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

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

16 Plaintiff,

17 vs.

18 PLANTRONICS, INC.,

19 Defendant.  
20

Case No.: 5:18-cv-05626-NC

**FIRST AMENDED CLASS ACTION**  
**COMPLAINT**

Magistrate Judge Nathanael Cousins

21  
22 The allegations made in this First Amended Complaint are based upon  
23 information and belief except those allegations that pertain to Plaintiff, which are  
24 based on personal knowledge. Each allegation in this First Amended Complaint  
25

1 either has evidentiary support or, alternatively, pursuant to Rule 11(b)(3) of the  
2 *Federal Rules of Civil Procedure*, is likely to have evidentiary support after a  
3 reasonable opportunity for further 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  
23  
24  
25

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 charge.  
10

11 5. Plantronics has long known or should have known of the Headphones’  
12 defect(s) from multiple sources. These sources include: pre-release design,  
13 manufacturing, and testing data; warranty claims data; consumer complaints made  
14 directly to Plantronics and/or posted on public online forums; product reviews  
15 posted on Plantronics’ and retailers’ websites; aggregate data and complaints from  
16 authorized dealers; and other sources. Yet, Plantronics failed to disclose and  
17 actively concealed the Headphones’ defects from the public, and continued to  
18 manufacture, distribute, and sell the Headphones. Furthermore, Plantronics  
19 continued to market and sell the Headphones after knowing of the Headphones’  
20 defects.  
21  
22

23 6. Plaintiff is among the tens of thousands of consumers nationwide  
24 whose Headphones experience rapidly diminishing battery life and eventual failure  
25

1 to retain a charge after using the Headphones for less than a year. Plaintiff alleges  
2 that the Headphones fail to retain a charge in part due to the Headphones' failure to  
3 resist sweat and water.  
4

5 7. Despite receiving countless complaints from consumers, Defendant  
6 refuses to acknowledge or attempt to fix the defects. Instead, when consumers  
7 return the defective Headphones under Plantronics' one-year warranty, Plantronics  
8 sends replacement Headphones that contain the exact same defects, leaving  
9 consumers caught in a cycle of use, malfunction, and replacement. Once the  
10 warranty-period expires, consumers are often left with only a broken pair of  
11 Headphones.  
12

13 8. Reasonable consumers like Plaintiff expect that high-end rechargeable  
14 Bluetooth headphones will continue to function after minimal use, and would not  
15 have purchased the Headphones or would have paid less had they known that  
16 Defendant's battery-life, sweatproof, and waterproof representations were false, or  
17 that the Headphones contain one or more defects that cause their batteries to  
18 rapidly fail.  
19

20 9. As a result of Plantronics' actions, Plaintiff and the proposed class  
21 have suffered damages. Wireless rechargeable headphones that are unable to retain  
22 a charge are essentially worthless. Had Plaintiff and the members of the proposed  
23 class known that Defendant's representations were false and that the Headphones  
24  
25

1 contained the defect(s), they would not have bought them or would otherwise have  
2 paid less for them. At a minimum, the defective Headphones certainly are worth  
3 substantially less than what the Plaintiff and members of the class paid to purchase  
4 them.  
5

### 6 **PARTIES**

7 10. Plaintiff Phil Shin is a California citizen residing in Pasadena,  
8 California. Mr. Shin purchased BackBeat FIT headphones through Amazon.com  
9 in March 2015.  
10

11 11. Defendant Plantronics, Inc. is a Delaware corporation with its  
12 headquarters and principal place of business at 345 Encinal Street, Santa Cruz,  
13 California 95060. Plantronics describes itself as “an audio pioneer and a leader in  
14 the communications industry,” and designs, manufactures, and markets a range of  
15 headsets, headphones and audio and video conferencing products, including the  
16 BackBeat FIT headphones.  
17

### 18 **JURISDICTION AND VENUE**

19 12. This Court has subject matter jurisdiction over this action under 28  
20 U.S.C. §1332(d)(2), as amended by the Class Action Fairness Act of 2005, because  
21 the amount in controversy exceeds \$5,000,000, exclusive of interests and costs,  
22 and because this is a class action in which the members of the class and Defendant  
23 are citizens of different states.  
24  
25

1 13. Venue is proper in this judicial district under 28 U.S.C. §1391  
2 because Defendant is a resident of Santa Cruz, California, which is located in this  
3 district.  
4

5 **FACTUAL ALLEGATIONS**

6 ***Plantronics’ Representations Regarding Battery-Life and Sweat***  
7 ***Resistance***

8 14. Plantronics represents on its website, product packaging, and  
9 marketing materials that the Headphones provide eight hours of listening time on a  
10 single charge.  
11

12 15. For instance, Plantronics’ website states in bold lettering that the  
13 Headphones feature an “8-HR BATTERY,” and urges users to “[p]ower through a  
14 week of workouts from a single charge.” The small-print “specifications” at the  
15 bottom of the webpage state that the Headphones provide “[u]p to 8 hours” of  
16 listening time on a single 2-hour charge.<sup>1</sup>  
17

18 16. Plantronics’ website also states that the “[c]harge time (maximum)”  
19 for the Headphones is “[u]p to 2 hours.”  
20

21 17. Virtually identical representations can be found on Plantronics’  
22 product packaging, advertisements, and promotional videos.  
23

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24 <sup>1</sup> Research has shown that “up to” representations are misleading to consumers, who reasonably  
25 interpret “up to” eight hours to mean that they would get eight 8 hours of battery life. 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 18. Despite Plantronics’ representations – which are repeated on  
2 Plantronics’ website, product packaging, marketing materials, and elsewhere –  
3 none of the Headphones have a battery that can be consistently used for eight hours  
4 without further charging. Moreover, as a result of the defect(s), the Headphones  
5 often take much longer than two hours to fully charge (if the Headphones accept a  
6 charge at all).  
7

8 19. Plantronics similarly represents on its website, product packaging, and  
9 marketing materials that the Headphones are sweatproof and waterproof.  
10

11 20. Plantronics’ website touts the Headphones as “WATERPROOF” and  
12 “SWEATPROOF.” Indeed, it describes the Headphones as “[e]ngineered for  
13 sport,” “flexible and durable,” and able to “withstand[] the rain or a rinse under the  
14 tap with a waterproof design.”  
15

16 21. Plantronics’ online promotional videos show athletes lifting weights,  
17 climbing stairs, jumping rope, running, and riding mountain bikes while wearing  
18 the Headphones. One such video describes the Headphones as “SWEATPROOF,”  
19 “WATERPROOF,” and “BUILT FOR AN ACTIVE LIFESTYLE.” Meanwhile,  
20 another video proclaims that the Headphones are “DURABLE ENOUGH TO  
21 WITHSTAND YOUR SWEATIEST WORKOUTS WITH WATERPROOF AND  
22 SWEATPROOF NANO-COATING.”  
23  
24  
25

1           22. Plantronics’ product packaging makes similar representations. For  
2 instance, the front of the box for the Headphones states “SWEAT AND  
3 WATERPROOF” in bold letters, and the side of the box states “UP TO 8 HOURS”  
4 listening time. The back of the box describes the Headphones as “Your perfect  
5 workout partner” and that the “Rugged, sweat and waterproof design works as hard  
6 as you do.”  
7

8           23. Plantronics ensures that its retailers uniformly promote the same  
9 battery life and sweat and water proof messages at consumers’ point of purchase.  
10

11           24. These representations are false and misleading because the  
12 Headphones are not sweatproof or waterproof, and exposure to sweat or moisture  
13 exacerbates the battery defect, causing the Headphones to fail to power on or hold  
14 a charge for the advertised time.  
15

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

17           25. The false nature of Plantronics’ representations is evident from the  
18 virtually unending stream of consumer complaints posted online. Indeed, negative  
19 reviews posted in the last few months on Plantronics’ own website<sup>2</sup> alone reflect  
20 the sheer scope of the problem:  
21

22  
23 \_\_\_\_\_  
24 <sup>2</sup> These customer reviews can be found at [https://www.plantronics.com/us/en/product/backbeat-  
25 \[fit?gelid=CjwKCAjwoMPcBRAWEiwAiAqZh-  
onMBYBYxxw9UyYXW4tpIuCkiI1vqdKKJBxkyerd7SJdHrxYX4gZxoCTfiQAvD\\\_BwE\]\(https://www.plantronics.com/us/en/product/backbeat-fit?gelid=CjwKCAjwoMPcBRAWEiwAiAqZh-onMBYBYxxw9UyYXW4tpIuCkiI1vqdKKJBxkyerd7SJdHrxYX4gZxoCTfiQAvD\_BwE\) \(last  
visited on December 13, 2018\). As of December 13, 2018, there were more than 292 one or two  
star reviews.](https://www.plantronics.com/us/en/product/backbeat-fit?gelid=CjwKCAjwoMPcBRAWEiwAiAqZh-onMBYBYxxw9UyYXW4tpIuCkiI1vqdKKJBxkyerd7SJdHrxYX4gZxoCTfiQAvD_BwE)

