
6 existing defects in the Blackberry 10 Series Cellular Telephone would cause the
7 Blackberry 10 Series Cellular Telephone to fail to properly operate.

8 (c) When: No later than June 2009, Blackberry concealed this material
9 information at all times with respect to the Blackberry 10 Series Cellular Telephone,
10 including before the time of sale, on an ongoing basis, and continuing to this day.

11 (d) Where: Blackberry concealed this material information in every
12 communication it had with Plaintiff, the Classes, and everyone in the chain of
13 distribution. Plaintiff is aware of no document, communication, or other place or thing,
14 in which Blackberry disclosed this material information to anyone outside of
15 Blackberry. Such information appears in no sales documents, no displays, no
16 advertisements, no warranties, no owner's manual, nor on Blackberry's website.

17 (e) How: Blackberry concealed this material information by not disclosing it
18 to Plaintiff, the Classes, or anyone in the chain of distribution at any time or place or in
19 any manner, even though it knew, or should have known this information due to the
20 significant number of complaints posted on its own web site and online from before the
21 named Plaintiff purchased his Blackberry 10 Series Cellular Telephone, as well as from
22 its own warranty records. Blackberry knew that it would be important to a reasonable
23 consumer, and even though its omissions with regard to the Defects and consequent
24 premature failures of the Blackberry 10 Series Cellular Telephone were contrary to its
25 representations about the Blackberry 10 Series Cellular Telephone.

26 (f) Why: Blackberry concealed this material information for the purpose of
27 inducing Plaintiff and Class Members to purchase the defective Blackberry 10 Series
28 Cellular Telephone at full price rather than purchasing competitors' Blackberry 10

1 Series Cellular Telephone or paying Blackberry less for the Blackberry 10 Series
2 Cellular Telephone, given their limited utility. Had Blackberry disclosed the truth,
3 Plaintiff, the Classes (and reasonable consumers) would not have bought the Blackberry
4 10 Series Cellular Telephones, or would have paid less for them.

5 **VI. TOLLING**

6 59. The causes of action alleged herein accrued upon discovery of the defective
7 nature of the Blackberry 10 Series Cellular Telephone. Because the Defects are latent, and
8 Blackberry concealed it, Plaintiff and members of the Classes did not discover and could not
9 have discovered the Defects through reasonable and diligent investigation. Reasonable and
10 diligent investigation into the cause of the Defects did not and could not reveal a factual basis
11 for a cause of action based on Blackberry's concealment of the Defects.

12 **Fraudulent Concealment**

13 60. Any applicable statutes of limitation have been tolled by Blackberry's knowing
14 and active and ongoing concealment and denial of the facts as alleged herein. Plaintiff and the
15 Classes have been kept ignorant by Blackberry of vital information essential to the pursuit of
16 these claims, without any fault or lack of diligence on their part. Plaintiff and members of the
17 Classes could not reasonably have discovered the true, latently defective nature of the
18 Blackberry 10 Series Cellular Telephone.

19 **Estopple**

20 61. Blackberry was and is under a continuing duty to disclose to the Plaintiff and the
21 Classes the true character, quality, and nature of the Blackberry 10 Series Cellular Telephone.
22 Blackberry knowingly, affirmatively, and actively concealed the true character, quality, and
23 nature of the Blackberry 10 Series Cellular Telephone, and the concealment is ongoing.
24 Plaintiff and the members of the Classes reasonably relied upon Blackberry's knowing,
25 affirmative, and/or active and ongoing concealment. Based on the foregoing, Blackberry is
26 estopped from relying on any statutes of limitation in defense of this action.

27 **VII. CLASS ACTION ALLEGATIONS**

28 62. Plaintiff brings this action pursuant to Rule 23(b)(3) of the Federal Rules of Civil

1 Procedure, on behalf of himself and the following ascertainable Classes defined as:

2 Nationwide Class:

3 All residents of the United States who purchased Defendants' Blackberry 10 Series
4 Cellular Telephone since its release and continuing until judgment in this action. The
5 class does not include the named Defendants or co-conspirators, their directors, officers,
6 or employees or members of their families ("the Nationwide Class").

