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19 **United States District Court**

20 **Northern District of California – San Jose Division**

21 **Samara Diner**, on behalf of herself and all
22 others similarly situated,

23 Plaintiff,

24 v.

25 **Apple Inc., a California Corporation,**

26 Apple.

Case No.

**Class Action Complaint and Complaint for
Damages**

Demand for Jury Trial

1 Plaintiff Samara Diner (“Plaintiff”) by and through her undersigned attorneys, brings this
2 class action against Apple Inc. (“Apple”), on behalf of herself and a class of similarly situated
3 persons (the “Class”). Plaintiff alleges the following upon her own knowledge, or where there is no
4 personal knowledge, upon the investigation of counsel and/or upon information and belief:

5 1. Apple is one of the most recognizable tech companies in the world, specializing in
6 consumer electronics that run on Apple’s own proprietary operating system. Its flagship smartphone,
7 the iPhone, has been marketed and sold in the United States since June 2007.

8 2. Despite its name recognition, Apple must compete fiercely for its corner of the
9 smartphone market. Most smartphone makers follow an annual release cycle, introducing new
10 models every year. Apple is no exception, releasing at least one new iPhone model or sub model
11 every year since the original iPhone was released.

12 3. To encourage consumers to purchase the newest iPhone in such short intervals, Apple
13 has to convince consumers they need to upgrade their device. One way to do this is by reducing the
14 performance of older iPhones.

15 4. On January 23, 2017, Apple released an upgrade to the operating system of iPhone
16 models 7/6/6s and all older model iPhones (the “Affected
17 iPhones”). Apple coerced Plaintiff and other Class members
18 into updating their iPhones to iOS 10.2.1 because Apple
19 claimed that the update provided “bug fixes and improves
20 security” of their phones. While the 10.2.1 upgrade did
21 include some bug fixes, unbeknownst to consumers, it also
22 included a function that allowed Apple to substantially
23 reduce performance of Affected iPhones.

24 5. Under certain operating conditions, the
25 10.2.1 update caused Plaintiff’s and Class members’ iPhones to perform much slower than before
26 the update was installed. Nothing in Apple’s update notice mentioned any possibility of the
27 slowdown. Further, Apple designed the operating system so that once installed, the installation
28 cannot be undone.



iOS 10.2.1
Apple Inc.
67.4 MB

iOS 10.2.1 includes bug fixes and improves the security of your iPhone or iPad.

For information on the security content of Apple software updates, please visit this website:
<https://support.apple.com/HT201222>

[Download and Install](#)

1 business in California, and has sufficient minimum contacts with California.

2 12. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because Apple
3 resides in this District and a substantial part of the events or omissions giving rise to Plaintiff's and
4 Class members' claims occurred in this District.

5 **INTRADISTRICT ASSIGNMENT**

6 13. Pursuant to Northern District of California Local Rule 3-2(c) and 3-2(e), assignment
7 to the San Jose Division of this District is proper because a substantial part of the events or
8 omissions giving rise to Plaintiff's claims originated from Apple's headquarters, located in one of
9 the counties served by the San Jose Division.

10 **SPECIFIC FACTUAL ALLEGATIONS**

11 **A. Apple makes an icon: the iPhone**

12 14. Apple is one of the biggest tech companies in the world, first making a splash with
13 personal computers in the late 1970s and early 80s. Its products have historically been developed in
14 secrecy, with each new introduction often reinventing the market landscape—or inventing a new
15 market entirely.

16 15. In 2007, Apple made waves with the introduction of the iPhone. While some balked
17 at the high price, many consumers and tech analysts were very taken with the then-\$500 smartphone,
18 dubbing it the “Jesus phone.”³

19 16. The following year, Apple introduced the iPhone 3G, with new features like GPS and
20 3G data. Apple would continue to release at least one new iPhone every year to the present day.
21 Some have had compelling new features, like the introduction of a fingerprint sensor with the 5S.
22 Others are hard to distinguish from the previous model, sometimes limited to moderately improved
23 performance statistics, a slightly thinner body, and not much else.

