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

JOSEPH CASILLAS and DE'JHONTAI
BANKS, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

APPLE INC.,

Defendant.

Case No.: 3:19-cv-02455

CLASS ACTION COMPLAINT

1. Breach of Express Warranty
2. Breach of Implied Warranty
3. Breach of Written Warranty Under the Magnuson-Moss Warranty Act (15 U.S.C. § 2301, *et seq.*)
4. Violation of the Song-Beverly Consumer Warranty Act (Cal. Civ. Code § 1790)
5. Violation of the California Consumer Legal

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- Remedies Act (Cal. Civ. Code § 1750)
- 6. Violation of California Unfair Competition Laws (Cal. Bus. & Prof. Code § 17200)
- 7. Violation of California False Advertising Law (Cal. Bus. & Prof. Code § 17500)
- 8. Negligent Misrepresentation
- 9. Unjust Enrichment

DEMAND FOR JURY TRIAL

1 **CLASS ACTION COMPLAINT**

2 1. Plaintiffs Joseph Casillas and De’Jhontai Banks (“Plaintiffs”), individually and on behalf
3 of all others similarly situated, by and through counsel, bring this action against Apple Inc. (“Apple”).
4 Plaintiffs’ allegations herein are based upon personal knowledge and belief as to their own acts and upon
5 the investigation of their counsel, including information received from class members who have
6 experienced the failure of the audio integrated circuit of their Apple iPhone 7 or 7 Plus devices (the “Audio
7 IC Defect”) as described herein, and information and belief as to all other matters.

8 **INTRODUCTION**

9 2. Plaintiffs bring this action, individually and on behalf of a Class of similarly situated
10 owners of Apple’s iPhone 7 and/or iPhone 7 Plus (“iPhones”). This action arises from Apple’s
11 concealment of a material defect that ultimately causes iPhone audio features to become unresponsive and
12 fail of their essential purpose as smartphones, called the “Audio IC Defect” herein.

13 3. Apple has long been aware of the Audio IC Defect, yet, notwithstanding its longstanding
14 knowledge, Apple routinely refuses to repair the iPhones without charge when the Audio IC Defect
15 manifests.

16 4. Many iPhone owners communicated with Apple’s employees and agents to request that
17 Apple remediate and/or address the Audio IC Defect and/or resulting damage at no expense. Apple failed
18 and/or refused to do so.

19 5. As a result of Apple’s unfair, deceptive, and/or fraudulent business practices, owners of
20 the iPhones, including Plaintiffs, have suffered ascertainable losses. The unfair and deceptive trade
21 practices committed by Apple were conducted in a manner giving rise to substantial aggravating
22 circumstances.

23 6. Had Plaintiffs and other Class Members known about the Audio IC Defect at the time of
24 purchase, they would not have bought the iPhones, or else would have paid substantially less for them.

25 7. As a result of the Audio IC Defect and the monetary costs associated with attempting to
26 repair it, Plaintiffs and the Class Members suffered an injury in fact, incurred damages, and otherwise
27 have been harmed by Apple’s conduct

1 itself of the laws and markets within this District; it does substantial business in this District; and it is
2 subject to personal jurisdiction in this District. Plaintiffs' declarations stating facts showing that this action
3 has been commenced in a proper place for trial is attached as **Exhibit 1**.

4 **INTRADISTRICT ASSIGNMENT**

5 15. Assignment to the San Francisco Division is proper under Civil Local Rules 3-2(c) and 3-
6 2(d) because a substantial part of the events or omissions giving rise to Plaintiff Casillas' claims occurred
7 in Emeryville.

8 **PLAINTIFFS' FACTUAL ALLEGATIONS**

9 Plaintiff Joseph Casillas

10 16. On or about July 8, 2017, while a resident and citizen of the State of California, Plaintiff
11 Joseph Casillas purchased a new iPhone 7 from a Best Buy retail store in Vallejo, California. Mr. Casillas
12 purchased his phone for approximately \$969.99. Mr. Casillas purchased the iPhone in part because of its
13 reputation for being a high quality and reliable product.

14 17. Plaintiff Casillas' iPhone came with Apple's express warranty.

15 18. Starting in approximately November 2018, Plaintiff Casillas noticed that his phone's sound
16 was distorted with audible static while attempting to play a video on his phone. Additionally, his phone's
17 speaker function exhibits the same distorted sound when on phone calls or attempting to utilize any other
18 audio functions with phone's speaker. These are common indications of the Audio IC Defect. These issues
19 have continued since he first experienced the Audio IC Defect.

20 19. Shortly after first experiencing the audio issue, Plaintiff Casillas contacted Apple Support
21 seeking assistance with his defective iPhone. Over the course of this conversation, Plaintiff Casillas was
22 told that Apple could not diagnose a problem with his phone despite the continuing distorted audio. Apple
23 neither mentioned that it was a known defect nor did Apple agree to repair the defect without charging the
24 costs to Mr. Casillas.

25 20. Had Plaintiff Casillas been aware of the Audio IC Defect, he either would not have
26 purchased the iPhone 7, or else would have paid significantly less for it. He has not received the benefit
27 of his bargain.

1 21. If Plaintiff Casillas' iPhone functioned as advertised, Mr. Casillas would purchase an
2 iPhone again in the future. Alternatively, if the Court were to issue an injunction ordering Apple to comply
3 with advertising and warranty laws, Mr. Casillas would likely purchase an iPhone again in the future.

4 Plaintiff De'Jhontai Banks

5 22. On or about January 1, 2017, Plaintiff De'Jhontai Banks purchased a new iPhone 7 from a
6 Verizon retail store located in Fremont, California. Ms. Banks purchased her phone for approximately
7 \$1,200.00. Ms. Banks purchased the iPhone in part because of its reputation for being a high quality and
8 reliable product.

9 23. Plaintiff Banks' iPhone came with Apple's express warranty.

10 24. On or about August 1, 2018, Plaintiff Banks noticed that she was unable to hear callers
11 unless she used her iPhone's speaker function. These are common indications of the Audio IC Defect.
12 These issues have continued since she first experienced the Audio IC Defect, and all of Ms. Banks' calls
13 must be made in this manner.

