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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

THOMAS T. COOK, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

APPLE INC., a California Corporation;
DOES 1 through 10, inclusive,

Defendants.

Case No.: '17CV2579 BEN RBB

CLASS ACTION

COMPLAINT FOR:

- 1. Violations of the Consumers Legal Remedies Act, Cal. Civ. Proc. Code § 1750, et seq.**
- 2. Violations of California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, et seq.**
- 3. Violation of California’s False and Misleading Advertising Law, Cal. Bus. & Prof. Code § 17500, et seq.**
- 4. Unjust Enrichment**

JURY TRIAL DEMANDED

1 Plaintiff Thomas T. Cook (“Plaintiff”) by and through their undersigned
2 attorneys, bring this class action against Apple Inc. (“Defendant” or “Apple”),
3 on behalf of themselves and a class of similarly situated persons (the “Class” or
4 “Class Members”). Plaintiff alleges the following upon his own knowledge, or
5 where there is no personal knowledge, upon the investigation of counsel and/or
6 upon information and belief:

7 **INTRODUCTION**

8 1. Plaintiff brings this class action on behalf of himself and all others
9 similarly situated who purchased or otherwise owned an iPhone 6 smartphone or
10 other older model iPhone manufactured and sold by Apple. Plaintiff and other
11 iPhone owners began experiencing significant slowdown and performance issues
12 with their phones when Apple updated the operating software of the phones to
13 iOS 10.2.1 earlier this year. Apple represented to the public that iOS 10.2.1 and
14 subsequent iOS updates were fully compatible with, and intended for use in,
15 iPhone 6 and other older iPhone models. Plaintiff and the other Class Members
16 were effectively compelled to update their iPhones to iOS 10.2.1 because Apple
17 claimed the update provided “bug fixes and improves the security” of their
18 phones.

19 2. However, after updating to iOS 10.2.1, Plaintiff and the other Class
20 Members, without any warning or notice, were left with phones that operated in
21 a sluggish manner and failed to perform at the normal, expected standard prior to
22 the update. Indeed, after the iOS update, iPhone owners experienced problems
23 and delays using mobile applications, or “Apps,” on their phones, slowdowns in
24 downloading data, battery drain, Wi-Fi and internet connectivity issues, and
25 inadvertent shutdowns, among other concerns. Plaintiff and the other Class
26 Members have therefore been harmed because they were forced to update their
27 iPhones with operating software that degraded the performance and functionality
28

1 of their phones, leaving them with phones that were significantly impaired in
2 value.

3 3. Very recently, as of December 20, 2017, Apple effectively
4 confirmed that the iOS 10.2.1 update was responsible for slowing down and
5 hindering the performance of the iPhone 6 and other older model iPhones. Apple
6 claims the batteries used in iPhone 6 models were prone to causing unexpected
7 shutdowns, and that the iOS 10.2.1 update was intended to prevent such
8 shutdowns. To address the battery issues purportedly affecting iPhone 6 models,
9 Apple used the iOS 10.2.1 update to “throttle,” or slow down, the processor
10 speeds of those phones. Thus, as part of this purported “fix,” Apple *intentionally*
11 caused the slowdown and impairment of its iPhone 6 and older model iPhones,
12 to the detriment of Plaintiff and other Class Members.

13 4. Notably, Apple did not disclose to the public at the time of the
14 iOS 10.2.1 update that it would be throttling the processor speeds of the iPhone 6
15 and other older model iPhones. Nor did Apple disclose at the time of the iOS
16 update that there were any issues surrounding the batteries in those iPhones.

17 5. A simple and easy fix of the purported shutdown problem would
18 have been to provide notice to iPhone users and offer to replace the batteries in
19 the iPhone 6 and other older-model phones. Apple, however, has never offered
20 its customers the option of replacing the batteries in those phones. As a result,
21 owners of the iPhone 6 and other older iPhone models have been stuck with
22 inferior, poorly-performing phones, or worse yet, feel compelled to spend
23 hundreds of dollars more to upgrade a newer model iPhone.

24 6. Based on the misconduct alleged herein, Plaintiff alleges violations
25 of California’s Consumers Legal Remedies Act, Cal. Civ. Proc. Code § 1750, *et*
26 *seq.*; violations of California’s Unfair Competition Law, Cal. Bus. & Prof. Code
27 § 17200, *et seq.*; violations of California’s False and Misleading Advertising
28 Law, Cal. Bus. & Prof. Code § 17500, *et seq.*; and unjust enrichment. Plaintiff

1 seeks, on behalf of himself and all Class Members nationwide, monetary
2 damages, restitution, injunctive relief, and all other relief deemed appropriate,
3 arising out of such misconduct.

