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12  
13 **UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT CALIFORNIA**

14  
15  
16 LORA AND CLAY WOLPH, on behalf of  
themselves and all others similarly situated,

17 Plaintiffs,

18 v.

19 ACER AMERICA CORPORATION, a  
20 California corporation,

21 Defendant.

CASE NO.: CV 09-1314

**FIRST AMENDED CLASS ACTION  
COMPLAINT**

**DEMAND FOR JURY TRIAL**

22  
23 Plaintiffs Lora and Clay Wolph (“Plaintiffs”) allege the following on behalf of themselves  
24 and all others similarly situated:  
25  
26  
27  
28

1 **I. INTRODUCTION**

2 1. Plaintiffs bring this action for monetary damages, declaratory and  
3 equitable relief, and restitution and/or disgorgement of profits on behalf of themselves and all  
4 similarly-situated individuals and entities Nationwide (the “Class”) who have purchased an Acer  
5 notebook computer (“Notebook”) from Acer or an Authorized Acer Reseller, for personal or  
6 business use and not for resale, that came bundled and pre-installed with a Microsoft® Windows  
7 Vista Home Premium, Business, or Ultimate operating system (collectively referred to herein as  
8 “Vista Premium”) and containing 1024 megabytes (“MB”) or 1 gigabyte (“GB”) of Random  
9 Access Memory (“RAM”) or less as shared memory for both the system and graphics (“Defective  
10 Notebooks”).

11 2. Per Microsoft, the minimum system requirements for notebooks pre-  
12 installed with Vista Premium require access to at least 1 GB of system RAM *plus* 128MB of  
13 RAM dedicated to the graphics adaptor to run properly. Most computer manufacturers and  
14 professionals recommend at least 2 GB of RAM to effectively run Vista Premium. Acer’s  
15 Defective Notebooks contain only 1 GB of RAM total, to be shared between the system and  
16 graphics, thus leaving only approximately 750MB of system memory to run the Vista Premium  
17 operating system.

18 3. Acer’s Defective Notebooks are materially defective in that they do not  
19 contain enough RAM to properly run Vista Premium (the “Defect”) despite being promoted and  
20 sold as a bundled product of both a notebook computer *and* a Vista Premium operating system.  
21 As a result, the Defective Notebooks experience serious problems, including, but not limited to,  
22 freezing during use, crashing, requiring frequent restarts, and experiencing slow load times.

23 4. The Defect exists in the Defective Notebooks at the time of sale. The  
24 installation of additional memory is necessary to repair the problem and in order for the Defective  
25 Notebooks to run as designed, marketed, promoted, advertised, warranted, and/or sold. Because  
26 the Defective Notebooks are pre-installed with Vista Premium, along with drivers and other  
27 materials devoted exclusively to running on that operating system, Plaintiffs cannot install  
28 another operating system, such as Windows XP, without experiencing other significant

1 difficulties. Moreover, Plaintiffs would have had to purchase an additional operating system at  
2 their own expense as Acer refuses to provide alternative operating systems to consumers with  
3 Defective Notebooks.

4 5. Acer has been designing, marketing, promoting, advertising, warranting  
5 and/or selling Defective Notebooks that it knew or should have known were inherently defective  
6 since Microsoft first released Vista Premium in January of 2007.

7 6. As a direct result of Acer's acts and omissions, Plaintiffs and thousands  
8 of others across the United States have been damaged and suffered economic loss and bring  
9 claims for violations of the Consumer Legal Remedies Acts (Cal. Civ. Code §§ 1750, *et seq.*), the  
10 Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200 & 17500, *et seq.*), breach of express  
11 warranty, and the Magnuson-Moss Warranty Act.

12  
13 **II. PARTIES**

14 7. Plaintiffs Lora and Clay Wolph reside in Fostoria, Seneca County,  
15 Ohio. They purchased an Acer Aspire 4520-5458 Notebook in or around April 2008, for  
16 approximately \$586.36 from Wal-Mart. Shortly after their purchase, and well within the one year  
17 warranty period, Plaintiffs discovered that their computer would not run properly and that it  
18 experienced numerous "crashes," "freezing," and was operating very slowly.

19 8. Plaintiffs' Acer Aspire Notebook was defective and deceptively  
20 marketed, advertised and promoted. Plaintiffs' notebook was designed, marketed, promoted,  
21 advertised, warranted, and/or sold by Acer and came bundled and pre-installed with a Vista  
22 Premium operating system, yet contained inadequate memory to run this operating system.

23 9. Plaintiffs believed and detrimentally relied on Acer's representations  
24 that their Defective Notebook could effectively and adequately run with a Vista Premium  
25 operating system, met the recommended minimum system requirements for running Vista  
26 Premium, and that Acer warranted the products to be free from defects in material.

27 10. Acer failed to disclose that its Defective Notebooks did not comply  
28 with Microsoft's recommended minimum system requirements for running Vista Premium; that

1 the memory in its Defective Notebooks was shared between the system and graphics processor  
2 and was insufficient to run Vista Premium; and that Acer knew the Defective Notebooks could  
3 not effectively operate Vista Premium and would experience problems. This is the type of  
4 fundamental information Plaintiffs would have been expected to rely on when purchasing the  
5 Defective Notebooks.

6 11. All Acer computers come with a one year written, express warranty  
7 that extends to the original purchaser. The "Limited Product Warranty" states: "Acer warrants  
8 the product you purchased from Acer or an Acer Authorized Reseller in the United States or  
9 Canada to be free from defects in materials or workmanship under normal use during the  
10 warranty period." (Exhibit A).

11 12. Consumers are directed to contact Acer via a service phone number or  
12 service website as opposed to a retailer to obtain warranty service. Acer's warranty states:

13 Acer Service is here to help you. Simply contact Acer Service by  
14 calling the number listed in the Warranty Reference Table above.

15 Our Acer technicians will help you diagnose the issue. If our  
16 technician believes the Product does or may exhibit a defect in  
17 material or workmanship within the warranty period, Acer will  
18 provide the warranty service applicable to the product.

19 13. On September 5, 2008, as directed by Acer's written warranty,  
20 Plaintiffs contacted Acer Technical Support via email to discuss the problems with their Acer  
21 notebook and seek a refund:

22 Customer (Lora Wolph) - 09/05/2008 09:04 AM - This computer  
23 was sold with less than 1GB which means it cannot possibly run  
24 the Vista program that it came with. I have had trouble with it  
25 since I got it and did not know what was wrong. I finally had a  
26 tech person explain that it should not have been sold with less than  
27 1GB--it cannot run Vista with less. It is not my fault that Vista  
28 came with this computer than cannot run the program.

1                   14.           One of Acer's technicians ("Hal") responded via e-mail on September  
2 5th, 2008:

3                   If the system does not run properly, please note that Windows  
4 Vista recommended requirements for the memory is 1 GB of  
5 system memory. However, the minimum requirements is [sic] 512  
6 MB of memory in which your system is pre-installed with. This  
7 means that the system is still able to run Windows Vista properly.

8                   15.           In November 2008, after Acer rejected Plaintiffs' attempts to seek a  
9 refund or repair under the warranty, Plaintiffs paid \$157.40 to add additional RAM so that their  
10 notebook would run as designed, marketed, advertised, promoted and/or warranted by Acer.  
11 After purchasing and installing the additional memory, Plaintiffs no longer experienced the  
12 problems with their computer caused by Acer's use of insufficient memory materials.

13                   16.           The technician who repaired Plaintiffs' computers wrote an explanation  
14 of the work:

15                   This letter is an explanation of the work performed on your Acer  
16 Notebook at our shop as outlined on Invoice #3957-0. The  
17 specifications of the computer from the factory show that it was  
18 shipped with 1GB DDR-2 of system memory. As a technician/  
19 engineer I felt this was inadequate system memory for a computer  
20 operating Windows Vista. Especially since the video memory is  
21 shared with the system memory, leaving a useable 768MB of  
22 system memory. Since the system memory was low, performance  
23 of windows was significantly decreased. This is because Microsoft  
24 specifies Windows Vista needs at least 1GB of full system memory  
25 to operate properly. The solution to this issue was to add 2GB  
26 more of system memory to make the computer fully functional.  
27 It is my conclusion that all Acer notebook computers do not meet  
28 most quality standards for computing. I hope this letter gives you

1 a better understanding of your computer and the work performed.  
2 (Exhibit B).

3 17. Plaintiffs would not have purchased their Defective Notebook if Acer  
4 had disclosed that the computer did not meet Microsoft's recommended minimum system  
5 requirements for Vista Premium computers, could not effectively and adequately run Vista  
6 Premium as a result of insufficient memory, and/or would experience significant problems as a  
7 result of these material defects.

8 18. Defendant Acer America Corp. is incorporated in California and has its  
9 principal place of business in San Jose, California. Its products are marketed and sold under the  
10 brand name "Acer." The company does business throughout California and the United States  
11 directly and in concert with other agents, servants, partners, aiders and abettors, co-conspirators  
12 and/or joint venturers such as authorized retail stores. Acer designed, marketed, promoted,  
13 advertised, and/or warranted its Defective Notebooks and then sold the Defective Notebooks  
14 through its agents, servants, partners, aiders and abettors, co-conspirators and/or joint venturers to  
15 Plaintiffs and thousands of others throughout California and the United States.

16

17 **III. JURISDICTION AND VENUE**

18 19. This Court has diversity jurisdiction over the claims asserted herein on  
19 behalf of this proposed nationwide class pursuant to 28 U.S.C. § 1332, as amended by the Class  
20 Action Fairness Act ("CAFA"). Jurisdiction is proper because (a) the amount in controversy in  
21 this class action exceeds five million dollars, exclusive of interest and costs; and (b) there is  
22 diversity of citizenship between Plaintiffs and Defendant.

23 20. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(a)  
24 and (c) in that Acer resides in this district and a substantial part of the events or omissions giving  
25 rise to the claims occurred in this district.

26 21. A venue affidavit pursuant to California Civil Code § 1780(d) is  
27 attached hereto as Exhibit C.

28

1 **IV. CHOICE OF LAW**

2 22. The product warranty accompanying Lora and Clay Wolph's notebook  
3 specifies that "All product warranties and warranty options shall be governed exclusively by the  
4 laws of the State of California exclusive of its choice of law provisions." Given this choice of  
5 law provision, all of Plaintiffs' and the Class Members' warranty-related claims are governed by  
6 California law.

7 23. California law also governs the non-warranty claims asserted herein by  
8 Plaintiffs and the Class Members.

9 24. Upon information and belief, Acer's acts and omissions discussed  
10 herein were orchestrated and implemented at Acer's headquarters in California.

