

1 Eric H. Gibbs (SBN 178658)  
David Stein (SBN 257465)  
2 Joshua Bloomfield (SBN 212172)  
3 GIBBS LAW GROUP LLP  
505 14th Street, Suite 1110  
4 Oakland, CA 94612  
Telephone: (510) 350-9700  
5 Facsimile: (510) 350-9701  
ehg@classlawgroup.com  
6 ds@classlawgroup.com  
7 jjb@classlawgroup.com

8 Andrew N. Friedman  
Douglas J. McNamara  
9 COHEN MILSTEIN SELLERS & TOLL PLLC  
1100 New York Ave. NW, Fifth Floor  
10 Washington, DC 20005  
Telephone: (202) 408-4600  
11 afriedman@cohenmilstein.com  
12 dmcmamara@cohenmilstein.com

13 Attorneys for Plaintiffs

14 **UNITED STATES DISTRICT COURT**  
15 **NORTHERN DISTRICT OF CALIFORNIA**  
16 **SAN JOSE DIVISION**

17 JOHN FERGUSON, KELLI BEAUGEZ,  
GREGORY STENSTROM on behalf of  
18 themselves and those similarly situated,

19 Plaintiffs,

20 vs.

21 APPLE, INC.

22 Defendant.

Case No: 18-cv-00206

**CLASS ACTION COMPLAINT**

DEMAND FOR JURY TRIAL

CLASS ACTION

1 Plaintiffs John Ferguson, Kelli Beaugez, and Gregory Stenstrom, individually and on behalf  
2 of others similarly situated, bring this class action lawsuit against Defendant, Apple, Inc. (“Apple”),  
3 based upon personal knowledge of the facts pertaining to themselves, and upon information and  
4 belief as to all other matters, hereby allege as follows:

5 **INTRODUCTION**

6 1. Apple releases new iPhone models on a periodic basis; for example, it released the  
7 iPhone 6 and iPhone 7 in 2014 and 2016 respectively, also releasing “S” and “Plus” versions of  
8 those models roughly every other year. Often around the same time it releases a new iPhone model,  
9 Apple updates the operating software (known as “iOS”) that runs on the phones. When Apple  
10 updates the iOS, Apple pushes the update for download on both the newest model and the older  
11 models.

12 2. This case concerns Apple’s decision to impose, through its iOS software,  
13 performance requirements that exceed the capabilities of the hardware on the iPhone SE, 6, 6 Plus,  
14 6s, 6s Plus, 7, and 7 Plus (the “Subject iPhones”). Notably, with iOS 10 and subsequent iOS  
15 updates, these iPhone models, which had up to that point been functioning acceptably, began  
16 experiencing sudden shutdowns where the phones would lose all power and restart without warning.

17 3. Apple responded by releasing iOS update 10.2.1 around January 2017, and later  
18 update 11.2.0. But rather than restoring the iPhones to perform as they were previously capable, the  
19 updates only stopped the shutdowns by imposing a variety of drastic software throttles that slow  
20 down the performance, impair battery life, and reduce functionality of the phones—by as much as  
21 60%. Apple did not disclose that it was throttling performance and instead misrepresented to  
22 consumers that the updates were an improvement.

23 4. Apple’s actions thus steered consumers away from blaming Apple for the abrupt iOS-  
24 caused shutdowns, and instead made it seem like their phones were simply nearing the end of their  
25 useful lives due to the passage of time. As a result, many people went out and bought new iPhones,  
26 while others have just suffered through using much slower phones, as they were under the mistaken  
27 belief that nothing could be done to rejuvenate them.

28 5. Most recently, Apple was forced to admit that it used iOS updates 10.2.1 and 11.2.0

1 to intentionally slow down the computer processor of the devices to avoid sudden shutdowns. As  
2 part of its admission, Apple told consumers that they could temporarily restore their phones' pre-iOS  
3 update performance by buying a new battery for their phone. Many consumers are now paying or  
4 have paid Apple \$30-\$80 for a battery, and Apple is expected to take in upwards of \$1.5 billion from  
5 the battery sales alone. But replacing the battery is a temporary solution that cannot correct the  
6 underlying design incompatibility.

7 6. Plaintiffs bring this proposed class action to seek appropriate remuneration and  
8 equitable relief in light of Apple's unlawful and deceptive conduct. Plaintiffs seek a nationwide  
9 class under California law, consistent with Apple's terms of service for the iOS software agreements.  
10 Plaintiffs seek the following remedies: 1) Appropriate injunctive relief, including an order requiring  
11 Apple to modify the iOS to prevent it from intentionally degrading the performance and battery life  
12 of the Subject iPhones; prohibiting Apple from throttling future iPhone models, particularly without  
13 the express consent of affected consumers; and requiring Apple to tell Subject iPhone users that the  
14 iOS and iOS updates on the phones throttled the phones' performance; and 2) Remuneration from  
15 Apple to consumers in connection with the Subject iPhones' reduced performance and battery life,  
16 and as compensation for those who purchased replacement batteries and iPhones following the iOS-  
17 induced slowdowns.

18 **PARTIES**

19 7. Plaintiff John Ferguson purchased an iPhone SE. He is a citizen of California, and a  
20 resident of Yuba City.

21 8. Plaintiff Kelli Beaugez leased an iPhone 7 as part of her cellphone service. She is a  
22 citizen of Virginia, and a resident of Sterling.

23 9. Plaintiff Gregory Stenstrom purchased an iPhone 6s Plus. He is a citizen of  
24 Pennsylvania, and a resident of Glen Mills.

25 10. Defendant, Apple, Inc., is a California corporation headquartered in Cupertino,  
26 California. Apple designs and markets its iPhone devices throughout the United States. Decisions  
27 regarding how to market the phones and even Software Updates are made in Cupertino.

28

1 **JURISDICTION AND VENUE**

2 11. This is a class action, on behalf of more than one hundred putative class members, for  
3 damages that exceed \$5,000,000.00, exclusive of interest and costs.

4 12. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(d).

