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

In re: HP INKJET PRINTER LITIGATION) _____)) This Document Relates To:) All Actions) _____)	MASTER FILE NO. C053580 JF SECOND CONSOLIDATED AND AMENDED CLASS ACTION COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF <u>DEMAND FOR JURY TRIAL</u>
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1 Plaintiffs Nicklos Ciolino and Daniel Feder (hereinafter “Plaintiffs”), individually and on
2 behalf of the Class defined below, bring this action for damages and injunctive relief against
3 Defendant, Hewlett-Packard Company, demanding a trial by jury, and complain and allege as
4 follows:

5 I. INTRODUCTION

6 1. Defendant Hewlett-Packard Company (hereinafter “HP” or “Defendant”), the
7 world’s leading manufacturer of printers and printer supplies, engages in deceptive and
8 unconscionable conduct designed to increase the sale of its very profitable replacement ink
9 cartridges to the detriment of, and at the cost to, unsuspecting consumers. At the heart of this
10 unlawful conduct is what HP calls its “smart chip,” which HP has embedded into printer
11 cartridges claiming with much fanfare that the chip will improve “printer performance.” It does
12 not.

13 2. HP’s claims relating to the “smart chip” technology are misleading and false and
14 harm consumers. For example, the “smart chip” is designed and programmed to send a premature
15 and false message to consumers advising them that they will need to purchase a replacement
16 cartridge of ink, when in fact, the printer cartridge is far from empty and is capable of printing
17 hundreds of additional pages. The “smart chip” also steers consumers to an HP sponsored
18 website to purchase HP replacement cartridges online before the consumer in fact needs
19 replacement ink. Additionally, the “smart chip” has been programmed in conjunction with the use
20 of various HP printer models, to automatically prevent the use of a printer cartridge, even if full or
21 nearly full, on a date predetermined by HP. This expiration date is timed well before the ink in the
22 cartridge ceases to be useable for printing. Each of these examples, illustrates HP’s ongoing
23 effort to use its “smart chip” technology to deceive consumers into purchasing additional ink from
24 HP.

25 3. This lawsuit, brought on behalf of consumers of HP printers and ink cartridges,
26 seeks to end HP’s deceptive and unconscionable practices relating to its use of the “smart chip” in
27 its printers and ink cartridges and prays for relief addressing HP’s conduct, including without
28 limitation, relief in the form of compensatory damages for printer cartridge ink that Plaintiffs and

1 the Class purchased but were unable to use, restitution, and injunctive relief as indicated in each
2 cause of action.

3 **II. JURISDICTION AND VENUE**

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

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

13 **III. THE PARTIES**

14 **A. Plaintiffs**

15 6. Plaintiff Nicklos Ciolino, an individual, is a resident of San Mateo County,
16 California, and is the owner of an HP printer that utilizes cartridges with "smart chip" technology.
17 He purchased his HP printer for personal, family of household use.

18 7. Plaintiff Daniel Feder, an individual, is a resident of Marin County, California, and
19 is the owner of an HP printer that utilizes the cartridges with "smart chip" technology. He
20 purchased his HP printer for personal, family of household use.

21 **B. Defendant Hewlett-Packard Company**

22 6. Defendant Hewlett-Packard Company is a publicly traded corporation with
23 worldwide corporate headquarters in Palo Alto, California.

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IV. CLASS ACTION ALLEGATIONS

7. Plaintiffs bring this action on behalf of themselves, and pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3), on behalf of the following Class:

All individuals and entities who, whether for business, personal, family, household or other use, purchased a HP inkjet printer or printer cartridge containing a technology that prematurely registers the cartridge as being low on ink and/or shuts down the cartridge on a predetermined date even though there is ink in the cartridge. Excluded from the Class are (1) employees of the Defendant, including its officers or directors; (2) Defendant’s affiliates, subsidiaries, or co-conspirators; and (3) the Court to which this case is assigned.

8. Plaintiffs do not know the exact number of Class members because such information is in the exclusive control of the Defendant. However, Plaintiffs believe that due to the nature of the trade and commerce involved, Class members are sufficiently numerous, most likely thousands of purchasers, and geographically dispersed throughout the United States, and that joinder of all Class members is impracticable. The information as to the identity of the Class members can be readily determined from records maintained by the Defendant and its agents.

