

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON**

J.A., THROUGH HIS GUARDIAN, TARA ALLEN; C.C., THROUGH HIS GUARDIAN, CINDY CRUMMIT; A.D., THROUGH HIS GUARDIAN, LUCKIESIA BELTON; A.H., THROUGH HIS GUARDIAN, TRACY HUNT; J.H., THROUGH HIS GUARDIAN, TRACY HUNT; DONALD MCFADDEN; BRANDON PETTI; SAMUEL WHISNANT; individually and on behalf of all others similarly situated,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

Cause No.: 2:20-cv-640-MAT

PLAINTIFFS' FIRST AMENDED
CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs J.A., through his guardian Tara Allen (“Plaintiff J.A.”); C.C., through his guardian, Cindy Crummit (“Plaintiff C.C.”); A.D., through his guardian Luckiesia Belton (“Plaintiff A.D.”); A.H., through his guardian Tracy Hunt (“Plaintiff A.H.”); J.H., through his guardian Tracy Hunt (“Plaintiff J.H.”); Donald McFadden (“Plaintiff McFadden”); Brandon Petti (“Plaintiff Petti”); and Samuel Whisnant (“Plaintiff Whisnant”) (collectively, “Plaintiffs”), individually, and on behalf of all others similarly situated, bring this action against the Microsoft Corporation (“Microsoft” or “Defendant”). Plaintiffs’ allegations are based upon personal

1 knowledge and belief as to their own acts, and upon information and belief and the investigation
2 of their counsel as to all other matters.

3 **I. NATURE OF THE ACTION**

4 1. This is a class action lawsuit brought against Microsoft Corporation by Plaintiffs
5 on behalf of themselves and all other similarly situated consumers who purchased wireless,
6 Microsoft-branded Xbox One controllers, including the standard Xbox controllers that accompany
7 a purchase of an Xbox One console, and the separately sold Elite Controllers Series 1 and Series
8 2. As discussed in more detail below, these controllers are defective. The potentiometer within the
9 joystick component—the mechanism that translates the physical movement of the thumbstick into
10 movement within the video game—contains a design flaw such that the wiper component of the
11 potentiometer becomes coated with a grease-like lubricant which causes resistive material scraped
12 off a curved track to adhere to the wiper causing unwanted movement without input from the user.
13 Once this damage occurs, the joystick registers phantom input or stick drift, thwarting accurate
14 gameplay (the “Defect”). Accurate gameplay is the central purpose of video game controllers.

15 2. Microsoft manufactures these controllers and markets them as superior controllers
16 that enhance game play while failing to disclose the Defect which interferes with proper game
17 functioning. Furthermore, consumers pay a significant premium for the Elite Controllers, which
18 are upwards of \$179.99, compared to the roughly \$50 paid for a standard Xbox One controller.

19 3. Microsoft has been made aware of the Defect through online consumer complaints
20 beginning as early as 2014. Microsoft was also aware of the Defect through its own records of
21 complaints and warranty requests, as well as its own pre-release testing.

22 4. Despite this knowledge, Microsoft failed to disclose the Defect and routinely
23 refuses to repair the controllers without charge when the Defect manifests. Unlike the warranty on
24 their Xbox game consoles—which is one year—the warranty on their affected controllers is just
25 90 days.
26

1 5. As a result of Microsoft’s unfair, deceptive, and/or fraudulent business practices,
2 owners of wireless, Microsoft-brand Xbox One controllers, including Plaintiffs, have suffered an
3 ascertainable loss. As a result of Microsoft’s deceptive conduct, Plaintiffs paid more for the
4 wireless Xbox One controllers than they are worth and more than they would have had Microsoft
5 disclosed the Defect; spent money and time repairing and managing defective controllers and/or
6 buying replacement controllers; and otherwise have been harmed by Microsoft’s conduct.

7 6. Accordingly, Plaintiffs bring this action to redress Defendant’s violation of
8 Washington Consumer Protection Act, Wash. Rev. Code § 19.86.010 et seq. (the “CPA”).
9 Plaintiffs seek to certify a Nationwide Class for the unfair and deceptive practices Defendant, a
10 Washington corporation, directed at out-of-state and in-state residents and further seeks injunctive
11 relief, actual damages, treble damages, reasonable attorneys’ fees, and other relief the Court deems
12 just.

13 7. In the alternative to a National Class, Plaintiffs bring this action on behalf of their
14 respective state classes under the respective consumer protection statutes listed herein.

15 **II. JURISDICTION AND VENUE**

16 8. The Court has jurisdiction over Plaintiffs’ claims under 28 U.S.C. §1332(d)(2)
17 (“CAFA”), because (a) there are 100 or more Class members, (b) at least one Class member is a
18 citizen of a state that is diverse from Defendant, and (c) the matter in controversy exceeds
19 \$5,000,0000, exclusive of interest and costs.

20 9. Venue is proper in this District under 28 U.S.C. §1391(b)(1) and §1391(c)(2)
21 because the Defendant resides in this District, is subject to personal jurisdiction in this District,
22 and transacts business in this District. Additionally, Defendant has advertised and received
23 substantial revenue from sale of its products, including the wireless, Xbox One controllers, within
24 this District.
25
26

1 **III. PARTIES**

2 **Plaintiff J.A.**

3 10. Plaintiff J.A., a minor, brings this case by and through his guardian, Tara Allen.
4 Plaintiff J.A. is and at all relevant times was a resident and citizen of the state of Illinois, and
5 resides in Minooka, Illinois.

6 11. J.A. primarily plays video games from the shooter, racing, and sports genres, each
7 of which require precise controller input to achieve in-game success.

8 12. J.A. initially purchased a standard wireless controller from Best Buy in November
9 2017 for \$69.99, having saved up money over the past year to do so. Before purchasing the
10 controller, J.A. viewed Microsoft's representations about the controller being an elite and
11 reliable controller. He was unaware that standard wireless controllers for the Xbox One suffered
12 from the Defect. Approximately two months after purchase of this first controller, J.A. had not
13 yet noticed any manifestation of the Defect, so he decided to purchase a second standard wireless
14 controller using money he received during the winter holidays. He purchased this second
15 controller from Best Buy in January 2018 for \$69.99.

16 13. Shortly after the purchase of his second controller, his first controller began to
17 exhibit noticeable signs of the Defect. The controller would frequently register external input
18 where there was none, causing in-game movement at inopportune moments. Unsure what to
19 make of the Defect, J.A. decided to visit Best Buy's in-house technical support team, the Geek
20 Squad, to get an outside perspective. However, this visit proved unproductive. Geek Squad
21 members found the issue to be, at that point, only intermittent and not worthy of greater concern.
22 Trusting in their judgement, J.A. resigned himself to the stick drift defect, believing it would
23 only be an occasional nuisance.

24 14. Despite what he was told during his Geek Squad visit, the Defect persisted. At
25 first, J.A. tried to compensate for the Defect with his playing style. He would factor the Defect
26 into his in-game decision making, as to better manage the situation. If this failed to ameliorate

1 the problem, he would work to manually reprogram the dead-zones for individual games, so that
2 the software would not as easily register input by the controller's hardware. However, these
3 efforts eventually grew untenable, as the joysticks' operability further deteriorated.

4 15. Shortly after two months of purchase, J.A.'s second controller also began to
5 exhibit the Defect. J.A. took the second controller in for the Geek Squad to examine as well, but
6 they were unable to eliminate the problem.

7 16. By mid-2018, the Defect had rendered J.A.'s first controller essentially
8 inoperable. Although at this point the second controller was in slightly better shape than the first,
9 it was nonetheless on track to meet the same fate. By November 2018, both of J.A.'s controllers
10 suffered from the Defect to such a serious degree that it was impossible for him to derive any
11 enjoyment from using his Xbox One console.

12 17. J.A. purchased a third standard wireless controller from Best Buy in November
13 2018 for \$69.99, so that he could operate his Xbox One console. The deterioration of this
14 controller's joysticks followed roughly the same timeline as the previous two. By the third month
15 of ownership, the controller's joysticks began to exhibit an intermittent tendency to register
16 external input where there was none. After the stick drift's initial display, the issue only
17 worsened in severity. J.A.'s attempts to mitigate the issue failed to provide long term relief and,
18 after roughly six months of ownership, this third controller also impeded J.A.'s ability to derive
19 utility from the use of his Xbox One console.

20 18. J.A. always took extreme care when handling and storing each of his standard
21 wireless controllers and never subjected any of them to storage conditions which could have
22 contributed to the manifestation or severity of the Defect. J.A always maintained the controller in
23 accordance with the instructions provided by Microsoft and as would any reasonable consumer.

24 19. To the extent Microsoft contends that J.A. consented to terms of an End User
25 Licensing Agreement ("EULA") purportedly related to use of the defective Xbox One
26

1 controllers, J.A. disaffirms any such EULA and has completely ceased use of the defective Xbox
2 One controllers.

3
4 **Plaintiff C.C.**

5 46. Plaintiff C.C., a minor, brings this case by and through his guardian, Cindy
6 Crummitt. Plaintiff C.C. is, and at all relevant times was, a resident and citizen of the state of
7 Maryland.

8 47. C.C. regularly plays video games on his Xbox One console. His preferred games to
9 play include any of the Call of Duty games and Grand Theft Auto 5. The drift issue would create
10 roadblocks to prevent him from playing these games successfully.

11 48. C.C. purchased three standard wireless controllers for \$59.99 at GameStop. Before
12 purchasing the controller, C.C. viewed Microsoft's representations about the controller being an
13 elite and reliable controller.

14 49. At the time of purchase, C.C. was unaware that standard wireless controllers for the
15 Xbox One suffered from a defect which result in their joysticks becoming inoperable. Within a
16 couple months of purchase, C.C.'s controller began to exhibit the Defect, causing in-game
17 movement even in the absence of external input. Over time the Defect worsened to the point where
18 C.C. found the game unplayable. Due to the Defect, gameplay became difficult and less enjoyable.

19 50. Upon hearing about C.C.'s complaints with the Defect, his mother reached out to
20 Microsoft support about the issue. Support responded that the controller was outside the 90-day
21 warranty, therefore there was nothing further that could be done from their end. Her son ended up
22 buying two additional controllers over time due to being unable to find any relief from Microsoft.

23 51. C.C. and his mother always took extreme care when handling the controller and
24 never subjected it to any storage conditions which could have contributed to the manifestation or
25 severity of the Defect. C.C. always maintained the controller in accordance with the instructions
26

1 provided by Microsoft. At the time of C.C.'s last use of the defective controller, it continued to
2 experience the Defect.

3 52. To the extent Microsoft alleges that C.C. consented to terms of a EULA purportedly
4 related to use of the defective Xbox One controller, C.C. disaffirms any such EULA and has
5 completely ceased use of the defective Xbox One controller.

6 **Plaintiff A.D.**

7 20. Plaintiff A.D., a minor, brings this case by and through his guardian Luckiesia
8 Belton. Plaintiff A.D. is and at all relevant times was a resident and citizen of the state of California
9 and resides in Sacramento, CA.

10 21. A.D. has purchased one standard wireless controller. A.D. typically plays video
11 games that require precise controller input in order to achieve in-game success.

12 22. A.D. purchased his standard his standard wireless controller from GameStop in
13 June 2019 for \$60.00. He was unaware that standard wireless controllers for Xbox One consoles
14 suffered from the Defect.

15 23. Approximately one month after purchase of the controller, it began to exhibit signs
16 of the Defect, causing in-game movement even when lacking external input. At first, the Defect
17 was more of a simple annoyance than an obstacle to the function A.D.'s Xbox One console.
18 However, as time wore on, the Defect worsened. A.D. quickly found himself more or less unable
19 to play his favorite video games.

20 24. As his controller's operability continued to deteriorate, A.D. endeavored to
21 discover the source of the problem and see if he could eliminate its impact. Over a two-week
22 period, he spent approximately 40 hours conducting online research, attempting to learn about
23 others' experiences with the Defect and restorative methods that might serve to ameliorate the
24
25
26

1 issue. At all times, he took care to never violate the controller's functional integrity. Ultimately,
2 A.D.'s research proved futile and the Defect progressed unabated.

3 25. A.D. always took extreme care when handling the standard wireless controller and
4 never subjected it to any storage conditions which could have contributed to the manifestation of
5 the Defect. A.D. always maintained the controller in accordance with the instructions provided by
6 Microsoft and as would any reasonable consumer. He would not have purchased the standard
7 wireless controller had he known about the Defect beforehand.

8
9 26. To the extent Microsoft contends that A.D. consented to terms of a EULA
10 purportedly related to use of the defective Xbox One controller, A.D. disaffirms any such EULA
11 and has completely ceased use of the defective Xbox One controller.

12 **Plaintiff A.H.**

13 27. Plaintiff A.H., a minor, brings this case by and through his guardian, Tracy Hunt.
14 Plaintiff A.H. is and at all relevant times was a resident and citizen of the state of North Carolina
15 and resides in Newport, North Carolina.

16 28. A.H. regularly plays video games on his Xbox One console. His preferred game is
17 Minecraft, a building sandbox in which players need to place blocks in a precise order to succeed
18 in construction.

19 29. A.H. purchased a standard wireless controller using money he had saved. A.H.
20 purchased his controller at GameStop in November 2019 for \$60.00. Before purchasing the
21 controller, A.H. viewed Microsoft's representations about the controller being an elite and reliable
22 controller. He was unaware that standard wireless controllers for the Xbox One suffered from the
23 Defect.

24 30. Within two months of purchase, A.H.'s controller began to exhibit the Defect,
25 causing in-game movement even in the absence of external input. Over time the Defect worsened
26

1 to the point where A.H. found the game unplayable. Gameplay mistakes required lengthy
2 corrective measures that would themselves lead to more mistakes caused by the Defect.

