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6 *Attorneys for Plaintiff and the Putative Class*

7
8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 RICKY FUNG, individually and on behalf of
11 all others similarly situated,

12 Plaintiff,

13 vs.

14 APPLE INC., a California corporation,

15 Defendants.
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CASE NO.

CLASS ACTION COMPLAINT FOR:

- 1. **FRAUDULENT MISREPRESENTATION**
- 2. **FRAUDULENT CONCEALMENT**
- 3. **BREACH OF IMPLIED CONTRACT**
- 4. **TRESPASS TO CHATTELS**
- 5. **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW (CAL. BUS. & PROF. CODE § 17200, ET SEQ.)**
- 6. **UNJUST ENCIRHMENT**

DEMAND FOR JURY TRIAL

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1. Plaintiff Ricky Fung (“Plaintiff”), on behalf of himself and all others similarly situated, alleges against Defendant Apple, Inc. (“Apple” or “Defendant”) the following upon information and belief, except as to those allegations concerning Plaintiff individually, which are alleged upon personal knowledge:

SUMMARY OF ACTION

2. Plaintiff brings this class action against Apple for its fraudulent and deceptive interference into the operation and performance of its iPhone devices, which were updated with any of the operating system software described below (the “Devices”), and Apple’s failure to disclose that it has purposely slowed down the processing and operations of the Devices through such updates.

3. The Devices are comprised of the series 6 and 7 iPhones, including, but not limited to, the following models: iPhone 6, iPhone 6s, iPhone 6s Plus, iPhone 7, and iPhone 7 Plus.

4. The Apple iPhone operating systems software updates affecting the Devices include the following iOS 10 and 11 updates (“iOS updates”): iOS 10.2.1, iOS 10.3, iOS 10.3.1, iOS 10.3.2, iOS 10.3.3 (collectively referred to as the “iOS 10 updates”); iOS 11.0.1, iOS 11.0.2, iOS 11.0.3, iOS 11.1, iOS 11.1.1, iOS 11.1.2, iOS 11.2, and iOS 11.2.1 (collectively referred to as the “iOS 11 updates”).

5. Instead of enhancing the performance of the Devices through iOS updates which are compatible and support the devices’ operating systems, as Apple had represented, Apple distributed iOS updates which interfered with the Devices’ performance.

6. On or about December 20, 2017, Apple confirmed in a statement that the company’s iOS updates have, in fact, slowed the performance of Devices, interfered with their normal usage, and limited their performance under certain conditions to prevent the Devices from reaching their full processing power. Apple has stated that it slowed the performance of Devices in an effort to protect the Devices from the effects of battery degradation.

7. By failing to disclose previously that it was intentionally slowing down performance of Devices to, Apple disregarded the rights of Plaintiff and members of the proposed classes in order to push consumers to upgrade their phones faster. In doing so, Apple also intentionally

1 failed to inform Device owners of alternatives, such as replacing Device batteries.

2 8. As a result of Apple’s wrongful actions, Plaintiff and members of the
3 proposed classes have been injured by either continuing to use slowed Devices, or
4 purchasing a new model iPhone or other phone.

5 **JURISDICTION AND VENUE**

6 9. This Court has subject matter jurisdiction pursuant to the Class Action Fairness
7 Act of 2005 (“CAFA”), 28 U.S.C. 1332(d), because (1) the aggregate amount in controversy
8 exceeds \$5 million, exclusive of interest and costs, (2) there are more than 100 putative class
9 members, and (3) at least some members of the proposed Class have a different state
10 citizenship from Apple.

11 10. This Court has personal jurisdiction over Apple because Apple advertises and does
12 substantial business in the state of California and purposefully avails itself of the privileges of
13 conducting business within this state and in this District.

14 11. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because Apple
15 advertises and does substantial business within this District, and engaged in deceptive
16 practices in this District, and a substantial part of the events, acts, and omissions giving rise to
17 Plaintiff’s claims occurred in this District.

18 **THE PARTIES**

19 12. Plaintiff Ricky Fung resides in San Francisco, CA and is the owner of an iPhone
20 6s.

21 13. Defendant Apple is a California corporation with its principal offices at 1 Infinite
22 Loop, Cupertino, CA 95014.

23 **FACTUAL ALLEGATIONS**

24 14. Plaintiff purchased an iPhone 6s to own and operate in or around January 2016.

25 15. Apple periodically releases iOS updates for the Devices to the public. The iOS
26 updates are downloaded and installed as a single bundle. Users cannot download portions of the
27 update while not downloading other portions.

28 16. Upon information and belief, Apple’s updates, including the iOS 10 and iOS 11

1 updates, caused performance problems to many aspects of Devices' functionality, including core
2 functions such as phone calls, text messaging, and use of applications.

3 17. Plaintiff downloaded iOS updates, including iOS 10 and/or 11 updates on his iPhone
4 6s.