- 1 a. "They do not recharge! I have owned two pair for three years and for  
2 some considerable time neither will take a charge." Complaint posted  
3 on Plantronics' website (November 2018).
- 4 b. "Same issue like many others here, after a couple of years it wouldn't  
5 power on, no charging, no sign of life. Warranty is one year and  
6 support give you same standard thing, 'try resetting press and hold...'  
7 HOW can reset something dead!? Disappointing." Complaint posted  
8 on Plantronics' website (October 2018).
- 9 c. "Should be discontinued immediately. Bought a pair which didn't  
10 charge or turn on. Returned for a second pair which charged for 1  
11 hour then died. Person at the shop said lots of other customers  
12 reported similar issues. Looks like a clear manufacturing fault. Can't  
13 believe these are still in the marketplace." Complaint posted on  
14 Plantronics' website (October 2018).
- 15 d. "Complete garbage. Bought last year used a couple times put in  
16 cabinet. Just took out to charge and use. Won't charge or power on .  
17 What a waste of money. Don't buy plantronics. I see a lot of other  
18 people with the same issue." Complaint posted on Plantronics'  
19 website (October 2018).
- 20 e. "Disappointed & frustrated. I've had my first pair for almost 3 years  
21 now! .... But when the battery life started to decline and I needed a  
22 long life to complete marathon I ordered a replacement pair from  
23 amazon. They arrived and after all night on the charger the lights  
24 never stopped blinking red to indicate full charge and unit would  
25 never power on at all. So I got a return authorization to send them  
back and promptly orders a replacement set. They wouldn't even light  
up at all!! Nothing! No charging, no turning on just dead." Complaint  
posted on Plantronics' website (October 2018).
- f. "Waste of money. Stopped working after a few uses. Red light for  
charging works, but the headphones won't turn on at all.  
Disappointing." Complaint posted on Plantronics' website (October  
2018).
- g. "A second unit dead! After less than 5 uses my Backbeat FIT won't  
charge and is unresponsive. This is the second BB FIT I have bought

1 that has done this. Red charge lights keep flashing and unit won't turn  
2 on or respond to any buttons. I suspect a serious design flaw and  
3 would steer clear." Complaint posted on Plantronics' website  
(September 2018).

4 h. "DON'T WASTE YOUR MONEY. Got these as a gift, finally ready  
5 to see how they work and they will not power on nor charge. Thought  
6 maybe I was doing something wrong, but after reading multiple  
7 reviews from other consumers they had the same issue and I knew that  
8 these are just poorly designed and a complete waste of money. I  
would not recommend." Complaint posted on Plantronics' website  
(September 2018).

9 i. "Bad product. I receive this product as a gift from one of my UK  
10 friend, two days ago. After he left Sri Lanka I try to use his product.  
11 But it doesn't power on and charging." Complaint posted on  
Plantronics' website (September 2018).

12 j. "These headphones sound good and are comfortable while running,  
13 however I experienced a battery life that is much shorter than I  
14 expected: typically my battery lasted less than 2 hours, and so I was  
15 unable to get two full work-outs in on a single charge and needed to  
16 charge after every run. Also, my headphones stopped turning on after  
17 about 7 months of use (typical usage for me is 1-3 workouts per week,  
18 each lasting about an hour). The headphones haven't suffered any  
noticeable damage, the charging light still works when they are plugged  
19 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  
20 use." Complaint posted on Plantronics' website (August 2018).

21 k. "Not even a year's worth of use out of them. I bought them in mid-  
22 December 2017, and probably used them less than 25 times or so. It  
23 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  
24 replug them in, so they need to be charged again with no usage."  
Complaint posted on Plantronics' website (August 2018).

25 l. "Bought a set of these, and within 7 months they won't turn on  
anymore... Charging is fine, just doesn't work ... Ownly use them while

1 mowing the lawn, so they are not rough up.....” Complaint posted on  
2 Plantronics’ website (August 2018).

3 m. “Used them for a month, had a 6 month injury (disc bulge), went to  
4 start using them again and it doesn’t hold charge. I charged them for a  
5 full day and over night and they still won’t turn on.” Complaint posted  
6 on Plantronics’ website (August 2018).

7 n. “Battery will not charge. I have had them for a year and just stopped  
8 working. For the price you would think they would last longer than  
9 this.” Complaint posted on Plantronics’ website (August 2018).

10 o. “Hi. I’d like to check whether it is indeed running on 8 hours  
11 CONTINUOUSLY after full on single charge OR when you use it  
12 sporadically throughout the week? Cos after charging it on full (+2  
13 hours) then using it continuously for my workout it lasts for about 4  
14 hour plus only?” Complaint posted on Plantronics’ website (July 2018).

15 p. “Expect to spend close to \$100 for a product that will just stop working.  
16 Battery holds a charge but it won’t turn on. Nice business plan to keep  
17 demand high for this product. Second set that has done this. Moving on  
18 to another product from a different company.” Complaint posted on  
19 Plantronics’ website (July 2018).

20 q. “Product still looks new worn so little. Battery refuses to hold charge.  
21 Tried your hold 5 seconds etc, as an ex QC manager for a multi national  
22 seems you have not done enough research into failure. Great concept,  
23 poor execution not good enough in this era.” Complaint posted on  
24 Plantronics’ website (July 2018).

25 r. “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).

s. “I bought them before a few months and used them only twice, they  
was really comfort, the sound was ok but missing some bass. The  
battery run out very fast and I charged them twice, after that they

1 stopped working just charging without complete charge and can't turn  
2 on while searching in Google I saw multiple people with the same  
3 issue, even at Plantronics facebook." Complaint posted on Plantronics'  
4 website (July 2018).

5 t. "I purchased these at Costco a while ago. They only lasted for 6 months  
6 even though I didn't use them a lot. The charger stopped charging the  
7 headphones. I read that lots of other people had same problem. For the  
8 short time they worked they were fabulous and then they just couldn't  
9 be charged. Heart breaking. And a bad investment for only 6 mo of  
10 intermittent use." Complaint posted on Plantronics' website (June  
11 2018).

12 u. "I bought this Plantronics Back Beat Fit Bluetooth headset from Best  
13 Buy so that I could enjoy music while I workout. I've only used it three  
14 times but now the headphones will no longer charge or turn on. It was a  
15 complete waste of my money." Complaint posted on Plantronics'  
16 website (May 2018).

17 v. "Do not buy these. As you can see from the many 1\* reviews, there is a  
18 significant battery issue where the battery won't charge and the unit  
19 won't operate. There are a bunch of issues like this listed on Amazon  
20 reviews too. Plantronics won't address it for you if the unit is more than  
21 a year old." Complaint posted on Plantronics' website (May 2018).

22 26. But the Headphones' battery problems are not new. Plantronics has  
23 been receiving similar reports from consumers for years:

24 a. "I purchased this item and it stopped charging after only 4 months  
25 Contacted manufacturer and since I don't have a receipt they would  
not honor warrantee I will never buy another product from them."  
Complaint posted on Plantronics' website (2016).

b. "I bought these headphone solely based on the fact they are marketed  
as waterproof, not water resistant but water proof. It last about 1 min  
in the water and now it does not work." Complaint posted on  
Plantronics' website (2016).

- 1 c. "Charged overnight and couldn't even get it to turn on, I've tried  
2 everything but I can't even get a light to turn on." Complaint posted  
3 on Plantronics' website (2016).
- 4 d. "I bought my Backbeat Fit a little over a year ago and loved it. I even  
5 bought one for a friend. Unfortunately, I can no longer charge the  
6 headset so basically, it is toast. I bought it from an authorized dealer  
7 so it was not an inferior product or "second". I am furious because I  
8 expect a product that I paid over \$100 for to LAST LONGER THAN  
9 A YEAR! Prior to the day it just stopped working, there was no  
10 indication that it was failing. VERY DISAPPOINTED and VERY  
11 FRUSTRATED." Complaint posted on Plantronics' website (2016).
- 12 e. "I was able to wear these maybe 6 times to the gym before they just  
13 stopped powering on. They still look brand new but are totally dead.  
14 These were a complete and total waste of money." Complaint posted  
15 on Plantronics' website (2016).
- 16 f. "Simply Do Not Work. These headphones simply will not work.  
17 Despite being fully charged multiple times, I cannot get them to turn  
18 on." Complaint posted on Plantronics' website (2016).
- 19 g. "Headset stopped working after one use. After one use, the Plantronic  
20 Backbeat FIT stopped working. The unit will not take a charge, nor  
21 will it turn on when plugged in. I see several other customers having  
22 the same problem." Complaint posted on Plantronics' website (2016).
- 23 h. "Suddenly turned to dead. The headset turned to total dead, no  
24 charging accepted, no control lights and system voices. Tried with  
25 different chargers/cables but no success. I used it once a week for 14  
months." Complaint posted on Plantronics' website (2016).
- i. "Garbage. Bought it a while ago, used once and now it doesn't charge  
and the troubleshooting guide is laughable at best." Complaint posted  
on Plantronics' website (2016).
- j. "[V]ery unhappy with this product. Had it replaced once, same issue  
again, won't charge, red light on when charging. Used fully maybe  
twice, kept for special outings. Very sad it's worthless now due to

1 warranty up and replacement cost \$70.00. Not going to pay that for  
2 same problem.” Complaint posted on Plantronics’ website (2016).