14 25. In early 2019, Plaintiff Banks contacted Apple Support seeking assistance with her
15 defective iPhone. Over the course of this conversation, Plaintiff Banks was told that she would have to
16 pay to fix the "speaker issue" related to the Audio IC Defect.

17 26. Had Plaintiff Banks been aware of the Audio IC Defect, she either would not have
18 purchased the iPhone 7, or else would have paid significantly less for it. She has not received the benefit
19 of her bargain.

20 27. If Plaintiff Banks' iPhone functioned as advertised, Ms. Banks would purchase an iPhone
21 again in the future. Alternatively, if the Court were to issue an injunction ordering Apple to comply with
22 advertising and warranty laws, Ms. Banks would likely purchase an iPhone again in the future.

23 **GENERAL ALLEGATIONS**

24 **A. Apple's iPhone**

25 28. Defendant Apple designs, manufactures, markets, and sells the iPhone series of
26 smartphones. The iPhone 7 and 7 Plus were released on September 16, 2016.

1 29. iPhones are designed and built around the use of a touchscreen whereby the user touches
2 the screen directly to interact with the device, as opposed to using a traditional number pad or keyboard,
3 and it allows the user to interact with the device through a variety of audio responsive applications.

4 30. In the United States, the iPhone holds the largest share of the smartphone market. In 2018,
5 iPhones accounted for approximately 40.75% of the market share followed by Samsung with
6 approximately 24.5% of the market share.

7 31. iPhones are capable of sending text messages, taking pictures, capturing video, playing
8 music, browsing the internet, sending and receiving email, using GPS navigation, using the touchscreen
9 to make and take calls, and downloading and using various applications, among other functions. Many of
10 these functions allow the user to perform audio commands as well as communicating information to the
11 user through audio responses.

12 32. Upon information and belief, purchasers of the iPhones are given fourteen days from the
13 date of purchase (or from the date the product is received if purchased online) to return the iPhones if
14 purchased directly from Apple or through an authorized reseller, such as Best Buy, Verizon, or AT&T.

15 **B. The Audio IC Defect**

16 33. Unbeknownst to consumers, the iPhones suffer from a material Audio IC Defect that leads
17 to audio failures. As a result, consumers experience poor sound or complete failure of the sound system.

18 34. Often, the Audio IC Defect impacts the time it takes for the device to power on, a complete
19 failure of the phone's Voice Memo application, an inoperable speaker function, and other issues associated
20 with the phones' sound system, including but not limited to making ordinary telephone calls.

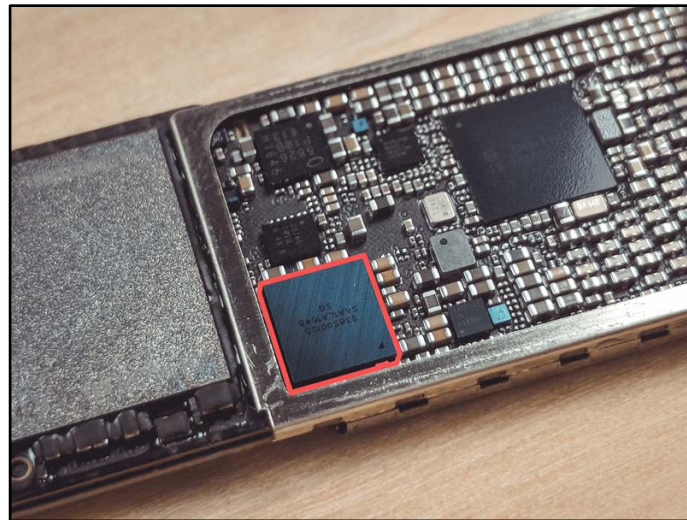
21 35. Upon information and belief, the Audio IC Defect results from a problem with the iPhone's
22 external casing and the location of the audio IC chip on the iPhone's logic board. The materials used in
23 the iPhone's external casing are insufficient and inadequate to protect the internal parts—including the
24 audio IC chip—in light of reasonable and foreseeable use by consumers.

25 36. Apple has advertised that the "iPhone 7 and iPhone 7 Plus dramatically improve every
26 aspect of the iPhone experience, reaching a new level of innovation and precision to make this the best
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1 iPhone we have ever made. The completely redesigned cameras shoot incredible photos and videos day
2 or night, the A10 Fusion chip is the most powerful chip on any smartphone while delivering the best
3 battery life ever in an iPhone, and an entirely new stereo speaker system provides twice the sound, all
4 within the first water and dust resistant iPhone.”¹

5 37. However, the external casing of the iPhone is not sturdy, strong, durable, or drastically
6 improved. Instead, it is manufactured from substandard materials that are neither appropriate for nor
7 durable enough for the ordinary and expected use of the iPhone.

8 38. The motherboard located inside the iPhone (which Apple calls the “logic board”) contains
9 an audio controller chip (referred to as the “audio IC chip”). An illustration of the logic board and the
10 audio IC chip—outlined in red—is included below.



20 39. The audio IC chip is responsible for all audio related functions in Apple’s iPhone operating
21 system software, iOS.

22 40. From the first day of use, the Audio IC Defect exposes the internal components of the
23 iPhones to increased stress and physical harm.

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27 ¹ <https://www.apple.com/newsroom/2016/09/apple-introduces-iphone-7-iphone-7-plus> (last visited May 3, 2019).

1 41. Upon information and belief, the Audio IC Defect causes significant decreased strength
2 and durability directly over the audio controller chip on the logic board. Due to the flexion allowed by the
3 phone's casing and the location of the audio IC chip on the logic board, over time the audio IC chip loses
4 electrical continuity with the logic board, resulting in a manifestation of the Audio IC Defect. The audio
5 IC chip is a delicate circuit. Regular and anticipated use of the iPhone results in manifestation of the Audio
6 IC Defect, i.e. a failure of the solder to adhere the audio IC chip to the logic board. Once the circuit has
7 failed, the audio IC chip is unable to operate properly with the phone causing issues ranging from a wide
8 variety of audio failures to a failure of the devices' ability to reboot.

9 42. The Audio IC Defect can be repaired by trained technicians through the use of a thin copper
10 wire soldered from the audio IC chip to the iPhone's logic board. This repair allows the audio IC chip to
11 remain connected to the logic board despite the flexion of the device.