24 17. Regardless of the new features or lack thereof, Apple has marketed each iPhone as
25 The Next Big Thing that consumers must have, e.g.: “iPhone3G – Every pocket should have one.”;

26
27
28 ³ See e.g., Paul Kedrosky, “The Jesus Phone,” The Wall Street Journal (June 29, 2007, 11:59 p.m.)
<https://www.wsj.com/articles/SB118308453151652551>.

1 “iPhone 4 – This changes everything. Again.”; and “There’s iPhone. And then there’s everything
2 else.”

3 18. Apple has been successful in creating market demand, with some customers willing
4 to stand in line overnight to obtain the newest model. Consumer device reviewers often tout the next
5 “iPhone killer,” but no other smartphone has established such cultural and market dominance like
6 the iPhone has.

7 19. Despite its success, the iPhone has not been problem-free. In 2010, shortly after the
8 launch of the iPhone 4, consumers began reporting dropped calls due to an issue with the antenna
9 design. The problem was quickly named “antennagate.”

10 20. The iPhone 6 launched in 2015, but not without issues. Users reported their iPhones
11 would bend in their pockets. YouTube videos confirming the existence of “bendgate” quickly
12 appeared. In response, Apple tweaked the design of the phone, increasing its weight, to fix the
13 problem.

14 21. One of the key selling points of iPhones is Apple’s operating system. Unlike most
15 smartphones, which run on some variant of Google’s Android operating system, all iPhones use the
16 mobile version of Apple’s operating system, iOS, which is mostly limited to Apple devices. Apple
17 has marketed iOS as more secure, user-friendly, and intuitive than Android.

18 22. Importantly, Apple has always marketed and advertised its iPhones, including
19 Affected iPhones, as being fully compatible and working well with iOS updates. In 2015, Apple
20 started the marketing campaign entitled “Why There’s Nothing Quite like iPhone.” As part of this
21 campaign, Apple stated that iPhones “should have hardware and software that were designed to
22 work with each other. And enhance each other. By people who frequently see each other. That’s how
23 you make a phone that works ridiculously well.”

24 23. In reality, iPhones do not work well with iOS long term, and the software and
25 hardware were not designed to “work ridiculously well” for a reasonable time.⁴

26
27 ⁴ See Bryan Chaffin, *Apple Redefines the Power of Plain Language in New iPhone Campaign*,
28 Macobserver.com (Jul. 24, 2015) <https://www.macobserver.com/tmo/article/apple-redefines-the-power-of-plain-language-in-new-iphone-campaign>; Uzair Ghani, *Apple Launches ‘Why There’s*

1 24. Issues of compatibility are likely exacerbated by the wide range of models still
2 available for sale or for which Apple still provides ongoing tech support. Currently, Apple sells 5
3 different iPhone models and supports 7 different models.

4 **B. Apple forces an update to cover battery issues**

5 25. Within the first year of availability of the iPhone 6 and 6s, consumers began reporting
6 weird power failures with their devices. By at least as early as November 2016, Apple was aware
7 that a number of iPhone 6/6s were experiencing sudden shutdown. Apple began receiving similar
8 complaints on its website about iPhone 7 models in late 2016 and early 2017. The problem is now
9 thought to be affecting all lithium-ion batteries in iPhone models 7/6/6s and older versions.

10 26. Rechargeable lithium-ion batteries naturally lose some of their ability to hold a charge
11 with age. While the batteries in the Affected iPhones have been aging and losing some of their
12 capacity, Apple’s operating system and software have grown more demanding with each update.
13 Rather than publicly acknowledging this issue—and addressing the “sudden shutdown” problem
14 openly—Apple tried to sweep everything under the rug.

15 27. On January 23, 2017, Apple released an upgrade to iOS that was available to all iOS
16 10-compatible devices. For the iPhone, this included all models from the iPhone 5 on. Apple’s
17 release notes for the update are sparse, stating only that “iOS 10.2.1 includes bug fixes and improves
18 the security of your device.” Apple often includes language about “improving your device’s
19 performance”; notably, any such language was absent here.