5 13. Defendant is subject to personal jurisdiction in this Court because Defendant is  
6 headquartered here, and because Apple engages in substantial, continuous, systematic, and non-  
7 isolated business activity within the state of California.

8 14. Venue is proper within this District because a substantial part of the events giving rise  
9 to the claims occurred in this District, namely that Apple determined how to disclose its Software  
10 Updates within this District.

11 **INTRADISTRICT ASSIGNMENT**

12 15. Assignment is proper to the San Jose division of this District under Local Rule 3-2(c)-  
13 (e), as a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in Santa  
14 Clara County, where Apple is headquartered.

15 **GENERAL ALLEGATIONS**

16 **A. Apple's Operating System and Software Updates**

17 16. Apple is in the business of, among other things, designing and selling mobile devices  
18 known as iPhones. Models pertinent to this litigation include the iPhone SE, 6, 6 Plus, 6s, 6s Plus, 7,  
19 and 7 Plus.

20 17. Apple also creates iPhone operating systems (or "iOS's") for its phones. The  
21 operating system is the software that helps the device function and carry out commands and run  
22 applications.

23 18. When Apple releases a new operating system or updates an existing operating system,  
24 it installs it on phones it is selling and making available for sale; installs it on phones it is repairing  
25 under warranty; and also alerts existing iPhone owners to download the updates through "push"  
26 notifications. Operating system updates may solve existing problems, including security flaws and  
27 other bugs.

28 19. Downloading iOS updates is functionally mandatory. Apple's push notifications

1 continue until the iOS update is downloaded. And without an update, the iPhone is likely to begin  
2 experiencing functionality problems. For example, applications on the phone are likely to stop  
3 working because the latest updates for those applications often require the application to be run on  
4 the newer iOS. iPhones that aren't updated may also become vulnerable to security vulnerabilities,  
5 since Apple does not push security updates for the older iOS.

6 20. The push notification for the iOS 10.1.1 update, for example, looked like this:



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19 21. Clicking on “Details” or “Learn More” lists the supposed positives of the update.  
20 Never in connection with updates 10.1.1, 10.2.1, and 11.2.0, did Apple disclose that the updates  
21 would negatively impact the performance or utility of the Subject iPhones. An example, for the iOS  
22 10.2.1 update, appears below:



1           22.     An example, for the iOS 11.2.0 update, appears below:



15           23.     The Apple iOS Software License Agreement terms that accompany Apple’s software  
16 state that the software “may be updated or replaced by future enhancements.”

17 <http://images.apple.com/legal/sla/docs/iOS11.pdf> at §1(b). The agreement also states that the terms  
18 of use for the software will be “governed by and construed in accordance with the laws of the State  
19 of California, excluding its conflict of law principles. *Id.* at § 12.

20           24.     In consideration for their use of iOS, consumers agree to be locked into Apple’s  
21 content ecosystem. All purchases of software applications must be made through Apple’s “App  
22 Store.” Consumers cannot interact directly with software vendors, guaranteeing that Apple will take  
23 30 percent of each of their App Store transactions. In short, Apple benefits greatly when consumers  
24 use iOS-equipped smart phones.

25           **B.     Apple’s iOS Software Caused Battery and Performance Problems in Subject**  
26           **iPhones by Fall of 2016**

27           25.     Apple released iOS 10 in September 2016. In the weeks and months that followed,  
28 Apple pushed updates to iOS 10, including update 10.1.1 in October 2016 and 10.2.1 in January

1 2017. Later, in September 2017, Apple released iOS 11. Subsequently, Apple released a string of  
2 further iOS updates, including iOS 11.2.0.

3 26. Starting in October 2016, iPhone owners who had downloaded the latest iOS updates  
4 were reporting that their iPhones were shutting down suddenly and without warning. The shutdowns  
5 did not appear to be due to a lack of battery reserve, since when users rebooted their iPhones  
6 following the shutdown, the phones would immediately show substantial battery power remaining—  
7 often in the range of 30-40%.<sup>1</sup>

8 27. By November 23, 2016, Apple’s official Support Communities forum contained a  
9 thread that was 11 pages long and growing, with users detailing how iPhones were suddenly shutting  
10 down.<sup>2</sup> The shutdown problem was affecting all of the Subject iPhones, including the iPhone 7,  
11 which was brand new. One consumer posted that he had experienced the shutdown problem on his  
12 iPhone 7 even though the phone was only a week old. By January 2017, at least one prominent tech  
13 journalist was referring to the shutdown problem as “infamous.”<sup>3</sup>

14 28. On November 30, 2016, Apple admitted that there was a problem which led the  
15 phones to “unexpectedly shut down.” But Apple claimed the problem affected only a “very small  
16 number of iPhone 6s devices,” and Apple suggested a small-scale issue with the lithium ion batteries  
17 was the root cause of the problem. Apple promised those purchasers a replacement battery free of  
18 charge. The program covered the “the first three years after the first retail sale of the unit”—an  
19 acknowledgment by Apple that no phone in use less than three years should be experiencing such  
20 problems.

21 29. Yet as Apple knew then or would soon discover, the shutdowns were not attributable  
22 solely to battery degradation as Apple implied; only after substantial use—about three years  
23 following purchase—would an iPhone battery be reasonably expected to degrade to the point that it  
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26 <sup>1</sup> Gordon Kelly, *Apple iOS 10.2.1 Has A Nasty Surprise*, Forbes (Jan. 24, 2017),  
<https://goo.gl/8MefnM>.

27 <sup>2</sup> *Id.*

28 <sup>3</sup> *Id.*

1 could no longer meet the phone’s performance demands. The relatively new iPhone 6 and 7 models  
2 were experiencing shutdowns because the phones hardware could not meet the performance  
3 demands created by the iOS and iOS updates. Even as this became increasingly clear, Apple did not  
4 extend its initial program of providing free batteries to allow these phones to function properly  
5 throughout at least the first three years of their life.

