

1 Michael F. Ram (SBN 104805)
RAM & OLSON
2 555 Montgomery Street, Suite 820
San Francisco, California 94111
3 Telephone: (415) 433-4949
Facsimile: (415) 433-7311
4 Email: mram@ramolson.com

5 Oren S. Giskan
GISKAN SOLOTAROFF
6 **ANDERSON & STEWART, LLP**
11 Broadway, Suite 2150
7 New York, NY 10004
Telephone: (212) 847-8315
8 Facsimile: (646) 520-3237
Email: ogiskan@gslawny.com

9 Marc H. Edelson
10 **EDELSON & ASSOCIATES, LLC**
45 W. Court Street
11 Doylestown, PA 18901
Telephone: (215) 230-8043
12 Facsimile: (215) 230-8735
Email: medelson@edelson-law.com

13 *Attorneys for Plaintiff and the Class*

14 *[Additional counsel on signature page]*

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

19 **MICHAEL A. KENT, BOYD**
DAUGHERTY, DANIEL JOHANNING,
20 **AND JAKUB CMIRAL**, individually and on
behalf of all those similarly situated,

21 Plaintiffs,

22 v.

23 **HEWLETT-PACKARD COMPANY**, a
Delaware corporation,

24 Defendant.

CASE NO. C 09-05341 JF

CLASS ACTION

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

DEMAND FOR JURY TRIAL

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I. INTRODUCTION

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2 1. Plaintiffs, Michael A. Kent, Boyd B. Daugherty, Daniel Johannning, and Jakub
3 Cmiral, (“Plaintiffs”), individually and on behalf of the Class defined below, bring this action for
4 damages, restitution and injunctive relief against defendant, Hewlett-Packard Company (“HP” or
5 “Defendant”), on behalf of consumers who purchased Hewlett-Packard Pavilion Elite series
6 computers, including the Pavilion Elite e9150t, e9180f, e9180t, m9600t and m9650f, alleging
7 violations of California’s Consumers Legal Remedies Act, California Civil Code Section 1750 *et*
8 *seq.* (“CLRA”); the Unfair Competition Law, California Business & Professions Code § 17200 *et*
9 *seq.* (“UCL”), (Unfair Business Practices, Unlawful Business Practices, Fraudulent Conduct);
10 Breach of Express Warranty and Breach of Implied Warranty. Plaintiffs demand a jury trial on
11 all issues so triable, and allege the following in support:

12 2. The HP Pavilion Elite series computers at issue here include the Pavilion Elite
13 e9150t, e9180f, e9180t, m9600t and m9650f equipped with Pegatron “Truckee” motherboards
14 and Intel i7 series CPUs. These computers are inherently defective and are prone to frequent
15 failures, the symptoms of which include the system becoming unresponsive or locking-up within
16 thirty minutes turning it on (“cold boot”). The lock-up symptoms are frequently accompanied by
17 messages on the computer’s display to the effect that “there is an uncorrectable hardware error”
18 and there is “a timing issue on a secondary processor.”

19 3. Defendant Hewlett-Packard Company (“HP”), one of the world's leading
20 computer companies, designs, manufactures, markets, advertises, promotes, distributes and
21 knowingly continues to sell, its HP Pavilion Elite series computers with the defective
22 motherboards.

23 4. As alleged more fully herein, Defendant HP made material misrepresentations
24 and/or concealed material information in the marketing, advertising, and sale of a consumer
25 product, the HP Pavilion Elite series computers.

26 5. HP “guaranteed” Plaintiffs and members of the class that its computers were
27 “reliable; free from defects,” and of merchantable quality and workmanship.
28

1 HP guarantees that the HP Hardware Products that you have
2 purchased from HP are free from defects in materials or
workmanship under normal use during the Limited Warranty
3 Period. See
[http://welcome.hp.com/country/us/en/privacy/limited_warranty.ht](http://welcome.hp.com/country/us/en/privacy/limited_warranty.htm)
4 [m.l](http://welcome.hp.com/country/us/en/privacy/limited_warranty.htm)

5 6. Plaintiffs' experiences, along with those of numerous other purchasers who have
6 recounted their problems with the HP Elite series computers, reveal that the computers are not
7 "free from defects."

8 7. Defendant concealed material facts regarding its HP Pavilion Elite series
9 computers, including that the motherboard is defective, prone to frequent, repeated failures, and
10 thus is inherently defective, is not of merchantable quality, and is substantially certain to
11 malfunction and fail during the warranty period.

12 8. Though faced with numerous consumer complaints, HP has failed and refused to
13 warn consumers about the defects inherent in its HP Pavilion Elite series computers and has
14 failed to provide an adequate repair.

15 II. JURISDICTION AND VENUE

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

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

III. THE PARTIES

Plaintiffs

11. Plaintiff Michael A. Kent is an adult individual residing in Arvada Colorado. He purchased his HP Elite e9150t computer for personal, family or household use on July 22, 2009 directly from Defendant. Prior to purchasing his computer, he visited Defendant HP's online store, "HP Home & Home Office," in order to compare features and prices on the various computers offered for sale. In selecting the HP Pavilion Elite series computers, Plaintiff Kent relied on HP's representations that the HP Pavilion Elite was reliable, was free from defects, and was of merchantable quality and workmanship. He selected the e9150t based on cost, quality, performance and durability factors. Additionally, Plaintiff Kent purchased a four-year extended warranty from HP. The e9150t he received incorporates the Pegatron Truckee motherboard, version 1.04, and Intel i7 CPU, version 920. After operating the e9150t for approximately two weeks, Plaintiff's computer began experiencing repeated disruptive failures including lock-ups, freezes,¹ and blue screens errors,² requiring him to reboot the computer. Since that time, Plaintiff experiences the aforementioned errors on an almost daily basis. These errors occur most frequently within ten to twenty minutes after a "cold boot." The errors Plaintiff reports are typical of those being reported on the HP Forum detailed below. Based on numerous posts on the Internet, Plaintiff reasonably believed that HP does not have a fix to satisfactorily repair his computer. He went on an HP Internet forum and saw that similarly situated consumers were experiencing the same problems as he was before and after HP repairs, the HP BIOS fixes did not work, and replacing the motherboard was not working. He has installed the HP BIOS fixes discussed on the forum and they have not solved the problem.

