

Exhibit A

(Redacted)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE: MACBOOK KEYBOARD
LITIGATION

Case No. [5:18-cv-02813-EJD](#)

**ORDER GRANTING MOTION TO
CERTIFY CLASS; GRANTING IN
PART AND DENYING IN PART
APPLE'S MOTION TO STRIKE
EXPERT OPINIONS OF HAL J.
SINGER; GRANTING MOTION TO
STRIKE EXPERT OPINIONS OF
DAVID V. NIEBUHR**

Re: Dkt. No. 229, 238, 239

Plaintiffs Kyle Barbaro, Joseph Baruch, Steve Eakin, Lorenzo Ferguson, Benjamin Gulker, Michael Hopkins, Adam Lee, Kevin Melkowsky, and Zixuan Rao ("Plaintiffs") bring this proposed class action against Defendant Apple, Inc. ("Apple" or "Defendant") on behalf of purchasers of MacBook laptops equipped with allegedly defective "butterfly" keyboards. There are several motions currently before the Court: (1) Plaintiffs' Motion for Class Certification (Dkt. No. 233-21, "Class Certification Motion");¹ (2) Apple's Motion to Strike the Expert Opinions of Hal J. Singer, Ph.D. (Dkt. No. 237-46, "Singer Motion to Strike"); (3) Apple's Motion to Strike the Expert Opinions of David V. Niebuhr, Ph.D. (Dkt. No. 237-49, "Niebuhr Motion to Strike"); (4) Apple's Objections to New Evidence Submitted With Plaintiffs' Reply in Support of Class Certification (Dkt. No. 261, "Objections"); and (5) Apple's Administrative Motion for Leave to File a Surreply and Expert Report in Support of Opposition to Plaintiffs' Motion for Class

¹ All docket numbers cited in this order refer to the unredacted document filed under seal.

Case No.: [5:18-cv-02813-EJD](#)

**ORDER GRANTING MOTION TO CERTIFY CLASS; GRANTING IN PART AND DENYING
IN PART APPLE'S MOTION TO STRIKE EXPERT OPINIONS OF HAL J. SINGER.**

1 Certification (Dkt. No. 279-4, “Motion for Surreply”).

2 On February 4, 2021, the Court held a hearing on the pending motions. At that hearing,
3 the Court indicated that the Objections would be overruled for the purpose of the Court’s
4 consideration at the class certification stage, without prejudice to renewal. Likewise, the Court
5 indicated that Motion for Surreply would be denied given the robust discussion at the hearing.

6 Having considered the parties’ submissions and oral arguments on the remaining motions,
7 the Court hereby **GRANTS** Plaintiffs’ Class Certification Motion, **GRANTS** in part and **DENIES**
8 in part the Singer Motion to Strike, and **GRANTS** the Niebuhr Motion to Strike.

9 **I. Background**

10 Plaintiffs are eleven consumers from California, Massachusetts, New York, Illinois,
11 Florida, Washington, New Jersey, and Michigan. Second Amended Consolidated Class Action
12 Complaint, Dkt. No. 219 (“SAC”) ¶¶ 8-18. Plaintiffs bring this proposed class action against
13 Apple on behalf of purchasers of MacBook laptops equipped with allegedly defective keyboards,
14 known as “butterfly” keyboards. Specifically, Plaintiffs request that this Court certify a proposed
15 class consisting of “all persons who purchased, other than for resale, within California, New York,
16 Florida, Illinois, New Jersey, Washington, or Michigan, an Apple MacBook from any of the
17 model years 2015-2017, an Apple MacBook Pro from any of the model years 2016-2019
18 (excluding the 16 [inch] MacBook Pro released in November 2019), or an Apple MacBook Air
19 from any of the model years 2018-2019” (the “Class”). Plaintiffs also seek to certify subclasses of
20 purchasers in the seven states listed in the Class definition, to appoint Plaintiffs as Class and
21 subclass representatives, and to appoint the law firms of Girard Sharp LLP and Chimicles
22 Schwartz Kriner & Donaldson-Smith LLP as class counsel.