3 31. Upon hearing about A.H.'s complaints with the Defect, his mother spent several
4 hours over the next few days reading about potential fixes for the problem. She spent another
5 couple hours attempting to troubleshoot and resolve the issue, but all to no avail.

6 32. A.H. and his mother always took extreme care when handling the controller and
7 never subjected it to any storage conditions which could have contributed to the manifestation or
8 severity of the Defect. A.H. always maintained the controller in accordance with the instructions
9 provided by Microsoft. At the time of A.H.'s last use of the defective controller, it continued to
10 exhibit the Defect.
11

12 33. To the extent Microsoft contends that A.H. consented to terms of a EULA
13 purportedly related to use of the defective Xbox One controller, A.H. disaffirms any such EULA
14 and has completely ceased use of the defective Xbox One controller.
15

16 **Plaintiff J.H.**

17 34. Plaintiff J.H., a minor, brings this case by and through his guardian, Tracy Hunt.
18 Plaintiff J.H. is and at all relevant times was a resident and citizen of the state of North Carolina,
19 and resides in Newport, North Carolina.

20 35. J.H. is an avid gamer who primarily plays video games from the shooter and
21 sports genres, both of which require precise controller input in order to achieve in-game success.

22 36. J.H. purchased a standard wireless controller using money he had saved. J.H.
23 purchased the controller at Wal-Mart in June 2019 for \$60.00. Before purchasing the controller,
24 J.H. viewed Microsoft's representations about the controller being an elite and reliable controller.
25 He was unaware that standard wireless controllers for the Xbox One suffered from the Defect.
26

1 37. Within two months of purchase, J.H.'s controller began to exhibit the Defect,
2 causing in-game movement even in the absence of external input. Over time the Defect worsened.
3 J.H. frequently lost competitive matches due the erroneous movement input exhibited in the left
4 joystick. Eventually he was unable to enjoy gameplay and make full use of his Xbox One console.

5 38. Upon hearing about J.H.'s complaints with the Defect, his mother spent several
6 hours over the next few days reading about potential fixes for the problem. She spent another
7 couple hours attempting to troubleshoot and resolve the issue, but all to no avail.

8 39. J.H. always took extreme care when handling the controller and never subjected it
9 to any storage conditions which could have contributed to the manifestation or severity of the
10 Defect. J.H. always maintained the controller in accordance with the instructions provided by
11 Microsoft. At the time of J.H.'s last use of the defective controller, it continued to experience the
12 Defect.
13

14 40. To the extent Microsoft contends that J.H. consented to terms of a EULA
15 purportedly related to use of the defective Xbox One controller, J.H. disaffirms any such EULA
16 and has completely ceased use of the defective Xbox One controller.

17 **Plaintiff McFadden**

18 41. Plaintiff Donald McFadden, an adult, is a citizen of the state of New York, and
19 resides in Binghamton, New York.

20 42. Mr. McFadden considers himself an avid gamer and often plays video games after
21 work to unwind. He has owned multiple Microsoft gaming products, including special edition
22 versions of the standard controller and the Elite Controller.

23 43. Mr. McFadden first heard about the Elite Controller in 2015 while watching E3, a
24 large gaming convention, at which Microsoft presented its new controller.¹McFadden viewed

25 _____
26 ¹ Jenna Pitcher, E3: 2015: Microsoft Showcases New Xbox Elite Controller, IGN, May 15, 2014
(updated May 2, 2017), <https://www.ign.com/articles/2015/06/15/e3-2015-microsoft-showcases-new-xbox-elite-controller> (last visited April 14, 2020).

1 Microsoft's representations about the controller being an elite and reliable controller. He was
2 drawn to the Elite Controller's many features. Specifically, Mr. McFadden appreciated the Elite
3 controller's promised ability to enhance the experience of First Person Shooter ("FPS") games—
4 his preferred games. Microsoft's presentation at the 2015 E3 omitted any mention of a defective
5 joystick.

6 44. Shortly after learning about the controller, he purchased an Xbox One/Elite
7 Controller bundle at a GameStop in the Oakdale Mall in Johnson, NY. He bought the bundle
8 specifically for the Elite Controller.

9 45. At first, Mr. McFadden enjoyed the new controller. Mr. McFadden was extremely
10 careful with handling his expensive controller. He consistently placed the controller back on the
11 charger when he was finished, taking care to never drop it or leave it laying on the floor. About
12 once a week, he wipes it with cloth after playing to remove his fingerprints from the matte black
13 finish.

14 46. Despite this care, he noticed the joystick on the controller had started to drift,
15 causing movement without his input. Eventually, the stick drift so interfered with gameplay that,
16 in 2017, Mr. McFadden purchased a second Elite Controller.

17 47. The second Elite Controller was purchased new from an online retailer and cost
18 approximately \$160. Within three or four months, the joystick started to drift.

19 48. Mr. McFadden spent a considerable amount of time attempting to fix the defect on
20 his own. He spent three or four hours trying to manipulate joystick dead zones. But after at least
21 twelve hours playing with these settings, his controllers continued to drift without any manual
22 input.

23 49. Users can also manipulate the joystick sensitivity outside of specific games in the
24 Xbox settings; Mr. McFadden spent another three or four hours in these settings to no avail.

25 50. Because he now had two non-functioning Elite Controllers, in 2019, Mr. McFadden
26 ordered a repair kit off Amazon to facilitate a manual fix on his first controller. Using a video he

1 found on the internet devoted to fixing stick drift on Xbox One controllers, Mr. McFadden opened
2 the controller and attempted to fix it with hot glue and a toothpick. Though he was under the
3 impression such home repair might void the warranty, and believed the short warranty had already
4 expired, he figured he had nothing to lose. The home-repair did not fix the issue, however.

5 51. Stick drift substantially interfered with Mr. McFadden's gameplay, so much so that
6 in in 2019, Mr. McFadden bought basic \$20 wired controllers from Walmart and began using them
7 instead of the much more expensive Elite Controllers.

8 52. The Defect continues to plague Mr. McFadden's controller. Mr. McFadden would
9 not have bought the Xbox Elite Bundle or the second Elite Controller had he known about the stick
10 drift Defect. If Microsoft fixed the Defect in its wireless Xbox One Controllers, Mr. McFadden
11 would purchase one.

12 **Plaintiff Petti**

13 52. Plaintiff Brandon Petti is a citizen of the state of California, and resides in Temple
14 City, California.

15 53. Mr. Petti purchased an Xbox Elite controller online from Amazon for \$150 on or
16 around December 25, 2015.

17 54. Before purchasing the controller, Mr. Petti viewed Microsoft's representations
18 about the controller being an elite controller and having pro-level precision. He also reviewed
19 multiple tech blogs and general reviews to gain a better sense of whether Microsoft's Elite
20 controller was worth purchasing or not.

21 55. After normal use of the controller for approximately a year, Mr. Petti started to
22 notice that the cursor on his screen would drift to the right on the right joystick without his
23 interference.

24 56. Mr. Petti contacted Microsoft to alert them of the drift issue with his controller. The
25 Microsoft representative told Mr. Petti that they could not offer him any recourse because the
26 controller was outside of the 90-day warranty period.

1 57. Mr. Petti also purchased a Standard Special Edition controller from Best Buy on or
2 around January 29, 2016.

3 58. Mr. Petti's Standard Special Edition controller also began to exhibit drift in the
4 right joystick after approximately a year of normal use.

5 59. Left with two defective controllers, Mr. Petti purchased a replacement Elite
6 controller from Gamestop in or about December 2018.

7 60. Once again, within a year, and in or about November 2019, Mr. Petti began to notice
8 the Defect in the right joystick. Since this controller exhibited the drift defect just beyond the 90-
9 day warranty period, Mr. Petti did not contact Microsoft again, believing such attempts at repair
10 would be futile.

11 61. Each of Mr. Petti's controllers continue to manifest the Defect.

12 62. Mr. Petti did not know about the drift Defect prior to purchasing his Xbox
13 controllers. Had Mr. Petti known that the Xbox controllers were defective, he would not have
14 purchased the Xbox controllers or would have paid substantially less for them.

15 **Plaintiff Whisnant**

16 63. Samuel Whisnant is a citizen of the state of North Carolina, and resides in Chapel
17 Hill, North Carolina.

18 64. Mr. Whisnant purchased an Xbox Elite Controller on October 11, 2018 from
19 Amazon for approximately \$149.99. Mr. Whisnant was drawn to the controller because the
20 controller would enable him to play more competitively. Specifically, the paddles on the controller
21 made it easier to perform action without having to take thumbs off the joysticks.
22

23 65. Before purchasing the controller, Mr. Whisnant viewed Microsoft's representations
24 boasting the Elite's pro-level precision and elite performance.
25
26

1 66. After normal use of the controller for approximately three months of ownership,
2 Mr. Whisnant noticed that his controller's joystick began to experience the drift issue. Specifically,
3 the controller began exhibiting drift problems, causing certain fluid actions to become more
4 difficult including: cycling through menus through games accomplishing routine tasks as saving a
5 game file and preventing success in games requiring precise movement or aim.

6 67. Mr. Whisnant tolerated the issue for approximately three months, but it was
7 interfering significantly with his gameplay, and thus he decided to contact Microsoft about the
8 issue. He reached out to Xbox support online on January 26, 2019 to inquire about having the
9 controller either fixed or replaced due to the drift issue. The customer representative suggested
10 taking the controller into a nearby Microsoft store to expedite the repair/replacement process.

11 68. On that same day, he visited the Microsoft store located in Durham, North Carolina
12 to get a replacement controller. After describing his issue to an employee at the store, he was
13 provided a replacement controller without incurring any out-of-pocket expense, even though he
14 was outside the 90-day warranty period
15

16 69. However, the replacement controller also began to experience drift after
17 approximately three to four months. His replacement controller also suffered from broken trigger
18 buttons and bumper in addition to deteriorated rubber grips.
19

20 70. In or around April 2019, Mr. Whisnant once again contacted Microsoft regarding
21 the Defect, but Microsoft refused to provide Mr. Whisnant with a repair or replacement controller,
22 because Mr. Whisnant was far outside the 90-day warranty period, and Microsoft would only
23 provide one free courtesy replacement for controller issues occurring outside the warranty period.
24
25
26

1 71. Mr. Whisnant currently uses his controller with his system, but still experiences the
2 Defect. As a result, he no longer uses the Elite controller and instead uses the standard controller
3 that came with the system.

4 72. Mr. Whisnant did not know about the Defect prior to purchasing his Xbox
5 controller. Had Mr. Whisnant known that the Xbox controllers were defective, he would not have
6 purchased the Xbox controller or would have paid substantially less for it.

7 **Defendant**

8 73. Microsoft Corporation is incorporated in the state of Washington and maintains its
9 principal place of business at One Microsoft Way, Redmond, Washington 98052-6399. According
10 to its 2019 Annual report, Microsoft’s main research and development facilities are located in
11 Redmond, Washington. The Redmond Microsoft campus employs over 50,000 people, comprises
12 520 acres, 5 million square feet of additional leased space, and is used for engineering, sales,
13 marketing, operations, and other administrative purposes.

14 74. Microsoft’s corporate policies and practices, including those relating to the design,
15 testing, marketing, and customer care for the Xbox One and compatible controllers has been
16 centered in Washington: the Xbox was invented at the Redmond campus,² the Entertainment and
17 Devices division is housed on the Redmond campus, where the head of the gaming division, among
18 other key executives, works,³ and where hardware for the Xbox One is prototyped.⁴ Journalists are
19 invited to tour the Redmond gaming facilities to speak with gaming executives or for grand
20 promotional events; these articles are published and read by consumers as marketing materials.
21

22 ² “[O]n the company’s campus, in Building 27 and Building 5, a ‘garage shop’ game console was
23 taking shape...” Steven L. Kent. *The Ultimate History of Video Games: Volume Two: From Pong to Pokemon and Beyond—The Story Beyond the Craze That Touched Our Lives and Changed Our World* (2001).

24 ³ Mike Futter. *Microsoft’s Phi Spencer On Pre-Orders, The Cloud, and Indie*, Game Informer
25 (Sept. 5, 2013), <https://www.gameinformer.com/b/news/archive/2013/09/05/microsofts-phil-spencer-on-xbox-one-pre-orders-demystifying-the-cloud-and-woing-indies.aspx>.

26 ⁴ Ben Gilbert, *A tour of Microsoft’s massive, sprawling headquarters*, Business Insider (Dec. 28, 2016), <https://www.businessinsider.com/microsoft-headquarters-photos-2016-12#and-this-sweet-food-court-18>.

1 For example, for the launch of the Xbox One in 2013, Microsoft invited reporters to the Redmond
2 campus for an Xbox One reveal event where journalists witnessed the 3D printers that print the
3 controller prototypes, visited the hardware testing center where a robot pushes each button on the
4 controller 3 million times, and played with the new “rumbling” controllers in a special play
5 station.⁵

6 **IV. FACTUAL BACKGROUND**

7 75. In 2013, Microsoft launched the Xbox One as a successor to the Xbox 360 gaming
8 console.⁶

9 76. Since the launch of the Xbox One, consumers have been able to purchase
10 controllers either with the gaming system (in a bundle) or separately (as a stand-alone purchase).
11 This practice continues to the present.

12 77. Today, the basic Xbox One wireless controller starts at about \$50. Extra features or
13 special designs can bring the price closer to \$80. One of these controllers comes with the system.

14 78. Microsoft also produces and sells an Elite wireless controller, which it brought to
15 market in 2015. In 2019, Microsoft began selling an Elite Series 2 controller.⁷ This controller is
16 currently sold separately from the console for \$179.99 and is the one of the most expensive
17 controllers on the market. Compared with the standard model, the Elite controller does not require
18 replacing the batteries but comes with a rechargeable lithium battery. Additionally, the controller
19
20

21 ⁵ Cesar Torres, Kyle Orland, *My day in Redmond: A brief look at Microsoft's Xbox campus*, Ars
22 Technica, (May 27, 2013), <https://arstechnica.com/gaming/2013/05/my-day-in-redmond-a-brief-look-at-microsofts-xbox-campus/>.