20 **C. Apple admits it intentionally slowed down older iPhones**

21 28. On December 9, 2017, redditor TeckFire revealed that Apple was slowing down older
22 iPhones.⁵ The outcry was immediate, with multiple major news outlets covering the story.

23 29. After extensive negative media coverage, Apple released a semi-apology statement
24 on December 28, 2017. It demonstrates that Apple knowingly and intentionally misled and deceived

25
26 *Nothing Quite Like iPhone Web Campaign*, WCCFTech.com (Jul. 25, 2015)
<https://wccftech.com/why-theres-nothing-quite-like-iphone/>.

27 ⁵ Original post archived on Pastebin: <https://pastebin.com/JergYngQ>; active reddit thread:
28 https://www.reddit.com/r/iphone/comments/7inu45/psa_iphone_slow_try_replacing_your_battery/
(last accessed Jan. 4, 2018).

1 consumers when it released the 10.2.1 update and subsequent updates:

2 About a year ago in iOS 10.2.1, we delivered a software update that improves power
3 management during peak workloads to avoid unexpected shutdowns on iPhone 6,
4 iPhone 6 Plus, iPhone 6s, iPhone 6s Plus, and iPhone SE. With the update, iOS
5 dynamically manages the maximum performance of some system components
6 when needed to prevent a shutdown. While these changes may go unnoticed, in
7 some cases users may experience longer launch times for apps and other reductions
8 in performance.

Customer response to iOS 10.2.1 was positive, as it successfully reduced the
occurrence of unexpected shutdowns. We recently extended the same support for
iPhone 7 and iPhone 7 Plus in iOS 11.2.

Of course, when a chemically aged battery is replaced with a new one, iPhone
performance returns to normal when operated in standard conditions.

9 30. At the same time, Apple instituted a program for owners of older iPhones to replace
10 out-of-warranty iPhone batteries for less than full price. However, Apple has not made any attempt
11 to allow consumers to control the performance of their iPhones while requiring consumers to pay
12 money to replace their battery. Apple also does not indicate how long this battery will last, nor
13 whether future updates will further degrade the performance of Affected iPhones. Plaintiff is
14 informed and believes that the replacement batteries are no better than the batteries originally
15 installed, which only lasted a year in some cases. The battery replacement plan is available until
16 December 2018. Consumers who replaced their battery will encounter the same problems in a year
17 or two as they face now.

18 **CLASS ACTION ALLEGATIONS**

19 31. Plaintiff brings this action pursuant to Fed. R. Civ. P. 23(a), (b)(2), (b)(3), or (c)(4)
20 individually and on behalf of the members of the following proposed classes:

21 **A. The Nationwide Class**

22 32. Plaintiff seeks to represent a proposed nationwide class (the “Nationwide Class”),
23 defined as follows:

24 All persons in the United States who own or owned an iPhone smartphone
25 that was introduced prior to 2017 (including the following models: iPhone
26 7, iPhone 7 Plus, iPhone 6, iPhone 6 Plus, iPhone 6s, iPhone 6s Plus, iPhone
SE, iPhone 5s, iPhone 5c, and iPhone 5), and which was updated to iOS
10.2.1 (hereinafter referred to as “Affected iPhones”).

27 **B. The California Subclass**

28 33. Plaintiff also seeks to represent a subclass comprised of California residents (the

1 “California Subclass”), defined as:

2 All persons in the State of California who own or owned an Affected iPhone
3 and who are “consumers,” as that term is defined by California Civil Code
4 section 1761(d), or who purchased “goods” or “consumer goods,” as those
5 terms are defined by California Civil Code sections 1761(a) and 1791(a),
6 respectively.

7 34. Except where otherwise noted, “the Class” and “Class members” shall refer to
8 members of the Nationwide Class and the California Subclass, collectively.

9 35. Excluded from the Class are Apple, its subsidiaries, affiliates, officers, directors, and
10 employees; persons who have settled with and validly released Apple from separate, non-class legal
11 actions against Apple based on the conduct alleged herein; counsel, and the immediate families of
12 counsel, who represent Plaintiff in this action; the judge presiding over this action; and jurors who
13 are impaneled to render a verdict on the claims alleged in this action.