9. Plaintiffs’ claims are typical of, and not antagonistic to, the claims of the other Class members because Plaintiffs are direct purchasers of HP “smart chip” technology and, by asserting their claims, will also advance the claims of all members of the Class who were damaged by the same wrongful conduct of HP and their co-conspirators as alleged herein, and the relief sought is common to the Class.

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

- a. Whether Defendant has undertaken a common business practice of producing and selling to the public inkjet printers which are compatible with HP replacement ink cartridges containing the so-called “smart chip” technology that send an electronic message misleading the consumer into thinking the cartridge is empty or low on ink;
- b. Whether Defendant has undertaken a common business practice of selling inkjet printers that will disable or render unuseable an HP replacement ink

1 cartridge containing the so-called “smart chip” technology after a
2 predetermined expiration date;

3 c. Whether Defendant adequately disclosed these practices, and/or concealed
4 materials related to these practices;

5 d. Whether Defendant engaged in unfair, unlawful and/or fraudulent business
6 practices;

7 e. Whether Defendant’s use of advertising and other representations
8 constitutes unfair competition and unfair, deceptive, untrue or misleading
9 advertising;

10 f. Whether Defendant failed to disclose material facts about the subject HP
11 cartridges and printers;

12 g. Whether Defendant was unjustly enriched by its conduct;

13 h. Whether Defendant breached its warranties with Plaintiff and the Class;

14 i. Whether Defendant breached the implied covenant of good faith and fair
15 dealing with Plaintiff and the Class; and

16 j. Whether Class members are entitled to monetary recovery including
17 punitive damages, restitution, disgorgement of profits, and injunctive relief,
18 and the proper measure, nature and extent of such relief.

19 13. These common questions and others predominate over questions, if any, that affect
20 only individual members of the Class.

21 14. Plaintiffs and their counsel will fairly and adequately represent the interests of the
22 Class in that Plaintiffs are typical direct purchasers of HP “smart chip” technology. There are no
23 material conflicts with any other member of the Class that would make class certification
24 inappropriate. Plaintiffs have retained attorneys experienced in the prosecution of class actions,
25 including complex cases and consumer actions, and Plaintiffs intend to prosecute this action
26 vigorously.

27 15. A class action is superior to other available methods for the fair and efficient
28 adjudication of this controversy because individual litigation of the claims of all Class members is

1 impracticable. Even if every Class member could afford individual litigation, the court system
2 could not. It would be unduly burdensome on the courts if individual litigation of numerous cases
3 would proceed. By contrast, the conduct of this action as a class action, with respect to some or
4 all of the issues presented in this Complaint, presents fewer management difficulties, conserves the
5 resources of the parties and of the court system, and protects the rights of each Class member.

6 16. Prosecution of separate actions by individual Class members would create the risk
7 of inconsistent or varying adjudications, establishing incompatible standards of conduct for the
8 Defendant and would magnify the delay and expense to all parties and to the court system
9 resulting from multiple trials of the same complex factual issues.

10 17. Injunctive relief is appropriate as to the Class as a whole because Defendant has
11 acted or refused to act on grounds generally applicable to the Class.

12 18. Whatever difficulties may exist in the management of the class action will be
13 greatly outweighed by the benefits of the class action procedure, including, but not limited to,
14 providing Class members with a method for the redress of claims that may not otherwise warrant
15 individual litigation.

16 V. FACTUAL ALLEGATIONS

17 A. The Subject Technology

18 19. HP's Imaging and Printing Group provides home and business printing, imaging
19 and publishing devices, digital products and printer supplies, and consumables, such as ink and
20 toner cartridges.

