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ELECTRONICALLY  
**FILED**

*Superior Court of California,  
County of San Francisco*

**02/01/2021**  
**Clerk of the Court**

BY: **RONNIE OTERO**  
Deputy Clerk

**CGC-21-589534**

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

JOHN KEELEY, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

APPLE, INC., a California corporation,

Defendant.

Case No.:

**CLASS ACTION**

COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiff John Keeley (“Plaintiff”), individually and on behalf of all others similarly  
2 situated, brings this action against Apple, Inc. (“Apple” or “Defendant”). Plaintiff alleges,  
3 based upon personal knowledge and belief as to his own acts and upon the investigation of  
4 counsel, as follows:

### 5 INTRODUCTION

6 1. This class action is brought on behalf of California consumers who purchased  
7 AirPods Max headphones designed, promoted, distributed, warranted, and sold by Apple. Apple  
8 sells the AirPods Max for \$549, the most expensive headphones currently sold on Apple’s  
9 website.

10 2. Apple has built a loyal customer base by marketing itself as a revolutionary  
11 personal technology company that “leads the world in innovation with iPhone, iPad, Mac, Apple  
12 Watch, and Apple TV. Apple’s five software platforms — iOS, iPadOS, macOS, watchOS, and  
13 tvOS — provide seamless experiences across all Apple devices and empower people with  
14 breakthrough services including the App Store, Apple Music, Apple Pay, and iCloud.” Apple  
15 customers pay premium prices because they expect premium products that seamlessly work  
16 together.

17 3. As part of its suite of premium, high-performance products and services, Apple  
18 touts that the AirPods Max “join the existing AirPods family in delivering unparalleled wireless  
19 audio, whether a customer is listening to music, making phone calls, enjoying TV shows and  
20 movies, playing games, or interacting with Siri.” Specifically, Apple boasts that the AirPods  
21 Max are “innovative wireless headphones that bring the magic of AirPods to an over-ear design  
22 with high-fidelity sound” to deliver a “breakthrough listening experience[.]”

23 4. However, a latent and material defect causes condensation to accumulate inside  
24 the ear cups of the AirPods Max, often after only an hour or several hours of normal use (the  
25 “Defect”). In addition to affecting the overall experience and value of the AirPods Max, the  
26 Defect also causes some consumers to experience performance problems such as degraded or no  
27 sound in one or both of the ear cups, failure to detect the user’s ears and of the active noise  
28 cancellation (“ANC”) function, and/or battery charging issues.



1           12.     Before purchasing his AirPods Max, Mr. Keeley relied on his previous  
2 experience with Apple products and trusted that they were high-quality, high-performance,  
3 durable products. Upon receiving his AirPods Max, Mr. Keeley reviewed Apple’s AirPods Max  
4 box, the documents included with the AirPods Max, and proceeded with the setup process to  
5 begin using his AirPods Max. At no point before using the AirPods Max, did Mr. Keeley see any  
6 disclosure that the AirPods Max were defective and prone to condensation or other  
7 condensation-related failure.

8           13.     Approximately a week after he received them, Mr. Keeley noticed excessive  
9 condensation in his AirPods Max ear cups while he was taking a walk. Throughout the next few  
10 weeks, his AirPods Max ear cups would create excessive condensation with increasing  
11 frequency.

12           14.     On or around January 5, 2021, Mr. Keeley contacted an Apple specialist to report  
13 the condensation problem and request repairs. The Apple representative did not acknowledge or  
14 address the condensation issue. Instead, the specialist notified him that he could request a repair  
15 for water damage under his AppleCare+ coverage and referred him to the Apple website, which  
16 indicated a water damage repair would cost \$29.

17           15.     By mid-January, Mr. Keeley’s AirPods Max generated condensation in the ear  
18 cups every time he used them, after approximately one hour of use. Due to the condensation  
19 problems, Mr. Keeley no longer uses the AirPods Max when he is outside, as he is concerned  
20 that outside temperatures or conditions could exacerbate the Defect. The AirPods Max also  
21 exhibit occasional connectivity and performance problems, such as failure to detect his ears,  
22 connect to his wireless network, or maintain its battery charge.

23           16.     Before purchasing his AirPods Max, Mr. Keeley did not know that the  
24 headphones suffer from the Defect. Had Apple disclosed the defective nature of the AirPods  
25 Max prior to his purchase, on the product’s box, or in the accompanying materials, he would not  
26 have purchased the AirPods Max.

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1 **Defendant**

2 17. Defendant Apple Inc. is a corporation organized and existing under the laws of  
3 the State of California and has its principal place of business and worldwide headquarters in  
4 Cupertino, California. At all relevant times, Apple was subject to California law. The policies  
5 and practices challenged herein were centrally adopted at, and disseminated and overseen from,  
6 Apple’s worldwide headquarters in California with the intent that the policies and practices  
7 apply nationwide.

8 **JURISDICTION AND VENUE**

9 18. Venue is proper in the County of San Francisco pursuant to Code of Civil  
10 Procedure section 395(a) because Plaintiff was injured in San Francisco County. Venue is also  
11 proper pursuant to Civil Code section 1780(d) because the transaction at issue or a substantial  
12 portion thereof occurred in San Francisco County.