¹ During the "freeze" state, Plaintiff reports that the keyboard and mouse are unresponsive, the last screen remains displayed on the computer's monitor but does not update, and the system clock remains frozen at the time to error occurred.

² Blue screens are also known as "blue screens of death" or "BSOD" which indicate a system failure requiring the computer to shut down, and may display an error code such as "hardware error."

1 12. Plaintiff Boyd B. Daugherty is an adult individual residing in Kingston Springs,
2 Tennessee. He purchased his e9150t for personal, family or household use on July 6, 2009 from
3 HP. Plaintiff wanted to purchase a high performance computer and was specifically interested in
4 purchasing a computer utilizing the Intel I7 processor. Plaintiff selected the e9150t because HP
5 represented it as the best performing computer available from HP. The e9150t system he
6 purchased cost approximately \$1,378.99 and incorporates the Pegatron Truckee motherboard,
7 and Intel i7 CPU, version 920, that are among the Pavilion Elite series computers included in this
8 complaint. Prior to purchase he reviewed the e9150t's specifications and product reviews placed
9 on both HP's website. Plaintiff Daugherty decided to purchase the e9150t based on HP's
10 representations that the e9150t was reliable and of merchantable quality and workmanship.
11 Plaintiff specifically relied on HP's representations that he was purchasing a computer that was
12 free from defects and expected that he could immediately start using said computer without
13 experiencing the defects described below. Within ten minutes of its first use, Plaintiff
14 Daugherty' e9150t computer displayed the same defects that Plaintiff Kent describes above,
15 consisting of the unexpected locking-up and freezing requiring Plaintiff Daugherty to reboot this
16 computer. Plaintiff Daugherty immediately contacted HP's customer service department and
17 reported that his e9150t was malfunctioning. HP provided Plaintiff Daugherty with a new Vista
18 operating system and software package for installation on the e9150t. After Plaintiff Daugherty
19 installed the new software, his e9150t continued to malfunction. Plaintiff Daugherty again
20 contacted HP's customer service and requested that HP replace his e9150t with another
21 computer. This request was made within twenty-one days of Plaintiff Daugherty's purchase. HP
22 denied Plaintiff's request and, instead, demanded that Plaintiff install the Windows 7 operating
23 system. His e9150t continued to malfunction after Windows 7 was installed. Plaintiff again
24 requested that HP replace his e9150t with one that would not malfunction. HP again refused
25 Plaintiff's request. Plaintiff Daugherty reports that his e9150t continues to display the same
26 defects consisting of freezes, lock-ups and blue screen errors as it has since his initial purchase.
27 Plaintiff Daugherty estimates that he has contacted HP's customer service approximately fifty
28

1 times regarding his defective e9150t. He has been unable to obtain a usable unit free from the
2 defects described herein despite his repeated attempts to obtain warranty service from HP. Had
3 Plaintiff been aware prior to purchase that the e9150t computer he owns suffered from the defects
4 described herein and were prone to frequent lock-ups, freezes and blue screen errors, he would
5 not have purchased any of the HP Pavilion Elite series computers.

6 13. Plaintiff Daniel Johanning resides in Parkland, Florida. Mr. Johanning purchased
7 an HP Elite m9600t from HP in or around June 2009 for approximately \$1,369.51. Mr.
8 Johanning purchased the HP Elite m9600t based, in large part, on HP's representations that it was
9 reliable, of merchantable quality and workmanship and free from defects. Mr. Johanning has used
10 his HP Elite m9600t for its intended purpose and in a manner consistent with its intended use.
11 Mr. Johanning's HP Elite m9600t exhibited failure almost immediately upon initial use and
12 routinely locked up and froze each morning on a cold boot. Mr. Johanning contacted HP support
13 in July and asked for help to resolve these issues. HP technical support had Mr. Johanning run
14 diagnostics. Afterwards, HP technical support told Mr. Johanning that his HP wireless keyboard
15 and mouse were the problem and shipped him a new set. The problems with Mr. Johanning's HP
16 Elite m9600t, however, did not go away with the new keyboard and mouse, and the routine
17 freezing and lock ups continued. In August, Mr. Johanning contacted HP technical support,
18 which had Mr. Johanning run numerous hardware tests. All of the tests checked out "okay." HP
19 technical support then suggested doing a complete system restore, which Plaintiff did that same
20 night. The next morning on a cold boot, Mr. Johanning's m9600t experienced the same lock up
21 problem after approximately 15 minutes of use. Mr. Johanning contacted HP support again
22 asking for a solution. HP technical support had Mr. Johanning run the same hardware tests over
23 again. The tests again checked out "okay." Mr. Johanning asked HP technical support if she had
24 heard of others experiencing the same problems. HP technical support said "no," even though
25 Mr. Johanning could hear another HP technical support person speaking with someone
26 experiencing the exact same problems. Mr. Johanning asked to have his case escalated, but HP
27 technical support refused. Although Mr. Johanning has spent approximately three to four hours
28

1 on the telephone with HP technical support, and has spent numerous additional hours running
2 diagnostics, installing a new keyboard and mouse from HP and performing a complete system
3 restore on his HP Elite m9600t as per HP's directives, HP has not been able to fix Mr.
4 Johanning's HP Elite m9600t. Nor has HP provided Plaintiff Johanning with a refund for his
5 purchase of the HP Elite m9600t or comparable and defect-free replacement computer. Had Mr.
6 Johanning been aware prior to purchase that the HP Elite m9600t suffered from the defects
7 described herein, he would not have purchased it.