3 k. “For the cost would not recommend. Purchase a new set for my wife,  
4 she did not use them and when I got ready to the battery was dead,  
5 attempted to charge it with no success. Contacted customer support  
6 and they only were able to confirm, that yes the battery was dead and  
7 there was nothing they could do. Suggest saving money and buying a  
8 less expensive pair that will stand behind their product.” Complaint  
9 posted on Plantronics’ website (2016).

10 l. “Poor quality. Can no longer charge the headset after less than 10  
11 times' use. Very disappointed.” Complaint posted on Plantronics’  
12 website (2016).

13 m. “Disappointed. My husband bought me a Back Beat Fit for Christmas,  
14 it won’t charge at all...not even a red light! I would give it a zero if I  
15 could as I cannot even get it to work to rate it. Back to the shops to  
16 return for a different brand. Its most disappointing as it’s Christmas.”  
17 Complaint posted on Plantronics’ website (2017).

18 n. “Do not buy this product. My husband bought me a backbeat fit a  
19 while ago and when I decided to star using them the battery was not  
20 charging. I let it charged and the light was always red. There is no  
21 way to replace the battery so I had to get rid of them and buy a  
22 different brand. I do not recommend this product.” Complaint posted  
23 on Plantronics’ website (2017).

24 o. “Terrible product. I bought this about a year ago. I only found a need  
25 to use it twice during this time. I wanted to charge it and use it this  
week - it will not charge or do anything. Product support comments  
show this to be a common issue. Product is dead. Poor design.”  
Complaint on Plantronics’ website (2017).

p. “[D]on’t waste your money. I was given a pair from a friend after his  
3 months of use, and they immediately stopped working. The red LED  
turns on when plugged in but they will not turn on at all. Don’t waste  
your money because they won’t work after about 3 months.”  
Complaint posted on Plantronics’ website (2017).

- 1 q. "Don't last! I bought these headphones thinking that they were good  
2 and would last but after only using them less then a dozen times they  
3 no longer take a charge and don't work. Really disappointed!"  
Complaint on Plantronics' website (2017).
- 4 r. "Nope. My husband bought these for me as a birthday gift..I really  
5 liked them as they are comfortable to wear but I only used them 3  
6 times and now they will not charge. The light just stays red while  
7 charging and they will not turn on. The battery should not have any  
8 issues with such little use. They were expensive to only use them 3  
9 times." Complaint posted on Plantronics' website (2017).
- 10 s. "I bought these last year and they stopped working completely within  
11 18 months of the purchase. After further research online this seems to  
12 be a normal occurrence. No solution from Plantronics except for me to  
13 pay to mail mine back and then once they receive it they will send me  
14 a new pair at a cost that is more than I can buy a replacement now  
15 online." Complaint posted on Plantronics' website (2017).
- 16 t. "Really Plantronics! purchased over a year ago battery does NOT hold  
17 a charge for even two hours let alone fifteen. Sound quality is poor  
18 and overall product support is lacking." Complaint posted on  
19 Plantronics' website (2017).
- 20 u. "Failed Product - It stop working. It just stop working for not good  
21 reason from one day to the other. Not worth the price." Complaint  
22 posted on Plantronics' website (2017).
- 23 v. "13 month life span : ( very disappointed as 13 months after I  
24 purchased these they have stopped working. the battery was low, I put  
25 it on charge (the light came on as usual) and they never worked again  
! a lady I was standing w/ when I realized they had died said hers did  
the same as well as other people she knew... very annoyed... don't  
want to spend \$130+ every 12 months ! will look for another brand.  
Can't go past the good ol cordless headphones tbh !" Complaint  
posted on Plantronics' website (2017).
- w. "Dont waste your money. Headphones barely worked for a year.  
Called about the warranty and it expires at 1 yr. Called 10 days past

1 the 1 yr and was unable to get anything. Don't plan on them working  
2 longer than that." Complaint posted on Plantronics' website (2017).

3 x. "Great product but it doesn't last. .... This is the second pair that  
4 stopped working just after the one year warranty expired. I can't  
5 afford to replace them every year. I will have to try a different brand."  
Complaint posted on Plantronics' website (2017).

6 y. "Short lived. During the warranty period I had to return them twice  
7 due to sound quality issues, now the headset just died for the third  
8 time and will not charge or power up. Warranty period has ended so  
9 no support from local dealer. For this price, these are by no means a  
10 good value product, which is a shame since this would be one of the  
best sport headsets on the market if it wouldn't suddenly go sour."  
Complaint posted on Plantronics' website (2017).

11 z. "Started Well Finished Horribly. I really enjoyed this product for  
12 about 6 months. Then it began having issues holding a charge to the  
13 point where it wouldn't charge. I called customer support and since I  
14 didn't have receipt I had to mail the headphones back. Somehow my  
15 shipment was lost. I couldn't find my tracking number and was told  
16 there is nothing they could do. So now I have nothing. I wouldn't  
have gone through all of the trouble of returning this if there wasn't an  
issue. All I can say is keep your receipt and buyer beware." Complaint  
posted on Plantronics' website (2017).

17 aa. "Will Eventually Stop Working! DO NOT BUY THIS PRODUCT!  
18 They will eventually just stop working, and there is no fix. Mine  
19 worked great for about a year, and now they won't even power on,  
20 charge, nothing... After doing some research on this issue, it seems  
21 this is a very common issue with these headphones. Another issue is  
22 the battery on these headphones is NOT replaceable, so when it dies  
23 they're done. I just called Plantronics Support, and they were no help.  
24 My headphones are out of warranty, so there is nothing they can do  
other than offer a discount on buying another pair (which are likely to  
die again). So frustrating!!!" Complaint posted on Plantronics'  
website (2017).

25 bb. "I have had 2 of these, and both crapped out the same way. The same  
way a quick internet search will show is a BIG problem. They both

1 just stop charging, and become useless. These would easily get a 5  
2 star review if they worked. I liked them enough to buy a second one  
3 when the first went south. I just assumed it was something I did. I  
4 wish I had Googled the problem.” Complaint posted on Plantronics’  
5 website (2017).

6 27. Customer reviews on Amazon.com paint a strikingly similar picture.  
7 As of December 13, 2018, there are at least 1,031 one star reviews for the  
8 Headphones, many of which complain about the Headphones’ failure to hold a  
9 charge. The following is a representative sample of those one star reviews:

- 10 a. “Very frustrating, i have purchased many pairs of these. The first ones  
11 i got as a gift and they worked great for about 8 months then they  
12 suddenly died on me. They where [sic] still under warranty and sent  
13 me a new pair. These died after about 6 month, then i purchased  
14 another pair Another 6 months. I am hard on the headphones wearing  
15 them to the gym many times a week so I wasn’t too upset about  
16 needing to trade them in. The last 3 pair purchased is where the  
17 frustration comes from. The first pair stopped working in the right ear  
18 after a week, the replacement pair died midway through the 1st time i  
19 used them, and the most recent didn’t even work out of the box. Very  
20 disappointing as I think it could be a great product without these  
21 issues.” Amazon.com review (June 22, 2018)
- 22 b. “I love these headphones, but after a SECOND pair of these 90 dollar  
23 headphones stopped working after 6 months I wouldn’t recommend  
24 them.” Amazon.com review (November 24, 2017).
- 25 c. “Don’t buy this - it will die after less than a year. Just got off of an  
extensive call with Plantronics customer support. I was calling  
because I’ve had two pairs of these die after 11 months and 6 months  
respectively. If you google “plantronics backbeat fit not powering on”  
you will find plenty of posts about this issue. The rep tried to tell me it  
is because I’m not using their special USB wall charger (which they  
don’t ship with the product). That makes no sense because USB is an  
international mechanical and electrical standard and you can’t sell  
USB chargers that don’t comply with those standards and call them

1 USB. The 2nd pair lasted 6 months and when I called to get those  
2 replaced they said they were not warrantied. Instead they offered to  
3 sell me a pair for 50% off instead. I told him no thanks because I now  
4 don't think they are worth the shipping cost. Too bad because other  
5 than the poor lifetime, I liked them. Not sure I will be buying any  
6 plantronics products in the future." Amazon.com review (July 3,  
7 2018).

8 d. "These lasted 4 months and just stopped working...for \$80+, I  
9 expected more!" Amazon.com review (July 7, 2017).

10 e. "These are my second pair - do not function out of the box. Charging  
11 light comes on but headphones dont power on. I loved the first pair for  
12 the first 9 months until they stopped working for same issue. Seems  
13 they have a problem." Amazon.com review (June 25, 2018).

14 f. "Really wanted to like these headphones, even encouraged co-workers  
15 to buy them. At the end of the day Plantronics replacement program is  
16 a hassle and the 1 year warranty only is valid for your first purchase.  
17 Since these break and blowout every 3 to 4 months, you have to  
18 replace them often, and unfortunately you only get 1 year to do that.  
19 The warranty doesn't refresh when you get a brand new replacement."  
20 Amazon.com review (June 8, 2018).