14 36. Plaintiff is informed and believes that the proposed Class comprises millions of
15 members. The Class is, therefore, so numerous and geographically dispersed that joinder of all
16 members in one action is impracticable.

17 37. Apple has acted with respect to Plaintiff and members of the proposed Class in a
18 manner generally applicable to each of them. There is a well-defined community interest in the
19 questions of law and fact involved, which affect all Class members. The questions of law and fact
20 common to the Class predominate over the questions that may affect individual Class members,
21 including the following:

- 22 a. Whether the 10.2.1 iOS update was intended by Apple to slow down Affected
23 iPhones;
- 24 b. Whether Apple altered iOS in a manner that slowed the performance of Affected
25 iPhones;
- 26 c. Whether the representations Apple has made about the nature and scope of the
27 battery defect are false;
- 28 d. Whether the representations Apple has made about the nature and scope of the
10.2.1 update omitted material facts;
- e. Whether Apple made false representations about the nature and scope of the

1 battery defect for the purpose of concealing it and avoiding the expense of
2 recalling and replacing the batteries in Affected iPhones;

- 3 f. Whether Apple omitted material facts about the nature and scope of the battery
4 defect and/or 10.2.1 iOS update to avoid the expense of recalling and replacing
5 the batteries in Affected iPhones;
- 6 g. Whether Apple used the iOS modification to profit from Plaintiff and members of
7 the proposed Class by inducing them to buy a new replacement for their Affected
8 iPhones;
- 9 h. Whether Apple fraudulently concealed material facts from Plaintiff and members
10 of the proposed Class;
- 11 i. Whether Apple violated the Consumers Legal Remedies Act (“CLRA”), Cal. Civ.
12 Code §§ 1750-1784;
- 13 j. Whether Apple violated the Unfair Competition Law (“UCL”), Cal. Bus. & Prof.
14 Code §§ 17200-17209;
- 15 k. Whether Apple has been unjustly enriched as a result of its fraudulent conduct;
- 16 l. Whether Plaintiff’s claims satisfy the criteria for class certification under Federal
17 Rule of Civil Procedure 23 and, to the extent applicable, California Civil Code
18 section 1781;
- 19 m. Whether compensatory or consequential damages should be awarded to Plaintiff
20 and members of the proposed Class;
- 21 n. Whether punitive damages should be awarded to Plaintiff and members of the
22 proposed Class;
- 23 o. Whether restitution should be awarded to Plaintiff and members of the proposed
24 Class;
- 25 p. Whether other, additional relief is appropriate, and what that relief should be.

26 38. Plaintiff’s claims are typical of the claims of all members of the Class they propose to
27 represent in this action.

28 39. Plaintiff will fairly and adequately represent and protect the interests of the class, and

1 do not have interests that are antagonistic to or in conflict with those they seek to represent.

2 40. Plaintiff has retained counsel who have extensive experience in the prosecution of
3 class actions and other forms of complex litigation.

4 41. In view of the complexity of the issues and the expense that an individual plaintiff
5 would incur if he or she attempted to obtain relief from a large, transnational corporation such as
6 Apple, the separate claims of individual Class members are monetarily insufficient to support
7 separate actions. Because of the size of the individual Class members' claims, few, if any, Class
8 members could afford to seek legal redress for the wrongs complained of in this Complaint.

9 42. The Class is readily definable, and prosecution as a class action will eliminate the
10 possibility of repetitious litigation and will provide redress for claims too small to support the
11 expense of individual, complex litigation. Absent a class action, Class members will continue to
12 suffer losses, Apple's violations of law will be allowed to proceed without a full, fair, judicially
13 supervised remedy, and Apple will retain sums received as a result of its wrongdoing. A class action
14 will provide a fair and efficient method for adjudicating this controversy.

15 43. The prosecution of separate claims by individual Class members would create a risk
16 of inconsistent or varying adjudications with respect to thousands of individual Class members,
17 which would, as a practical matter, dispose of the interests of the Class members not parties to those
18 separate actions or would substantially impair or impede their ability to protect their interests and
19 enforce their rights.