8 14. Plaintiff Jakub Cmiral resides in Anaheim, California. Mr. Cmiral purchased an
9 HP Elite e9180f in or around September 3, 2009, for approximately \$1,199. Mr. Cmiral
10 purchased the HP Elite e9180f based, in large part, on HP's representations that it was reliable, of
11 merchantable quality and workmanship and free from defects. Mr. Cmiral has used his HP Elite
12 e9180f for its intended purpose and in a manner consistent with its intended use. Mr. Cmiral's
13 HP Elite e980f experienced a "blue screen of death" failure on the first day of use and since that
14 time has experienced freezing, lock-ups, and "blue screens of death" routinely. Approximately
15 three days after his purchase of the HP Elite e1980f, Mr. Cmiral called HP customer service to
16 get help for these problems. The first call took about 75 minutes, and Mr. Cmiral and HP
17 customer support checked the hardware for errors and then restored the operating system
18 completely. The HP representative advised Mr. Cmiral to observe the computer's performance.
19 Because the same problems persisted, Mr. Cmiral contacted HP several times. Each call lasted
20 from approximately 20 to 60 minutes. On the second call, the HP representative kept putting Mr.
21 Cmiral on hold to get advice from an associate. After placing Mr. Cmiral on hold about ten times,
22 HP customer support had Mr. Cmiral run the hardware diagnostic and told him to call back if
23 problems persisted. The problems with Mr. Cmiral's HP Elite e9180f persisted. The third time
24 Mr. Cmiral called HP customer support, he asked whether HP had found any solution for these
25 problems with the HP Elite e9180f. The HP representative told Mr. Cmiral to update the BIOS.
26 Mr. Cmiral explained to the HP customer support representative that updating the BIOS does not
27 solve the problems and that numerous consumers who had posted on the HP message board
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1 informed HP that they had tried this measure without success. Mr. Cmiral asked if he could send
 2 his HP Elite e9180f to HP for repair, but HP denied his request. Mr. Cmiral was told by the HP
 3 representative that his “hands were tied” unless Mr. Cmiral updated the BIOS, which HP knew or
 4 reasonably should have known does not remedy the failures in the e9000 Series. On Mr.
 5 Cmiral’s fourth call with HP, HP customer support asked Mr. Cmiral whether he had made any
 6 progress towards fixing his computer, but the same problems remained. Mr. Cmiral’s problems
 7 with the HP Elite e980f have not been remedied by HP. Nor has HP provided Plaintiff Cmiral
 8 with a refund for his purchase of the e9180f or comparable and defect-free replacement
 9 computer. Had Mr. Cmiral been aware prior to purchase that the HP Elite e9180f suffered from
 10 the defects described herein, he would not have purchased it.

11 **Defendant**

12 15. Defendant Hewlett-Packard Company (“HP”) is a publicly traded corporation with
 13 worldwide corporate headquarters in Palo Alto, California.

14 **IV. CLASS ACTION ALLEGATIONS**

15
 16 16. Plaintiffs bring this action on behalf of themselves, and pursuant to Federal Rules
 17 of Civil Procedure 23(a) and (b)(3), on behalf of the following Class, and Consumer and
 18 Warranty Subclasses (“class or classes”):

19 **Class**

20 All persons and entities who, since March 20, 2009, purchased HP
 21 Pavilion Elite series computers models e9150t, e9180f, e9180t,
 22 m9600t, and m9650f and within their Limited Warranty period had
 23 “lockup” failures that HP did not adequately repair. “Lockup”
 failures include the system becoming unresponsive or locking-up
 within thirty minutes of a cold boot, freezing, or blue screen errors.
 Excluded from the Class are (1) employees of the defendant,
 including its officers or directors; and (2) defendant’s affiliates,
 subsidiaries, or co-conspirators.

24 **Consumer Subclass**

25 All Class members who purchased for personal, family or
 26 household purposes, HP Pavilion Elite series computers models
 e9150t, e9180f, e9180t, m9600t, and m9650f.

27 **Warranty Subclass**

28 All Class members whose HP Pavilion Elite series computers
 models e9150t, e9180f, m9600t, and m9650f, experienced failures
 within a year of purchase and all Class members whose HP

1 Pavilion Elite series computer model e9180t, experienced failures
2 within two years of purchase.

3 17. Plaintiffs do not know the exact number of Class members because such
4 information is in the exclusive control of the Defendant. However, Class members are
5 sufficiently numerous and geographically dispersed throughout the United States, so that joinder
6 of all Class members is impracticable. The information as to the identity of the Class members
7 can be readily determined from records maintained by the Defendant and its agents and by
8 publication notice. Fed.R.Civ.P. 23(a)(3).

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

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

16 a. Whether the HP Pavilion Elite series computers, e9150t, e9180f, e9180t,
17 m9600t, and m9650f, suffer from a common defect that causes the motherboard to fail during the
18 warranty period and/or its reasonable expected life;

19 b. Whether Defendant HP has undertaken a common business practice of
20 producing and selling to the public HP Pavilion Elite series computers with defective
21 motherboards;

22 c. Whether Defendant HP engaged in unfair, unlawful and/or fraudulent
23 business practices;

24 d. Whether Defendant HP's use of advertising, point-of-sale, and other
25 representations constitutes unfair competition and unfair, deceptive, untrue or misleading
26 advertising;

27 e. Whether Defendant HP's representations concerning its Pavilion Elite
28 series computers are material to a reasonable consumer;

1 f. Whether Defendant HP failed to disclose material facts about the HP
2 Pavilion Elite series computers;

3 g. Whether Defendant HP breached its express and implied warranties with
4 Plaintiffs and the Class; and

5 h. Whether Class members are entitled to monetary recovery including
6 punitive damages, restitution, and injunctive relief, and the proper measure, nature and extent of
7 such relief.

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

10 21. Plaintiffs and their counsel will fairly and adequately represent the interests of the
11 Classes in that Plaintiffs are typical purchasers of HP Pavilion Elite series computers. There is
12 no material conflict with any other member of the Classes that would make class certification
13 inappropriate. Plaintiffs have retained attorneys experienced in the prosecution of class actions,
14 including complex cases and consumer actions, and Plaintiffs intend to prosecute this action
15 vigorously. Fed.R.Civ.P. 23(a)(3).

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

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

1 30. A reasonable consumer expects that a computer's motherboard will last for at least
2 five years, and does not expect that it will contain defects that will cause the motherboard to fail
3 before that expected lifetime.