6 **C. Apple Surreptitiously Includes “Throttling” Technology in its iOS Upgrades**

7 30. Rather than revert to a version of the iOS that was compatible with the phones’  
8 hardware, or provide free batteries to meet the demands created by iOS updates, Apple opted to  
9 decrease unexpected shutdowns through “throttling.” The throttling is implemented by, among other  
10 things, capping the iPhone CPU’s maximum frequency well below its original maximum. This  
11 meant slowing down processing on the phones, which entails, among other things, longer launch  
12 times for applications, lower frame rates when scrolling, backlight dimming, lower speaker volume  
13 by up to -3dB, frame rate reductions in some applications, and the need to reload applications upon  
14 launch.

15 31. On January 25, 2017, Apple released iOS 10.2.1, which Apple said was compatible  
16 with Subject iPhones. Through the iOS update, however, Apple introduced throttling as a way to  
17 avoid shutdowns in the iPhone SE, 6, 6 Plus, 6s, and 6s Plus.<sup>4</sup>

18 32. Apple subsequently released iOS 11.2 on December 2, 2017. Apple again claimed  
19 the update was compatible with Subject iPhones, and the iOS update introduced throttling to avoid  
20 shutdowns in the iPhone 7 and 7 Plus—even though those models were barely one year old.

21 33. Upon downloading iOS 10.2.1 and then 11.2 (for those with an iPhone 7 or 7 Plus),  
22 existing iPhone users, like Plaintiffs, began to experience sluggish performance on their phone and  
23 decreased battery life. But it was not known that Apple was deliberately slowing down older  
24 iPhones.<sup>5</sup>

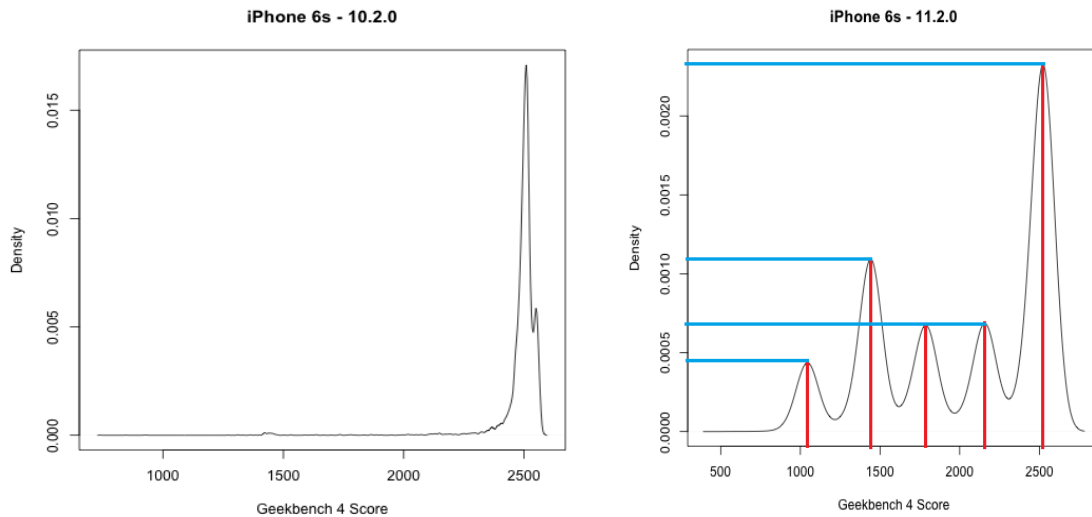
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25  
26 <sup>4</sup> *Id.*

27 <sup>5</sup> M. Panzarino, <https://www.theverge.com/2017/12/20/16800058/apple-iphone-slow-fix-battery-life-capacity>, last accessed on Jan. 5, 2018.



1           34. An analysis by Geekbench (which measures computer processing benchmarks) shows  
 2 that after updating iPhones to an iOS that throttles performance, there were more “cluster points”  
 3 where performance would slow down. The chart below shows phone performance before and after  
 4 iOS updates that use a “throttling” program. Operations run smoothly until the battery dies. The  
 5 recent iOS updates bottle up user performance at several points:



16           35. As explained, “where the peaks happen represents the cluster of phones running at  
 17 that particular performance level. And the height of the peaks (in blue) represents the relative  
 18 frequency of benchmarks being performed at that performance level.” This translates to a real loss  
 19 of performance. For example, “the iPhone 6s is slowed down by nearly 60%.”<sup>6</sup> This “effectively  
 20 turns the device’s performance into that of a device 1-2 generations older.”<sup>7</sup> The “software throttle  
 21 was not there when the phone was sold. It was put in there to mitigate Apple’s product liability [for  
 22 unexpected shutdowns] without the customer’s knowledge or consent. ... Without the throttle the  
 23 phones would shut down while still showing charge.”

26 <sup>6</sup> <https://seekingalpha.com/article/4133931-apple-wanted-know-iphone-throttling-scandal?page=2>,  
 27 last accessed on Jan. 5, 2018.

28 <sup>7</sup> *Id.*

1           **D. The iOS Updates Also Reduce Battery Life**

2           36. The throttling technology—aimed at preventing unexpected shutdowns—also  
3 increases battery depletion.

4           37. For example, a study comparing iPhones using the iOS 10.2 system found that on  
5 average, the phone reached 0% battery life after 240 minutes. Meanwhile, iPhones operating on the  
6 iOS 11 system on average reached 0% battery life after just 96 minutes.<sup>8</sup>

7           38. As a result of the shorter battery life, many consumers will just leave their iPhone  
8 continuously plugged in. But while this will avoid a quick battery drain from shutting off the device,  
9 it actually further erodes battery life and the device itself. As noted in Popular Science,

10                           If you do fill your battery all the way up, don't leave the device plugged  
11 in. Instead, follow the shallow discharge and recharge cycle we just  
12 mentioned. This isn't a safety issue: Lithium-ion batteries have built-in  
13 safeguards designed to stop them from exploding if they're left charging  
14 while at maximum capacity. **But in the long term, electronics will age  
faster if they're constantly plugged in while already charged to 100  
percent.**<sup>9</sup>

15           **E. Apple's Admissions and Reduced Battery Offer**

16           39. On December 20, 2017, Apple admitted that the Software Updates indeed impact  
17 performance. Apple stated:

18                           Last year we released a feature for iPhone 6, iPhone 6s and iPhone SE to  
19 smooth out the instantaneous peaks only when needed to prevent the  
20 device from unexpectedly shutting down during these conditions. We've  
21 now extended that feature to iPhone 7 with iOS 11.2, and plan to add  
support for other products in the future.<sup>10</sup>

22           40. Apple explained that starting with its iOS 10.2.1 update, the “iOS dynamically  
23

24 \_\_\_\_\_  
<sup>8</sup> <https://www.wandera.com/blog/ios-11-battery-drain/>, last accessed on Jan. 4, 2018.