20 44. The conduct of Apple is generally applicable to the Class as a whole and Plaintiff
21 seeks equitable remedies with respect to the Class as a whole. As such, the policies and practices of
22 Apple make declaratory or equitable relief with respect to the Class as a whole appropriate. Fed. R.
23 Civ. P. 23(b)(2).

24 **FIRST CAUSE OF ACTION**

25 **Fraudulent Concealment**
26 **(On Behalf of Plaintiff and the Nationwide Class)**

27 45. Plaintiff realleges and incorporates by reference the allegations contained in
28 preceding paragraphs of this Complaint.

1 46. At all times relevant herein, Apple made misrepresentations of material fact to
2 Plaintiff and the proposed Class regarding the true nature and scope of the problems impacting the
3 Affected iPhones, claiming that an “unknown” problem was causing certain Affected iPhones to
4 shutdown unexpectedly. Apple also falsely represented the reason that it modified iOS (to prolong
5 battery life) in Affected iPhones, knowing that the modification also substantially slowed the
6 performance of Affected iPhones, which would cause consumers to replace those devices with new
7 iPhones. Apple knew those representations were false when it made them, and did so for the purpose
8 of diminishing the possibility that the facts described in this Complaint would be discovered by
9 Plaintiff and members of the proposed Class.

10 47. Apple concealed material facts from Plaintiff and the proposed Class, including but
11 not limited to: the existence, nature, and scope of the battery defect; that modifying iOS for the
12 ostensible purpose of prolonging battery life also caused Affected iPhones to perform substantially
13 slower as their batteries aged, notwithstanding the iOS modification; that the battery defect could
14 only be remedied by replacing the lithium-ion batteries in Affected iPhones; and that Apple
15 concealed the foregoing facts from Plaintiff and members of the proposed Class as a means of
16 avoiding the expense involved with rectifying the battery defect.

17 48. Apple had a duty to disclose these facts, regardless of the existence of privity (see,
18 e.g., Cal. Civ. Code § 1711), by virtue of (a) Apple’s exclusive knowledge about the nature and
19 scope of the battery defect, and that its modifications of iOS caused Affected iPhones to perform
20 poorly; (b) Apple’s awareness that Plaintiff and members of the proposed Class were not reasonably
21 likely to discover these facts; (c) Apple’s active concealment of those facts from Plaintiff and
22 members of the Class (by making the false representations described herein); and (d) Apple’s
23 statutory and common-law obligations to disclose material information to the consumers who own or
24 formerly owned Affected iPhones, as alleged herein.

25 49. The facts Apple concealed from consumers are material and uniform to Plaintiff and
26 to the members of the Class.

27 50. Apple made misrepresentations of material fact and concealed the material facts
28 alleged herein intentionally and/or recklessly, with the intention that Plaintiff and members of the

1 proposed Class would rely on its misrepresentations. Plaintiff and members of the proposed Class
2 would have acted differently had the omitted facts been disclosed to them.

3 51. As a proximate result of Apple's misrepresentations and concealment and suppression
4 of material facts, Plaintiff and the proposed Class have sustained damage by: bearing the cost of
5 purchasing new Affected iPhones; bearing the cost of repairs due to the battery defect and/or
6 problems resulting from the slow performance caused by the iOS modification; and bearing the cost
7 of purchasing replacement devices as a result of the battery defect and/or the slow performance
8 caused by the iOS modification.

9 52. Because Apple engaged in the conduct alleged herein deliberately and with willful
10 and malicious intent, Plaintiff and the proposed Class are entitled to an award of punitive damages.
11 The total amount of damages suffered by Plaintiff and members of the proposed Class will be proved
12 at trial.

13 **SECOND CAUSE OF ACTION**

14 **Unlawful, Fraudulent, and Unfair Business Practices in Violation of the Unfair Competition 15 Law ("UCL") Cal. Bus. Prof. Code § 17200, et seq. 16 (On Behalf of Plaintiff and the Nationwide Class)**

17 53. Plaintiff realleges and incorporates by reference the allegations set forth in each of
18 the preceding paragraphs of this Complaint.

19 54. The UCL defines unfair business competition to include any "unlawful, unfair or
20 fraudulent" act or practice.