21 28. Plantronics has long known about the Headphones' propensity for  
22 battery failure – especially after being exposed to sweat or water – but nevertheless  
23 continued to sell the Headphones.

24 29. Upon information and belief, when Plantronics first decided to design,  
25 manufacture, and sell wireless sports headphones, it necessarily would have gained  
comprehensive and exclusive knowledge about how wireless headphones can  
malfunction when exposed to moisture and exercise and other normal conditions to  
which sport headphones are exposed. Such knowledge would necessarily include:

1 the basic engineering principles behind the construction and function of the parts;  
2 the forces and stresses the parts face during exercise; the cumulative wear on parts  
3 caused by use, age, and environmental factors; and how using different  
4 construction materials (e.g., thin plastic, thick plastic, metal, rechargeable  
5 batteries) affects the strength and durability of the parts and operation of the  
6 headphones. This design, engineering, and testing data is unavailable to Plaintiff  
7 without discovery, but upon information and belief, analysis of this data would  
8 have revealed that the flimsy plastics used to protect the Headphones' batteries  
9 from moisture were insufficient for their intended use and would cause the  
10 Headphones to fail prematurely as would the inadequate acquisition, installation,  
11 construction and manufacture of the rechargeable batteries.  
12  
13  
14

15 30. Moreover, the scope of the Headphones' battery problems was  
16 apparent to Plantronics shortly after the Headphones first went on sale to the public  
17 based on the large number of complaints it received, and the consistency of their  
18 descriptions of the Headphones' failures. Notably, some Headphones' batteries are  
19 known to have failed immediately upon their first use:  
20

- 21 a. "Brand New – Wouldn't Charge, Never worked. I was given these as  
22 a gift a while back and never bothered to try them out until tonight. I  
23 had charged them all last night and today...light stayed red, never  
24 changed to blue. Tried to turn on, it wouldn't. Tried a different cable  
25 and still wouldn't take a charge. Piece of faulty junk." Complaint  
posted on Plantronics' website (October 2018).

1 b. “Purchased 2 units were delivered yesterday, 26 March 2018. When  
2 opened and checked, they did not have any factory charge. They  
3 would not power on. When plugged for charging, the led light  
4 remained red even after more than 3 hours. Different cables and  
5 chargers have been used, to no avail. Still, units did not power on.  
6 Upon checking online on this problem, it seems there have been  
7 numerous cases like this, dating years back. It is most unfortunate that  
8 Amazon continues to carry this product, and has failed to protect its  
9 customers. It is likewise most unfortunate that Plantronics, after  
10 receiving what appears to be several feedbacks and complaints on the  
11 same problem, has continuously failed to recall these products or fix  
12 the problem. It seems both Amazon and Plantronics only want to  
13 make the sale first, and let the problem of the product be of the  
14 customers’. At this day and age, this should be totally unacceptable,  
15 and should be loudly condemned! CAUTION IF YOU PLAN TO  
16 PURCHASE THIS PRODUCT. IF THEY DO NOT CARE ABOUT  
17 YOU, WHY SHOULD YOU CARE BUYING FROM THEM?”  
18 Amazon.com review (March 26, 2018).

13 c. “Save your money. Never worked. Was given as a gift today, does not  
14 work. Will not set up. Red light comes on when charging., that’s it.  
15 Very disappointed!!!” Complaint posted on Plantronics’ website  
16 (2017).

16 d. “Waste of my money and time. Bought it today, charged it for awhile  
17 and saw some red light. 15mins into charging, there was no red light  
18 blinking. Tried to turn it on by holding the power button, but it did not  
19 turn on.” Complaint posted on Plantronics’ website (2016).

19 e. “Did not work new out of the box! Received as a BD present from my  
20 wife. Out of box, would not power up. Charged for 2 hours, still  
21 would not power up. Charged with different charger and cable  
22 overnight. Same red lights and would not power up! Very  
23 disappointed.” Complaint posted on Plantronics’ website (2016).

23 f. “Frustrated. Bought these TODAY after reading many reviews. Have  
24 them out of the box and charging for the recommended amount of  
25 time. Despite this they will not power on and needless to say I haven’t  
26 been able to access the Bluetooth.” Complaint posted on Plantronics’  
27 website (2016).

1  
2 g. “They never worked! I am a techie...love my electronic gadgets. So  
3 sad that these failed on the first charge up. (Never finished charging) I  
4 called Plantronics tech support and worked with their rep - resetting  
5 the headset and going through their list of fixes. Failure. Then they said  
6 they won’t replace them because all I have is my credit card statement  
7 not the itemized bill. Never dreamed I'd need it. Don’t want money -  
8 just functioning headphones. Super bummed out!” Complaint posted  
9 on Plantronics’ website (2016).

10 h. “Terrible product, customer service poorly trained. Just bought,  
11 doesn’t even turn on, called customer service waste of time, buy  
12 anything else but thus.” Complaint posted on Plantronics’ website  
13 (2016).

14 i. “Never turned on... Headphones never turned on (speaks to the quality  
15 of product). I am now in the throws of trying to find receipts, so I can  
16 hopefully get a warranty replacement. Not happy.” Complaint posted  
17 on Plantronics’ website (2016).

18 j. “Unfortunate... Never worked right out of the box.. Very  
19 disappointed. Did not work right out of the box. Evidently had been  
20 sitting on the rack for a while and was out of warranty. Not willing to  
21 pay another \$60-70 plus shipping for a replacement set. Not even  
22 willing to give a star...” Complaint posted on Plantronics’ website  
23 (2015).

24 k. “Not Working, Cannot be turned on. Took item out of the box for the  
25 first time, tried to charge it, tried to turn it on, tried to use it. Did not  
work. Very disappointed.” Complaint posted on Plantronics’ website  
(2015).

31. Plantronics knew or should have known of the Headphones’  
propensity for battery failure based on the numerous complaints it received directly  
from customers through its website. The following is a representative sample of  
those complaints:

- 1 a. "I think I got a Defect! - Thats why it gets 1 star. ... Less than a week  
2 of having them I find out the battery is defected and only a little less  
3 than 2hrs from full charge to empty. The headphones should last up to  
4 6-8hrs of music according to the description." Complaint posted on  
5 Plantronics' website (2014).
- 6 b. "Less than a week of having them I find out the battery is defected  
7 and only a little less than 2hrs from full charge to empty. The  
8 headphones should last up to 6-8hrs of music according to the  
9 description. I sent them to Plantronics for a replacement and waiting  
10 on them right now." Complaint posted on Plantronics' website (2015).
- 11 c. "It was great while it lasted. After three months the battery stopped  
12 charging. Now I have to ship it back. Covered under warranty yet I  
13 have to pay for the shipping. I think I'll go back to the cheap \$30 pair  
14 I bought off Amazon that lasted a year." Complaint posted on  
15 Plantronics' website (2015).
- 16 d. "I bought this headset and while it worked well for about a year, the  
17 unit started to have issues powering on and staying on. Very  
18 disappointing that this headset couldn't last at least two years."  
19 Complaint posted on Plantronics' website (2015).
- 20 e. "It is supposed to be waterproof, It is not. I bought these headphone  
21 solely based on the fact they are marketed as waterproof, not water  
22 resistant but water proof. It last about 1 min in the water and now it  
23 does not work." Complaint posted on Plantronics' website (2015).
- 24 f. "Do not buy. Got these a little over a year ago but only used them for  
25 about 6 months. ... Now they charge continuously and never seem to  
turn on." Complaint posted on Plantronics' website (2015).
- g. "Stopped working after only 4 months. I purchased this item and it  
stopped charging after only 4 months Contacted manufacturer and  
since I don't have a receipt they would not honor warrantee I will  
never buy another product from them." Complaint posted on  
Plantronics' website (2015).

- 1 h. "Battery died. Used the product 5 times and then the battery died and  
2 would not charge anymore." Complaint posted on Plantronics'  
3 website (2015).
- 4 i. "Doesn't work. I purchased 2 on 12/4 from local AT&T store as  
5 Christmas gifts for myself & my husband. His works. Mine doesn't.  
6 The AT&T store could not / would not take it back." Complaint  
7 posted on Plantronics' website (2015).
- 8 j. "Junk. Battery stopped after 3 months. It was great while it lasted.  
9 After three months the battery stopped charging. Now I have to ship it  
10 back. Covered under warranty yet I have to pay for the shipping. I  
11 think I'll go back to the cheap \$30 pair I bought off Amazon that  
12 lasted a year." Complaint on Plantronics' website (2015).

13 32. Only Plantronics has access to the full universe of complaints it  
14 received regarding the Headphones. However, upon information and belief,  
15 numerous Headphones owners who experienced battery failures also complained to  
16 Plantronics via telephone and mail.

