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11
12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 PHIL SHIN on behalf of himself and
15 all others similarly situated,

Case No.: 5:18-cv-05626

CLASS ACTION COMPLAINT

16 Plaintiff,

17 vs.

18 PLANTRONICS, INC.,

19 Defendant.
20
21

22 The allegations made in this Complaint are based upon information and
23 belief except those allegations that pertain to Plaintiff, which are based on personal
24 knowledge. Each allegation in this Complaint either has evidentiary support or,
25

1 alternatively, pursuant to Rule 11(b)(3) of the *Federal Rules of Civil Procedure*, is
2 likely to have evidentiary support after a reasonable opportunity for further
3 investigation or discovery.
4

5 NATURE OF THIS ACTION

6 1. Plaintiff Phil Shin (“Plaintiff”) brings this proposed class action
7 challenging the actions of Defendant Plantronics, Inc. (“Plantronics” or
8 “Defendant”) in the marketing and sale of Plantronics BackBeat FIT wireless
9 headphones (the “Headphones”). Plaintiff seeks damages and equitable relief on
10 behalf of himself and all others similarly situated.
11

12 2. Plantronics markets the Headphones as “sport headphones,” and
13 represents on its website, marketing materials, and product packaging that the
14 Headphones are “sweatproof” and “waterproof.” Plantronics uses images and
15 videos of sweat-drenched athletes wearing the Headphones while exercising in its
16 promotional materials. According to Plantronics’ website, the Headphones allow
17 consumers to “train harder and run longer.”
18

19 3. Plantronics further represents on its website, marketing materials, and
20 product packaging that the Headphones offer “up to 8 hours” of wireless listening
21 – enough according to Plantronics to “[p]ower through a week of workouts from a
22 single charge.” Plantronics’ website uses the tagline: “You never quit. Neither
23
24
25

1 should your headphones.” Plantronics describes the Headphones on their
2 packaging as “UNSTOPPABLEWARE.”

3
4 4. In reality, the Headphones are neither sweatproof nor waterproof. And
5 the Headphones’ batteries do not last eight hours on a single charge. This is
6 because the Headphones contain one or more defects that cause the battery life to
7 diminish and eventually stop retaining a charge after normal usage, especially
8 when the Headphones are exposed to sweat or water. As a result of the defect(s),
9 the Headphones regularly fail to hold a reasonable charge.
10

11 5. Plaintiff is among the tens of thousands of consumers nationwide
12 whose Headphones experience rapidly diminishing battery life and eventual failure
13 to retain a charge after using the Headphones for less than a year. Plaintiff alleges
14 that the Headphones fail to retain an adequate charge in part due to the
15 Headphones’ failure to resist sweat and water.
16

17 6. Despite receiving countless complaints from consumers, Defendant
18 refuses to acknowledge or attempt to fix the defects. Instead, when consumers
19 return the defective Headphones under Plantronics’ one-year warranty, Plantronics
20 sends replacement Headphones that contain the exact same defects, leaving
21 consumers caught in a cycle of use, malfunction, and replacement. Once the
22 warranty-period expires, consumers are often left with only a broken pair of
23 Headphones.
24
25

1 California 95060. Plantronics describes itself as “an audio pioneer and a leader in
2 the communications industry,” and designs, manufactures, and markets a range of
3 headsets, headphones and audio and video conferencing products, including the
4 BackBeat FIT headphones.
5

6 JURISDICTION AND VENUE

7 11. This Court has subject matter jurisdiction over this action under 28
8 U.S.C. §1332(d)(2), as amended by the Class Action Fairness Act of 2005, because
9 the amount in controversy exceeds \$5,000,000, exclusive of interests and costs,
10 and because this is a class action in which the members of the class and Defendant
11 are citizens of different states.
12

13 12. Venue is proper in this judicial district under 28 U.S.C. §1391
14 because Defendant is a resident of Santa Cruz, California, which is located in this
15 district.
16

17 FACTUAL ALLEGATIONS

18 *Plantronics’ Representations Regarding Battery-Life and Sweat* 19 *Resistance* 20

21 13. Plantronics represents on its website, product packaging, and
22 marketing materials that the Headphones provide eight hours of listening time on a
23 single charge.
24
25

1 14. For instance, Plantronics’ website states in bold lettering that the
2 Headphones feature an “8-HR BATTERY,” and urges users to “[p]ower through a
3 week of workouts from a single charge.” The small-print “specifications” at the
4 bottom of the webpage state that the Headphones provide “[u]p to 8 hours” of
5 listening time on a single 2-hour charge.¹

7 15. Plantronics’ website also states that the “[c]harge time (maximum)”
8 for the Headphones is “[u]p to 2 hours.”

10 16. Virtually identical representations can be found on Plantronics’
11 product packaging, advertisements, and promotional videos.

12 17. Despite Plantronics’ representations – which are repeated on
13 Plantronics’ website, product packaging, marketing materials, and elsewhere –
14 none of the Headphones have a battery that can be consistently used for eight hours
15 without further charging. Moreover, as a result of the defect(s), the Headphones
16 often take much longer than two hours to fully charge (if the Headphones accept a
17 charge at all).

19 18. Plantronics similarly represents on its website, product packaging, and
20 marketing materials that the Headphones are sweatproof and waterproof.
21

22
23 _____
24 ¹ Research has shown that “up to” representations are misleading to consumers, who reasonably
25 interpret “up to” eight hours to mean that they would get eight 8 hours of battery life. Plantronics’ headphones, which fail to hold a charge for long, and then not at all, do not provide the expected hours of battery life. As a result, Plantronics’ representations are false and misleading to consumers.

1 19. Plantronics’ website touts the Headphones as “WATERPROOF” and
2 “SWEATPROOF.” Indeed, it describes the Headphones as “[e]ngineered for
3 sport,” “flexible and durable,” and able to “withstand[] the rain or a rinse under the
4 tap with a waterproof design.”
5

6 20. Plantronics’ online promotional videos show athletes lifting weights,
7 climbing stairs, jumping rope, running, and riding mountain bikes while wearing
8 the Headphones. One such video describes the Headphones as “SWEATPROOF,”
9 “WATERPROOF,” and “BUILT FOR AN ACTIVE LIFESTYLE.” Meanwhile,
10 another video proclaims that the Headphones are “DURABLE ENOUGH TO
11 WITHSTAND YOUR SWEATIEST WORKOUTS WITH WATERPROOF AND
12 SWEATPROOF NANO-COATING.”
13

14 21. Plantronics’ product packaging makes similar representations. For
15 instance, the front of the box for the Headphones states “SWEAT AND
16 WATERPROOF” in bold letters, and the side of the box states “UP TO 8 HOURS”
17 listening time. The back of the box describes the Headphones as “Your perfect
18 workout partner” and that the “Rugged, sweat and waterproof design works as hard
19 as you do.”
20

21 22. Plantronics ensures that its retailers uniformly promote the same
22 battery life and sweat and water proof messages at consumers’ point of purchase.
23
24
25

1 23. These representations are false and misleading because the
2 Headphones are not sweatproof or waterproof, and exposure to sweat or moisture
3 exacerbates the battery defect, causing the Headphones to fail to power on or hold
4 a charge for the advertised time.
5

6 ***The Headphones Do Not Function As Represented***

7 24. The false nature of Plantronics' representations is evident from the
8 virtually unending stream of consumer complaints posted online. Indeed, negative
9 reviews posted in the last few months on Plantronics' own website² alone reflect
10 the sheer scope of the problem:
11

12 a. "These headphones sound good and are comfortable while running,
13 however I experienced a battery life that is much shorter than I
14 expected: typically my battery lasted less than 2 hours, and so I was
15 unable to get two full work-outs in on a single charge and needed to
16 charge after every run. Also, my headphones stopped turning on after
17 about 7 months of use (typical usage for me is 1-3 workouts per week,
18 each lasting about an hour). The headphones haven't suffered any
19 noticeable damage, the charging light still works when they are plugged
20 in, but they will not turn on. In my opinion, it is not acceptable for a
21 product at this price point to stop working after only 7 months of light
22 use." Complaint posted on Plantronics' website (August 2018).