13 19. The Superior Court for San Francisco County also has jurisdiction because there  
14 is no diversity of citizenship between Plaintiff and members of the Class on the one hand and  
15 Apple on the other.

16 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

17 20. The high-end earphone and headphone market—particularly in the wireless  
18 technology segment—has been and is continuing to expand in recent years. The global earphone  
19 and headphone market is slated to exceed a valuation of \$150 billion by the end of 2026.

20 21. AirPods Max is Apple’s first proprietary headphone product to feature wireless  
21 capabilities in an over-the-ear—as opposed to pods that are inserted in the ear—design. Apple  
22 introduced the AirPods Max for pre-order on December 8, 2020, with availability beginning on  
23 December 15, 2020.

24 22. Apple designs, distributes, warrants, markets, and sells the AirPods Max,  
25 throughout the United States and in California. Apple sells the AirPods Max through its own  
26 retail stores and third-party retail stores such as Best Buy, Verizon, and Amazon, both in brick-  
27 and-mortar stores and online. The retail price for the AirPods Max is \$549.

1           23.     At least three years ago, Apple began developing the AirPods Max, which it  
2 originally planned to release to the public as early as 2018. However, numerous delays caused  
3 production and release to be postponed until December 2020.

4           24.     Prior to Apple’s release of AirPods Max in December 2020, the only wireless,  
5 over-the-ear headphone sold by Apple were Beats headphones, from Beats Electronics, a  
6 headphones company that Apple acquired in May 2014.

7           25.     Apple built an aggressive marketing campaign to push consumers to purchase the  
8 AirPods Max, which are currently the first listing on Apple’s website under the Headphones and  
9 Speakers category.

10          26.     Several months before the AirPods Max release, Apple began offering “rare”  
11 discounts on Beats products, and in October 2020, Apple stopped offering them for sale, pulling  
12 the webpages for Beats headphones and the products themselves from Apple’s website and retail  
13 stores.

14          27.     Crucially, in addition to this aggressive marketing of its AirPods Max, most of  
15 Apple’s current iPhone offerings do not include a headphone jack. Therefore, wireless  
16 headphones must be used with most iPhones currently sold by Apple, unless the consumer buys  
17 a headphone jack converter.

18          28.     Apple’s landing page for the AirPods Max greets the consumer with,  
19 “Introducing AirPods Max — a perfect balance of exhilarating high-fidelity audio and the  
20 effortless magic of AirPods. The ultimate personal listening experience is here.” It goes on to  
21 state:

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The over-ear headphone has been completely reimagined. From cushion to canopy, AirPods Max are designed for an uncompromising fit that creates the optimal acoustic seal for many different head shapes — fully immersing you in every sound.

The canopy spanning the headband is made from a breathable knit mesh, distributing weight to reduce on-head pressure.

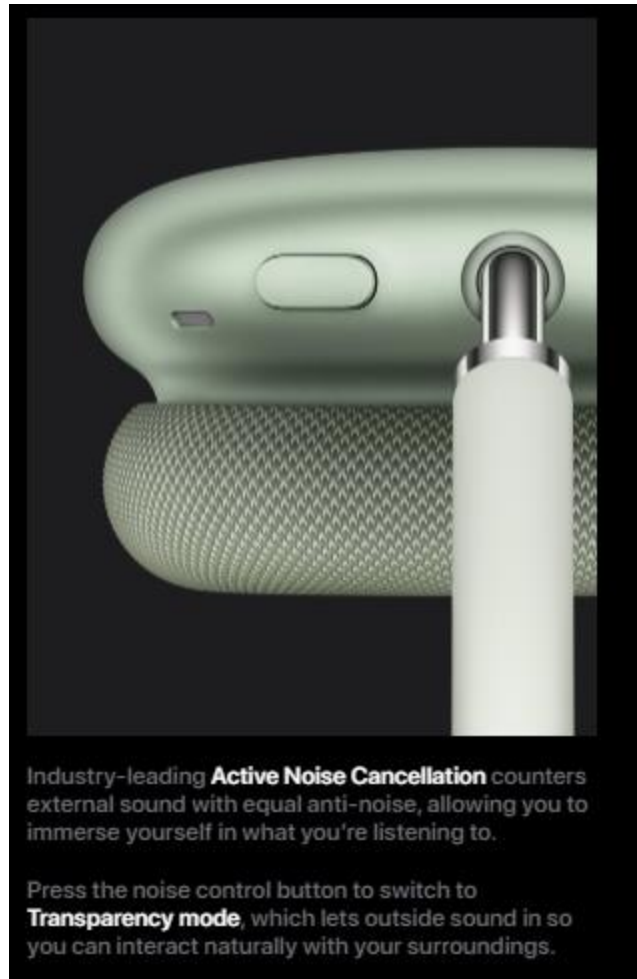
The stainless steel frame is wrapped with a soft-to-the-touch material for a remarkable combination of strength, flexibility, and comfort.