25 <sup>9</sup> Nield, “How to Charge Your Devices the Right Way,” Aug. 23, 2017,  
26 <https://www.popsci.com/charge-batteries-right#page-4>, last accessed on Jan. 4, 2018.

27 <sup>10</sup> M. Panzarino, “Apple addresses why people are saying their iPhones with older batteries are  
28 running ‘slower’”, Dec. 20, 2017, <https://techcrunch.com/2017/12/20/apple-addresses-why-people-are-saying-their-iphones-with-older-batteries-are-running-slower/>, last accessed on Jan. 5, 2018.

1 manages the maximum performance of some system components when needed to prevent a  
2 shutdown. While these changes may go unnoticed, in some cases users may experience longer  
3 launch times for apps and other reductions in performance.”<sup>11</sup>

4 41. Apple acknowledged customer complaints, but blamed some performance issues on  
5 the battery degradation:

6 Over the course of this fall, we began to receive feedback from some users  
7 who were seeing slower performance in certain situations. Based on our  
8 experience, we initially thought this was due to a combination of two  
9 factors: a normal, temporary performance impact when upgrading the  
operating system as iPhone installs new software and updates apps, and  
minor bugs in the initial release which have since been fixed.

10 We now believe that another contributor to these user experiences is the  
11 continued chemical aging of the batteries in older iPhone 6 and iPhone 6s  
12 devices, many of which are still running on their original batteries.

13 42. Although Apple blames normal battery deterioration, other smart phone  
14 manufacturers use similar lithium-ion batteries and have not experienced the same problems or  
15 resorted to throttling their phones’ performance. Samsung, for example, guarantees its Galaxy S7  
16 and Note & lithium-ion batteries will retain 95% of their capacity for at least two years; likewise, LG  
17 and Google warranty their smart phones’ batteries for two years.<sup>12</sup>

18 43. Apple’s “solution” for pushing operating system upgrades that surreptitiously  
19 degraded performance was to lower the price of battery replacements from \$79 to \$29 through the  
20 end of 2018. Even with the price reduction, Apple is expected to take in upwards of \$1.5 billion  
21 from the battery sales alone; this revenue estimate does not incorporate the substantial sums Apple  
22 has accrued by selling new iPhones to consumers who believed their older models had become  
23 outdated, when in reality their phones were being throttled.

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25 \_\_\_\_\_  
26 <sup>11</sup> <http://bgr.com/2017/12/28/iphone-battery-apple-apology-letter-battery-replacement/>, last accessed  
on Jan. 4, 2018.

27 <sup>12</sup> Gordon Kelly, *Why Your iPhone Is Slowing Down*, Forbes (Dec. 21, 2017),  
28 <https://goo.gl/5pWf1X>.

1           44.     What’s more, the demand for batteries is creating a backlog.<sup>13</sup> According to an  
2 analysis by Barclay’s, “[a]s of Jan 2nd, 77% of iPhone users are using iPhone 6, 6 Plus, 6s, 6s Plus,  
3 7, 7 Plus, and SE. Based on a conservative estimate of 675M total iPhone installed base as of Dec-  
4 Q, this implies 519M users are subject to or mostly ‘eligible’ for this offer.”<sup>14</sup> iFixit’s Kyle Wiens  
5 has hypothesized that it may not even be possible for every iPhone customer eligible to take  
6 advantage of the program if they wanted to:

7                     Apple reportedly has 47,000 retail employees. If they trained all of them to  
8 do iPhone battery swaps, and they did nothing but that, it would take 2.7  
9 years to clear out the backlog. But by then, more iPhones would need new  
batteries.<sup>15</sup>

10           45.     Not downloading the iOS has its risks. Apple recently announced that all its iPhones,  
11 iPads and Mac computers are affected by two recently disclosed processor flaws called Spectre and  
12 Meltdown.<sup>16</sup> These flaws present potential security breaches. Apple stated it has released patches to  
13 defend against Meltdown in iOS 11.2, macOS 10.13.2, and tvOS 11.2. Thus, customers who have  
14 yet to download the iOS updates to avoid sluggish performance and battery drain leave themselves  
15 exposed to greater risks of a security breach.

16           46.     The iOS upgrades have put customers in a terrible situation. Customers unhappy with  
17 their iPhone’s performance after the software update cannot undo it. They could purchase a new  
18 battery for their existing iPhone, buy a newer iPhone compatible with the iOS 11 and later systems,  
19 at a cost between \$699 to over \$1000, or run the risk of a safety breach.

20  
21 \_\_\_\_\_  
22 <sup>13</sup> See, e.g., [https://www.washingtonpost.com/news/the-switch/wp/2018/01/04/run-dont-walk-to-replace-your-iphone-battery-for-29/?utm\\_term=.97e83c7d302c](https://www.washingtonpost.com/news/the-switch/wp/2018/01/04/run-dont-walk-to-replace-your-iphone-battery-for-29/?utm_term=.97e83c7d302c), last accessed on Jan. 5, 2018. See  
23 also <http://fortune.com/2018/01/04/apple-iphone-battery-upgrade-wait/>, last accessed on Jan. 5, 2018  
24 (“If you want to upgrade your iPhone battery, expect to have to wait for several weeks.”).

25 <sup>14</sup> <https://www.barrons.com/articles/apples-battery-gate-fix-good-pr-move-may-hurt-iphone-sales-says-barclays-1514994135?mg=prod/accounts-barrons>, last accessed on Jan. 5, 2018.