4 31. The HP Pavilion Elite series computers suffer from a common defect that causes a
5 substantial number of the computers' motherboards to fail within the Limited Warranty Period,
6 including during the first year of use, rendering the computers unusable.

7 32. HP failed to adequately manufacture and/or test the Pavilion Elite series
8 computers' motherboards to ensure that they were free from defects. Before the Pavilion Elite
9 series computers even reached the market, HP knew, should have known, or was reckless in not
10 knowing, that its motherboards (a) failed at unacceptably high rates due; (b) contained inherent
11 defects that are substantially certain to manifest by malfunctioning and/or failing during the
12 Limited Warranty Period and before the end of the useful life of the product; and (c) were not of
13 merchantable quality.

14 33. In spite of its knowledge, HP marketed its Pavilion Elite series computers as
15 reliable and defect free. HP's statements were material to Plaintiffs and Plaintiffs relied on those
16 statements in deciding to purchase their computers.

17 34. At all times relevant and material hereto, Defendant HP had exclusive knowledge
18 of material facts concerning the nature and existence of the defective motherboards in the
19 Pavilion Elite series computers. HP failed to disclose its knowledge of the defects, and/or
20 concealed such knowledge by making partial and/or misleading representations of material facts
21 that were not known to Plaintiffs and all others similarly situated.

22 35. The facts that the Pavilion Elite series computers at issue in this complaint suffer
23 from common defects and that HP's repair attempts are not effective, leaving Plaintiffs and class
24 members without recourse are demonstrated by the 268 pages of consumers' complaints (as of
25 November 10, 2009). *See*

26 [http://h30434.www3.hp.com/psg/board/message?board.id=lockups&thread.id=895&view=by_da](http://h30434.www3.hp.com/psg/board/message?board.id=lockups&thread.id=895&view=by_date_ascending&page=268)
27 [te_ascending&page=268.](http://h30434.www3.hp.com/psg/board/message?board.id=lockups&thread.id=895&view=by_date_ascending&page=268)
28

1 36. Nor is the issue limited to HP Pavilion Elite series computers running Microsoft
2 Windows Vista. The customer complaints identify manifestations of the defect that occur on HP
3 Pavilion Elite series computers running Microsoft Windows XP and XP Professional, Windows 7
4 and Linux.

5 37. Examples of class members problems as reflected in the customer complaints are
6 as follows:

7 a. Cee-Cee, 07-17-2009

8 I received my new e9150t directly from HP on July 10 (9 days
9 ago) and since then it has locked up about 10 times. I could be doing
10 anything, looking at files on Windows Explorer, on the web with Internet
11 Explorer, even shutting down the system. Sometimes I have gotten the
12 blue screen, other times the arrow just freezes and it does not respond.
13 The only solution has been to turn it off. When I get an error message, I
14 have gotten errors like DRIVER_POWER_STATE_FAILURE (twice),
15 HARDWARE MANFUNCTION, NMI: PARITY CHECK/MEMORY
16 PARITY ERROR. Each at different times it has failed.

17 I have twin Seagate ST3500620AS Barracuda Drives on RAID1
18 (mirroring), so every time it fails, after I boot-up and log-in it
19 automatically runs the Intel Matrix Storage Console to verify that my twin
20 drives are in sync. This takes over 1 hour. They have always turned out
21 to be fine. I have 12GB memory (all six slots are full) on a PEGATRON
22 IPMTB-K (HP: UL83) motherboard. I have American Megatrends BIOS
23 5.13 and according to the HP website, there is no BIOS update available
24 for mine. The disk controller is a Intel ICHR8/ICH9R/ICH10R/DO
25 SATA RAID Controller.

26 HP Support has had me use PC Doctor (that came with the computer) do a
27 Memory Test, Drive Test and a System Test and a System Stress Test. It
28 always passes.

Anybody out there with same or similar problem? Any ideas? Thank you.

Id. at 1, (message 1).

b. new_e9150t, 07-24-2009

20 I bought a E9150t with 8Gb , 1Tb HDD , 1Gb ATI HD4650 card
21 and TV tuner card around the same time as you. I had been having
22 lockups and freezes since the days I received my PC. I spent 10 days
23 updating all the drivers and reading forums to find a solution but nothing
24 helped. Finally I called HP support and they were just blindly trying to
25 make me do some regular stuff which they always do. After an hour of
26 that exercise I told the tech that I want this escalated but he suggested that
27 he will arrange to bench test the system for which I have to send it to
28 them. I asked him to escalate since this is a brand new PC and I don't
want to do any testing on this hardware. Instead I asked them to replace
me with a new system which doesn't have this problem. He had a
manager walk me through the steps for the new PC. I am waiting for the
new equipment and hoping that the new one doesn't have that problem. I
will keep you guys posted on the progress.

Id. at 1, (message 2).

1 c. MMaziarz97, 07-25-2009

2 OK, this is too funny.... well, not really, but...

3 I was just in the middle of responding to this thread, saying that I just
4 received this computer on July 16th, and have already had 4 freeze issues,
5 and guess what? It froze in the middle of typing the message !!!

6 So, now it's 5. I don't know what caused it this time, although I tried
7 loading a CD into the computer INSTEAD of doing the usual hard shut
8 down and that caused the computer to reboot itself, without me having to
9 do the hard shut down. No error messages appeared, other than the usual
10 "Windows did not shut down properly" message.

11 So, if anyone finds out, for sure, what is causing this problem, please post
12 it. I'm not liking the fact that my brand new computer is giving me more
13 troubles than the 9 year old computer I just got rid of.

14 *Id. at 1, (message 6).*

15 d. Andyskrz, 07-09-2009

16 Hi Cee-Cee,

17 Sorry for the slow reply - I was rebuilding the machine (for the third time)
18 after they sent it back to me from repair (they replaced the HD and it did
19 not help).

20 My motherboard n the m9600t is Pegatron Corporation Truckee (with the
21 same BIOS as yours), Intel X58 chipset. I opened the computer and it is
22 Pegatron IPMTB-TK v. 1.03 .