12 43. The iPhone 6 and iPhone 6 Plus suffered from a similar issue known as the "Touch
13 Disease." This touchscreen defect was associated with a similar flexion-based issue present in the housing
14 of that series of iPhones which affected the touch IC chips.

15 44. Apple's experience with iPhone 6 and iPhone 6 Plus should have raised alarm within the
16 company that such flexion-based defects in their products are responsible for serious hardware
17 malfunctions including the audio issues present in the iPhone 7 and iPhone 7 Plus.

18 **C. Apple's Knowledge of the Audio IC Defect**

19 45. Plaintiffs' experiences are by no means isolated occurrences. Indeed, the internet is replete
20 with examples of blogs and other websites where consumers have complained of the exact same Audio
21 IC Defect within the iPhone 7s and 7 Pluses.

22 46. Complaints on Apple's own website regarding the Audio IC Defect date back as far as
23 December 30, 2016, where a user submitted the below message:

24 Anytime I'm on the phone I can hear the other person fine but they can't
25 hear me. They can only hear me when I have them on speaker phone. My
26 phone is brand new, just got it about 2 weeks ago. I've tried everything to
27 fix it (hard reset, volume controls, etc) and nothing helps. I've tried it in
different areas using wifi and using my Verizon LTE network. Same thing.

1 They say my phone sounds like scratching static unless I put them on
2 speaker phone, then it stops. What's going on?²

3 47. This consumer complaint prompted a multitude of responses from other Apple customers,
4 including the following from August 18, 2017:

5 The official answer is, "We know it's a problem with some devices and
6 we're not going to replace your phone."

7 Mine is under warranty. Eventually I lost speakerphone too. The
8 headphones don't work either.

9 Apple is aware. They're not going to solve the problem. You just bought a
10 bad phone, luck of the draw. They actually told me that since they know
11 it's a bug, they're not responsible for replacing the device.³

12 48. Since December 30, 2016, a plethora of owners of the iPhones have complained on Apple's
13 own website regarding the Audio IC Defect. Not only does the original poster complain of the Audio IC
14 Defect, but users in the comments section of the post often state they are experiencing the same or
15 exacerbated issues as the original poster.

16 49. The Audio IC Defect has become so pervasive with the iPhone that consumers have dubbed
17 the issue as iPhone 7 loop disease. The Audio IC Defect has been thoroughly discussed by Apple users on
18 the company's own discussion forum with multiple owners expressing their issues and concerns with the
19 Defect. One consumer described her experience as follows:

20 We are so frustrated with Apple and our daughter's iPhone 7. She cannot
21 hear callers, use FaceTime or Siri, or use her headphones. We finally got a
22 name for the problem – loop disease. Has anyone else had this issue and if
23 so were you able to resolve it? Preferably without spending more money.
24 Thanks.⁴

25 50. Again, responses to this consumer complaint were followed by other owners who were
26 suffering from similar issues:

27 Dear Apple,

I am facing exact same issue. This problem started happening in the 15th
month after the purchase. I cannot use mic and cannot record voice memo's.
After the phone is restarted it takes nearly 5 minutes to boot up. The only

² <https://discussions.apple.com/thread/7808120?answerId=32188435022#32188435022> (last visited May 3, 2019).

³ *Id.*

⁴ <https://discussions.apple.com/thread/250046921> (last visited Apr. 17, 2019).

1 way I can receive and make calls is by using Bluetooth headset. Without
2 bluetooth headset, the phone is of no use, as neither I would be able to
receive or make calls.

3 Without mic I cannot use siri as well. When I visited apple center, they
4 diagnosed mentioned that it is a hardware issue with the Audio IC and I will
5 have to pay to check if it can be repaired, as the phone is out of warranty.
6 They also mentioned that if it cannot be repaired, they would provide me a
replacement option in which I will have to shell out almost 1/3rd of the cost
of the phone, which as a solution is not acceptable to me after spending a
good amount of money while purchasing the phone.

7 If you search on internet, there are numerous users facing this issue, which
8 could potentially be due to a hardware defect.

9 As I have spent my hard earned money behind a Apple as a reputed brand
10 and I did not expect that it would only last 15 months. Now since I have
posted a technical problem in your community. Please provide a solution
instead of deleting my post.

11 Regards,
12 Manish⁵

13 51. Independent repair shops are also reporting the Audio IC Defect as an “epidemic” which
14 affects iPhones that “are just now getting to the age where they are off-warranty.”⁶

15 52. For earlier iPhone models, Apple employed a widely publicized testing regimen which
16 included five methods of durability testing prior to those model’s public release. Upon information and
17 belief, Apple conducts extensive pre-release durability testing on all of its products, including the
iPhones.⁷

18 A. First, Apple uses a “three-point bending test” to test the iPhone’s ability to handle reasonable
19 force. Apple applies pressure to three different points along the iPhone’s frame, and then
20 evaluates the iPhone’s performance at the test’s conclusion.
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25 ⁵ *Id.*

26 ⁶ https://motherboard.vice.com/en_us/article/8xem8x/iphone-7-grayed-out-speaker-loop-disease-boot-loop-hangs-on-apple-logo (last visited May 3, 2019).

27 ⁷ <https://blogs.wsj.com/personal-technology/2014/09/25/bendgate-five-durability-tests-apple-used-on-the-iphone-6-plus> (last visited May 3, 2019).

- 1 B. Second, Apple uses a “pressure-point cycling test” that expends substantial force on the
2 iPhones’ display and casing. This test reportedly ensures that the iPhones can be bent and
3 pushed many times over during their lifespan.
- 4 C. Third, Apple uses “torsion testing,” whereby the iPhones are twisted and torqued in various
5 situations. This test is reportedly to ensure the iPhones can handle actual use scenarios, such
6 as sitting on an iPhone unevenly.
- 7 D. Fourth, Apple uses “sit tests” whereby an Apple engineer takes an iPhone and sits down
8 thousands of times. This test is reportedly to ensure the iPhones will remain functional no
9 matter how individuals place the iPhones in their pockets. Apple’s senior vice president of
10 hardware engineering, Dan Riccio, stated that this test has three parts: (1) a simulation of a
11 typical user sitting down on a hard surface; (2) a simulation of a typical user sinking into
12 something softer like a couch; and (3) “worst-case” tests where a user sits down on a hard
13 surface at an angle.⁸
- 14 E. Fifth, Apple uses real-life user studies. Apple provides hundreds of company employees with
15 actual iPhones and asks them to use the iPhones throughout the day in various situations to test
16 for both durability and performance.

