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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

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

Plaintiff,

vs.

PLANTRONICS, INC.,

Defendant.

Case No.: 5:18-cv-05626

**CLASS ACTION COMPLAINT**

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

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

### 5 **NATURE OF THIS ACTION**

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

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

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

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

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

17 6. Despite receiving countless complaints from consumers, Defendant  
18 refuses to acknowledge or attempt to fix the defects. Instead, when consumers  
19 return the defective Headphones under Plantronics’ one-year warranty, Plantronics  
20 sends replacement Headphones that contain the exact same defects, leaving  
21 consumers caught in a cycle of use, malfunction, and replacement. Once the  
22 warranty-period expires, consumers are often left with only a broken pair of  
23 Headphones.  
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7. Reasonable consumers like Plaintiff expect that high-end rechargeable Bluetooth headphones will continue to function after minimal use, and would not have purchased the Headphones or would have paid less had they known that Defendant's battery-life, sweatproof, and waterproof representations were false, or that the Headphones contain one or more defects that cause their batteries to rapidly fail.

8. As a result of Plantronics' actions, Plaintiff and the proposed class have suffered damages. Wireless rechargeable headphones that are unable to retain a charge for a reasonable amount of time are essentially worthless. Had Plaintiff and the members of the proposed class known that Defendant's representations were false and that the Headphones contained the defect(s), they would not have bought them or would otherwise have paid less for them. At a minimum, the defective Headphones certainly are worth substantially less than what the Plaintiff and members of the class paid to purchase them.

## PARTIES

9. Plaintiff Phil Shin is a California citizen residing in Pasadena, California. Mr. Shin purchased BackBeat FIT headphones through Amazon.com in March 2015.

10. Defendant Plantronics, Inc. is a Delaware corporation with its headquarters and principal place of business at 345 Encinal Street, Santa Cruz,

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

### 6 **JURISDICTION AND VENUE**

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

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

### 17 **FACTUAL ALLEGATIONS**

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

21 13. Plantronics represents on its website, product packaging, and  
22 marketing materials that the Headphones provide eight hours of listening time on a  
23 single charge.  
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1           14. For instance, Plantronics’ website states in bold lettering that the  
2 Headphones feature an “8-HR BATTERY,” and urges users to “[p]ower through a  
3 week of workouts from a single charge.” The small-print “specifications” at the  
4 bottom of the webpage state that the Headphones provide “[u]p to 8 hours” of  
5 listening time on a single 2-hour charge.<sup>1</sup>

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

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

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

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

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

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

5  
6           20. Plantronics' online promotional videos show athletes lifting weights,  
7 climbing stairs, jumping rope, running, and riding mountain bikes while wearing  
8 the Headphones. One such video describes the Headphones as "SWEATPROOF,"  
9 "WATERPROOF," and "BUILT FOR AN ACTIVE LIFESTYLE." Meanwhile,  
10 another video proclaims that the Headphones are "DURABLE ENOUGH TO  
11 WITHSTAND YOUR SWEATIEST WORKOUTS WITH WATERPROOF AND  
12 SWEATPROOF NANO-COATING."  
13

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

22           22. Plantronics ensures that its retailers uniformly promote the same  
23 battery life and sweat and water proof messages at consumers' point of purchase.  
24  
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23. These representations are false and misleading because the Headphones are not sweatproof or waterproof, and exposure to sweat or moisture exacerbates the battery defect, causing the Headphones to fail to power on or hold a charge for the advertised time.

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

24. The false nature of Plantronics' representations is evident from the virtually unending stream of consumer complaints posted online. Indeed, negative reviews posted in the last few months on Plantronics' own website<sup>2</sup> alone reflect the sheer scope of the problem:

- a. "These headphones sound good and are comfortable while running, however I experienced a battery life that is much shorter than I expected: typically my battery lasted less than 2 hours, and so I was unable to get two full work-outs in on a single charge and needed to charge after every run. Also, my headphones stopped turning on after about 7 months of use (typical usage for me is 1-3 workouts per week, each lasting about an hour). The headphones haven't suffered any noticeable damage, the charging light still works when they are plugged in, but they will not turn on. In my opinion, it is not acceptable for a product at this price point to stop working after only 7 months of light use." Complaint posted on Plantronics' website (August 2018).
- b. "Hi. I'd like to check whether it is indeed running on 8 hours CONTINUOUSLY after full on single charge OR when you use it sporadically throughout the week? Cos [*sic*] after charging it on full (+- 2 hours) then using it continuously for my workout it lasts for about 4 hour plus only?" Complaint posted on Plantronics' website (July 2018).