23 ⁶ In 2016, Microsoft unveiled the Xbox One S, which allowed for, among other things 4K video
24 streaming. In 2017, the company came out with the Xbox One X, a high-end model of the
25 company's gaming console. Microsoft discontinued the original Xbox One after introducing the
26 Xbox S. They have announced plans for a fourth-generation gaming system, the Xbox Series X,
to be available in late 2020. The controllers at issue in the complaint are compatible with all Xbox
One models and the term Xbox is used generally to refer to all models, unless otherwise specified.

⁷ This complaint refers to the Elite controllers generally. The Elite Series 2 model is an upgrade to
the first-edition Elite, but Microsoft marketed them similarly. Mr. McFadden purchased two first-
edition Elite controllers.

1 itself also has a number of customizable buttons, allowing players to map the buttons to various
2 points on the controller. Below is an image of a model 1698 Elite wireless controller:



13 79. Microsoft sells its controllers with a warranty of only 90 days. Even when
14 consumers purchase an Xbox One bundle, Microsoft warranties the console for one year but limits
15 the warranty for the controllers to 90 days.

16 80. From the beginning, Microsoft has marketed the Xbox One controllers as an
17 indispensable component of a preeminent gaming system.

18 81. The 2013 trailer for the Xbox One lingers on the wireless controller. Close ups
19 emphasize the joysticks and buttons as the words “Ultimate Precision” appear on the screen.⁸

20 82. The Elite controllers are described by Microsoft as the “world’s most advanced
21 controller” with “every detail [] designed to meet the demands of the competitive gamer.”⁹ In
22 2015, the Xbox division head described the Elite controller as “an elite controller for the elite
23 gamer.”¹⁰

24 ⁸ <https://www.youtube.com/watch?v=LIYeHCFttMc> (last visited Oct. 2, 2020).

25 ⁹ <https://www.xbox.com/en-US/xbox-one/accessories/controllers/elite-wireless-controller> (last
visited Oct. 2, 2020).

26 ¹⁰ [https://www.theverge.com/2015/6/15/8783211/microsoft-xbox-one-elite-wireless-controller-
announced-e3-2015](https://www.theverge.com/2015/6/15/8783211/microsoft-xbox-one-elite-wireless-controller-announced-e3-2015) (last visited Oct. 2, 2020).

1 83. The Elite controllers are fully customizable. Using the linked app, the user can
2 reassign buttons, adjust trigger values, personalize thumbstick sensitivities, and save customized
3 settings for different games, among other things.

4 84. A two-minute video produced by Microsoft and uploaded to its website for the
5 Elite controllers entitled “The World’s Most Advanced Controller” consists of serious gamers
6 gushing over the Elite controllers’ enhanced play capabilities. Various “Xbox MVPs” and game
7 managers laud the controller:

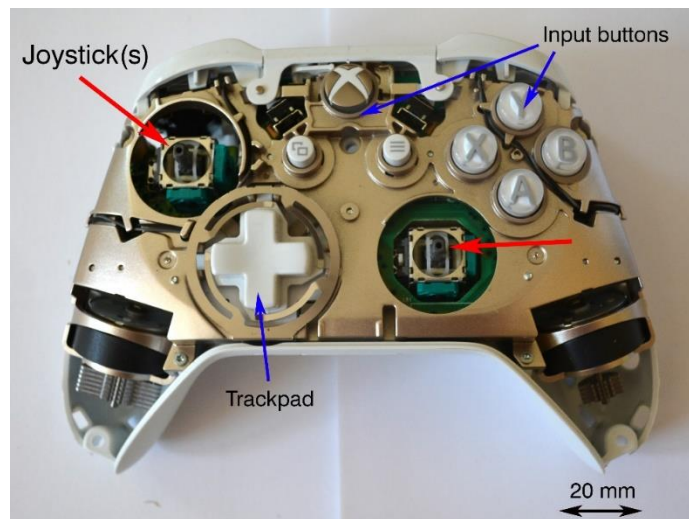
- 8 • “a must for any shooter;”
- 9 • “you have a natural advantage there;”
- 10 • “my tool of the trade;”
- 11 • “there is no other option;”
- 12 • “the controllers really help close the skill gap with other players;”
- 13 • “it helps my game;”
- 14 • “you can give it your personality;” and,
- 15 • “the moment you use the Elite controller, it puts the entire experience at a
16 new level.”¹¹

17 85. Despite Microsoft’s representations that its wireless controllers enhance the
18 gaming experience, its wireless Xbox One controllers are defective. Despite being aware of this
19 fact, Microsoft fails to disclose the Defect in marketing or communications with consumers.

20 **Technical Nature of the Defect**

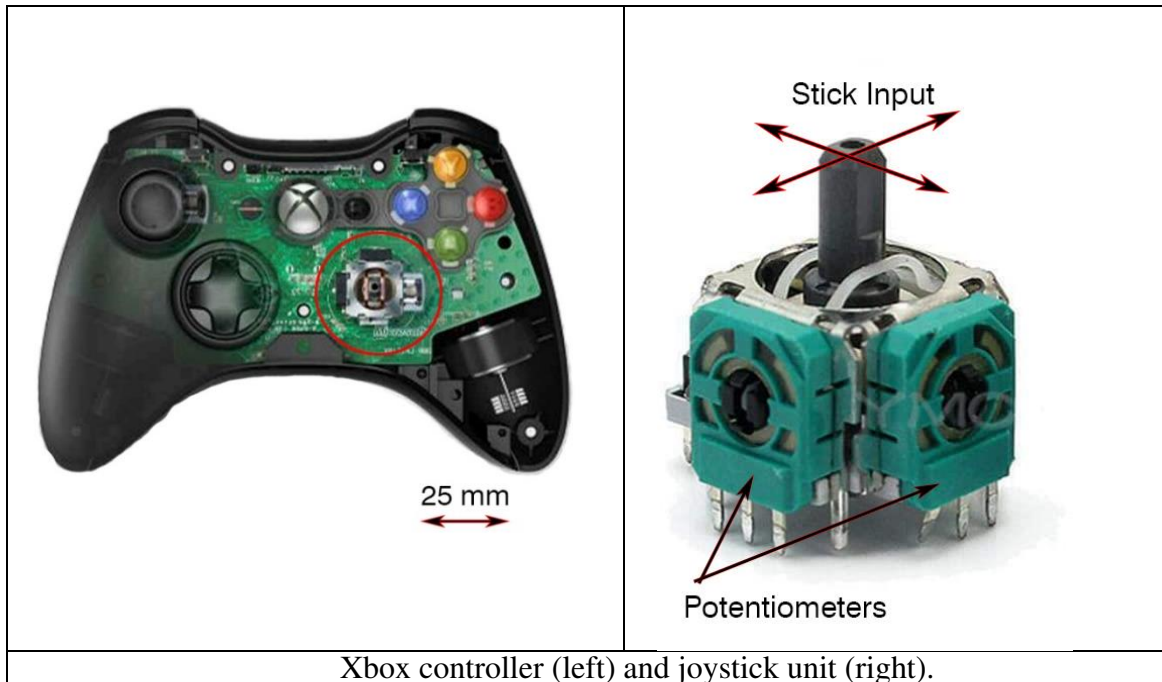
21 86. The design of and selection of materials in the controllers are the cause of the Drift
22 Defect. The picture below shows the inside of an Xbox controller. The layout of the controls is
23 identical for each Xbox One controller.

24
25
26 ¹¹ <https://www.youtube.com/watch?v=kkPN55JNQnY> (last visited Oct. 2, 2020).



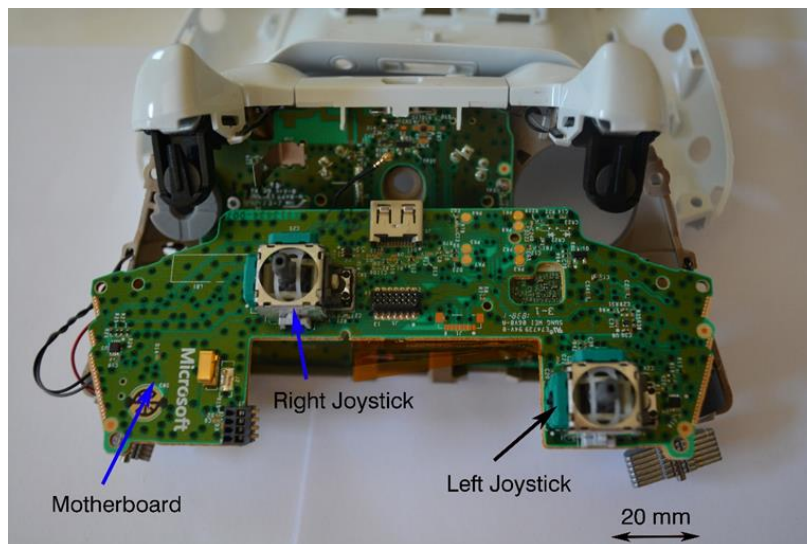
10 87. Both the basic Xbox One controllers and the Elite controllers—despite the
11 abundance of new features—consist of the same gimbal-design, joystick component. Each joystick
12 contains lubricated polyethylene gimbals that connect to the X and Y directional potentiometers.
13 The gimbals convert the up/down (Y direction) and right/left (X direction) motion to rotational
14 motion. The rotational motion is required for the potentiometer to regulate the input signal. Moving
15 the thumb stick pushes a narrow rod that sits in two slotted shafts: forward and backwards affects
16 movement on the Y-axis; left to right, affects movement on the X-axis. The image below illustrates
17 a typical controller revealing part of the circuitry and a generic joystick that is used in Xbox One
18 controllers.

19
20
21
22
23
24
25
26



Xbox controller (left) and joystick unit (right).

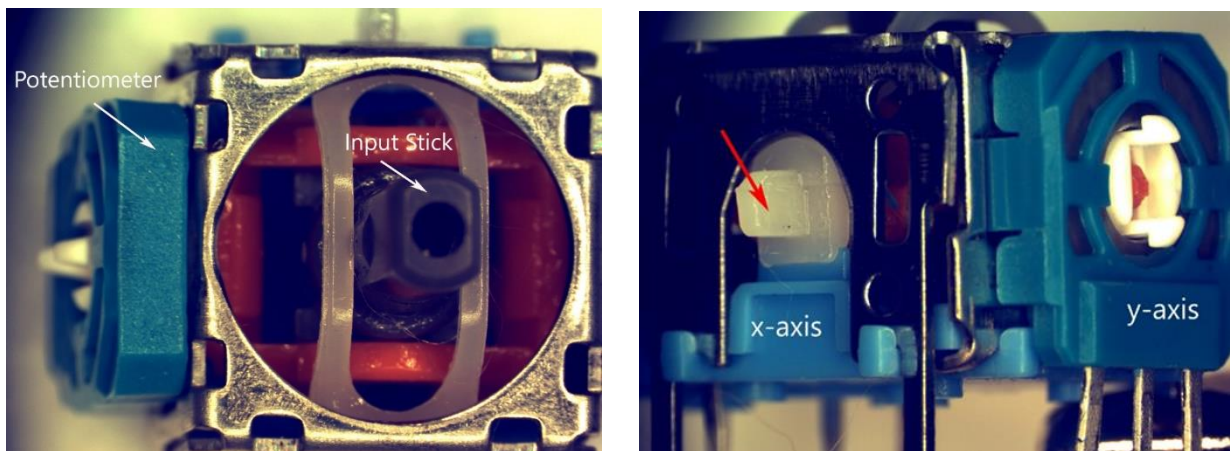
88. Below is an image of the backside of the motherboard illustrating where the joysticks are (the joysticks in this image are reversed, as the motherboard is flipped):



89. A potentiometer is connected to each joystick shaft, as well as the controller's circuit board and works as an electrical circuit. The potentiometer is a very common electrical component that is used to control the flow of electrical current. Each potentiometer consists of a

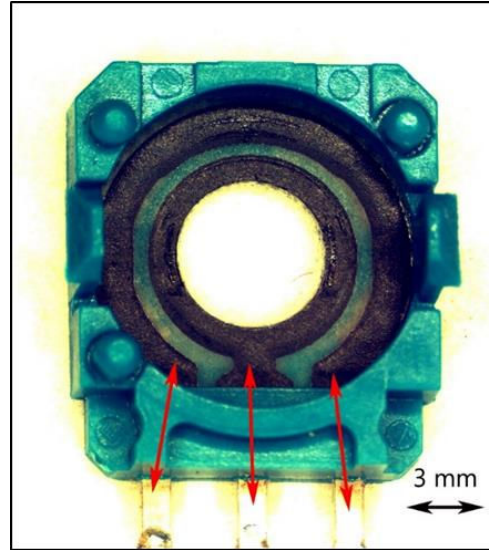
1 curved, resistive track and a contact arm. Moving the contact arm increases or decreases the
2 electrical current flowing through the circuit. The joystick's physical position is translated into an
3 electrical signal, which is then converted into a digital reading that can be read by the operating
4 system.

5 90. The picture below shows the kind of potentiometer used in Xbox One controllers.
6 The image on the left shows a potentiometer for the Y-direction (the X-direction potentiometer
7 was removed). The image on the right illustrates the potentiometer and the plastic tab (red arrow)
8 that moves the potentiometer during use. The plastic tab is at the 12 o'clock position when in the
9 neutral position and will rotate between 11 o'clock and 1 o'clock position.