21 55. During the relevant time period, Apple has violated the UCL's proscription against
22 engaging in unlawful conduct by virtue of (a) its fraudulent and deceitful conduct in violation of
23 California Civil Code sections 1709 through 1711; and (b) its violations of the Consumers Legal
24 Remedies Act, California Civil Code sections 1770(a)(5), (a)(7), and (a)(9).

25 56. During the relevant time period, Apple has violated the UCL's proscription against
26 fraud as a result of engaging in the fraudulent and deceitful conduct alleged herein.

27 57. During the relevant time period, Apple has violated the UCL's proscription against
28 unfair conduct as a result of engaging in the conduct alleged in this Complaint, which violates
legislatively-declared policies articulated in California Civil Code sections 1710, 1711, and 1770,

1 subsections (a)(5), (a)(7), and (a)(9).

2 58. Apple's violations of the UCL continue to this day. As a direct and proximate result
3 of Apple's violations of the UCL, Plaintiff and Class members have suffered actual damage in that
4 they paid more for their Affected iPhones than they would have had Apple not concealed the
5 existence of the battery defect and the effects of its modification of iOS; they purchased phones that
6 they would not have had they known the true nature of Apple's hardware and software problems;
7 they purchased replacement batteries or upgraded to new phones because Apple omitted material
8 facts about the nature of Affected Phones' batteries and performance. Further, Plaintiff and Class
9 members also suffered actual damages when they were forced to replace their Affected iPhones as
10 they became inoperable after the 10.2.1 iOS update.

11 59. Pursuant to Section 17203 of the UCL, Plaintiff and the Class seek an order that
12 requires Apple (a) to update iOS in a manner that prevents it from slowing the performance of
13 Affected iPhones; (b) to provide owners of Affected iPhones with notice that the slow performance
14 of those devices is caused by modifications Apple made to iOS; (c) reimburse current owners of
15 Affected iPhones with the purchase price they paid for those devices after Apple knew, but failed to
16 disclose, the existence of the battery defect and the slow performance caused by the iOS
17 modification; (d) to provide current owners of Affected iPhones with new batteries for those devices
18 free of charge; (e) to make full restitution of all moneys wrongfully obtained from its violations of
19 the UCL, as alleged in this Complaint; and (f) requires Apple to pay the attorney fees and costs
20 incurred by counsel for Plaintiff and the proposed Class in accordance with California Code of Civil
21 Procedure section 1021.5.

22 **THIRD CAUSE OF ACTION**

23 **Violation of California's False and Misleading Advertising Law ("FAL"), Cal. Bus. & Prof. Code § 17500, et seq.**

24 **(On Behalf of Plaintiff and the Nationwide Class)**

25 60. Plaintiff incorporates the above allegations by reference as if fully set forth herein.

26 61. Apple's acts and practices, as described herein, have deceived and/or are likely to
27 continue to deceive Class members and the public. Apple falsely advertised that iOS 10.2.1 and
28 other subsequent iOS updates were fully compatible, and intended for use, with Affected iPhones,

1 and that such updates would not impair the operations or functionality of those phones. Also, in the
2 alternative, Apple falsely advertised that Affected iPhones would not be impaired, or otherwise
3 adversely impacted by, subsequent iOS updates, including iOS 10.2.1. Furthermore, Apple omitted
4 material facts about the nature of Affected Phones' battery life and performance, including in
5 particular, but not limited to, the impact of the 10.2.1 update on Affected Phones.

6 62. Plaintiff and Class members were subjected to the same false, misleading, and
7 deceptive statements made by Apple in promoting the use of its iOS 10.2.1 software update. Plaintiff
8 and Class members relied on Apple's false, misleading, and deceptive statements (including
9 omissions) in updating to iOS 10.2.1 with the fair and reasonable expectation of receiving equal or
10 better performance and/or new features and functionality.

11 63. By its actions, Apple disseminated uniform advertising concerning its iOS updates
12 and impact of such updates on Older iPhones that, by their very nature, are unfair, deceptive, untrue,
13 or misleading within the meaning of Cal. Bus. & Prof. Code § 17500, et seq. Such advertisements
14 were likely to deceive the consuming public for the reasons detailed herein.