23 I agree with you all that it seems to be a motherboard problem, which
24 explains why these different machines have the same problem.

25 *Id. at 4, (message 33).*

26 e. Eots, 08-01-2009

27 I have an e9180f that also locks up after the initial startup after being off
28 all night. It work fine the rest of the day after a hard reset, so I also doubt
this is a heat issue or it would happen more frequently rather than the first
startup.

Id. at 4, (message 40).

f. LonghornBoy, 08-01-2009

Had an e9150t delivered on 7/9 and opened a support ticket on
7/29 due to daily system freezes. After spending over 7 hours on the
phone with them running various diagnostics, they agreed to do a CSO. I
currently have v1.03 of the motherboard as well.

Question: For those who have received new motherboards, was your data
intact or had it been wiped? Considering that I'll be without the computer
for a couple of weeks and was warned that the data may be erased, I'm
considering a refund.

-LB

Id. at 5, (message 41).

g. Eots, 08-01-2009

Windows 7 isn't going to resolve the system freezes, this is not a
Vista problem it's hardware. Operating system errors will be recorded in
the event logs, however these freezes don't produce any errors. I was also
considering a Dell XPS but after hearing you had the same problem with it
I won't bother. HP seems to have resolved the issue by replacing the 1.03
motherboard with a 1.04. What motherboard revision is yours? The
diagnostics program will show what version you have in the motherboard
info.

1 I also sent an email to Intel to find out if what XStan was told about the
 2 X58 chipset was true or not. I'm sure it's not but I'd like to see what Intel
 has to say about the issue and what HP is telling customers is the cause.

Id. at 12, (message 119).

3 h. beb2009, 08-11-2009

4 I received my e9150t one week ago. It shipped with the v1.04
 5 MOBO and two days out of the box, I started having issues with it
 freezing and locking up. Last night after my Norton anti-virus software
 6 became inoperable, I did a restore to the factory defaults and set up my
 internet connection. This morning my husband started the machine and
 7 with nothing running other than IE, the mouse froze. I did all kinds of
 research before purchasing the machine and chose HP over Dell because
 8 Dell customer reviews were so negative. I wish I had read this forum
 before ordering this one. I'm not looking forward to calling technical
 support and having to just through all of their hoops.

9 *Id. at 14, (message 132).*

10 i. Xstan, 08-04-2009

11 Jokke - Good luck with the NVidia driver. But I had the same
 problems with the e9600t and an NVidia card with the latest drivers, and
 12 now I'm having the exact same problems with the e9150t with an ATI
 card, so I think they're just guessing.

Id. at 14, (message 135).

13 j. phyridean, 08-08-2009

14 Those of us with the 5.13 bios on a 1.04 motherboard are still
 crashing. Here's hoping they release a downloadable bios update soon.

15 *Id. at 17, (message 163).*

16 k. eots

17 I've had mine replaced twice now and all 3 of them had the same
 freezing problem, several other posters on this forum have had the same
 experience. That's an extremely poor success rate.

18 *Id. at 57, (message 561).*

19 l. Robjrno, 09-14-2009

Add me to the list of freezers (no BSODs yet...)

20 HP e9180f Elite

21 MB v.1.04

BIOS v.5.18

22 NVIDIA GeForce GTS250

Windows Vista x64

23 Consistently freezes trying to play music, but also, to a lesser degree,
 when browsing. No freezes on wakeup since I disabled sleep mode

24 Too much money for an out of the box problem.

Id. at 64, (message 637).

25 m. Bbramish, 09-14-2009

Add another one here too.

26 I received my e9150t in early July with v1.03 mobo, i7 920 processor.

27 Freezes every time after starting cold (ie after being powered off

overnight.) If I reboot once more after the cold start, then it runs fine for
 days on end.

28 I've been following this thread for a while and it's disgusting that there's

1 no acknowledgement from HP of a problem, much less a solution.
 2 For whoever's keeping track, mark off one more under the column of
 disgruntled, angry customer with (another) bad e9150t!

Id. at 66, (message 659).

3 n. 95mustang
 4 You can add my PC to the list.
 e9150t mobo 1.04, bios 5.18
 5 i7-950
 Freezing, BSOD's, system failures which cause restarts
 6 I like how HP just sits in the shadows in this forum pretending not to
 notice an issue with the PCs. That's classic. I won't be buying HP again,
 7 that's for sure. And I'll make sure I recommend that to everyone I know.
Id. at 66, (message 652).

8 o. hakanson, 09-15-2009
 9 I have a e9180t with the i7-920 that I ordered on 8/10 with similar
 issues. I have only had a couple BSOD instances, but after the one tonight
 10 I found a "Error Type: Internal Timer Error" message in the event viewer.
 I ran the Belarc Advisor (googled it) and here are the relevant results:
 11 Board: PEGATRON CORPORATION TRUCKEE 1.04
 BIOS: American Megatrends Inc. 5.18 07/06/2009
 12 Made in Mexico
 I haven't called HP support yet, but I feel that I have enough information
 13 now to do so. Wish me luck and I will report back with any news.

Id. at 67, (message 668).

14 p. asciro, 09-15-2009
 15 Hey Everyone...
 Add me to the list of frustrated HP owners!
 16 Got a e9150t , i7-920, 6gb ddr3, 512mb radeon on September 8th - Froze
 on the HP splash screen on cold start-up! Spoke to about 10 service reps
 17 over the past 4 days. They have had me change everything from setting to
 "discharging" the unit. Also I had one guy who told me to take the CMOS
 18 battery out. All of this and it seemed to temporarily fix the issue but then I
 got a BSOD when I went to switch users! I still have about 10 days to
 19 send this POS back for a refund...

Id. at 68, (message 676).

20 q. GaryJ51, 09-15-2009
 21 Called HP to followup on my e9180f that came back from repair
 and is still freezing up. Case Manager was not available. I will try again
 22 tomorrow. Another day lost not being able to use what I paid for.
 Problem solving is now at a cost of \$200/wk. I only spent \$1200 for
 23 6weeks of headaches and frustration.

Id. at 72, (message 720).