23 b. "Hi. I'd like to check whether it is indeed running on 8 hours
24 CONTINUOUSLY after full on single charge OR when you use it
25 sporadically throughout the week? Cos [*sic*] after charging it on full (+-
2 hours) then using it continuously for my workout it lasts for about 4
hour plus only?" Complaint posted on Plantronics' website (July 2018).

24 ² These customer reviews can be found at https://www.plantronics.com/us/en/product/backbeat-fit?gclid=CjwKCAjwoMPcBRAWEiwAiAqZh-onMBYBYxxw9UyYXW4tpluCKiI1vqdKKJBxkycrd7SJdHrxYX4gZxoCTfIQAvD_BwE. As
25 of September 6, 2018, there were more than 270 one or two star reviews.

- 1
- 2 c. "Not even a year's worth of use out of them. I bought them in mid-
- 3 December 2017, and probably used them less than 25 times or so. It
- 4 appears to be a battery issue as they will charge up to the blue light,
- 5 then I unplug and they won't turn on. Then they show a red light when I
- replug them in, so they need to be charged again with no usage." Complaint posted on Plantronics' website (August 2018).
- 6
- 7 d. "Bought a set of these, and within 7 months they won't turn on
- 8 anymore... Charging is fine, just doesn't work ... Ownly [sic] use them
- while mowing the lawn, so they are not rough up....." Complaint posted
- 9 on Plantronics' website (August 2018).
- 10
- 11 e. "Used them for a month, had a 6 month injury (disc bulge), went to
- 12 start using them again and it doesn't hold charge. I charged them for a
- 13 full day and over night and they still won't turn on." Complaint posted
- 14 on Plantronics' website (August 2018).
- 15
- 16 f. "Battery will not charge. I have had them for a year and just stopped
- 17 working. For the price you would think they would last longer than
- 18 this." Complaint posted on Plantronics' website (August 2018).
- 19
- 20 g. "Expect to spend close to \$100 for a product that will just stop working.
- 21 Battery holds a charge but it won't turn on. Nice business plan to keep
- 22 demand high for this product. Second set that has done this. Moving on
- 23 to another product from a different company." Complaint posted on
- 24 Plantronics' website (July 2018).
- 25
- 26 h. "Product still looks new worn so little. Battery refuses to hold charge.
- Tried your hold 5 seconds etc, as an ex QC manager for a multi national
- seems you have not done enough research into failure. Great concept,
- poor execution not good enough in this era. Complaint posted on
- Plantronics' website (July 2018).
- 27
- 28 i. "I have had my headphones for less than years and really enjoyed them.
- 29 HOWEVER, they will no longer hold a charge. I have tried two
- 30 different chargers and when I turn on the headphones the voice says
- 31 fully charged. But within 30 minutes the headphones die. Should not
- 32 have battery issues in less than 1 year." Complaint posted on
- 33 Plantronics' website (July 2018).

1
2 j. "I bought them before a few months and used them only twice, they
3 was really comfort [*sic*], the sound was ok but missing some bass. The
4 battery run out very fast and I charged them twice, after that they
5 stopped working just charging without complete charge and can't turn
6 on while searching in Google I saw multiple people with the same
7 issue, even at Plantronics facebook." Complaint posted on Plantronics'
8 website (July 2018).

9
10 k. "I purchased these at Costco a while ago. They only lasted for 6 months
11 even though I didn't use them a lot. The charger stopped charging the
12 headphones. I read that lots of other people had same problem. For the
13 short time they worked they were fabulous and then they just couldn't
14 be charged. Heart breaking. And a bad investment for only 6 mo of
15 intermittent use." Complaint posted on Plantronics' website (June
16 2018).

17
18 l. "I bought this Plantronics Back Beat Fit Bluetooth headset from Best
19 Buy so that I could enjoy music while I workout. I've only used it three
20 times but now the headphones will no longer charge or turn on. It was a
21 complete waste of my money." Complaint posted on Plantronics'
22 website (May 2018).

23
24 m. "Do not buy these. As you can see from the many 1* reviews, there is a
25 significant battery issue where the battery won't charge and the unit
won't operate. There are a bunch of issues like this listed on Amazon
reviews too. Plantronics won't address it for you if the unit is more than
a year old." Complaint posted on Plantronics' website (May 2018).

26
27 25. But the defect is not new. Plantronics has been receiving similar
28 reports from consumers for years and nevertheless continues to sell the
29 Headphones:

30
31 a. "Less than a week of having them I find out the battery is defected
32 and only a little less than 2hrs from full charge to empty. The
33 headphones should last up to 6-8hrs of music according to the
34 description. I sent them to Plantronics for a replacement and waiting
35 on them right now." Complaint posted on Plantronics' website (2015).

- 1
- 2 b. "It was great while it lasted. After three months the battery stopped
- 3 charging. Now I have to ship it back. Covered under warranty yet I
- 4 have to pay for the shipping. I think I'll go back to the cheap \$30 pair I
- 5 bought off Amazon that lasted a year." Complaint posted on
- 6 Plantronics' website (2015).
- 7
- 8 c. "Used the product 5 times and then the battery died and would not
- 9 charge anymore." Complaint posted on Plantronics' website (2015).
- 10
- 11 d. "I purchased this item and it stopped charging after only 4 months
- 12 Contacted manufacturer and since I don't have a receipt they would
- 13 not honor warrantee I will never buy another product from them."
- 14 Complaint posted on Plantronics' website (2016).
- 15
- 16 e. "I bought these headphone solely based on the fact they are marketed
- 17 as waterproof, not water resistant but water proof. It last about 1 min
- 18 in the water and now it does not work." Complaint posted on
- 19 Plantronics' website (2016).
- 20
- 21 f. "Charged overnight and couldn't even get it to turn on, I've tried
- 22 everything but I [*sic*] can't even get a light to turn on." Complaint
- 23 posted on Plantronics' website (2016).
- 24
- 25 g. "I bought my Backbeat Fit a little over a year ago and loved it. I even
- bought one for a friend. Unfortunately, I can no longer charge the
- headset so basically, it is toast. I bought it from an authorized dealer
- so it was not an inferior product or "second". I am furious because I
- expect a product that I paid over \$100 for to LAST LONGER THAN
- A YEAR! Prior to the day it just stopped working, there was no
- indication that it was failing. VERY DISAPPOINTED and VERY
- FRUSTRATED." Complaint posted on Plantronics' website (2016).
- h. "I was able to wear these maybe 6 times to the gym before they just
- stopped powering on. They still look brand new but are totally dead.
- These were a complete and total waste of money." Complaint posted
- on Plantronics' website (2016).
26. Customer reviews on Amazon.com paint a strikingly similar picture:

- 1 a. "Very frustrating, i have purchased many pairs of these. The first ones
2 i got as a gift and they worked great for about 8 months then they
3 suddenly died on me. They where [*sic*] still under warranty and sent
4 me a new pair. These died after about 6 month, then i purchased
5 another pair Another 6 months. I am hard on the headphones wearing
6 them to the gym many times a week so I wasn't too upset about
7 needing to trade them in. The last 3 pair purchased is where the
8 frustration comes from. The first pair stopped working in the right ear
9 after a week, the replacement pair died midway through the 1st time i
10 used them, and the most recent didn't even work out of the box. Very
11 disappointing as I think it could be a great product without these
12 issues." Amazon.com review (June 22, 2018)
- 13 b. "I love these headphones, but after a SECOND pair of these 90 dollar
14 headphones stopped working after 6 months I wouldn't recommend
15 them." Amazon.com (November 24, 2017).
- 16 c. "Don't buy this - it will die after less than a year. Just got off of an
17 extensive call with Plantronics customer support. I was calling
18 because I've had two pairs of these die after 11 months and 6 months
19 respectively. If you google "plantronics backbeat fit not powering on"
20 you will find plenty of posts about this issue. The rep tried to tell me it
21 is because I'm not using their special USB wall charger (which they
22 don't ship with the product). That makes no sense because USB is an
23 international mechanical and electrical standard and you can't sell
24 USB chargers that don't comply with those standards and call them
25 USB. The 2nd pair lasted 6 months and when I called to get those
replaced they said they were not warrantied. Instead they offered to
sell me a pair for 50% off instead. I told him no thanks because I now
don't think they are worth the shipping cost. Too bad because other
than the poor lifetime, I liked them. Not sure I will be buying any
plantronics products in the future." Amazon.com review (July 3,
2018).
- d. "Purchased 2 units were delivered yesterday, 26 March 2018. When
opened and checked, they did not have any factory charge. They
would not power on. When plugged for charging, the led light
remained red even after more than 3 hours. Different cables and
chargers have been used, to no avail. Still, units did not power on.
Upon checking online on this problem, it seems there have been

1 numerous cases like this, dating years back. It is most unfortunate that
2 Amazon continues to carry this product, and has failed to protect its
3 customers. It is likewise most unfortunate that Plantronics, after
4 receiving what appears to be several feedbacks and complaints on the
5 same problem, has continuously failed to recall these products or fix
6 the problem. It seems both Amazon and Plantronics only want to
7 make the sale first, and let the problem of the product be of the
8 customers'. At this day and age, this should be totally unacceptable,
9 and should be loudly condemned! CAUTION IF YOU PLAN TO
10 PURCHASE THIS PRODUCT. IF THEY DO NOT CARE ABOUT
11 YOU, WHY SHOULD YOU CARE BUYING FROM THEM?"
12 Amazon.com review (March 26, 2018).

- 13
- 14 e. "These lasted 4 months and just stopped working...for \$80+, I
15 expected more!" Amazon.com review (July 7, 2017).
- 16 f. "These are my second pair - do not function out of the box. Charging
17 light comes on but headphones dont power on. I loved the first pair for
18 the first 9 months until they stopped working for same issue. Seems
19 they have a problem." Amazon.com review (June 25, 2018).
- 20 g. "Really wanted to like these headphones, even encouraged co-workers
21 to buy them. At the end of the day Plantronics replacement program is
22 a hassle and the 1 year warranty only is valid for your first purchase.
23 Since these break and blowout every 3 to 4 months, you have to
24 replace them often, and unfortunately you only get 1 year to do that.
25 The warranty doesn't refresh when you get a brand new replacement."
Amazon.com review (June 8, 2018).

The Experiences of Plaintiff Shin

27. Plaintiff Shin purchased a pair of BackBeat FIT headphones through
Amazon.com in March 2015.

28. Prior to purchasing the Headphones, Mr. Shin reviewed marketing
information from Plantronics on the Amazon.com website. Under "From the
manufacturer," Amazon.com described the Headphones as suitable for exercise, as

1 waterproof and sweatproof, and as providing up to eight hours of listening time on
2 a single charge. Mr. Shin relied on these representations in deciding to purchase
3 the headphones.
4

5 29. Mr. Shin is an avid runner who purchased the Headphones to listen to
6 music while exercising. When he purchased the Headphones, Mr. Shin reasonably
7 relied upon Plantronics' representation that the Headphones could withstand being
8 used during exercise after seeing Plantronics' "sweatproof" and "waterproof"
9 representations. Mr. Shin also reasonably relied upon Plantronics' representation
10 that the Headphones' batteries could play for eight hours on a single charge.
11

12 30. Mr. Shin used the headphones during runs and exposed the
13 headphones to sweat and/or water.
14

15 31. In mid-January, 2016, Mr. Shin noticed that the Headphones were
16 becoming difficult to charge. Approximately one week later, the Headphones
17 failed to power on even though he followed Plantronics' instructions to fully
18 charge them.
19

20 32. Mr. Shin's Headphones stopped working and failed to retain a charge
21 because they were neither "sweatproof" nor "waterproof" as Plantronics
22 represented.
23
24
25

1 33. Mr. Shin submitted a warranty claim to Plantronics in February 2016,
2 and Plantronics sent Mr. Shin a replacement pair of Headphones. A few months
3 later, the replacement Headphones similarly failed to hold a charge and would not
4 stay powered on.
5

6 34. Mr. Shin subsequently spent a significant amount of time contacting
7 Plantronics in an effort to obtain a pair of Headphones that would perform in a
8 manner consistent with Plantronics' representations. Mr. Shin received two
9 additional replacement Headphones from Plantronics. Each failed to work as
10 represented as each failed to charge or turn on due to one or more defects.
11

12 35. Had Mr. Shin known that these Headphones contained one or more
13 uniform defects, he would not have purchased them or would have paid
14 significantly less for them.
15

16 36. Had Mr. Shin known that these Headphones were not sweatproof or
17 waterproof, he would not have purchased them or would have paid significantly
18 less for them.
19

20 37. Had Mr. Shin known that the Headphones did not have a battery that
21 would last eight hours and/or were not suitable to use while exercising, he would
22 not have purchased them or would have paid significantly less for them.
23
24
25

1 FIT headphones primarily for personal, family or household
2 purposes, and not for resale.³

3 43. In the alternative, Plaintiff brings this action on behalf of himself and
4 the members of the following to Subclass:

5 All persons residing in the State of California who, during the
6 maximum period of time permitted by law, purchased BackBeat
7 FIT headphones primarily for personal, family or household
8 purposes, and not for resale.

9 44. Excluded from these definitions are (1) Defendant, any entity in
10 which Defendant has a controlling interest, and its legal representatives, officers,
11 directors, employees, assigns and successors; (2) the Judge to whom this case is
12 assigned and any member of the Judge's staff or immediate family; and (3) Class
13 Counsel.

14 45. As used herein, "Class Members" shall mean and refer to the
15 members of the Nationwide Class and all subclasses, including Plaintiff.

16 46. Plaintiff seeks only damages and equitable relief on behalf of
17 themselves and the Class Members. Plaintiff disclaims any intent or right to seek
18 any recovery in this action for personal injuries, wrongful death, or emotional
19 distress suffered by Plaintiff and/or the Class Members.
20
21

22 47. Members of the Class and Subclass are so numerous that joinder is
23 impracticable. While the exact number of class members is unknown to Plaintiff,
24

25 ³ Plaintiff reserves the right to amend, as necessary, this Class definition and the Subclass
definition.