11 25. California, which seeks to protect the rights and interests of California  
12 and other U.S. residents against a company doing business in California, has a greater interest in  
13 the claims of Plaintiffs and the Class Members than any other State.

14 26. Application of California law with respect to Plaintiffs' and the Class  
15 Members' claims is neither arbitrary nor fundamentally unfair because California has significant  
16 contacts and a significant aggregation of contacts that create a state interest in the claims of the  
17 Plaintiffs and the Nationwide Class.

18 27. Acer has recognized the appropriateness of the application of California  
19 law to the Plaintiffs' and Class Members' claims by virtue of its own choice of law provision in  
20 its warranty directing that California law should apply.

21  
22 **V. FACTUAL ALLEGATIONS**

23 **A. Acer Background**

24 28. Defendant Acer America Corp. is a subsidiary of Acer, Inc. ("AI"), a  
25 global corporation based in Taiwan.

26 29. According to its website, AI spun-off its manufacturing operation "to  
27 focus its resources on developing technologically advanced, user-friendly solutions" and now  
28 refers to itself as a "branded PC vendor." AI transferred the related manufacturing assets and

1 liabilities to Wistron Corp. (“Wistron”). In AI’s 2007 Annual Report, AI refers to Wistron as an  
2 “investee of the Company [AI] accounted for by equity method.”

3 30. As such, Acer outsources all of its manufacturing to related third  
4 parties and Acer’s products are shipped from these suppliers direct to Acer’s channels, hubs or  
5 customers worldwide.

6 31. Acer proclaims on its website: “Acer America Corporation designs and  
7 markets personal computing solutions for end-users who require reliability, enhanced productivity  
8 and greater value. Acer America’s award-winning products include tablet PCs, desktop PCs,  
9 notebook computers, servers, displays and peripheral solutions for business, government,  
10 education and home users.”

11 32. AI recorded \$11.32 billion in revenues worldwide in 2006; its revenue  
12 from the first to third quarter of 2008 was \$12.8 billion. AI shipped over 4 million Notebooks in  
13 the U.S. in 2008.

14 33. AI is the third largest computer company in the world (by sales) after  
15 Hewlett Packard and Dell Inc., and the second largest marketer of notebook computers.

16 **B. Notebook Computers**

17 34. A notebook (also known as a laptop) is a personal computer designed  
18 for mobile use small enough to sit on a consumer’s lap. A notebook includes most of the  
19 components of a typical desktop computer, incorporating a display, a keyboard, a pointing device  
20 (a touchpad, also known as a trackpad, or a pointing stick) as well as a battery, into a single small  
21 and light unit.

22 35. Notebooks, like any computers, require memory to function.

23 36. Random Access Memory (“RAM”) is a form of computer data storage  
24 taking the form of integrated circuits that allows stored data to be accessed in any order (i.e., at  
25 *random*).

26 37. Synchronous Dynamic RAM (“SDRAM”) is a term that is used to  
27 describe dynamic RAM that has a synchronous interface, meaning that it waits for a clock signal  
28 before responding to control inputs and is therefore synchronized with the computer’s system bus.

1                   38.           SDRAM is primarily used as the main memory in notebook computers.  
2 The RAM referred to herein in reference to Acer's Defective Notebooks is SDRAM.

3                   39.           Computers use RAM to store information for quick access later on,  
4 which is faster than constantly accessing information from the hard drive (the largest and slowest  
5 data storage device on a computer).

6                   40.           Some computers have dedicated graphics RAM (RAM that is devoted  
7 to graphics memory and cannot be used as system memory), while others have shared RAM  
8 (RAM that can be used for either system memory or graphics memory).

9                   41.           Acer's Defective Notebooks discussed herein contain memory that is  
10 shared between graphics and system memory with no dedicated graphics RAM.

11                  42.           Most notebook computers come bundled with an operating system so  
12 that the computer will function when the consumer takes the product out of the box. An  
13 operating system provides the core aspect of a notebook computer's functionality.

14                  43.           An operating system serves as an interface between the computer's  
15 hardware and applications; it is responsible for the management and coordination of activities and  
16 the sharing of the limited resources of the computer.

17                  44.           The operating system also acts as a host for applications that are run on  
18 the machine. As a host, one of the purposes of an operating system is to handle the details of the  
19 operation of the hardware. This relieves application programs from having to manage these  
20 details.

21                  45.           Thus, operating systems manage the hardware (such as the processor,  
22 memory, and disk space) and the applications (such as Microsoft Office Word, Adobe Acrobat,  
23 and Internet Explorer) that often run on computers.

24                  46.           All of Acer's Defective Notebooks are designed, marketed, promoted,  
25 advertised, warranted, and/or sold with a pre-installed, Vista Premium operating system.  
26 Consumers pay for this product as an integrated package bundled by Acer and are not able to  
27 purchase these notebooks without the Vista Premium operating system.

28

1           **C.     Microsoft Vista Premium Operating Systems**

2           47.           The Microsoft Vista operating system was introduced to the market in  
3 January of 2007.

4           48.           Microsoft developed four editions of Windows Vista for use by original  
5 equipment manufacturers (“OEM”), such as Acer, and consumers. Windows Vista Home Basic  
6 is intended for budget users with low needs. Windows Vista Home Premium covers the majority  
7 of the consumer market, and contains additional applications for creating and using multimedia.  
8 Windows Vista Business is specifically designed for small and medium-sized businesses.  
9 Windows Vista Ultimate contains the complete feature-set of both the Home and Business  
10 editions, as well as a set of Windows Ultimate Extras, and is aimed at enthusiasts. Home  
11 Premium, Business, and Ultimate contain the same recommended minimum system requirements,  
12 contain many of the same premium features, and are collectively referred to herein as “Vista  
13 Premium.”

14           49.           While a notebook computer needs, at a minimum, 512MB of RAM just  
15 to install Windows Vista (whether Basic or Premium), the additional elements of Windows Vista  
16 Premium, such as the Aero Glass interface (a key component of Vista Premium) and the Media  
17 Center, cannot function without additional memory. As such, Microsoft provides “recommended  
18 minimum system requirements” for Vista Premium so that users can experience the full  
19 functionality of the operating system and all of its components without experiencing problems  
20 with their computers.

21           50.           Acer has publicly acknowledged that the Windows Vista Basic features  
22 that a user would get with 512 MB of RAM are not the same as Vista Premium:

23           Acer claims that the Vista Home Basic - the new entry-level  
24 Windows - is so poorly featured that consumers will simply reject  
25 it. ‘The new [Vista] experience you hear of, if you get Basic, you  
26 won’t feel it at all,’ said Jim Wong, senior corporate vice president  
27 at Acer. ‘There’s no [Aero] graphics, no Media Center, no remote  
28 control.’ Wong claims that Microsoft’s own marketing machine

1 has undermined Vista Home Basic. ‘Right at the beginning they  
2 started talking about the experience of [Vista Home] Premium.  
3 Premium is the real Vista,’ he said.<sup>1</sup>

4 51. Microsoft’s “Recommended *minimum* hardware requirements” for  
5 Vista Premium, Business, and Ultimate, which Microsoft describes as “the recommended  
6 minimum hardware requirements for *basic functionality* of the different editions of Windows  
7 Vista” are:

8 \* 1-gigahertz (GHz) 32-bit (x86) processor or 1-GHz 64-bit (x64)  
9 processor

10 \* 1 GB of system memory

11 \* Windows Aero-capable graphics card

12 **Note** This includes a DirectX 9-class graphics card that supports the  
13 following:

14 o A WDDM driver

15 o Pixel Shader 2.0 in hardware

16 o 32 bits per pixel

17 \* 128 MB of graphics memory (minimum)

18 \* 40-GB hard disk that has 15 GB of free hard disk space (the 15GB of  
19 free space provides room for temporary file storage during the install or  
20 upgrade.)

21 \* Internal or external DVD drive

22 \* Internet access capability

23 \* Audio output capability<sup>2</sup>

24 52. With regard to Microsoft Windows Vista *Basic* (not the Vista Premium  
25 versions at issue herein), Microsoft makes an allowance for shared system and graphics memory:  
26 “On system configurations that use system memory as graphics memory, at least 448 MB of  
27

28 <sup>1</sup> “PC maker fumes at Vista price hike,” *PC Pro*, (October 26, 2006).

<sup>2</sup> <http://support.microsoft.com/kb/919183> (emphasis added).

1 system memory must be available to the operating system after some memory is allocated for  
2 graphics.”<sup>3</sup>

3 53. No such shared memory allowance is made for Vista Premium,  
4 Business, and Ultimate which require, at a minimum, 1 GB of system memory *and* 128 MB of  
5 graphics memory.

6 54. According to most computer professionals, a computer with Vista  
7 actually needs at least 2 GB of RAM to run properly.

8 55. As a *Computer World* article noted:

9 Configuring a PC around the minimum hardware requirements of  
10 an application or operating system is [a] lot like agreeing to live in  
11 a basement apartment. Sure, it will work as a place to live -- if you  
12 don't mind damp and dim living conditions. Such may be the case  
13 for Windows Vista's minimum requirement of 512MB of RAM.  
14 Microsoft's on-the-box minimum RAM requirement 'really isn't  
15 realistic,' according to David Short, an IBM consultant who works  
16 in its company's Global Services Division. He says users should  
17 consider 4GB of RAM if they really want optimum Vista  
18 performance. With 512MB of RAM, Vista will deliver  
19 performance that's 'sub-XP,' he warned. . . . Dell recommends  
20 2GB of system memory . . . . Mueez Deen, director of graphics  
21 memory and consumer DRAM at Samsung Electronics, also  
22 recommends 2GB of RAM, calling that amount the 'optimal  
23 density for the complete Vista experience -- economically and  
24 technologically.’<sup>4</sup>

25 56. Pcstats.com ran several comprehensive memory tests involving Vista  
26 and published an article titled, “Microsoft Windows Vista: How Much Memory is Enough?”

27 <sup>3</sup> *Id.*

28 <sup>4</sup> Patrick Thibodeau, “Buying a new PC? ‘Windows Vista Capable’ barely hits the mark,” *Computer World*  
(February 20, 2007).