23 **A. The Butterfly Keyboard**

24 In the spring of 2015, as part of its release of an all-new MacBook, Apple released the first
25 ever Apple-designed keyboard, the butterfly keyboard. Declaration of Claudia M. Vetesi In
26 Support of Apple Inc.’s Opposition to Plaintiffs’ Motion for Class Certification (Dkt. No. 236,

27 Case No.: [5:18-cv-02813-EJD](#)

28 ORDER GRANTING MOTION TO CERTIFY CLASS; GRANTING IN PART AND DENYING
IN PART APPLE’S MOTION TO STRIKE EXPERT OPINIONS OF HAL I. SINGER.

“Vetesi Decl.”) Ex. A (Rule 30(b)(6) Deposition of Laura Metz (“Metz Dep.”)) at 125:6-16. The butterfly keyboard is nicknamed for the stainless steel switch under the keycap, which bears a resemblance to butterfly wings. The butterfly switch acts as a mechanical lever, which exerts pressure on the other key components to activate the key. [REDACTED]

[REDACTED] Vetesi Decl. Ex. B (Rule 30(b)(6) Deposition of Shelly Goldberg (“Goldberg Dep.”)) at 131:1-4.

Before the butterfly design, Apple had always used the industry-standard “scissor” mechanism. *Goldberg Dep.* at 36:10-14. The scissor mechanism registered keystrokes through a rubber dome and two pieces in the switch housing that interlock in a “scissor” or “X” shape. *See* Vetesi Decl., Ex. C. The key difference between the scissor design and the butterfly design is the travel distance of the key stroke, *i.e.* how far the user must press the key before the electrical circuit is completed and the computer registers the user’s keystroke. *Goldberg Dep.* at 37:1-3. The butterfly keyboard utilizes a low-travel design, [REDACTED]

[REDACTED] *Goldberg Dep.* at 38:11-14. [REDACTED]

The low-travel design allowed the butterfly keyboard to be 40% thinner than the prior scissor mechanism keyboards, which in turn allowed Apple to produce its thinnest and lightest MacBook ever. Metz Dep. at 125:6-8. Following its release in 2015, the butterfly keyboard was incorporated into 16 new MacBook models, including the MacBook released in 2016 and 2017, as well as the MacBook Pro models released between 2016 and 2019, and the MacBook Air models released in 2018 and 2019 (together, the “Class Laptops”). *Id.*, Ex. H at Suppl. Resp. to Interrog. Nos. 7-8, Ex. D.

Case No.: [5:18-cv-02813-EJD](#)

ORDER GRANTING MOTION TO CERTIFY CLASS; GRANTING IN PART AND DENYING IN PART APPLE’S MOTION TO STRIKE EXPERT OPINIONS OF HAL J. SINGER.

B. The Alleged Defect

Plaintiffs allege that the butterfly keyboard is defective. Specifically, Plaintiffs allege that the low-travel design of the butterfly mechanism makes the keys prone to fail when minute amounts of dust or debris enter the sensitive area beneath the switch. [REDACTED]

[REDACTED] Class Certification Motion at 3 (citing Goldberg Dep. at 105:16-106:3).

Although it is common for debris to accumulate in a keyboard of any type, Plaintiffs allege that

Id. at 3-4. According to Plaintiffs, it is this phenomenon that caused the various issues Plaintiffs experienced with their laptops.

There are three main issues that Plaintiffs and other consumers experienced with the butterfly keyboard: (1) keys failing to register (“no make”), (2) keys registering multiple times with a single press (“double make”), and (3) keys exhibiting a sticky behavior when pressed (“sticky keys”).

C. Design Iterations

Within a short time after the release of the butterfly keyboard, Apple noticed that customers were returning the butterfly-equipped MacBook at a higher rate than predecessor products. Dkt. No. 224-5, Class Certification Motion at Ex. C (Deposition of Jeffery LaBerge) at 70:6-22. Apple began working on modifications to the design to address reported issues with debris affecting keyboard performance. For example, [REDACTED]

[REDACTED] Goldberg Dep. at 103:1-20. [REDACTED]

Case No.: [5:18-cv-02813-EJD](#)

ORDER GRANTING MOTION TO CERTIFY CLASS; GRANTING IN PART AND DENYING IN PART APPLE’S MOTION TO STRIKE EXPERT OPINIONS OF HAL I. SINGER.



Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.