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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

Aniledis Batista and Paul Sohayegh,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

Apple Inc.,

Defendant.

Civil Action No. _____

CLASS ACTION COMPLAINT

Jury Trial Demanded

1 Plaintiffs Aniledis Batista and Paul Sohayegh (collectively, “Plaintiffs”),
2 individually and on behalf of other similarly situated individuals, by and through their
3 undersigned attorneys, Finkelstein, Blankinship, Frei-Pearson & Garber, LLP and Brown,
4 Neri, Smith & Khan, LLP, file this Class Action Complaint against Apple Inc. (“Apple” or
5 “Defendant”) and allege the following based on personal knowledge, the investigation of
6 counsel, information, and belief.
7

8 **NATURE OF THE ACTION**

9 1. Plaintiffs bring this action against Apple for deceptive trade practices and
10 false advertising in violation of New York General Business Law § 349 and § 350 and the
11 common law. Plaintiffs and other owners of Apple’s iPhone models 7, 6S, 6, and SE
12 (collectively, “older iPhones”) were harmed when their devices’ software or operating
13 systems (“iOS”) were updated to the then-newest version (“iOS updates”). The iOS
14 updates significantly slowed down their iPhones and interfered with the normal usage of
15 their devices, leaving Plaintiffs with a difficult choice: to continue using a slow and at time
16 inoperable device that disrupts everyday life, or spend hundreds of dollars to purchase a
17 new phone.
18

19 2. Apple explicitly represented to Plaintiffs and the public that its iOS updates
20 are compatible with and support older iPhones, as evidenced by the fact that Plaintiffs and
21 Class Members were prompted to install the iOS updates on their iPhones.
22

23 3. Following media traction of reports on Reddit, Geekbench, and various
24 technology news sites evidencing Apple’s planned obsolescence of older iPhones, on
25 December 20, 2017, Apple admitted that it has been deliberately slowing the performance
26 (formally referred to as the “CPU” or “CPU Frequency”) of older iPhones.
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1 4. As a result of Apple’s deceptive and unlawful conduct, millions of
2 consumers are led to believe that their iPhones have become obsolete and are consequently
3 compelled to purchase the most recent iPhone model(s), which are currently the iPhone 8
4 and iPhone X. Customers who choose not to or cannot afford new iPhones, which
5 generally cost several hundreds of dollars, are left with iPhones with drastically diminished
6 performance such that they are effectively useless.

7
8 5. This action centers upon Apple’s negligent, reckless, or intentional
9 omission or failure to disclose to Plaintiffs and Class Members, at the time of purchase and
10 at the time they downloaded Apple’s iOS updates, that the new operating system would
11 materially slow down and/or otherwise interfere with the operation of their iPhones. Apple
12 represented and advertised at the moment before, or of, download that iOS updates would
13 improve performance Plaintiffs’ and Class Members devices, a statement Apple admittedly
14 knew to be false.
15

16 **PARTIES**

17 6. Plaintiff Aniledis Batista (“Ms. Batista”) is a resident of Copiague, New
18 York. Ms. Batista owned and operated an iPhone 7. Ms. Batista purchased her iPhone 7 in
19 August of 2017. Ms. Batista updated her iPhone’s iOS when prompted to do so.
20 Immediately after installing the update, Ms. Batista’s iPhone’s performance slowed
21 drastically, the iOS regularly crashes, and her iPhone often inexplicably shuts down.
22 Likewise, applications such as simple text messaging and phone call applications are
23 routinely inoperable. Thus, the iOS updates rendered Ms. Batista’s iPhone useless.
24

25 7. Plaintiff Paul Sohayegh (“Mr. Sohayegh”) is a resident of Old Westbury,
26 New York. Mr. Sohayegh purchased, owned, and operated an iPhone 6S. Mr. Sohayegh
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1 downloaded the iPhone's updated iOS when prompted to do so. Mr. Sohayegh's family
2 members likewise downloaded the iOS updates on their iPhones (also purchased by Mr.
3 Sohayegh) when prompted to do so. Subsequently, Mr. Sohayegh and his family members
4 noticed that their iPhones' performances slowed drastically, that the operating systems
5 would often crash altogether, and that the iPhones would inexplicably shut down.
6 Likewise, Applications such as simple text messaging and phone call applications became
7 routinely inoperable. Thus, the iOS updates rendered Mr. Sohayegh's and his family
8 members' iPhones useless. The lack of functionality of their iPhones prompted Mr.
9 Sohayegh to purchase new iPhones for himself and his family members. Had it not been
10 for the problems promulgated by the update, Mr. Sohayegh would not have purchased new
11 iPhones for his family members or himself.