26 <sup>15</sup> <https://9to5mac.com/2018/01/04/swap-apocalypse-iphone-battery-replacement/>, last accessed on  
27 Jan. 5, 2018.

28 <sup>16</sup> <http://money.cnn.com/2018/01/04/technology/business/apple-macs-ios-spectre-meltdown/index.html>, last accessed on Jan. 5, 2018.

1 **F. Plaintiffs' Experiences**

2 47. Plaintiff John Ferguson purchased his iPhone SE in California in approximately 2015.

3 48. In the years that followed, Plaintiff Ferguson periodically downloaded iOS updates  
4 pushed by Apple, including for iOS 10 and iOS 11. Plaintiff Ferguson reviewed the notifications and  
5 brief descriptions of the software updates, which did not alert him that updating the operating system  
6 could reduce its performance.

7 49. After downloading the iOS updates, Plaintiff Ferguson's phone started to perform  
8 more sluggishly. He noticed it would take more time to run applications. He also had to charge it  
9 constantly. After charging it all night, he found his phone it could not go more than a few hours  
10 until it was down to 50% charged.

11 50. Plaintiff Kelli Beaugez leased her iPhone 7 in 2015.

12 51. In the years that followed, Plaintiff Beaugez periodically downloaded iOS updates  
13 pushed by Apple, including for iOS 10 and iOS 11. Plaintiff Beaugez reviewed the push  
14 notifications and brief descriptions of the software upgrades, which did not alert her that updating  
15 the operating system could reduce its performance.

16 52. After the upgrades, she noticed a degradation in performance. Applications would  
17 "hang" and not open. She noticed her battery life would plummet from 100% charge to 30% in a  
18 few hours.

19 53. Frustrated with the performance of her phone, she leased an iPhone 8 in late 2017.  
20 She would not have obtained her iPhone 8 but for the performance and battery problems caused by  
21 the iOS upgrade.

22 54. Plaintiff Gregory Stenstrom purchased his iPhone 6s Plus in or around the fall of  
23 2015.

24 55. In the years that followed, Plaintiff Stenstrom periodically downloaded the iOS  
25 updates pushed by Apple, including for iOS 10 and iOS 11. Plaintiff Stenstrom reviewed the push  
26 notifications and brief descriptions of the software upgrades, which did not alert him that updating  
27 the operating system could reduce its performance.

28 56. After the upgrades, he noticed a degradation in performance. His phone experiences

1 abrupt shutdowns and sluggishness.

2 **CLASS ACTION ALLEGATIONS**

3 57. Plaintiffs seek certification of a Class defined to include:

4 All entities and individuals who have purchased or leased a new Subject  
5 iPhone (*i.e.*, an iPhone SE, 6, 6 Plus, 6s, 6s Plus, 7, or 7 Plus) in the  
6 United States before December 20, 2017.

7 58. Excluded from the Class are Apple and its employees, officers, directors, legal  
8 representatives, successors and wholly or partly owned subsidiaries or affiliated companies; class  
9 counsel and their employees; and the judicial officers and their immediate family members and  
10 associated court staff assigned to this case.

11 59. The Class can be readily identified from Apple's records of iPhone owners, and its  
12 own data as to who has updated their systems. For instance, when iPhones are activated, and when  
13 various functions are performed on them, including downloading an iOS Software Update, the  
14 device transmits and Apple receives, collects, and maintains, both a "unique hardware identifier" for  
15 the iPhone as well as "unique account identifiers" associated with the owner's Apple ID.<sup>17</sup>

16 **A. Numerosity**

17 There are tens of millions of Class members in the United States. Before the release of the  
18 iPhone 7, for example, it was reported that there were 50 million iPhone 6 users and 20 million  
19 iPhone 5 or earlier users.<sup>18</sup>

20 **B. Typicality**

21 60. Plaintiffs' claims are typical of the claims of the Class. Like members of the Class,  
22 Plaintiffs purchased or leased a Subject iPhone and/or downloaded one or more iOS updates on  
23 Subject iPhones they own, which imposed performance demands that the phones' hardware could  
24 not meet, throttled the phones' performance, and otherwise negatively impacted the performance and  
25 utility of the phones.

26 \_\_\_\_\_  
27 <sup>17</sup> See, e.g., <http://images.apple.com/legal/sla/docs/iOS11.pdf> at 2, § 2(b).

28 <sup>18</sup> <http://bit.ly/2pDHcM7>.

1           **C. Adequacy of Representation**

2           61. Plaintiffs will fairly and adequately protect the Class' interests and have retained  
3 counsel competent and experienced in class-action litigation. Plaintiffs' interests are coincident with,  
4 and not antagonistic to, absent Class members' interests because by proving their individual claims,  
5 they will necessarily prove the liability of Apple to the Class as well. Plaintiffs are cognizant of, and  
6 determined to, faithfully discharge their fiduciary duties to the absent Class members as their  
7 representatives.

8           62. Plaintiffs' counsel have substantial experience in prosecuting class actions, including  
9 against Apple. Plaintiffs and their counsel are committed to vigorously prosecuting this action, have  
10 the financial resources to do so, and do not have any interests adverse to the Class.

11           **D. Commonality and Predominance**

12           63. There are numerous questions of law and fact, the answers to which are common to  
13 each Class and predominate over questions affecting only individual members, including the  
14 following:

- 15           a) Whether Apple installed iOS and pushed updates, including iOS 10.1.1, 10.2.1,  
16           and 11.2.0, to Subject iPhones that imposed performance demands beyond the  
17           capabilities of the phones' hardware;
- 18           b) Whether Apple installed iOS and pushed iOS updates, including 10.2.1 and 11.2.0,  
19           to Subject iPhones, designed to throttle the phones' performance, degrading  
20           computing performance and battery life;
- 21           c) Whether Apple's pushing of iOS updates that impose performance demands  
22           beyond the capabilities of the phones' hardware or which throttle the phones'  
23           performance constitutes a trespass to chattel;
- 24           d) Whether Apple's pushing of iOS updates that impose performance demands  
25           beyond the capabilities of the phones' hardware or which throttle the phones'  
26           performance constitutes a breach of an express contractual term or implied  
27           contractual duty;
- 28           e) Whether Apple's pushing of iOS updates that impose performance demands

- 1 beyond the capabilities of the phones' hardware or which throttle the phones'  
2 performance constitutes an unfair or deceptive act or practice under California law;  
3 f) Whether Apple's deceptive and unlawful conduct led to its unjust enrichment such  
4 that Apple should be required to provide restitution to the Class; and  
5 g) Whether Plaintiffs' and Class members are entitled to injunctive relief to halt  
6 Apple's unlawful conduct.

