

**BURSOR & FISHER, P.A.**

L. Timothy Fisher (State Bar No. 191626)

Joel D. Smith (State Bar No. 244902)

Sean L. Litteral (State Bar No. 331985)

1990 North California Blvd., Suite 940

Walnut Creek, CA 94596

Telephone: (925) 300-4455

Facsimile: (925) 407-2700

Email: ltfisher@bursor.com

jsmith@bursor.com

slitteral@bursor.com

*Attorneys for Plaintiff*

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

BARRY RICHARDS, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

APPLE INC.,

Defendant.

Case No.

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

**FACTUAL ALLEGATIONS**

1  
2 1. This is a putative class action filed by Plaintiff Barry Richards (“Plaintiff”) on  
3 behalf of himself and all others similarly situated against Defendant Apple Inc. (“Apple” or  
4 “Defendant”) for the manufacture, marketing, detailing, distribution, and sale of Apple HomePods  
5 that were rendered inoperative by a defective software update issued by Apple.

6 2. The Apple HomePod is a wireless “smart speaker” for home audio. It is designed to  
7 integrate with an Apple iPhone, and multiple HomePods can be wirelessly linked throughout a  
8 home. The HomePod also serves as a remote hub for other Apple devices that can control lighting,  
9 thermostats, or other functions.

10 3. Apple first began selling HomePods in January or February 2018.

11 4. The original HomePod had a premium \$349 price tag that matched Apple’s  
12 marketing angle, which presented the HomePods as a music-first device with excellent sound  
13 quality.

14 5. However, in March 2021, Apple officially discontinued the original HomePod and  
15 began selling the HomePod mini, which is a smaller iteration of the original HomePod.

16 6. After March 2021, Apple continued to issue software updates for the original Home  
17 Pod.

18 7. In approximately May 2021, Apple released software update 14.6 for original  
19 HomePods.

20 8. On its website, Apple told consumers that software update 14.6 “includes general  
21 performance and stability improvements.”

22 9. Apple’s software updates upload to HomePods automatically, including update  
23 14.6.

24 10. After update 14.6 was issued, however, many Apple HomePod owners found that  
25 the software update “bricked” their HomePods, meaning they ceased working and were useless.

26 11. Many consumers complained about this problem on Redditt and other online  
27 forums. As one consumer described, “When it’s plugged in, doesn’t power up – the top doesn’t  
28 light up or respond to touch.” Other owners chimed in and said that their speakers could power up,

1 but could not otherwise function. Another HomePod owner noted: “Same problem with my stereo  
2 pair, although the one HomePod didn’t just ‘die’ – it became unresponsive with constant flashing  
3 volume buttons. Same result, though.” Another HomePod owner explained that a newly opened  
4 HomePod was set up, updated to 14.6, and then it lost connection. A hard reset caused the LED to  
5 turn red and the volume lights to blink, but it was non-functional. There were many more  
6 complaints online; the aforementioned complaints are only examples.

7 12. Apple monitors warranty claims and customer complaints to track trends and  
8 recurring issues with its products.

9 13. Apple received an unusually high number of complaints about the original  
10 HomePods becoming inoperative after Apple issued software update 14.6.

11 14. However, by this time, Apple had already discontinued the original Apple  
12 HomePod, and thus had little incentive to prioritize a solution.

13 15. Although Apple caused the problem with the HomePods, Apple’s policy was to  
14 deny any relief for owners of products that were past their 1-year warranty. One frustrated  
15 HomePod owner said he walked into an Apple retail store and was advised “to pay almost full  
16 price to replace an abandoned product” because the warranty had expired. Another similarly  
17 complained, the “[s]ame happened to me two days ago. Apple basically told me to buy another one  
18 since my warranty expired 6 months ago and service fee is \$280.”

19 16. It is unfair to force someone to pay upwards of \$300 for a HomePod replacement  
20 when a software update from Apple is what broke the HomePod in the first place.

21 17. Planned obsolescence is a business strategy in which the obsolescence (the process  
22 of becoming obsolete, that is, unfashionable or no longer usable) of a product is planned and built  
23 into it from its conception, by the manufacturer. This is done so that, in the future, the consumer  
24 feels a need to purchase new products and services that the manufacturer brings out as  
25 replacements for the old ones.

26 18. Planned obsolescence is part of Apple’s business model.  
27  
28

19. Apple has in the past faced several lawsuits in the United States and Europe alleging that Apple engaged in practices designed to force consumers to buy new Apple products before they would otherwise have to.

20. Through this business strategy, Apple bricked the original HomePods, or alternatively, it decided not to provide a remedy for the problems caused by software update 14.6, because Apple had discontinued the original HomePods and wanted consumers to purchase the newer HomePod minis.

21. If owners of original HomePods replaced their broken systems with HomePod minis, then Apple would sell more HomePod minis and profit from those sales.

**PARTIES**

22. Plaintiff Barry Richards is domiciled in North Carolina, and lives in Randleman, North Carolina.

23. In or around October 2019, Plaintiff purchased an original Apple HomePod from a store called Other World Computing for his personal use. Initially, the HomePod worked fine and as intended. After his HomePod automatically received the 14.6 software update, it malfunctioned and would not reset. Plaintiff took the device to an Apple Authorized Service Provider for repair and was told that the Provider would match Apple's cost of \$279 to repair the device. Plaintiff has lost the use of his HomePod as a result of the 14.6 software update.

24. Defendant Apple, Inc. is incorporated under the laws of the State of California.

25. Apple maintains its principal place of business in Cupertino, California.

26. Apple manufactures Apple HomePods.

27. Apple distributes Apple HomePods to retailers throughout the United States.

28. Apple sells Apple HomePods directly to consumers in the United States through its Apple stores and on Apple's website.

## **JURISDICTION AND VENUE**

29. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A) because this case is a class action where the aggregate claims of all members of the proposed class are in excess of \$5,000,000.00, exclusive of interest and costs, and Plaintiff, as well as most

1 members of the proposed class, are citizens of states different from Defendant. This Court also has  
2 supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367.

3 30. This Court has personal jurisdiction over Apple because its principal place of  
4 business is within this District and it has sufficient minimum contacts in California to render the  
5 exercise of jurisdiction by this Court proper and necessary.

6 31. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part  
7 of the events giving rise to Plaintiff's claims occurred in this District.

8 32. Employees at Apple's headquarters directed the production and assembly of the  
9 Apple HomePod hardware and software, including all software updates.

10 33. Promotional activities and literature were developed and coordinated at, and  
11 emanated from, Apple's California headquarters.

12 34. The decision to issue software update 14.6 for the Apple HomePod was made in  
13 California.

14 35. Software update 14.6 for the Apple HomePod was developed in California.

15 36. The steps and procedures taken to issue software update 14.6 for the Apple  
16 HomePod were made in California.

17 37. Software update 14.6 was transmitted from California to putative class members'  
18 Apple HomePods.

19 38. California is where Apple employees made the final decision to deny relief to  
20 putative class members whose HomePods were adversely affected by software update 14.6.

### 21 CLASS ALLEGATIONS

22 39. Plaintiff brings this lawsuit under Federal Rule of Civil Procedure 23(a), (b)(1),  
23 (b)(2), and/or (b)(3) as representatives of:

#### 24 Nationwide Class:

25 All persons within the United States who purchased, other than for resale, an Apple  
Home Pod.

#### 26 California Subclass:

27 All persons who purchased, other than for resale, within California, an Apple Home  
28 Pod.



# 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.