17 53. Through this extensive pre-release testing that specifically evaluated the iPhones
18 durability, Apple knew or should have known of the Audio IC Defect. The Audio IC Defect is a defect
19 that results from the reasonable, foreseeable use by consumers that is part of the testing methodology
20 above. Put simply, Apple’s pre-release testing should have alerted it to the fact that the external casing
21 suffers from a defect causing significant stress on the logic board and audio IC chip.

22 54. In addition, on September 25, 2014, Apple issued a press release in response to allegations
23 that the previous iteration of the iPhone, the iPhone 6 and 6 Plus, were manufactured with external casing
24 that was susceptible to bending under normal use and was insufficient to protect the internal components
25 on the logic boards. There is active litigation regarding the impact of the iPhone 6 and 6 Plus bending on
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27 ⁸ <https://9to5mac.com/2014/09/25/bendgate-iphone-stress-test-facility> (last visited May 3, 2019).

1 the touchscreen controller chips. *See Davidson v. Apple Inc.*, No. 5:16-cv-4942-LHK (N.D. Cal.). Apple
2 knew, or should have known, that the insufficient external casing on the iPhone 7 and 7 Plus would cause
3 the Audio IC Defect in the same manner that it knew or should have known that the insufficient internal
4 casing on the iPhone 6 and 6 Plus would cause the touchscreen controller chips to fail.

5 55. To date, Apple has not publicly released any explanation for Audio IC Defect, which has
6 also been called “Loop Disease” by consumers. Upon information and belief, Apple acknowledged that
7 an audio defect was present in the iPhone 7 and iPhone 7 Plus models via an internal document distributed
8 to Apple Authorized Service Providers which has subsequently been deleted. According to reports, Apple
9 initially authorized repairs outside the phone’s warranty period for audio issues ranging from grayed-out
10 speaker buttons during phone calls to customers not being heard during phone calls or FaceTime video
11 chats. Apple has since rescinded any such out-of-warranty repair authorization.⁹

12 56. This internal document illustrates Apple knew or should have known that the iPhones
13 suffer from the Audio IC Defect, were not fit for their intended use as smartphones, and would fail under
14 normal and foreseeable use by consumers.

15 57. Apple’s initial response to the Audio IC Defect demonstrates its recognition of the issue,
16 its knowledge that the Audio IC Defect was present at the time of sale, and its understanding that the
17 Audio IC Defect frequently manifests itself within months of purchase. As such, Apple’s preliminary
18 internal acknowledgment and subsequent discontinuation of their out-of-warranty repairs without public
19 announcement of the Audio IC Defect amounts to misrepresentation and concealment of the Audio IC
20 Defect.

21 58. Upon information and belief, Apple was well aware of the Audio IC Defect based upon:
22 (1) their own records of customers’ complaints, (2) Apple Store repair records, (3) its own pre-release
23 testing, (4) warranty and post-warranty claims, (5) internal documentation, and (6) other various sources.
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27 ⁹ <https://www.macrumors.com/2018/07/17/apple-ends-free-oow-iphone-7-mic-repairs> (last visited May 3, 2019).

1 Nevertheless, Apple failed to notify consumers of the nature and extent of the problems with the iPhones
2 or provide any adequate remedy.

3 59. Apple failed to adequately research, test, and/or manufacture the iPhones before
4 warranting, advertising, promoting, marketing, and selling the iPhones.

5 60. In many instances, consumers have incurred and will continue to incur expenses for the
6 diagnosis of the Audio IC Defect, as well as the repair and replacement of their iPhones, despite such
7 defect having been contained in the iPhones when manufactured by Apple and being present at the point
8 of sale.

9 61. Consumers were without access to the information concealed by Apple as described herein,
10 and therefore reasonably relied on Apple's representations and warranties regarding the quality, durability,
11 and other material characteristics of the iPhones. Had consumers known of the defect, they would have
12 paid less for the iPhones than the amounts they actually paid, or would not have purchased the iPhones at
13 all.

14 **D. Apple's Express Warranty Is Unconscionable**

15 62. Apple offers the following one-year warranty when a consumer purchases an iPhone 7 or
16 iPhone 7 Plus:

17 Apple Inc. of One Infinite Loop, Cupertino, California, U.S.A. 95014
18 ("Apple") warrants the Apple-branded iPhone, iPad, iPod or Apple TV
19 hardware product and the Apple-branded accessories contained in the
20 original packaging ("Apple Product") against *defects in materials* and
21 workmanship when used normally in accordance with Apple's published
22 guidelines for a period of ONE (1) YEAR from the date of original retail
23 purchase by the end-user purchaser ("Warranty Period"). Apple's published
24 guidelines include but are not limited to information contained in technical
25 specifications, user manuals and service communications.¹⁰

26 63. As stated above, there is ample evidence that Apple has been aware of the Audio IC Defect
27 from widespread complaints and media coverage surrounding the Audio IC Defect since, at the very latest,
December 30, 2016, just weeks after Apple began selling the iPhones.

¹⁰ <http://www.apple.com/legal/warranty/products/ios-warranty-document-us.html> (last visited May 3, 2019) (emphasis added).

1 64. In addition, journalists have released articles recounting information provided by Apple
2 Store employees that Apple was both aware of the Audio IC Defect and actively concealing it from
3 consumers while the iPhones were being sold—and at which time the iPhones were still covered
4 under the express warranty.

5 65. One such article published by MacRumors outlines Apple’s standard operating procedure
6 (“SOP”) when consumers presented the Audio IC Defect to repair at Apple Stores.¹¹ On information and
7 belief, for a short time in 2018, when customers would present their phones with the symptoms of the
8 Audio IC Defect, Apple instructed their employees to run audio diagnostics on the devices. Should the
9 iPhones continue to exhibit the symptoms, a repair would be authorized. However, upon information and
10 belief, this program was never publicized and was only available for a short period of time.