4 **JURISDICTION AND VENUE**

5 7. This Court has jurisdiction over this matter pursuant to 28 U.S.C.
6 § 1332, as modified by the Class Action Fairness Act of 2005, because at least
7 one member of the Class is a citizen of a different state than Defendant, there are
8 more than 100 members in the Class, and the aggregate amount in controversy
9 exceeds \$5,000,000, exclusive of interests and costs.

10 8. Venue properly lies in this District pursuant to 28 U.S.C. § 1391(a),
11 because Plaintiff resides here, and Defendant has transacted substantial business
12 within the meaning of 28 U.S.C. § 1391(a), as defined in 28 U.S.C. § 1391(c),
13 and because a substantial part of the events giving rise to the claims alleged herein
14 occurred in the Southern District of California. Specifically, Defendant marketed
15 and sold numerous iPhones throughout this District, maintained retail outlets in
16 this District; and Plaintiff, as well as other members of the Class, purchased
17 Defendant's iPhones from retail outlets located within this District.

18 **PARTY ALLEGATIONS**

19 9. Plaintiff Thomas T. Cook resides in San Diego County, California.
20 Plaintiff Cook purchased and owns an iPhone 6.

21 10. Defendant Apple Inc. is a California corporation with its principal
22 executive offices at 1 Infinite Loop, Cupertino, California 95104.

23 **SUBSTANTIVE ALLEGATIONS**

24 11. In or around October 2014, Plaintiff purchased a new iPhone 6
25 (64 GB) from Verizon Wireless.

26 12. Prior to updating to iOS 10.2.1, Plaintiff's iPhone operated with
27 normal functionality and at normal processing speeds.
28

1 13. On or about December 12, 2016, Apple released iOS 10.2, which, at
2 that time, was intended as the operating system software update for iPhones,
3 including the iPhone 6 and other older iPhone models. The Software Update
4 provided by Apple to Plaintiff and the other Class Members described the
5 iOS 10.2 update as follows:

6 iOS 10.2 introduces new features including the TV app (US only), a
7 new and unified and experience for accessing your TV shows and
8 movies across multiple video apps. Emoji have been beautifully
9 redesigned to reveal even more detail and over 100 new emoji have
been added including new faces, food, animals, sports and
professions. This update also includes stability improvements and
bug fixes.

10 14. Just over a month later, on or about January 23, 2017, Apple released
11 iOS 10.2.1, which was presented to the public as a “minor update” to iOS 10.2.¹
12 Apple provided a cursory description of the Software Update for iOS 10.2.1,
13 stating only that it “includes bug fixes and improves the security of your iPhone
14 or iPad.” Further information about the security content of iOS 10.2.1 was
15 provided on Apple’s website, which indicated that iOS 10.2.1 was intended for
16 use by, and compatible with, “iPhone 5 and later [iPhone models],” including all
17 iPhone 6 models.²

18 15. In connection with the release of its iOS 10.2.1 update, Apple
19 provided no warning or notice to the public that the update would cause certain
20 iPhone models, including iPhone 6 models, to operate significantly slower and
21 would otherwise degrade the overall performance, functionality, and usability of
22 those phones. As discussed below, Apple was well aware at the time that the
23 iOS 10.2.1 update would cause adverse-performance issues with the iPhone 6 and
24 other older model iPhones. Apple, in fact, introduced the iOS 10.2.1 update with
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26
27 ¹ See “Apple iOS 10.2.1 Is Now Available: What Is Included In The Update?”
28 <https://www.forbes.com/sites/amitchowdhry/2017/01/23/apple-ios-10-2-1-is-now-available-what-is-included-in-the-update/#163173fd488f>.

² See <https://support.apple.com/en-us/HT207482>.

1 the specific intention and plan to “throttle” or slow down the processing speeds
2 of the iPhone 6 and other older model phones.

3 16. Notably, Apple has long marketed and advertised its iPhones,
4 including the iPhone 6 and other older model iPhones, as being fully compatible
5 and working well with future iOS updates. For example, as part of its major
6 nationwide advertising campaign—“Why There’s Nothing Quite like iPhone”—
7 Apple assured iPhone users (including those with iPhone 6 and other older model
8 iPhones) that they had nothing to worry about when the iOS was updated, and
9 that their phones would continue to work “ridiculously well.” Indeed, Apple
10 touted the long-term, future compatibility of its iPhone models by stating:

11 It should have hardware and software that were designed to work
12 with each other. And enhance each other. By people who frequently
13 see each other. That’s how you make a phone work ridiculously
14 well.

15 And whenever there are shiny, new software updates with shiny,
16 new features, you should be able to sit back, relax, and know your
17 phone will get them. And be compatible with them. For years. For
18 free.

19 17. Plaintiff and the Class Members were subjected to the same false,
20 misleading, and deceptive statements made by Apple in promoting the use of its
21 iOS 10.2.1 software update. Plaintiff and the Class Members relied on Apple’s
22 false, misleading, and deceptive statements (including omissions) in updating to
23 iOS 10.2.1 with the fair and reasonable expectation of receiving equal or better
24 performance and/or new features and functionality.