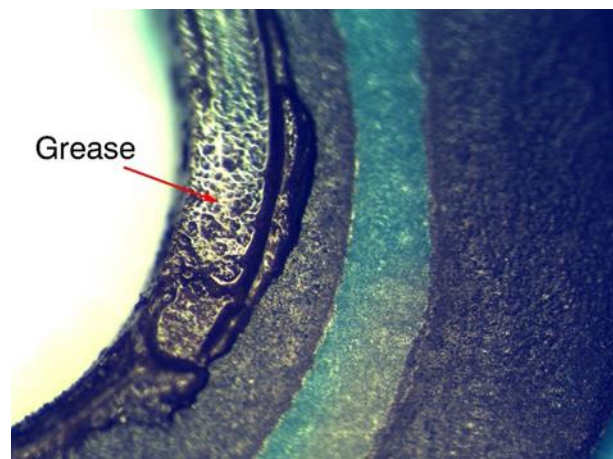
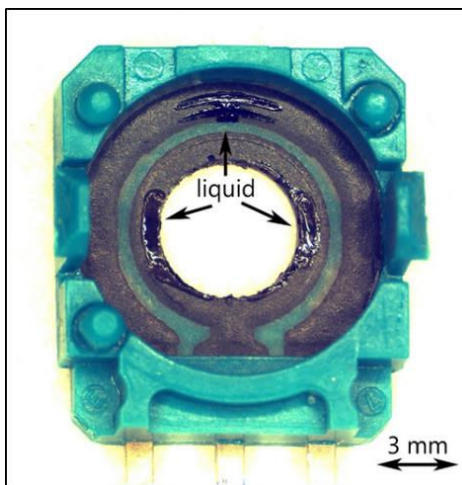
18
19 91. The potentiometer consists of the housing and brush. The blue plastic housing
20 contains the resistive carbon film. The brush consists of a stamped steel circle with wipers
21 formed in four places. The wipers are designed to be small points of contact, with a surface area
22 of less than 1mm. The potentiometer contains a resistive carbon film that forms two concentric
23 circles. Red arrows in the image below indicate where the pins are connected to the film.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26



92. Brush tips sweep across the carbon material in an arc-like motion. Their range of motion is limited to roughly 45 degrees.

93. In Xbox One controllers, the potentiometers contain a design flaw. In an effort to reduce friction and wear of the components sliding against each other, a small amount of grease is placed inside the joystick. The grease is composed of oil, a thickener and additive. This grease breaks down and loses viscosity over time, where heat or friction will accelerate this effect. The base oil then separates and adheres to the carbon film where the brush sweeps.



1 94. The grease is migrating into the potentiometer where it saturates the carbon
2 resistive surface. Subsequent sliding motion of the wiper against the carbon material produces
3 submicron wear particles which mix with the grease and build up on the wiper. The grease changes
4 the contact resistance between the wiper and the resistive surface. The result is a current value that
5 differs from what the circuitry expects, and thus a misinterpretation of the joystick's input. Once
6 this occurs, the joystick registers phantom input or joystick drift, thwarting accurate gameplay.
7 The image below shows excess grease on the wiper sliding path that is pushed aside in a "snow
8 plow"-like effect as the wiper travels on its arc.



17 95. All Xbox One controllers are likely to fail under foreseeable and reasonable use
18 as grease applied in the gimbal has a direct path to the potentiometer.

19 96. Thus, the controllers do not offer "ultimate precision" or "a natural advantage"
20 during gameplay; instead, users must compensate for the drift when gaming, which diminishes
21 performance and detracts from the experience—a fact Microsoft fails to disclose.

22 **Widespread and Enduring Drift Complaints from Consumers**

23 97. Plaintiff's experiences with drift are not isolated. Indeed, a large volume of
24 consumers have been complaining about drift on Xbox One controllers since at least 2014. A
25 simple Google search on this issue reveals multiple forum and message boards dedicated to stick
26

1 drift; YouTube instructional videos of users attempting to fix the issue on their own; and even
2 replacement joystick components from Amazon and other sellers.

3 98. Consumer complaints about stick drift refer to multiple Xbox controllers, including
4 the standard and Elite models. A sampling of these complaints is presented below:

5 **BadBoyzFastToyz, GameSpot, Game FAQs, Xbox One Board, approximately**
6 **2/11/2019¹²**

7 I've had issues on FPS games mostly, and ruined over 4 controllers. One of the
8 main reasons I won't buy an Elite Controller. The system might be great but the
9 controllers went to the lowest bidder and it shows. At least PS3 and PS4 controllers
10 were built better. Never ruined any of them like I do on the 360 and x1. Average, I
11 go through one a year or 2,000 hours of gameplay.

12 **@Whittaker506, ifixit.com, 7/24/2018¹³**

13 Hey guys! I've been having bad upwards stickdrift on my right stick, so I
14 took it apart and adjusted it to nearly completely remove it. It was fine. A bit of tiny
15 downwards drift, but barely noticeable. Not long after, the drift has returned. I going
16 to have to rip it apart and asjust sever times a day, or am I just doing it wrong?

17 **Confucius said, Reddit, 7/27/2014¹⁴**

18 My Day One controller suffers from the same issue with an upward drift.
19 Happened 3 months ago, and i haven't touched my xbox since. I really wish
20 Microsoft would acknowledge that there is indeed a widespread issue and offer a
21 fix or at the very least a discounted replacement. Until then i shall let my xbox sit
22 on the shelf.

23 **SinperLongshot 0, bungie.net 4/8/17¹⁵**

24 Does anyone know how to fix Xbox One controller Drift?

25 I was playing Destiny last night and it started drifting upwards pretty badly.

26 I've searched a few fixes but none of them work. Any ideas?

Edit: Thanks for the suggestions but I just went ahead and bought a new one.

12 <https://gamefaqs.gamespot.com/boards/691088-xbox-one/77344829?page=1> (last visited Oct.
2, 2020).

13 <https://www.ifixit.com/Answers/View/503130/Stick+drift+persistence+after+adjusting+the+sticks>
(last visited Oct. 2, 2020).

14 https://www.reddit.com/r/xboxone/comments/29v8qq/its_time_for_a_serious_discussion_about/cj9ieeg/
(last visited Oct. 2, 2020).

15 <https://www.bungie.net/en/Forums/Post/224628424> (last visited Oct. 2, 2020).

1 **BigIce, Reddit, 4/21/2014**¹⁶

2 my controllers left analog stick started to drift around the middle of March
3 I think. While playing games I can see the character slowly move forward or any
4 directional movements just go upwards. I've seen other people on other sites
5 complaining about it as well. Would it be possible for there to be an update to fix
6 things like this?

7 **TheAkimbro, Reddit, 9/12/2014**¹⁷

8 So I just got stick drift on my controller... my character moves forward if I
9 don't touch the stick now. EXTREMELY annoying. This is the second Xbox One
10 controller that this has happened to. Are these controllers really just that poorly
11 built? Is there any way to fix this?

12 99. Many users describe disassembling their controllers and attempting to fix the
13 problem themselves.

14 **LordNazo, Reddit, "How I Fixed my Stick Drift," approximately May 2019**¹⁸

15 With my first controller, the stick drift only got worse to the point where I couldn't
16 use it anymore, so after buying my second controller and using it (assuming the
17 first controller was just defective), the 2nd controller also started drifting. As soon
18 as I noticed this, I found the video you mentioned and decided to test this "fix" that
19 involved breaking off the gray piece of the joystick component on my first
20 controller since it already past the point of no return. Of course, it only made the
21 input worse, so I opened my 2nd controller and decided to glue that gray panel on
22 the left side of the joystick component, which I noticed was not very tight, like it
23 loosened over time.

24 I still experience some irritating stick drift, but it's been effective at preventing the
25 drift from become worse.

26 100. The problem is so common, there are at least two dozen YouTube tutorials
dedicated to fixing stick drift in Xbox controllers. These DIY videos often suggest either cleaning
or replacing the potentiometer wiper, one or both potentiometers, or replacing the analog sensor
(joystick component) altogether. Both the analog sensor as a unit, and the potentiometers

¹⁶ https://www.reddit.com/r/xboxone/comments/23n1ct/xbox_one_controller_left_analog_and_sensitivity/ (last visited Oct. 2, 2020).

¹⁷ https://www.reddit.com/r/xboxone/comments/2g67i0/stick_drift_again/ (last visited Oct. 2, 2020).

¹⁸ https://www.reddit.com/r/xboxone/comments/ag6w7f/how_i_fixed_my_stick_drift/ (last visited Oct. 2, 2020).

1 individually, are soldered to the motherboard, so replacing these parts requires removing a solder
 2 in order to pull out the defective parts and re-soldering after a new component (often ordered from
 3 a third-party seller for a few dollars) has been inserted. This is intricate and dangerous work that
 4 many do without gloves or without any apparent ventilation for any smoke coming off the solder
 5 point, which is toxic. The analog sensor component is attached to the motherboard at 14 points,
 6 and this DIY fix requires time, expertise and additional equipment. Many decide this is still better
 7 than paying another \$55-180 for a controller that will only start to drift again.

8 Microsoft's Knowledge of the Defect

9 101. Microsoft is aware of the Defect. In the first place, it has received droves of
 10 complaints from consumers about this issue both directly from consumers and through online
 11 forums and social media sites that it monitors.

12 102. Microsoft also controls the manufacture, development, marketing, sales, and
 13 support for the Xbox controllers. Microsoft performed pre-release testing on the Xbox controllers
 14 which should have alerted it to the Defect.

15 103. Numerous complaints posted in Microsoft forums reveal that Microsoft has been
 16 aware of the stick drift defect for many years:

17 Xcaphansolox, Microsoft forum, 12/19/2013¹⁹

18 I'm on my 3rd, yes 3rd Xbox One controller!!!, can't believe this is happening, and
 19 its' always the left stick that keeps faulting / breaking down??? I play 3-4 hours a
 20 day, mostly Fifa 14, the Xbox One controller is just not up to the job, shocking
 manufacturing or design! The Xbox 360 controllers were so much better, rock solid
 - they've lasted years, I did have Day One controller too :-(

21 **Microsoft Ambassador Response, dated 12/29/2013:** Microsoft promised that
 Xbox One controller is better and durable.

22 Boomerb1, Microsoft forum, 5/22/2016²⁰

23 I have had my console for under a year and recently the left analog stick has started
 24 to drift and is starting to make game unplayable because my controller won't stop

25 ¹⁹ https://answers.microsoft.com/en-us/xbox/forum/xba_console/xbox-one-controller-left-stick-faulting/29a5a5d1-02bd-4aa7-843f-334f729ae6a6 (last visited Oct. 2, 2020).

26 ²⁰ <https://answers.microsoft.com/en-us/xbox/forum/all/xbox-one-controller-left-analog-stick-drift/204cb475-f4fe-4dd7-b41d-7c0b125d5ee1> (last visited Oct. 2, 2020).

1 moving my person forward unless I am constantly pushing the stick back. I have
 2 never done anything crazy with the analog stick, it has received mild use over the
 3 past couple months. I am really disappointed with Microsoft and that they cannot
 4 make a reliable controller that lasts.

5 **Jifats, Microsoft forum, 5/9/19²¹**

6 I am so sick of and tired of every xbox one controller that I have starts drifting up.
 7 I have been a loyal xbox player for over 10 years. I own three Xbox one's and have
 8 spent many hours fighting with drifting controllers. Eventually every controller
 9 starts to drift and most after 2 months of playing. I am sick of paying for a new
 10 controller all the time. What are you guys doing about this? I will stop playing Xbox
 11 in total and go to playstaion if you guys can not fix this issue.

12 **SkyRim Legend21, Microsoft Forum, 10/12/2019²²**

13 I think this is familiar too everyone who owns xbox and to be honest its getting on
 14 my nerves, anyone unfamiliar with this allow me to explain, xbox controllers can
 15 start drifting up down left or right without any pressure, and it may look like its
 16 stuck but oh how wrong you are, your right sticks busted, and if you deside too deal
 17 with it it'll make games even more difficult to play, for example fps, its essential
 18 for you too focus your aim in any fps but with the drift problem it makes it way
 19 harder too, now i know the mods at Microsoft can't fix this but at least try to get the
 20 problem known around the place so the manufacturers are aware too fix it, and i
 21 know alot of friends with the same drift problem, so please just fix these defective
 22 controllers, for everybodys sake. Edit* overall even if your a pure brute to it or your
 23 so careful you treat it like a bomb they seem to break just as fast as they get bought,
 24 i hope they make the controllers better as they move on.

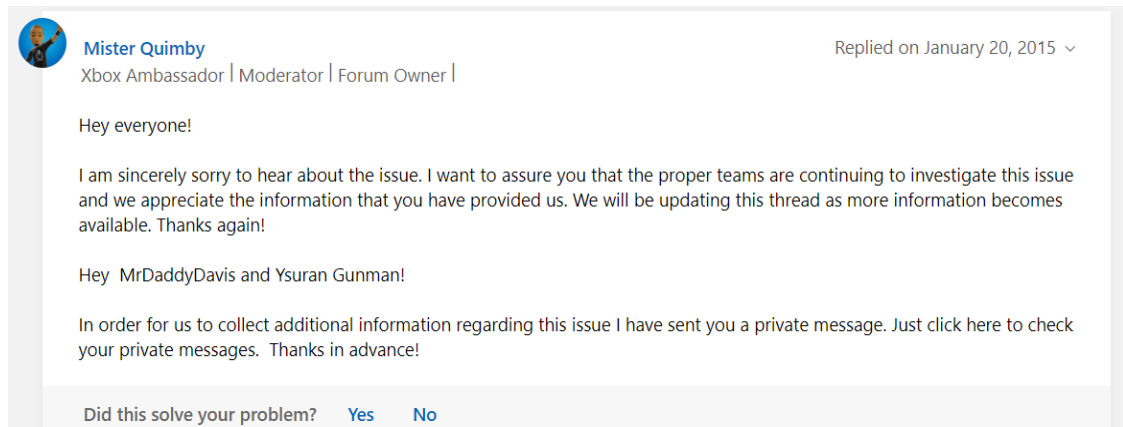
25 104. One thread on the Microsoft forum, "Xbox One Controller Drifting Up," posted
 26 October 10, 2014 is 105 pages long and contains over 1000 posts. A Microsoft "Ambassador"²³
 chimes in occasionally, noting he has sent a private message to the poster.²⁴

27 ²¹ <https://answers.microsoft.com/en-us/xbox/forum/all/xbox-controller-drifting/fd94fa45-7621-494a-be28-ea0e1ca2564d> (last visited Oct. 2, 2020).