1 Using a desktop computer with a graphics card containing a dedicated 256 MB of RAM,  
2 Pcstats.com configured the computer with separate system memory in 512 MB, 1 GB, 2 GB, and  
3 4 GB increments to determine how the varying system memory amounts would impact the  
4 computer's ability to run Vista Ultimate.<sup>5</sup>

5 57. Pcstats.com found that a computer with 512 MB of system memory and  
6 a 256 MB dedicated graphics card (less than Microsoft's recommended minimum requirements  
7 for Vista Premium) would exhibit poor performance and not function properly:

8 2GB of RAM is generally considered the sweet spot for Windows

9 Vista. . . . *With 512MB of memory Vista crawls. Even in 2D*

10 *office/workstation style work there was a noticeable lag.*

11 Microsoft's Windows Experience Index was particularly hard,

12 scoring just 1.7 points. Not very impressive. *What the*

13 *benchmarks don't say though was how laggy simple Windows tasks*

14 *were... we could hear the HDD chugging away accessing the*

15 *swapfile.*<sup>6</sup>

16 58. Acer's Defective Notebook computers, which have a total of 1024 MB  
17 RAM and dedicate approximately 256 MB of memory to graphics, are left with only 768 MB of  
18 system memory to run the operating system. These Defective Notebooks are comparable to  
19 Pcstats.com's computer with 512 MB of system memory and 256 MB of graphics memory (or  
20 768 MB of total system and graphics memory) as neither meet Microsoft's recommended  
21 minimum system requirements.

22 59. Despite the fact that numerous computer professionals recommend at  
23 least 2 GB of RAM to run Vista Premium in addition to dedicated graphics memory, Acer  
24 routinely designs, market, promotes, advertises, warrants, and/or sells computers bundled with  
25 Vista Premium operating systems that fail to meet even Microsoft's recommended minimum  
26 system requirements and fails to disclose this material fact to consumers.

27  
28 <sup>5</sup> <http://www.pcstats.com/articleview.cfm?articleID=2163>

<sup>6</sup> *Id.* (emphasis added).

1           **D. Acer's Defective Notebook Computers and Deceptive Business Practices**

2           60.           Upon information and belief, Acer has been designing, marketing,  
3 promoting, advertising, warranting, and/or selling notebooks that fail to meet Microsoft's  
4 recommended minimum system requirements for Vista Premium since Microsoft released Vista  
5 in January of 2007.

6           61.           Acer's notebooks that fail to meet Microsoft's recommended minimum  
7 system requirements are materially defective as these computers have 1 GB or less of shared  
8 system memory, no dedicated graphics memory, and yet are bundled with a Microsoft Vista  
9 Premium operating system, pre-installed by Acer, and unable to adequately and properly function  
10 with that operating system.

11           62.           Beginning with the release of Vista in January of 2007 and continuing  
12 through the present, Acer made affirmative and material misrepresentations about the Defective  
13 Notebooks upon which they intended Plaintiffs and consumers to rely and upon which Plaintiffs  
14 and consumers did rely.

15           63.           Acer misrepresented that its Defective Notebooks could effectively and  
16 adequately run with a Vista Premium operating system.

17           64.           On every Defective Notebook at issue, Acer placed a label on the  
18 outside of the box detailing the computer's system specifications. (E.g., Exhibit D). These  
19 representations were available to Plaintiffs and every class member at the time of purchasing their  
20 computer.

21                   a.           Under "RAM," Acer's label detailed that the computer contained  
22 "1024 MB DDR2 RAM" (or 1GB of RAM or less).

23                   b.           Under "Softload," Acer's label detailed that the computer contained  
24 "Windows Vista® Home Premium" (or a similar Vista Premium operating system).

25           65.           Acer's product labels explicitly and implicitly represented that the  
26 Notebooks had adequate memory to run the Windows Vista Premium operating system that came  
27 with the computer. By virtue of including Vista Premium pre-installed on every notebook  
28

1 computer at issue herein, Acer also impliedly represented that the computer could adequately run  
2 the software and all of the features contained therein.

3           66.           Despite its knowledge that its computers failed to meet Windows  
4 Minimum Recommended System requirements, Acer touted (and continues to tout) Windows  
5 Vista Premium on its website (in several places) directed to consumers with messages that read:  
6 “Acer recommends Windows Vista® Business for Business Computing. Acer recommends  
7 Windows Vista® Home Premium for Personal Computing.” (Exhibit E)

8           67.           Acer further misrepresented that its Defective Notebooks met the  
9 recommended minimum system requirements for running Vista Premium.

10           68.           For example, in a reply to Plaintiffs’ email on September 5th, 2008,  
11 Acer’s service technician (Hal) stated: “[P]lease note that Windows Vista recommended  
12 requirements for the memory is 1 GB of system memory. However, the minimum requirements  
13 is [sic] 512 MB of memory in which your system is pre-installed with. This means that the  
14 system is still able to run Windows Vista properly.”

15           69.           Upon information and belief, Acer made these representations to other  
16 consumers and members of the class, as well, in response to service inquiries. Acer also  
17 impliedly represented that the Defective Notebooks complied with Microsoft’s recommended  
18 minimum system requirements by including and installing Vista Premium on every computer at  
19 issue in this case.

20           70.           Acer’s statements are false and/or misleading.

21           71.           Microsoft’s “recommended system requirements” are 1 GB of system  
22 memory *and* 128 MB of graphics memory, at a minimum, not “1 GB of system memory.”

23           72.           While Microsoft’s “minimum supported system requirements” (those  
24 needed just to install the system on a computer) are 512 MB of RAM, a computer with 512 MB  
25 of RAM running Vista Premium will *not* be able to run Vista Premium properly and will  
26 experience a loss of functionality and other serious problems. In particular, the important  
27 elements of Windows Vista Premium that distinguish the software from Windows Vista Basic  
28 (such as the Aero Glass feature and media center) will not operate on a computer with only 512

1 MB of RAM. Further, as detailed herein, computers containing only 512 MB of total RAM and  
2 attempting to run Windows Vista Premium will experience frequent problems such as freezing  
3 during use, crashing, requiring frequent restarts, and experiencing slow load times.

4 73. Acer's material misrepresentations imposed an affirmative duty on  
5 Acer to disclose additional material information to Plaintiffs and Class Members.

6 74. Acer concealed and/or failed to disclose material information about its  
7 Defective Notebooks upon which they intended Plaintiffs and consumers to rely and upon which  
8 Plaintiffs and consumers did rely.

9 75. Despite labeling its Notebooks with statements that the Computers  
10 contained 1024 MB of RAM and Windows Vista Premium, Acer concealed and/or failed to  
11 disclose that its Defective Notebooks did not meet the recommended minimum system  
12 requirements for operating Vista Premium which had an additional minimum requirement of 128  
13 MB of graphics RAM.

14 76. Despite labeling its Notebooks with statements that the Computers  
15 contained 1024 MB of RAM, Acer failed to disclose that the 1024 MB of RAM are shared  
16 between memory and graphics leaving only approximately 750 MB of RAM to run the Windows  
17 Vista operating system. Thus, even if a consumer was aware of the recommended minimum  
18 system requirements for Vista Premium, Acer's label failed to disclose that the 1024 MB of  
19 memory was shared and inadequate to run the operating system.

20 77. Despite the knowledge that consumers, such as Plaintiffs, were  
21 experiencing numerous problems with their Defective Notebooks as a result of inadequate  
22 memory, Acer concealed and/or failed to disclose that its Defective Notebooks could not  
23 effectively and adequately run with Vista Premium.

24 78. Despite the knowledge that consumers, such as Plaintiffs, were  
25 experiencing numerous problems with their Defective Notebooks as a result of inadequate  
26 memory, Acer failed to disclose that its Defective Notebooks running Vista Premium would  
27 experience serious problems, including, but not limited to, freezing during use, crashing,  
28

1 requiring frequent restarts, and experiencing slow load times, well before their warranted or  
2 expected useful life.

3 79. Despite knowledge of the Defect, Acer failed to disclose the Defect to  
4 its customers.

5 80. Acer's warranty provides that "Acer warrants the Product you have  
6 purchased from Acer or from an Acer Authorized Reseller in the United States or Canada to be  
7 free from defects in materials or workmanship under normal use during the warranty period."

8 81. Acer fails to meet its warranted quality of being free from defects in  
9 material, as its Defective Notebooks do not have the requisite amount of RAM material to run  
10 properly, making the computers experience significant problems far before their warranted or  
11 expected useful life. The Defect is solvable only if the consumers spend additional money to add  
12 RAM.

13 82. Acer has refused to provide relief to Plaintiffs and thousands of other  
14 Class Members with Defective Notebooks that fail to perform as marketed, promoted, advertised,  
15 warranted and/or sold.

16 83. Acer's acts and omissions as outlined herein were false, deceptive  
17 and/or unfair. Acer engaged in these acts and omissions with the intent that consumers, such as  
18 Plaintiffs and Class Members, rely upon them.

19 84. Plaintiffs and Class Members have been harmed and suffered direct  
20 economic loss as a result of Acer's acts and omissions. Plaintiffs and Class Members purchased  
21 notebooks that failed to perform as marketed, promoted, advertised, warranted, and/or sold by  
22 Acer, did not get what they paid for, and have incurred or will incur hundreds of dollars in  
23 damages to replace or repair their Defective Notebooks.

24 **E. Consumer Complaints**

25 85. Numerous consumers have complained about Acer's Defective  
26 Notebooks and problems such as freezing, restarting, and slow operations. The following are  
27 examples of these complaints:  
28

1                   86.           “Hi guys, I bought a new acer notebook today and it came preinstalled  
2 with vista. I got the acer aspire 5610-2328, intel pentium dual core processor, and it has a lot of  
3 space 120 gb, and 1gb [of RAM] so I know space is not a problem. I’ve only been using it for a  
4 couple of hours and it has already FROZEN 5 times. Yes 5 times. The last time, it froze right  
5 after it finished booting.”<sup>7</sup>

6                   87.           “I have an ACER Aspire 4720 laptop. Intel Core 2 Duo with a T7300  
7 2.0 ghz chip. 1 gig of RAM. It is driving Vista home premium and doing it veeerrry slowly. Any  
8 ideas?”<sup>8</sup>

9                   88.           “I got an Acer Aspire 3100 which came with Vista installed. Vista was  
10 too heavy for it and it was so slow that it was making my work hard.”<sup>9</sup>

11                  89.           “My new acer laptop 5050 is extremely slow! Haven’t had any luck  
12 getting it to respond normally, maybe I just don’t know Vista home premium! Takes almost 10  
13 minutes to shut down! Several minutes to load anything! Haven’t installed but two programs on  
14 it. Print Artist 22 platinum and Embarq security virus program. AMD ATHELON CHIP 64X2  
15 120 G HD.1G DDR2 MEM. [RAM] 802.11b/g WLAN VISTA HOME PREMIUM. Maybe I  
16 should reformat and inst a copy of win XP prof. ! Any ideas?”<sup>10</sup>

17                  90.           “Hi there...i just bought acer aspire 4310 and using windows vista... but  
18 the problem is its running very slow and always hang up, i cant work on anything... anybody who  
19 can help me with my problem?”<sup>11</sup>