7 New Jersey Sub-Class:

8 All residents of the State of New Jersey who purchased Defendants' Blackberry 10
9 Series Cellular Telephone since its release and continuing until judgment in this action.
10 The class does not include the named Defendants or co-conspirators, their directors,
11 officers, or employees or members of their families ("the New Jersey Sub-Class").

12 63. The Nationwide Class and the New Jersey Subclass together are hereafter
13 collectively referred to as the "Classes."

14 64. The persons in the Classes are so numerous that the joinder of all such persons is
15 impracticable and that the disposition of their claims in a class action rather than in individual
16 actions will benefit the parties and the Court.

17 65. There is a well-defined commonality and community of interest in the questions
18 of law and fact involving and affecting all members of the Classes exists and common questions
19 of fact and law predominate over questions which may affect only individual Class Members.
20 The questions of fact and law common to the Classes include, *inter alia*:

- 21 a. Whether Defendant Blackberry's Blackberry 10 Series Cellular Telephone
22 were defectively designed, manufactured, marketed, distributed and sold;
- 23 b. Whether the existence of the Defects in the Blackberry 10 Series Cellular
24 Telephone is a material fact reasonable purchasers would have considered in
25 deciding whether to purchase a Blackberry 10 Series Cellular Telephone;
- 26 c. Whether Defendant knew the Blackberry 10 Series Cellular Telephones was
27 defective when offered for sale to the public;
- 28 d. Whether Defendant knew or should have known of defects in the Blackberry

- 1 10 Series Cellular Telephones when selling it to the public;
- 2 e. Whether Defendant mislead consumers and concealed defects in the
- 3 Blackberry 10 Series Cellular Telephones;
- 4 f. Whether, by the misconduct set forth herein, Defendant Blackberry violated
- 5 consumer protection statutes and/or false advertising statutes and/or state
- 6 deceptive business practice statutes;
- 7 g. Whether the Blackberry 10 Series Cellular Telephone are of merchantable
- 8 quality;
- 9 h. Whether, by the misconduct set forth herein, Defendant Blackberry violated
- 10 express and implied warranty statutes;
- 11 i. Whether Defendant was unjustly enriched by refusing to replace the
- 12 defective Blackberry 10 Series Cellular Telephones with a properly
- 13 functioning camera, at no charge to consumers;
- 14 j. Whether the Class is entitled to notice as to the Defects;
- 15 k. Whether members of the Class have suffered damages;
- 16 l. Whether Defendant has breached the express or implied warranties for the
- 17 Blackberry 10 Series Cellular Telephones, or the provisions of the
- 18 Magnuson-Moss Warranty Act, when it is used for its intended purpose;
- 19 m. The extent of damages caused by Defendant's willful violations; and
- 20 n. The type of damages and restitution that should be granted to Plaintiff and
- 21 members of the Class.

22 66. Plaintiff's claims are typical of the claims of the members of the Classes because
23 Plaintiff and each member of the Classes purchased a Blackberry 10 Series Cellular Telephone
24 from Defendants during the statutory period prior to the filing of this action to present. Plaintiff
25 has no interests antagonistic to those of the Classes and Defendants have no defenses unique to
26 Plaintiff.

27 67. Plaintiff will fairly and adequately protect the interests of the members of the
28 Classes and Plaintiff has no interests which are contrary to or in conflict with those of the

1 Classes he seeks to represent. Plaintiff has retained competent counsel experienced in class
2 action litigation to further ensure such protection and intend to prosecute this action vigorously.

3 68. The prosecution of separate actions by individual members of the Classes would
4 create a risk of inconsistent or varying adjudications with respect to individual members of the
5 Classes, which would establish incompatible standards of conduct for the party opposing the
6 Classes and would lead to repetitious trials of the numerous common questions of fact and law.
7 Plaintiff knows of no difficulty that will be encountered in the management of this litigation that
8 would preclude its maintenance as a class action. As a result, a class action is superior to other
9 available methods for the fair and efficient adjudication of this controversy.

10 69. Defendants have acted or refused to act on grounds generally applicable to the
11 Classes, making final declaratory or injunctive relief appropriate.

12 70. The questions of law and fact common to members of the Classes predominate
13 over any questions affecting only individual members.