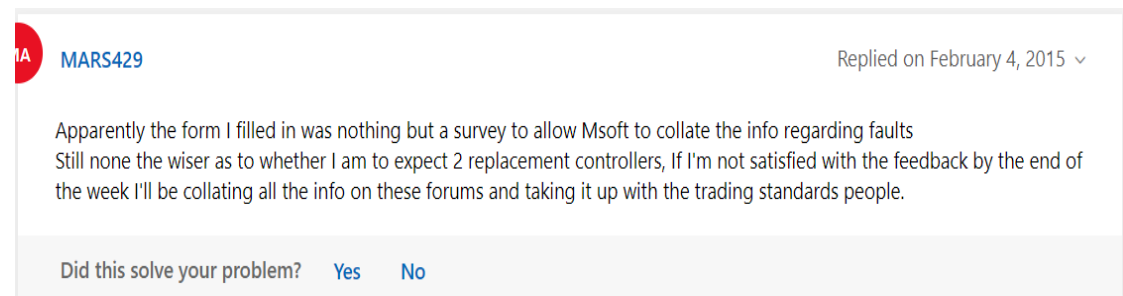
28 ²² <https://answers.microsoft.com/en-us/xbox/forum/all/right-stick-drifting/48a767de-1599-4ae5-9d31-3afefbbc999a?page=2> (last visited Oct. 2, 2020).

29 ²³ An Xbox Ambassador is an individual who has volunteered to assist Microsoft with certain
 30 customer support functions in exchange for perks. Statements and representations made by
 31 Ambassadors can be attributed to Microsoft since the Ambassadors must be approved by Microsoft
 32 to earn the title and their support activities are monitored by Microsoft.

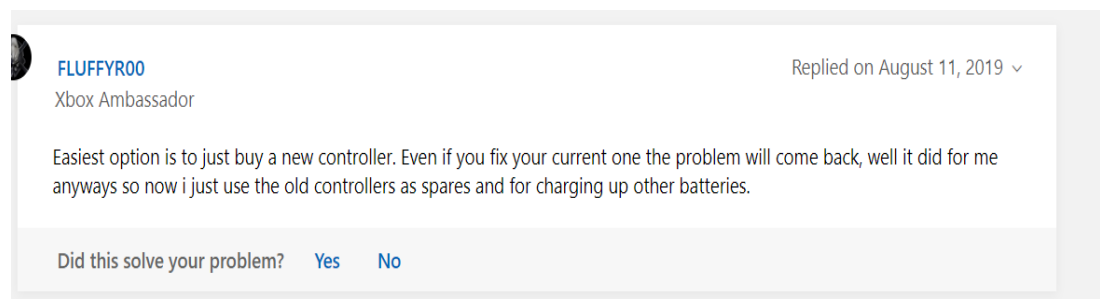
33 ²⁴ <https://answers.microsoft.com/en-us/xbox/forum/xb-console/xbox-one-controller-drifting-up/999d72d5-e8e8-48b8-8458-6a5faad378a3?page=16> (last visited Oct. 2, 2020).



105. Replies later in the thread indicate the private messages contained surveys asking for information regarding their controller issues, revealing that Microsoft was not only aware of the issue but collecting detailed information from users as far back as 2014.²⁵



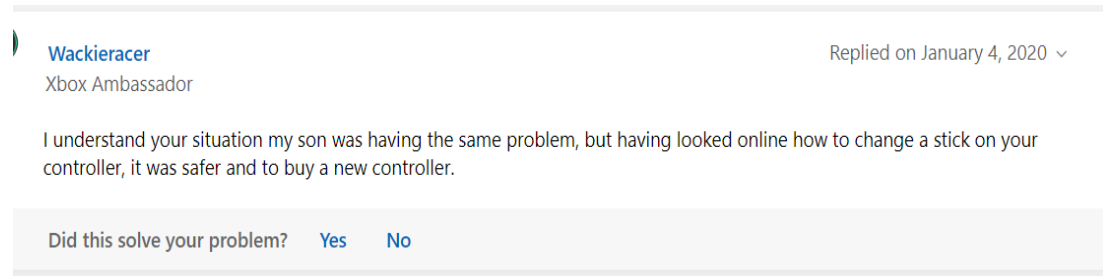
106. Notably, many of the responses to the stick drift complaints on these Microsoft boards advise buying a new controller as the only solution.²⁶



²⁵ https://answers.microsoft.com/en-us/xbox/forum/xba_console/xbox-one-controller-drifting-up/999d72d5-e8e8-48b8-8458-6a5faad378a3?page=22

²⁶ <https://answers.microsoft.com/en-us/xbox/forum/all/xbox-one-x-controller-drift-issue/76410fca-0a99-443b-b70f-03a4c3d809e6>

1 107. Indeed, even in 2020, “Xbox Ambassadors” on the Microsoft forums are still
2 recommending simply replacing the controller.²⁷



8 108. As discussed above, Microsoft touted the Xbox controllers as “advanced” stressing
9 the far superior design which would enhance gaming experience.

10 109. The Xbox controllers are still on the market today.

11 110. Despite knowing about the Defect, Microsoft marketed and sold, and continues to
12 market and sell, the defective Xbox controllers (through third-party retailers) without disclosing
13 the Defect.

14 111. Microsoft could easily disclose the Defect to potential consumers in any number of
15 ways, including on product packaging, in the user manual, on its website, or on its console set-up
16 screen. It does not do so and instead conceals the Defect from consumers.

17 112. Because of Microsoft’s actions, Xbox controller owners have suffered damages in
18 the form of loss of use, failure of the Xbox controllers’ core functionality, loss of the benefit of the
19 bargain, diminution in value of and overpayment for Xbox controllers, and lost time and expense.

20 **V. CLASS ACTION ALLEGATIONS**

21 113. Plaintiffs bring these claims, as set forth below, on behalf of themselves and all
22 others similarly situated, pursuant to the provisions of Rule 23 of the Federal Rules of Civil
23 Procedure. Plaintiffs bring this action on behalf of a Nationwide Class defined as:

24 All persons in the United States who bought any model of a wireless,
25 Microsoft-brand, Xbox One controller.

26 ²⁷ <https://answers.microsoft.com/en-us/xbox/forum/all/controller-stick-drift-needs-recalibration/fc535df6-6e18-40e7-a40a-14f306454ce4>

1 114. Excluded from the Nationwide Class are Defendant and its affiliates, parents,
2 subsidiaries, employees, officers, agents, and directors. In addition, any judicial officer presiding
3 over this matter and the members of their immediate families and judicial staff are excluded.

4 115. Plaintiffs J.A., C.C., A.D., A.H., and J.H bring Counts III and IV, below, on behalf
5 of themselves and as a class action, pursuant to the provisions of Rule 23 of the Federal Rules of
6 Civil Procedure, on behalf of a Nationwide Minor Class defined as:

7 All persons in the United States who bought any model of a wireless, Microsoft-
8 brand, Xbox One controller and, at the time of purchase, were below the age of
9 majority.

10 116. Excluded from the Nationwide Minor Class are Defendant and its affiliates, parents,
11 subsidiaries, employees, officers, agents, and directors. In addition, any judicial officer presiding
12 over this matter and the members of their immediate families and judicial staff are excluded.

13 117. In addition, or in the alternative, Plaintiffs seek certification of the following state
14 classes pursuant to Fed. R. Civ. P. 23(c)(5):

15 **California Class:**

16 All persons who bought any model of a wireless, Microsoft-brand, Xbox
17 One controller in California.

18 **Illinois Class:**

19 All persons who bought any model of a wireless, Microsoft-brand, Xbox
20 One controller in New York.

21 **New York Class:**

22 All persons who bought any model of a wireless, Microsoft-brand, Xbox
23 One controller in New York.

24 **North Carolina Class:**

25 All persons who bought any model of a wireless, Microsoft-brand, Xbox
26 One controller in North Carolina.

1 **California Minor Class:**

2 All persons who bought any model of a wireless, Microsoft-brand, Xbox
3 One controller in California and, at the time of purchase, were below the
4 age of majority.

5 **Illinois Minor Class:**

6 All persons who bought any model of a wireless, Microsoft-brand, Xbox
7 One controller in Illinois and, at the time of purchase, were below the age
8 of majority.

9 **Maryland Minor Class:**

10 All persons who bought any model of a wireless, Microsoft-brand, Xbox
11 One controller in Maryland and, at the time of purchase, were below the age
12 of majority.

13 **North Carolina Minor Class:**

14 All persons who bought any model of a wireless, Microsoft-brand, Xbox
15 One controller in North Carolina and, at the time of purchase, were below
16 the age of majority.

17 118. Certification of Plaintiffs' claims for class-wide treatment is appropriate because
18 Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as
19 would be used to prove those elements in individual actions alleging the same claims.

20 119. **Numerosity—Federal Rule of Civil Procedure 23(a)(1)**. The members of the
21 Classes and Subclasses are geographically dispersed and are so numerous that joinder of all Class
22 members would be impracticable. On information and belief, Class members number in the
23 hundreds of thousands.

24 120. **Commonality and Predominance—Federal Rule of Civil Procedure 23(a)(2)**
25 **and 23(b)(3)**. Common questions of law and fact exist as to all Class members and predominate
26 over questions affecting only individual Class members. Such common questions of law or fact
include, *inter alia*:

a. Whether Defendant engaged in the conduct discussed herein;

- b. Whether wireless Xbox controllers are defective;
- c. Whether the Defect is material to a reasonable consumer;
- d. Whether Defendant placed the wireless, Xbox One controllers in the stream of commerce in the United States with knowledge of the Defect;
- e. Whether Defendant knew or should have known about the Defect and, if so, when Defendant became aware of the Defect;
- f. Whether Defendant knowingly failed to disclose the existence and cause of the Defect;
- g. Whether Defendant violated consumer protection statutes;
- h. Whether Plaintiffs and Class members overpaid for their Xbox controllers in light of the Defect;
- i. Whether Plaintiffs and Class Members are entitled to damages as a result of Defendant's conduct alleged herein, and if so, the amount or proper measure of those damages; and
- j. Whether Plaintiffs and Class Members are entitled to equitable relief, including but not limited to injunctive relief, including public injunctive relief as provided under Washington law (for the Nationwide Class) and California law (for the California Class).

121. **Typicality—Federal Rule of Civil Procedure 23(a)(3)**: Plaintiffs' claims are typical of the claims of the other Class members because, among other things, all Class members purchased a wireless, Xbox One controller, either individually or in a bundle. Defendant engaged in a common course of conduct giving rise to the legal rights sought to be enforced by Plaintiffs, on behalf of himself and other Class members. Plaintiffs and all Class Members have the same claims related to the same conduct alleged herein, and Plaintiffs and all Class Members sustained economic injury arising out of Defendant's wrongful conduct in selling and failing to remedy the defective, wireless, Xbox One controllers. Further, there are no defenses available to Defendant

1 that are unique to Plaintiffs.

2 122. **Adequacy of Representation—Federal Rule of Civil Procedure 23(a)(4).**

3 Plaintiffs are adequate Class representatives because their interests do not conflict with the
4 interests of the other Class members they seek to represent, they have retained counsel competent
5 and experienced in complex class action litigation, and Plaintiffs will prosecute this action
6 vigorously. The Class’ interests will be fairly and adequately protected by Plaintiffs and their
7 counsel.

8 123. **Insufficiency of Separate Actions—Federal Rule of Civil Procedure 23(b)(1).**

9 Absent a representative class action, members of the Class would continue to suffer the harm
10 described herein, for which they would have no remedy. Even if separate actions could be brought
11 by individual consumers, the resulting multiplicity of lawsuits would cause undue hardship and
12 expense for both the Court and the litigants, as well as create a risk of inconsistent rulings and
13 adjudications that might be dispositive of the interests of similarly situated consumers,
14 substantially impeding their ability to protect their interests, while establishing incompatible
15 standards of conduct for Microsoft. The Class thus satisfies the requirements of Fed. R. Civ. P.
16 23(b)(1).

17 124. **Superiority—Federal Rule of Civil Procedure 23(b)(3).** A class action is

18 superior to any other available means for the fair and efficient adjudication of this controversy,
19 and no unusual difficulties are likely to be encountered in the management of this class action. The
20 damages or other financial detriment suffered by Plaintiffs and the other Class members are
21 relatively small compared to the burden and expense that would be required to individually litigate
22 their claims against Microsoft, so it would be impracticable for Class members to individually seek
23 redress for Microsoft’s wrongful conduct. Even if Class members could afford individual
24 litigation, the court system could not. Individualized litigation creates a potential for inconsistent
25 or contradictory judgments and increases the delay and expense to all parties and the court system.
26 By contrast, the class action device presents far fewer management difficulties and provides the

1 benefits of a single adjudication, economy of scale, and comprehensive supervision by a single
2 court.

3 125. In the alternative, to certification pursuant to Rule 23(b)(3), Plaintiff submits that
4 certification is proper as to certain issues pursuant to Rule 23(c)(4).