Telescoping arms smoothly extend and stay where you set them, for a consistent fit and seal.



The beautifully anodized aluminum cups feature a revolutionary mechanism that allows each cup to rotate independently and balance pressure.

1           29.     Apple goes on to tout the AirPods Max’s premium technological features:  
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19           30.     And Apple continues, “Spatial audio with dynamic head tracking gives you a  
20 theater-like experience for movies and shows, with sound that surrounds you. Using built-in  
21 gyroscopes and accelerometers, AirPods Max and your iPhone or iPad track the subtle motion of  
22 your head, anchoring sounds to your device.”

23           31.     Apple also promises “20 hours of listening, movie watching, or talk time — with  
24 Active Noise Cancellation and spatial audio enabled. Simply charge via Lightning connector. A  
25 quick 5-minute charge delivers 1.5 hours of listening.”

26           32.     Notably, on its website with care instructions for AirPods Max, Apple notes that  
27 “AirPods Max, and Smart Case aren't waterproof or water resistant, so be careful not to get  
28

1 moisture in any openings[,]” repeating the exhortation to “[a]void getting moisture in any  
2 openings[,]” and “[m]ake sure not to get any liquid in the openings” multiple times.

3 33. But numerous consumers have complained in online forums and Apple’s own  
4 community boards that condensation forms in the ear cups of their AirPods Max, sometimes  
5 causing liquid to seep into the drivers. For instance, on third-party online consumer forums and  
6 Twitter, users posted the following:

7 (a) “So, uhh... my AirPods Max form condensation after extended use.  
8 They’ve never been used in any humid environment. The water gets inside the drivers and has  
9 caused ear detection problems. I’ve been wearing them inside sitting at a desk mainly, nothing  
10 crazy. Super concerning issue”

11 (b) “Had exactly the same issue, with a light walk (40mn) and then again  
12 while watching a movie (1h30). Decided to return them after seeing that the water was also  
13 getting inside the driver and that the ring was getting red... too worrisome for me”

14 (c) “I’m having the exact same issue. I’m in Bradenton Florida, I work inside  
15 a dr office and had my AirPods Max on for 2.5 hours. I just happen to remove the earmuffs  
16 while cleaning them and noticed all this condensation inside and the driver as well. And it’s  
17 weird because I’m not moving around at all. Really freaked me out.”

18 (d) “Today it happened to me, but after walking for 1 hour in the street, the  
19 weather was 0.”

20 (e) “I noticed this with mine and I just got them yesterday.”

21 (f) “Have experienced this too. Not to this extent, but have seen some  
22 condensation when I take the ear cup off.”

23 (g) “Got mine today. Unboxed and using it while walking outside (the air  
24 temperature is around 10°C today) going from places to places for about 6 hours or so. Came  
25 back home, took the ear cups off wanting to see the magnetic magic, and surprised that I saw  
26 some condensation built up like OP's. Started Googling, and now I'm here.”

27 (h) “Why am I seeing condensation inside my ear cups as well as on my  
28 drivers????”

1 (i) “So I’ve had my AirPods Max for just under a week and have noticed that  
2 after prolonged usage there’s a decent amount of condensation inside the ear cup. It’s quite  
3 noticeable when you detach the magnetic ear cushions from the ear cup.”

4 (j) “I actually noticed this after the 2 hour mark, but it was only in the right  
5 ear cup (left was completely fine). I want to assume its condensation, but it was quite a bit of  
6 liquid for it to be from condensation alone. I used an air squirter thingy I use on my camera to  
7 try to dry it off, but ultimately it took about 45 minutes for it to completely dry out. Some of the  
8 liquid actually got through the fine mesh and landed on the driver. I’m going to keep using them  
9 and see if it continues to happen at the same rate or if it goes away. But as of right now, I really  
10 can’t recommend these for working out. Edit: just realized now this post makes it sound like I  
11 worked out using the headphones. I haven’t and never planned to. It was more of a warning for  
12 those that suggested that they would do it (apparently people in this sub said they would still  
13 work out with them).”

14 (k) “Have same issue. After wearing them for an hour and a half watching a  
15 movie, in a 20 degrees Celsius living room. Space Grey also. Probably other headphones have  
16 same issue but you just can’t see it. Wondering what to do. Keep them or better return them.”

17 34. Similarly, on Apple’s own community boards, users posted as follows:

18 (a) A user named “jehidan” posted the following, which generated 114  
19 responses stating that they had the same question:

20  
21 Q: Condensation in the AirPods Max

22 After I wear my AirPods Max for about half an hour, there is liquid accumulation on the inside of the headphones,  
23 especially on the round speakers themselves. These are expensive headphones and I don’t want them to go to waste  
because of a design flaw. Will this damage my headphones and if it does, will Apple fix the problem they created?

24 Posted on Jan 4, 2021 11:40 AM

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1 (b) A user named Sheridan712 posted the following, which generated 9  
2 responses stating that they had the same question:

3  
4 Q: AirPods Max

5 What about the condensation issue I just read about? Should I return mine. I just got them yesterday.

6  
7 Posted on Jan 1, 2021 8:02 PM

8 Reply

I have this question too (9)

9 (c) A user named “maxim10” posted the following, which generated 2  
10 responses stating that they had the same question:

11  
12 Q: Anyone else experiencing Condensation in their AirPods Max?