7 **E. Superiority and Manageability**

8 64. A class action is superior to other available methods for the fair and efficient  
9 adjudication of this controversy since joinder of all the individual Class members is impracticable.  
10 Likewise, because the damages suffered by each individual Class member are relatively small, the  
11 expense and burden of individual litigation would make it very difficult or impossible for individual  
12 Class members to redress the wrongs done to each of them individually. And the burden imposed on  
13 the judicial system by individual litigation would be enormous.

14 65. The prosecution of separate actions by the individual Class members would also  
15 create a risk of inconsistent or varying adjudications. The conduct of this action as a class action  
16 presents far fewer management difficulties, conserves judicial resources and the parties' resources,  
17 and protects the rights of each Class member.

18 **COUNT I**

19 **FRAUDULENT CONDUCT IN VIOLATION OF**  
20 **CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200 et seq.**

21 66. Plaintiffs repeat and re-allege the allegations in the paragraphs above as if fully set  
22 forth herein.

23 67. Plaintiffs assert this cause of action on behalf of themselves and the Class.

24 68. Plaintiffs are entitled to assert this cause of action for Apple's violations of California  
25 Business and Professions Code § 17200 et seq. because Apple's software agreement requires  
26 application of California law.

27 69. California Business & Professions Code § 17200 et seq. (the "UCL") prohibits unfair  
28 competition, that is, any unfair, unlawful, or a fraudulent business practice.



1 70. Apple violated the “fraudulent” prong of the UCL by making material  
2 misrepresentations and failing to disclose material information regarding certain iOS updates,  
3 including but not limited to 10 and 11, and its variants. In particular, Apple represented that the  
4 updates were to fix software bugs and to improve security and Apple failed to say that the updates  
5 imposed performance demands that the phones’ hardware could not meet, throttled the phones’  
6 performance, and otherwise negatively impacted the performance and utility of the phones.

7 71. These material misrepresentations and nondisclosures were likely to mislead  
8 reasonable consumers and the general public. Apple’s misrepresentations and nondisclosures were  
9 material, in that a reasonable person would attach importance to the information and would be  
10 induced to act on the information in making purchase and product-updating decisions.

11 72. Plaintiffs reasonably relied on Apple’s material misrepresentations and/or  
12 nondisclosures and lost money and/or property as a result in that, had they known the truth, they  
13 would not have elected to download the iOS updates and thus would not have Subject iPhones of  
14 degraded performance and utility and/or would not have purchased new iPhones and/or iPhone  
15 batteries after the update that they otherwise would not have purchased.

16 73. Plaintiffs seek an order enjoining Apple from committing such fraudulent business  
17 practices immediately and in the future; an order requiring Apple to provide all potentially-affected  
18 iPhone owners with reasonable notice that the poor performance of those devices is caused by  
19 Apple’s own modifications; restitution for themselves and all Class members in connection with  
20 their purchase of iPhones and iPhone batteries; and/or all applicable pre- and post-judgment interest.  
21 Plaintiffs also seek attorneys’ fees and costs, for themselves and the Class, under Cal. Code Civ.  
22 Proc. § 1021.5.

## 23 **COUNT II**

### 24 **UNFAIR CONDUCT IN VIOLATION OF** 25 **CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200 et seq.**

26 74. Plaintiffs repeat and re-allege the allegations in the paragraphs above as if fully set  
27 forth herein.

28 75. Plaintiffs assert this cause of action on behalf of themselves and the Class.

1 76. Apple's conduct violated the "unfair" prong of the UCL because it was immoral,  
2 unethical, oppressive, unscrupulous, unconscionable, and/or substantially injurious to Plaintiffs and  
3 the Class. Apple's practice was also contrary to legislatively declared public policy and the harm it  
4 caused to consumers outweighed its utility, if any.

5 77. Apple sold Subject iPhones that were capable of a certain level of performance and  
6 functionality, and then pushed iOS updates onto those phones that imposed performance demands  
7 that the phones' hardware could not meet, throttled the phones' performance, and otherwise  
8 negatively impacted their performance and utility. This conduct had the effect of making it seem  
9 like the Subject iPhones had become outdated and in need of replacement simply due to the passage  
10 of time, instead of alerting users to the fact that the phones were not capable of meeting the  
11 performance demands that Apple imposed on them.

12 78. As a direct and proximate result of Apple's unfair conduct, Plaintiffs and the  
13 members of the Class have lost money and/or property in that Apple's unfair conduct caused  
14 Plaintiffs' and Class members' phones to experience degraded performance and utility leading many  
15 to purchase new iPhones and/or iPhone batteries that they otherwise would not have purchased.

16 79. Plaintiffs seek an order enjoining Apple from committing such unfair business  
17 practices immediately and in the future; an order requiring Apple to provide all potentially-affected  
18 iPhone owners with reasonable notice that the poor performance of those devices is caused by  
19 Apple's own modifications; restitution for themselves and all Class members in connection with  
20 their purchase of iPhones and iPhone batteries; and/or all applicable pre- and post-judgment interest.  
21 Plaintiffs also seek attorneys' fees and costs, for themselves and the Class, under Cal. Code Civ.  
22 Proc. § 1021.5.

23 **COUNT III**

24 **TRESPASS TO CHATTELS**

25 80. Plaintiffs repeat and re-allege the allegations above as if fully set forth herein.

26 81. Plaintiffs assert this cause of action on behalf of themselves and the Class.