17 33. In addition to the complaints lodged directly with Plantronics, many  
18 Headphones owners complained to retailers and posted complaints on retailers'  
19 websites. The following is a representative sample of those complaints:

- 20 a. "First one was DOA. Second one only worked for about a week. 2nd  
21 one now won't charge or turn on after just a short time using."  
22 Amazon.com review (August 15, 2014).
- 23 b. "The headphones quit working within two weeks of purchasing them.  
24 When I plug them in to charge, the red light comes on which always  
25 indicates normal charging, but it never goes off and it never becomes  
blue (to indicate high level of charge). No matter how long I leave the  
headphones charging, it always stays red. When I press the button to  
turn them on, nothing happens. Even when they are plugged into the  
charger it is not possible to turn them on again. This all occurred after

1 just two weeks of light, regular usage. I wore the headphones twice  
2 while jogging and twice while practicing some drills on a squash  
3 court, and also several times while just walking around town.”  
Amazon.com review (September 13, 2014).

4 c. “First run, 20 miler and I was in love. ... Was ready to write a  
5 glowing review and recommend to my running club and running  
6 friends. However...charged full, early morning Sunday for 2nd run,  
7 they turned on, starting playing and then POP. No button control,  
8 won’t sync when plugged in, no lights, no little voice, no nothing, and  
9 as runners reading this, you know if you rely on music during your  
10 long wrong, I was really ticked off. Angry, quickly switched to my  
\$39.99 Avantree which work fine and went for my run. Came back,  
11 tried everything I could think of again and still would not respond to  
12 ANYTHING. DOA” Amazon.com review (September 14, 2014).

13 d. “[G][reatest wireless set... Until a month later they no longer work.](#)”  
14 Amazon.com review (December 6, 2014)

15 e. “Dead on arrival for me. I’ll get a second pair and write a second  
16 review, but feel I have to note this experience due to some of the other  
17 concerning reviews. I just received this pair as a holiday gift, new,  
18 unopened from a Verizon store. Based on the product’s instructions,  
19 they should have enough power to start up and connect to my phone,  
20 but they did not. I used the included cord to plug them into my  
21 laptop’s usb and the devices light turns red. After four hours of  
22 charging, still just a red light. I then held down the start button to get a  
23 blue light for a couple seconds and that is all, no sound, no  
24 nothing.” Amazon.com review (December 25, 2014)

25 f. “Did not work, they would die after half an hour of using them!”  
Amazon.com review (January 6, 2015)

g. “[D]idn’t work.” Amazon.com review (January 24, 2015).

h. “These headphones would not turn on, or hold a charge.”  
Amazon.com review (March 2, 2015).

i. “Lasted 2 workouts before they stopped working. Was a gift bought in  
advance so they couldn’t be replaced/ returned in time. Would

1 recommend looking at different products .... These are just too  
2 expensive to warrant another chance.” Amazon.com review (March 5,  
3 2015).

4 j. “Nice Idea, but poor quality. These stopped working after 3 months.”  
5 Amazon.com review (March 5, 2015).

6 k. “Arrived uncharged. Charged it and used it for an hour. Next time I  
7 wanted to use it the battery was dead. Charged again, and wouldn’t  
8 turn on. I called their customer support, and the only advice they had  
9 was to return it. ‘Sometimes there are problems with the battery,’ was  
10 all they could say.” Amazon.com review (March 22, 2015).

11 34. Moreover, Plantronics tracks warranty claims in its normal course of  
12 business. As reflected by the many complaints above, Plantronics would have also  
13 been made aware of the Headphones’ battery problems by the large number of  
14 warranty claims it received. Only Plantronics has access to the full universe of the  
15 warranty claims it received regarding the Headphones. However, upon  
16 information and belief, Plantronics continuously received broken Headphones from  
17 consumers, often several times from the same consumers:

18 a. “Good for a couple months. I bought this product less than a year ago,  
19 I’m now on my 4th different Head Set. Customer Support has been  
20 great about replacing the product, but I would think a head set at this  
21 price would last more than 2-3 months tops. They are great for  
22 working out with, but I don’t know if worth all the trouble of having  
23 to submit a replacement request and then ship them back every couple  
24 months. Would like a pair that could last at least a year or longer.”  
25 Complaint on Plantronics’ website (2017).

b. “Received a dead unit from Plantronics. I have purchased two before,  
and I loved them. The first one lasted for two years. The last one was  
a refurbished headset, but it didn’t last more than four months, so I  
bought straight from the producer. The unit I received from

1 Plantronics was defective, and would not charge. The customer  
2 service people are replacing it, but I am disappointed to have received  
3 one that was not working when they sent it.” Complaint on  
4 Plantronics’ website (2017).

5 35. Based on this constant stream of returned Headphones, Plantronics  
6 knew or reasonably should have known of the defect(s) shortly after it began  
7 selling the Headphones.

8 ***The Experiences of Plaintiff Shin***

9 36. Plaintiff Shin purchased a pair of BackBeat FIT headphones through  
10 Amazon.com in March 2015.

11 37. Prior to purchasing the Headphones, Mr. Shin reviewed marketing  
12 information from Plantronics on the Amazon.com website. Under “From the  
13 manufacturer,” Amazon.com described the Headphones as suitable for exercise, as  
14 waterproof and sweatproof, and as providing up to eight hours of listening time on  
15 a single charge. Mr. Shin relied on these representations in deciding to purchase  
16 the headphones.  
17

18 38. Mr. Shin is an avid runner who purchased the Headphones to listen to  
19 music while exercising. When he purchased the Headphones, Mr. Shin reasonably  
20 relied upon Plantronics’ representation that the Headphones could withstand being  
21 used during exercise after seeing Plantronics’ “sweatproof” and “waterproof”  
22 representations. Mr. Shin also reasonably relied upon Plantronics’ representation  
23 that the Headphones’ batteries could play for eight hours on a single charge.  
24  
25

1 39. Mr. Shin used the headphones during runs and exposed the  
2 headphones to sweat and/or water.

3 40. In mid-January, 2016, Mr. Shin noticed that the Headphones were  
4 becoming difficult to charge. Approximately one week later, the Headphones  
5 failed to power on even though he followed Plantronics' instructions to fully  
6 charge them.  
7

8 41. Mr. Shin's Headphones stopped working and failed to retain a charge  
9 because they were neither "sweatproof" nor "waterproof" as Plantronics  
10 represented. Mr. Shin submitted a warranty claim to Plantronics in February  
11 2016, and Plantronics sent Mr. Shin a replacement pair of Headphones. A few  
12 months later, the replacement Headphones similarly failed to hold a charge and  
13 would not stay powered on.  
14

15 42. Mr. Shin subsequently spent a significant amount of time contacting  
16 Plantronics in an effort to obtain a pair of Headphones that would perform in a  
17 manner consistent with Plantronics' representations. Mr. Shin received two  
18 additional replacement Headphones from Plantronics. Each failed to work as  
19 represented as each failed to charge or turn on due to one or more defects.  
20

21 43. Had Mr. Shin known that these Headphones contained one or more  
22 uniform defects, he would not have purchased them or would have paid  
23 significantly less for them.  
24  
25



1 49. Alternatively, Plaintiff pleads state law subclass claims as indicated  
2 below.

3 **CLASS ACTION ALLEGATIONS**  
4

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

7 All persons residing in the United States who, during the  
8 maximum period of time permitted by law, purchased BackBeat  
9 FIT headphones primarily for personal, family or household  
10 purposes, and not for resale.<sup>3</sup>

11 51. In the alternative, Plaintiff brings this action on behalf of himself and  
12 the members of the following to Subclass:

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

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

22 53. As used herein, "Class Members" shall mean and refer to the  
23 members of the Nationwide Class and all subclasses, including Plaintiff.  
24

25 <sup>3</sup> Plaintiff reserves the right to amend, as necessary, this Class definition and the Subclass  
definition.

1           54. Plaintiff seeks only damages and equitable relief on behalf of  
2 themselves and the Class Members. Plaintiff disclaims any intent or right to seek  
3 any recovery in this action for personal injuries, wrongful death, or emotional  
4 distress suffered by Plaintiff and/or the Class Members.  
5

6           55. Members of the Class and Subclass are so numerous that joinder is  
7 impracticable. While the exact number of class members is unknown to Plaintiff,  
8 it is believed that the Class comprises thousands of members geographically  
9 disbursed throughout the United States. Therefore, the Class Members are so  
10 numerous that individual joinder of all Class Members is impracticable under Fed.  
11 R. Civ. P. 23(a)(1).  
12

13           56. Common questions of law and fact exist as to all Class Members, as  
14 required by Fed. R. Civ. P. 23(a)(2), and predominate over any individual  
15 questions, as required by Fed. R. Civ. P. 23(b)(3). These common legal and  
16 factual questions include:  
17

- 18           a) Whether the Headphones are defective;
- 19           b) Whether Plantronics' claim that the Headphones are "sweatproof"  
20           and "waterproof" is deceptive;
- 21           c) Whether Plantronics' claim that the Headphones have "up to 8  
22           hours" of battery life is deceptive;  
23  
24  
25