14 71. A class action is superior to other available methods for the fair and efficient
15 adjudication of this controversy because joinder of all members is impracticable. Disposition of
16 the Classes' claims in a class action, rather than in individual actions, will benefit the parties
17 and the Court, because:

- 18 a. The losses to Plaintiff and similarly situated other consumers are relatively
19 small, estimated at most to be between three and ten dollars per customer;
- 20 b. Obtaining private counsel by individual Class Members is economically
21 unfeasible and impractical;
- 22 c. The burden imposed on the judicial system by approximately a million
23 actions vastly outweighs any burdens that would be imposed by this class
24 action;
- 25 d. Thousands of actions prosecuted against Defendants could, and most likely
26 would, result in inconsistent standards of conduct for Defendants; and
- 27 e. The public interest would be best served by obtaining a definitive answer to
28 questions posed by this case.

1 72. The proposed class action is manageable.

2 73. Proper and sufficient notice of this action may be provided to the Class Members
3 through notice published in nationwide publications, and/or through retail stores, Defendants'
4 web sites, and the national media.

5 74. Plaintiff and the members of the Classes have suffered irreparable harm and
6 damages as a result of Defendants' wrongful conduct as alleged herein. Absent a representative
7 action, Plaintiff and the members of the Classes will continue to suffer losses, thereby allowing
8 these violations of law to proceed without remedy, and allowing Defendants to retain the
9 proceeds of their unjust profits.

10 **FIRST CAUSE OF ACTION**

11 **VIOLATIONS OF NEW JERSEY'S CONSUMER FRAUD ACT,**
12 **N.J.S.A. § 56:8-2, *ET SEQ.*, AND SUBSTANTIALLY SIMILAR LAW OF CERTAIN**
13 **OTHER STATES**

14 **(By Plaintiff and the Members of Classes Against All Defendants)**

15 75. Plaintiff, individually and on behalf of all others similarly situated, repeats,
16 reiterates and realleges each and every allegation of this Complaint in each of the foregoing
17 paragraphs inclusive, with the same force and effect as if fully set forth herein.

18 76. Plaintiff and other members of the Classes are "consumers" within the meaning
19 of the CFA and the consumer protection statutes of certain other states.

20 77. The Blackberry 10 Series Cellular Telephone are "goods" within the meaning of
21 the CFA.

22 78. At all relevant times material hereto, Blackberry conducted trade and commerce
23 in New Jersey and elsewhere within the meaning of the CFA.

24 79. The CFA is, by its terms, a cumulative remedy, such that remedies under its
25 provisions can be awarded in addition to those provided under other remedies.

26 80. Blackberry has engaged in deceptive, unconscionable, unfair, fraudulent and
27 misleading commercial practices in the marketing and sale of Blackberry 10 Series Cellular
28 Telephone it knew to be defective.

1 81. Blackberry had exclusive knowledge of the Defects at the time of sale. The
2 Defects are latent and not something that Plaintiff or Class members could, in the exercise of
3 reasonable diligence, have discovered independently prior to purchase.

4 82. Blackberry represented that its goods, merchandise or services had
5 characteristics, uses, benefits, or quantities that they did not have, and that its goods,
6 merchandise and services were of a particular standard, quality or grade that they were not.

7 83. In its marketing and sale of the Blackberry 10 Series Cellular Telephone,
8 Blackberry undertook active and ongoing steps to conceal the Defects and has consciously
9 withheld material facts from Plaintiff and other members of the Classes with respect to the
10 Defect in the Blackberry 10 Series Cellular Telephone.

11 84. Plaintiff is aware of nothing in Blackberry's advertising, publicity, or marketing
12 materials that discloses the truth about the Defects, despite Blackberry's awareness, or reckless
13 unawareness, of the problem.

14 85. Blackberry's conduct was objectively deceptive and had the capacity to deceive
15 reasonable consumers under the circumstances. The fact that Defects in the Blackberry 10
16 Series Cellular Telephone would cause the Blackberry 10 Series Cellular Telephone to fail to
17 operate properly, particularly as to essential functions of the device (i.e. placing telephone calls,
18 and emailing), rendering the Blackberry 10 Series Cellular Telephones unable to perform
19 essential purposes before the end of their expected useful lives, was a material fact that a
20 reasonable and/or unsophisticated consumer would attach importance to at the time of purchase.
21 This fact would influence a reasonable consumers' choice of action during the purchase of their
22 Blackberry 10 Series Cellular Telephone.