14 8. Defendant Apple Inc. is a California corporation with its headquarters and
15 principal place of business located at 1 Infinite Loop in Cupertino, California.

16 JURISDICTION AND VENUE

17 9. Subject matter jurisdiction in this civil action is authorized pursuant to 28
18 U.S.C. § 1332(d) because there are more than one hundred Class Members, a majority of
19 Class Members are citizens of states that are diverse from Apple, and the amount in
20 controversy exceeds \$5 million, exclusive of interest and costs.
21

22 10. This Court has personal jurisdiction over Apple because Apple was
23 incorporated in California, maintains its principal place of business in this District, is
24 registered to conduct business in California, and has sufficient minimum contacts with
25 California.

26 11. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because
27
28

1 Apple resides in this District and a substantial part of the events or omissions giving rise to
2 Plaintiffs' claims occurred in this District.

3
4 **FACTUAL BACKGROUND**

5 12. Over the course of the past year, Apple released various iOS updates that
6 intentionally and deceptively debilitated the functionality of older iPhones, causing the
7 devices to dramatically slow down and interfering with normal usage. The relevant iOS
8 updates include: iOS 10.2.1 (released on January 23, 2017); iOS 10.3 (released on March
9 27, 2017); iOS 10.3.1 (released on April 3, 2017); iOS 10.3.2 (released on May 15, 2017);
10 iOS 10.3.3 (released on July 19, 2017) (collectively, "iOS 10 update"); iOS 11.0.1
11 (released on September 26, 2017); iOS 11.0.2 (released on October 3, 2017); iOS 11.0.3
12 (released on October 11, 2017); iOS 11.1 (released on October 31, 2017); iOS 11.1.1
13 (released on November 9, 2017); iOS 11.1.2 (released on November 16, 2017); iOS 11.2
14 (released on December 2, 2017); and iOS 11.2.1 (released on December 13, 2017)
15 (collectively, "iOS 11 updates").

16
17 13. Apple represented and advertised that all of the various iOS updates are
18 compatible with and support older iPhones, as evidenced by the fact that Plaintiffs and
19 Class Members were prompted to install the iOS updates on their iPhones.
20

21 14. At or immediately preceding the time of download for each iOS update,
22 Apple represented and advertised that the iOS updates were designed to improve device
23 performance.

24 15. Notwithstanding, Plaintiffs and Class Members quickly noticed that, soon
25 after downloading the iOS updates, their iPhones were no longer operable for normal use.
26 Instead, Plaintiffs and Class Members experienced drastic performance slowdowns,
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1 delayed or non-responses to touch and voice interactions, software and application freezes
2 and crashes, and spontaneous shut downs.

3
4 16. The resultant problems permeated even the core functions of Plaintiffs' and
5 Class Members' devices, preventing them from making and receiving phone calls, text
6 messaging, and emailing.

7
8 17. Following media traction of reports on Reddit, Geekbench, and various
9 technology news sites substantiating speculation that Apple was engaging in planned
10 obsolescence of older iPhones,¹ on December 20, 2017, Apple released a statement in
11 which it admitted that it has been deliberately slowing the performance of older iPhones:

12 Our goal is to deliver the best experience for customers, which includes
13 overall performance and prolonging the life of their devices. Lithium-ion
14 batteries become less capable of supplying peak current demands when in
15 cold conditions, have a low battery charge or as they age over time, which
16 can result in the device unexpectedly shutting down to protect its electronic
17 components.

18 Last year we released a feature for iPhone 6, iPhone 6s and iPhone SE to
19 smooth out the instantaneous peaks only when needed to prevent the device
20 from unexpectedly shutting down during these conditions. We've now
21 extended that feature to iPhone 7 with iOS 11.2, and plan to add support for
22 other products in the future.²

23 18. Apple failed to inform and/or warn Plaintiffs and Class Members that it
24 engineered its iOS updates to slow down the performance of older iPhones and that
25

26 ¹ See, e.g., TeckFire, *PSA: iPhone slow? Try replacing your battery!*, REDDIT (Dec. 9,
27 2017), https://www.reddit.com/r/iphone/comments/7inu45/psa_iphone_slow_try_replacing_your_battery/;
28 John Poole, *iPhone Performance and Battery Age*, GEEKBENCH (Dec. 18, 2017),
<https://www.geekbench.com/blog/2017/12/iphone-performance-and-battery-age/>.