21 20. Substantially all of the profits generated by HP's Imaging and Printing Group
22 result from the sale of ink cartridges. The printer and ink cartridge business is much like razors
23 and razor blades, in that the printers are priced low because the margins on the cartridges are
24 high. Printer supplies account for half of the annual revenues generated by HP's Imaging and
25 Printing Group. According to HP, 10 percent of revenue year-over-year is generated by the sale
26 of consumables: "The growth in revenue was driven by the continuing increase in HP's installed
27 base and growth in ink-intensive digital imaging solutions and applications."
28

1 21. The Wall Street Journal has reported that “profit margins on H-P’s ink and toner
2 remain some of the most envied in the technology industry, at more than 50% for toner and more
3 than 60% for ink cartridges.” A typical, black and white HP replacement cartridge costs about
4 \$35.00 to purchase, while it costs HP much less to produce it, with some estimates as low as
5 \$3.00 to manufacture the cartridge. Replacement cartridges for the higher-end, color printers are
6 more expensive.

7 22. By investing an annual \$1 billion on the engineering of its ink and toner cartridges,
8 HP developed a “smart chip” that HP embedded into its printer cartridges. HP claims that the
9 “smart chip” is designed to improve printer performance by reporting to the consumer the
10 remaining ink levels and signaling when ink must be reordered. According to HP, the “smart
11 chip” stores information about the type and status of the supply of ink in the cartridge. Once the
12 ink level is registered as low, the printer will send a warning message to the consumer that the ink
13 level is low and the cartridge needs to be replaced.

14 23. In reality, the “smart chip” is programmed to prematurely register ink replacement
15 long before depletion of the ink supply. Frequently, these cartridges can register as empty when
16 they in fact have substantial ink remaining. These cartridges are required for HP’s most
17 commonly used personal inkjet printers, including, but not limited to, the PSC 2510 Photosmart
18 All-in-One, DeskJet 812C, 840C, 842C, as well as the 2000C and 2500C high end printers used
19 by businesses.

20 24. Moreover, without regard to the actual supply of remaining ink available in a
21 cartridge, the “smart chip” is capable of rendering a cartridge unusable through the use of a
22 built-in shut down date that is concealed from consumers. This concealed feature automatically
23 shuts down a printer cartridge on the earlier of the following dates: (1) thirty months after the
24 cartridge has been installed in a printer; or (2) thirty months after the “install-by” date. Not only
25 is this shut down timed well before the ink in the cartridge ceases to be usable for printing, but the
26 shut down can occur even before the cartridge has been installed in a printer.

27 25. HP fails to explain the shut down feature at the point of purchase and omits such
28 information in their marketing materials. The external date stamp that appears on HP’s packaging

1 and on the printer cartridge only discloses the end of the warranty period, not the date on which
2 the cartridge will automatically shut down and be rendered unuseable. Plaintiffs believe and
3 thereon allege that HP cartridges can, and do, expire while they are still under warranty.

4 26. According to the Limited Warranty for HP Inkjet Print Cartridge Printerheads and
5 Ink Supplies, HP printer cartridges are warranted to be “free from defects in materials and
6 workmanship during the period of the warranty.” This warranty coverage lasts “until the HP ink
7 is depleted or the ‘end of warranty’ date has been reached, whichever comes first.” HP’s
8 warranty disclaims coverage for HP printer cartridges “that have been refilled, remanufactured,
9 refurbished, misused, tampered with, or products receiving a printer generated expiration
10 message.” A copy of HP’s Limited Warranty is attached hereto as Exhibit A.

11 27. Because the “smart chip” is programmed to prematurely register cartridges as
12 being depleted and send a low-ink message, it operates to cut consumers’ warranty period short.
13 HP thus compounds the impact and harm of the “smart chip” technology by linking the end of the
14 warranty period to the depletion of ink and receipt of a printer generated expiration message.

15 **B. HP’s “SureSupply” False Advertising Campaign**

16 28. As part of its “SureSupply” campaign, HP promotes the “smart chip” technology
17 as “a free user-friendly tool enabled through Smart printing technology that provides you with an
18 easy way to manage and purchase HP genuine printing supplies. . . .” HP’s website claims that
19 “SureSupply automatically tracks and manages customers’ toner or ink level usage, and provides
20 alerts via email or cell phone when toner or ink is low. With a couple of clicks of a button,
21 customers can access cartridge information, pricing and purchasing options that best meet their
22 needs from the reseller of their choice.” Additionally, HP claims that by using “SureSupply,”
23 consumers will “[n]ever run out of supplies” and will “[s]ave time [a]nd money.” HP’s
24 “SureSupply” literature is attached hereto as Exhibit B.