23 86. Blackberry intended that Plaintiff and the other members of the Classes would
24 rely on its acts of concealment and omissions by purchasing the Blackberry 10 Series Cellular
25 Telephone at full price rather than paying less for them or purchasing competitors' Blackberry
26 10 Series Cellular Telephone.

27 87. Had Blackberry disclosed all material information regarding the Defects to
28 Plaintiff and other members of the Classes, they would not have purchased the Blackberry 10

1 Series Cellular Telephone, or they would have paid less for them

2 88. Blackberry's conduct had an impact on the public interest because the acts were
3 part of a generalized course of conduct affecting numerous consumers.

4 89. As a result of the foregoing acts, omissions, and practices, Plaintiff and other
5 members of the Classes have suffered an ascertainable loss by purchasing defective Blackberry
6 10 Series Cellular Telephone that are unable to perform their essential function for their
7 expected useful life and that are different from the Blackberry 10 Series Cellular Telephone
8 promised. The difference in value between the product promised and the one received can be
9 reasonably quantified by a review of the cost of comparable "smart" telephones sold by
10 Blackberry's competitors.

11 90. Plaintiff and the members of the Classes are entitled to recover such damages,
12 together with appropriate penalties, including treble damages, attorneys' fees, and costs of suit

13 **SECOND CAUSE OF ACTION**

14 **FRAUDULENT CONCEALMENT/NONDISCLOSURE**

15 **(By Plaintiff and the Members of Classes Against All Defendants)**

16 91. Plaintiff repeats, realleges, and incorporates by reference each of the foregoing
17 paragraphs of this Complaint as if fully set forth herein.

18 92. Blackberry knew, or was reckless in not knowing at the time of sale, that the
19 Blackberry 10 Series Cellular Telephones were defective in that they are substantially certain to
20 fail well in advance of their anticipated useful life.

21 93. Blackberry fraudulently concealed from and/or intentionally failed to disclose to
22 Plaintiff, the Classes, and all others in the chain of distribution, the true defective nature of the
23 Blackberry 10 Series Cellular Telephone and that it routinely malfunctioned, rendering it
24 unusable and inoperable.

25 94. Blackberry had exclusive knowledge of the Defects at the time of sale. The
26 Defects are latent and not something that Plaintiff or members of the Classes could, in the
27 exercise of reasonable diligence, have discovered independently prior to purchase.

28 95. Blackberry had the capacity to, and did, deceive consumers into believing that

1 they were purchasing Blackberry 10 Series Cellular Telephone that could be used safely and
2 practically without causing damage.

3 96. Blackberry undertook active and ongoing steps to conceal the Defects because
4 Blackberry knew, or should have known, that it alone could alert consumers to the presence of
5 the Defects, yet Blackberry chose not to do so.

6 97. Plaintiff is aware of nothing in Blackberry's advertising, publicity, or marketing
7 materials that discloses the truth about the Defects, despite Blackberry's awareness of the
8 problem.

9 98. The facts concealed and/or not disclosed by Blackberry to Plaintiff and the
10 Classes are material facts in that a reasonable person would have considered them important in
11 deciding whether or not to purchase (or to pay the same price for) a telephone.

12 99. If the facts concealed and/or not disclosed by Blackberry to Plaintiff and the
13 proposed Classes had been disclosed to Plaintiff, Plaintiff and members of the Classes would
14 not have purchased their Blackberry 10 Series Cellular Telephone or would only have
15 purchased them for a reduced price.

16 100. Blackberry had a duty to disclose the fact that Defects existed at the time of sale
17 by virtue of the fact that consumers would reasonably expect disclosure of the Defects.

18 101. Blackberry had a duty to disclose the fact that the Defects existed after sale, but
19 before the Defects manifested, because consumers would reasonable expect disclosure of the
20 Defects.

21 102. Blackberry intentionally concealed and/or failed to disclose the problems with
22 the Blackberry 10 Series Cellular Telephone for the purpose of inducing Plaintiff and the
23 Classes to act thereon.

24 103. Plaintiff and the Classes justifiably acted or relied upon the concealed and/or
25 non-disclosed facts to their detriment, as evidenced by their purchase of the Blackberry 10
26 Series Cellular Telephone.