² Bill Chappell, *Apple Says It Slows Older iPhones To Save Their Battery Life*, NPR (Dec.
21, 2017), <https://www.npr.org/sections/thetwo-way/2017/12/21/572538593/apple-says-it-slows-older-iphones-to-save-their-battery-life>.

1 installing the iOS updates would intentionally slow their devices and prevent older iPhones
2 from reaching their full processing power. Rather, Apple falsely and deceptively
3 represented and advertised that the iOS updates would improve performance.
4

5 19. While Apple asserts that the deliberate slowdowns were designed to
6 enhance functionality and performance, in part by prolonging battery life, Plaintiffs and
7 Class members have experienced reduced battery life as a direct result of the iOS 10 and
8 11 updates.

9 20. By failing to disclose that iOS updates were designed to intentionally
10 reduce the CPU on certain iPhone models, iPhone consumers would be more likely to
11 attribute degraded performance to the device rather than battery, prompting consumers to
12 believe it is necessary to upgrade their iPhones rather than simply replace the batteries.
13

14 21. Apple failed to inform Plaintiff and Class Members that the battery issues it
15 purportedly sought to delay could have been quickly and relatively inexpensively remedied
16 by simply replacing batteries. Indeed, iPhone owners with aging batteries could go to a
17 third-party repair shop and replace aged batteries with new ones for \$20 to \$70 (depending
18 on location and iPhone model),³ or to an Apple store and receive a battery replacement for
19 \$79 (with includes a one-year warranty).⁴
20

21 22. Upon information and belief, as a consequence of Apple's iOS updates,
22 consumers with older iPhones no longer have the option of battery replacement to restore
23

24 ³ Niraj Chokshi, *Is Apple Slowing Down Old iPhones? Questions and Answers*, N.Y.
25 TIMES (Dec. 21, 2017), [https://www.nytimes.com/2017/12/21/technology/iphone-battery-
26 problem-slow.html](https://www.nytimes.com/2017/12/21/technology/iphone-battery-problem-slow.html).

27 ⁴ TeckFire, *PSA: iPhone slow? Try replacing your battery!*, REDDIT (Dec. 9, 2017),
28 [https://www.reddit.com/r/iphone/comments/7inu45/psa_iphone_slow_try_replacing_your_](https://www.reddit.com/r/iphone/comments/7inu45/psa_iphone_slow_try_replacing_your_battery/)
[battery/](https://www.reddit.com/r/iphone/comments/7inu45/psa_iphone_slow_try_replacing_your_battery/).

1 device performance, as the performance degradations apply based on iPhone model rather
2 than extent of battery erosion.

3
4 23. Moreover, Apple represents and advertises that many of its iOS updates
5 include “bug fixes” or “improved security,” *i.e.*, the updated software patches security
6 risks that have since been discovered in the devices’ iOS.

7 24. When prompting iPhone owners to install updates for enhanced security or
8 fix bugs, Apple does not disclose that the iOS updates will also detrimentally impact
9 device functionality.

10 25. iPhone owners who receive prompts to install iOS updates that include
11 security enhancements will often download the iOS updates without hesitation, as refusing
12 the update would leave their devices and personal information vulnerable to digital security
13 risks such as hacking.

14 26. Apple does not permit iPhone owners to selectively download its security
15 improvements while rejecting other aspects of iOS updates.

16 27. Furthermore, Apple actively encourages consumers to install iOS updates
17 by repeatedly displaying reminders and notifications on consumers’ iPhone screens until
18 consumers agree to install the new iOS.

19 28. Apple does not allow iPhone owners to reverse or uninstall the iOS 10 or
20 iOS 11 updates and to use their prior, better-functioning iOS. Defendant does not warn the
21 consumer that its iOS updates are irreversible.

22 29. Apple intentionally concealed material information from Plaintiffs and
23 Class Members when failing to inform them that its iOS updates, purportedly designed to
24 extend battery life, were engineered to significantly slow their devices’ performance – so
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1 much so that many iPhone owners would feel compelled to purchase a new phone all
2 together.

