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KIRI TORRE

Chief Executive Officer

Superior Court of CA, County of Santa Clara

Case #1-03-CV-817837 Filing #G-1450

By R. Walker, Deputy

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

ED RUTLEDGE AND I BRAUN
DEGENSHEIN, ON BEHALF OF
THEMSELVES AND ALL OTHERS
SIMILARLY SITUATED,

Plaintiffs,

vs.

HEWLETT-PACKARD, CO., AND DOES 1
THROUGH 10,

Defendants.

Case No. 1-03-CV-817837

**ORDER REGARDING PLAINTIFFS'
MOTION FOR CLASS
CERTIFICATION**

Hearing Date: January 30, 2007

Time: 9:00 a.m.

Department: 17C

Judge: Hon. Jack Komar

The motion for class certification by Plaintiffs Ed Rutledge and I Braun Degenshein came on for hearing before the Honorable Jack Komar on November 1, 2005; July 11, 2006; September 26, 2006; November 28, 2006; and January 30, 2007, at 9:00 a.m. in Department 17C. The matter having been submitted, the Court orders as follows:

1. Motions and objections filed for hearing on November 1, 2005

To the extent the parties have moved to strike certain evidence, the Court will treat the motions as objections to evidence. Defendant's evidentiary objections (filed Sept. 26, 2005) to the declaration of Kamon Naddaf are OVERRULED.

1 Plaintiffs' evidentiary objections (filed Oct. 17, 2005) to the declarations of Daren
2 Forney, Randy Jones, David Lee, and Tammy Porter are OVERRULED.

3 Plaintiffs' motion to strike (filed Oct. 27, 2005) the "surreply" by Defendant (filed Oct.
4 25, 2005) is DENIED.

5 **2. Motions and objections filed for hearing on July 11, 2006**

6 Defendant's request for judicial notice (filed May 30, 2006) of a class action complaint
7 entitled, *Michael Brothers v. Hewlett-Packard Co.*, filed by Plaintiffs' counsel, Green Welling
8 LLP, in the United States District Court for the Northern District of California is DENIED. The
9 pleading in *Brothers* is not relevant to this action. Additionally, the purpose for which
10 Defendant seeks judicial notice, *i.e.*, to establish that dim, dark, or flickering computer screens
11 may be due to overheating, is not a proper subject of judicial notice.

12 Defendant's evidentiary objections (filed May 30, 2006) to the declaration of Jenelle
13 Welling (dated Apr. 25, 2006) are OVERRULED.

14 Plaintiffs' evidentiary objections (filed June 20, 2006) to the declaration of Randy Jones
15 (dated May 25, 2006, and filed May 30, 2006) are OVERRULED.

16 **3. Motions and objections filed for hearing on September 26, 2006**

17 Defendant's request for judicial notice (filed Sept. 14, 2006) of a class action complaint
18 entitled, *Lewis Long and Therry Simien v. Hewlett-Packard Co.*, filed by Plaintiffs' counsel,
19 Green Welling LLP, in the United States District Court for the Northern District of California is
20 GRANTED as to the existence of the pleading.

21 Defendant's evidentiary objections (filed Sept. 22, 2006) to Exhibit OOOOO of the
22 declaration of Jenelle Welling (dated Sept. 19, 2006) are OVERRULED.

23 The Court is not considering "Defendant's Response to Appendix A to Plaintiffs' Reply
24 Memorandum" (filed Sept. 25, 2006), because the "response" was not properly filed or timely
25 filed.

26 **4. Motions and objections filed for hearing on November 28, 2006**

27 Defendant's evidentiary objections (filed Oct. 24, 2006) to the declaration of Dr.
28 Andrew Perry (filed Oct. 10, 2006) are OVERRULED. His opinions are admissible but the

1 court finds them entitled to little weight. Dr. Perry fails to provide a credible basis in his
2 declaration for the conclusion he reaches, *i.e.*, that the Zinfandel computers have a five year
3 useful life.

4 Plaintiffs' request for judicial notice (filed Nov. 7, 2006) of the dockets of two cases
5 now pending before the California Supreme Court, *i.e.*, *Pfizer, Inc. v. Superior Court* and *In re*
6 *Tobacco II Cases*, is GRANTED.

7 Plaintiffs' evidentiary objections (filed Nov. 21, 2006) to the declaration of Dr. Ernst R.
8 Berndt (filed Oct. 24, 2006) are OVERRULED. Dr. Berndt's opinion is entitled to little weight.
9 Dr Berndt fails to provide a credible basis for his opinion. Dr. Berndt did not study the
10 Zinfandel specifically, and his opinion does not pertain to the useful physical life of a Zinfandel
11 (as opposed to the useful economic life).