1 it is believed that the Class comprises thousands of members geographically
2 disbursed throughout the United States. Therefore, the Class Members are so
3 numerous that individual joinder of all Class Members is impracticable under Fed.
4 R. Civ. P. 23(a)(1).
5

6 48. Common questions of law and fact exist as to all Class Members, as
7 required by Fed. R. Civ. P. 23(a)(2), and predominate over any individual
8 questions, as required by Fed. R. Civ. P. 23(b)(3). These common legal and
9 factual questions include:
10

- 11 a) Whether the Headphones are defective;
- 12 b) Whether Plantronics' claim that the Headphones are "sweatproof"
13 and "waterproof" is deceptive;
- 14 c) Whether Plantronics' claim that the Headphones have "up to 8
15 hours" of battery life is deceptive;
- 16 d) Whether Plantronics' claim that the Headphones are durable
17 enough to withstand "working out" is deceptive;
- 18 e) Whether Plantronics breached express warranties relating to the
19 Headphones including (1) the Headphones have "up to 8 hours" of
20 use on a single charge; and (2) the Headphones are "sweatproof"
21 and "waterproof";
22
23
24
25

- 1 f) Whether Plantronics breached the implied warranty of
2 merchantability relating to the Headphones;
- 3 g) Whether Plantronics breached the implied warranty of fitness for
4 particular purpose relating to the Headphones;
- 5 h) Whether Plantronics was unjustly enriched by receiving moneys in
6 exchange for Headphones that were defective;
- 7 i) Whether Plantronics should be ordered to disgorge all or part of the
8 ill-gotten profits it received from the sale of the defective
9 Headphones;
- 10 j) Whether Plaintiff and the Class are entitled to damages, including
11 compensatory, exemplary, and statutory damages, and the amount
12 of such damages;
- 13 k) Whether Plantronics should be enjoined from continuing to sell
14 defective Headphones that do not live up to Plantronics' advertising
15 and marketing claims; and
- 16 l) Whether Plantronics engaged in unfair, unconscionable, or
17 deceptive trade practices by selling and/or marketing defective
18 Headphones.
- 19
20
21
22

23 49. Plaintiff's claims are typical of the claims of the Class Members
24 whom he seeks to represent under Fed. R. Civ. P. 23(a)(3) because Plaintiff and
25

1 each Class Member have been similarly affected by Plantronics' actionable
2 conduct. Plaintiff and all members of the Class purchased defective Headphones
3 that render the Headphones either worthless or worth substantially less than the
4 price paid to purchase the Headphones. In addition, Plantronics' conduct that gave
5 rise to the claims of Plaintiff and Class Members (i.e. delivering defective
6 Headphones, making false claims with respect to the Headphones, and breaching
7 warranties respecting the Headphones) is the same for all Class Members.
8

9
10 50. Plaintiff will fairly and adequately represent and protect the interests
11 of the Class Members as required by Fed. R. Civ. P. 23(a)(4). Plaintiff is an
12 adequate representative because his interests do not conflict with the interests of
13 the Class Members. Further, Plaintiff has retained counsel competent and
14 experienced in complex class action litigation, including product defect class
15 action litigation, and Plaintiff intends to prosecute this action vigorously.
16 Therefore, the interests of the Class Members will be fairly and adequately
17 protected.
18

19
20 51. A class action is appropriate under Fed. R. Civ. P. 23(b)(3) because a
21 class action is superior to any other available means for fairly and efficiently
22 adjudicating the controversy. In this regard, the Class Members' interests in
23 individually controlling the prosecution of separate actions is low given the
24 magnitude, burden, and expense of individual prosecutions against a large
25

1 corporation such as Defendant. Further, neither Plaintiff nor his counsel are aware
2 of any other on-going class litigation concerning this controversy. It is desirable to
3 concentrate this litigation in this forum to avoid burdening the courts with
4 individual lawsuits. Individualized litigation presents a potential for inconsistent
5 or contradictory judgments, and also increases the delay and expense to all parties
6 and the court system presented by the legal and factual issues of this case. By
7 contrast, the class action procedure here will have no management difficulties.
8
9

10 52. Plantronics has acted or refused to act on grounds generally applicable
11 to the Class, thereby making appropriate final injunctive relief or corresponding
12 declaratory relief with respect to the Class as a whole.
13

14 **FIRST CLAIM FOR RELIEF**

15 **Breach of Express Warranty – Magnuson Moss Warranty Act**

16 **(On Behalf of the Nationwide Class)**

17 53. Plaintiff re-alleges and incorporates each and every allegation set
18 forth above as if fully written herein.
19

20 54. The Headphones are consumer products as defined in 15 U.S.C. §
21 2301(1).
22

23 55. Plaintiff and Class Members are consumers as defined in 15 U.S.C. §
24 2301(3).
25

1 56. Plantronics is a supplier and warrantor as defined in 15 U.S.C. §§
2 2301(4) and (5).

3 57. Plantronics provided Plaintiff and Class Members with “written
4 warranties” within the meaning of 15 U.S.C. § 2301(6).

5 58. 15 U.S.C. § 2310(d)(1)(A) and/or § 2310(d)(3)(C) is satisfied because
6 Plaintiff properly invokes jurisdiction under the Class Action Fairness Act
7 (“CAFA”).
8

9 59. Plantronics breached two separate express warranties made to
10 Plaintiff.
11

12 ***Sweatproof & Waterproof:***
13

14 60. Plantronics promised, affirmed, and expressly warranted that the
15 Headphones are sweatproof and waterproof. In other words, Plantronics expressly
16 warranted to Plaintiff and Class Members that the Headphones would continue to
17 function after being exposed to moisture during exercise.
18

19 61. Plantronics’ sweatproof and waterproof warranty became part of the
20 basis of the bargain for Plaintiff and other Class members because they relied on
21 such statements in deciding to purchase the Headphones, and because such
22 statements are among the facts a reasonable consumer would consider material in
23 the purchase of high-end sport headphones.
24
25

1 62. Plantronics breached its sweatproof and waterproof warranty by
2 delivering Headphones that do not withstand exposure to minimal amounts of
3 sweat and moisture.
4

5 63. At the time the Headphones were sold, Plantronics knew of the
6 defects they possessed and offered an express warranty with no intention of
7 honoring said warranties with respect to the known defects.
8

9 64. Despite repeated demands by Plaintiff and Class Members that
10 Plantronics repair or replace the defective Headphones, Plantronics has refused to
11 provide a permanent fix and simply provides equally defective replacement
12 Headphones. Plantronics' refusal to provide an adequate repair or replacement
13 violates 15 U.S.C. § 2304.
14

15 65. Although notice is not required, where, as here, consumers purchase a
16 product from a retailer rather than a manufacturer, when Plaintiff contacted
17 Plantronics concerning the problems with their headphones, Plantronics was
18 afforded a reasonable opportunity to cure its breach of its express warranty that
19 Headphones would be sweatproof and waterproof, but Plantronics failed to do so.
20

21 66. As a direct and proximate result of Plantronics' breach of its express
22 written warranty regarding the sweatproof and waterproof representations,
23 Plaintiff and Class Members have been damaged in an amount to be proven at trial.
24
25

1 ***Battery-Life:***

2 67. Plantronics expressly warranted that the Headphones provide “up to 8
3 hours” of wireless listening on a single charge.
4

5 68. Such statements became the basis of the bargain for Plaintiff and other
6 Class Members because they relied on such statements in deciding to purchase the
7 Headphones, and because such statements are among the facts a reasonable
8 consumer would consider material in the purchase of high-end sport headphones.
9

10 69. Plantronics breached its battery-life warranties by delivering
11 Headphones that do not deliver as promised and fail to retain their charge for eight
12 hours.