3
4 30. Apple intentionally concealed this information and encourages iOS updates
5 in order to increase profits at Plaintiffs' and Class Members' expenses, *i.e.*, by forcing
6 Plaintiffs and Class Members to purchase its newest devices. Indeed, Apple knows that
7 many iPhone consumers will prefer to purchase new iPhone phones rather than switch
8 manufacturers for various reasons. Consequently, Apple stands to benefit financially when
9 it damages the performance of older iPhones, which causes owners to purchase a new
10 phone.

11
12 **CLASS ALLEGATIONS**

13 31. Pursuant to Fed. R. Civ. P. 23, Plaintiffs bring this action against Apple as a
14 class action on behalf of themselves and all members of the following class of similarly
15 situated persons (the "Class" or "Class Members"):

16 "All individuals and entities in New York who own or owned an iPhone 7,
17 6S, 6, or SE, and installed one or more iOS 10 updates or iOS 11 updates."

18 32. Plaintiffs reserve the right to amend the above definition(s), or to propose
19 other or additional classes, in subsequent pleadings and/or motions for class certification.

20 33. Excluded from the Class are Defendant; any parent, subsidiary, or affiliate
21 of Defendant; any entity in which Defendant have or had a controlling interest, or which
22 Defendant otherwise controls or controlled; and any legal representative, predecessor,
23 successor, or assignee of Defendant.

24
25 34. This action satisfies the requirements for a class action under Rule 23.

26 35. Plaintiffs believe that the proposed Class as described above consists of
27 hundreds of thousands of members and can be identified through Apple's records, though
28

1 the exact number and identities of the Class Members are currently unknown. The Class is
2 therefore so numerous that joinder of all members, whether otherwise required or
3 permitted, is impracticable.
4

5 36. Common questions of fact and law exist for each cause of action and
6 predominate over questions affecting only individual Class Members. Common questions
7 include, but are not limited to, the following:

8 a. whether Defendant's representations and advertisements to older
9 iPhone owners concerning the iOS 10 and iOS 11 Updates constitute unfair or deceptive
10 business practices in violation of § 349 of New York General Business Law;

11 b. whether Defendant's use of iOS updates to deliberately reduce the
12 performance of older iPhones without the knowledge or consent of Plaintiffs and Class
13 Members constitutes unfair or deceptive business practices in violation of § 349 of New
14 York General Business Law;

15 c. whether Defendant's omissions concerning the adverse impacts of
16 the iOS updates constitute unfair or deceptive business practices in violation of § 349 of
17 New York General Business Law;

18 d. whether Defendant's omissions concerning alternate methods of
19 remedying battery life issues constitute unfair or deceptive business practices in violation
20 of § 349 of New York General Business Law;

21 e. whether Defendant's representations and advertisements to older
22 iPhone owners concerning the iOS 10 and iOS 11 Updates constitute unfair or deceptive
23 advertising in violation of § 350 of New York General Business Law;

24 f. whether Defendant's omissions concerning the adverse impacts of
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1 the iOS updates constitute unfair or deceptive advertising in violation of § 350 of New
2 York General Business Law;

3 g. whether Defendant's omissions concerning alternate methods of
4 remedying battery life issues constitute unfair or deceptive advertising in violation of § 350
5 of New York General Business Law;

6 h. whether Defendant breached the implied covenant of good faith and
7 fair dealing by deliberately and secretly degrading the performance, quality, and
8 functionality of older iPhones through its iOS updates;

9 i. whether Defendant unjustly enriched itself at Plaintiffs' and Class
10 Members' expenses by deliberately and secretly degrading the performance, quality, and
11 functionality of older iPhones through its iOS updates;

12 37. The claims asserted by Plaintiffs are typical of the claims of the Members of
13 the Class they seek to represent because, among other things, Plaintiffs and Class Members
14 sustained similar injuries as a result of Apple's uniform wrongful conduct; Apple owed the
15 same duty to each Class Member; and Class Members' legal claims arise from the same
16 conduct by Apple.

17 38. Plaintiffs will fairly and adequately protect the interests of the proposed
18 Class. Plaintiffs' interests do not conflict with the Class Members' interests. Plaintiffs
19 have retained class counsel experienced in class action litigation to prosecute this case on
20 behalf of the Class.