- 1 d) Whether Plantronics’ claim that the Headphones are durable  
2 enough to withstand “working out” is deceptive;
- 3 e) Whether Plantronics breached express warranties relating to the  
4 Headphones including (1) the Headphones have “up to 8 hours” of  
5 use on a single charge; and (2) the Headphones are “sweatproof”  
6 and “waterproof”;
- 7 f) Whether Plantronics breached the implied warranty of  
8 merchantability relating to the Headphones;
- 9 g) Whether Plantronics breached the implied warranty of fitness for  
10 particular purpose relating to the Headphones;
- 11 h) Whether Plantronics was unjustly enriched by receiving moneys in  
12 exchange for Headphones that were defective;
- 13 i) Whether Plantronics should be ordered to disgorge all or part of the  
14 ill-gotten profits it received from the sale of the defective  
15 Headphones;
- 16 j) Whether Plaintiff and the Class are entitled to damages, including  
17 compensatory, exemplary, and statutory damages, and the amount  
18 of such damages;
- 19  
20  
21  
22  
23  
24  
25

1 k) Whether Plantronics should be enjoined from continuing to sell  
2 defective Headphones that do not live up to Plantronics' advertising  
3 and marketing claims; and  
4

5 l) Whether Plantronics engaged in unfair, unconscionable, or  
6 deceptive trade practices by selling and/or marketing defective  
7 Headphones.  
8

9 57. Plaintiff's claims are typical of the claims of the Class Members  
10 whom he seeks to represent under Fed. R. Civ. P. 23(a)(3) because Plaintiff and  
11 each Class Member have been similarly affected by Plantronics' actionable  
12 conduct. Plaintiff and all members of the Class purchased defective Headphones  
13 that render the Headphones either worthless or worth substantially less than the  
14 price paid to purchase the Headphones. In addition, Plantronics' conduct that gave  
15 rise to the claims of Plaintiff and Class Members (i.e. delivering defective  
16 Headphones, making false claims with respect to the Headphones, and breaching  
17 warranties respecting the Headphones) is the same for all Class Members.  
18

19 58. Plaintiff will fairly and adequately represent and protect the interests  
20 of the Class Members as required by Fed. R. Civ. P. 23(a)(4). Plaintiff is an  
21 adequate representative because his interests do not conflict with the interests of  
22 the Class Members. Further, Plaintiff has retained counsel competent and  
23 experienced in complex class action litigation, including product defect class  
24  
25

1 action litigation, and Plaintiff intends to prosecute this action vigorously.  
2 Therefore, the interests of the Class Members will be fairly and adequately  
3 protected.  
4

5 59. A class action is appropriate under Fed. R. Civ. P. 23(b)(3) because a  
6 class action is superior to any other available means for fairly and efficiently  
7 adjudicating the controversy. In this regard, the Class Members' interests in  
8 individually controlling the prosecution of separate actions is low given the  
9 magnitude, burden, and expense of individual prosecutions against a large  
10 corporation such as Defendant. Further, neither Plaintiff nor his counsel are aware  
11 of any other on-going class litigation concerning this controversy. It is desirable to  
12 concentrate this litigation in this forum to avoid burdening the courts with  
13 individual lawsuits. Individualized litigation presents a potential for inconsistent  
14 or contradictory judgments, and also increases the delay and expense to all parties  
15 and the court system presented by the legal and factual issues of this case. By  
16 contrast, the class action procedure here will have no management difficulties.  
17  
18  
19

20 60. Plantronics has acted or refused to act on grounds generally applicable  
21 to the Class, thereby making appropriate final injunctive relief or corresponding  
22 declaratory relief with respect to the Class as a whole.  
23

### **FIRST CLAIM FOR RELIEF**

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

(On Behalf of the Nationwide Class)

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

62. The Headphones are consumer products as defined in 15 U.S.C. § 2301(1).

63. Plaintiff and Class Members are consumers as defined in 15 U.S.C. § 2301(3).

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

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

66. 15 U.S.C. § 2310(d)(1)(A) and/or § 2310(d)(3)(C) is satisfied because Plaintiff properly invokes jurisdiction under the Class Action Fairness Act (“CAFA”).

67. Plantronics breached two separate express warranties made to Plaintiff.

***Sweatproof & Waterproof:***

68. Plantronics promised, affirmed, and expressly warranted that the Headphones are sweatproof and waterproof. In other words, Plantronics expressly

1 warranted to Plaintiff and Class Members that the Headphones would continue to  
2 function after being exposed to moisture during exercise.

3  
4 69. Plantronics' sweatproof and waterproof warranty became part of the  
5 basis of the bargain for Plaintiff and other Class members because they relied on  
6 such statements in deciding to purchase the Headphones, and because such  
7 statements are among the facts a reasonable consumer would consider material in  
8 the purchase of high-end sport headphones.

9  
10 70. Plantronics breached its sweatproof and waterproof warranty by  
11 delivering Headphones that do not withstand exposure to minimal amounts of  
12 sweat and moisture.

13  
14 71. At the time the Headphones were sold, Plantronics knew of the  
15 defects they possessed and offered an express warranty with no intention of  
16 honoring said warranties with respect to the known defects.

17  
18 72. Despite repeated demands by Plaintiff and Class Members that  
19 Plantronics repair or replace the defective Headphones, Plantronics has refused to  
20 provide a permanent fix and simply provides equally defective replacement  
21 Headphones. Plantronics' refusal to provide an adequate repair or replacement  
22 violates 15 U.S.C. § 2304.

23  
24 73. 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 its express warranty that  
3 Headphones would be sweatproof and waterproof, but Plantronics failed to do so.  
4

5 74. As a direct and proximate result of Plantronics' breach of its express  
6 written warranty regarding the sweatproof and waterproof representations,  
7 Plaintiff and Class Members have been damaged in an amount to be proven at trial.  
8

9 ***Battery-Life:***

10 75. Plantronics expressly warranted that the Headphones provide “up to 8  
11 hours” of wireless listening on a single charge.  
12

13 76. Such statements became the basis of the bargain for Plaintiff and other  
14 Class Members because they relied on such statements in deciding to purchase the  
15 Headphones, and because such statements are among the facts a reasonable  
16 consumer would consider material in the purchase of high-end sport headphones.  
17

18 77. Plantronics breached its battery-life warranties by delivering  
19 Headphones that do not deliver as promised and fail to retain their charge for eight  
20 hours.  
21

22 78. At the time the Headphones were sold, Plantronics knew of the  
23 defects they possessed and offered an express warranty with no intention of  
24 honoring said warranties with respect to the known defects.  
25



1           84. The Headphones are “consumer products” within the meaning of 15  
2 U.S.C. § 2301.

3           85. Plaintiff and members of the Class are “consumers” within the  
4 meaning of 15 U.S.C. § 2301 because they are persons entitled under applicable  
5 state law to enforce against the warrantor the obligations of its express and implied  
6 warranties.  
7

8           86. Plantronics is a “supplier” of consumer products to consumers and a  
9 “warrantor” within the meaning of 15 U.S.C. § 2301.  
10

11           87. 15 U.S.C. § 2310(d)(1)(A) and/or § 2310(d)(3)(C) is satisfied because  
12 Plaintiff properly invoke jurisdiction under the Class Action Fairness Act  
13 (“CAFA”).  
14

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

18           89. Plantronics made written and implied warranties regarding the  
19 Headphones to Plaintiff and Class Members within the meaning of 15 U.S.C. §  
20 2301. Plantronics provided Plaintiff and other Class Members with an implied  
21 warranty of merchantability within the meaning of the Magnuson-Moss Warranty  
22 Act, 15 U.S.C. § 2301(7).  
23  
24  
25

1           90. Plantronics breached the implied warranty of merchantability because  
2 the Headphones were not fit for the ordinary purpose in which such goods are  
3 used. Specifically, the Headphones contained one or more defects that caused  
4 them to fail to retain a charge as advertised, particularly after use during exercise,  
5 rendering the Headphones unusable for their ordinary purpose.  
6

7           91. Pursuant to 15 U.S.C. § 2310(e), Plaintiff is entitled to bring this class  
8 action and are not required to give Plantronics notice and an opportunity to cure  
9 until such time as the Court determines the representative capacity of Plaintiff  
10 pursuant to Rule 23 of the Federal Rules of Civil Procedure.  
11

12           92. Plaintiff, individually and on behalf of the other Class Members, seeks  
13 all damages permitted by law, including diminution in value of their Headphones,  
14 in an amount to be proven at trial.  
15

16           93. In addition, pursuant to 15 U.S.C. § 2310(d)(2), Plaintiff and the other  
17 Class Members are entitled to recover a sum equal to the aggregate amount of  
18 costs and expenses (including attorneys' fees based on actual time expended)  
19 determined by the Court to have reasonably been incurred by Plaintiff and the  
20 other Class Members in connection with the commencement and prosecution of  
21 this action.  
22  
23  
24  
25



1 99. Plantronics breached its sweatproof and waterproof warranty by  
2 delivering Headphones that do not withstand minimal amounts of moisture.

3  
4 100. At the time the Headphones were sold, Plantronics knew of the  
5 defects they possessed and offered an express warranty with no intention of  
6 honoring said warranties with respect to the known defects.

7 101. Although notice is not required, where, as here, consumers purchased  
8 a product from a retailer rather than a manufacturer, when Plaintiff contacted  
9 Plantronics concerning the problems with their headphones, Plantronics was  
10 afforded a reasonable opportunity to cure its breach of its express warranty that  
11 Headphones would be sweatproof and waterproof, but failed to do so.