13 Will Apple recall? Any update from anyone else?

14  
15 Posted on Jan 11, 2021 8:33 PM

16 Reply

I have this question too (2)

17  
18 35. In addition to Plaintiff Keeley, AirPods Max owners complained on consumer  
19 online forums that they have experienced performance issues following condensation gathering  
20 in the ear cups of the AirPods Max, stating:

21 (a) “I can confirm I have the same [condensation] issue and that it is also linked to  
22 the issue of the ANC failing and the wind noise. The drivers get wet and the noise starts up,  
23 ANC stops working and sometimes no sound comes out of either ear. A restart helps but this is  
24 extremely disappointing.”

25 (b) “Mine are doing the same thing with around an hour of listening time...having  
26 ear detection issues @Apple”  
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1           36.     On Forbes.com, in a recent article titled “AirPods Max Users Report Worrying  
2 ‘Condensation’ Problems,” the author noted,<sup>1</sup>

3                     Not only did Apple (controversially) decide not to make the  
4 AirPods Max water resistant, it appears the company’s decision to  
5 make the ear cups out of aluminium is the cause of the problem.  
6 Aluminium stands out, but it is a poor insulator which - as users  
7 have pointed out - likely creates the condensation problem due to  
8 heat build up from wearing the (also heavy) AirPods Max over  
9 time. If this owner theory is correct, there’s no easy way to fix it.  
10 Which may also explain why almost all rivals use plastic.

11           37.     The Forbes.com article also reported that, like Plaintiff Keeley’s experience,  
12 Apple refuses to acknowledge the Defect and instead requires the customer to pay out-of-pocket  
13 for repairs due to the Defect, quoting a customer who stated:<sup>2</sup>

14                     I chatted with Apple about the coverage and they also said it’s a  
15 \$29 repair on top of the \$59 purchase of the AppleCare. That’s \$680  
16 with tax where I’m at, for headphones and coverage. She told me  
17 to just make sure to wipe them down after every use. And I’m just  
18 like - I can get the moisture out of the inside part of the muffs area,  
19 but not in the drivers area AT ALL. And that’s what worries me.  
20 Might just return them and wait for [the] second gen.

21           38.     In other words, Apple blames the customer for allowing the AirPods Max to  
22 retain moisture, when in fact Apple’s own design Defect causes the damaging moisture through  
23 condensation. Then, adding insult to injury, Apple requires customers to pay to repair the  
24 AirPods Max that they have only owned for a short period of time.

25           39.     As the experiences of these consumers and Plaintiff demonstrate, the Defect  
26 causes the AirPods Max to fail to perform as advertised and/or generate condensation that,  
27 according to Apple’s own care instructions—keeping the product openings free of moisture or  
28 liquid, is contrary to the use for which they were intended.

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<sup>1</sup> <https://www.forbes.com/sites/gordonkelly/2021/01/02/apples-airpods-max-condensation-problem-upgrade-new-airpods-pro-iphone-headphones/?sh=89255f332c71>

<sup>2</sup> *Id.*

1           40.     Apple knew or should have known, from its own internal records, and from the  
2 complaints on Apple’s website and third-party forums, and through customer complaints  
3 directly to Apple’s representatives, of the Defect. In addition,

4           41.     Upon information and belief, Apple, through (a) their own records of customers’  
5 complaints, (b) Apple Store repair records, (c) warranty and post-warranty claims, and (d)  
6 complaints online, on its own community boards, in news articles, and on third-party websites,  
7 was well-aware of the Defect but failed to notify consumers of the nature and extent of the  
8 problems with the AirPods Max or provide any adequate remedy. In addition to the above  
9 sources, Apple was aware of the Defect through its own pre-release research, development, and  
10 testing.

11           42.     For example, Apple’s AirPods Max product page touts the battery life of 20 hours  
12 of listening—or 1.5 hours of listening after a “quick 5-minute charge”—based on “Testing  
13 conducted by Apple in November 2020 using preproduction AirPods Max and software paired  
14 with iPhone 12 Pro Max units and prerelease software.”<sup>3</sup>

15           43.     Additionally, on Apple’s webpage offering “information about getting a good fit  
16 and potential skin sensitivities” regarding its earphone and headphone products including the  
17 AirPods Max, it states, “A great deal of care and research goes into choosing materials for all  
18 our devices. As part of our testing and evaluation process, both Apple and independent  
19 laboratories test the materials used in our products. Only materials that pass our rigorous review  
20 process are acceptable for use in Apple products.”<sup>4</sup>

21           44.     Apple undoubtedly performed extensive research and testing beyond battery life  
22 and materials sensitivity in connection with its AirPods Max as early as 2018, the year that  
23 media reports projected Apple’s initial release of the AirPods Max.