13 70. At the time the Headphones were sold, Plantronics knew of the
14 defects they possessed and offered an express warranty with no intention of
15 honoring said warranties with respect to the known defects.
16

17 71. Despite repeated demands by Plaintiff and Class Members that
18 Plantronics repair or replace the defective Headphones, Plantronics has refused to
19 provide a permanent fix and simply provides equally defective replacement
20 Headphones. Plantronics’ refusal to provide an adequate repair or replacement
21 violates 15 U.S.C. § 2304.
22

23 72. Although notice is not required, where, as here, consumers purchase a
24 product from a retailer rather than a manufacturer, when Plaintiff contacted
25

1 Plantronics concerning the problems with his headphones, Plantronics was
2 afforded a reasonable opportunity to cure its breach of the express warranty, but
3 failed to do so.
4

5 73. As a direct and proximate result of Plantronics' breach of its express
6 written warranties regarding battery-life, Plaintiff and Class Members have been
7 damaged in an amount to be proven at trial.
8

9 **SECOND CLAIM FOR RELIEF**

10 **Breach of Implied Warranty - Magnuson-Moss Warranty Act**

11 **(On Behalf of the Nationwide Class)**

12 74. Plaintiff re-alleges and incorporates each and every allegation set
13 forth above as if fully written herein.
14

15 75. Plaintiff brings this claim on behalf of the Nationwide Class and the
16 California Subclasses.

17 76. The Headphones are "consumer products" within the meaning of 15
18 U.S.C. § 2301.
19

20 77. Plaintiff and members of the Class are "consumers" within the
21 meaning of 15 U.S.C. § 2301 because they are persons entitled under applicable
22 state law to enforce against the warrantor the obligations of its express and implied
23 warranties.
24
25

1 78. Plantronics is a “supplier” of consumer products to consumers and a
2 “warrantor” within the meaning of 15 U.S.C. § 2301.

3 79. 15 U.S.C. § 2310(d)(1)(A) and/or § 2310(d)(3)(C) is satisfied because
4 Plaintiff properly invoke jurisdiction under the Class Action Fairness Act
5 (“CAFA”).
6

7 80. Section 2310(d)(1) of Chapter 15 of the United States Code provides a
8 cause of action for any consumer who is damaged by the failure of a warrantor to
9 comply with a written or implied warranty.
10

11 81. Plantronics made written and implied warranties regarding the
12 Headphones to Plaintiff and Class Members within the meaning of 15 U.S.C. §
13 2301. Plantronics provided Plaintiff and other Class Members with an implied
14 warranty of merchantability within the meaning of the Magnuson-Moss Warranty
15 Act, 15 U.S.C. § 2301(7).
16

17 82. Plantronics breached the implied warranty of merchantability because
18 the Headphones were not fit for the ordinary purpose in which such goods are
19 used. Specifically, the Headphones contained one or more defects that caused
20 them to fail to retain a charge as advertised, particularly after use during exercise,
21 rendering the Headphones unusable for their ordinary purpose.
22

23 83. Pursuant to 15 U.S.C. § 2310(e), Plaintiff is entitled to bring this class
24 action and are not required to give Plantronics notice and an opportunity to cure
25

1 until such time as the Court determines the representative capacity of Plaintiff
2 pursuant to Rule 23 of the Federal Rules of Civil Procedure.

3
4 84. Plaintiff, individually and on behalf of the other Class Members, seeks
5 all damages permitted by law, including diminution in value of their Headphones,
6 in an amount to be proven at trial.

7
8 85. In addition, pursuant to 15 U.S.C. § 2310(d)(2), Plaintiff and the other
9 Class Members are entitled to recover a sum equal to the aggregate amount of
10 costs and expenses (including attorneys' fees based on actual time expended)
11 determined by the Court to have reasonably been incurred by Plaintiff and the
12 other Class Members in connection with the commencement and prosecution of
13 this action.

14
15 86. Further, Plaintiff and the Class are also entitled to equitable relief
16 under 15 U.S.C. § 2310(d)(1) and damages as a result of Plantronics' violation of
17 its written and/or implied warranties.

18 **THIRD CLAIM FOR RELIEF**

19 **Breach of Express Warranty**

20
21 **(On Behalf of the Nationwide Class or, Alternatively, California Subclass)**

22 87. Plaintiff re-alleges and incorporates each and every allegation set
23 forth above as if fully written herein.
24
25

1 88. Plaintiff alleges that Plantronics breached two separate express
2 warranties.

3 ***Sweatproof & Water-Resistant:***
4

5 89. Plantronics promised, affirmed, and expressly warranted that
6 Headphones are sweatproof and waterproof. In other words, Plantronics expressly
7 warranted to Plaintiff and Class Members that the Headphones would continue to
8 function after being exposed to moisture during exercise.
9

10 90. Plantronics' sweatproof and water-resistant warranty became part of
11 the basis of the bargain for Plaintiff and other Class Members because they relied
12 on such statements in deciding to purchase the Headphones, and because such
13 statements are among the facts a reasonable consumer would consider material in
14 the purchase of high-end sport headphones.
15

16 91. Plantronics breached its sweatproof and waterproof warranty by
17 delivering Headphones that do not withstand minimal amounts of moisture.

18 92. At the time the Headphones were sold, Plantronics knew of the
19 defects they possessed and offered an express warranty with no intention of
20 honoring said warranties with respect to the known defects.
21

22 93. Although notice is not required, where, as here, consumers purchased
23 a product from a retailer rather than a manufacturer, when Plaintiff contacted
24 Plantronics concerning the problems with their headphones, Plantronics was
25

1 afforded a reasonable opportunity to cure its breach of its express warranty that
2 Headphones would be sweatproof and waterproof, but failed to do so.

3
4 94. As a direct and proximate result of Plantronics' breach of its express
5 written warranty regarding the sweatproof and waterproof representations, Plaintiff
6 and Class Members have been damaged in an amount to be proven at trial.

7 ***Battery-Life:***

8
9 95. Plantronics expressly warranted that the Headphones provide "up to 8
10 hours" of wireless listening on a single charge.

11
12 96. Such statements became the basis of the bargain for Plaintiff and other
13 Class Members because they relied on such statements in deciding to purchase the
14 Headphones, and because such statements are among the facts a reasonable
15 consumer would consider material in the purchase of high-end sport headphones.

16
17 97. Plantronics breached its battery-life express warranties by delivering
18 Headphones that do not deliver as promised and fail to retain their charge for six or
19 eight hours.

20
21 98. At the time the Headphones were sold, Plantronics knew of the
22 defects they possessed and offered an express warranty with no intention of
23 honoring said warranties with respect to the known defects.

24
25 99. Although notice is not required, where, as here, consumers purchase a
product from a retailer rather than a manufacturer, when Plaintiff contacted

1 Plantronics concerning the problems with their headphones, Plantronics was
2 afforded a reasonable opportunity to cure its breach of the express warranty, but
3 failed to do so.
4

5 100. As a direct and proximate result of Plantronics' breach of its express
6 written warranties regarding battery-life, Plaintiff and Class Members have been
7 damaged in an amount to be proven at trial.
8

9 **FOURTH CLAIM FOR RELIEF**

10 **Implied Warranty of Merchantability – California Song-Beverly Act**
11 **(On Behalf of Nationwide Class or, Alternatively, California Subclass)**
12

13 101. Plaintiff re-alleges and incorporates each and every allegation set
14 forth above as if fully written herein.

15 102. The Headphones are a “consumer good” within the meaning of Cal.
16 Civ. Code § 1791(a).
17

18 103. Plaintiff and members of the Class are “buyers” within the meaning of
19 Cal. Civ. Code § 1791(b).
20

21 104. Plantronics is a “manufacturer” of the Headphones within the
22 meaning Cal. Civ. Code § 1791(j).
23

24 105. Plantronics contracted with retailers so that the retailers could sell
25 Headphones to consumers. Plantronics intended that consumers would be the end
26

1 users of Headphones and that consumers would be the beneficiaries of its contracts
2 with retailers to sell Headphones to consumers.