24 r. MrsMustang97, 9-21-09
 25 Please add my PC to the list
 E9150T
 26 I7-920
 8 GB DDR3
 27 Package originated in Texas so I believe it was assembled in Mexico but
 100% positive. I spent three 3hrs on the phone with tech support on
 28 Friday only to have the computer lock up again on Saturday morning. I so

1 look forward to my next phone call today to tech support. Great thread.
 2 *Id.* at 84, (message 840).

3 s. 95mustang, 09-21-2009

4 Just so I'm clear on this, is it true that HP has admitted to the
 5 motherboard problem now? I'm supposed to be having my e9180t built
 6 soon. So if they are admitting to the problem, you would think that they
 7 would wait to build it until they have non-defective boards in. This is my
 8 second replacement. First PC: e9150t i7-920 was faulty. (BSOD's,
 9 freezing, display shutting off) Had that one repaired: apparently they
 10 replaced the CPU. (Still freezing, BSOD's). Next got a replacement
 11 e9150t i7-950: (BSOD's, freezing, display shutting off, random restarts
 12 because of system failures). Now I'm getting an e9180t i7-975

13 *Id.* at p. 85, (message 841).

14 t. Jaydn 09-21-2009

15 I received my (replacement) e9180t i7-975 late last week, fired it
 16 up on Saturday. I am 2 for 2 on BSODs. The first was during registration
 17 (before I even got fully into Windows) and the second was less than 10
 18 minutes into my first cold-boot.

19 So, I am having similar problems with my "new" replacement machine
 20 that I had with my initial 9180t. The only difference is that this new box
 21 seems to result in BSDOs while the original resulted in lock-ups.

22 *Id.* at 85, (message 842).

23 38. HP has so far failed to offer Plaintiffs and class members any adequate fix of the
 24 motherboards. As set forth above, even though HP is replacing e9150t models with the upgraded
 25 e9180 models and including faster, more costly processors, the computers still exhibit the same
 26 defects.

27 39. In addition, HP has instructed HP Pavilion Elite series computer owners to install
 28 a BIOS update to "improve system stability" and "resolve an issue which could prevent the
 system from starting up." *See*
<http://h30434.www3.hp.com/psg/board/message?board.id=lockups&thread.id=3146>. However,
 this BIOS update fails to prevent the lock-ups, freezes and blue screen errors that Plaintiffs
 experience.

VI. FIRST CAUSE OF ACTION

(Violations of Business & Professions Code § 17200 *et seq.*) (Unfair Business Practices)

40. Plaintiffs incorporate and reallege all of the foregoing paragraphs, as though fully

1 set forth herein.

2 41. Defendant has engaged in unfair competition within the meaning of California
3 Business & Professions Code Section 17200 *et seq.* because Defendant's conduct is unfair as
4 herein alleged.

5 42. Defendant's conduct constitutes an unfair business practice because Defendant is
6 marketing and selling its HP Pavilion Elite series computers in a manner likely to deceive the
7 public, and Plaintiffs relied on Defendant's representations and omissions and were deceived and
8 have suffered actual harm as a result.

9 43. Defendant's business practices, and each of them, are unfair because they offend
10 established public policy and/or are immoral, unethical, oppressive, unscrupulous and/or
11 substantially injurious to consumers in that consumers are led to believe that HP Pavilion Elite
12 series computers were free from defects and reliable when, in fact, the HP Pavilion Elite series
13 computers cannot operate without lock-ups and freezes as described above.

14 44. Additionally, when Plaintiffs and class members report problems with their HP
15 Pavilion Elite series computers, HP fails to provide an adequate fix. That is, HP fails to provide
16 consumers with a reliable computer without the defects that impair the HP Pavilion Elite series
17 computers' functionality.

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

21 46. Plaintiffs and the Class are entitled to relief, including full restitution of all
22 revenues which may have been obtained by Defendant from Plaintiffs and the Class as a result of
23 such business acts or practices, and enjoining Defendant to cease and desist from engaging in the
24 practices described herein.

25 **WHEREFORE**, Plaintiffs and the Class pray for relief as set forth below.
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VII. SECOND CAUSE OF ACTION

**(Violation of Business & Professions Code § 17200)
(Illegal Business Practice)**

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4 47. Plaintiffs incorporate and reallege all of the foregoing paragraphs, as though fully
5 set forth herein.

6 48. Defendant has engaged in an illegal business practice within the meaning of
7 California Business & Professions Code Section 17200 *et seq.* because Defendant's conduct
8 violates the California False Advertising Law, the California Consumers Legal Remedies Act and
9 the written and express warranties created by HP's representations concerning the HP Pavilion
10 Elite series computers' functionality.

11 49. Defendant's wrongful business acts constituted, and constitute, a continuing
12 course of conduct of illegal business practices because Defendant is selling its products and
13 marketing them in a manner that is likely to deceive the public, and Plaintiffs have suffered
14 actual harm as a result.

15 50. Defendant's business practices, and each of them, are illegal because they offend
16 established public policy and/or are immoral, unethical, oppressive, unscrupulous and/or
17 substantially injurious to consumers in that consumers are led to believe that HP Pavilion Elite
18 series computers were "free from defects and reliable" when, in fact, the HP Pavilion Elite series
19 computers cannot operate without lock-ups and freezes as described above.

20 51. Defendant's unlawful business acts constituted, and constitute, a continuing
21 course of conduct of illegal business practices because Defendant is selling its products and
22 marketing them in a manner that is likely to deceive the public, and Plaintiffs who relied on HP's
23 representations and have suffered actual harm as a result.

24 52. Plaintiffs have suffered a loss of money and property as a result of the wrongful
25 conduct here alleged. Defendant's unlawful business practices have caused injury to Plaintiffs,
26 the Class, and the public. Plaintiffs and the Class are entitled to relief, including full restitution
27 of all revenues which may have been obtained by Defendant from Plaintiffs and the Class as a
28 result of such business acts or practices, and enjoining Defendant to cease and desist from

1 engaging in the practices described herein.