27 82. Plaintiffs and the Class were in possession of personal property in the form of their  
28 Subject iPhones.

1 83. Apple interfered with Plaintiffs' and the Class's possession of their iPhones by  
2 pushing software updates that substantially degraded the phones' performance and utility.

3 84. Apple intentionally pushed iOS updates, including but not limited to iOS 10 and 11  
4 and their variants, despite knowing that the updates imposed performance demands that the phones'  
5 hardware could not meet, throttled the phones' performance, and otherwise negatively impacted the  
6 performance and utility of the phones.

7 85. Apple did not disclose the negative impact of the iOS updates, and Plaintiffs and  
8 Class members had no reason to know either when they acquired their iPhones or when they  
9 downloaded iOS updates that Apple was pushing iOS updates that imposed performance demands  
10 that the phones' hardware could not meet, throttled the phones' performance, and otherwise  
11 negatively impacted the performance and utility of the phones.

12 86. Apple functionally forced consumers to update their iPhones to the latest version of  
13 iOS. Users who don't update face constant push notifications encouraging them to update. Users  
14 are not given the option of not updating: the push notifications give the user the options to "Install  
15 Now" or "Later." Users who select "Later" are prompted to select a specific time for the phone to  
16 install the update without further user input. iPhones that are not updated also face a loss of  
17 functionality for installed applications, which often require the latest version of iOS, and are  
18 vulnerable to hackers because security updates are not provided for older versions of iOS. Not  
19 updating is not an option that is offered or supported by Apple.

20 87. As a direct and proximate result of Apple's interference with their iPhones, Plaintiffs  
21 and the Class suffered injury, including that their iPhones suffered a permanent and long-term  
22 degradation in performance, utility, condition, quality, and value. As a result, Plaintiffs and/or Class  
23 members were required and induced to purchase new iPhones and/or new batteries to their detriment  
24 and Apple's benefit.

25 **COUNT IV**

26 **BREACH OF CONTRACT**

27 88. Plaintiffs repeat and re-allege the allegations above as if fully set forth herein.

28 89. Plaintiffs assert this cause of action on behalf of themselves and the Class.

1 90. Apple requires everyone who downloads an iOS update, including iOS 10, 10.1.1,  
2 10.2.1, and 11.2.0, to agree to the terms of a contract: its iOS Software License Agreement.

3 Plaintiffs and the Class entered into contracts with Apple in connection with their use of an iPhone,  
4 using an Apple iOS, and/or by downloading an iOS update, including Apple's software license.

5 91. Apple's Software License Agreement terms provide in part: "12. Controlling Law and  
6 Severability. **This License will be governed by and construed in accordance with the laws of the  
7 State of California, excluding its conflict of law principles.**"<sup>19</sup>

8 92. In the iOS Software License Agreement, Apple permits the iPhone device owner "to  
9 use the iOS Software on a single Apple-branded iOS Device." *Id.* at 1, § 2(a).

10 93. Plaintiffs performed their obligations under the iOS Software License Agreement.

11 94. Apple breached its iOS Software License Agreement by providing software that  
12 could not be "used" as intended since the operating system software impaired the performance of the  
13 Subject iPhones, reducing their ability to function as a "mobile" device.

14 95. As a result of Apple's breach of its promises in the iOS Software License Agreement,  
15 Plaintiffs, and those similarly situated, have suffered damages in the form of the loss of the value of  
16 their existing iPhone.

17 96. Accordingly, Plaintiffs, and all those similarly situated, seek specific performance  
18 and damages for Apple's breach of contract.

19 **COUNT V**

20 **BREACH OF IMPLIED DUTY TO PERFORM WITH REASONABLE CARE**

21 97. Plaintiffs repeat and re-allege the allegations above as if fully set forth herein.

22 98. Plaintiffs assert this cause of action on behalf of themselves and the Class.

23 99. Apple requires everyone who downloads an iOS update, including iOS 10, 10.1.1,  
24 10.2.1, and 11.2.0, to agree to the terms of a contract: its iOS Software License Agreement.

25 Plaintiffs and the Class entered into contracts with Apple in connection with their use of an iPhone,  
26

27 \_\_\_\_\_  
28 <sup>19</sup> <http://images.apple.com/legal/sla/docs/iOS11.pdf>

1 using an Apple iOS, and/or by downloading an iOS update, including Apple’s software license.  
2 They did so anticipating the software updates would improve phone performance, and not degrade  
3 performance and battery life.

4 100. Plaintiffs and Class members met all or substantially all of their contractual  
5 obligations, including only using Apple licensed operating systems.

6 101. Apple was obligated to provide operating systems that would enhance iPhone  
7 operations and not degrade performance or battery life. This obligation is implied by Apple’s  
8 conduct, its descriptions of the pushed operating systems as “upgrades,” and the license agreement  
9 itself.

10 102. Under California law, Apple was required to perform its contractual obligations  
11 competently and with reasonable care. Apple breached that duty by providing software operating  
12 systems that degraded the performance and battery life of the iPhones its customers purchased.

13 103. Had Apple used reasonable care, it would have provided operating systems that  
14 improved the performance of its iPhones, or at least not degraded the performance.

15 104. As a result of Apple’s failure to provide operating systems upgrades competently and  
16 using reasonable care, Plaintiffs and Class members failed to receive the benefit of their bargain.  
17 They are entitled to damages in an amount to be proven at trial.

18 105. Apple is aware of its breach, and has admitted that its software updates throttle device  
19 performance, and its response is merely to offer reduced cost batteries until the end of 2018. This is  
20 insufficient correction of Apple’s breach.

21 **COUNT VI**

22 **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

23 106. Plaintiffs repeat and re-allege the allegations in the paragraphs above as if fully set  
24 forth herein.

25 107. Plaintiffs assert this cause of action on behalf of themselves and the Class.

26 108. Plaintiffs and the Class entered into contracts with Apple in connection with their use  
27 of an iPhone, using an Apple iOS, and/or by downloading an iOS update, including Apple’s software  
28 license.