25 18. With no prior warning from Apple concerning the adverse nature of
26 iOS 10.2.1, Plaintiff unwittingly updated the operating software of his iPhone 6
27 to iOS 10.2.1, and later, to subsequent versions of iOS that had the same problems
28 as iOS 10.2.1.

19. Immediately after updating to iOS 10.2.1, Plaintiff’s iPhone became
significantly impaired and failed to function normally. Indeed, the update caused
the operation and performance of Plaintiff’s iPhone to slow down dramatically.

1 For example, Plaintiff and other iPhones users experienced slower App launches,
2 slower web browsing and downloading of data, delayed touchscreen interaction,
3 and other performance issues, including crashes, freezes, battery drain, Wi-Fi and
4 internet connectivity issues, and home screen failure.

5 20. As a result of the iOS 10.2.1 update, the overall operations and
6 functionality of Plaintiff's iPhone was severely slowed down and degraded,
7 including core functions concerning the usage of the phone itself, emails, text
8 messaging, and App usage. Plaintiff was therefore left with a phone that was
9 severely impaired in value and had compromised functionality.

10 21. Many other iPhone users have observed and reported their phones
11 becoming slow and impaired after updating to iOS 10.2.1. For example, on
12 Apple's own "Support Communities Forum," an iPhone 6 user with the username
13 "stobloo" reported the following:

14 Q: iOS 10.2.1 iPhone 6 Plus - Very Slow

15 Since installing the iOS 10.2.1 update on my iPhone 6 Plus the
16 overall performance has become nearly unusable.

17 It constantly plays catch up when typing anything whether it is an
18 internet search, e-mail content or anything else. It feels like
something has a big memory leak and it's operating with any
available memory and struggling massively.

19 I have done all the 'usual' disabling of certain transparency effects
20 and background app refresh, forced reset, reboot; all to no avail.

21 I don't consider restoring it to factory settings an avenue to take as a
test as I cannot lose my text messages.

22 The only thing that's changed is the iOS update. Is anyone else
23 having problems?

24 *iPhone 6 Plus, iOS 10.2.1*

25 Posted on Mar 2, 2017 8:15 AM

26 See <https://discussions.apple.com/thread/7879711>.

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1 22. As of December 26, 2017, 559 other users on Apple’s Support
2 Communities Forum indicated they had the same concerns raised by “stobloo”
3 about the update.

4 23. Another user on Apple’ Support Communities Forum, known as
5 “epurschke,” reported similar slowdown and performance problems after
6 updating to iOS 10.2.1, as follows:

7 Q: iPhone 6 running slow, won't download or update apps,
8 storage is wrong

9 I noticed the other day that my phone was starting to act slow in
10 response and download. I checked my usage and I was full. I deleted
11 all (15GB) of my music since I don't use it. It worked for the rest of
12 the day. Today it did the same thing, the only issue is my music is
13 not showing up in storage but the 15GB are back for some reason.

14 I've been trying to back up my phone since that first day and it will
15 start for about 3 minutes then it will say the phone is disconnected.

16 I'm doing everything I can without restoring the phone to factory
17 settings, but I'm running out of ideas.

18 *iPhone 6, iOS 10.2.1*

19 Posted on Mar 8, 2017 12:13 PM

20 See <https://discussions.apple.com/thread/7885326>.

21 24. As of December 26, 2017, 210 other users on Apple’s Support
22 Communities Forum indicated they had the same concerns raised by “epurschke”
23 about the update.

24 25. Other iPhone users have made similar complaints about the iOS
25 10.2.1 update on the iPhone Reddit forum.³ For example, Reddit user “Naxolyte”
26 complained that “iOS 10.2.1 made my iPhone SE noticeably slower.” Another
27 Reddit user, “ArchiveSQ,” echoed the sentiment, noting: “I was wondering about
28 this. Mine is noticeably slower too.” And, Reddit user “httr_barbarian”
remarked in the same thread: “installed 10.2.1 onto my iPhone5, and now my

³ https://www.reddit.com/r/iphone/comments/5qu6ek/ios_1021_made_my_iphone_se_noticeably_slower/#bottom-comments

1 battery drains before lunch time. [S]erious noticeable difference in battery life,
2 since updating to 10.2.1[,] considering reverting back to ios9. [T]his sucks.”