11 66. Moreover, Apple knew or should have known of the Audio IC Defect during its extensive
12 internal, pre-release testing.

13 67. As such, Apple’s one-year express warranty is both substantively and procedurally
14 unconscionable. Consumers did not have the ability to negotiate the terms or length of the express
15 warranty and Apple concealed the Audio IC Defect from the Plaintiffs and the Class Members. Apple has
16 been aware of the Audio IC Defect since at least December 2016, when the first publicly available
17 consumer complaint of the Audio IC Defect was posted to their website, and continually after Apple issued
18 their internal procedures for diagnosing and repairing phones exhibiting the Audio IC Defect. Despite the
19 pre-release durability testing, consumer complaints, media coverage, and Apple’s own internal policies
20 showing the large number of Audio IC Defect complaints both during and shortly after Apple’s express
21 warranty expired, Apple concealed the problem and discontinued its repair program. Upon information
22 and belief, Apple knew of and concealed the Audio IC Defect before these events, including at the time
23 of sale.

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27 ¹¹ <http://www.macrumors.com/2018/12/17/iphone-7-microphone-defect> (last visited May 3, 2019).

CLASS ACTION ALLEGATIONS

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2 68. Plaintiffs bring this suit as a class action on behalf of themselves and on behalf of all others
3 similarly situated pursuant to Federal Rule of Civil Procedure 23. This action satisfies the numerosity,
4 commonality, typicality, adequacy, predominance and superiority requirements of the provisions of Rule
5 23.

6 69. Plaintiffs seek to represent the following “Nationwide Class”:

7 All persons or entities in the United States that purchased an Apple iPhone
8 7 or 7 Plus.

9 70. In the alternative, Plaintiffs seek to represent the following state sub-class:

10 All persons or entities in California that purchased an Apple iPhone 7 or 7
11 Plus for primarily personal, family, or household purposes, as defined by
12 California Civil Code § 1791(a) (the “California Class”).

13 71. The Nationwide Class and California Class will be referred to collectively as the “Class.”

14 72. **Numerosity:** Members of the Class are so numerous that joinder of all members is
15 impracticable. While the exact number of Class Members remains unknown at this time, upon information
16 and belief, there are hundreds of thousands of putative Class Members throughout the United States who
17 are generally ascertainable by appropriate discovery.

18 73. **Commonality:** This action involves common questions of law and fact, which predominate
19 over any questions affecting individual Class Members. These common legal and factual questions
20 include, but are not limited to, the following:

- 21 a. Whether the iPhones suffer from the Audio IC Defect;
- 22 b. Whether Apple engaged in the conduct alleged herein;
- 23 c. Whether Apple designed, manufactured, marketed, distributed, sold or otherwise placed
24 the iPhones into the stream of commerce in the United States knowing that the iPhones
25 suffered from the Audio IC Defect;
- 26 d. When Apple first learned of the existence of the Audio IC Defect;
- 27 e. Whether Apple intentionally concealed the Audio IC Defect in the iPhones from
consumers;

- 1 f. Whether Apple breached the terms of its contracts with purchasers when it marketed and
2 sold the iPhones containing the Audio IC Defect;
- 3 g. Whether Plaintiffs and the other Class Members have been harmed by the fraud alleged
4 herein;
- 5 h. Whether Apple was unjustly enriched by its deceptive practices; and
- 6 i. Whether Plaintiffs and the Class are entitled to equitable or injunctive relief.

7 74. **Typicality:** Plaintiffs' claims are typical of those of the other Class Members because, *inter*
8 *alia*, all members of the Class were injured through the common misconduct described above and were
9 subject to Apple's unfair and unlawful conduct. Plaintiffs are advancing the same claims and legal theories
10 on behalf of themselves and all members of the Class.

11 75. **Adequacy of Representation:** Plaintiffs will fairly and adequately represent and protect the
12 interests of the Class in that they have no disabling conflicts of interest that would be antagonistic to those
13 of the other members of the Class. Plaintiffs seek no relief that is antagonistic or adverse to the other
14 members of the Class and the infringement of the rights and the damages they have suffered are typical of
15 other Class Members. Plaintiffs have retained counsel experienced in complex consumer class action
16 litigation, and Plaintiffs intend to prosecute this action vigorously.

17 76. **Superiority:** Class litigation is an appropriate method for fair and efficient adjudication of
18 the claims involved. Class action treatment is superior to all other available methods for the fair and
19 efficient adjudication of the controversy alleged herein; it will permit a large number of Class Members
20 to prosecute their common claims in a single forum simultaneously, efficiently, and without the
21 unnecessary duplication of evidence, effort and expense that hundreds of individual actions would require.
22 Class action treatment will permit the adjudication of relatively modest claims by certain Class Members,
23 who could not individually afford to litigate a complex claim against large corporate defendants. Further,
24 even for those Class Members who could afford to litigate such a claim, it would still be economically
25 impractical.

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1 77. The nature of this action and the nature of laws available to Plaintiffs and the Class make
2 the use of the class action device a particularly efficient and appropriate procedure to afford relief to
3 Plaintiffs and the Class for the wrongs alleged because Apple would necessarily gain an unconscionable
4 advantage since they would be able to exploit and overwhelm the limited resources of each individual
5 Class member with superior financial and legal resources; the costs of individual suits could unreasonably
6 consume the amounts that would be recovered; proof of a common course of conduct to which Plaintiffs
7 were exposed is representative of that experienced by the Class and will establish the right of each member
8 of the Class to recover on the cause of action alleged; and individual actions would create a risk of
9 inconsistent results and would be unnecessary and duplicative of this litigation.

10 78. Plaintiffs reserve the right to modify or amend the definition of the proposed class and
11 subclass before the Court determines whether certification is appropriate and as the parties engage in
12 discovery.

13 79. The class action is superior to all other available methods for the fair and efficient
14 adjudication of this controversy. Because of the number and nature of common questions of fact and law,
15 multiple separate lawsuits would not serve the interest of judicial economy.