21 39. Prosecuting separate actions by individual Class Members would create a
22 risk of inconsistent or varying adjudications with respect to individual Class Members that
23 would establish incompatible standards of conduct for Defendant.

1 40. A class action is superior to other available methods for the fair and
2 efficient adjudication of this controversy because Class Members number in the hundreds
3 of thousands and individual joinder is impracticable. The expense and burden of
4 individual litigation would make it impracticable or impossible for proposed Class
5 Members to prosecute their claims individually. Trial of Plaintiffs and Class Members'
6 claims on a class basis, however, is manageable. Unless the Class is certified, Defendant
7 will remain free to continue to engage in the wrongful conduct alleged herein without
8 consequence.
9

10 41. Certification of the Class is also appropriate under Fed. R. Civ. P. 23(b)(1)
11 because the prosecution of separate actions by individual Class Members would create a
12 risk of establishing incompatible standards of conduct for Apple.
13

14 42. Certification of the Class is also appropriate under FED. R. CIV. P. 23(b)(2)
15 because Apple has acted, or refused to act, on grounds generally applicable to the Class,
16 thereby making appropriate final injunctive relief or equitable relief with respect to the
17 Class as a whole.
18

19 43. Certification of the Class, therefore, is appropriate under Fed. R. Civ. P.
20 23(b)(3) because the above common questions of law or fact predominate over any
21 questions affecting individual Class Members and a class action is superior to other
22 available methods for the fair and efficient adjudication of this controversy.
23

24 44. Apple's wrongful actions and omissions are generally applicable to the
25 Class as a whole and, therefore, Plaintiffs also seek equitable remedies for the Class.
26

27 45. Apple's systemic policies and practices also make injunctive relief for the
28 Class appropriate.

1 46. Absent a class action, Apple will retain the benefits of its wrongdoing
2 despite its serious violations of the law and infliction of economic damages, injury, and
3 harm on Plaintiffs and Class Members.
4

5 **CAUSES OF ACTION**
6 **FIRST CAUSE OF ACTION**
7 **(New York General Business Law § 349)**

8 47. Plaintiffs re-allege and incorporate by reference all preceding factual
9 allegations as though fully set forth herein.

10 48. Plaintiffs bring this claim on behalf of themselves and the Class.

11 49. Defendant has engaged in, and continues to engage in, deceptive acts and
12 practices in violation of N.Y. GEN. BUS. LAW § 349.

13 50. Defendant's acts are willful, unfair, unconscionable, deceptive, and contrary
14 to the public policy of New York, which aims to protect consumers.

15 51. Defendant's misrepresentations and false, deceptive, and materially
16 misleading statements, representations, and omissions with respect to the iOS updates, as
17 described above, constitute deceptive practices in violation of N.Y. GEN. BUS. LAW § 349.

18 52. Defendant's false, deceptive, and misleading statements, representations,
19 and omissions would have been material to any older iPhone user.

20 53. Defendant knew at the time it promised enhanced and improved
21 performance that its promise was false because at the time Defendant was deliberately
22 engineering the iOS updates to reduce device performance.
23

24 54. Defendant's intentional concealments were designed to deceive older
25 iPhone users into installing iOS updates, which severely degrade device performance and
26 effectively render their iPhones inoperable.
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1 55. By concealing the adverse impacts of the iOS updates, Defendant benefits
2 from the purchase of newer iPhone models.

3 56. Defendant intentionally concealed that iOS updates were designed to reduce
4 the effectiveness of the CPU on certain iPhone models so that iPhone consumers would
5 believe it is necessary to purchase new iPhones.
6

7 57. Defendant's practices are unconscionable and outside the norm of
8 reasonable business practices.

9 58. As a direct and proximate result of Defendant's unlawful deceptive acts and
10 practices, Plaintiffs and Class Members installed iOS updates and suffered and continue to
11 suffer an ascertainable loss of monies based on loss of functionality, loss in value, and
12 irreversible destruction of their iPhones, and the costs of replacement batteries and phones.
13 By reason of the foregoing, Defendant is liable to Plaintiffs and Class Members for trebled
14 compensatory damages, attorneys' fees, and the costs of this suit.
15

16 59. Plaintiffs and Class Members further seek equitable relief against
17 Defendant. Pursuant to N.Y. GEN. BUS. LAW § 349, this Court has the power to award
18 such relief, including but not limited to, an order declaring Defendant's practices as alleged
19 herein to be unlawful, an Order enjoining Defendant from undertaking any further
20 unlawful conduct, an Order directing Defendant to refund to Plaintiffs and the Class all
21 amounts wrongfully assessed, collected, or withheld, and an Order requiring Apple to issue
22 an iOS update that reverses the damage done by prior updates.
23

24 60. Defendant knowingly and willfully deceptively induces consumers to install
25 iOS updates that will significantly degrade performance so that it can reap outrageous
26 profits to the direct detriment of New York consumers. Defendant is therefore additionally
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1 liable for triple damages.