3 26. The slowdown and performance issues related to the iOS 10.2.1
4 update have also been widely documented by the media. In a *Forbes* article
5 entitled, “*Why Every iPhone Contains a Nasty Surprise,*” tech journalist Gordon
6 Kelly wrote that in connection with the iOS 10.2.1 update, Apple “deliberately
7 slows older iPhones.”⁴ In another article in *Newsweek* entitled “*The Apple*
8 *iPhone Slow Down is Real – Here’s Why,*” tech journalist Dana Dovey reported
9 that an analysis of iPhone data revealed that “iPhones perform worse with newer
10 iOS updates...”⁵ According to the *Newsweek* article, “[r]esults showed that the
11 iPhone 6S running on iOS 10.2 performed fine, but when the same phones were
12 upgraded to the iOS 10.2.1 in January 2017, they began to gradually perform
13 worse. The same downward performance trend was seen on iPhone 6S running
14 iOS 11.2, an update released in December 2017.” Lastly, in a *Wired* article
15 entitled “*Apple Had Way Better Options Than Slowing Down Your iPhone,*” tech
16 journalist Jordan McMahon noted that “Apple confirmed what many customers
17 have long suspected: The company has been slowing the performance of older
18 iPhones.”

19 27. Compounding the problems surrounding the iOS 10.2.1 update,
20 Apple actively prevents iPhone users from reverting back to older operating
21 software to avoid the problems in newer iOS updates. In a *Forbes* article entitled,
22 “*Apple iOS 10.2.1 Suddenly Becomes A Bigger Problem,*” tech journalist Gordon
23 Kelly explained: “Apple has decided to do what it normally does shortly after an
24 iOS release: it has stopped signing the previous version. This means any user
25 running the new iOS 10.2.1 upgrade cannot go back to iOS 10.2 because the
26

27 ⁴ <https://www.forbes.com/sites/gordonkelly/2017/12/21/apple-iphone-battery-life-slow-iphone-performance-ios11-battery/#15effc4a674b>

28 ⁵ <http://www.newsweek.com/why-do-old-iphones-slow-down-new-report-solves-mystery-752874>

1 checks (sign off) devices require before installing an update will be told by Apple
2 servers it is invalid.” Because of this onerous policy by Apple, Plaintiff and the
3 Class Members have effectively been denied the option of reverting back to using
4 a less problematic, better performing version of iOS.

5 28. Incredibly, Apple itself confirmed that iOS 10.2.1 and subsequent
6 iOS updates were, in fact, *intended* to slow down and hinder the performance of
7 the iPhone 6 and other older model iPhones. Apple revealed this information
8 after John Poole, founder of Primate Labs and developer at Geekbench, published
9 a blog post on December 18, 2017, documenting his in-depth examination of
10 iPhone 6 and 7 devices that were using different versions of iOS. As part of his
11 analysis, Poole compiled data from the performance tests of thousands of iPhones
12 and specifically looked at phones running iOS 10.2 and iOS 10.2.1.

13 29. Poole’s analysis revealed that iPhone 6 models were, in fact,
14 suffering from widespread slowdown after updating to iOS 10.2.1, and that “users
15 will experience reduced performance without notification” from such updates.
16 According to Poole, the slowdown in iPhone 6 performance from the iOS update
17 was intentional and planned, as “Apple introduced CPU slow-down” to address
18 a battery performance issue that Apple claimed was affecting older model
19 iPhones. Poole further remarked on the confusing and deceptive nature of the
20 upgrade, stating it “will also cause users to think, ‘my phone is slow so I should
21 replace it’ not, ‘my phone is slow so I should replace its battery.’”

22 30. Rather than deny Poole’s analysis, Apple basically confirmed his
23 findings and acknowledged that the slowdown in iPhone 6 performance was
24 caused by the iOS 10.2.1 software update. In a public statement released by
25 Apple, on or about December 20, 2017, Apple claimed the batteries in iPhone 6
26 models were prone to causing unexpected shutdowns, and that the iOS 10.2.1
27 update was ostensibly intended to prevent such shutdowns. To address the
28 battery issues that were purportedly affecting iPhone 6 models, Apple used the

1 iOS 10.2.1 update to “throttle,” or slow down, the processor speeds of those
2 phones. Apple therefore admitted that it was intentionally slowing down and
3 hindering the performance of iPhone 6 models as part of this purported fix.

4 31. Apple did not disclose to iPhone 6 owners at the time of the iOS
5 10.2.1 update that it would be throttling the processor speeds of those phones.
6 Nor did Apple disclose at the time that there were any issues with the battery in
7 iPhone 6 models.

8 32. A simple and easy fix to the purported shutdown problem would
9 have been to provide notice to iPhone users and offer to replace the batteries in
10 iPhone 6 models. Apple, however, has never offered its customers the option of
11 replacing the batteries in those phones. As a result, iPhone 6 owners (like
12 Plaintiff) are stuck with inferior, poorly performing phones, or worse yet, feel
13 compelled to spend hundreds of dollars more to upgrade to a newer model
14 iPhone.

15 33. As a result of Apple’s deceptive practices and wrongful conduct
16 described above, Plaintiff and other Class Members were harmed by losing the
17 normal use of their iPhone 6, or other older model iPhones, and/or being forced
18 to purchase a new smartphone. Indeed, through its conduct, Apple has compelled
19 many iPhone owners to “upgrade” to a newer iPhone model by leaving them with
20 the impression that their current phones are not working correctly, or are obsolete,
21 when in fact, it is Apple’s own software updates that are causing the adverse
22 performance issues. Apple, therefore, stands to benefit financially when older
23 iPhones are slowed down or otherwise degraded by its iOS updates, and owners
24 are forced to purchase a new phone.