16 80. Individual litigation of the claims of all Class Members is economically unfeasible and
17 procedurally impracticable. While the aggregate damages sustained by the Class are likely in the millions
18 of dollars, the individual damages incurred by each Member resulting from Apple's wrongful conduct are
19 too small to warrant the expense of individual suits. The likelihood of individual Class Members
20 prosecuting separate claims is remote, and even if every Class member could afford individual litigation,
21 the court system would be unduly burdened by individual litigation of such cases. Individual Class
22 Members do not have a significant interest in individually controlling the prosecution of separate actions,
23 and the individualized litigation would also present the potential for varying, inconsistent, or contradictory
24 judgments and would magnify the delay and expense to all parties and to the court system resulting from
25 multiple trials of the same factual issues. Plaintiffs know of no difficulty to be encountered in the
26 management of this action that would preclude its maintenance as a class action. A class action in this
27

1 matter will avoid case management difficulties and provide multiple benefits, including efficiency,
2 economy of scale, unitary adjudication with consistent results and equal protection of the rights of each
3 Class member, all by way of the comprehensive and efficient supervision of the litigation by a single
4 court.

5 81. Notice of a certified class action and of any result or resolution of the litigation can be
6 provided to Class Members by first-class mail, email, or publication, or such other methods of notice as
7 deemed appropriate by the Court.

8 82. Plaintiffs do not anticipate any difficulty in the management of this litigation.

9
10 **FIRST CLAIM FOR RELIEF**
BREACH OF EXPRESS WARRANTY

11 **(By All Plaintiffs on Behalf of the Nationwide Class or, Alternatively, the California Class)**

12 83. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though
13 fully set forth herein.

14 84. Apple provided Plaintiffs and the Class Members with the following express warranty:
15 “Apple Inc. of One Infinite Loop, Cupertino, California, U.S.A. 95014 (“Apple”) warrants the Apple-
16 branded iPhone, iPad, iPod or Apple TV hardware product and the Apple-branded accessories contained
17 in the original packaging (“Apple Product”) against defects in materials and workmanship when used
18 normally in accordance with Apple's published guidelines for a period of ONE (1) YEAR from the date
19 of original retail purchase by the end-user purchaser (“Warranty Period”). Apple’s published guidelines
20 include but are not limited to information contained in technical specifications, user manuals and service
21 communications.”

22 85. The above express warranty became part of the basis of the bargain between Plaintiffs and
23 the Class Members and Apple.

24 86. Plaintiffs and the Class Members presented their iPhones for repairs after the Audio IC
25 Defect manifested. Apple, however, declined to remedy the Audio IC Defects in Plaintiffs’ and the Class
26 Members’ iPhones and thereby breached its express warranties with Plaintiffs and the Class Members.

1 87. Plaintiffs and the Class Members notified Apple of the breaches within a reasonable time,
2 and/or were not required to do so because affording Apple a reasonable opportunity to cure its breach of
3 written warranty would have been futile. Apple also knew of the defect and yet has chosen to conceal it
4 and fail to comply with its warranty obligations.

5 88. The Audio IC Defect is a defect as defined by Apple's express warranty.

6 89. As a direct and proximate cause of Apple's breach, Plaintiffs and the Class Members
7 bought iPhones that they otherwise would not have, overpaid for their iPhones, did not receive the benefit
8 of their bargain, and their iPhones suffered a diminution in value. Plaintiffs and the Class Members have
9 also incurred and will continue to incur costs for replacement iPhones.

10 90. As alleged above, the terms of Apple's express warranty are both substantively and
11 procedurally unconscionable. Apple's attempt to disclaim or limit these express warranties vis-à-vis
12 consumers is unconscionable and unenforceable under the circumstances here. Specifically, Apple's
13 warranty limitation is unenforceable because it knowingly sold a defective product without informing
14 consumers about the defect.

15 91. The time limits contained in Apple's warranty period were also unconscionable and
16 inadequate to protect Plaintiffs and the Class Members. Among other things, Plaintiffs and Class Members
17 had no meaningful choice in determining these time limitations the terms of which unreasonably favored
18 Apple. A gross disparity in bargaining power existed between Apple and Plaintiffs and the Class Members,
19 and Apple knew or should have known that the iPhones were defective at the time of sale and would fail
20 well before their useful lives.

21 92. Plaintiffs and Class Members have complied with all obligations under the warranty, or
22 otherwise have been excused from performance of said obligations as a result of Apple's conduct
23 described herein.

24 93. Plaintiffs and the Class Members are entitled to legal and equitable relief against Apple,
25 including damages, consequential damages, specific performance, attorney fees, costs of suit, and other
26 relief as appropriate.
27

1 liability on any “warrantor” for failing to comply with any obligation under written and implied warranties.
2 15 U.S.C. § 2310(d)(1).

3 101. This Court has jurisdiction over this matter under CAFA and can therefore assert
4 alternative jurisdiction over the Plaintiffs’ MMWA claims.

5 102. The iPhones are consumer products as defined by 15 U.S.C. § 2301(1).

6 103. Plaintiffs and the Class Members are “consumers” as defined by 15 U.S.C. § 2301(3).

7 104. Apple is a warrantor and supplier as defined by 15 U.S.C. § 2301(4) and (5).

8 105. Apple has failed to remedy the Audio IC Defect, despite Apple’s knowledge and notice of
9 the Audio IC Defect in the iPhones.

10 106. Apple expressly warranted the iPhones would be free of defects.

11 107. At the time Apple issued written warranties for the iPhones, Apple knew and had notice
12 that the iPhones had the propensity to prematurely fail due to the Audio IC Defect. Apple’s continued
13 misrepresentations and omissions concerning the Audio IC Defect, as well as Apple’s failure to abide by
14 their own written and implied warranties, are “unfair methods of competition in or affecting commerce,
15 and [are] unfair or deceptive acts or practices in or affecting commerce.” Accordingly, Apple’s behavior
16 is unlawful under 15 U.S.C. §§ 2310(b), 45(a)(1).

17 108. Plaintiffs and the Class Members seek to recover damages caused as a direct result of
18 Apple’s breach of their written and implied warranties and their deceitful and unlawful conduct. Damages
19 include costs associated with repairing or replacing the iPhones with non-defective iPhones or other
20 smartphones.