1 109. Plaintiffs and the Class gave consideration that was fair and reasonable, and  
2 performed all of their material obligations under the contracts.

3 110. Implied in all contracts is a covenant of good faith and fair dealing, imposing a duty  
4 on the parties to act in good faith and deal fairly with one another.

5 111. Under the terms of its software license for both iOS 10 and iOS 11 and their variants,  
6 Apple reserved the right, “at its discretion, [to] make available future iOS Software Updates for your  
7 iOS Device.” The terms of the software license “govern any iOS Software Updates provided by  
8 Apple that replace or supplement the Original iOS Software product, unless such iOS Software  
9 Update is accompanied by a separate license in which case the terms of that license will govern.”

10 112. Plaintiffs and Class members had a reasonable expectation that when Apple used its  
11 discretion to create and push any iOS software updates to their iPhones, that the updates would be  
12 for the benefit of the phones’ functionality and security, and would not impose performance  
13 demands that the phones’ hardware could not meet, throttle the phones’ performance, or otherwise  
14 negatively impact the performance and utility of the phones.

15 113. Apple nevertheless used its discretion to push iOS updates to the Subject iPhones that  
16 imposed performance demands that the phones’ hardware could not meet, throttled the phones’  
17 performance, and otherwise negatively impacted the performance and utility of the phones.

18 114. Plaintiffs and Class members had no reason to know either when they acquired their  
19 iPhones or when they downloaded iOS updates that Apple was pushing iOS updates that imposed  
20 performance demands that the phones’ hardware could not meet, throttled the phones’ performance,  
21 and otherwise negatively impacted the performance and utility of the phones.

22 115. By providing the iOS updates described above, Apple breached its contractual duty of  
23 good faith and fair dealing.

24 116. By reason of Apple’s breach, Plaintiffs and Class members suffered damages in that  
25 their iPhones suffered a degradation in performance and utility and they were required and induced  
26 to purchase new iPhones and/or new batteries to their detriment and Apple’s benefit. Apple thus  
27 directly benefited from, and is being unjustly enriched by, the contractual breaches alleged herein.

28 117. As a result, Plaintiffs and the Class sustained damages in an amount to be determined

1 by this Court.

2 **COUNT VII**

3 **QUASI-CONTRACT CLAIM FOR RESTITUTION**

4 118. Plaintiffs repeat and re-allege the allegations in the paragraphs above as if fully set  
5 forth herein.

6 119. Plaintiffs assert this cause of action on behalf of themselves and the Class.

7 120. In the event it is found that Plaintiffs and the Class lack an adequate remedy at law,  
8 Plaintiffs and the Class are entitled to relief from Apple under quasi-contract principles.

9 121. Through its conduct described above, Apple caused Plaintiffs' and Class members'  
10 iPhones to suffer degraded performance and utility, depriving them of the benefit of their purchase  
11 or lease of those iPhones and causing them to spend additional money on new iPhones as well as  
12 replacement batteries for their existing iPhones, all of which led to Apple's unjust enrichment at  
13 Plaintiffs' and Class members' expense.

14 122. Under the circumstances, it would be inequitable for Apple to benefit from its  
15 conduct.

16 123. To avoid injustice, Plaintiffs and the Class accordingly seeks restitution and/or  
17 disgorgement of profits in an amount to be proven at trial.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, hereby  
20 demand:

- 21 a) certification of the proposed Class;
- 22 b) appointment of the undersigned counsel as class counsel;
- 23 c) an order enjoining Apple as detailed above, including enjoining Apple from engaging  
24 any further in the unlawful conduct set forth herein;
- 25 d) a declaration that Apple's actions described above violate the UCL, constitute a  
26 trespass to chattels, and breach Apple's contractual duties;
- 27 e) restitution and disgorgement of all profits wrongfully obtained;
- 28 f) an award to Plaintiffs and the Class of all damages, including attorneys' fees and

1 reimbursement of litigation expenses, recoverable under applicable law;

2 h) such other relief as this Court deems just and equitable.

3 **DEMAND FOR JURY TRIAL**

4 Plaintiffs hereby demand a trial by jury on all applicable claims.

5  
6  
7 Dated: January 9, 2018

/s/ David Stein

8  
9 Eric H. Gibbs  
David Stein  
Joshua Bloomfield  
10 GIBBS LAW GROUP LLP  
11 505 14th Street, Suite 1110  
Oakland, CA 94612  
12 Telephone: (510) 350-9700  
13 Facsimile: (510) 350-9701  
ehg@classlawgroup.com  
14 ds@classlawgroup.com  
jjb@classlawgroup.com

15  
16 Andrew N. Friedman  
Douglas J. McNamara  
17 COHEN MILSTEIN SELLERS & TOLL PLLC  
1100 New York Ave. NW, Fifth Floor  
18 Washington, DC 20005  
Telephone: (202) 408-4600  
19 afriedman@cohenmilstein.com  
dmcnamara@cohenmilstein.com

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21 Attorneys for Plaintiffs  
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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

Kelli Beaugez, John Ferguson, Gregory Stenstrom, on behalf of themselves and those similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Eric H. Gibbs - Gibbs Law Group LLP 505 14th Street, Suite 1110, Oakland, CA 94612 (510) 350-9700

DEFENDANTS

Apple, Inc.

County of Residence of First Listed Defendant Santa Clara County, California (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)

- Citizen of This State PTF 1 DEF 1 Incorporated or Principal Place of Business In This State PTF 4 DEF 4 X 4
Citizen of Another State PTF X 2 DEF 2 Incorporated and Principal Place of Business In Another State PTF 5 DEF 5
Citizen or Subject of a Foreign Country PTF 3 DEF 3 Foreign Nation PTF 6 DEF 6

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes categories like Personal Injury, Civil Rights, Prisoner Petitions, Habeas Corpus, and others.

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(d)

Brief description of cause: Class Action Fairness Act

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 Edward J. Davila

DOCKET NUMBER 5:17-cv-07285

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

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

DATE 01/09/2018

SIGNATURE OF ATTORNEY OF RECORD

/s/ David Stein

## 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.