<sup>2</sup> These customer reviews can be found at [https://www.plantronics.com/us/en/product/backbeat-fit?gclid=CjwKCAjwoMPcBRAWEiwAiAqZh-onMBYBYxxw9UyYXW4tpluCKiI1vqdKKJBxkyrcrd7SJdHrxYX4gZxoCTfiQAvD\\_BwE](https://www.plantronics.com/us/en/product/backbeat-fit?gclid=CjwKCAjwoMPcBRAWEiwAiAqZh-onMBYBYxxw9UyYXW4tpluCKiI1vqdKKJBxkyrcrd7SJdHrxYX4gZxoCTfiQAvD_BwE). As of September 6, 2018, there were more than 270 one or two star reviews.



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

- j. "I bought them before a few months and used them only twice, they was really comfort [*sic*], the sound was ok but missing some bass. The battery run out very fast and I charged them twice, after that they stopped working just charging without complete charge and can't turn on while searching in Google I saw multiple people with the same issue, even at Plantronics facebook." Complaint posted on Plantronics' website (July 2018).
- k. "I purchased these at Costco a while ago. They only lasted for 6 months even though I didn't use them a lot. The charger stopped charging the headphones. I read that lots of other people had same problem. For the short time they worked they were fabulous and then they just couldn't be charged. Heart breaking. And a bad investment for only 6 mo of intermittent use." Complaint posted on Plantronics' website (June 2018).
- l. "I bought this Plantronics Back Beat Fit Bluetooth headset from Best Buy so that I could enjoy music while I workout. I've only used it three times but now the headphones will no longer charge or turn on. It was a complete waste of my money." Complaint posted on Plantronics' website (May 2018).
- m. "Do not buy these. As you can see from the many 1\* reviews, there is a significant battery issue where the battery won't charge and the unit won't operate. There are a bunch of issues like this listed on Amazon reviews too. Plantronics won't address it for you if the unit is more than a year old." Complaint posted on Plantronics' website (May 2018).

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

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

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

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

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

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

### 26 *The Experiences of Plaintiff Shin*

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

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

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

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

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

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

20 32. Mr. Shin's Headphones stopped working and failed to retain a charge  
21 because they were neither "sweatproof" nor "waterproof" as Plantronics  
22 represented.  
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1           33. Mr. Shin submitted a warranty claim to Plantronics in February 2016,  
2 and Plantronics sent Mr. Shin a replacement pair of Headphones. A few months  
3 later, the replacement Headphones similarly failed to hold a charge and would not  
4 stay powered on.  
5

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

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

16           36. Had Mr. Shin known that these Headphones were not sweatproof or  
17 waterproof, he would not have purchased them or would have paid significantly  
18 less for them.  
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20           37. Had Mr. Shin known that the Headphones did not have a battery that  
21 would last eight hours and/or were not suitable to use while exercising, he would  
22 not have purchased them or would have paid significantly less for them.  
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**CHOICE OF LAW ALLEGATIONS**

38. Because this Complaint is brought in California, California's choice of law regime governs the state law allegations in this Complaint. Under California's governmental interest/comparative impairment choice of law rules, California law applies to the claims of all Class Members, regardless of their state of residence or state of purchase.

39. Because Plantronics is headquartered — and made all decisions relevant to these claims — in California, California has a substantial connection to, and materially greater interest in, the rights, interests, and policies involved in this action than any other state. Application of California law to Plantronics and the claims of all Class members would not be arbitrary or unfair.

40. Plaintiff also pleads breach of express warranty claims for the Nationwide Class as the laws for each state do not vary materially for these claims.

41. Alternatively, Plaintiff pleads state law subclass claims as indicated below.

**CLASS ACTION ALLEGATIONS**

42. Plaintiff brings this action on behalf of himself and the Nationwide Class defined as follows:

All persons residing in the United States who, during the maximum period of time permitted by law, purchased BackBeat



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

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

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

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

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

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

20 47. Members of the Class and Subclass are so numerous that joinder is  
21 impracticable. While the exact number of class members is unknown to Plaintiff,  
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25 <sup>3</sup> Plaintiff reserves the right to amend, as necessary, this Class definition and the Subclass  
definition.