21 109. The Act also provides for “other legal and equitable” relief. 15 U.S.C. § 2310(d)(1).
22 Accordingly, Plaintiffs and the Class Members seek reformulation of Apple’s written warranty to comport
23 with Apple’s obligations under the Act and with consumers’ reasonable expectations. Additionally,
24 Plaintiffs seek to enjoin Apple from acting unlawfully as further alleged, including discouraging Plaintiffs
25 to seek all available remedies.
26
27

FIFTH CLAIM FOR RELIEF

VIOLATIONS OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT (“CLRA”)

Cal. Civ. Code § 1750, *et seq.*

(By All Plaintiffs on Behalf of the California Class)

1
2
3
4 117. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though
5 fully set forth herein.

6 118. Apple is a person as that term is defined in California Civil Code § 1761(c).

7 119. Plaintiffs and the members of the California Class are “consumers” as that term is defined
8 in California Civil Code § 1761(d).

9 120. Apple engaged in unfair and deceptive acts in violation of the CLRA by the practices
10 described above, and by knowingly and intentionally concealing from Plaintiffs and California Class
11 Members that the iPhones are defective. These acts and practices violate, at a minimum, the following
12 sections of the CLRA:

13 (a)(2) Misrepresenting the source, sponsorship, approval or certification of
14 goods or services;

15 (a)(5) Representing that goods or services have sponsorships,
16 characteristics, uses, benefits or quantities which they do not have, or that a
17 person has a sponsorship, approval, status, affiliation or connection which
18 he or she does not have;

19 (a)(7) Representing that goods or services are of a particular standard,
20 quality, or grade, or that goods are of a particular style or model, if they are
21 of another; and

22 (a)(9) Advertising goods and services with the intent not to sell them as
23 advertised.

24 121. Apple’s unfair or deceptive acts or practices occurred repeatedly in Apple’s trade or
25 business and were capable of deceiving a substantial portion of the purchasing public.

26 122. Apple knew that the iPhones were defective, prone to failing for their essential purpose as
27 phones, and would become useless as a result of reasonable and foreseeable use by consumers.

123. Apple was under a duty to Plaintiffs and the California Class Members to disclose the
defective nature of the iPhones because:

a. Apple was in a superior position to know the true state of facts about the Audio IC
Defect in the iPhones;

1 **(By All Plaintiffs on Behalf of the Nationwide Class or, Alternatively, the California Class)**

2 130. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though
3 fully set forth herein.

4 131. The California Unfair Competition Law (“UCL”) prohibits acts of “unfair competition,”
5 including any “unlawful, unfair or fraudulent business act or practice” and “unfair, deceptive, untrue or
6 misleading advertising.” Cal. Bus. & Prof. Code § 17200.

7 132. Apple has engaged in unfair competition and unfair, unlawful or fraudulent business
8 practices by the conduct, statements, and omissions described above, and by knowingly and intentionally
9 concealing from Plaintiffs and the Class Members the Audio IC Defect (and the costs and diminished
10 value of the iPhones as a result of Defendant’s conduct). Defendant should have disclosed this information
11 because it was in a superior position to know the true facts related to the Audio IC Defect, and Plaintiffs
12 and Class Members could not reasonably be expected to learn or discover the true facts related to the
13 Audio IC Defect.

14 133. These acts and practices have deceived Plaintiffs and are likely to deceive the public. In
15 failing to disclose the Audio IC Defect and suppressing other material facts from Plaintiffs and the Class
16 Members, Defendant breached its duties to disclose these facts, violated the UCL, and caused injuries to
17 Plaintiffs and the Class Members. The omissions and acts of concealment by Defendant pertained to
18 information that was material to Plaintiffs and the Class Members, as it would have been to all reasonable
19 consumers.

20 134. The injuries suffered by Plaintiffs and the Class Members are greatly outweighed by any
21 potential countervailing benefit to consumers or to competition, nor are they injuries that Plaintiffs and
22 the Class Members should have reasonably avoided.

23 135. Apple’s acts and practices are unlawful because they violate California Civil Code
24 §§ 1668, 1709, 1710, and 1750, *et seq.*, and California Commercial Code § 2313.

25 136. Plaintiffs seek to enjoin further unlawful, unfair and/or fraudulent acts or practices by
26 Defendant, to obtain restitutionary disgorgement of all monies and revenues generated as a result of such
27 practices, and all other relief allowed under California Business & Professions Code § 17200.

SEVENTH CLAIM FOR RELIEF

VIOLATIONS OF THE CALIFORNIA FALSE ADVERTISING LAW (“FAL”)

Cal. Bus. & Prof. Code § 17500, *et seq.*

(By All Plaintiffs on Behalf of the Nationwide Class or, Alternatively, the California Class)

137. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

138. The California False Advertising Law (“FAL”) states: “It is unlawful for any . . . corporation . . . with intent directly or indirectly to dispose of real or personal property . . . to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated . . . from this state before the public in any state, in any newspaper or other publication, or any advertising device, . . . or in any other manner or means whatever, including over the Internet, any statement . . . which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.” Cal. Bus. & Prof. Code § 17500.

139. Apple caused to be made or disseminated throughout California and the United States, through advertising, marketing and other publications, statements that were untrue or misleading, and which were known, or which by the exercise of reasonable care should have been known to Apple, to be untrue and misleading to consumers, including Plaintiffs and the other Class Members.

140. Apple has violated the FAL because the misrepresentations and omissions regarding the functionality of its iPhones as set forth in this Complaint were material and likely to deceive a reasonable consumer.

141. Plaintiffs and the other Class Members have suffered an injury in fact, including the loss of money or property, as a result of Apple’s unfair, unlawful, and/or deceptive practices. In purchasing their iPhones, Plaintiffs and the other Class Members relied on the misrepresentations and/or omissions of Apple with respect to the reliability of the iPhones. Defendant’s representations were untrue because the iPhones were manufactured and sold with the Audio IC Defect. Had Plaintiffs and the other Class Members known this, they would not have purchased their iPhones and/or paid as much for them. Accordingly, Plaintiffs and the other Class Members overpaid for their iPhones and did not receive the benefit of their bargain.