2 **SECOND CAUSE OF ACTION**
3 **(New York General Business Law § 350)**

4 61. Plaintiffs re-allege and incorporate by reference all preceding factual
5 allegations as though fully set forth herein.

6 62. Plaintiffs bring this claim on behalf of themselves and the Class.

7 63. Defendant has engaged in, and continues to engage in, false advertising in
8 violation of N.Y. GEN. BUS. LAW § 350.

9 64. Defendant's acts are willful, unfair, unconscionable, deceptive, and contrary
10 to the public policy of New York, which aims to protect consumers.

11 65. Defendant's advertisements and false, deceptive, and materially misleading
12 statements, representations, and omissions with respect to the iOS updates, as described
13 above, constitute deceptive practices in violation of N.Y. GEN. BUS. LAW § 350.

14 66. Defendant's false, deceptive, and misleading advertisements, statements,
15 representations, and omissions would have been material to any older iPhone user.

16 67. Defendant knew at the time it promised enhanced and improved
17 performance that its promise was false because at the time Defendant was deliberately
18 engineering the iOS updates to reduce device performance.

19 68. Defendant's intentional concealments in its advertising were designed to
20 deceive older iPhone users into installing iOS updates, which severely degrade device
21 performance and effectively render their iPhones inoperable.

22 69. By concealing the adverse impacts of the iOS updates, Defendant benefits
23 from the purchase of newer iPhone models.

24 70. Defendant intentionally concealed that iOS updates were designed to reduce
25

1 the CPU on certain iPhone models so that iPhone consumers would believe it is necessary
2 to purchase new iPhones.

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4 71. Defendant's practices are unconscionable and outside the norm of
5 reasonable business practices.

6 72. As a direct and proximate result of Defendant's unlawful deceptive acts and
7 practices, Plaintiffs and Class Members installed iOS updates and suffered and continue to
8 suffer an ascertainable loss of monies based on loss of functionality, loss in value, and
9 irreversible destruction of their iPhones, and the costs of replacement batteries and phones.
10 By reason of the foregoing, Defendant is liable to Plaintiffs and Class Members for trebled
11 compensatory damages, attorneys' fees, and the costs of this suit.
12

13 73. Plaintiffs and Class Members further seek equitable relief against
14 Defendant. Pursuant to N.Y. GEN. BUS. LAW § 350, this Court has the power to award
15 such relief, including but not limited to, an order declaring Defendant's practices as alleged
16 herein to be unlawful, an Order enjoining Defendant from undertaking any further
17 unlawful conduct, and an order directing Defendant to refund to Plaintiffs and the Class all
18 amounts wrongfully assessed, collected, or withheld.
19

20 74. Defendant knows full well that it deceptively induces consumers to install
21 iOS updates that will significantly degrade performance so that it can reap outrageous
22 profits to the direct detriment of New York consumers. As such, Defendant's actions are
23 unconscionable and actuated by bad faith, lack of fair dealing, actual malice, or
24 accompanied by wanton and willful disregard for consumers' well-being. Defendant is
25 therefore additionally liable for punitive damages, in an amount to be determined at trial.
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THIRD CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith and Fair Dealing)

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3 75. Plaintiffs re-allege and incorporate by reference all preceding factual
4 allegations as though fully set forth herein.

5 76. Plaintiffs bring this claim on behalf of themselves and the Class.

6 77. Every contract in New York contains an implied covenant of good faith and
7 fair dealing in the performance and enforcement of the contract. The implied covenant is
8 an independent duty and may be breached even if there is no breach of a contract's express
9 terms.
10

11 78. Upon prompting Plaintiffs and Class Members to install iOS updates,
12 Defendant represented that the upgrades were compatible with and support older iPhones
13 and would enhance performance.