5 **ESTOPPEL FROM PLEADING AND TOLLING OF**
6 **APPLICABLE STATUTES OF LIMITATIONS**

7 126. Microsoft had prior knowledge and information, much of which in its exclusive
8 possession from product testing and validation, about the stick drift defect at issue before Plaintiffs
9 and class members knew or could have known.

10 127. Microsoft is estopped from relying on any statutes of limitation or repose due to its
11 acts of concealment. Microsoft knew about the defect for years, but concealed it and/or failed to
12 alert purchasers or potential purchasers. Defendant maintained exclusive control over information
13 concerning the known, but non-public, defect and the number of class devices at issue; Plaintiffs
14 and class members, therefore, could not reasonably have known about the existence of the defect
15 or the number of class devices affected. Thus, Defendant is estopped from relying on any statutes
16 of limitations or repose that might otherwise be applicable to the claims asserted herein.

17 **PUBLIC INJUNCTIVE RELIEF**

18 128. Plaintiffs seek an injunction on behalf of themselves, the putative class, and the
19 general public, prohibiting Microsoft from making material omissions and misrepresentations to
20 the public as to the nature of its Xbox controllers. Plaintiffs seek a public injunction requiring
21 Microsoft to notify all Xbox controller owners, and the public at large, about the Defect, setting
22 forth a description of the Defect in Xbox controllers and that the Xbox controllers do not perform
23 as marketed.

24 129. Along with Plaintiffs' prayers for monetary relief, the injunctive relief sought is
25 essential to stopping Microsoft's continuing deceptive scheme. In the absence of an injunction,
26 Microsoft will remain free to continue to mislead members of the public regarding the Defect,

1 causing consumers to believe Microsoft’s material misrepresentations and omissions concerning
2 the function and reliability of the Xbox controllers.

3 130. Microsoft lures consumers into purchasing the Xbox controllers by touting the
4 Xbox controllers as superior controllers that enhance gameplay, describing the Elite controllers as
5 the “world’s most advanced controller” and emphasizing the Xbox one joysticks and buttons as
6 possessing “Ultimate Precision.” Microsoft does not disclose to consumers that the Xbox
7 controllers are defective, causing the joystick component to fail. Members of the general public
8 have the right to know the latent defects with the Xbox controller components.

9 131. The injunctive relief sought by Plaintiffs will protect the public from Microsoft’s
10 deceitful marketing practices which misrepresent and omit material facts. Plaintiffs seek to enjoin
11 Microsoft from misrepresenting the features of its Xbox One controllers and Elite controllers to
12 the public.

13 **PLAINTIFFS’ CLAIMS FOR RELIEF ARE PROPERLY BEFORE THIS COURT**

14 132. Plaintiffs are informed and believe that Microsoft purports to require every
15 consumer in the United States who purchases an Xbox controller to abide by an arbitration
16 agreement. The arbitration agreement is a pre-drafted form agreement that was drafted in its
17 entirety by Microsoft and presented to consumers following the point of sale on a non-negotiable,
18 take-it-or-leave-it basis. The arbitration agreement is procedurally and/or substantively
19 unconscionable, invalid, and unenforceable, because, *inter alia*, users are not required to manifest
20 assent to arbitrate their claims, there is no opt-out provision, and the temporal limitations prevent
21 users from effectively vindicating their statutory causes of action in the arbitral forum.

22 133. Even if the arbitration agreement is applied in accordance with its own terms, the
23 arbitration agreement prohibitions on public injunctive relief are unenforceable as applied to the
24 claims asserted in this action under California law.

25 134. Paragraph 20 of the “Binding Arbitration and Class Action Waiver” (“Arbitration
26 Terms”) provides that “any claim or controversy” concerning the “Microsoft Device, ... any

1 replacement device provided or purchased, ... under any legal theory” must be resolved “through
2 binding individual arbitration.”²⁸

3 135. Paragraph 20 of the Arbitration Terms further provides that class action or
4 representative actions are prohibited and any disputes with Microsoft must be resolved through
5 individual arbitration only:

6 Class action lawsuits, class-wide arbitrations, private attorney-general
7 actions, and any other proceeding where someone acts in a representative
8 capacity aren’t allowed. Nor is combining individual proceedings without
the consent of all parties.

9 136. Paragraph 20(d) provides that an arbitrator “may award declaratory or injunctive
10 relief only to you individually to satisfy your individual claim.”

11 137. Paragraph 20(d) further states that “a court has exclusive authority to enforce the
12 prohibition on arbitration on a class-wide basis or in a representative capacity.”

13 138. The limitations, restrictions, and deprivations of statutory rights imposed by
14 Paragraph 20 are unlawful, unenforceable, and contrary to the public policy of the State of
15 California, and therefore do not apply to the California claims in this action.

16 139. Further, Paragraph 20(d) vests jurisdiction in the Court, not an arbitrator, to
17 determine the enforceability of the prohibition on arbitration on a class-wide basis or in a
18 representative capacity, which Plaintiffs are challenging in this class action lawsuit.

19 140. The mandate in Paragraph 20(d) that the arbitrator may only award injunctive relief
20 to a user “individually to satisfy [an] individual claim” is unlawful, unenforceable, and void
21 because it purports to prevent consumers from pursuing a consumer protection claim that seeks a
22 public injunction under California law, as Plaintiffs seek in this case. *See, e.g. McGill v. Citibank,*
23 *N.A.*, 2 Cal.5th 945, 961 (2017) (contract provision that purposes to preclude consumers from
24 seeking an injunction for the benefit of the general public is void); Cal. Civ. Code § 3515 (“Any
25

26 ²⁸ See <https://support.xbox.com/help/hardware-network/warranty-service/microsoft-device-service-terms-and-conditions>.

1 one may waive the advantage of a law intended solely for his benefit. But a law established for a
2 public reason cannot be contravened by a private agreement.”). The Federal Arbitration Act, 9
3 U.S.C., § 2, expressly preserves from federal preemption any state contract law rule of general
4 application, such as Civil Code § 3515 and the rule announced in *McGill*. See *McGill*, 2 Cal.5th at
5 961-66.

6 141. As discussed herein, Plaintiffs seek a public injunction within the meaning of
7 *McGill*, and the requested public injunction would by its nature affect other owners besides the
8 individual bringing the claim. Because the right to seek a public injunction is not waivable,
9 Microsoft’s prohibition against public injunctive relief in Paragraph 20 of its Arbitration Terms is
10 void and cannot be enforced with respect to Plaintiffs’ claims for public injunctive relief.

11 142. The arbitration agreement is also unenforceable against the minor Plaintiffs and
12 class members because as minors they may disaffirm contracts.

13 **VI. CAUSES OF ACTION**

14 **COUNT I**

15 **BREACH OF EXPRESS WARRANTY**

16 **(On behalf of Plaintiffs McFadden, Petti, and Whisnant, and the Nationwide Class or,
17 alternatively, each of the non-Minor State Classes)**

18 143. Plaintiffs incorporate by reference each preceding and succeeding paragraph as
19 though fully set forth herein.

20 144. Microsoft is a “merchant” as defined under the Uniform Commercial Code
21 (“UCC”).

22 145. The Xbox controllers are “goods” as defined under the UCC.

23 146. Microsoft expressly warranted that the Xbox controllers were of high quality and,
24 at a minimum, would actually work properly and be suitable for gameplay. Microsoft specifically
25 warranted attributes and general functionality of the Xbox controllers.

26 147. Microsoft also expressly warranted that it would repair and/or replace defects in
material and/or workmanship free of charge that occurred during the applicable warranty periods.

1 148. Microsoft breached its warranties by selling to Plaintiffs and Class members Xbox
2 controllers with a known defect, and which are not of high quality, and are predisposed to fail
3 prematurely and/or fail to function properly. Microsoft also breached its warranty by not correcting
4 the Defect and failing to provide an adequate repair when contacted by Plaintiffs and Class
5 members following manifestation of the Defect.

6 149. Plaintiffs notified Microsoft of the breach within a reasonable time or were not
7 required to do so, because affording Microsoft a reasonable opportunity to cure tis breach of
8 written warranty would have been futile. Microsoft also knew of the Defect and chose to conceal
9 it and to fail to comply with its warranty obligations.

10 150. Microsoft’s attempt to disclaim or limit these express warranties vis-à-vis
11 consumers is unconscionable and unenforceable under these circumstances. Microsoft’s warranty
12 limitation is unenforceable because it knowingly sold a defective product without informing
13 consumers about the Defect. In addition, Microsoft’s attempt to disclaim or limit its warranty by
14 asserting that opening the Xbox controller automatically voids the warranty is unconscionable and
15 a violation of the FTC Act.

16 151. Microsoft’s attempt to limit its express warranty in a manner that would result in
17 replacing its defectively designed Xbox controllers with identical defective Xbox controllers
18 causes the warranty to fail its essential purpose and renders the warranty null and void.

19 152. The time limits contained in Microsoft’s warranty period are also unconscionable
20 and inadequate to protect Plaintiffs and Class members. Among other things, Plaintiffs and Class
21 members had no meaningful choice in determining these time limitations, the terms of which
22 unreasonably favor Microsoft. A gross disparity in bargaining power exists between Microsoft and
23 Class members, and Microsoft knew or should have known that the Xbox controllers were
24 defective at the time of sale and would fail well before the end of their useful lives.

25 153. These warranties formed the basis of the bargain that was reached when Plaintiffs
26 and other Class members purchased Xbox controllers.

1 154. Plaintiffs and other Class members have complied with all obligations under the
2 warranty, or otherwise have been excused from performance of said obligations as a result of
3 Microsoft's conduct described herein.

4 155. As a direct and proximate cause of Microsoft's breach, Plaintiffs and Class
5 members bought Xbox controllers they otherwise would not have, overpaid for their Xbox
6 controllers, did not receive the benefit of their bargain, and their Xbox controllers suffered a
7 diminution in value. Plaintiffs and Class members have also incurred and will continue to incur
8 costs for repair and replacement of their defective Xbox controllers.

9 156. Plaintiffs and Class members are entitled to legal and equitable relief against
10 Microsoft, including damages, consequential damages, specific performance, attorney fees, costs
11 of suit, and such further relief as the Court may deem proper.

12 **COUNT II**

13 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**
14 **(On behalf of Plaintiffs McFadden, Petti, and Whisnant, and the Nationwide Class or,**
15 **alternatively, each of the non-Minor State Classes)**

16 157. Plaintiffs, individually and on behalf of the Nationwide Class, repeat and reallege
17 the foregoing paragraphs as though fully set forth herein.

18 158. Microsoft is a "merchant" as defined under the UCC.

19 159. The Xbox controllers are "goods" as defined under the UCC.

20 160. A warranty that Xbox controllers were in merchantable quality and condition is
21 implied by law in transactions for the purchase of Xbox controllers. Microsoft impliedly warranted
22 that the Xbox controllers were of good and merchantable condition and quality, fit for their
23 ordinary intended use, including with respect to reliability, operability, gameplay, and substantial
24 freedom from defects.

25 161. The Xbox controllers, when sold, and at all times thereafter, were not in
26 merchantable condition and are not fit for the ordinary purpose for which they are used. The Xbox

1 Defect renders the devices unmerchantable, as they are unreliable, partially or fully inoperable,
2 and not substantially free from defects.

3 162. Microsoft was provided with notice of the issues complained of herein by numerous
4 complaints filed against them, including the instant lawsuit, within a reasonable amount of time.

5 163. Plaintiffs and the other Class members had sufficient direct dealings with either
6 Microsoft or its agents to establish privity of contract between Microsoft on one hand, and
7 Plaintiffs and each of the Class members on the other hand. Nonetheless, privity is not required
8 here because Plaintiffs and each of the Class members are intended third-party beneficiaries of
9 contracts between Microsoft and its third-party retailers, and specifically, of Microsoft's implied
10 warranties. The dealers were not intended to be the ultimate consumers of the devices and have no
11 rights under the warranty agreements; the warranty agreements were designed for and intended to
12 benefit the consumers only.

13 164. As a direct and proximate result of the breach of said warranties, Plaintiffs and
14 Class members were injured, and are entitled to damages.

15 **COUNT III**
16 **VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT**
17 **Wash. Rev. Code. Ann. § 19.86.010 *et seq.* (“Washington CPA”)**
18 **(On behalf of all Plaintiffs, the Nationwide Class, and the Nationwide Minor Class)**

19 165. Plaintiffs J.A., C.C., A.D., A.H., J.H., McFadden, Petti, and Whisnant, individually
20 and on behalf of the Nationwide Class, repeat and reallege the foregoing paragraphs as though
21 fully set forth herein.

22 166. The Washington CPA prohibits unfair and deceptive acts or practices in the conduct
23 of any trade or commerce.

24 167. Defendant is a “person” within the meaning of the WCPA, § 19.86.010(1), and
25 conduct “trade” and “commerce” within the meaning of the CPA § 19.86.010(2).

26 168. Plaintiffs and members of the Class are “persons” within the meaning of the
WCPA, § 19.86.010(1).

1 169. By reason of the conduct alleged herein, Defendant engaged in unlawful, unfair,
2 and deceptive practices within the meaning of the CPA.

3 170. Defendant engaged in materially misleading acts and practices by marketing and
4 representing their wireless, Xbox controllers were functional, superior products that enhanced
5 gameplay while failing to disclose a significant defect causes stick drift.

6 171. Defendant's omissions and representations were likely to mislead a consumer
7 acting reasonably under the circumstances. Video game players are concerned about the
8 functionality of their controllers as video games cannot be played without them and would,
9 therefore, find it material if a controller enhanced game play or, in contrast, contained a defect that
10 rendered the controller unfit for its ordinary purpose.

11 172. Defendant's failure to disclose the stick drift was also unfair, because it causes
12 substantial injury to consumers without any countervailing benefit. To market and price a
13 controller as a superior, platform-enhancing product while concealing the joystick contains a
14 defect that interferes with gameplay is unethical and unscrupulous.