27 104. As a direct and proximate cause of Blackberry's misconduct, Plaintiff and Class
28 Members have suffered actual damages in that they bought and own Blackberry 10 Series

1 Cellular Telephone that contain an inherent defect and that have prematurely failed or are
2 substantially certain to prematurely fail within and outside applicable warranty periods, and
3 they will be required to incur costs to repair and/or replace the defective components or the
4 Blackberry 10 Series Cellular Telephone as a whole.

5 105. Blackberry's conduct has been, and is, wanton and/or reckless and/or shows a
6 reckless indifference to the interests of others.

7 106. Blackberry has acted with malice by engaging in conduct that was and is
8 intended by Blackberry to cause injury to the Plaintiff and the Classes.

9 107. Blackberry has committed fraud through its concealment of material facts known
10 to Blackberry with the intent to cause injury to the Plaintiff and the Classes.

11 108. Plaintiff, on behalf of himself and all others similarly situated, demands
12 judgment against Blackberry for actual and punitive damages for himself and each member of
13 the Classes, plus attorneys' fees for the establishment of a common fund, interest, and costs.

14 **THIRD CAUSE OF ACTION**

15 **BREACH OF IMPLIED WARRANTY**

16 **(By Plaintiff and the Members of Classes Against All Defendants)**

17 109. Plaintiff incorporates by reference each allegation contained in preceding
18 paragraphs as though fully set forth herein.

19 110. Blackberry sold and promoted the Blackberry 10 Series Cellular Telephone,
20 which it placed into the stream of commerce. Defendant knew, or had reason to know, of the
21 specific use for which the Blackberry 10 Series Cellular Telephones were purchased, and it
22 impliedly warranted that the Blackberry 10 Series Cellular Telephones were of merchantable
23 quality and fit for such use.

24 111. Plaintiff and members of the Classes reasonably relied upon the expertise, skill,
25 judgment, and knowledge of Defendant Blackberry and upon its implied warranty that the
26 Blackberry 10 Series Cellular Telephones were of merchantable quality and fit for such use.

27 112. Through the conduct alleged herein, Blackberry has breached the implied
28 warranty of fitness for a particular purpose. The defectively designed Blackberry 10 Series

1 Cellular Telephones were not fit for the particular purpose for which they were purchased by
2 members of the Classes to perform. The members of the Classes purchased the Blackberry 10
3 Series Cellular Telephones for a particular purpose of being able to *inter alia*, place telephone
4 calls and send emails, including emails with photo attachments. Blackberry knew that the Class
5 Members were purchasing the Blackberry 10 Series Cellular Telephone for these purposes and
6 marketed the products for these particular purposes.

7 113. Plaintiff and members of the Classes relied on Defendant's misrepresentations by
8 purchasing the Blackberry 10 Series Cellular Telephone.

9 114. Defendant knew, or had reason to know, that Plaintiff and the members of the
10 Classes were influenced to purchase the Blackberry 10 Series Cellular Telephone through
11 Defendant's expertise, skill, judgment and knowledge in furnishing the products for their
12 intended use.

13 115. The Blackberry 10 Series Cellular Telephones were not of merchantable quality
14 and were not fit for their particular intended use because the design and/or manufacturing
15 defects alleged herein which cause the Blackberry 10 Series Cellular Telephones to
16 (1) randomly merge the consumer's contacts thereby rendering their contact list useless; (2) fail to
17 permit the user to manage the size and resolution of photographs for the purposes of emailing;
18 and (3) fail to support the Yahoo Calendar.

19 116. Defendants' actions, as complained of herein, breached their implied warranty
20 that the Blackberry 10 Series Cellular Telephones were of merchantable quality as fit for such
21 use, in violation of the Uniform Commercial Code (UCC § 2-314 and § 2-315) and the common
22 law of this State, as well as the common law and statutory laws of the other states.

23 117. As set forth above, Defendants' unconscionable conduct precludes their
24 disclaimer of implied warranties.

25 118. Plaintiff and the members of the Classes have incurred damage as described
26 herein as a direct and proximate result of the failure of Defendants to honor their implied
27 warranty. In particular, Plaintiff and the members of the Classes would not have purchased the
28 Products had they known the truth about their Defects; nor would they have suffered the

1 collateral effects and damages associated with these Defects.