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

3 **VIII. THIRD CAUSE OF ACTION**

4 **(Violation of Business & Professions Code § 17200)**
5 **(Fraudulent Conduct)**

6 53. Plaintiffs incorporate and reallege all of the foregoing paragraphs, as though fully
7 set forth herein.

8 54. Defendant's wrongful business acts constituted, and constitute, a continuing
9 course of fraudulent conduct because Defendant is selling its products and marketing them in a
10 manner that is likely to deceive the public, and Plaintiffs relied on Defendant's misrepresentation
11 and has suffered actual harm as a result.

12 55. Plaintiffs are informed and believe that Defendant knew that its representations
13 concerning its HP Pavilion Elite series computers were false. Furthermore, Plaintiffs relied on
14 Defendant's misrepresentation and suffered a loss of money and property as a result of
15 Defendant's fraudulent conduct. Defendant's fraudulent practices have caused injury to
16 Plaintiffs, the Class, and the public. Plaintiffs and the Class are entitled to relief, including full
17 restitution of all revenues which may have been obtained by Defendant from Plaintiffs and the
18 Class as a result of such business acts or practices, and enjoining Defendant to cease and desist
19 from engaging in the practices described herein.

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

21 **IX. FOURTH CAUSE OF ACTION**

22 **(Breach of Express Warranty)**

23 56. Plaintiffs incorporate and reallege all of the foregoing paragraphs, as though fully
24 set forth herein.

25 57. Defendant HP issued written warranties to Plaintiffs and the Class wherein
26 Defendant warranted that their Pavilion Elite series computers were fit for the purpose for which
27 they were intended, and were free of defects. HP's written warranty specifically provides:
28

1 HP warrants that the HP Hardware Products that you have purchased or leased
2 from HP are free from defects in materials or workmanship under normal use
during the Limited Warranty Period.

3 58. The HP Elites series computers come with either a one-year (for models e9150t,
4 m9600t, and m9650f) or two-year (for models e9180f and e9180t) written warranty.

5 59. Further, HP warranted that HP Pavilion Elite series computers were reliable.

6 60. Plaintiffs and the Class have performed all conditions, covenants and promises
7 required to be performed on their part in accordance with the warranties.

8 61. Defendant has breached warranty obligations by failing to design, engineer,
9 manufacture and deliver its HP Pavilion Elite series computers in a manner so that the computers
10 would be fit for the purpose for which the computers were represented, free from the defects
11 alleged herein, and able to function as HP represented.

12 62. Further, HP has breached its written warranty in failing to provide an adequate
13 repair or replacement to correct the defect that causes the HP Pavilion Elite series computers'
14 motherboards of to fail prematurely.

15 63. As consumers, Plaintiffs and the Class are relieved of any notice requirement, and
16 HP, who has superior knowledge of its technology, should be estopped from asserting lack of
17 notice as a defense. Plaintiffs also provided sufficient notice to HP pursuant to the California
18 Consumers Legal Remedies Act as alleged in paragraph 82 below and that notice should suffice
19 under the law of warranty as well.

20 64. Defendant has breached the warranties by undertaking the wrongful acts herein
21 alleged.

22 65. Defendant's breach of the warranty was a substantial factor in causing Plaintiffs
23 and the Class to suffer economic losses and other general, consequential and specific damages,
24 according to proof.

25 **WHEREFORE**, Plaintiffs and the Class pray for relief as set forth below.
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X. FIFTH CAUSE OF ACTION

(Breach of Implied Warranty)

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3 66. Plaintiffs incorporate and reallege all of the foregoing paragraphs, as though fully
4 set forth herein.

5 67. Plaintiffs Kent and Daugherty purchased their HP Pavilion Elite e9150t's directly
6 from HP and, therefore, are in privity with Defendant HP.

7 68. At the time of contracting, Defendant HP impliedly warranted to Plaintiffs and to
8 all other Class members that their HP Pavilion Elite series computers were of merchantable
9 quality and suitable for ordinary use.

10 69. As set forth above, the Pavilion Elite series computers sold, leased and delivered
11 to Plaintiffs and all other Class members contain an inherent defect which is substantially certain
12 to result in malfunction during the computer's useful life of the product and, therefore, are not of
13 merchantable quality and was not suited for ordinary use.

14 70. Plaintiffs and all Class members reasonably relied on HP's implied warranty at the
15 time they made their decision to purchase HP Pavilion Elite series computers.

16 71. Defendant HP breached its implied warranty of merchantability to Plaintiffs and
17 all Class members who purchased or leased their HP Pavilion Elite series computers.

18 72. Defendant HP breached its implied warranty of fitness for a particular purpose to
19 Plaintiffs and all Class members who purchased or leased their HP Pavilion Elite series
20 computers.

21 73. Defendant HP's breach of warranties proximately caused damages to Plaintiffs
22 and all Class members who purchased or leased their HP Pavilion Elite series computers.

23 **WHEREFORE**, Plaintiffs and the Class and Consumer Subclass pray for relief as set
24 forth below.

XI. SIXTH CAUSE OF ACTION

**Violation of Civil Code § 1750 *et seq.*
(For Consumer Subclass)**

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4 74. Plaintiffs incorporate and reallege all of the foregoing paragraphs, as though fully
5 set forth herein.

6 75. The Consumers Legal Remedies Act, Civil Code Section 1750 *et seq.* (hereinafter
7 “CLRA”) was designed and enacted to protect consumers from unfair and deceptive business
8 practices. To this end, the CLRA sets forth a list of unfair and deceptive acts and practices in
9 Civil Code Section 1770.

10 76. The CLRA applies to Defendant’s actions and conduct described herein because it
11 extends to transactions that are intended to result, or which have resulted, in the sale or lease of
12 goods or services for personal, family or household use.

13 77. At all relevant times, Plaintiffs and members of the Consumer Subclass were
14 “consumers” as that term is defined in Civil Code Section 1761(d).

15 78. The transactions from which this action arises include transactions involving the
16 sale or lease of goods or services for personal, family or household purposes within the meaning
17 of Civil Code Section 1761.