25 29. The “SureSupply” campaign is false because, rather than track the true ink level in
26 a cartridge, the “smart chip” prematurely registers the ink as being low and limits a consumer’s
27 ability to use all of the ink in his or her printer cartridge. “Smart chips” and the “SureSupply”
28 campaign deceive consumers into falsely believing that their cartridges are empty and can cause

1 damage to the printer, that their cartridge are expired and must be replaced, or that the warranty
2 coverage on the printer cartridge has ended. Absent from HP's marketing material is any mention
3 of the "smart chip's" predetermined shut down date or premature signals of ink depletion. And
4 rather than save consumers money, the use of cartridges embedded with "smart chip" technology
5 increases the cost for consumers to use HP printers because consumers are deceived into
6 discarding printer cartridges that still have useable ink and purchasing unnecessary replacement
7 cartridges. HP has deliberately withheld from its consumers information about the true
8 functioning of the smart chip in a effort to prevent damage to their bottom line.

9 **C. Plaintiff Nicklos Ciolino's Experience**

10 30. Plaintiff Nicklos Ciolino owns an HP Photosmart printer (model HP PSC 2510)
11 that utilizes printer cartridges with "smart chip" technology. On multiple occasions, in connection
12 with the use of his HP printer, Ciolino received low-ink warnings. Believing the warnings he
13 received were accurate and the cartridges were empty or nearly empty, Ciolino ceased using the
14 cartridges and purchased additional HP replacement ink cartridges. The ink in Ciolino's printer
15 cartridge was not empty or nearly empty when Ciolino received the low-ink warning messages. In
16 fact, the printer cartridges had substantial ink remaining, which would likely continue to print for
17 several additional print jobs.

18 31. As a result of this misleading and inaccurate warning, Ciolino was unable to obtain
19 the full value of his HP printer cartridges and unnecessarily purchased additional replacement
20 cartridges. If HP's low-ink warnings were accurate and not misleading, Ciolono would have
21 obtained the full value of the HP printer cartridges he purchased. Ciolino has suffered actual and
22 monetary injury by virtue of purchasing HP ink that he was unable to use.

23 **D. Plaintiff Daniel Feder's Experience**

24 32. Plaintiff Daniel Feder owns a HP printer that utilizes "smart chip" technology. He
25 purchased his HP printer for personal, family and household use. Since Feder has owned his HP
26 printer, he has received several low-ink warnings. Based on those warnings, he believed that his
27 printer cartridges were empty or almost empty of ink. He discarded his printer cartridges and
28 purchased new replacement cartridges upon receipt of low-ink warnings. Contrary to the low-ink

1 warnings, the printer cartridges that Feder discarded actually had substantial levels of ink
2 remaining and were still useable.

3 33. As a result of the misleading and inaccurate warnings, Feder was unable to obtain
4 the full value of his HP printer cartridges and purchased unnecessary replacement cartridges. If
5 HP's low-ink warnings were accurate and not misleading, Feder would have obtained the full
6 value of the HP printer cartridges he purchased. Feder has suffered actual and monetary injury by
7 virtue of purchasing HP ink that he was unable to use.

8 **VI. FIRST CAUSE OF ACTION**

9 **(Breach of Express Warranty)**

10 34. Plaintiffs incorporate and reallege, as though fully set forth herein, paragraphs 1
11 through 33, inclusive, set forth above.

12 35. Defendant HP issued written warranties to Plaintiffs and the Class wherein
13 Defendant warranted that its printer cartridges would be free of defects in materials and
14 workmanship during the warranty period.

15 36. Plaintiffs and the Class purchased HP printer cartridges from HP and/or HP-
16 authorized retailers. Plaintiffs relied on representations made by HP in its website, labels and
17 marketing materials. In particular, Plaintiffs relied on HP's claim that its printer cartridges would
18 be free of defects in materials in workmanship for the duration of the warranty period. Plaintiffs
19 expected to get full use of the ink contained in the HP printer cartridges they purchased under this
20 warranty.