15 173. The aforementioned conduct is and was deceptive and false. Defendant's wrongful
16 conduct caused Plaintiff and the Class to suffer consumer-related injuries by causing them to pay
17 more for a product than it was worth, and to spend money and time attempting to repair the defect,
18 and/or purchase a controller without the defect.

19 174. Defendant made the claims willingly and knowingly, despite consumer complaints
20 dating to at least 2014.

21 175. Defendant alone possessed material information about the defect in the form of pre-
22 market testing, complaints, warranty requests and other information not available to Plaintiffs, nor
23 the Class.

24 176. Defendant's violations present a continuing risk to Plaintiffs and the general public.
25 Defendant's unlawful acts and practices complained of herein affect the public interest and are
26 likely to be repeated.

1 177. As a direct and proximate result of Defendant's violations of the above, Plaintiff
2 and Class Members suffered damages including, but not limited to: (1) paying more for wireless,
3 Microsoft Xbox One controllers than they were worth and more than Plaintiff and Class Members
4 would have had they known of the defect, (2) paying out of pocket attempting to repair the defect
5 and/or for replacement controllers; and (3) lost time addressing the defect.

6 178. Plaintiff, individually and on behalf of the Class, seeks relief in the form of
7 injunctive relief, actual damages, treble damages, and reasonable attorneys' fees, pursuant to
8 Wash. Rev. Code § 19.86.090.

9 179. In accordance with § 19.86.095, a copy of this Amended Complaint is being served
10 on the Attorney General of Washington.

11 **COUNT IV**
12 **UNJUST ENRICHMENT**
13 **(On behalf of Plaintiffs J.A., C.C., A.D., A.H., and J.H., and the**
14 **Nationwide Minor Class)**

15 180. Plaintiffs J.A., C.C., A.D., A.H., and J.H., individually and on behalf of the
16 Nationwide Minor Class, repeat and reallege the foregoing paragraphs as though fully set forth
17 herein.

18 181. By means of the wrongful conduct alleged herein, Microsoft knowingly
19 misrepresented their wireless, Xbox controllers as functional, superior products that enhanced
20 gameplay while failing to disclose a significant defect causes stick drift. Microsoft's conduct was
21 unfair, unconscionable, and oppressive.

22 182. The Minor Plaintiffs and members of the Minor Class conferred an economic
23 benefit on Microsoft by paying for their wireless, Xbox controllers, and Microsoft had an
24 appreciation or knowledge of the benefit conferred by the Minor Plaintiffs and the members of the
25 Minor Class.

26 183. Microsoft accepted and retained the economic benefit conferred by the Minor
Plaintiffs and members of the Minor Class under circumstances as to make it inequitable for
Defendant to retain the benefit without payment of its value.

1 184. The financial benefits obtained by Microsoft rightfully belong to the Minor
2 Plaintiffs and members of the Minor Class. Microsoft should be compelled to disgorge in a
3 common fund for the benefit the Minor Plaintiffs and members of the Minor Classes all wrongful
4 or inequitable proceeds of their conduct. A constructive trust should be imposed on all wrongful
5 or inequitable sums received by Defendant traceable to the Minor Plaintiffs and members of the
6 Minor Class.

7 **COUNT V**
8 **VIOLATION OF THE CALIFORNIA CONSUMERS LEGAL REMEDIES ACT**
9 **CAL. BUS. & PROF. CODE § 1750, *et seq.* (“CLRA”)**
10 **(On Behalf of Plaintiff A.D. and the California Minor Class, and**
11 **Plaintiff Petti and the California Class)**

12 185. Plaintiffs repeat and reallege the above allegations as if fully set forth herein.

13 186. Plaintiff A.D. brings this Count on behalf of the California Minor Class and
14 Plaintiff Petti brings this Count on behalf of the California Class.

15 187. The CLRA proscribes “unfair methods of competition and unfair or deceptive acts
16 or practices undertaken by any person in a transaction intended to result or which results in the sale
17 of goods or services to any consumer.”

18 188. Microsoft is a “person” as that term is defined in CAL. CIV. CODE § 1761(c).

19 189. The wireless Xbox controllers are “goods” as defined in CAL. BUS. & PROF.
20 CODE § 1761(a).

21 190. Plaintiffs and the members of the California Class are “consumers” as defined in
22 CAL. BUS. & PROF. CODE § 1761(d), and Plaintiffs, the members of the California Class, and
23 Defendant are “persons” as defined in CAL. BUS. & PROF. CODE § 1761(c).

24 191. As alleged above, Defendant engaged in unfair and deceptive acts and practices by
25 marketing and representing their wireless Xbox controllers were functional, superior products that
26 enhanced gameplay while knowingly and intentionally failing to disclose that the controllers suffer
from the Defect.

1 192. Defendant’s omissions and representations were likely to mislead a consumer acting
2 reasonably under the circumstances. Video game players are concerned about the functionality of
3 their controllers as video games cannot be played without them and would, therefore, find it material
4 if a controller enhanced game play or, in contrast, contained a defect that rendered the controller
5 unfit for its ordinary purpose.

6 193. Defendant’s conduct, as described herein, was and is in violation of the CLRA.
7 Defendant’s conduct violates at least the following enumerated CLRA provisions: (i) § 1770(a)(2):
8 Misrepresenting the approval or certification of goods; (ii) § 1770(a)(5): Representing that goods
9 have sponsorship, approval, characteristics, uses, benefits, or quantities which they do not have; (iii)
10 § 1770(a)(7): Representing that goods are of a particular standard, quality, or grade, if they are of
11 another; (iv) § 1770(a)(9): Advertising goods with intent not to sell them as advertised; and (v) §
12 1770(a)(16): Representing that goods have been supplied in accordance with a previous
13 representation when they have not.

14 194. Plaintiffs A.D. and Petti and the members of the California Minor Class and
15 California Class have suffered injury in fact and actual damages resulting from Defendant’s material
16 omissions and misrepresentations because, *inter alia*, they lost money when they purchased their
17 wireless Xbox controllers, and/or paid an inflated purchase price for them, and/or later expended
18 money and time to attempt to repair them.

19 195. Defendant made the claims willingly and knowingly, despite consumer complaints
20 dating to at least 2014.

21 196. Defendant alone possessed material information about the defect in the form of pre-
22 market testing, complaints, warranty requests and other information not available to Plaintiffs A.D.
23 and Petti, nor the California Minor Class and California Class.

24 197. Defendant’s violations present a continuing risk to Plaintiffs A.D. and Petti, the
25 California Minor Class, California Class, and the general public. Defendant’s unlawful acts and
26 practices complained of herein affect the public interest and are likely to be repeated.

1 198. Microsoft knew that its Xbox controllers were defective, would fail prematurely,
2 and were not suitable for their intended use.

3 199. Microsoft was under a duty to Plaintiffs A.D. and Petti and California Minor Class
4 Members and California Class Members to disclose the defective nature of the controllers because:
5 (1) Microsoft was in a superior position to know the true state of facts about the Defect; (2) Plaintiff
6 A.D. and the California Minor Class Members and Plaintiff Petti and the California Minor Class
7 Members could not reasonably have been expected to learn or discover that the devices had a
8 defect at the time of purchase; and (3) Microsoft knew that Plaintiff A.D. and the California Minor
9 Class Members, and Plaintiff Petti and the California Class Members, could not reasonably have
10 been expected to learn or discover the Defect and the associated costs until the manifestation of
11 the Defect.

12 200. In failing to disclose the Defect and the associated costs and harm that result from
13 it, Microsoft has knowingly and intentionally concealed material facts and breached its duty to
14 disclose this material information.

15 201. The facts concealed or not disclosed by Microsoft to Plaintiff A.D. and the
16 California Minor Class Members, and Plaintiff Petti and the California Class Members, are
17 material in that a reasonable consumer would have considered them to be important in deciding
18 whether the purchase the controllers or pay a lesser price. Had Plaintiff A.D. and the California
19 Minor Class Members, and Plaintiff Petti and the California Class Members, known about the
20 defective nature of the Xbox controllers, they would not have purchase them or would have paid
21 less for them than they did.

22 202. As a direct and proximate result of Defendant's violations of the above, Plaintiff
23 A.D. and California Minor Class Members, and Plaintiff Petti and California Class Members,
24 suffered damages including, but not limited to: (1) paying more for wireless, Microsoft Xbox One
25 controllers than they were worth and more than Plaintiffs and Class Members would have had they
26

1 known of the defect, (2) paying out of pocket attempting to repair the defect and/or for replacement
2 controllers; and (3) lost time addressing the defect.

3 203. This cause of action seeks injunctive relief and monetary damages. Plaintiff Petti
4 sent a demand letter to Defendant via certified mail on or about November 20, 2019 pursuant to
5 the requirements of the CLRA in order to provide the notice required by CAL. CIV. CODE §
6 1782(a). The CLRA letter advised Defendant that it is in violation of the CLRA and must correct,
7 replace or otherwise rectify the goods alleged to be in violation of CAL. CIV. CODE § 1770.
8 Defendant was further advised therein that in the event the relief requested was not provided within
9 thirty (30) days, Plaintiff Petti would file suit with a request for public injunctive relief and
10 monetary damages pursuant to the CLRA. Over 30 days have now passed, and Defendant did not
11 correct, replace, or otherwise rectify the goods and issues alleged in Plaintiff Petti's CLRA notice
12 or this complaint within the statutorily proscribed 30-day period. Plaintiffs therefore seek both
13 public injunctive relief and monetary damages against Defendant pursuant to the CLRA, CAL.
14 CIV. CODE §§ 1781 and 1782.

15 204. Plaintiffs further seek an order awarding costs of court and attorneys' fees pursuant
16 to CAL. CIV. CODE § 1780(e).

17 205. Plaintiffs A.D. and Petti's CLRA venue declarations are attached hereto.

18 **COUNT VI**
19 **VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW**
20 **CAL. BUS. & PROF. CODE § 17200, *et seq.* ("UCL")**
21 **(On Behalf of Plaintiff A.D. and the California Minor Class and**
22 **Plaintiff Petti and the California Class)**

23 206. Plaintiffs repeat and allege the above allegations as if fully set forth herein

24 207. Plaintiff A.D. brings this Count on behalf of the California Minor Class and
25 Plaintiff Petti brings this Count on behalf of the California Class.

26 208. The UCL proscribes acts of unfair competition, including "any unlawful, unfair or
fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising."

1 209. Defendant's conduct, as described herein, was and is in violation of the UCL.
2 Defendant's conduct violates the UCL in at least the following ways:

3 a. Knowingly and intentionally concealing from Plaintiff A.D. and the California
4 Minor Class, and Plaintiff Petti and the members of the California Class, the existence of the stick
5 drift defect in the Xbox One wireless controllers;

6 b. Marketing the Xbox One wireless controllers as being functional and not possessing
7 a defect that would render them useless; and

8 c. violating other California laws, including California laws governing false advertising
9 and consumer protection.

10 210. Defendant's misrepresentations and omissions alleged herein caused Plaintiff A.D.
11 and members of the California Minor Class, and Plaintiff Petti and the members of the California
12 Class, to purchase their Xbox One wireless controllers. Absent these misrepresentations and
13 omissions, Plaintiffs and Class Members would not have purchased their Xbox One wireless
14 controllers at the prices they paid (or purchased them at all).

15 211. Defendant had a duty to disclose these issues because it had exclusive knowledge of
16 the Defect prior to making sales of Xbox One wireless controllers, and because Defendant made
17 partial representations about the quality of the Xbox One wireless controllers, but failed to fully
18 disclose the problems as well.

19 212. Microsoft's conduct also constitutes unfair business practices for at least the
20 following reasons:

21 a. The gravity of harm to Plaintiffs A.D. and Petti, and their respective Classes, from
22 Microsoft's acts and practices far outweighs any legitimate utility of that conduct;

23 b. Microsoft's conduct is immoral, unethical, oppressive, unscrupulous, or
24 substantially injurious to Plaintiffs and members of the proposed California Class; and
25
26

1 c. Microsoft's conduct undermines and violates the stated policies underlying the
2 Consumer Legal Remedies Act –to protect consumers against unfair and sharp business practices
3 and to promote a basic level of honesty and reliability in the marketplace.

4 213. As a direct and proximate result of Defendant's misrepresentations and omissions,
5 Plaintiff A.D. and members of the California Minor Class, and Plaintiff Petti and the members of
6 the California Class, have suffered injury in fact, including lost money or property, because they
7 purchased and paid for a product that they otherwise would not have (or would have paid less for).

8 214. Microsoft's wrongful acts will continue unless restrained and enjoined by order of
9 this Court. Plaintiffs seek to enjoin further unlawful, unfair, and/or fraudulent acts or practices by
10 Defendant under CAL. BUS. & PROF. CODE § 17200. Plaintiff A.D. and the California Minor
11 Class, and Plaintiff Petti and the California Class, are entitled to an injunction and other equitable
12 relief, including restitutionary disgorgement of all profits accruing to Microsoft, because of
13 Microsoft's ongoing unfair and deceptive practices, and such other orders as may be necessary to
14 prevent Microsoft's future violations of the UCL. Pursuant to CAL. BUS. & PROF. CODE §§
15 17203, Plaintiff and the California Class are entitled to (i) an order on behalf of the general public
16 of the State of California enjoining Microsoft from committing violations of the UCL; (ii) requiring
17 Microsoft to immediately cease the sale of Xbox controllers with the Defect; (iii) requiring
18 Microsoft to give individualized notice to all consumers who purchased Xbox controllers in the
19 State of California during the applicable limitations periods and the public at large of the existence
20 of the Defect; (iv) requiring Microsoft to give individualized notice to all consumers who purchased
21 Xbox controllers in the State of California within the applicable limitations periods of their rights
22 under the UCL and applicable California law; (v) requiring Microsoft to repair or replace Class
23 members' Xbox controllers with non-defective Xbox controllers; and (vi) establishing an effective
24 monitoring mechanism to ensure Microsoft's continued compliance with the terms of the injunction.
25 To the extent any of these remedies are equitable, Plaintiff and the California Class seek them in the
26 alternative to any adequate remedy at law they may have.