20                  91.           “I bought a ACER 4210. It is so slow it cannot keep up with my typing  
21 and I am always going back to insert missed letters. It is running Vista. Would going to XP fix  
22 this or is it the slow processor in it. Or is it the Acer control centre which insists on taking 45  
23 secs to load every time I start it. It isn’t very old but it frustrates the hell out of me. I have ditched  
24  
25

26 \_\_\_\_\_  
<sup>7</sup> <http://forums.techarena.in/vista-help/697965.htm>

27 <sup>8</sup> <http://www.computerforum.com/127074-slow-acer-laptop-vista.html>

28 <sup>9</sup> <http://forums.techguy.org/windows-vista-7/600485-vista-acer-notebook-no-good.html>

<sup>10</sup> <http://forum.worldstart.com/showthread.php?t=128266>

<sup>11</sup> <http://www.notebookforums.com/showthread.php?p=2676182>

1 Norton for AVG.- but cannot seem to remove norton fully. Years ago I had an XT that didn't  
2 require this 'reediting'."<sup>12</sup>

3 92. "Hello all I purchased a Acer Genuine Intel CPU T1350 @ 1.86 gig  
4 with 1 gig ram . . . . It came with vista home premium. I don't mind vista but it takes 3 – 5  
5 minutes for my notebook to load and general tasks are slow to run, even web browsers takes 10 to  
6 20 seconds to wake up..."<sup>13</sup>

7 93. "How do I speed up 1Gb RAM Vista laptop? I've just bought my  
8 partner a new laptop, couldn't get a model and spec I wanted without Vista though. It arrived  
9 yesterday and I am amazed at how slow Vista is. The laptop (Acer Aspire 5710) is no rocket but  
10 task manager shows that 800Mb of memory from it's 1Gb [of RAM] is being used and that's just  
11 with the browser running. It's even slower than the XP powered 700Mhz PIII it replaces which  
12 has only 256Mb of slow RAM."<sup>14</sup>

13 94. "My husband bought me this acer for christmas in 12-17-07, and my  
14 warranty just ran out 12-17-08. I have had problems with my computer shutting down and  
15 restarting on its own since the second month ive owned it. I called acer tech support many times  
16 and was bounced back and forth, meaning I was told it was many different things wrong with  
17 system, and my internet connection, I had my internet bellsouth tech come to my house and test  
18 the line and it wasnt the problem. . . . Its had issues since the begaining. My money wasnt  
19 broken, or fake. not only that, vista is a problem in itself. I just feel like i got robbed."<sup>15</sup>

## 21 VI. TOLLING

22 95. Because the defective nature of the Defective Notebooks is concealed,  
23 Plaintiffs and the Class Members were not reasonably able to discover the Defect until after their  
24 purchase and use of Acer's Defective Notebook, despite their exercise of due diligence.

26  
27 <sup>12</sup> <http://answers.yahoo.com/question/index?qid=20080111100648AAEzZvi>

<sup>13</sup> <http://forums.whirlpool.net.au/forum-replies-archive.cfm/1141369.html>

28 <sup>14</sup> <http://forums.techguy.org/windows-vista-7/642719-how-do-i-speed-up.html>

<sup>15</sup> <http://www.consumeraffairs.com/computers/acer.html>

1           96.           Acer knew of the Defect prior to the time of sale, and concealed that  
2 material information from Plaintiffs and all consumers. Any applicable statutes of limitation  
3 have, therefore, been tolled by Acer's concealment of material facts.

4           97.           Acer is estopped from relying on any statutes of limitation because of  
5 its concealment of the Defect.

6  
7 **VII. CLASS ACTION ALLEGATIONS**

8           98.           Plaintiffs Lora and Clay Wolph bring this lawsuit as a class action on  
9 behalf of themselves and all other similarly situated consumers as members of a proposed Class  
10 pursuant to Federal Rule of Civil Procedure 23.

11           99.           Based upon the allegations of this Complaint, this action satisfies the  
12 requirements for class certification.

13           100.          The Class is defined as:

14           All persons and entities who reside in the United States who have  
15 purchased a new Acer notebook computer from Acer or an Acer  
16 Authorized Reseller, not for resale, that came pre-installed with a  
17 Microsoft® Windows Vista Home Premium, Business, or Ultimate  
18 operating system and contained 1024 megabytes of Random  
19 Access Memory or less as shared memory for both the system and  
20 graphics.

21           101.          The following Persons shall be excluded from the Class: (1) Acer and  
22 its subsidiaries, affiliates, officers and employees; (2) all Persons who make a timely election to  
23 be excluded from the proposed Class; (3) governmental entities; and (4) the judge(s) to whom this  
24 case is assigned and any immediate family members thereof.

25           102.          Plaintiffs reserve the right to re-define the Class prior to certification.

26           103.          Although the exact number of Class Members is uncertain and can only  
27 be ascertained through appropriate discovery, Plaintiffs are informed and reasonably believe the  
28 number of Class Members is in the thousands, such that joinder is impracticable.

1                   104.       The Class is composed of an easily ascertainable, self-identifying set of  
2 individuals and entities who purchased Acer's Defective Notebooks.

3                   105.       There is a well-defined community of interest among the proposed  
4 Class Members, and the disposition of all their claims in a single action will provide substantial  
5 benefits to all parties and to the Court.

6                   106.       The claims of the representative Plaintiffs are typical of the claims of  
7 the Class Members in that the representative Plaintiffs, like all Class Members, purchased an  
8 Acer Defective Notebook, which Acer had misrepresented its characteristics and capabilities and  
9 did not have the requisite amount of RAM to adequately run Vista Premium - operating system  
10 installed.

11                  107.       The representative Plaintiffs, like all Class Members, have been  
12 damaged by Defendant's misconduct in that they did not get what they paid for and have incurred  
13 or will incur the cost of repairing or replacing the Defective Notebooks.

14                  108.       The factual bases for Acer's misconduct are common to all Class  
15 Members and represent a common thread of wrongdoing resulting in injury to all members of the  
16 Class.

17                  109.       Plaintiffs will fairly and adequately protect the interests of the Class.  
18 They have retained counsel with substantial experience in prosecuting consumer class actions,  
19 and specifically actions involving defective products.

20                  110.       Plaintiffs and their counsel are committed to prosecuting this action  
21 vigorously on behalf of the Class, and have the financial resources to do so. Neither Plaintiffs nor  
22 their counsel have any interests adverse to those of the Class.

23                  111.       Plaintiffs and the Class Members have all suffered and will continue to  
24 suffer harm and damages as a result of Acer's unlawful and wrongful conduct.

25                  112.       The prosecution of separate actions by thousands of individual Class  
26 Members would create a risk of inconsistent or varying adjudications with respect to individual  
27 Class Members, thus establishing incompatible standards of conduct for Defendants.

28

1                   113.       The prosecution of separate actions by individual Class Members  
2 would also create the risk of adjudications with respect to them that would, as a practical matter,  
3 be dispositive of the interests of the other Class Members who are not a party to such  
4 adjudications and would substantially impair or impede the ability of such non-party Class  
5 Members to protect their interests.

6                   114.       Defendants have acted or refused to act on grounds generally  
7 applicable to the entire Class, thereby making appropriate final declaratory and injunctive relief  
8 with respect to the Class as a whole.

9                   115.       There are numerous questions of law and fact common to Plaintiffs and  
10 the Class that predominate over any questions that may affect individual Class Members, and  
11 include the following:

- 12                   a.       Whether Acer notebooks pre-installed with Vista Premium and only 1  
13 GB of RAM total, to be shared between the system and graphics, are  
14 defective;
- 15                   b.       Whether Acer knew or should have known of the inherent material  
16 defect in the Defective Notebooks;
- 17                   c.       Whether Acer misrepresented that its Defective Notebooks met the  
18 recommended minimum system requirements for running Vista  
19 Premium;
- 20                   d.       Whether Acer misrepresented that its Defective Notebooks could  
21 effectively and adequately run with the Vista Premium operating  
22 system;
- 23                   f.       Whether Acer had an affirmative duty to disclose omitted information  
24 to Plaintiffs and Class Members;
- 25                   g.       Whether Acer failed to disclose that its Defective Notebooks did not  
26 meet the recommended minimum system requirements for Vista  
27 Premium;
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- h. Whether Acer failed to disclose that the 1 GB of memory in its Defective Notebooks was shared with graphics memory leaving insufficient memory to run Vista Premium;
- i. Whether Acer failed to disclose that its Defective Notebooks could not effectively and adequately run with Vista Premium;
- j. Whether Acer failed to disclose that its Defective Notebooks running Vista Premium would experience serious problems, including, but not limited to, freezing during use, crashing, requiring frequent restarts, and experiencing slow load times, well before their warranted or expected useful life;
- k. Whether Acer misrepresented that its products had certain qualities, characteristics or benefits;
- l. Whether Acer represented that its products were of a particular standard, quality or grade when they were not and/or when Acer knew or should have known that they are of another standard, quality or grade;
- m. Whether Acer advertised and/or offered for sale products that were defective without clearly and unequivocally indicating that the products were defective and/or with intent not to sell them as advertised;
- n. Whether the facts Acer misrepresented, concealed or failed to disclose were material;
- o. Whether Acer intended Plaintiffs and Class Members to rely on its misrepresentations or omissions of material facts;
- p. Whether as a result of Acer's misrepresentation and/or concealment of material facts, Plaintiffs and the Class acted to their detriment by purchasing Acer Notebooks;

- 1 q. Whether Plaintiffs and the Class have suffered a loss as the result of  
2 Acer's failure to disclose, concealment and/or misrepresentation of  
3 material facts;
- 4 r. Whether Acer's conduct in advertising and selling Acer products  
5 constitutes a violation of the California Consumer Legal Remedies Act,  
6 Civ. Code §§ 1750, *et seq.*;
- 7 s. Whether Acer's conduct in advertising and selling Acer products  
8 constitutes a violation of California's Unfair Competition Law, Bus. &  
9 Prof. Code §§ 17200, *et seq.*;
- 10 t. Whether Acer's conduct in advertising and selling Acer products  
11 constitutes a violation of California's False Advertising Law, Bus. &  
12 Prof. Code §§ 17500, *et seq.*;
- 13 u. Whether Acer created express warranties regarding its product;
- 14 v. Whether Acer should be declared financially responsible for notifying  
15 all Class Members of the problems with Acer products and for the costs  
16 and expenses of repair and/or replacement of all such products;
- 17 w. Whether Plaintiffs and the Class are entitled to compensatory,  
18 exemplary and statutory damages, and the amount of such damages;  
19 and
- 20 x. Whether Acer should be ordered to disgorge, for the benefit of the  
21 Class, all or part of the ill-gotten profits it received from the sale of defective Acer  
22 products, and/or to make full restitution to Plaintiffs and the Class Members.