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

5  
6 48. Common questions of law and fact exist as to all Class Members, as  
7 required by Fed. R. Civ. P. 23(a)(2), and predominate over any individual  
8 questions, as required by Fed. R. Civ. P. 23(b)(3). These common legal and  
9 factual questions include:  
10

- 11 a) Whether the Headphones are defective;
- 12 b) Whether Plantronics' claim that the Headphones are "sweatproof"  
13 and "waterproof" is deceptive;
- 14 c) Whether Plantronics' claim that the Headphones have "up to 8  
15 hours" of battery life is deceptive;
- 16 d) Whether Plantronics' claim that the Headphones are durable  
17 enough to withstand "working out" is deceptive;
- 18 e) Whether Plantronics breached express warranties relating to the  
19 Headphones including (1) the Headphones have "up to 8 hours" of  
20 use on a single charge; and (2) the Headphones are "sweatproof"  
21 and "waterproof";  
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- f) Whether Plantronics breached the implied warranty of merchantability relating to the Headphones;
- g) Whether Plantronics breached the implied warranty of fitness for particular purpose relating to the Headphones;
- h) Whether Plantronics was unjustly enriched by receiving moneys in exchange for Headphones that were defective;
- i) Whether Plantronics should be ordered to disgorge all or part of the ill-gotten profits it received from the sale of the defective Headphones;
- j) Whether Plaintiff and the Class are entitled to damages, including compensatory, exemplary, and statutory damages, and the amount of such damages;
- k) Whether Plantronics should be enjoined from continuing to sell defective Headphones that do not live up to Plantronics' advertising and marketing claims; and
- l) Whether Plantronics engaged in unfair, unconscionable, or deceptive trade practices by selling and/or marketing defective Headphones.

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

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

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

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

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

9  
10 52. Plantronics has acted or refused to act on grounds generally applicable  
11 to the Class, thereby making appropriate final injunctive relief or corresponding  
12 declaratory relief with respect to the Class as a whole.

13  
14 **FIRST CLAIM FOR RELIEF**

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

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

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

19  
20 54. The Headphones are consumer products as defined in 15 U.S.C. §  
21 2301(1).

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

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

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

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

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

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

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

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

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

4  
5           63. At the time the Headphones were sold, Plantronics knew of the  
6 defects they possessed and offered an express warranty with no intention of  
7 honoring said warranties with respect to the known defects.

8  
9           64. Despite repeated demands by Plaintiff and Class Members that  
10 Plantronics repair or replace the defective Headphones, Plantronics has refused to  
11 provide a permanent fix and simply provides equally defective replacement  
12 Headphones. Plantronics' refusal to provide an adequate repair or replacement  
13 violates 15 U.S.C. § 2304.

14  
15           65. Although notice is not required, where, as here, consumers purchase a  
16 product from a retailer rather than a manufacturer, when Plaintiff contacted  
17 Plantronics concerning the problems with their headphones, Plantronics was  
18 afforded a reasonable opportunity to cure its breach of its express warranty that  
19 Headphones would be sweatproof and waterproof, but Plantronics failed to do so.

20  
21           66. As a direct and proximate result of Plantronics' breach of its express  
22 written warranty regarding the sweatproof and waterproof representations,  
23 Plaintiff and Class Members have been damaged in an amount to be proven at trial.  
24  
25

***Battery-Life:***

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

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

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

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

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

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



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

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

9 **SECOND CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6  
7 85. In addition, pursuant to 15 U.S.C. § 2310(d)(2), Plaintiff and the other  
8 Class Members are entitled to recover a sum equal to the aggregate amount of  
9 costs and expenses (including attorneys' fees based on actual time expended)  
10 determined by the Court to have reasonably been incurred by Plaintiff and the  
11 other Class Members in connection with the commencement and prosecution of  
12 this action.

13  
14 86. Further, Plaintiff and the Class are also entitled to equitable relief  
15 under 15 U.S.C. § 2310(d)(1) and damages as a result of Plantronics' violation of  
16 its written and/or implied warranties.