21 37. Plaintiffs and the Class have performed all conditions, covenants and promises
22 required to be performed on their part in accordance with the warranties.

23 38. As unsophisticated consumers, Plaintiffs and the Class are relieved of any notice
24 requirement, and HP, who has superior knowledge of its technology, is estopped from asserting
25 lack of notice as a defense.

26 39. At all times, HP had knowledge of the deceptive and misleading nature of the
27 printers and cartridges equipped with "smart chip" technology because HP developed this
28

1 technology. Therefore, notification to HP would serve no purpose, and HP is estopped from
2 asserting lack of notice as a defense.

3 40. Notwithstanding the fact that notice is not required in these circumstances, by
4 letter of November 7, 2005, Plaintiffs' counsel provided notice to Defendant and requested that it
5 "refund, replace, and correct the defective inkjet printers and printer cartridges sold to plaintiffs
6 and other similarly situated class members." Despite this opportunity to cure the breaches of
7 warranty, Defendant has refused to do so.

8 41. Defendant has breached its warranty obligations with the use of a concealed shut
9 down date in its cartridges that renders the cartridge unusable without regard to the level of ink
10 therein. A cartridge that contains useable ink but is nevertheless inoperable is defective and
11 breaches the HP warranty.

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

13 **VII. SECOND CAUSE OF ACTION**

14 **(Breach of Implied Warranty)**

15 42. Plaintiffs incorporate and reallege, as though fully set forth herein, paragraphs 1
16 through 33, and 35 through 41, set forth above.

17 43. Defendant had direct dealings with Plaintiffs and the Class through its vast
18 marketing efforts and the interactive features of the "smart chip" technology and "SureSupply"
19 campaign. As a result of the direct dealings with Defendant, Plaintiffs and the Class purchased
20 HP inkjet printers and cartridges from HP and/or HP-authorized retailers. Plaintiffs and the Class
21 relied on HP's promotional materials, which touted HP printer cartridges and the "smart chips"
22 contained therein as consumer-friendly products that would help save money. Plaintiffs also relied
23 on HP's reputation and brand name in selecting HP printers and cartridges. Plaintiffs believed HP
24 would exercise skill and judgment to furnish printers and cartridges suitable for the purpose for
25 which they are intended.

26 44. Defendant impliedly warranted that their inkjet printers and cartridges were fit for
27 the purpose for which they were intended, and free of defects. Plaintiffs and the Class are the
28 intended beneficiaries of Defendant's implied warranties.

1 business practices. To this end, the CLRA sets forth a list of unfair and deceptive acts and
2 practices in Civil Code Section 1770.

3 53. The CLRA applies to Defendant's actions and conduct described herein because it
4 extends to transactions that are intended to result, or which have resulted, in the sale or lease of
5 goods or services for personal, family or household use.

6 54. At all relevant times, Plaintiffs and members of the Class were "consumers" as that
7 term is defined in Civil Code Section 1761(d).

8 55. The transactions from which this action arises include transactions involving the
9 sale or lease of goods or services for personal, family or household purposes within the meaning
10 of Civil Code Section 1761.

11 56. Defendant's practices in connection with the marketing and sale of its printers and
12 printer cartridges violate the CLRA in at least the following respects:

- 13 a. In violation of Section 1770(a)(5), Defendant has represented that HP
14 cartridges have characteristics that they do not have;
- 15 b. In violation of Section 1770(a)(9), Defendant has advertised HP cartridges
16 with an intent not to sell them as advertised; and
- 17 c. In violation of Section 1770(a)(15), Defendant represented that printer
18 cartridge replacement was needed when it was not.

19 57. Defendant's failure to disclose and knowing concealment of the true function,
20 design and operation of the "smart chip" technology and the true ink level in printer cartridges are
21 omissions and concealments of material fact that constitute unfair and/or deceptive business
22 practices in violation of Civil Code Section 1770(a).

23 58. Defendant's violations of the CLRA present a continuing threat to members of the
24 public in that Defendant is continuing to engage in the practices alleged herein, and will not cease
25 until an injunction is issued by this Court.