25 **CLASS ALLEGATIONS**

26 34. Plaintiff brings this action pursuant to Fed. R. Civ. P. 23(a), (b)(2),
27 and (b)(3), individually, and as a class action on behalf of all individuals in the
28 United States who currently own, or owned, an iPhone smartphone that was

1 introduced prior to 2017 (including the following models: iPhone 7, iPhone 7
2 Plus, iPhone 6, iPhone 6 Plus, iPhone 6s, iPhone 6s Plus, iPhone SE, iPhone 5s,
3 iPhone 5c, and iPhone 5), and which was updated to iOS 10.2.1 (hereinafter
4 referred to as “Older iPhones”).

5 35. Specifically excluded from the proposed Class are: Defendant and
6 its officers, directors, agents, trustees, parents, corporations, trusts,
7 representatives, employees, principals, partners, joint ventures, and entities
8 controlled by Defendant, Defendant’s heirs, successors, assigns, or other persons
9 or entities related to, or affiliated with, Defendant, the Judge(s) assigned to this
10 action, and any member of their immediate families.

11 36. Subject to additional information obtained through further
12 investigation and discovery, the foregoing definition of the Class may be
13 expanded or narrowed by amendment, amended complaint, or at class
14 certification proceedings.

15 37. Numerosity. There are reportedly tens of millions of iPhone users
16 nationwide, and therefore the members of the Class are so numerous that joinder
17 of all individual members is impracticable. The exact number and identities of
18 the Class Members are unknown to Plaintiff at this time, but can be ascertained
19 through appropriate discovery, including Defendant’ own records.

20 38. Commonality and Predominance. There are questions of law and
21 fact, of common and general interest that exist, as to Plaintiff and all Class
22 Members, and predominate over any questions solely affecting individual Class
23 Members. These questions include, *inter alia*:

- 24 a. whether Defendant released and implemented iOS updates,
25 including iOS 10.2.1, that slowed or otherwise impaired the performance
26 of Older iPhones;

1 b. whether Defendant falsely represented that its iOS updates,
2 including iOS 10.2.1, were compatible with, and intended for use in, Older
3 iPhones;

4 c. whether Defendant failed to disclose that its iOS updates,
5 including iOS 10.2.1, caused the slowdown or impairment in performance
6 of Older iPhones;

7 d. whether Defendant concealed problems concerning the
8 batteries used in Older iPhones;

9 e. whether Defendant violated the Consumers Legal Remedies
10 Act (“CLRA”), Cal. Civ. Proc. Code § 1750, *et seq.*;

11 f. whether Defendant violated the Unfair Competition Law
12 (“UCL”), Cal. Bus. & Prof. Code § 17200, *et seq.*;

13 g. whether Defendants violated the False and Misleading
14 Advertising Law (“FAL”), Cal. Bus. & Prof. Code § 17500, *et seq.*;

15 h. whether Defendant’s actions proximately caused damages to
16 Plaintiff and the Class Members;

17 i. what the measure of damages suffered by Plaintiff and the
18 Class is; and

19 j. whether Defendant was unjustly enriched by the conduct
20 complained herein.

21 39. Typicality. The claims asserted by Plaintiff are typical of all other
22 Class Members. Plaintiff’s claims present class-wide legal and factual issues that
23 arise out of the same course of deceptive conduct by Defendant. Plaintiff, like
24 all other Class Members, was harmed by Defendant’s deceptive and misleading
25 statements, and its conduct in forcing iPhone users to update to an iOS that
26 adversely affected the functionality of their phones. All Class Members,
27 including Plaintiff, sustained similar economic damages arising out of
28 Defendant’ alleged common course of conduct.

1 40. Adequacy. Plaintiff will fairly and adequately protect the interests
2 of the Class Members and has no interests antagonistic to those of the Class
3 Members. Plaintiff has retained counsel experienced in the prosecution and
4 successful settlement of nationwide and statewide class actions.

5 41. Superiority (pursuant to Rule 23(b)(3)). A class action is superior
6 to all other available means for the fair and efficient adjudication of this
7 controversy. The damages or other financial detriment suffered by individual
8 Class Members are relatively small compared to the burden and expense that
9 would be entailed by individual litigation of their claims against Defendant. It
10 would thus be virtually impossible for Class Members, on an individual basis, to
11 obtain effective redress for the wrongs done to them. Furthermore, even if Class
12 Members could afford such individualized litigation, the court system could not.
13 Individualized litigation would create the danger of inconsistent or contradictory
14 judgments arising from the same set of facts. Individualized litigation would also
15 increase the delay and expense to all parties and the court system from the issues
16 raised by this action. By contrast, the class action device provides the benefits of
17 adjudication of these issues in a single proceeding, economies of scale,
18 comprehensive supervision by a single court, and presents no unusual
19 management difficulties under the circumstances here.