23 116. Given, (i) the substantive complexity of this litigation; (ii) the size of  
24 individual Class Members' claims; and (iii) the limited resources of the Class Members, few, if  
25 any, Class Members could afford to seek legal redress individually for the wrongs Defendant has  
26 committed against them.

27 117. Class treatment of common questions of law and fact would also be  
28 superior to multiple individual actions or piecemeal litigation in that class treatment will foster an

1 orderly and expeditious administration of Class claims, economies of time, effort and expense,  
2 and uniformity of decision.

3 118. This action presents no difficulty that would impede the Court's  
4 management of it as a class action, and a class action is the best and/or the only available means  
5 by which members of the Class can seek legal redress for the harm caused by Defendants.

6 119. Absent a class action, Class Members will continue to incur damages  
7 and Acer's misconduct will continue without remedy.

8 120. A class action is superior to other available methods for the fair and  
9 efficient adjudication of the controversy.

10 121. The issues common to Plaintiffs' and the Class Members' claims, some  
11 of which are identified above, are alternatively certifiable pursuant to Fed. R. Civ. P. 23(c)(4) as  
12 resolution of these issues would materially advance the litigation, and class resolution of these  
13 issues is superior to repeated litigation of these issues in separate trials.

14  
15 **FIRST CLAIM FOR RELIEF**

16 **(Violation of the Consumer Legal Remedies Acts, Civ. Code §§ 1750, et seq.)**

17 122. Plaintiffs hereby incorporate by reference the allegations contained in  
18 the preceding paragraphs of this Complaint.

19 123. Acer is a "person" as defined by Cal. Civil Code § 1761(c).

20 124. Plaintiffs and the Class Members are "consumers" within the meaning  
21 of Cal. Civil Code § 1761(d).

22 125. The affected Defective Notebooks are "goods" within the meaning of  
23 Cal. Civil Code § 1761(a).

24 126. Plaintiffs' purchase of Acer products constituted "transactions" as that  
25 term is defined in Cal. Civil Code § 1761(e).

26 127. Acer's acts and omission alleged herein violated CLRA § 1770(a)(5)'s  
27 proscription against representing that goods have uses, characteristics or benefits they do not  
28 actually have; 1770(a)(7)'s proscription against representing that goods are of a particular

1 standard, quality or grade when they are of another; and 1770(a)(9)'s proscription against  
2 advertising goods with an intent not to sell them as advertised.

3           128.       Beginning on or about January of 2007 and continuing through the  
4 present Acer misrepresented to Plaintiffs and Class Members, in its advertising, warranties, and  
5 representations that: (a) its Defective Notebooks met the recommended minimum system  
6 requirements for running Vista Premium; (b) its Defective Notebooks could effectively and  
7 adequately run with a Vista Premium operating system; and (c) the Defective Notebooks would  
8 be warranted against defects in materials and workmanship for one year.

9           129.       Beginning on or about January of 2007 and continuing through the  
10 present, Acer omitted, failed to disclose and/or concealed the material facts that: (a) its Defective  
11 Notebooks did not meet the recommended minimum system requirements for Vista Premium; (b)  
12 the 1 GB of memory in its Defective Notebooks was shared with graphics memory leaving  
13 insufficient memory to run Vista Premium; (c) its Defective Notebooks could not effectively and  
14 adequately run with Vista Premium; and (d) its Defective Notebooks running Vista Premium  
15 would experience serious problems, including, but not limited to, freezing during use, crashing,  
16 requiring frequent restarts, and experiencing slow load times, well before their warranted or  
17 expected useful life. Each of these material omissions were contrary to Acer's affirmative  
18 representations regarding the quality and nature of the Defective Notebooks.

19           130.       The facts that Acer failed to disclose, concealed and/or misrepresented  
20 are material in that reasonable consumers would consider them important in deciding whether or  
21 not to purchase (or to pay the same price for) Acer notebooks. Had Plaintiffs and the Class  
22 known the defective nature of the notebooks, they would not have purchased the Defective  
23 Notebooks or would have paid less for them.

24           131.       In failing to disclose the defective nature of the Defective Notebooks,  
25 Acer has knowingly and intentionally concealed material facts and breached its duty not to do so.

26           132.       Acer knew that its Defective Notebooks were defective, would  
27 experience significant problems within the one year warranty period, and were not fit for their  
28 intended use. Acer was under a duty to disclose the defective nature of the Notebooks to

1 Plaintiffs and the Class Members because Acer affirmatively misrepresented material facts about  
2 its Defective Notebooks.

3 133. Acer's concealment and deceptive practices, in violation of the CLRA,  
4 were designed to and did induce Plaintiffs and the Class Members to purchase Acer products.

5 134. A reasonable consumer would expect the Acer notebooks to function  
6 properly for at least one year, the length of Acer's warranty, if not longer.

7 135. Acer performed the acts herein alleged in connection with the design,  
8 marketing, advertisement, warranty and/or sale of the Defective Notebooks with the knowledge  
9 and intent to defraud and deceive Plaintiff and members of the Class.

10 136. To this day, Acer continues to violate the CLRA by misrepresenting  
11 and concealing the defective nature of its Defective Notebooks and by failing or refusing to reveal  
12 to the Class Members that the cause of the problems with Acer's Defective Notebooks is an  
13 inherent defect in materials and not a result of improper use or maintenance.

14 137. Plaintiffs, on behalf of themselves and all similarly situated, demand  
15 judgment against Acer under the CLRA for injunctive relief, restitution, and/or disgorgement of  
16 funds paid to Acer to purchase the Acer Defective Notebooks, and/or disgorgement of funds  
17 received by Acer to repair or replace the Defective Notebooks, and/or an injunction requiring  
18 Acer to repair or replace the Acer Defective Notebooks free of charge, and an award of attorneys'  
19 fees.

20 138. Plaintiffs submitted a CLRA notice letter to Acer's counsel on  
21 February 4, 2009, a copy of which is attached hereto as Exhibit F. Acer has failed to provide  
22 appropriate relief for its violations of CLRA §§ 1770(a)(5), (7) and (9) within 30 days of receipt  
23 of Plaintiffs' notification, in accordance with Civ. Code § 1782(b). Plaintiffs are therefore  
24 entitled, under CLRA § 1780, to recover or obtain any of the following relief for Acer's  
25 violations of CLRA §§ 1770(a)(5), (7) and (9):

- 26 a. actual damages under Civ. Code Section 1780(a)(1);  
27 b. punitive damages under Civ. Code Section 1780(a)(4);  
28 c. attorneys' fees and costs under Civ. Code Section 1780(d); and

1 d. any other relief the Court deems proper under Civ. Code Section  
2 1780(a)(5).

3  
4 **SECOND CLAIM FOR RELIEF**

5 **(Breach of Express Warranty)**

6 139. Plaintiffs hereby incorporate by reference the allegations contained in  
7 the preceding paragraphs of this Complaint.

8 140. Acer's warranty provides: "Acer warrants the Product you have  
9 purchased from Acer or from an Acer Authorized Reseller in the United States or Canada to be  
10 free from defects in materials or workmanship under normal use during the warranty period."

11 141. The written warranty provided by Acer was a part of the basis of the  
12 bargain for Plaintiffs and the Class Members in purchasing or acquiring the Acer products.

13 142. Acer's written warranty directed that Plaintiffs and Class Members  
14 seeking relief under the warranty contact Acer's service department. Acer's warranty placed the  
15 Plaintiffs and Class Members in a direct vertical privity and contractual relationship with Acer.

16 143. Alternatively, Plaintiffs and Class Members were third-party  
17 beneficiaries to the warranty and are in a direct privity relationship as a result.

18 144. Acer's written warranty was made expressly for the benefit of Plaintiffs  
19 and Class Members (the ultimate consumers) and not for the retailers who sold Acer's Defective  
20 Notebooks.

21 145. Acer has breached its expressed warranty to Plaintiffs and Class  
22 Members in that the Acer notebooks were materially defective from the day they were sold and  
23 will not function properly, displaying serious problems such as freezing during use, crashing,  
24 requiring frequent restarts, experiencing slow load times, and other manifestations of the Defect,  
25 within the warranted period of one year from the date of purchase.

26 146. Any contractual language contained in Acer's express warranty that  
27 attempts to limit remedies or the period within which to bring claims is unconscionable, fails to  
28

1 conform to the requirements for limiting remedies under applicable law, causes the warranties to  
2 fail of their essential purpose, and is, thus, unconscionable and void.

3 147. Acer has been put on notice of its breach of express warranties by  
4 Plaintiffs and Class Members through notice provided by Plaintiffs and Class Members prior to  
5 the filing of this Complaint.

6 148. As a direct result of the failure of the Acer products to perform as  
7 expressly warranted, Plaintiffs and the Class Members have incurred and will continue to incur  
8 expenses to repair or replace the Defective Notebooks.

9 149. As a result of Acer's breach of express warranties, Plaintiffs and  
10 members of the Class have been injured and are entitled to equitable/injunctive relief and/or  
11 damages in a measure and amount which are to be determined at trial.

12  
13 **THIRD CLAIM FOR RELIEF**

14 **(Violation of the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301 et seq.)**

15 150. Plaintiffs hereby incorporate by reference the allegations contained in  
16 the preceding paragraphs of this Complaint.

17 151. The Magnuson-Moss Consumer Products Warranties Act ("Magnuson  
18 Moss"), 15 U.S.C. §§ 2301, *et seq.*, provides a private right of action by purchasers of consumer  
19 products against manufacturers or retailers who, *inter alia*, fail to comply with the terms of a  
20 written warranty. 15 U.S.C. § 2310(d)(1). As demonstrated above, Acer has failed to comply  
21 with the terms of its written warranty with regard to its Defective Notebooks.

22 152. Acer's Defective Notebooks are a consumer product as that term is  
23 defined in § 2301(a) of Magnuson-Moss.

24 153. Acer is a warrantor, as that term is defined in § 2301(5) of Magnuson-  
25 Moss.

26 154. The Plaintiffs and each member of the Class are consumers, as that  
27 term is defined in § 2301(3) of Magnuson-Moss.  
28





1 “any unlawful...business act or practice;” (b) “any... unfair or fraudulent business act or  
2 practice;” and (c) “any... unfair, deceptive, untrue or misleading advertising.”