26 59. Plaintiffs have provided Defendant with notice and opportunity to cure its
27 violations. Defendant has refused to do so. Plaintiffs seek actual and punitive damages pursuant
28 to Civil Code Section 1780(a)(4).

1 **XI. SIXTH CAUSE OF ACTION**

2 **(Violations of California Business & Professions Code § 17200 *et seq.*)**

3 66. Plaintiffs incorporate and reallege, as though fully set forth herein, paragraphs 1
4 through 33, 35 through 41, 43 through 47, 49 through 50, and 52 through 59, and 62 through 65,
5 inclusive, set forth above.

6 67. Defendant has engaged in unfair competition within the meaning of California
7 Business & Professions Code Section 17200 *et seq.* because Defendant's conduct is fraudulent,
8 unfair and illegal as herein alleged. Defendant's conduct was substantially injurious to Plaintiffs.

9 68. Defendant's wrongful business acts constituted, and constitute, a continuing
10 course of conduct of unfair competition because Defendant is selling its products and marketing
11 them in a manner that is likely to deceive the public. Plaintiffs suffered actual and monetary injury
12 because they were deprived of the ability to use all of the ink in their printer cartridges and
13 purchased replacement cartridges that were unnecessary.

14 69. Defendant's business practices, and each of them, are unfair because they offend
15 established public policy and/or are immoral, unethical, oppressive, unscrupulous and/or
16 substantially injurious to consumers in that consumers are led to believe that HP cartridges are
17 empty of ink when this is not true and that the warranty period has ended when in fact it has not.
18 Consumers are further injured when their printer cartridges shut down as a result of the concealed
19 and predetermined shut down date.

20 70. Defendant's business practices are unlawful because the conduct constitutes a
21 breach of warranty, false marketing and advertising, as well as the other causes of action herein
22 alleged.

23 71. The practices are fraudulent because they are likely to deceive consumers into
24 believing that their cartridges are empty and can cause damage to the printer, and that the
25 warranty period on their cartridges has expired.

26 72. Plaintiffs have standing to pursue this claim because Plaintiffs have been injured by
27 virtue of suffering a loss of money and/or property as a result of the wrongful conduct alleged

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1 herein. Defendant's business acts and practices, as alleged herein, have caused injury to Plaintiffs,
2 the Class, and the public.

3 73. Plaintiffs and the Class are entitled to relief, including full restitution for the printer
4 cartridge ink they purchased but were unable to use and/or disgorgement of all revenues,
5 earnings, profits, compensation and benefits which may have been obtained by Defendant as a
6 result of such business acts or practices, and enjoining Defendant to cease and desist from
7 engaging in the practices described herein.

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

9 **XII. PRAYER FOR RELIEF**

10 **On the First Cause of Action Only**

- 11 1. For an injunction ordering Defendant to cease and desist in the use of a concealed
12 and built-in shut down date;

13 **On the Third Cause of Action Only**

- 14 2. For restitution and disgorgement;

15 **On the Second, Fourth, Fifth, and Sixth Causes of Action Only**

- 16 3. For compensatory damages for the printer cartridge ink that Plaintiffs and the
17 Class purchased but were unable to use;
- 18 4. For an injunction ordering Defendant to cease and desist from engaging in the
19 unfair, unlawful, and/or fraudulent practices alleged in the Complaint;
- 20 5. For an injunction ordering Defendant to provide informative disclosures and
21 education to the public regarding the "smart chip" technology;
- 22 6. For special damages according to proof on certain causes of action;
- 23 7. Prejudgment interest at the maximum rate;

24 **On All Causes of Action**

- 25 8. Certification of the proposed Class and notice thereto to be paid by Defendant;
- 26 9. Costs of the proceedings herein;
- 27 10. Reasonable attorneys' fees as allowed by statute; and

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11. All such other and further relief as the Court deems just and proper.

Dated: March 31, 2006

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BRUCE L. SIMON
Co-Lead Counsel for Plaintiffs and the Class

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XIII. DEMAND FOR JURY TRIAL

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

Dated: March 31, 2006

**COTCHETT, PITRE, SIMON & McCARTHY
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