3
4 106. Plantronics impliedly warranted to Plaintiff and Class Members that
5 its Headphones were “merchantable” within the meaning of Cal. Civ. Code §§
6 1791.1(a) and 1792; however, as described throughout this Complaint, the
7 Headphones do not have the quality that a buyer would reasonably expect, and
8 were therefore not merchantable.

9
10 107. Cal. Civ. Code § 1791.1(a) states:

11 “Implied warranty of merchantability” or “implied warranty that
12 goods are merchantable” means that the consumer goods meet each of
the following:

- 13 (1) Pass without objection in the trade under the contract description;
14 (2) Are fit for the ordinary purposes for which such goods are used;
15 (3) Are adequately contained, packaged, and labeled; and
16 (4) Conform to the promises or affirmations of fact made on the
container or label.

17 108. The Headphones would not pass without objection in the trade
18 because they do not perform as warranted because they fail to maintain a charge
19 after minimal use and are neither sweatproof nor waterproof.

20 109. Similarly, the Headphones’ failure to maintain a charge after minimal
21 use renders them unfit for ordinary purposes for which such goods are used.
22

23 110. The Headphones are not adequately contained, packaged, and labeled
24 for two independent reasons.
25

1 111. The Headphones are not adequately contained, packaged, and labeled
2 because the labeling represents that they are sweatproof and waterproof, which
3 they are not.
4

5 112. Moreover, the Headphones are not adequately contained, packaged,
6 and labeled because the labeling represents that they have a battery that can last
7 eight hours following a single charge, when the battery does not last nearly that
8 long.
9

10 113. For the same reason, the Headphones do not conform to the promises
11 or affirmations of fact made on the container or label.

12 114. Plantronics thus breached the implied warranty of merchantability.

13 115. Notice of breach is not required because Plaintiff and the other Class
14 Members did not purchase their Headphones directly from Plantronics.
15

16 116. As a direct and proximate result of Plantronics' breach of the implied
17 warranty of merchantability, Plaintiff and the other Class Members did not receive
18 the benefit of their bargain and received goods with a defect and/or that were the
19 product of poor quality materials and workmanship that substantially impairs their
20 value to Plaintiff and Class Members.
21

22 117. Plaintiff and Class Members were damaged as a result of the defects
23 present in the Headphones, the product's malfunctioning, and the nonuse of their
24 Headphones.
25

1 118. Pursuant to Cal. Civ. Code §§ 1791.1(d) & 1794, Plaintiff and Class
2 Members are entitled to damages and other legal and equitable relief including, at
3 their election, the purchase price of their Headphones or the overpayment or
4 diminution in value of their Headphones.
5

6 119. Pursuant to Cal. Civ. Code § 1794, Plaintiff and the other Class
7 Members are entitled to costs and attorneys' fees.
8

9 **FIFTH CLAIM FOR RELIEF**

10 **Breach of Implied Warranty of Fitness for a Particular Purpose**

11 **(On Behalf of the Nationwide Class or, Alternatively, California Subclass)**

12 120. Plaintiff re-alleges and incorporates each and every allegation set
13 forth above as if fully written herein.
14

15 121. Defendant marketed, distributed, and/or sold the Headphones with
16 implied warranties that it was fit for its particular purpose of use during exercise.
17

18 122. At the time of purchasing the Headphones, Plaintiff and the Class
19 Members intended to use Headphones during exercise.
20

21 123. Because Defendant extensively marketed Headphones as a product for
22 use during exercise, Defendant knew at the time it sold Headphones to Plaintiff
23 and the Class Members that the Plaintiff and the Class Members intended to use
24 Headphones for that particular purpose.
25

1 124. Plaintiff and the Class Members relied on Defendant's skill and
2 judgment to furnish goods suitable for use during exercise, and for resistance to
3 sweat and water. Plaintiff and the Class Members purchased the Headphones in
4 reliance upon Defendant's implied warranties.
5

6 125. At the time that the Headphones were sold, Defendant knew or had
7 reason to know that Plaintiff and the Class Members were relying on Defendant's
8 skill and judgment to select or furnish a product capable of operating while
9 exercising and after exposure to sweat or moisture during such exercise.
10

11 126. As a direct and proximate cause of Defendant's breach of this implied
12 warranty, Plaintiff and Class Members have been injured and harmed because: (a)
13 they would not have purchased the products on the same terms if the true facts
14 were known concerning the Headphones; (b) they paid a price premium for the
15 products due to Defendant's implied warranties; and (c) they did not receive a
16 product that was fit for its particular purpose of use during exercise and/or after
17 exposure to sweat and moisture.
18
19

20 **SIXTH CLAIM FOR RELIEF**

21 **Violation of California's Consumers Legal Remedies Act ("CLRA")**

22 **(On Behalf of the Nationwide Class or, Alternatively, California Subclass)**

23 127. Plaintiff re-alleges and incorporates each and every allegation set
24 forth above as if fully written herein.
25

1 128. Plantronics is a “person” as defined by the CLRA. Cal. Civ. Code §
2 1761(c).

3 129. Plaintiff and Class Members are “consumers” within the meaning of
4 the CLRA, as defined by Cal. Civ. Code § 1761(d), who purchased one or more
5 pairs of Headphones.
6

7 130. The CLRA prohibits “unfair or deceptive acts or practices undertaken
8 by any person in a transaction intended to result or which results in the sale or
9 lease of goods or services to any consumer[.]” Cal. Civ. Code § 1770(a).
10

11 131. Plantronics has engaged in unfair or deceptive trade practices that
12 violated Cal. Civ. Code § 1770(a), as described above and below, by, among other
13 things, failing to disclose the defective nature of the Headphones despite its
14 knowledge of the defects dating back at least several years, representing that the
15 Headphones had characteristics and benefits that they do not have (e.g., durability,
16 battery-life, sweatproof, waterproof, the ability to use during workouts),
17 representing that the Headphones were of a particular standard, quality, or grade
18 when they were of another, and advertising Headphones with the intent not to sell
19 them as advertised. See Cal. Civ. Code §§ 1770(a)(5), (a)(7), (a)(9).
20
21

22 132. The information Plantronics concealed and/or failed to disclose to
23 Plaintiff and Class Members concerning these defects is material because
24 reasonable consumers would consider the Headphones’ battery defect(s) that
25

1 causes them to fail to hold a reasonable charge and become inoperable during their
2 useful life to be important information when deciding whether to purchase
3 rechargeable, wireless sport headphones.
4

5 133. Plaintiff and Class members would have behaved differently by not
6 buying the Headphones and/or paying less for the Headphones, had they been
7 aware that the Headphones were defective.
8

9 134. Defendant was obliged to disclose the material facts as to the defects
10 because: a) Defendant had exclusive knowledge (dating back at least several years)
11 of the material facts not known to Plaintiff and Class Members, since only
12 Defendant had access to the aggregate data from its retailers, its own research and
13 tests, and complaints from its customers through its warranty and customer service
14 database(s); and b) Defendant actively concealed and suppressed the material facts
15 from Plaintiff and Class Members by not warning of the battery defect at the time
16 of purchase; and (c) Defendant made partial representations about the Headphones'
17 battery life, waterproof, and sweatproof qualities through a long-term advertising
18 campaign while withholding the material fact that the Headphones have defects
19 that render them inoperable.
20
21

22 135. Plaintiff and Class Members justifiably acted or relied to their
23 detriment upon the concealment and/or non-disclosure of material facts as
24 evidenced by their purchases of the defective Headphones. Had Defendant
25

1 disclosed the material fact that the Headphones had one or more defects that cause
2 them to lose the ability to hold a reasonable charge, Plaintiff and Class Members
3 would have behaved differently by not buying the Headphones and/or paying less
4 for the Headphones.
5

6 136. Defendant's omissions of material facts directly and proximately
7 caused Plaintiff's and Class Member's injuries in that Plaintiff and Class Members
8 would not have overpaid for the Headphones. As such, Plaintiff and Class
9 Members did not receive the benefit of the bargain
10

11 137. Plantronics' misrepresentations about battery-life constitute an
12 independent basis for a violation of the CLRA.