12 **5. Motions and objections filed for hearing on January 30, 2007**

13 Plaintiffs' evidentiary objections (filed Jan. 12, 2007) to the declaration of Randy Jones
14 (filed Dec. 19, 2006) and the 90-day warranty attached to the declaration are OVERRULED.

15 **6. Plaintiffs' Motion for Class Certification**

16 Plaintiffs' motion for class certification is GRANTED IN PART. The Court will certify
17 the following class with respect to the second cause of action for Violation of the Unfair
18 Competition Law and fourth cause of action for Breach of Express Warranty:

19 All persons or entities who own or owned one or more of the following HP Pavilion
20 notebook models: zt1150; zt1155; zt1170; zt1175; zt1180; zt1185; zt1190; zt1195;
21 zt1250; xz185; xz275; and xz295; containing a TDK TAD669 Rev. 2.0 inverter or an
22 Ambit inverter, part numbers PK070012310 and PK070011210; who purchased the
23 notebook from an entity located within California; and who experienced a dim, dark, or
24 flickering display. Excluded from the class are employees, directors, officers, or agents
25 of Defendant.

26 This definition identifies an ascertainable class with numerous members. Regarding the
27 "useful life" of the notebook computers, none of the parties have presented sufficient evidence
28

1 on this issue. To the extent the “useful life” of the notebook computer is relevant to Plaintiffs’
2 causes of action, it will be a matter of proof at the trial of this matter.

3 A well-defined community of interest exists among the class members. In this regard,
4 the questions common to the class predominate over questions affecting members individually.
5 All class members have the same notebook units, received an express warranty with their
6 notebooks, and experienced a dim, dark, or flickering display. One of the common,
7 predominate questions in this action is whether the dim, dark, or flickering display is caused by
8 a defect in one of the two inverters at issue.

9 The court is neither ruling on the merits of the causes of action nor what limits to
10 recovery for any class member might be. Nor is the court ruling on what effect the principles
11 relied upon by the court in *Daugherty v. American Honda Co., Inc.* (2006) 144 Cal.App.4th
12 824, (a case in which Supreme Court review has been sought) might have in this case.

13 The court concludes that benefits will accrue both to litigants and the courts if a class is
14 certified, because there is an alleged common defect affecting numerous individuals, the
15 amounts at issue are small, and the class is ascertainable. The court recognizes that upon
16 further discovery the class definition may change and subclasses may be certified.

17 Plaintiffs seek to certify a nationwide class, because consumers throughout the United
18 States purchased the notebooks at issue. Only a California class will be certified, however.
19 Plaintiffs fail to establish the constitutionality of applying California law to out-of-state class
20 members’ claims. Plaintiffs also fail to persuasively articulate why California has a special
21 obligation that would fairly call for it to assume the burden of adjudicating a nationwide class
22 action. The purchases occurred at local retail stores in a multitude of jurisdictions. Presumably
23 consumers would have exercised their warranty rights under their respective states’ laws.
24 Further, there appear to be warranty issues unique to some jurisdictions. Plaintiffs fail to
25 provide sufficient information or a satisfactory assessment as to how the state law differences
26 may be managed fairly and efficiently. In sum, due to the circumstances under which the
27 purchases were made, *i.e.*, at local retail stores, significant manageability issues would arise if a
28 nationwide class was certified.

1 Because the class is limited to purchases within California, only Plaintiff I Braun
2 Degenstein is appointed class representative. Defendant Hewlett-Packard nonetheless contends
3 Plaintiff Degenstein may not serve as class representative, because he does not have a claim for
4 breach of express warranty. Hewlett-Packard points to the fact that Plaintiff Degenstein did not
5 notify Hewlett-Packard about a screen problem until after the warranty expired, and notice is an
6 element of a claim for breach of express warranty. In response, Plaintiff Degenstein contends
7 not every class member is required to complain of a breach in order for Hewlett-Packard to
8 have notice of an alleged defect in the inverters at issue. (*See Metowski v. Traid Corp.* (1972)
9 28 Cal.App.3d 332, 339.) The issue of whether Hewlett-Packard was on notice of a breach of
10 express warranty as to a given class member is a legal and factual issue that may not be
11 resolved in the pending motion for class certification. Plaintiff Degenstein has claims typical
12 of the class, and he may adequately represent the class. Therefore, Plaintiff Degenstein may
13 serve as class representative.

14 Green Welling LLP and Kershaw, Cutter & Ratinoff LLP are appointed as class counsel,
15 because they are experienced in litigating class actions and consumer actions in particular.

16 The parties are ordered to meet and confer regarding further class definition as well as
17 notice to the class of the pendency of this action and to submit a joint plan regarding notice if
18 possible.

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21 Dated: January 31, 2007

/s/
Hon. Jack Komar
Judge of the Superior Court