20 42. In the alternative, the Class may also be certified under Fed. R. Civ.
21 P. 23(b)(2) because:

22 a. the prosecution of separate actions by individual Class
23 Members would create a risk of inconsistent or varying adjudication, with
24 respect to individual Class Members, which would establish incompatible
25 standards of conduct for Defendant;

26 b. the prosecution of separate actions by individual Class
27 Members would create a risk of adjudications, with respect to them, that
28 would, as a practical matter, be dispositive of the interests of other Class

1 Members not parties to the adjudications, or substantially impair or impede
2 their ability to protect their interests; and/or

3 c. Defendant has acted or refused to act on grounds generally
4 applicable to the Class, thereby making appropriate final declaratory
5 and/or injunctive relief with respect to the members of the Class as a whole.

6 43. Defendant has acted on grounds generally applicable to the entire
7 Class with respect to the matters complained of herein, thereby making
8 appropriate the relief sought herein with respect to Class Members as a whole.

9 **COUNT I**

10 **Violations of The Consumers Legal Remedies Act,**
11 **Cal. Civ. Code §1 750, *et seq.***
(On Behalf of Plaintiff and All Class Members)

12 44. Plaintiff incorporates the above allegations by reference as if fully
13 set forth herein.

14 45. This Count is brought pursuant to the Consumers Legal Remedies
15 Act, or CLRA. Plaintiff and the other Class Members are consumers as defined
16 by Cal. Civ. Proc. Code § 1761(d). Their purchases of Older iPhones constitute
17 transactions for the sale of “goods” within the meaning of Cal. Civ. Proc. Code
18 §§ 1770(a) and 1761.

19 46. Defendant, through its agents, employees, and/or subsidiaries,
20 violated the CLRA by engaging in the following practices, proscribed by Cal.
21 Civ. Proc. Code § 1770(a), in transactions that were intended to result in, and did
22 result in, the sale of the product in the State of California:

- 23 a. representing Older iPhones as having characteristics, uses,
24 and benefits, which they did not in fact have;
- 25 b. representing Older iPhones as being of a particular standard,
26 quality, or grade, which in fact, they were not;
- 27 c. advertising Older iPhones with the intent not to sell them as
28 advertised;

1 d. representing that transactions involving the sale and purchase
2 of Older iPhones conferred or involved certain rights and obligations,
3 when such transaction did not; and

4 e. representing Older iPhones as having been supplied in
5 accordance with previous representations when in fact, they were not.

6 47. Defendant knew, or should have known, that their representations
7 and advertisements regarding the Older iPhones were false and misleading.

8 48. Defendant' conduct is malicious, fraudulent, and wanton, and
9 provided misleading information to Plaintiff, the Class, and the general public.

10 49. By reason of the foregoing, Plaintiff and Class Members have been
11 irreparably harmed, entitling them to both injunctive relief and restitution. Thus,
12 pursuant to Cal. Civ. Proc. Code § 1782(d), Plaintiff seeks a Court order
13 enjoining the above-described wrongful acts and practices of Defendant and for
14 restitution and disgorgement.

15 50. Pursuant to § 1782 of the CLRA, Plaintiff has notified Defendant,
16 in writing, of the particular violations of § 1770 of the Act and demanded that
17 Defendant rectify the actions described above by providing complete monetary
18 relief, agreeing to be bound by their legal obligations and to give notice to all
19 affected customers of their intent to do so. Plaintiff sent this notice by certified
20 mail, return receipt requested, to Defendant's principal place of business.

21 51. Unless Defendant agrees to rectify the problems associated with the
22 actions detailed above or give notice to all affected consumers within 30 days of
23 the date of written notice pursuant to Cal. Civ. Proc. Code § 1782, Plaintiff will
24 amend this Complaint to seek an order awarding actual damages.

25 52. As a proximate result of Defendant's deceptive acts, Plaintiff and
26 the public, including the Class, have been damaged.

27 53. Plaintiff also seek injunctive relief for the violation of the CLRA.

28 54. Plaintiff further seeks attorneys' fees and costs as allowed by law.

1 **COUNT II**

2 **Violations of California’s Unfair Competition Law,**
3 **Cal. Bus. & Prof. Code § 17200, *et seq.***
4 **(On Behalf of Plaintiff and All Class Members)**

5 55. Plaintiff incorporates by reference and realleges each and every
6 paragraph above as though fully alleged herein.