15 64. The above-described false, misleading, and deceptive advertising Apple disseminated
16 continues to have the potential to deceive consumers. Apple has not yet launched a public
17 information campaign to alert consumers of the adverse nature of iOS 10.2.1 and other iOS updates,
18 and their detrimental impact on the performance of Affected iPhones.

19 65. In making and disseminating the statements alleged herein, Apple knew, or should
20 have known, their advertisements were untrue and misleading in violation of Cal. Bus. & Prof. Code
21 § 17500, et seq. Plaintiff and Class members based their decisions to purchase Affected iPhones in
22 substantial part on Apple's omitted material facts. The revenues to Apple attributable to products
23 sold based on those false and misleading advertisements amount to hundreds of millions of dollars.
24 Plaintiff and the Class were injured in fact and lost money or property as a result.

25 66. The misrepresentations and non-disclosures by Apple of the material facts detailed
26 above constitute false and misleading advertising and, therefore, constitutes a violation of Cal. Bus.
27 & Prof. Code § 17500, et seq.

28 67. As a result of Apples' wrongful conduct, Plaintiff and the Class lost money. Plaintiff

1 and the Class are therefore entitled to restitution as shown at trial.

2 **FOURTH CAUSE OF ACTION**
3 **Quasi Contract/Unjust Enrichment**
4 **(On Behalf of Plaintiff and the Nationwide Class)**

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

7 69. As a direct, proximate, and foreseeable result of Apple's acts and otherwise wrongful
8 conduct, Plaintiff and Class members suffered damages. Apple profited and benefitted from the
9 unjust sale of Affected iPhones, which caused Plaintiff and Class members to incur losses and
10 damages.

11 70. Apple has voluntarily accepted and retained these profits and benefits, derived from
12 their customers, including Plaintiff and Class members, with full knowledge and awareness that
13 retention of such profits and benefits is wrong and unlawful.

14 71. By virtue of the conscious wrongdoing alleged in this Complaint, Apple has been
15 unjustly enriched at the expense of Plaintiff and Class members, who are entitled to, and hereby
16 seek, the disgorgement and restitution of Apple's wrongful profits, revenue, and benefits, to the
17 extent and in the amount, deemed appropriate by the Court, and such other relief as the Court deems
18 just and proper to remedy Apple's unjust enrichment.

19 72. Unless successful on the preceding counts of this Complaint, Plaintiff and the Class
20 have no adequate remedy at law.

21 **FIFTH CAUSE OF ACTION**
22 **Unfair and Deceptive Acts and Practices in Violation of the Consumers Legal Remedies Act**
23 **(On Behalf of Plaintiff and the California Subclass)**

24 73. Plaintiff realleges and incorporates by reference the allegations set forth in each of the
25 preceding paragraphs of this Complaint.

26 74. This claim for relief is brought pursuant to the CLRA. Plaintiff and members of the
27 California Subclass are "consumers," as that term is defined by California Civil Code section
28 1761(d) because they bought Affected iPhones for personal, family, or household purposes.

75. Plaintiff and members of the California Subclass have engaged in a "transaction" with

1 Apple, as that term is defined by California Civil Code section 1761(e), because they have entered
2 into a purchase agreement with Apple to purchase an Affected iPhone.

3 76. The conduct alleged in this Complaint constitutes unfair methods of competition and
4 unfair and deceptive acts and practices for the purposes of the CLRA, and were undertaken by Apple
5 in transactions intended to result in, and which resulted in, the sale of goods to consumers; namely,
6 to sell replacement batteries, repair services, and/or replacement devices for their Affected iPhones.

7 77. By engaging in the conduct alleged herein, Apple has violated subdivisions (a)(5),
8 (a)(7), and (a)(9) of California Civil Code section 1770 by, misrepresenting and concealing the true
9 nature and scope of the battery defect and that the modification of iOS would cause Affected
10 iPhones to perform slowly and erratically and not disclosing those facts to Plaintiff and members of
11 the proposed Class before they bore the cost of purchasing a replacement device for their Affected
12 iPhone, purchasing a new Affected iPhone, and/or purchasing replacement parts and/or repair
13 services as a result of the battery defect or the iOS modification.