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26 <sup>3</sup> [https://www.apple.com/airpods-max/?afid=p238%7Ccssva4QyZK-  
27 dc\\_mtid\\_1870765e38482\\_pcrd\\_490221026373\\_pgrid\\_124603971068\\_&cid=aos-us-kwgo---  
slid---product-](https://www.apple.com/airpods-max/?afid=p238%7Ccssva4QyZK-dc_mtid_1870765e38482_pcrd_490221026373_pgrid_124603971068_&cid=aos-us-kwgo---slid---product-)

28 <sup>4</sup> <https://support.apple.com/en-us/HT211158>

1           45.     In many instances, consumers have incurred and will continue to incur expenses  
2 for the diagnosis of the Defect and repair and replacement of their AirPods Max, despite such  
3 defect having been contained in the product when manufactured by Apple.

4           46.     Consumers were without access to the information concealed by Apple as  
5 described herein, and therefore reasonably relied on Apple’s representations and warranties  
6 regarding the quality, durability, and other material characteristics of the AirPods Max. Had  
7 consumers known of the Defect, they would not have purchased the AirPods Max and would  
8 certainly not have paid \$549 for the product.

9           **CLASS ACTION ALLEGATIONS**

10          47.     Plaintiff brings this lawsuit as a class action on behalf of himself and all others  
11 similarly situated as members of the proposed Class pursuant to California Code of Civil  
12 Procedure section 382. The questions raised in this action are of common or general interest of  
13 many persons and it is impracticable to bring them all before the court.

14          48.     The Class is defined as all California citizens who purchased Apple AirPods Max  
15 headphones (the “Class”).

16          49.     Excluded from the Class are: (a) Defendant, any entity or division in which  
17 Defendant has a controlling interest, and their legal representatives, officers, directors, assigns,  
18 and successors; and (b) the Judge to whom this case is assigned and the Judge’s staff. Plaintiff  
19 reserves the right to amend the Class definition if discovery and further investigation reveal that  
20 the Class should be expanded or otherwise modified.

21          50.     Numerosity: Although the exact number of Class Members is uncertain, and can  
22 only be ascertained through appropriate discovery, the number is significant enough such that  
23 joinder is impracticable. The disposition of the claims of the Class Members in a single action  
24 will provide substantial benefits to all parties and to the Court. The Class Members are readily  
25 identifiable from information and records in Defendant’s possession, custody, or control.

26          51.     Typicality: Plaintiff’s claims are typical of the claims of the Class in that  
27 Plaintiff, like all Class Members, purchased the AirPods Max designed, distributed, warranted,  
28 and sold by Apple. The representative Plaintiff, like all Class Members, has been damaged by

1 Defendant's misconduct in that they have all incurred or will incur the cost of purchasing the  
2 defective product, and of repairing or replacing the defective AirPods Max and/or its  
3 components. Furthermore, the factual bases of Apple's misconduct are common to all Class  
4 Members and represent a common thread resulting in injury to the Class.

5 52. Commonality: There are numerous questions of law and fact common to  
6 Plaintiff and the Class that predominate over any question affecting Class Members individually.  
7 These common legal and factual issues include the following:

- 8 (a) Whether AirPods Max are defective;
- 9 (b) Whether AirPods Max are defectively designed and/or manufactured;
- 10 (c) Whether Defendant knew about the defects pertaining to the AirPods Max and, if  
11 so, how long Defendant has known of the defect;
- 12 (d) Whether the defective nature of the AirPods Max constitutes a material fact;
- 13 (e) Whether Plaintiff and the other Class Members are entitled to equitable relief,  
14 including a preliminary and/or permanent injunction;
- 15 (f) Whether Defendant knew or reasonably should have known of the Defect before  
16 it sold AirPods Max to Class Members;
- 17 (g) Whether Defendant should be declared financially responsible for notifying the  
18 Class Members of problems with the AirPods Max and for the costs and expenses of repairing  
19 and replacing the defective AirPods Max;
- 20 (h) Whether Defendant is obligated to inform Class Members of their right to seek  
21 reimbursement for having paid to diagnose, repair, or replace their defective AirPods Max;
- 22 (i) Whether Defendant engaged in unfair, unconscionable, or deceptive trade  
23 practices by selling and/or marketing their defective AirPods Max;
- 24 (j) Whether Defendant breached the implied warranty of merchantability pursuant to  
25 the Song-Beverly Act;
- 26 (k) Whether Defendant breached its express warranties under UCC Section 2301;
- 27 (l) Whether Defendant was unjustly enriched by receiving monies in exchange for  
28 AirPods Max that were defective; and

1 (m) Whether Defendant should be ordered to disgorge all or part of the ill-gotten  
2 profits it received from the sale of defective AirPods Max.

3 53. Adequate Representation: Plaintiff will fairly and adequately protect the interests  
4 of the Class Members. Plaintiff has retained attorneys experienced in the prosecution of class  
5 actions, including consumer and product defect class actions, and Plaintiff intends to vigorously  
6 prosecute this action.