7 56. The UCL prohibits any “unlawful . . . business act or practice.”
8 Defendants, through their agents, employees, and/or subsidiaries, violated the
9 UCL’s prohibition against engaging in unlawful acts and practices by, *inter alia*:
10 (a) engaging in fraudulent and deceitful conduct in violation of Cal. Civ. Proc.
11 Code §§ 1709 through 1711; and (b) engaging in practices that resulted in
12 transactions that violated the CLRA, as described above.

13 57. Plaintiff reserves the right to allege other violations of law, which
14 constitute other unlawful business acts or practices. Such conduct is ongoing and
15 continues to this date.

16 58. The UCL also prohibits any “unfair or fraudulent business act or
17 practice.” As described herein, Defendant engaged in unfair business acts and
18 practices by: (i) mischaracterizing the adverse nature of iOS 10.2.1 and
19 subsequent operating system updates, and failing to disclose that such updates
20 were detrimental to the performance of Older iPhones; (ii) falsely representing
21 that iOS 10.2.1 and subsequent operating system updates were fully compatible
22 with, and intended for use in, Older iPhones; (iii) forcing Plaintiff and other Class
23 Members to “update” their Older iPhones to iOS 10.2.1, and prohibiting them
24 from using previous versions of the iOS that performed better and did not degrade
25 their phones; (iv) intentionally throttling or slowing down the performance of
26 Older iPhones by requiring the use iOS 10.2.1 and other software updates; and
27 (v) concealing the existence of battery problems in Older iPhones.

28 59. Defendant’s acts, omissions, misrepresentations, practices, and non-
disclosures alleged herein constitute “unfair” business acts and practices within

1 the meaning of the UCL in that Defendant's conduct is substantially injurious to
2 consumers, offends public policy, and is immoral, unethical, oppressive,
3 unscrupulous, unconscionable, and/or substantially injurious, and the gravity of
4 the conduct outweighs any alleged benefits attributable to such conduct. There
5 were reasonably available alternatives to further Defendant's legitimate business
6 interests, other than the conduct described herein.

7 60. Defendant's claims, non-disclosures, and misleading statements, as
8 more fully set forth above, were false, misleading, and/or likely to deceive the
9 consuming public within the meaning of the UCL. Defendant's conduct has
10 caused, and continues to cause, substantial injury to Plaintiff and other Class
11 Members. Plaintiff has suffered injury-in-fact and has lost money as a result of
12 Defendants' unlawful and unfair conduct.

13 61. Plaintiff is informed and believes, and on that basis alleges, that the
14 unlawful and unfair practices alleged herein are continuing in nature and are
15 widespread practices engaged in and perpetrated by Defendants. Plaintiff
16 reserves the right to allege other unlawful or unfair business acts or practices.

17 62. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiff and the Class
18 Members are entitled to an Order that requires Defendant to, *inter alia*:

- 19 a. and desist the unlawful and unfair acts alleged herein;
- 20 b. repair or modify the iOS in a manner that returns full
21 processing speed and complete functionality to Older iPhones;
- 22 c. implement a robust marketing campaign to fully inform the
23 public that Defendant's iOS updates are slowing down and impairing the
24 performance and functionality of Older iPhones;
- 25 d. provide owners of Older iPhones with new, fully-functioning
26 batteries free of charge;
- 27 e. provide full restitution of all moneys paid to Defendant for
28 the Older iPhones, or other amounts that were wrongfully acquired,

1 obtained, and collected from Plaintiff and the Class Members in
2 connection with such phones;

3 f. pay pre-judgment interest at the highest rate allowable by law;
4 and

5 g. pay attorneys' fees and costs incurred by counsel for Plaintiff
6 and the Class, pursuant to, inter alia, Cal. Civ. Proc. Code § 1021.5.

7 **COUNT III**

8 **Violation of California's False and Misleading Advertising Law,**
9 **Cal. Bus. & Prof. Code § 17500, *et seq.***
10 **(On Behalf of Plaintiff and All Class Members)**

11 63. Plaintiff incorporated the above allegations by reference as if fully
12 set forth herein.

13 64. Defendants' acts and practices, as described herein, have deceived
14 and/or are likely to continue to deceive Class Members and the public.
15 Defendants falsely advertised that iOS 10.2.1 and other subsequent iOS updates
16 were fully compatible, and intended for use, with Older iPhones, and that such
17 updates would not impair the operations or functionality of those phones. Also,
18 in the alternative, Defendant falsely advertised that Older iPhones would not be
19 impaired, or otherwise adversely impacted by, subsequent iOS updates, including
20 iOS 10.2.1.

21 65. By their actions, Defendant disseminated uniform advertising
22 concerning its iOS updates and impact of such updates on Older iPhones that, by
23 their very nature, are unfair, deceptive, untrue, or misleading within the meaning
24 of Cal. Bus. & Prof. Code § 17500, *et seq.* Such advertisements were likely to
25 deceive the consuming public for the reasons detailed herein.