### 17 **THIRD CLAIM FOR RELIEF**

#### 18 **Breach of Express Warranty**

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

20  
21 87. Plaintiff re-alleges and incorporates each and every allegation set  
22 forth above as if fully written herein.  
23  
24  
25

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

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

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

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

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

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

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

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

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

7 ***Battery-Life:***

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

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

15  
16 97. Plantronics breached its battery-life express warranties by delivering  
17 Headphones that do not deliver as promised and fail to retain their charge for six or  
18 eight hours.

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

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

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

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

#### 9 **FOURTH CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12           114. Plantronics thus breached the implied warranty of merchantability.  
13

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

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

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



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

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

9                           **FIFTH CLAIM FOR RELIEF**

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

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

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

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

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

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

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

5  
6           125. At the time that the Headphones were sold, Defendant knew or had  
7 reason to know that Plaintiff and the Class Members were relying on Defendant's  
8 skill and judgment to select or furnish a product capable of operating while  
9 exercising and after exposure to sweat or moisture during such exercise.

10  
11           126. As a direct and proximate cause of Defendant's breach of this implied  
12 warranty, Plaintiff and Class Members have been injured and harmed because: (a)  
13 they would not have purchased the products on the same terms if the true facts  
14 were known concerning the Headphones; (b) they paid a price premium for the  
15 products due to Defendant's implied warranties; and (c) they did not receive a  
16 product that was fit for its particular purpose of use during exercise and/or after  
17 exposure to sweat and moisture.  
18

19  
20                           **SIXTH CLAIM FOR RELIEF**

21                   **Violation of California's Consumers Legal Remedies Act ("CLRA")**  
22                   **(On Behalf of the Nationwide Class or, Alternatively, California Subclass)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **SEVENTH CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

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

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

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

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

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

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



1           153. Legal remedy alone will be insufficient to fully redress Plaintiff's  
2 injuries and stop Plantronics from continuing in its unfair and deceptive conduct.  
3 Therefore, Plaintiff and the Class seek equitable relief, including an order  
4 enjoining Plantronics' unfair or deceptive acts or practices, and an award of  
5 attorneys' fees and costs under Cal. Code of Civ. Proc. § 1021.5.  
6

7                           **EIGHTH CLAIM FOR RELIEF**

8                                   **Common Law Fraud**

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

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

13           155. Plantronics engaged in fraudulent and deceptive conduct. As  
14 described above, Plantronics' conduct defrauded Plaintiff and Class members, by  
15 intentionally leading them to believe, through affirmative misrepresentations,  
16 omissions, suppressions, and concealments of material fact, that the Headphones  
17 possessed important characteristics that they in fact do not possess—namely that  
18 they are sweatproof and waterproof and provide eight hours of listening on a single  
19 charge—and inducing their purchases.  
20

21           156. Plantronics' intentional and material misrepresentations included,  
22 among other things, its advertising, marketing materials and messages, and other  
23  
24  
25

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **PRAYER FOR RELIEF**

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

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

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

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

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

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

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

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

13 H. Award all such further relief as the Court deems appropriate.  
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**DEMAND FOR JURY TRIAL**

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

Dated: September 13, 2018

/s/Ronald S. Kravitz

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James C. Shah (SBN 260435)  
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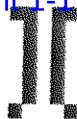
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Attorneys for Plaintiff

# EXHIBIT A





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Goldenberg Schneider, LPA

September 12, 2018

**Via Certified Mail/Return Receipt Requested**

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

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

Dear Sir or Madam:

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

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

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

Plantronics, Inc.  
September 12, 2018  
Page Two

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

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

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

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

Sincerely,



Jeffrey S. Goldenberg

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

## I. (a) PLAINTIFFS

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

**(b) County of Residence of First Listed Plaintiff** Los Angeles County  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Ronald S. Kravitz, Shepherd Finkelman Miller & Shah, LLP  
201 Filbert Street, Ste. 201, San Francisco, CA 94133; (415) 429-5272

## DEFENDANTS

# PLANTRONICS, INC.

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

1	U.S. Government Plaintiff	3	Federal Question (U.S. Government Not a Party)
2	U.S. Government Defendant	<input checked="" type="checkbox"/> 4	Diversity (Indicate Citizenship of Parties in Item III)

### III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated <i>or</i> Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated <i>and</i> Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