7 54. Predominance and Superiority: Plaintiff and Class Members have all suffered,  
8 and will continue to suffer, harm and damages as a result of Defendant's unlawful and wrongful  
9 conduct. A class action is superior to other available methods for the fair and efficient  
10 adjudication of the controversy. Absent a class action, most Class Members would likely find  
11 the cost of litigating their claims prohibitively high and would therefore have no effective  
12 remedy. Because of the relatively small size of the individual Class Members' claims, it is likely  
13 that only a few Class Members could afford to seek legal redress for Defendant's misconduct.  
14 Absent a class action, Class Members will continue to incur damages, and Defendant's  
15 misconduct will continue unabated without remedy or relief. Class treatment of common  
16 questions of law and fact would also be a superior method to multiple individual actions or  
17 piecemeal litigation in that it will conserve the resources of the courts and the litigants and  
18 promote consistency and efficiency of adjudication.

19 **FIRST CAUSE OF ACTION**  
20 **(Violation of California's Consumers Legal Remedies Act,**  
21 **California Civil Code § 1750, *et seq.*)**

22 55. Plaintiff Keeley incorporates by reference all allegations contained in the  
23 preceding paragraphs of this Complaint.

24 56. Plaintiff Keeley brings this cause of action on behalf of himself and the Class.

25 57. Defendant is a "person" as defined by California Civil Code § 1761(c).

26 58. Plaintiff Keeley and Class members are "consumers" within the meaning of  
27 California Civil Code § 1761(d) because they purchased their AirPods Max primarily for  
28 personal, family, or household use.

1           59. By failing to disclose and concealing the defective nature of the AirPods Max  
2 from Plaintiff Keeley and Class members, Defendant violated California Civil Code § 1770(a),  
3 as it represented that the AirPods Max had characteristics and benefits that they do not have, and  
4 represented that the AirPods Max were of a particular standard, quality, or grade when they were  
5 of another. *See* Cal. Civ. Code §§ 1770(a)(5) & (7).

6           60. Defendant's unfair and deceptive acts or practices occurred repeatedly in  
7 Defendant's trade or business, were capable of deceiving and did deceive a substantial portion  
8 of the purchasing public.

9           61. Defendant knew that the AirPods Max suffered from an inherent defect, were  
10 defectively designed and/or manufactured, and were not suitable for their intended use.

11           62. As a result of their reliance on Defendant's omissions, purchasers of the AirPods  
12 Max, including Plaintiff Keeley, suffered an ascertainable loss of money, property, and/or value  
13 of their AirPods Max. Additionally, as a result of the Defect, Plaintiff Keeley and Class  
14 members were harmed and suffered actual damages in that the AirPods Max are not worth the  
15 price paid, and/or are substantially certain to fail before the expected useful life of the product  
16 has run.

17           63. In failing to disclose the defective nature of the AirPods Max, Defendant  
18 knowingly and intentionally concealed material facts and breached its duty not to do so.

19           64. The facts Defendant concealed from or failed to disclose to Plaintiff Keeley and  
20 Class members are material in that a reasonable consumer would have considered them to be  
21 important in deciding whether to purchase the AirPods Max. Had Plaintiff and Class members  
22 known that the Defect existed, they would not have purchased the AirPods Max and would not  
23 have paid \$549 for the product.

24           65. Plaintiff and Class members are reasonable consumers who expect that high-end,  
25 premium-priced wireless headphones will not repeatedly become wet with condensation, which  
26 is contrary to Apple's explicit care and use instructions and will ultimately damage or degrade  
27 the headphones. This is the reasonable and objective consumer expectation relating to a high-  
28 end, premium-priced wireless headphones.



1           75. Defendant knew the AirPods Max were defectively designed or manufactured,  
2 would fail prematurely, and were not suitable for their intended use.

3           76. In failing to disclose the Defect, Defendant has knowingly and intentionally  
4 concealed material facts and breached its duty not to do so.

5           77. The facts Defendant concealed from or failed to disclose to Plaintiff and Class  
6 members are material in that a reasonable person would have considered them to be important in  
7 deciding whether to purchase AirPods Max. Had they known of the Defect, Plaintiff and Class  
8 members would not have purchased the AirPods Max and would not have paid \$549 for the  
9 product.

10          78. Defendant continued to conceal the defective nature of the AirPods Max even  
11 after Plaintiff and Class members began to report problems.

12          79. Defendant's conduct was and is likely to deceive consumers.

13          80. Defendant's acts, conduct, and practices were unlawful, in that they constituted:

14          (a) Violations of California's Consumers Legal Remedies Act;

15          (b) Violations of the Song-Beverly Consumer Warranty Act; and

16          (c) Breach of Express Warranty under California Commercial Code § 2313.

17          81. By its conduct, Defendant has engaged in unfair competition and unlawful,  
18 unfair, and fraudulent business practices.

19          82. Defendant's unfair or deceptive acts or practices occurred repeatedly in  
20 Defendant's trade or business and were capable of deceiving a substantial portion of the  
21 purchasing public.

22          83. As a direct and proximate result of Defendant's unfair and deceptive practices,  
23 Plaintiff and Class members have suffered and will continue to suffer actual damages.