18 79. Defendant’s practices in connection with the marketing and sale of its HP Pavilion
19 Elite series computers violate the CLRA in at least the following respects:

20 a. In violation of Section 1770(a)(5), Defendant has represented that the HP
21 Pavilion Elite series computers have characteristics that they do not have;

22 b. In violation of Section 1770(a)(7), defendant has represented that the HP
23 Pavilion Elite series computers are of a particular standard, quality, or grade when they are not;
24 and

25 c. In violation of Section 1770(a)(9), Defendant has advertised the HP
26 Pavilion Elite series computers with an intent not to sell them as advertised.

27 80. Defendant’s failure to disclose and knowing concealment of the fact that the HP
28 Pavilion Elite series computers had defective motherboards are omissions and concealments of

1 material fact that constitute unfair and/or deceptive business practices in violation of Civil Code
2 Section 1770(a).

3 81. Defendant's violations of Civil Code Section 1770 present a continuing threat to
4 members of the public in that Defendant is continuing to engage in the practices alleged herein,
5 and will not cease until an injunction is issued by this Court.

6 82. Pursuant to Civil Code Section 1782, Plaintiffs provided notice to defendant thirty
7 days prior to filing this action.

8 83. Defendant HP has not provided any relief to Plaintiffs, or the Class, in response to
9 the notice described in paragraph 93, *supra*.

10 84. Accordingly, pursuant to the provisions of Civil Code § 1780, Plaintiffs are
11 entitled to actual and punitive damages plus interest thereon, restitution and other appropriate
12 equitable relief, an order enjoining Defendant from the unlawful practices described herein, as
13 well as recovery of attorney's fees and cost of litigation.

14 **WHEREFORE**, Plaintiffs and the Class and Consumer Subclass pray for relief as set
15 forth below.

16 **XII. PRAYER FOR RELIEF**

- 17 1. Certification of the proposed Class and notice thereto to be paid by Defendant;
 - 18 2. For restitution;
 - 19 3. For an injunction ordering Defendant to cease and desist from engaging in the
20 unfair, unlawful, and/or fraudulent practices alleged in the Complaint;
 - 21 4. For compensatory damages;
 - 22 5. For statutory damages;
 - 23 6. Prejudgment interest;
 - 24 7. Costs;
 - 25 8. Reasonable attorneys fees; and
- 26
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1 9. All such other and further relief as the Court deems just and proper.

2 Dated: February 12, 2010

RAM & OLSON

3
4 By: /s/ Michael F. Ram

5 Michael F. Ram
6 555 Montgomery Street, Suite 820
7 San Francisco, California 94111
8 Telephone: (415) 433-4949
9 Facsimile: (415) 433-7311
10 Email: mram@ramolson.com

11 Michael Boni
12 **BONI & ZACK, LLC**
13 15 St. Asaphs Road
14 Bala Cynwyd, PA 19004
15 Telephone: (610) 822-0200
16 Facsimile: (610) 822-0206
17 Email: mboni@bonizack.com

18 Marc H. Edelson
19 **EDELSON & ASSOCIATES, LLC**
20 45 W. Court Street
21 Doylestown, PA 18901
22 Telephone: (215) 230-8043
23 Facsimile: (215) 230-8735
24 Email: medelson@edelson-law.com

25 Oren S. Giskan
26 **GISKAN SOLOTAROFF**
27 **ANDERSON & STEWART, LLP**
28 11 Broadway, Suite 2150
New York, NY 10004
Telephone: (212) 847-8315
Facsimile: (646) 520-3237
Email: ogiskan@gslawny.com

Paul R. Kiesel
KIESEL BOUCHER & LARSON, LLP
8648 Wilshire Boulevard
Los Angeles, CA 90211
Telephone: (310) 854-4444 ext. 215
Facsimile: (310) 854-0812
Email: kiesel@kbla.com

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Jonathan Shub (SBN 237708)
SHUBLAW LLC
1818 Market Street, 13th Floor
Philadelphia, PA 19102
Telephone: (610) 453-6551
Email: jshub@shublawn.com

Jeffrey L. Kodroff
**SPECTOR ROSEMAN KODROFF &
WILLIS, P.C**
1818 Market Street, Suite 2500
Philadelphia, PA 19103
Telephone: (215) 496-0300
Facsimile: (215) 496-6611
Email: jkodroff@srkw-law.com

Attorneys for Plaintiffs and the Class

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XIII. JURY DEMAND

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

Dated: February 12, 2010

RAM & OLSON

By: /s/ Michael F. Ram

Michael F. Ram
555 Montgomery Street, Suite 820
San Francisco, California 94111
Telephone: (415) 433-4949
Facsimile: (415) 433-7311
Email: mram@ramolson.com

Michael Boni
BONI & ZACK, LLC
15 St. Asaphs Road
Bala Cynwyd, PA 19004
Telephone: (610) 822-0200
Facsimile: (610) 822-0206
Email: mboni@bonizack.com

Marc H. Edelson
EDELSON & ASSOCIATES, LLC
45 W. Court Street
Doylestown, PA 18901
Telephone: (215) 230-8043
Facsimile: (215) 230-8735
Email: medelson@edelson-law.com

Oren S. Giskan
**GISKAN SOLOTAROFF
ANDERSON & STEWART, LLP**
11 Broadway, Suite 2150
New York, NY 10004
Telephone: (212) 847-8315
Facsimile: (646) 520-3237
Email: ogiskan@gslawny.com

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Paul R. Kiesel
KIESEL BOUCHER & LARSON, LLP
8648 Wilshire Boulevard
Los Angeles, CA 90211
Telephone: (310) 854-4444 ext. 215
Facsimile: (310) 854-0812

Jonathan Shub (SBN 237708)
jshub@shublaw.com
SHUBLAW LLC
1818 Market Street, 13th Floor
Philadelphia, PA 19102
Telephone: (610) 453-6551

Jeffrey L. Kodroff
**SPECTOR ROSEMAN KODROFF &
WILLIS, P.C**
1818 Market Street, Suite 2500
Philadelphia, PA 19103
Telephone: (215) 496-0300
Facsimile: (215) 496-6611

Attorneys for Plaintiffs and the Class

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