14 79. Plaintiffs reasonably expected that the iOS updates were compatible with
15 and support their iPhones and would enhance performance. Plaintiffs also reasonably
16 expected that Apple would not recommend installing software that would significantly
17 diminish device capacity, performance, and functionality. Without these reasonable
18 expectations, Plaintiff and other Class Members would not have agreed to install the iOS
19 updates.
20

21 80. Defendant breached the implied covenant of good faith and fair dealing by
22 engaging in affirmative misrepresentations, concealments, and omissions in bad faith,
23 thereby frustrating Plaintiffs and other Class Members' reasonable expectations concerning
24 their iPhones and the iOS updates. Defendant also breached the implied covenant of good
25 faith and fair dealing by issuing an iOS update knowing that it would damage the
26 performance of iPhones to the extent that they did not perform as Plaintiffs and the public
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1 reasonably expected them to perform.

2 81. As a direct and proximate result of Defendant's breach, Defendant is liable
3 to Plaintiffs and Class Members for actual damages in an amount to be determined at trial.
4

5 **FOURTH CAUSE OF ACTION**
6 **(Unjust Enrichment)**

7 82. Plaintiffs re-allege and incorporate by reference all preceding factual
8 allegations as though fully set forth herein.

9 83. Plaintiffs bring this claim on behalf of themselves and the Class.

10 84. Apple, by way of its affirmative actions and omissions, knowingly and
11 deliberately enriched itself by deliberately and secretly slowing Class Members' iPhones.

12 85. Apple consciously and opportunistically issued the iOS updates to increase
13 its own profits at the expense of Plaintiffs and Class Members.

14 86. Apple continued to obtain the benefits conferred on it by Plaintiffs' and
15 Class Members' business, including but not limited to purchase of new iPhones and
16 applications from Apple's App Store.
17

18 87. Plaintiffs and Class Members, on the other hand, suffered as a direct and
19 proximate result. As a result of Apple's decision to profit by rendering Plaintiffs' and
20 Class Members' iPhones effectively useless, Plaintiffs and Class Members suffered and
21 continue to suffer considerable injuries in the forms of, *inter alia*, loss of functionality, loss
22 in value, and irreversible destruction of their iPhones, and the costs of replacement.
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24 88. Accordingly, Plaintiffs, on behalf of themselves and the Class Members,
25 respectfully request this Court award relief in the form of restitution and compensatory
26 damages
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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the Class, respectfully request that the Court grant relief against Defendant as follows:

1. For an Order certifying the proposed Class pursuant to FED. R. CIV. P. 23(b)(1), (2) and/or (3), requiring notice thereto to be paid by Defendant, and appointing Plaintiffs and their counsel to represent the Class;
2. Adjudging and decreeing that Defendant has engaged in the conduct alleged herein;
3. For appropriate injunctive relief and/or declaratory relief, including an Order enjoining Defendant's unlawful conduct;
4. For compensatory, statutory, general damages, trebled according to proof on certain causes of action;
5. For reimbursement, restitution, and disgorgement on certain causes of action;
6. For an Order awarding Plaintiffs and the Class reasonable attorney's fees and expenses for the costs of this suit;
7. For both pre- and post-judgment interest at the maximum allowable rate on any amounts awarded; and
8. For any and all such other and further relief that this Court may deem just and proper, including but not limited to punitive or exemplary damages.

DEMAND FOR TRIAL BY JURY

Plaintiffs hereby demand trial by jury of all claims and causes of action in this lawsuit to which they are so entitled.

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Dated: December 28, 2017

Respectfully submitted,

/s/Nathan M. Smith

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Attorneys for Plaintiffs and the Putative Class

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Analedis Batista, Paul Sohayegh

(b) County of Residence of First Listed Plaintiff Suffolk County, New York (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Nathan M. Smith, 11601 Wilshire Blvd., Suite 2080, Los Angeles, CA 90025, 310.593.9890

DEFENDANTS

Apple, Inc.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship options: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. Section 1332(d) Brief description of cause: Violations of New York General Business Law Sections 349, 350, Breach of covenant of good faith, Unjust enrichment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE Donna M. Ryu DOCKET NUMBER 4:17-cv-07292-DMR

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 12/28/2017

SIGNATURE OF ATTORNEY OF RECORD

/s/Nathan M. Smith

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.