CONTRACT		TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	<b>PERSONAL INJURY</b> 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury 362 Personal Injury -Medical Malpractice	<b>PERSONAL INJURY</b> 365 Personal Injury – Product Liability 367 Health Care/ Pharmaceutical Personal Injury Product Liability 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> ✕ 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability	625 Drug Related Seizure of Property 21 USC § 881	422 Appeal 28 USC § 158	375 False Claims Act	
120 Marine			690 Other	423 Withdrawal 28 USC § 157	376 Qui Tam (31 USC § 3729(a))	
130 Miller Act			<b>LABOR</b> 710 Fair Labor Standards Act 720 Labor/Management Relations 740 Railway Labor Act 751 Family and Medical Leave Act 790 Other Labor Litigation 791 Employee Retirement Income Security Act	<b>PROPERTY RIGHTS</b> 820 Copyrights 830 Patent 835 Patent—Abbreviated New Drug Application 840 Trademark	400 State Reapportionment	
140 Negotiable Instrument					410 Antitrust	
150 Recovery of Overpayment Of Veteran's Benefits			<b>SOCIAL SECURITY</b> 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g))	<b>FEDERAL TAX SUITS</b> 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS—Third Party 26 USC § 7609	430 Banks and Banking	
151 Medicare Act					450 Commerce	
152 Recovery of Defaulted Student Loans (Excludes Veterans)			<b>CIVIL RIGHTS</b> 440 Other Civil Rights 441 Voting 442 Employment 443 Housing/ Accommodations 445 Amer. w/Disabilities—Employment 446 Amer. w/Disabilities—Other 448 Education	<b>PRISONER PETITIONS</b> <b>HABEAS CORPUS</b> 463 Alien Detainee 510 Motions to Vacate Sentence 530 General 535 Death Penalty <b>OTHER</b> 540 Mandamus & Other 550 Civil Rights 555 Prison Condition 560 Civil Detainee—Conditions of Confinement	460 Deportation	
153 Recovery of Overpayment of Veteran's Benefits					470 Racketeer Influenced & Corrupt Organizations	
160 Stockholders' Suits			<b>REAL PROPERTY</b> 210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property	<b>IMMIGRATION</b> 462 Naturalization Application 465 Other Immigration Actions	<b>FEDERAL TAX SUITS</b> 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS—Third Party 26 USC § 7609	480 Consumer Credit
190 Other Contract						490 Cable/Sat TV
195 Contract Product Liability	850 Securities/Commodities/Exchange					
196 Franchise	890 Other Statutory Actions					
				861 HIA (1395ff)	490 Cable/Sat TV	
				862 Black Lung (923)	850 Securities/Commodities/Exchange	
				863 DIWC/DIWW (405(g))	890 Other Statutory Actions	
				864 SSID Title XVI	891 Agricultural Acts	
				865 RSI (405(g))	893 Environmental Matters	
				870 Taxes (U.S. Plaintiff or Defendant)	895 Freedom of Information Act	
				871 IRS—Third Party 26 USC § 7609	896 Arbitration	
					899 Administrative Procedure Act/Review or Appeal of Agency Decision	
					950 Constitutionality of State Statutes	

**V. ORIGIN** (Place an "X" in One Box Only)

1	2	3	4	5	6	7	8
Original Proceeding	Removed from State Court	Remanded from Appellate Court	Reinstated or Reopened	Transferred from Another District ( <i>specify</i> )	Multidistrict Litigation—Transfer	Multidistrict Litigation—Direct File	

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:

28 U.S.C. § 1332(d)(2)

Brief description of cause:

### Defective and/or flawed headphone devices

**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION  
UNDER RULE 23, Fed. R. Civ. P.

<b>DEMAND \$</b>	<b>500,000,000.00</b>
------------------	-----------------------

CHECK YES only if demanded in complaint:  
**JURY DEMAND:** ☒ Yes ☐ No

**VIII. RELATED CASE(S),  
IF ANY** (See instructions)

JUDGE

DOCKET NUMBER

**IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)**

(Place an "X" in One Box Only)

## SAN FRANCISCO/OAKLAND

**× SAN JOSE**

## EUREKA-MCKINLEYVILLE

DATE 09/13/2018

**SIGNATURE OF ATTORNEY OF RECORD**

/s/Ronald S. Kravitz