3 168. Beginning on or about January of 2007 and continuing through the  
4 present Acer, Acer disseminated false and misleading statements to Plaintiffs and the Class by  
5 misrepresenting that: (a) its Defective Notebooks met the recommended minimum system  
6 requirements for running Vista Premium; (b) its Defective Notebooks could effectively and  
7 adequately run with a Vista Premium operating system; and (c) its Defective Notebooks would be  
8 warranted against defects in materials and workmanship for one year.

9 169. Beginning on or about January of 2007 and continuing through the  
10 present, Acer omitted, failed to disclose, and/or concealed the material facts that: (a) its Defective  
11 Notebooks did not meet the recommended minimum system requirements for Vista Premium; (b)  
12 the 1 GB of memory in its Defective Notebooks was shared with graphics memory leaving  
13 insufficient memory to run Vista Premium; (c) its Defective Notebooks could not effectively and  
14 adequately run with Vista Premium; and (d) its Defective Notebooks running Vista Premium  
15 would experience serious problems, including, but not limited to, freezing during use, crashing,  
16 requiring frequent restarts, and experiencing slow load times, well before their warranted or  
17 expected useful life. Each of these material omissions that were contrary to Acer's affirmative  
18 representations regarding the quality and nature of the Defective Notebooks.

19 170. The aforementioned conducted violated the Unfair Competition Law by  
20 breaching the express warranty provide to the Plaintiffs and the Class with the Defective  
21 Notebooks.

22 171. Acer disseminated unfair, deceptive, untrue and/or misleading  
23 advertising in violation of the Unfair Competition Law, Bus. & Prof. Code §§ 17200, *et seq.*,  
24 when it misrepresented, failed to disclose and/or concealed the true defective nature of the Acer  
25 notebooks in its advertising, marketing, and other broadly disseminated representations.

26 172. Acer's above-described conduct constitutes “unfair” business practices  
27 within the meaning of the Unfair Competition Law insofar as Acer's business practices alleged  
28

1 herein are immoral, unethical, oppressive, unscrupulous and/or substantially injurious to  
2 consumers.

3 173. Acer's above-described conduct constitutes "fraudulent" business  
4 practices within the meaning of the Unfair Competition Law insofar as Acer's business practices  
5 alleged herein are likely to deceive members of the public.

6 174. These above-described unfair and fraudulent business practices and  
7 false and misleading advertising by Acer present an ongoing threat to Plaintiffs and the Class.  
8 Plaintiffs are informed and believe and thereon allege that Acer has systematically perpetrated  
9 deceptive and unfair practices upon members of the public and have intentionally deceived  
10 Plaintiffs and the Class.

11 175. In addition, the use of media to promote the sale of Defective  
12 Notebooks through false and deceptive representations constitutes unfair competition and unfair,  
13 deceptive, untrue or misleading advertising within the meaning of the Unfair Competition Law.

14 176. Acer further violated the Unfair Competition Law by engaging in  
15 unlawful conduct, including but not limited to, failing to comply with the Magnuson and Moss  
16 Warranty Act (15 U.S.C. §§ 2301 et seq.).

17 177. As a direct and proximate result of Acer's violation of the Unfair  
18 Competition Law, Plaintiffs and the Class Members have suffered harm in that they, would not  
19 have purchased or would have paid less for the Defective Notebooks if Plaintiffs and the Class  
20 had known of the notebook's defective nature.

21 178. As a direct and proximate result of Acer's violation of the Unfair  
22 Competition Law, Plaintiffs and the Class Members have suffered harm in that they purchased  
23 Acer Defective Notebooks that will not run properly and have incurred or will be required to  
24 incur costs to replace or repair their Defective Notebooks.

25 179. As a direct and proximate result of Acer's violation of the Bus. & Prof.  
26 Code §§ 17200 *et seq.*, Acer has been unjustly enriched at the expense of Plaintiffs and the Class  
27 and should be required to make restitution to Plaintiffs and the Class Members or make  
28 restitutionary disgorgement of its ill-gotten profits pursuant to Bus. & Prof. Code § 17203.



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replace their Notebook with a Notebook that has the necessary RAM to run properly;

- d. An award to Plaintiffs and the Class of compensatory, exemplary, and statutory damages, including interest thereon, in an amount to be proven at trial;
- e. An order requiring the restitution and restitutionary disgorgement to the Class of all profits unlawfully obtained by Acer;
- f. An award of attorneys' fees and costs, as allowed by law;
- g. An award of pre-judgment and post-judgment interest, as provided by law;
- h. For leave to amend the Complaint to conform to the evidence produced at trial; and
- i. Such other or further relief as may be appropriate under the circumstances.

**DEMAND FOR JURY TRIAL**

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

DATED this 1st day of October, 2009.

\_\_\_\_\_/s  
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*Attorneys for Plaintiffs and the Proposed Class*

\* Admitted to practice *pro hac vice*

# **EXHIBIT A**

## WARRANTY REFERENCE TABLE

Warranty Area	Coverage
Aspire™	
Warranty Length/Type	1 Year Parts & Labor, Mail In or Carry In
Hardware Technical Support	1 Year
Software Support	90 days
Service Website	www.acerpanam.com
Service phone number	254-298-4696 (United States) 866-661-7100 (Canada)
Hours of Operation	English Technical Support 8:00am – 8:00pm Monday – Friday 8:00am – 5:00pm Saturday Central Time

Please see the Limited Product Warranty below for details regarding warranty coverage.

## Limited Product Warranty

### What is covered by this warranty?

Acer warrants the Product you have purchased from Acer or from an Acer Authorized Reseller in the United States or Canada to be free from defects in materials or workmanship under normal use during the warranty period. This warranty extends only to you, the original Purchaser. It is not transferable to anyone who subsequently purchases, leases, or otherwise obtains the Product from you. If the product you purchased was a "bundled" product (bundled meaning a desktop computer and either a LCD or CRT monitor in the same box) it is covered as shown in the Warranty Table above.

### What is not covered by this warranty?

This Limited Warranty does not extend to any Product not purchased from Acer or from an Acer Authorized Reseller. This Limited Warranty also does not extend to any Product that has been damaged or rendered defective (a) as a result of use of the Product other than for its normal intended use, failure to use the Product in accordance with the User's Manual that accompanies the Product, or other misuse, abuse, or negligence to the Product; (b) by the use of parts not manufactured or sold by Acer; (c) by modification of the Product; (d) as a result of service by anyone other than Acer or an Acer Authorized Service Provider; or (e) improper transportation or packing when returning the Product to Acer or an Acer Authorized Service Provider; (f) improper installation of third-party products (e.g. memory cards); (g) external keyboard and mice, (h) the replacement of parts due to normal wear and tear parts (e.g. plastics, etc.).

Regarding Acer-supplied software that accompanies the Product, Acer warrants the "hard copy" media, e.g. diskettes, CD-ROMs, upon which this software is delivered to be "free from defects and workmanship" for a period of 90 days after the date of purchase by the end user. In the event that you receive defective media, Acer will replace the defective media at no charge to you. Media is not covered if abused, neglected or damaged by the user. It is your responsibility to back up all software supplied on the hard drive.

Except for this media warranty, this software is provided "As Is" and Acer disclaims any and all warranties, expressed or implied, including but not limited to any implied warranty of non-infringement of third-party rights, merchantability or fitness for a particular purpose. Acer does not warrant that the operation of this software will be uninterrupted or error-free, or that this software will meet your requirements. You assume both the risk as to the quality and performance of this software and the cost of repair or service to remedy software defects.

EXCEPT FOR THE WARRANTIES SET FORTH HEREIN, ACER DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ANY IMPLIED WARRANTIES THAT MAY BE IMPOSED BY APPLICABLE LAW ARE LIMITED TO THE TERM OF THIS WARRANTY. IN NO EVENT SHALL ACER BE LIABLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING

BUT NOT LIMITED TO LOSS OF BUSINESS, PROFITS, DATA OR USE, WHETHER IN AN ACTION IN CONTRACT OR TORT OR BASED ON A WARRANTY, ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE PRODUCT OR ANY ACER-SUPPLIED SOFTWARE THAT ACCOMPANIES THE PRODUCT, EVEN IF ACER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, YOU AGREE THAT REPAIR, AND (UPON AVAILABILITY) REPLACEMENT, AS APPLICABLE, UNDER THE WARRANTY SERVICES DESCRIBED HEREIN IS YOUR SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY BREACH OF THE ACER LIMITED WARRANTY SET FORTH HEREIN.

Add-on Components (HDD, CD-ROM, Sound cards, etc.) purchased from Acer and not installed in an Acer system are covered by a limited warranty as defined on the Warranty Card which comes with the component. For components purchased from Acer or an Acer Authorized Reseller and installed in an Acer system which are defined as "Supported" on Acer's Qualified Vendor List, Acer will provide warranty technical support and part replacement service for the duration of the system warranty. The warranty service provided on these supported components will be equal to the warranty service in effect on the system on which the components are installed. Proof of purchase from Acer for all the components is required.

Acer is not responsible for damage to or loss of any programs, data, or removable storage media. You are responsible for saving (backing up) any programs, data or removable storage media.

Some states or provinces do not allow the exclusion or limitation of incidental or consequential damages for consumer products, and some states and provinces do not allow limitations on how long an implied warranty lasts. In such states and provinces, the exclusions or limitations of this Limited Warranty may not apply to you.

This Limited Warranty gives you specific legal rights. You may also have other rights that vary from state to state. You are advised to consult applicable state and provincial laws for a full determination of your rights.

### How long is my warranty?

Your warranty is one (1) year from the date of purchase. For notebook products the warranty of the battery is one (1) year from the date of purchase and can not be extended through service contracts. The warranty period commences on the date of purchase. Your original purchase invoice (sales receipt) showing the date of purchase of the Product is your proof of the date of purchase. The warranty period is not extended if we repair or replace a warranted product or any parts. Acer may change the availability of limited warranties, at its discretion, but any changes will not be retroactive.

### How do I obtain warranty service?

Acer service is here to help you. Simply contact Acer Service by calling the number listed in the Warranty Reference Table above. Our Acer technicians will help you diagnose the issue. If our technician believes the Product does or may exhibit a defect in material or workmanship within the warranty period, Acer will provide the warranty services applicable to the Product. If necessary, we will either send you

Note : All terms and conditions subject to change without notice

Rev.: 1005 PN: 46AD094.007

a part or have your product repaired. If the product needs to be repaired we will instruct you on how to mail it in or carry it in to either an Acer repair center or an Acer Authorized Repair provider.

If we send you a part or do a repair we will use new or factory refinished parts at Acer's discretion. All exchanged parts and Products replaced under this warranty will become the property of Acer.