12  
13 102. As a direct and proximate result of Plantronics' breach of its express  
14 written warranty regarding the sweatproof and waterproof representations, Plaintiff  
15 and Class Members have been damaged in an amount to be proven at trial.

16  
17 ***Battery-Life***

18  
19 103. Plantronics expressly warranted that the Headphones provide “up to 8  
20 hours” of wireless listening on a single charge.

21 104. Such statements became the basis of the bargain for Plaintiff and other  
22 Class Members because they relied on such statements in deciding to purchase the  
23 Headphones, and because such statements are among the facts a reasonable  
24 consumer would consider material in the purchase of high-end sport headphones.  
25



1           110. The Headphones are a “consumer good” within the meaning of Cal.  
2 Civ. Code § 1791(a).

3           111. Plaintiff and members of the Class are “buyers” within the meaning of  
4 Cal. Civ. Code § 1791(b).

5           112. Plantronics is a “manufacturer” of the Headphones within the  
6 meaning Cal. Civ. Code § 1791(j).

7           113. Plantronics contracted with retailers so that the retailers could sell  
8 Headphones to consumers. Plantronics intended that consumers would be the end  
9 users of Headphones and that consumers would be the beneficiaries of its contracts  
10 with retailers to sell Headphones to consumers.

11           114. Plantronics impliedly warranted to Plaintiff and Class Members that  
12 its Headphones were “merchantable” within the meaning of Cal. Civ. Code §§  
13 1791.1(a) and 1792; however, as described throughout this Complaint, the  
14 Headphones do not have the quality that a buyer would reasonably expect, and  
15 were therefore not merchantable.

16           115. Cal. Civ. Code § 1791.1(a) states:

17           “Implied warranty of merchantability” or “implied warranty that  
18 goods are merchantable” means that the consumer goods meet each of  
19 the following:

- 20           (1) Pass without objection in the trade under the contract description;  
21           (2) Are fit for the ordinary purposes for which such goods are used;  
22           (3) Are adequately contained, packaged, and labeled; and  
23  
24  
25

1 (4) Conform to the promises or affirmations of fact made on the  
2 container or label.

3 116. The Headphones would not pass without objection in the trade  
4 because they do not perform as warranted because they fail to maintain a charge  
5 after minimal use and are neither sweatproof nor waterproof.

6 117. Similarly, the Headphones' failure to maintain a charge after minimal  
7 use renders them unfit for ordinary purposes for which such goods are used.

8 118. The Headphones are not adequately contained, packaged, and labeled  
9 for two independent reasons.  
10

11 119. The Headphones are not adequately contained, packaged, and labeled  
12 because the labeling represents that they are sweatproof and waterproof, which  
13 they are not.  
14

15 120. Moreover, the Headphones are not adequately contained, packaged,  
16 and labeled because the labeling represents that they have a battery that can last  
17 eight hours following a single charge, when the battery does not last nearly that  
18 long.  
19

20 121. For the same reason, the Headphones do not conform to the promises  
21 or affirmations of fact made on the container or label.  
22

23 122. Plantronics thus breached the implied warranty of merchantability.

24 123. Notice of breach is not required because Plaintiff and the other Class  
25 Members did not purchase their Headphones directly from Plantronics.



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

3           130. At the time of purchasing the Headphones, Plaintiff and the Class  
4 Members intended to use Headphones during exercise.

5           131. Because Defendant extensively marketed Headphones as a product for  
6 use during exercise, Defendant knew at the time it sold Headphones to Plaintiff  
7 and the Class Members that the Plaintiff and the Class Members intended to use  
8 Headphones for that particular purpose.  
9  
10

11           132. Plaintiff and the Class Members relied on Defendant's skill and  
12 judgment to furnish goods suitable for use during exercise, and for resistance to  
13 sweat and water. Plaintiff and the Class Members purchased the Headphones in  
14 reliance upon Defendant's implied warranties.  
15

16           133. At the time that the Headphones were sold, Defendant knew or had  
17 reason to know that Plaintiff and the Class Members were relying on Defendant's  
18 skill and judgment to select or furnish a product capable of operating while  
19 exercising and after exposure to sweat or moisture during such exercise.  
20

21           134. As a direct and proximate cause of Defendant's breach of this implied  
22 warranty, Plaintiff and Class Members have been injured and harmed because: (a)  
23 they would not have purchased the products on the same terms if the true facts  
24 were known concerning the Headphones; (b) they paid a price premium for the  
25

1 products due to Defendant’s implied warranties; and (c) they did not receive a  
2 product that was fit for its particular purpose of use during exercise and/or after  
3 exposure to sweat and moisture.  
4

5 **SIXTH CLAIM FOR RELIEF**

6 **Violation of California’s Consumers Legal Remedies Act (“CLRA”)**

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

8 135. Plaintiff re-alleges and incorporates each and every allegation set  
9 forth above as if fully written herein.  
10

11 136. Plantronics is a “person” as defined by the CLRA. Cal. Civ. Code §  
12 1761(c).  
13

14 137. Plaintiff and Class Members are “consumers” within the meaning of  
15 the CLRA, as defined by Cal. Civ. Code § 1761(d), who purchased one or more  
16 pairs of Headphones.  
17

18 138. The CLRA prohibits “unfair or deceptive acts or practices undertaken  
19 by any person in a transaction intended to result or which results in the sale or  
20 lease of goods or services to any consumer[.]” Cal. Civ. Code § 1770(a).  
21

22 139. Plantronics has engaged in unfair or deceptive trade practices that  
23 violated Cal. Civ. Code § 1770(a), as described above and below, by, among other  
24 things, failing to disclose the defective nature of the Headphones despite its  
25 knowledge of the defects dating back at least several years, representing that the

1 Headphones had characteristics and benefits that they do not have (e.g., durability,  
2 battery-life, sweatproof, waterproof, the ability to use during workouts),  
3 representing that the Headphones were of a particular standard, quality, or grade  
4 when they were of another, and advertising Headphones with the intent not to sell  
5 them as advertised. See Cal. Civ. Code §§ 1770(a)(5), (a)(7), (a)(9).

7       140. The information Plantronics concealed and/or failed to disclose to  
8 Plaintiff and Class Members concerning these defects is material because  
9 reasonable consumers would consider the Headphones' battery defect(s) that  
10 causes them to fail to hold a charge and become inoperable during their useful life  
11 to be important information when deciding whether to purchase rechargeable,  
12 wireless sport headphones.  
13

14       141. Plaintiff and Class members would have behaved differently by not  
15 buying the Headphones and/or paying less for the Headphones, had they been  
16 aware that the Headphones were defective.  
17

18       142. Defendant was obliged to disclose the material facts as to the defects  
19 because: a) Defendant had exclusive knowledge (dating back at least several years)  
20 of the material facts not known to Plaintiff and Class Members, since only  
21 Defendant had access to the aggregate data from its retailers, its own research and  
22 tests, and complaints from its customers through its warranty and customer service  
23 database(s); and b) Defendant actively concealed and suppressed the material facts  
24  
25

1 from Plaintiff and Class Members by not warning of the battery defect at the time  
2 of purchase; and (c) Defendant made partial representations about the Headphones'  
3 battery life, waterproof, and sweatproof qualities through a long-term advertising  
4 campaign while withholding the material fact that the Headphones have defects  
5 that render them inoperable.  
6

7       143. Plaintiff and Class Members justifiably acted or relied to their  
8 detriment upon the concealment and/or non-disclosure of material facts as  
9 evidenced by their purchases of the defective Headphones. Had Defendant  
10 disclosed the material fact that the Headphones had one or more defects that cause  
11 them to lose the ability to hold a charge, Plaintiff and Class Members would have  
12 behaved differently by not buying the Headphones and/or paying less for the  
13 Headphones.  
14  
15

16       144. Defendant's omissions of material facts directly and proximately  
17 caused Plaintiff's and Class Member's injuries in that Plaintiff and Class Members  
18 would not have overpaid for the Headphones. As such, Plaintiff and Class  
19 Members did not receive the benefit of the bargain  
20

21       145. Plantronics' misrepresentations about battery-life constitute an  
22 independent basis for a violation of the CLRA.  
23  
24  
25

1 146. Plantronics’ misrepresentations about the Headphones being  
2 sweatproof and waterproof constitute an independent basis for a violation of the  
3 CLRA.  
4

5 147. Plantronics knew, should have known, or was reckless in not knowing  
6 that its products did not have the qualities, characteristics, and functions it  
7 represented, warranted, and advertised them to have.  
8

9 148. Plaintiff and Class Members are reasonable consumers who expected  
10 that their Headphones would work as represented.

11 149. As a result of Plantronics’ conduct and unfair or deceptive acts or  
12 practices, Plaintiff and Class Members suffered actual damages in that the  
13 Headphones do not function as represented and are not worth the amount paid and  
14 Plantronics has deprived Plaintiff and Class Members the benefit of the bargain.  
15

16 150. Plaintiff and the Class seek an order enjoining Defendant’s unfair or  
17 deceptive acts or practices, equitable relief, and an award of attorneys’ fees and  
18 costs under Cal. Civ. Code § 1780(e).<sup>4</sup>  
19

20 **SEVENTH CLAIM FOR RELIEF**

21 **Violation of California’s Unfair Competition Law (“UCL”)**

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

23 \_\_\_\_\_  
24 <sup>4</sup> On September 12, 2018, Plaintiff mailed a letter to Plantronics that complied with Section  
25 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.