24          84. Defendant has been unjustly enriched and should be required to make restitution  
25 to Plaintiff and Class members pursuant to §§ 17203 and 17204 of the Business & Professions  
26 Code.

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**THIRD CAUSE OF ACTION**

**(Breach of Implied Warranty Pursuant to Song-Beverly  
Consumer Warranty Act, California Civil Code §§ 1791.1 and 1792, *et seq.*)**

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3 85. Plaintiff incorporates by reference all allegations contained in the preceding  
4 paragraphs of this Complaint.

5 86. Plaintiff brings this cause of action against Defendant on behalf of himself and  
6 the Class.

7 87. Defendant was at all relevant times the designer, manufacturer, distributor,  
8 warrantor, and/or seller of the AirPods Max.

9 88. Defendant impliedly warranted to Plaintiff and Class members that the AirPods  
10 Max were “merchantable” within the meaning of Cal. Civ. Code §§ 1791.1 and 1792. However,  
11 the AirPods Max do not have the quality that a buyer would reasonably expect, and were  
12 therefore not merchantable.

13 89. Defendant knew or had reason to know of the specific use for which the AirPods  
14 Max were purchased.

15 90. Defendant impliedly warranted that the AirPods Max were of merchantable  
16 quality, would pass without objection in the trade, and are fit for their intended use.

17 91. Contrary to the applicable implied warranties, the AirPods Max at the time of  
18 sale and thereafter would not pass without objection in the trade because they do not perform as  
19 warranted and because the Defect causes them to generate condensation in the ear cups after  
20 minimal use under normal conditions, which is contrary to Apple’s explicit care and use  
21 instructions to keep moisture away from, and out of, the AirPods Max openings.

22 92. Contrary to the applicable implied warranties, the AirPods Max at the time of  
23 sale and thereafter were not fit for their ordinary and intended purpose of performing as  
24 warranted and being designed and/or manufactured so that damage inducing condensation is  
25 prevented from forming in the ear cups, in accordance with Apple’s explicit care and use  
26 instructions. Instead, the AirPods Max are defective as a result of the Defect.

27 93. The alleged Defect is inherent and was present in each AirPods Max at the time  
28 of sale.



1 functionally equivalent to the product it replaces, or (3) refund the  
2 original purchase price. This warranty excludes normal depletion  
3 of consumable parts such as batteries unless failure has occurred  
4 due to a defect in materials or workmanship and, damage resulting  
5 from abuse, accident, modifications, unauthorized repairs or other  
6 causes that are not defects in materials and workmanship.

7 101. Defendant provided all purchasers of the AirPods Max with an express warranty  
8 described above, which became a material part of the bargain. Accordingly, Defendant's express  
9 warranty is an express warranty under California law.

10 102. The AirPods Max are covered by the express warranty.

11 103. Defendant breached the express warranties by selling AirPods Max that were  
12 defective as a result of the Defect, requiring repair or replacement within the warranty period,  
13 and refusing to honor the express warranty by repairing or replacing, free of charge, the AirPods  
14 Max and its component parts. Apple has failed to "repair" the defects as alleged herein, and in  
15 fact, the product cannot be repaired because it suffers from a design and/or manufacturing  
16 defect.

17 104. Plaintiff was not required to notify Apple of the breach or was not required to do  
18 so because affording Apple a reasonable opportunity to cure its breach of written warranty  
19 would have been futile. Defendant was also on notice of the defect from complaints and service  
20 requests it received from Class Members, from repairs and/or replacements of the AirPods Max,  
21 and from other internal sources.

22 105. As a direct and proximate cause of Defendant's breach, Plaintiff and the Class  
23 members have suffered, and continue to suffer, damages, including economic damages at the  
24 point of sale. Additionally, Plaintiff and the other Class members have incurred or will incur  
25 economic damages at the point of repair in the form of the cost of repair.

26 106. Plaintiff and the Class members are entitled to legal and equitable relief against  
27 Defendant, including actual damages, consequential damages, specific performance, attorneys'  
28 fees, costs of suit, and other relief as appropriate.

**FIFTH CAUSE OF ACTION**  
**(Common Law Fraud/Fraudulent Concealment)**

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2           107. Plaintiff incorporates by reference all allegations contained in the preceding  
3 paragraphs of this Complaint.

4           108. Plaintiff brings this cause of action on behalf of himself and the Class.

5           109. Defendant engaged in fraudulent and deceptive conduct. As described above,  
6 Defendant's conduct defrauded Plaintiff and Class members by intentionally leading them to  
7 believe, through omissions, suppressions, and concealments of material fact, that the AirPods  
8 Max possessed important characteristics that they in fact do not possess—namely that they are  
9 premium quality, high performance wireless headphones will not repeatedly become wet with  
10 condensation, which will ultimately damage or degrade the headphones, after minimal use  
11 and/or as the result of normal and intended ordinary use—and inducing their purchases.

12           110. Defendant intentionally suppressed and concealed material facts about the  
13 performance and quality of the AirPods Max. As alleged herein, Defendant knew about the  
14 defective nature of the AirPods Max and was aware of numerous consumer complaints, but  
15 never disclosed the Defect to Plaintiff and Class members.