If you are located in the United States (fifty (50) states and District of Columbia), Canada, or Puerto Rico you are entitled to service under this Limited Warranty during the warranty period subject to the following terms and conditions:

1. Before calling Acer Technical Support, please run the hardware diagnostics. This will help us provide you with better quality support. Please refer to your User's Guide for instruction.
2. Acer will attempt to resolve warranty issues over the telephone. If telephone resolution is not possible, Acer will require your assistance in performing routine diagnostic procedures. Acer will then issue you a Service Request (SR) Number to be used as a means of identifying the Product returned.
3. Carry-in service may take place at any of the Acer Authorized Service Centers. Mail-in service must take place by returning the product to an Acer authorized location as identified by Acer personnel at the time the SR number is issued. You must prepay any shipping charges, export taxes, custom duties and taxes or any other charges associated with transportation of the Product. In addition, you are responsible for insuring any Product shipped or returned. You assume the risk of loss during shipment.
4. Use the original shipping and packing materials and include a description of the Product symptom. The Service Request (SR) Number must be placed on the exterior shipping container.
5. You must provide Acer or an Acer Authorized Service Provider with proof of the place and date of purchase.

### Registration

Registration of your product helps us better serve you and keep you up-to-date with the latest information about your product. We encourage you to register your product within 30 days of the original purchase in order to receive prompt service and support coverage should you need it. To register go to our Service website - <http://www.acerpanam.com> and choose "Register Your System".

All product warranties and warranty options shall be governed exclusively by the laws of the State of California exclusive of its choice of law provisions. Service options are subject to change without notice.

Note : All terms and conditions subject to change without notice

Rev.: 1005 PN: 46AD094.007



## Addendum for Acer notebooks

### ■ English

Thank you for choosing this Acer product.

Acer delivers a superior user experience via the Microsoft® Windows Vista™ operating system (OS). By manufacturer default, the Windows Vista™ OS and Acer applications utilize 8.7 GB or more of hard disk space – this figure may vary depending on preloaded materials and the operating environment.

Acer eRecovery Management may utilize another 8-10 GB of the stated hard disk capacity as dedicated backup space (10 GB with Microsoft® Works 8.5 with Office Home and Student 2007 Trial or Microsoft® Office Ready 2007, subject to availability). This backup space is stored in a separate partition of your hard disk and will not be viewable using Windows Explorer.

The available, usable capacity of your hard disk is equal to the total size of the hard disk minus the space occupied by the Acer eRecovery Management backup partition and all preloaded content.

Acer recommends using a DVD-R or DVD+R to burn\* a backup image of your system via Acer eRecovery Management.

\*DVD burner available on select models only.

### ■ Français

Nous vous remercions de votre achat de ce produit Acer.

Acer offre une expérience utilisateur supérieure via le système d'exploitation (SE) Microsoft® Windows Vista™. Par défaut d'usine, le SE Windows Vista™ et les applications Acer utilisent 8,7 Go ou plus d'espace du disque dur – cette figure peut varier selon ce qui est préchargé et l'environnement d'utilisation.

Acer eRecovery Management peut utiliser de 8 à 10 Go supplémentaires de la capacité déclarée du disque dur comme espace dédié de sauvegarde (10 Go avec Microsoft® Works 8.5 avec Office Famille et Etudiant 2007 Essai ou Microsoft® Office Ready 2007, selon disponibilité). Cette espace de sauvegarde est stocké sur une partition séparée de votre disque dur et ne sera pas affichable en utilisant l'Explorateur Windows.

La capacité disponible, utilisable de votre disque dur est égale à la taille totale du disque dur moins l'espace occupé par la partition de sauvegarde de Acer eRecovery Management et tout le contenu préchargé.

Acer recommande l'utilisation d'un DVD-R ou DVD+R pour graver\* une image de sauvegarde de votre système via Acer eRecovery Management.

\*Graveur DVD disponible sur certains modèles seulement.

### ■ Deutsch

Danke, dass Sie sich für dieses Acer-Produkt entschieden haben.

Acer bietet Ihnen mit dem Betriebssystem (OS) Microsoft® Windows Vista™ jetzt ein ganz neues Computererlebnis. Standardmäßig werden von Windows Vista™ und den Acer-Anwendungen 8,7 GB oder mehr an Festplattenspeicherplatz belegt — dieser Wert kann sich jedoch je nach bereits installiertem Inhalt oder dem Bedienungsumfeld unterscheiden.

Acer eRecovery Management nutzt weitere 8-10 GB an Festplattenplatz für Sicherungszwecke (10 GB mit Microsoft® Works 8.5 mit Office Home und Student 2007 Trial oder Microsoft® Office Ready 2007; je nach Verfügbarkeit). Der Speicherplatz für Sicherungskopien wird in einer separaten Partition der Festplatte bereitgestellt und kann mit Windows Explorer nicht eingesehen werden.

Der verfügbare, nutzbare Speicherplatz der Festplatte entspricht der Gesamtgröße minus dem Platz, der von Sicherungspartition von Acer eRecovery Management und von im voraus installierten Komponenten belegt ist.

Acer empfiehlt die Verwendung einer DVD-R oder DVD+R zum Brennen\* eines Sicherungsbilds des Systems mit Hilfe von Acer eRecovery Management.

\*Ein DVD-Brenner steht nur für ausgewählte Modelle zur Verfügung.

### ■ Italiano

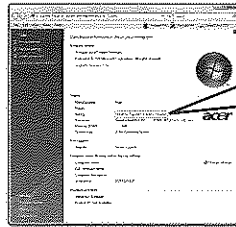
Grazie per aver scelto questo prodotto Acer.

Acer garantisce all'utente esperienze di livello superiore grazie al sistema operativo (OS) Microsoft® Windows Vista™. Come impostazione predefinita dal produttore, il sistema operativo Windows Vista™ e le applicazioni Acer utilizzano almeno 8,7 GB di spazio su disco rigido — il valore può variare in base ai contenuti precaricati e all'ambiente operativo.

Acer eRecovery Management potrebbe utilizzare altri 8-10 GB della capacità disco rigido stabilita come spazio riservato al backup (10 GB con Microsoft® Works 8.5 per Office Home e Student 2007 Trial o Microsoft® Office Ready 2007, soggetti a disponibilità). Lo spazio di backup è allocato in una diversa partizione del disco rigido e non è visualizzabile usando Esplora risorse.



## Addendum for Acer notebooks



System  
 Manufacturer: Acer  
 Model:  
 Rating: Windows Experience Index: Unrated  
 Processor: Genuine CPU T2400@1.83GHz 1.83 GHz

### English

Rate your computer's performance:

The Windows Experience Index measures the capability of your computer's hardware and software configuration and expresses this measurement as a number called a "Base score". If your system has an "Unrated" index level, please use the following directions to get an accurate "Base score".

To rate your computer's performance\*, open the Rate and improve your computer's performance screen. Do this by selecting "Show more details" on the right side of your Welcome Center, shown at startup. This takes you to the View basic information about your computer screen, where you select "Windows Experience Index". Alternately, select "Control Panel" from the Start menu, then "System and Maintenance". In the System and Maintenance screen find the System option and select "Check your computer's Windows Experience Index base score" directly underneath.

If you install new hardware and wish to see if your score has changed; while in the Rate and improve your computer's performance screen, select "Update my score".

\* Make sure that the AC adapter is properly plugged into the computer and to the power outlet.

### Français

Évaluez la performance de votre ordinateur :

L'Indice de performance Windows mesure la capacité de la configuration matérielle et logicielle de votre ordinateur et exprime cette mesure sous forme d'un nombre appelé une « Note de base ». Si votre système à un niveau d'indice « non évalué », veuillez utiliser les instructions suivantes pour obtenir une « Note de base » précise.

Pour évaluer la performance de votre ordinateur\*, ouvrez l'écran Évaluer et améliorer la performance de votre ordinateur. Faites ceci en sélectionnant « Afficher plus de détails » sur le côté droit de votre Centre d'accueil affiché au démarrage. Ceci vous amène à l'écran Afficher des informations de base sur votre ordinateur, dans lequel vous sélectionnez « Indice de performance Windows ». Vous pouvez également sélectionner « Panneau de configuration » dans le menu Démarrer, puis « Système et maintenance ». Dans l'écran Système et maintenance, trouvez l'option Système et sélectionnez « Vérifier la note de base de l'indice d'expérience Windows de votre ordinateur » directement au-dessous.

Si vous installez un nouveau matériel et souhaitez savoir si votre note a changé, dans l'écran Évaluer et améliorer la performance de votre ordinateur, sélectionnez « Mettre à jour ma note ».

\* Assurez-vous que l'adaptateur secteur est correctement branché à l'ordinateur et à la prise secteur.

### Deutsch

Bewerten Sie die Leistung Ihres Computers:

Der Windows Leistungsindex misst die Leistungsfähigkeit Ihrer Computer-Hardware- und Software-Konfiguration und vergibt als Messergebnis eine "Gesamtwert". Wenn die Indexstufe Ihres Systems "Nicht bewertet" ist, gehen Sie folgendermaßen vor, um einen akkuraten "Gesamtwert" zu erhalten.

Um die Leistung Ihres Computers zu bewerten\*, öffnen Sie das Fenster Leistung von Computer bewerten und verbessern. Wählen Sie "Weitere Einzelheiten zeigen" auf der rechten Seite des Willkommen-Center, das beim Start gezeigt wird. Sie gelangen dann zum Fenster Grundlegende Informationen über den Computer anzeigen, in dem Sie dann "Windows Leistungsindex" auswählen. Oder wählen Sie "Systemsteuerung" im Startmenü und dann "System und Instandhaltung". Im Fenster System und Instandhaltung sehen Sie die Option System. Wählen Sie "Gesamtwert des Windows Leistungsindex für den Computer prüfen" darunter.

Wenn Sie neue Hardware installieren und nachsehen möchten, ob sich der Gesamtwert geändert hat, wählen Sie im Fenster Leistung des Computers bewerten und verbessern die Option "Gesamtwert aktualisieren".

\*Das Netzteil muß fest in den Computer und die Steckdose eingesteckt sein.

### Italiano

Valuta le prestazioni del computer:

Windows Experience Index misura le funzionalità della configurazione hardware e software del computer e esprime queste misurazioni con un valore numerico definito "Base score". Se l'indice del livello del sistema è "Non classificato", seguire le seguenti istruzioni per ottenere un "Base score" accurato.