13 138. Plantronics' misrepresentations about the Headphones being
14 sweatproof and waterproof constitute an independent basis for a violation of the
15 CLRA.
16

17 139. Plantronics knew, should have known, or was reckless in not knowing
18 that its products did not have the qualities, characteristics, and functions it
19 represented, warranted, and advertised them to have.
20

21 140. Plaintiff and Class Members are reasonable consumers who expected
22 that their Headphones would work as represented.

23 141. As a result of Plantronics' conduct and unfair or deceptive acts or
24 practices, Plaintiff and Class Members suffered actual damages in that the
25

1 Headphones do not function as represented and are not worth the amount paid and
2 Plantronics has deprived Plaintiff and Class Members the benefit of the bargain.

3
4 142. Plaintiff and the Class seek an order enjoining Defendant's unfair or
5 deceptive acts or practices, equitable relief, and an award of attorneys' fees and
6 costs under Cal. Civ. Code § 1780(e).⁴

7
8 **SEVENTH CLAIM FOR RELIEF**

9 **Violation of California's Unfair Competition Law ("UCL")**

10 **(On Behalf of the Nationwide Class or, Alternatively, California Subclass)**

11 143. Plaintiff re-alleges and incorporates each and every allegation set
12 forth above as if fully written herein.

13
14 144. California Business & Professions Code § 17200 prohibits acts of
15 "unfair competition," including any "unlawful, unfair or fraudulent business act or
16 practice" and "unfair, deceptive, untrue or misleading advertising." Plantronics'
17 conduct related to the sale of its defective Headphones violated each of this
18 statute's three prongs.

19
20 145. Plantronics committed an unlawful business act or practice in
21 violation of Cal. Bus. & Prof. Code § 17200, et seq., by their violations of the
22

23
24 ⁴ On September 12, 2018, Plaintiff mailed a letter to Plantronics that complied with Section
25 1782(d) of the CLRA. This letter, attached as Exhibit A, was prepared by Plaintiff's counsel on
behalf of Plaintiff as well as similarly situated purchasers nationwide. The letter gave Defendant
notice of the allegations in this Complaint. As such, Plaintiff plans to file an Amended
Complaint to add a request for damages under the CLRA as appropriate.

1 Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*, as set forth above,
2 by the acts and practices set forth in this Complaint.

3
4 146. Plantronics committed unfair business acts and practices in violation
5 of Cal. Bus. & Prof. Code § 17200, *et seq.*, when it sold Headphones that contained
6 one or more defects causing them to fail to maintain a charge after minimal use;
7 when it represented that the Headphones withstand sweat and water, when in fact
8 they do not; when it represented that the Headphones have batteries that last eight
9 hours following once fully recharged, when in fact they do not; and, when in
10 response to requests for replacement Headphones under Plantronics' warranty,
11 Plantronics sent consumers Headphones that contained the same defects.
12

13
14 147. Plantronics committed fraudulent business acts and practices in
15 violation of Cal. Bus. & Prof. Code § 17200, *et seq.*, when it affirmatively and
16 knowingly misrepresented that the Headphones were durable and would withstand
17 sweat and water, when in fact they do not; and, when in response to requests for
18 replacement Headphones under Plantronics' warranty, Plantronics sent consumers
19 Headphones that contained the same defects. Plantronics' representations and
20 concealment of the defects are likely to mislead the public with regard to the true
21 defective nature of the Headphones.
22

23
24 148. Plantronics' misrepresentations about battery life constitute an
25 independent basis for a violation of the fraudulent prong of the UCL.

1 149. Plantronics' misrepresentation about the Headphones being
2 sweatproof and waterproof constitutes an independent basis for a violation of the
3 fraudulent prong of the UCL.
4

5 150. Plantronics knew, or reasonably should have known, that its
6 Headphones were defective, because they continuously received broken
7 headphones from consumers, often several times from the same individual
8 consumer. Despite the constant stream of returned Headphones, Plantronics
9 continued to sell Headphones to the public. Plantronics knew, or reasonably should
10 have known, of the defect(s) because, in the normal course of business, Plantronics
11 tracks headphones returned under its warranty and the complaints related to those
12 problems and, therefore, must have noticed that there was an unusually high
13 incidence of warranty claims.
14
15

16 151. As a direct and proximate result of Plantronics' unfair and deceptive
17 practices, Plaintiff and Class Members suffered and will continue to suffer actual
18 damages.
19

20 152. As a result of its unfair and deceptive conduct, Plantronics has been
21 unjustly enriched and should be required to disgorge its unjust profits and make
22 restitution to Plaintiff and Class Members pursuant to Cal. Bus. & Prof. Code §§
23 17203 and 17204.
24
25

1 standardized statements claiming the Headphones are designed for use during
2 workouts, and built to withstand sweat and water.

3 157. The foregoing misrepresentations were uniform across all Class
4 Members.
5

6 158. The same extensive and widespread advertising campaign was
7 promoted nationwide, and all of the promotional materials contained the same
8 material representations regarding the Headphones' ability to be used during
9 exercise, that the Headphones provide eight hours of listening on a single charge,
10 and that the Headphones are sweatproof and waterproof.
11

12 159. These representations were false, as detailed herein. Plantronics knew
13 the representations were false when it made them and thereby intended to defraud
14 purchasers.
15

16 160. Plantronics' actions constitute "actual fraud" within the meaning of
17 Cal. Civ. Code § 1572 because Plantronics did the following with the intent to
18 deceive Plaintiff and Class Members and to induce them to enter into their
19 contracts:
20

- 21 a. Suggested that the Headphones can withstand sweat and water and
22 heavy exercise, even though it knew this to be false;
- 23 b. Positively asserted that the Headphones are sweatproof and
24 waterproof in a manner not warranted by the information available to
25 Plantronics;
- 25 c. Asserted that Headphones were "engineered for sport" and had a
battery that could last for eight hours without recharging when they
knew this to be false;

- 1 d. Asserted that the Headphones had a rechargeable battery with an eight
- 2 hour battery life per charge;
- 3 e. Suppressed the true nature of the Headphones' defects from Plaintiff
- 4 and Class Members;
- 5 f. Promised it would deliver Headphones that could withstand sweat,
- 6 water, and heavy workouts, with no intention of so doing; and
- 7 g. Promised it would deliver Headphones that could play sound for eight
- 8 hours, with no intention of so doing.

9 161. Plantronics' actions, listed above, also constituted "deceit" as defined
10 by Cal. Civ. Code § 1710 because Plantronics willfully deceived Plaintiff and
11 Class Members with intent to induce them to alter their positions to their detriment
12 by purchasing defective Headphones.

13 162. Plantronics' fraud and concealment was also uniform across all Class
14 Members; Plantronics concealed from everyone the true nature of the failure to
15 hold a charge and battery defects present in the Headphones.

16 163. Plantronics' misrepresentations and omissions were material in that
17 they would affect a reasonable consumer's decision to purchase Headphones. A
18 reasonable consumer would not purchase high-end rechargeable headphones that
19 stop being able to retain a charge after only minimal use.