COUNT VII
**VIOLATIONS OF THE ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS
PRACTICE ACT (“IFCA”)**
815 ILCS 505, et seq.
**(On Behalf of Plaintiff J.A., the
Illinois Class, and the Illinois Minor Class)**

215. Plaintiffs repeat and reallege the above allegations as if fully set forth herein.

216. Plaintiff J.A. brings this claim individually and on behalf of the Illinois Class and Illinois Minor Class.

217. Plaintiff J.A. and the members of the Illinois Class and Illinois Minor Class are “consumers” within the meaning of 815 Ill. Comp. Stat. § 505/1 (e), who purchased Xbox One wireless controllers, which are consumer goods.

218. Plaintiff J.A., members of the Illinois Class, members of the Illinois Minor Class, and Microsoft are “persons” within the meaning of § 505/1 (c).

219. Plaintiff J.A. and the members of the Illinois Class and Illinois Minor Class are entitled to the protections of the IFCA and may recover damages pursuant to its provisions.

220. Microsoft engages in “trade” or “commerce” within the meaning of 815 Ill. Comp. Stat. § 505/1 (f).

221. Microsoft engages in the “sale” of “merchandise” as those terms are defined by 815. Ill. Comp. Stat. § 505/1(b) and (d).

222. The ICFA prohibits “[u]nfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or other concealment, suppression or omission of any material fact, with the intent that others rely upon the concealment, suppression or omission of such material fact . . . in the conduct of any trade or commerce.” 815 Ill. Comp. Stat. § 505/2.

223. Defendant engaged in unfair methods of competition in or affecting commerce, and unfair or deceptive acts and/or practices in or affecting commerce, through their advertisements and outer packaging of Xbox One wireless controllers, by representing to Plaintiff J.A. and the

1 members of the Illinois Class and Illinois Minor Class that the Xbox One wireless controllers were
2 premium and durable controllers with high-end characteristics. Such pattern of conduct was
3 uniform in nature with respect to the marketing and sale of the product.

4 224. Defendant also knowingly concealed, suppressed and consciously omitted material
5 facts from Plaintiff J.A., and members of the Illinois Class and Illinois Minor Class, knowing that
6 consumers would rely on the advertisements and Defendant's uniform representations concerning
7 the Xbox One wireless controllers' high-end features and functionality.

8 225. Defendant's acts and omissions possessed the tendency or capacity to mislead or
9 create the likelihood of deception.

10 226. Defendant's acts and omissions were and are unfair because they offend established
11 public policy.

12 227. Defendant's acts and omissions were and are immoral, unethical, oppressive,
13 unscrupulous, and/or substantially injurious to consumers.

14 228. Defendant's acts and omissions were and are unfair because they amount to an
15 inequitable assertion of its power or position.

16 229. Until the present, Defendant knowingly accepted the benefits of their deception and
17 improper conduct in the form of profits from the increased sale of Xbox One wireless controllers,
18 including replacement controllers.

19 230. As a proximate result of the above-described IFCA violations, Plaintiff J.A. and
20 members of the Illinois Class and Illinois Minor Class: (1) paid more for wireless, Microsoft Xbox
21 One controllers than they were worth and more than Plaintiff and Class Members would have had
22 they known of the Defect, (2) paid out of pocket attempting to repair the Defect and/or for
23 replacement controllers; and (3) lost time addressing the Defect.

24 231. As a direct and proximate result of these unfair, deceptive and unconscionable
25 commercial practices, Plaintiff A.H., and the members of the Illinois Class and Illinois Minor
26 Class, have been damaged, and are entitled under 815 Ill. Comp. Stat. § 505/10a(a) and 815 Ill

1 Comp. Stat. § 505/10(c) to seek actual compensatory and punitive damages, as well as injunctive
2 relief, and reasonable attorneys’ fees and costs.

3 **COUNT VII**
4 **VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW**
5 **GBL § 349**
6 **(On Behalf of Plaintiff McFadden and the New York Class)**

7 232. Plaintiffs repeat and reallege the above allegations as if fully set forth herein.

8 233. Plaintiff McFadden brings this claim on behalf of the New York Class.

9 234. Plaintiff McFadden and New York Class members who purchased Xbox One
10 wireless controllers are “consumers” under GBL § 349.

11 235. GBL § 349 makes unlawful “[d]eceptive acts or practices in the conduct of any
12 business, trade or commerce.”

13 236. Defendant’s sale of Xbox One wireless controllers was a consumer oriented
14 transaction and Defendant’s practices, acts, policies and course of conduct violated GBL § 349 in
15 that:

- 16 a. Defendant engaged in deceptive acts and practices in or affecting
17 commerce, through their advertisements and outer packaging of Xbox One
18 wireless controllers, by representing to Plaintiff McFadden and members of
19 the New York Subclass, among other things, that the products were
20 premium and durable controllers with premium characteristics. Such pattern
21 of conduct was uniform in nature with respect to the marketing and sale of
22 the product.
- 23 b. Defendant also knowingly concealed, suppressed and consciously omitted
24 material facts from Plaintiff and other members of the members of the New
25 York Class – such as the stick drift defect – knowing that consumers would
26 rely on the advertisements and Defendant’s uniform representations

1 concerning the Xbox One wireless controllers' high-end characteristics and
2 functionality in purchasing their Xbox One controllers.

3 237. Defendant's acts and omissions possessed the tendency or capacity to mislead or
4 create the likelihood of deception.

5 238. Until the present, Defendant knowingly accepted the benefits of their deception and
6 improper conduct in the form of profits from the increased sale of Xbox One wireless controllers,
7 including replacement controllers.

8 239. As a direct and proximate result of Defendant's violations of the above, Plaintiff
9 McFadden and Class Members suffered damages including, but not limited to: (1) paying more
10 for wireless, Microsoft Xbox One controllers than they were worth and more than Plaintiff and
11 Class Members would have had they known of the defect, (2) paying out of pocket attempting to
12 repair the Defect and/or for replacement controllers; and (3) lost time addressing the Defect.
13 Plaintiff and New York class members are entitled to recover their actual damages or \$50,
14 whichever is greater. Microsoft acted willfully or knowingly, so Plaintiff and New York class
15 members are entitled to recover three times their actual damages.

16 240. Plaintiff McFadden and New York Subclass Members also seek appropriate
17 equitable relief, including an order requiring Microsoft to adequately disclose and remediate the
18 Defect plaguing its Xbox One wireless controllers, and an order enjoining Microsoft from
19 incorporating the Defect into its controllers in the future. Plaintiff and the Class also seek
20 attorneys' fees and any other just and proper relief available under GBL § 349.

21
22 **COUNT VIII**
23 **VIOLATIONS OF THE NORTH CAROLINA CONSUMER PROTECTION ACT**
24 **N.C. GEN. STAT. § 75-1.1, *et. seq.* ("NCCPA")**
25 **(On Behalf of Plaintiffs A.H., J.H., and Whisnant, the**
26 **North Carolina Class, and the North Carolina Minor Class)**

241. Plaintiffs repeat and reallege the above allegations as if fully set forth herein.

1 242. Plaintiffs A.H., J.H., and Whisnant, bring this claim individually and on behalf of
2 the North Carolina Class and North Carolina Minor Class.

3 243. Plaintiffs A.H., J.H., and Whisnant, and the members of the North Carolina Class
4 and North Carolina Minor Class, are consumers who purchased Xbox One wireless controllers,
5 which are consumer goods.

6 244. Plaintiffs A.H., J.H., and Whisnant, and the members of the North Carolina Class
7 and North Carolina Minor Class are entitled to the protections of the NCCPA and may recover
8 damages pursuant to its provisions.

9 245. N.C. Gen. Stat. § 75-1.1 makes unlawful “[u]nfair methods of competition in or
10 affecting commerce, and unfair or deceptive acts or practices in or affecting commerce.”

11 246. Defendant engaged in unfair methods of competition in or affecting commerce, and
12 unfair or deceptive acts and/or practices in or affecting commerce, through their advertisements
13 and outer packaging of Xbox One wireless controllers, by representing to Plaintiffs A.H., J.H., and
14 Whisnant, and the members of the North Carolina Class and North Carolina Minor Class that the
15 Xbox One wireless controllers were premium and durable controllers with high-end
16 characteristics. Such pattern of conduct was uniform in nature with respect to the marketing and
17 sale of the product.

18 247. Defendant also knowingly concealed, suppressed and consciously omitted material
19 facts from Plaintiffs A.H., J.H., and Whisnant, and members of the North Carolina Class and North
20 Carolina Minor Class, knowing that consumers would rely on the advertisements and Defendant’s
21 uniform representations concerning the Xbox One wireless controllers’ high-end features and
22 functionality.

23 248. Defendant’s acts and omissions possessed the tendency or capacity to mislead or
24 create the likelihood of deception.

25 249. Defendant’s acts and omissions were and are unfair because they offend established
26 public policy.

1 250. Defendant's acts and omissions were and are immoral, unethical, oppressive,
2 unscrupulous, and/or substantially injurious to consumers.

3 251. Defendant's acts and omissions were and are unfair because they amount to an
4 inequitable assertion of its power or position.

5 252. Until the present, Defendant knowingly accepted the benefits of their deception and
6 improper conduct in the form of profits from the increased sale of Xbox One wireless controllers,
7 including replacement controllers.

8 253. As a proximate result of the above-described NCCPA violations, Plaintiffs A.H.,
9 J.H., and Whisnant, and members of the North Carolina Class and North Carolina Minor Class:
10 (1) paid more for wireless, Microsoft Xbox One controllers than they were worth and more than
11 Plaintiff and Class Members would have had they known of the Defect, (2) paid out of pocket
12 attempting to repair the Defect and/or for replacement controllers; and (3) lost time addressing the
13 Defect.

14 254. As a direct and proximate result of these unfair, deceptive and unconscionable
15 commercial practices, Plaintiffs A.H., J.H., and Whisnant, and the members of the North Carolina
16 Class and North Carolina Minor Class, have been damaged in an amount in excess of \$10,000,
17 and are entitled under N.C. Gen. Stat. § 75-16 to recover treble damages as well as attorneys' fees
18 and costs.

19 **VII. DEMAND FOR JURY TRIAL**

20 Plaintiffs demand a trial by jury of all claims so triable.

21 **VIII. REQUEST FOR RELIEF**

22 WHEREFORE, Plaintiffs, individually and on behalf of the other members of the Classes and
23 Subclasses proposed in this Complaint, respectfully requests that the Court enter judgment in their
24 favor and against Microsoft, as follows:

- 25 a. Certifying this action as a class action, with the Classes and Subclasses as
26 defined above;

- 1 b. Appointing Plaintiffs as representative of the Classes and Subclasses;
- 2 c. Appointing Plaintiffs’ counsel as counsel for the Classes and Subclasses;
- 3 d. Issuing proper notice to the Classes and Subclasses at Microsoft’s expense;
- 4 e. Enjoining the unlawful acts and practices described herein;
- 5 f. Awarding public injunctive relief in the form of a recall or free replacement
- 6 program and notice of same to all Class members;
- 7 g. Awarding compensatory damages – including for overpayment at the point
- 8 of sale, out of pocket expenses to address the defect, and for lost time
- 9 addressing the defect – to Plaintiffs and the members of the Classes and
- 10 Subclasses in an amount according to proof at trial;
- 11 h. Awarding treble damages to Plaintiffs and the members of the Classes and
- 12 Subclasses in an amount according to proof at trial;
- 13 i. Awarding prejudgment interest on the monies wrongfully obtained by
- 14 Microsoft from the date of collection through the date of entry of judgment
- 15 in this action;
- 16 j. Awarding attorneys’ fees, expenses, and recoverable costs reasonably
- 17 incurred in connection with the commencement and prosecution of this
- 18 action to Plaintiffs and the members of the Classes and Subclasses to the
- 19 extent permitted by CPA § 19.86.090 or other applicable law; and
- 20 k. Awarding Plaintiff and the Class such other and further relief as this Court
- 21 deems just and proper.
- 22
- 23
- 24
- 25
- 26

1 DATED this 2nd day of October, 2020.

2
3 Respectfully submitted,

4
5 **BRESKIN JOHNSON & TOWNSEND, PLLC**

6 By: s/ Cynthia Heidelberg
7 Cindy Heidelberg, WSBA #44121
8 1000 Second Avenue, Suite 3670
9 Seattle, WA 98104
10 (206) 652-8660 Fax (206) 652-8290
11 cheidelberg@bjtlegal.com

12 *Interim Liaison Counsel*

13 Nicholas A. Migliaccio (*pro hac vice*)
14 Jason S. Rathod (*pro hac vice*)
15 **MIGLIACCIO & RATHOD LLP**
16 412 H Street NE
17 Washington, DC 20002
18 Tel: (202) 470-3520
19 nmigliaccio@classlawdc.com
20 jrathod@classlawdc.com

21 Benjamin F. Johns (*pro hac vice*)
22 Andrew W. Ferich (*pro hac vice*)
23 Alex M. Kashurba (*pro hac vice*)
24 **CHIMICLES SCHWARTZ KRINER**
25 **& DONALDSON-SMITH LLP**
26 361 W. Lancaster Avenue
Haverford, PA 19041
Tel: (610) 642-8500
bfj@chimicles.com
awf@chimicles.com
amk@chimicles.com

Interim Co-Lead Class Counsel