26 66. The above-described false, misleading, and deceptive advertising
27 Defendants disseminated continues to have a likelihood to deceive in that
28 Defendants failed to disclose the true, adverse nature of iOS 10.2.1 and other iOS
updates, and their detrimental impact on the performance of Older iPhones.

1 Defendants failed to instigate a public information campaign to alert consumers
2 of the adverse nature of iOS 10.2.1 and other iOS updates, and their detrimental
3 impact on the performance of Older iPhones.

4 67. In making and disseminating the statements alleged herein,
5 Defendant knew, or should have known, their advertisements were untrue and
6 misleading in violation of Cal. Bus. & Prof. Code § 17500, *et seq.* Plaintiff and
7 the other Class Members based their decisions to purchase Older iPhones in
8 substantial part on Defendants' omitted material facts. The revenues to
9 Defendant attributable to products sold in those false and misleading
10 advertisements amount to hundreds of millions of dollars. Plaintiff and the Class
11 were injured in fact and lost money or property as a result.

12 68. The misrepresentations and non-disclosures by Defendant of the
13 material facts detailed above constitute false and misleading advertising and,
14 therefore, constitutes a violation of Cal. Bus. & Prof. Code § 17500, *et seq.*

15 69. As a result of Defendants' wrongful conduct, Plaintiff and the Class
16 lost money. Plaintiff and the Class are therefore entitled to restitution as
17 appropriate for this Cause of Action.

18 **COUNT IV**

19 **Unjust Enrichment**
20 **(On Behalf of Plaintiff and All Class Members)**

21 70. Plaintiff incorporates by reference and realleges each and every
22 paragraph above as though fully alleged herein.

23 71. As a direct, proximate, and foreseeable result of Defendants' acts
24 and otherwise wrongful conduct, Plaintiff and Class Members suffered damages.
25 Defendants profited and benefitted from the unjust sale of Older iPhones, which
26 caused Plaintiff and Class Members to incur losses and damages.

27 72. Defendants have voluntarily accepted and retained these profits and
28 benefits, derived from their customers, including Plaintiff and Class Members,

1 with full knowledge and awareness that retention of such profits and benefits is
2 wrong and unlawful.

3 73. By virtue of the conscious wrongdoing alleged in this Complaint,
4 Defendants have been unjustly enriched at the expense of Plaintiff and Class
5 Members, who are entitled to, and hereby seek, the disgorgement and restitution
6 of Defendants' wrongful profits, revenue, and benefits, to the extent and in the
7 amount, deemed appropriate by the Court, and such other relief as the Court
8 deems just and proper to remedy Defendants' unjust enrichment.

9 74. Unless successful on the preceding counts of this Complaint,
10 Plaintiff and the Class have no adequate remedy at law.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff, on behalf of himself and all others similarly
13 situated, prays for relief and judgment against Defendants as follows:

- 14 A. for an order certifying the Class under the appropriate
15 provisions of Fed. R. Civ. P. 23, as well as any appropriate subclasses, and
16 appointing Plaintiff and his legal counsel to represent the Class as Class
17 Counsel;
- 18 B. awarding actual, compensatory, and consequential damages;
- 19 C. awarding punitive and treble damages, as provided under
20 relevant laws;
- 21 D. awarding reimbursement, restitution, and disgorgement from
22 Defendants of the benefits unjustly conferred by Plaintiff and the Class;
- 23 E. awarding injunctive relief as appropriate;
- 24 F. awarding declaratory relief;
- 25 G. for pre- and post-judgment interest to the Class, at the highest
26 rate allowed by law;
- 27 H. awarding costs, including experts' fees and attorneys' fees
28 and expenses, and the costs of prosecuting this action; and

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I. granting such other and further relief as is just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury on all issues triable by a jury.

Dated: December 27, 2017

JOHNSON FISTEL, LLP
FRANK J. JOHNSON
PHONG L. TRAN

By: s/Phong L. Tran

PHONG L. TRAN

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Attorneys for Plaintiff Thomas T. Cook

CIVIL COVER SHEET

The JS 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 by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

THOMAS T. COOK, on behalf of himself and all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Johnson Fistel, LLP; Frank J. Johnson; Phong L. Tran 600 West Broadway, Suite 1540, San Diego, CA 92101 619-230-0063

DEFENDANTS

APPLE INC., a California Corporation; DOES 1 through 10, inclusive

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. 17CV2579 BEN RBB

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 and business location (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, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, 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. §1332; 28 U.S.C. §1391(a) & (c)
Brief description of cause: Cal. Civ. Proc. Code §1750, et seq.; Cal. Bus. & Prof. Code §17200, et seq.; Cal. Bus. & Prof. Code §17500, et seq.; unjust enrichment

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 12/27/2017 SIGNATURE OF ATTORNEY OF RECORD s/ Phong L. Tran

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 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 by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating 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 Rule 8(a), F.R.Cv.P., 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.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 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.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 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 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 there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN 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 Rule 23, F.R.Cv.P.
 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 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.