1 142. All of the wrongful conduct alleged herein occurred in the conduct of Apple's business.

2 143. Plaintiffs, individually and on behalf of the other Class Members, request that this Court
3 enter such orders or judgments as may be necessary to restore to Plaintiffs and the other Class Members
4 any money Apple acquired by unfair competition, including restitution and/or restitutionary disgorgement,
5 and for such other relief set forth below.

6 **EIGHTH CLAIM FOR RELIEF**
7 **NEGLIGENT MISREPRESENTATION**

8 **(By All Plaintiffs on Behalf of the Nationwide Class or, Alternatively, the California Class)**

9 144. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though
10 fully set forth herein.

11 145. Apple had a duty to provide honest and accurate information to its customers so that
12 customers could make informed decisions on the substantial purchase of a smartphone.

13 146. Apple specifically and expressly misrepresented material facts to Plaintiffs and Class
14 Members, as discussed above.

15 147. Apple knew, or in the exercise of reasonable diligence, should have known, that the
16 ordinary and reasonable consumer would be misled by Apple's misleading and deceptive advertisements.

17 148. Plaintiffs and the Class Members justifiably relied on Apple's misrepresentations and have
18 been damaged thereby in an amount to be determined at trial.

19 **NINTH CLAIM FOR RELIEF**
20 **UNJUST ENRICHMENT**

21 **(By All Plaintiffs on Behalf of the Nationwide Class or, Alternatively, the California Class)**

22 149. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though
23 fully set forth herein.

24 150. Plaintiffs and the Class Members conferred a benefit on Apple by purchasing the iPhones.

25 151. Apple had knowledge that this benefit was conferred upon it.

26 152. Because of its wrongful acts and omissions, Apple charged a higher price for the iPhones
27 than the iPhones' true value and Apple obtained money which rightfully belongs to Plaintiffs and the Class
Members.

1 DATED: May 6, 2019

2 **TYCKO & ZAVAREEI LLP**

3
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**Pro Hac Vice Applications to be submitted*

*Attorneys for Plaintiffs and the Putative
Classes*

EXHIBIT 1

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26 * Pro Hac Vice to follow

27 Attorneys for Plaintiffs and the Proposed Class

28
29 **UNITED STATES DISTRICT COURT**
30 **NORTHERN DISTRICT OF CALIFORNIA**

31 JOSEPH CASILLAS and DE'JHONTAI
32 BANKS, on behalf of themselves and all
33 others similarly situated,

34 Plaintiffs,

35 v.

36 APPLE INC.,

37 Defendant.

Case No.: _____

CLASS ACTION

VENUE DECLARATION OF JOSEPH CASILLAS

1 I, JOSEPH CASILLAS, hereby declare and state as follows:

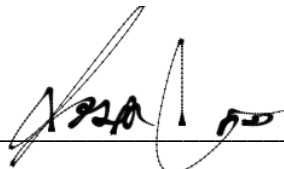
2 1. I am over the age of 18. The facts contained in this declaration are based upon my personal
3 knowledge, and if called upon to do so, I could and would testify competently hereto.

4 2. I am, and at all time relevant to this action have been, a resident of Alameda County,
5 California.

6 3. On or about July 8, 2017, I purchased a new iPhone 7 for approximately \$969.99. I
7 purchased this iPhone 7 from a Best Buy retail store, located in Vallejo, California. In or around November
8 2018, I noticed that the sound on my phone was distorted with audible statis while attempting to play a
9 video on my phone. Additionally, the speaker function on my phone exhibits the same distorted sound
10 when on phone calls or attempting to utilize any other audio functions with the phone's speakers.
11

12 I declare under penalty of perjury under the laws of the United States and of the State of California
13 that the foregoing is true and correct.
14

15
16 Dated: 05/06/2019
17

18 By: 
19 Joseph Casillas
20
21
22
23
24
25
26
27
28

1 Hassan A. Zavareei (CA Bar No. 181547)
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26 * *Pro Hac Vice to follow*

27 *Attorneys for Plaintiffs and the Proposed Class*

28
29 **UNITED STATES DISTRICT COURT**
30 **NORTHERN DISTRICT OF CALIFORNIA**

31 JOSEPH CASILLAS and DE'JHONTAI
32 BANKS, on behalf of themselves and all
33 others similarly situated,

34 Plaintiffs,

35 v.

36 APPLE INC.,

37 Defendant.

Case No.: _____

CLASS ACTION

**VENUE DECLARATION OF DE'JHONTAI
BANKS**

1 I, DE'JHONTAI BANKS, hereby declare and state as follows:

2 1. I am over the age of 18. The facts contained in this declaration are based upon my personal
3 knowledge, and if called upon to do so, I could and would testify competently hereto.

4 2. I am, and at all time relevant to this action have been, a resident of Santa Clara County,
5 California.

6 3. In or around January 2017, I purchased a new iPhone 7 for approximately \$1,200.00. I
7 purchased this iPhone 7 from a Verizon retail store, located in Fremont, California. In or around August
8 2018, I noticed that I was no longer able to hear callers through the earpiece speaker of my iPhone 7 while
9 holding the phone to my ear. Since then, I must use the iPhone's "speaker" function in order to hear callers
10 through the iPhone 7's outward speakers. I must make all calls in this manner.
11

12 I declare under penalty of perjury under the laws of the United States and of the State of California
13 that the foregoing is true and correct.
14

15 Dated: 4/19/2019
16

17
18 By: _____
19

20 De'Jhontai Banks
21
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28

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

JOSEPH CASILLAS and DE'JHONTAI BANKS, on behalf of themselves and all others similarly situated

(b) County of Residence of First Listed Plaintiff Alameda County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Tycko & Zavareei LLP; 1828 L Street NW, Washington, D.C. 20036; Telephone: (202) 973-0900

DEFENDANTS

APPLE, INC.

County of Residence of First Listed Defendant Santa Clara County (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
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
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: 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): 15 U.S.C. § 2301

Brief description of cause: Breach of Express Warranty

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 DOCKET NUMBER

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

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

DATE 05/06/2019

SIGNATURE OF ATTORNEY OF RECORD

/s/Hassan A. Zavareei

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.