16           111. Because the Defect in the AirPods Max is latent and unobservable until it arises,  
17 Plaintiff and Class members had no reasonable means of knowing that Defendant's  
18 representations concerning the AirPods Max were incomplete, false, or misleading, or that it had  
19 failed to disclose that the AirPods Max are defective. Plaintiff and Class members did not and  
20 reasonably could not have discovered Defendant's deceit before they purchased their AirPods  
21 Max.

22           112. Defendant had a duty to disclose the Defect because the Defect is material and  
23 Defendant possessed exclusive knowledge of it. Defendant acquired its knowledge of the Defect  
24 from numerous consumer complaints and warranty claims, and Defendant's non-public internal  
25 data, analyses, and communications, among other sources.

26           113. Defendant also had a duty to disclose the Defect because Defendant made partial  
27 representations regarding the purported high quality of the AirPods Max, yet failed to disclose  
28

1 facts that would have materially qualified these partial representations. Defendant made these  
2 partial and misleading representations through marketing materials, advertising, product  
3 brochures, and labeling, statements made through its agents and on its website, and in other  
4 sources that Plaintiff and Class members encountered before purchasing their AirPods Max. In  
5 light of Defendant's voluntarily providing such partial information to Plaintiff and Class  
6 members, Defendant had a duty to disclose the entire truth about the AirPods Max and, in  
7 particular, its defective nature and the Defect specifically.

8 114. Before and immediately after purchase, Plaintiff relied on Defendant's reputation  
9 – along with Defendant's failure to disclose the faulty and defective nature of the AirPods Max  
10 on websites and in product manuals and brochures that accompanied the AirPods Max.

11 115. These informational sources that Plaintiff saw or heard, including statements on  
12 websites, product manuals, brochures, or promotional materials, did not disclose the Defect or  
13 that the AirPods Max are defective.

14 116. Defendant concealed the Defect to sell more AirPods Max at higher prices, to  
15 protect its brand, and to avoid the costs of honoring warranty claims and making effective  
16 repairs, replacements, and refunds for its customers.

17 117. Had Defendant disclosed its knowledge of the Defect before Plaintiff and Class  
18 members purchased their AirPods Max, they would have seen such disclosures and been aware  
19 of them. Defendant's omissions were material to Plaintiff and Class members, as they would not  
20 have purchased the AirPods Max had they known it contained the Defect and would not have  
21 paid \$549 for the product.

22 118. At the time that Defendant made these misrepresentations and concealed these  
23 material facts, and at the time that Plaintiffs and Class members purchased the AirPods Max,  
24 Plaintiff and the Class were unaware of the Defect.

25 119. Plaintiff and Class members did in fact rely upon Defendant's misrepresentations  
26 concerning the non-defective nature of the AirPods Max and such reliance was reasonable.

27 120. As a direct and proximate cause of Defendant's deceptive and fraudulent  
28 conduct, Plaintiff and Class members sustained damages.



1 (b) A declaration that Defendant is financially responsible for notifying all  
2 Class Members of the Defect;

3 (c) An order enjoining Defendant from further deceptive distribution and  
4 sales practices with respect to AirPods Max; compelling Defendant to issue a voluntary recall  
5 for the AirPods Max; compelling Defendant to repair and eliminate the Defect from every  
6 AirPods Max; enjoining Defendant from selling the AirPods Max with the misleading  
7 information; and/or compelling Defendant to reform its warranty, in a manner deemed to be  
8 appropriate by the Court, to cover the injury alleged and to notify all Class Members that such  
9 warranty has been reformed;

10 (d) A declaration requiring Defendant to comply with the various provisions  
11 of the Song-Beverly Act alleged herein and to make all the required disclosures;

12 (e) An award to Plaintiff and the Class for compensatory, exemplary, and  
13 statutory damages, including interest, in an amount to be proven at trial; except that Plaintiff do  
14 not currently seek monetary damages under the Consumers Legal Remedies Act;

15 (f) Any and all remedies provided pursuant to the Song-Beverly Act,  
16 including California Civil Code section 1794;

17 (g) Any and all statutory remedies provided for breach of express warranties,  
18 pursuant to Cal. Comm. Code section 2701, *et seq.*;

19 (h) A declaration that Defendant must disgorge, for the benefit of the Class,  
20 all or part of the ill-gotten profits it received from the sale of its AirPods Max or make full  
21 restitution to Plaintiff and Class Members;

22 (i) An award of attorneys' fees and costs, as allowed by law;

23 (j) An award of attorneys' fees and costs pursuant to California Code of Civil  
24 Procedure § 1021.5;

25 (k) An award of pre-judgment and post-judgment interest, as provided by  
26 law;

27 (l) Leave to amend the Complaint to conform to the evidence produced at  
28 trial; and

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(m) Such other relief as may be appropriate under the circumstances.

**JURY TRIAL DEMANDED**

Plaintiffs demand a trial by jury of any and all issues in this action so triable.

Dated: January 26, 2021

Respectfully submitted,

By: Todd M. Schneider

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