# **EXHIBIT B**



[www.noguska.com](http://www.noguska.com)

[www.nolapro.com](http://www.nolapro.com)

741 N. Countyline St.  
Fostoria, OH 44830  
Phone: 419.435.0404  
Fax: 419.435.1844

Wolph Chiropractic  
123 S Main St.  
Fostoria, OH 44830

11/3/2008

Mr. Wolph,

This letter is an explanation of the work performed on your Acer Notebook at our shop as outlined on invoice #3957-0. The specifications of the computer from the factory show that it was shipped with 1GB DDR-2 of system memory. As a technician/engineer I felt that this was inadequate system memory for a computer operating Windows Vista. Especially since the video memory is shared with the system memory, leaving a usable 768MB of system memory. Since the system memory was low, performance of windows was significantly decreased. This is because Microsoft specifies Windows Vista needs at least 1GB of full system memory to operate properly. The solution to this issue was to add 2GB more of system memory to make the computer fully functional.

It is my conclusion that all Acer brand notebook computers do not meet most quality standards for computing. I hope this letter gives you a better understanding of your computer and the work performed.

Best regards,

Justin Brickner  
Hardware Department Manager, Noguska LLC  
[jbrickner@noguska.com](mailto:jbrickner@noguska.com)

# EXHIBIT C

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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT CALIFORNIA

LORA AND CLAY WOLPH, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

ACER AMERICA CORPORATION, a  
California corporation,

Defendant.

**AFFIDAVIT OF MICHAEL P.  
LEHMANN PURSUANT TO  
CALIFORNIA CIVIL CODE § 1780**

I, MICHAEL P. LEHMANN, declare as follows:

1. I am a partner of the law firm of Hausfeld LLP, counsel for Plaintiffs Lora and Clay Wolph.

2. This action has been commenced in a county described in California Civil Code § 1780 as a proper place for the trial of the action

3. Acer America Corporation, Inc., the Defendant in this action, does substantial business in San Francisco County.

4. I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Executed on this 25th day of March 2009 at San Francisco, California.



Michael P. Lehmann (77152)  
mlehmann@hausfeldllp.com  
Hausfeld, LLP  
44 Montgomery Street, Suite 3400  
San Francisco, CA 94104  
Telephone: (415) 633-1908  
Facsimile: (415) 693-0770

# EXHIBIT D



**e**mpowering technology

### Aspire 4520 - 5458

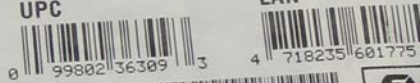
P/N : LX.AMV0X.050  
 MODEL NO. : Z03  
 S/N : LXAMV0X050804040DE2500  
 CPU : Mobile AMD® Athlon™ 64X2 TK-55  
 LCD : 14.1" CrystalBrite WXGA  
 RAM : 1024MB DDR2 RAM  
 HDD : 120GB  
 Card Reader : 5 in 1 Card Reader  
 OPTICAL : DVD - Super Multi  
 Modem/LAN : 56K, 10/100/1000 BASE T  
 Wireless : 802.11 b/g  
 Softload : Windows Vista® Home Premium

EPC



UPC

EAN



LXAMV0X050804040DE2500

P/N : LX.AMV0X.050

Aspire 4520 - 5458

Made in China

SYSTEM BD/BIOS: 00/3620



# EXHIBIT E

Empowering people

United States

Products Service & Support Where to buy

Acer Store Product Registration

Notebooks

Value



- Everyday productivity
- E-mail, Web and more
- Simple, smart design

select

Home Entertainment & Multimedia



- Vivid widescreen visuals
- Media and gaming
- Stylish, high-end design

select

Ultraportable



- Advanced mobility
- E-mail, web and productivity
- Compact, thin and light

select

All-Day Computing



- Advanced energy efficiency
- Work and play longer
- Lightweight and sleek

select

Business Productivity



- Stable, secure performance
- Range of configurations
- Sleek widescreen chassis

select

Acer recommends Windows Vista® Business for Business Computing  
Acer recommends Windows Vista® Home Premium for Personal Computing

Filter by Type

Reset

Screen Size

- 15.6" (26)
- 16" (21)
- 14.1" (19)
- 15.4" (19)
- » More Options

HDD

- 320GB (46)
- 250GB (42)
- 160GB (26)
- 500GB (4)
- » More Options

Processor

- Core 2 Duo (50)
- Pentium Dual-core (22)
- Core 2 Solo (10)
- Athlon X2 (9)
- » More Options

TravelMate

Achieve your business goals

- [TravelMate® 6593](#)
- [TravelMate® 6493](#)
- [TravelMate® 6293](#)
- [TravelMate® 5730](#)
- [TravelMate® 5530](#)
- [TravelMate® 4730](#)

Aspire

Create, explore, relax

- [Aspire® 8930](#)
- [Aspire® 8920](#)
- [Aspire® 8730](#)
- [Aspire® 7738](#)
- [Aspire® 7735](#)
- [Aspire® 7730](#)
- [Aspire® 7535](#)
- [Aspire® 6935](#)
- [Aspire® 6930](#)
- [Aspire® 6920](#)
- [Aspire® 6530](#)
- [Aspire® 5810 Timeline](#)
- [Aspire® 5739](#)
- [Aspire® 5738](#)
- [Aspire® 5735](#)
- [Aspire® 5730](#)
- [Aspire® 5536](#)
- [Aspire® 5535](#)
- [Aspire® 5530](#)
- [Aspire® 5520](#)
- [Aspire® 5517](#)
- [Aspire® 5516](#)
- [Aspire® 5515](#)
- [Aspire® 5335](#)
- [Aspire® 5315](#)
- [Aspire® 4810 Timeline](#)
- [Aspire® 4736](#)
- [Aspire® 4730](#)
- [Aspire® 4535](#)
- [Aspire® 4530](#)
- [Aspire® 3935](#)
- [Aspire® 3810 Timeline](#)
- [Aspire® 1410](#)

Extensa

Power and performance for busy professionals

- [Extensa® 5635](#)
- [Extensa® 5630](#)
- [Extensa® 5230](#)
- [Extensa® 4630](#)

About Acer Contact us News Partner Privacy Disclaimer Hot buys Pricing & Upgrades Acer Technology

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# EXHIBIT F

## GARY, NAEGELE & THEADO, LLC

ROBERT D. GARY†  
JORI BLOOM NAEGELE\*  
THOMAS R. THEADO  
THOMAS A. DOWNIE  
RICHARD M. MCKEE  
D.J. YOUNG III‡

ATTORNEYS AT LAW

446 BROADWAY AVENUE  
LORAIN, OHIO 44052-1740

TELEPHONE:  
(440) 244-4809

TELEFACSIMILE:  
(440) 244-3462

EMAIL:  
Office@GNTLaw.com

† also admitted in New York

\* also admitted in Colorado

‡ also admitted in Virginia

February 4, 2009  
Via Certified Mail

### FOR SETTLEMENT PURPOSES ONLY

Beatriz Duenas, Esq.  
Acer America Corporation  
333 West San Carlos Street  
Suite 1500  
San Jose, CA 95110

**RE: Acer Notebook Computer/Vista Problems - Notice of Breach and Opportunity to Cure**

Dear Ms. Duenas:

Thank you for your call yesterday in response to my initial letter to Acer America dated January 22, 2009. As I advised you, the serial number of the Wolph's computer is LXAMV0X050804040DE2500. As further identifying information, it is Aspire 4520 – 5458, Model No. Z03. As you already know, my firm, along with Hausfeld LLP, represent Lora and Clay Wolph of Fostoria, Ohio with regard to the Acer 4520-5458 notebook that they purchased from Wal-Mart on April 20, 2008 for \$586.36. The computer was advertised as containing "1024MB DDR2 RAM" and came pre-installed with a Windows Vista® Home Premium operating system. Shortly after their purchase, our clients discovered that their computer would not run properly. After numerous attempts at troubleshooting, our clients learned that their computer did not have enough memory to effectively run Vista. Microsoft's Vista Premium requirements state that 1GB of RAM is needed to run the software and that 128MB of graphics memory is also needed, at a minimum, for the computer to run effectively. See <http://www.microsoft.com/windows/windows-vista/get/system-requirements.aspx>. However, Acer has defectively designed this product to devote 250MB of RAM to graphics which only leaves approximately 750MB of RAM to run Vista. This was not disclosed in any of the materials that our clients were provided, nor were they told that the computer needs 1GB of memory devoted exclusively to running Vista in order to be able to utilize many of the operating system's features. Further, Microsoft and most computer professionals recommend at least 2GB of RAM to effectively run Vista.

After emailing Acer's customer service department, our client was told of Vista's minimum system requirements and offered no other assistance. Thus, on November 3, 2008, our clients were forced to spend \$157.40 to upgrade their computer's memory just so that it would run as advertised and promoted.

Our research has led us to the conclusion that there are numerous other Acer customers who are also experiencing these same problems. In the event that this issue is not resolved, please be advised that we would seek to represent a nationwide class of purchasers who have experienced similar issues with their Acer notebooks. We would bring claims for breach of express and implied warranty; violations of the Magnuson-Moss Warranty Act; Violations of Bus. and Prof. Code, §§ 17200 and 17500; Violations of the Consumer Legal Remedies Act, Civ. Code § 1750; and unjust enrichment.

Beatriz Duenas, Esq.  
February 4, 2009  
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**GARY, NAEGELE AND THEADO, LLC**

Pursuant to the California Consumer Legal Remedies Act ("CLRA"), California Civil Code § 1750, *et seq.* (specifically, §§ 1782(a)(1) and (2)), Lora and Clay Wolph, on behalf of themselves and all other similarly situated consumers nationwide (collectively, the "Class"), through their undersigned counsel, hereby notify you that Acer America Corporation is alleged to have violated the CLRA by warranting, marketing, advertising, and selling Acer computers that Acer knew were inherently defective because the computers do not have the requisite 1GB of RAM devoted to running Windows Vista operating system.

Acer's misrepresentations and its failure to disclose the Defect in warranting, marketing, advertising, and selling Acer computers constitute the following violations of the CLRA:

1. Acer has represented that its goods have characteristics, uses or benefits that they do not have (§ 1770(a)(5));
2. Acer has falsely represented that its goods are of a particular standard, quality or grade when they are of another (§ 1770(a)(7)); and
3. Acer has advertised its goods with the intent not to sell them as advertised (§ 1770(a)(9)).

Pursuant to Section 1782 of the CLRA, and based on the foregoing, we hereby demand that within thirty (30) days of receiving this letter, Acer agree to refund our clients their entire purchase price, or, at the very least, provide our clients with compensation for the repairs they had to undertake. Our clients further request that Acer provide a corrective advertising and notice campaign and stops selling all 1GB notebooks with a Vista operating system.

If you have any questions, please contact my office. I look forward to hearing from you soon.

Very truly yours,



Jori Bloom Naegele

JBN/sy

pc: Lora & Clay Wolph  
Richard S. Lewis, Esq.