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

3 152. California Business & Professions Code § 17200 prohibits acts of  
4 “unfair competition,” including any “unlawful, unfair or fraudulent business act or  
5 practice” and “unfair, deceptive, untrue or misleading advertising.” Plantronics’  
6 conduct related to the sale of its defective Headphones violated each of this  
7 statute’s three prongs.  
8

9 153. Plantronics committed an unlawful business act or practice in  
10 violation of Cal. Bus. & Prof. Code § 17200, *et seq.*, by their violations of the  
11 Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*, as set forth above,  
12 by the acts and practices set forth in this Complaint.  
13

14 154. Plantronics committed unfair business acts and practices in violation  
15 of Cal. Bus. & Prof. Code § 17200, *et seq.*, when it sold Headphones that contained  
16 one or more defects causing them to fail to maintain a charge after minimal use;  
17 when it represented that the Headphones withstand sweat and water, when in fact  
18 they do not; when it represented that the Headphones have batteries that last eight  
19 hours following once fully recharged, when in fact they do not; and, when in  
20 response to requests for replacement Headphones under Plantronics’ warranty,  
21 Plantronics sent consumers Headphones that contained the same defects.  
22  
23  
24  
25

1           155. Plantronics committed fraudulent business acts and practices in  
2 violation of Cal. Bus. & Prof. Code § 17200, et seq., when it affirmatively and  
3 knowingly misrepresented that the Headphones were durable and would withstand  
4 sweat and water, when in fact they do not; and, when in response to requests for  
5 replacement Headphones under Plantronics' warranty, Plantronics sent consumers  
6 Headphones that contained the same defects. Plantronics' representations and  
7 concealment of the defects are likely to mislead the public with regard to the true  
8 defective nature of the Headphones.  
9  
10

11           156. Plantronics' misrepresentations about battery life constitute an  
12 independent basis for a violation of the fraudulent prong of the UCL.  
13

14           157. Plantronics' misrepresentation about the Headphones being  
15 sweatproof and waterproof constitutes an independent basis for a violation of the  
16 fraudulent prong of the UCL.  
17

18           158. Plantronics knew, or reasonably should have known, that its  
19 Headphones were defective, because they continuously received broken  
20 headphones from consumers, often several times from the same individual  
21 consumer. Despite the constant stream of returned Headphones, Plantronics  
22 continued to sell Headphones to the public. Plantronics knew, or reasonably should  
23 have known, of the defect(s) because, in the normal course of business, Plantronics  
24 tracks headphones returned under its warranty and the complaints related to those  
25

1 problems and, therefore, must have noticed that there was an unusually high  
2 incidence of warranty claims.

3  
4 159. As a direct and proximate result of Plantronics’ unfair and deceptive  
5 practices, Plaintiff and Class Members suffered and will continue to suffer actual  
6 damages.

7  
8 160. As a result of its unfair and deceptive conduct, Plantronics has been  
9 unjustly enriched and should be required to disgorge its unjust profits and make  
10 restitution to Plaintiff and Class Members pursuant to Cal. Bus. & Prof. Code §§  
11 17203 and 17204.

12  
13 161. Legal remedy alone will be insufficient to fully redress Plaintiff’s  
14 injuries and stop Plantronics from continuing in its unfair and deceptive conduct.  
15 Therefore, Plaintiff and the Class seek equitable relief, including an order  
16 enjoining Plantronics’ unfair or deceptive acts or practices, and an award of  
17 attorneys’ fees and costs under Cal. Code of Civ. Proc. § 1021.5.

18  
19 **EIGHTH CLAIM FOR RELIEF**

20 **Common Law Fraud**

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

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

1           163. Plantronics engaged in fraudulent and deceptive conduct. As  
2 described above, Plantronics' conduct defrauded Plaintiff and Class members, by  
3 intentionally leading them to believe, through affirmative misrepresentations,  
4 omissions, suppressions, and concealments of material fact, that the Headphones  
5 possessed important characteristics that they in fact do not possess—namely that  
6 they are sweatproof and waterproof and provide eight hours of listening on a single  
7 charge—and inducing their purchases.  
8

9  
10           164. Plantronics' intentional and material misrepresentations included,  
11 among other things, its advertising, marketing materials and messages, and other  
12 standardized statements claiming the Headphones are designed for use during  
13 workouts, and built to withstand sweat and water.  
14

15           165. The foregoing misrepresentations were uniform across all Class  
16 Members.  
17

18           166. The same extensive and widespread advertising campaign was  
19 promoted nationwide, and all of the promotional materials contained the same  
20 material representations regarding the Headphones' ability to be used during  
21 exercise, that the Headphones provide eight hours of listening on a single charge,  
22 and that the Headphones are sweatproof and waterproof.  
23  
24  
25

1           167. These representations were false, as detailed herein. Plantronics knew  
2 the representations were false when it made them and thereby intended to defraud  
3 purchasers.  
4

5           168. Plantronics' actions constitute "actual fraud" within the meaning of  
6 Cal. Civ. Code § 1572 because Plantronics did the following with the intent to  
7 deceive Plaintiff and Class Members and to induce them to enter into their  
8 contracts:  
9

- 10           a. Suggested that the Headphones can withstand sweat and water and  
            heavy exercise, even though it knew this to be false;
- 11           b. Positively asserted that the Headphones are sweatproof and  
            waterproof in a manner not warranted by the information available to  
12           Plantronics;
- 13           c. Asserted that Headphones were "engineered for sport" and had a  
            battery that could last for eight hours without recharging when they  
14           knew this to be false;
- 15           d. Asserted that the Headphones had a rechargeable battery with an eight  
            hour battery life per charge;
- 16           e. Suppressed the true nature of the Headphones' defects from Plaintiff  
            and Class Members;
- 17           f. Promised it would deliver Headphones that could withstand sweat,  
            water, and heavy workouts, with no intention of so doing; and  
18           g. Promised it would deliver Headphones that could play sound for eight  
19           hours, with no intention of so doing.

20           169. Plantronics' actions, listed above, also constituted "deceit" as defined  
21 by Cal. Civ. Code § 1710 because Plantronics willfully deceived Plaintiff and  
22 Class Members with intent to induce them to alter their positions to their detriment  
23 by purchasing defective Headphones.  
24  
25

1           170. Plantronics' fraud and concealment was also uniform across all Class  
2 Members; Plantronics concealed from everyone the true nature of the failure to  
3 hold a charge and battery defects present in the Headphones.  
4

5           171. Plantronics' misrepresentations and omissions were material in that  
6 they would affect a reasonable consumer's decision to purchase Headphones. A  
7 reasonable consumer would not purchase high-end rechargeable headphones that  
8 stop being able to retain a charge after only minimal use.  
9

10           172. Plantronics' intentionally deceptive conduct induced Plaintiff and  
11 Class Members to purchase Headphones and resulted in harm and damage to them.  
12

13           173. Plaintiff believed and relied upon Plantronics' misrepresentations and  
14 concealment of the true facts. Class Members are presumed to have believed and  
15 relied upon Plantronics' misrepresentations and concealment of the true facts  
16 because those facts are material to a reasonable consumer's decision to purchase  
17 Headphones.  
18

19           174. As a result of Plantronics' inducements, Plaintiff and Class Members  
20 sustained actual damages including but not limited to receiving a product that fails  
21 to perform as promised and not receiving the benefit of the bargain related to their  
22 purchase of the Headphones. If Plaintiff and Class Members had known about the  
23 defect, they would not have purchased the Headphones or would have paid  
24  
25

1 significantly less for them. Plantronics is therefore liable to Plaintiff and Class  
2 Members in an amount to be proven at trial.

3 175. Plantronics' conduct was systematic, repetitious, knowing, intentional,  
4 and malicious, and demonstrated a lack of care and reckless disregard for  
5 Plaintiff's and Class Members' rights and interests. Plantronics' conduct thus  
6 warrants an assessment of punitive damages under Cal. Civ. Code § 3294 and other  
7 applicable states' laws, consistent with the actual harm it has caused, the  
8 reprehensibility of its conduct, and the need to punish and deter such conduct  
9  
10

11 **PRAYER FOR RELIEF**

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

14 A. Certify the Class pursuant to Rule 23;

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

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

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

21 E. Award punitive damages, to the extent permitted by law, in an amount to  
22 be determined at trial;  
23  
24  
25

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

3 G. Award Plaintiff and the Class pre-judgment and post-judgment interest at  
4 the highest legal rate to the extent provided by law; and  
5

6 H. Award all such further relief as the Court deems appropriate

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff demands a trial by jury of all issues so triable.  
9

10 Dated: December 14, 2018

11 /s/ Ronald S. Kravitz

12 Ronald S. Kravitz

13 James C. Shah

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