20 164. Plantronics' intentionally deceptive conduct induced Plaintiff and
21 Class Members to purchase Headphones and resulted in harm and damage to them.

22 165. Plaintiff believed and relied upon Plantronics' misrepresentations and
23 concealment of the true facts. Class Members are presumed to have believed and
24 relied upon Plantronics' misrepresentations and concealment of the true facts
25

1 because those facts are material to a reasonable consumer's decision to purchase
2 Headphones.

3
4 166. As a result of Plantronics' inducements, Plaintiff and Class Members
5 sustained actual damages including but not limited to receiving a product that fails
6 to perform as promised and not receiving the benefit of the bargain related to their
7 purchase of the Headphones. If Plaintiff and Class Members had known about the
8 defect, they would not have purchased the Headphones or would have paid
9 significantly less for them. Plantronics is therefore liable to Plaintiff and Class
10 Members in an amount to be proven at trial.
11

12 167. Plantronics' conduct was systematic, repetitious, knowing, intentional,
13 and malicious, and demonstrated a lack of care and reckless disregard for
14 Plaintiff's and Class Members' rights and interests. Plantronics' conduct thus
15 warrants an assessment of punitive damages under Cal. Civ. Code § 3294 and other
16 applicable states' laws, consistent with the actual harm it has caused, the
17 reprehensibility of its conduct, and the need to punish and deter such conduct
18
19

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff, on behalf of himself and all others similarly
22 situated, respectfully requests that this Court:

23 A. Certify the Class pursuant to Rule 23;
24
25

1 B. Award damages, including compensatory, exemplary, and statutory
2 damages, to Plaintiff and the Class in an amount to be determined at trial;

3 C. Grant restitution to Plaintiff and the Class and require Plantronics to
4 disgorge its ill-gotten gains;

5 D. Permanently enjoin Plantronics from engaging in the wrongful and
6 unlawful conduct alleged herein;

7 E. Award punitive damages, to the extent permitted by law, in an amount to
8 be determined at trial;

9 F. Award Plaintiff and the Class their expenses and costs of suit, including
10 reasonable attorneys' fees to the extent provided by law;

11 G. Award Plaintiff and the Class pre-judgment and post-judgment interest at
12 the highest legal rate to the extent provided by law; and

13 H. Award all such further relief as the Court deems appropriate.
14
15
16
17
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24
25

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff demands a trial by jury of all issues so triable.

3
4 Dated: September 13, 2018

5 /s/Ronald S. Kravitz

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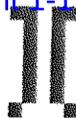
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Attorneys for Plaintiff

EXHIBIT A



Goldenberg Schneider, LPA

September 12, 2018

Via Certified Mail/Return Receipt Requested

Plantronics, Inc.
345 Encinal Street
Santa Cruz, California 95060

Re: Gaffney v. Plantronics, Inc. – Defective Plantronics BackBeat Fit Headphones

Dear Sir or Madam:

We represent James Gaffney, Phil Shin, and Joni Ragain (“Claimants”), individuals who purchased Plantronics BackBeat FIT wireless headphones (“Headphones”) manufactured, marketed and warranted by Plantronics, Inc. (“Plantronics”). Claimants purchased the Headphones after reviewing and relying on representations on Plantronics’ website, marketing materials, and product packaging that the Headphones are “sweatproof,” “waterproof,” and capable of providing “up to 8 hours” of wireless listening – enough to “[p]ower through a week of workouts from a single charge.” Contrary to Plantronics’ representations, the Headphones are not sweatproof or waterproof. Nor do they provide eight hours of listening on a single charge. This is because the Headphones contain one or more defects that cause the battery life to diminish and eventually stop retaining a charge after normal usage, especially when the Headphones are exposed to sweat or water. As a result of the defect(s), the Headphones regularly fail to hold a reasonable charge.

Please take notice that it has come to the attention of Claimants and other purchasers of the Headphones that Plantronics has engaged in deceptive, fraudulent and misleading consumer practices in connection with the marketing and sale of the Headphones in violation of the Consumers Legal Remedies Act (“CLRA”), Cal.Civ.Code § 1750 *et seq.* Specifically, consumers, including Claimants, allege that Plantronics has engaged in unfair or deceptive trade practices that violated Cal. Civ. Code § 1770(a) by, among other things, failing to disclose the defective nature of the Headphones, representing that the Headphones had characteristics and benefits that they do not have (e.g., durability, battery-life, sweatproof, waterproof, the ability to use during workouts), representing that the Headphones were of a particular standard, quality, or grade when they were of another, and advertising Headphones with the intent not to sell them as advertised. *See* Cal. Civ. Code §§ 1770(a)(5), (a)(7), (a)(9).

As a result, Claimants and consumers have incurred substantial damages. Based upon our investigation and the numerous experiences of consumers, we believe and allege that the Headphones cannot and do not perform as Plantronics claims. Claimants further believe and allege that Plantronics knew, or, at a minimum, should have known, that the Headphones are defective and incapable of performing as Plantronics claims.

Plantronics, Inc.
September 12, 2018
Page Two

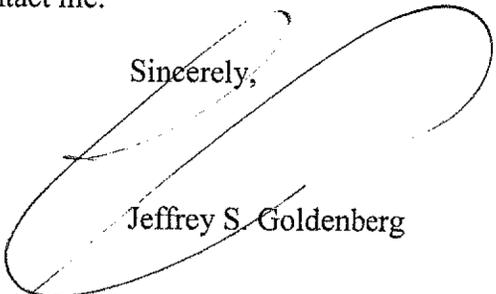
In addition, on behalf of Claimants and a nationwide class of similarly-situated consumer purchasers of the Headphones, Claimants hereby notify you of your violations of the Magnuson-Moss Warranty – Federal Trade Commission Improvement Act, 15 U.S.C. § 2301, *et seq.* (“MMWA”). Numerous consumers have complained to Plantronics about the Headphones’ battery defect, but Plantronics has refused to repair the Headphones or provide replacement headphones that conform to Plantronics’ representations. This conduct violates the MMWA. Consumers, including Claimants, reasonably relied on Plantronics’ warranties in making their purchase decisions.

This Notice is being served on behalf of Claimants and all similarly situated consumers nationwide, who hereby demand that, within 30 days of the date of this letter, you agree to provide to Claimants and similarly situated consumers replacement headphones that fully conform to your prior representations, or otherwise provide to Claimants and similarly situated consumers full refunds of their purchase price.

We have sent this letter directly to you in order to fully comply with the requirements of Cal.Civ.Code § 1782 and the MMWA. We, of course, hope that you will act immediately to rectify this situation and stand ready to discuss a reasonable resolution of this matter on the terms outlined above or on similar terms acceptable to Claimants and similarly situated consumers nationwide.

If you have any questions, require any additional information, or would like to discuss these matters, please do not hesitate to contact me.

Sincerely,



Jeffrey S. Goldenberg

CIVIL COVER SHEET

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
PHIL SHIN, on behalf of himself and all others similarly situated
(b) County of Residence of First Listed Plaintiff Los Angeles County
(c) Attorneys (Firm Name, Address, and Telephone Number)
Ronald S. Kravitz, Shepherd Finkelman Miller & Shah, LLP
201 Filbert Street, Ste. 201, San Francisco, CA 94133; (415) 429-5272

DEFENDANTS
PLANTRONICS, INC.
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question
4 Diversity

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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
6 Multidistrict Litigation-Transfer
8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing
Brief description of cause: Defective and/or flawed headphone devices

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ 500,000,000.00 JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions): JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)
SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 09/13/2018 SIGNATURE OF ATTORNEY OF RECORD /s/Ronald S. Kravitz