14 78. By concealing the battery defect and the iOS modification from Plaintiff and
15 members of the proposed Class, Apple has represented, and continues to represent, that Affected
16 iPhones have characteristics, uses and benefits, or qualities that they do not have, and that they are of
17 a particular standard, quality, or grade, when they are not, in violation of Civil Code section 1770,
18 subsections (a)(5) and (a)(7).

19 79. By engaging in the conduct alleged herein, above, Apple has also advertised, and
20 continues to advertise, goods with the intent not to sell them as advertised, in violation of California
21 Civil Code section 1770(a)(9).

22 80. Pursuant to Section 1782 of the CLRA and along with the filing of this Complaint,
23 Plaintiff will send written notice to Apple by certified mail regarding its violations of the CLRA,
24 thereby providing Apple with an opportunity to correct or otherwise rectify the problems alleged
25 herein within 30 days of receipt of that notice.

26 81. Unless Apple agrees to correct, repair, replace, or otherwise rectify the problems
27 created by Apple's conduct as alleged herein within 30 days, Plaintiff will amend this Complaint to
28 seek an order awarding actual damages and, because Apple engaged in the conduct alleged herein

1 deliberately and with willful and malicious intent, punitive damages.

2 82. Plaintiff now seeks an order requiring Apple to (a) cease violating the CLRA by
3 modifying iOS in a manner that prevents it from slowing the performance of Affected iPhones; (b) to
4 provide owners of Affected iPhones with notice that the slow performance of those devices is caused
5 by modifications Apple made to iOS; and (c) to provide current owners of Affected iPhones with
6 new batteries for those devices free of charge.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff, on her own behalf and on behalf of the Class, respectfully requests
9 that this Court enter an Order:

- 10 (1) Certifying the proposed Class and California Subclass, and appointing Plaintiff as Class
11 Representative;
- 12 (2) Finding that Apple's conduct was negligent, deceptive, unfair, and unlawful as alleged
13 herein;
- 14 (3) Enjoining Apple from engaging in further negligent, deceptive, unfair, and unlawful
15 business practices as alleged herein;
- 16 (4) Awarding Plaintiff and Class members actual, compensatory, and consequential
17 damages;
- 18 (5) Awarding Plaintiff and Class members statutory damages and penalties, as allowed by
19 law;
- 20 (6) Awarding Plaintiff and Class members restitution and disgorgement;
- 21 (7) Awarding Plaintiff and Class members punitive damages for the First Cause of Action;
- 22 (8) Awarding Plaintiff and Class members pre-judgment and post-judgment interest;
- 23 (9) Awarding Plaintiff and Class members reasonable attorneys' fees, costs, and expenses;
- 24 and
- 25 (10) Granting such other relief as the Court deems just and proper.
- 26
27
28

DEMAND FOR JURY TRIAL

1
2 Plaintiff, on behalf of herself and the proposed Class, hereby demands a trial by jury as to
3 all matters so triable.

4 Dated: January 8, 2018

CASEY GERRY SCHENK
FRANCAVILLA BLATT & PENFIELD, LLP

6 By: s/ David S. Casey, Jr.
7 DAVID S. CASEY, JR.
8 *dcasey@cglaw.com*

9 Attorneys for Plaintiff
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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

Samara Diner

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Casey Gerry Schenk Francavilla Blatt & Penfield LLP 110 Laurel St., San Diego, CA 92101 619.238.1811

DEFENDANTS

Apple, Inc.

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

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

Attorneys (If Known)

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

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

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

Table with columns for PTF and DEF for Citizen of This State, Citizen of Another State, and Citizen or Subject of a Foreign Country, with checkboxes for each.

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

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

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 USC § 1332(d)

Brief description of cause: CA unfair competition and false advertising-related claims

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: X 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 X SAN JOSE EUREKA-MCKINLEYVILLE

DATE 01/08/2018

SIGNATURE OF ATTORNEY OF RECORD

/s/ David S. Casey, Jr.

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.