2 **FOURTH CAUSE OF ACTION**

3 **BREACH OF EXPRESS WARRANTIES**

4 **(By Plaintiff and the Members of Classes Against All Defendants)**

5 119. Plaintiff hereby incorporates the above allegations by reference as if set forth
6 fully herein.

7 120. Defendants warranted that all of the Blackberry 10 Series Cellular Telephones
8 were free from defects in material or workmanship at a time when they knew that the
9 Blackberry 10 Series Cellular Telephones suffered from serious defects and nevertheless,
10 continued to market and sell these Blackberry 10 Series Cellular Telephones with this express
11 warrant.

12 121. Defendant has breached its express warranties, as set forth above, by supplying
13 the Blackberry 10 Series Cellular Telephone in a condition which does not meet the warranty
14 obligations undertaken by Blackberry and by failing to repair or replace the defective
15 Blackberry 10 Series Cellular Telephone or defective parts.

16 122. Defendants have received sufficient and timely notice of the breaches of
17 warranty alleged herein. Despite this notice and Blackberry's knowledge, Blackberry refuses to
18 honor its warranty, even though it knows of the inherent Defects in the Blackberry 10 Series
19 Cellular Telephone.

20 123. In addition, Blackberry has received, upon information and belief, hundreds if
21 not thousands of complaints and other notices from its customers nationwide advising it of the
22 Defects complained of herein.

23 124. Plaintiff has given Defendants a reasonable opportunity to cure their failures
24 with respect to their warranties, and Defendants failed to do so.

25 125. Defendants have failed to provide Plaintiff or the members of the Classes, as a
26 warranty replacement, a product that conforms to the qualities and characteristics that
27 Blackberry expressly warranted when it sold the Blackberry 10 Series Cellular Telephones to
28 Plaintiff and the Class.

1 126. As set forth above, Defendants’ unconscionable conduct precludes Blackberry’s
2 reliance upon the one year time limit of the express warranty.

3 127. As a result of Blackberry’s breach of warranty, Plaintiff and the Classes have
4 suffered damage in the amount to be determined at trial.

5 **FIFTH CAUSE OF ACTION**

6 **Negligent Misrepresentation**

7 **(By Plaintiff and the Members of Classes Against All Defendants)**

8 128. Plaintiff hereby incorporates the above allegations by reference as if set forth
9 fully herein.

10 129. Defendant Blackberry made a series of misrepresentations and material
11 omissions, as alleged herein, and including misrepresentations in its standard written warranty
12 and otherwise that it would repair defective Blackberry 10 Series Cellular Telephones.
13 Defendants’ statements were material, false, deceptive, and misleading and omitted material
14 facts necessary to make the statements not misleading; such material misrepresentations and
15 omissions were the result of the Defendants’ negligence.

16 130. Defendants owed a duty to Plaintiff and members of the proposed Classes to
17 exercise reasonable care in making representations about the Blackberry 10 Series Cellular
18 Telephones.

19 131. Plaintiff and the proposed Class Members relied (or should be presumed to have
20 relied) on Defendants’ material representations and omissions in purchasing the Blackberry 10
21 Series Cellular Telephone. As a result of their justifiable reliance, Plaintiff and members of the
22 Classes were induced to and did purchase the Blackberry 10 Series Cellular Telephone.
23 Plaintiff’s reliance and the members of the Classes’ reliance were reasonably foreseeable by
24 Defendants (and in fact, that is why the Defendants made the misrepresentations that they did).

25 132. As a direct and proximate result of the negligent misrepresentations made by
26 Defendants, Plaintiff and the proposed members of the Classes have been damaged.

27 ///

28 ///

1 **SIXTH CAUSE OF ACTION**

2 **UNJUST ENRICHMENT**

3 **(By Plaintiff and the Members of Classes Against All Defendants)**

4 133. Plaintiff hereby incorporates the above allegations by reference as if set forth
5 fully herein.

6 134. Defendants knowingly profited from the sale of its Blackberry 10 Series Cellular
7 Telephone s to Plaintiffs and Class members.

8 135. Plaintiff and the Class have conferred a benefit upon Defendants.

9 136. Defendants have received and retained money belonging to Plaintiff and the
10 Class as a result of its unlawful and deceptive conduct described herein.

11 137. Defendants appreciate or has knowledge of the benefit conferred upon it by
12 Plaintiff and the Class.

13 138. Under principles of equity and good conscience, Defendants should not be
14 permitted to retain the money belonging to Plaintiff and the Class that it unjustly received as a
15 result of its unlawful and deceptive conduct described herein.

16 139. Plaintiff and the Class have suffered financial loss as a direct result of
17 Defendants' unlawful and deceptive conduct described herein.

18 140. Plaintiff, on his own behalf and on behalf of the Class, seeks restitution of the
19 proceeds Defendants received as a result of its unlawful and deceptive conduct described herein,
20 as well as attorneys' fees and costs.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff on behalf of himself and the members of the Classes, prays for
23 relief as follows:

- 24 A. An order certifying this case as a class action and appointing Plaintiff to
25 represent the Classes and Plaintiff's counsel as Class counsel;
- 26 B. All recoverable compensatory and other damages sustained by Plaintiff and the
27 Classes;
- 28 C. Restitution and disgorgement of all amounts obtained by Blackberry as a result

- 1 of its misconduct, together with interest thereon from the date of payment, to the
2 victims of such violations;
- 3 D. Actual and/or statutory damages for injuries suffered by Plaintiff and the Classes
4 in the maximum amount permitted by applicable law, including mandatory treble
5 damages pursuant to the New Jersey Consumer Fraud Act;
- 6 E. For interest on these sums at the legal rate from the date of each unlawful
7 collection of funds paid to Defendants by Plaintiff and others similarly situated;
- 8 F. An order (i) requiring Blackberry to immediately cease its wrongful conduct as
9 set forth above; (ii) enjoining Blackberry from continuing to conceal material
10 information and conduct business via the unlawful, unfair and deceptive business
11 act and practices complained of herein; and (iii) requiring Blackberry to refund
12 to Plaintiff and all Class Members the funds necessary to repair or replace the
13 Blackberry 10 Series Cellular Telephone as appropriate and/or refund to Plaintiff
14 and all Class Members the funds paid to Blackberry for the defective Blackberry
15 10 Series Cellular Telephone;
- 16 G. Statutory pre-judgment and post-judgment interest on the Class damages;
- 17 H. Payment of reasonable attorneys' fees and costs as may be allowable under
18 applicable law;
- 19 I. For costs of suit herein incurred; and
- 20 J. Such other relief as the Court may deem just and proper.

21 **JURY DEMAND**

22 Plaintiff demands a trial by jury on all issues so triable as a matter of right.

23 DATED: February 2, 2015 Respectfully submitted,
24

25 **HARRISON, HARRISON & ASSOCIATES, LTD.**

26 **s/ Joseph Harrison**

27 Joseph Harrison, Esq.

28 David Harrison, Esq.

110 Series Highway 35, 2nd Floor

Red Bank, New Jersey 07701

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Attorneys for Plaintiff & Proposed Class

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS RUSS SEMERAN on behalf of himself and all others similarly situated,</p> <p>(b) County of Residence of First Listed Plaintiff <u>BERGEN</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorneys (Firm Name, Address, Email and Telephone Number) HARRISON, HARRISON & ASSOCIATES, LTD., 110 HIGHWAY 35, 2ND FLR., RED BANK, NJ, 07701 888-239-4410</p>	<p>DEFENDANTS BLACKBERRY CORPORATION., a Delaware corporation; and DOES 1 through 10, inclusive,</p> <p>County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td>PTF</td> <td>DEF</td> <td></td> <td>PTF</td> <td>DEF</td> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<p>CONTRACT</p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p>TORTS</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury - Medical Malpractice</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p>PERSONAL PROPERTY</p> <p><input checked="" type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p>FORFEITURE/PENALTY</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p>LABOR</p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Management Relations</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 751 Family and Medical Leave Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Employee Retirement Income Security Act</p> <p>IMMIGRATION</p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p>BANKRUPTCY</p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p>PROPERTY RIGHTS</p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p>SOCIAL SECURITY</p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p>FEDERAL TAX SUITS</p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>	<p>OTHER STATUTES</p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>
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V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2).

Brief description of cause:
New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-2, et seq. claims re: Blackberry 10 Series Cellular Telephones

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMANDS** CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE: 02/02/2015

SIGNATURE OF ATTORNEY OF RECORD: _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____