5 18. Following iOS updates to the Devices, including iOS 10 and/or 11 updates, Plaintiff
6 and putative class members began to experience significant slowdowns with their Devices, delayed
7 responses to touch interactions and application ("Apps") launches, and other performance
8 problems that negatively affected the performance of the Devices.

9 19. Apple purposefully concealed that their iOS updates were intended to limit the
10 maximum performance of some system components, and would or could interfere with
11 performance and ordinary functions.

12 20. Moreover, Apple repeatedly misrepresented the iOS updates, touting the new
13 software's improvements, bug fixes, and security, while failing to disclose the negative
14 aspects of the updates.

15 21. Apple also purposefully concealed that the aging of Device batteries contributed to
16 slowing of the Devices, and that a battery replacement could serve as a remedy to the problem
17 of degraded performance without the slowing that the iOS updates caused.

18 22. Had Plaintiff and putative class members been informed by Apple that a battery
19 replacement would have improved the performance of their Devices, Plaintiff and putative class
20 members could have chosen to replace their batteries.

21 23. On January 4, 2018, Apple published a explanation of the effects of the updates
22 introduced in iOS 10.2.1:

23 This power management works by looking at a combination of the
24 device temperature, battery state of charge, and battery impedance. Only
25 if these variables require it, iOS will dynamically manage the maximum
26 performance of some system components, such as the CPU and GPU, in
27 order to prevent unexpected shutdowns. As a result, the device
28 workloads will self-balance, allowing a smoother distribution of system
tasks, rather than larger, quick spikes of performance all at once. In
some cases, a user may not notice any differences in daily device
performance. The level of perceived change depends on how much
power management is required for a particular device.

1 Users may notice longer app launch times, lower frame rates while
2 scrolling, backlight dimming (which can be overridden in Control
3 Center), lower speaker volume by up to -3Db, gradual frame rate
4 reductions in some apps, camera flash disabled and apps refreshing in
5 background may require reloading upon launch.

6 24. Apple's representations regarding "shut-down prevention" are misleading and
7 fraudulent, as the actual purpose of the slowdowns was to induce consumers with older iPhones to
8 upgrade to new models. Apple has engaged in the misleading and fraudulent practices described
9 herein to increase iPhone sales and profits.

10 25. Plaintiff and other putative class members effectively had no choice but to
11 update their devices' software with the iOS updates, including the iOS 10 and iOS 11 software,
12 as Apple's constant reminders to update were otherwise unceasingly disruptive. Further,
13 applications on the Devices ultimately could not be updated unless the Device was running the
14 latest iOS software.

15 26. As a result of the foregoing, Apple's iOS updates, including the iOS 10 and iOS 11
16 software, forced Plaintiff and putative class members to either use a slowed Device, or purchase
17 a new phone.

18 27. Apple's wrongful and deceptive material actions, representations, and omissions
19 directly and proximately caused the interference and loss of value to Devices causing Plaintiff
20 and putative class members to suffer economic harm as well as other harm for which they are
21 entitled to compensation, including replacement of phones; loss of use; loss of value; purchase
22 of new batteries; ascertainable losses in the form of deprivation of the value of their Devices;
23 and overpayment for their Devices in that Plaintiff putative class members did not get what they
24 paid for.

25 **CLASS ALLEGATIONS**

26 28. Plaintiff seeks relief on behalf of himself and as representative of all others who are
27 similarly situated. Pursuant to Fed. R. Civ. P. 23(a), (b)(2), (b)(3) and (c)(4), Plaintiff seeks
28 certification of a Nationwide class defined as follows:

All persons residing in the United States who own or have owned an
iPhone Device who downloaded a version of iOS and who experienced
reduced functionality on their Device (the "Nationwide Class").

1 29. Pursuant to Fed. R. Civ. P. 23, and in the alternative to claims asserted on behalf of
2 the Nationwide Class, Plaintiff asserts claims under the laws of California, and on behalf of
3 separate California Sub-Class, defined as follows:

4 All persons residing in California who own or have owned an iPhone
5 Device who downloaded a version of iOS and who experienced reduced
6 functionality on their Device (the “California Sub-Class”).

7 30. Excluded from each of the above Classes are any of Apple's officers, directors and
8 board members; all persons who make a timely election to be excluded from the Class; and the
9 judge(s) to whom this case is assigned and their immediate family.

10 31. Plaintiff hereby reserves the right to amend or modify the class definitions with
11 greater specificity or division after having had an opportunity to conduct discovery.

12 32. Each of the proposed Classes meets the criteria for certification under Federal
13 Rule of Civil Procedure 23(a), (b)(2), (b)(3), and (c)(4).

14 33. Numerosity: Consistent with Rule 23(a)(1), putative class members are so
15 numerous and geographically dispersed that the joinder of all members is impractical. While
16 the exact number of members are unknown to Plaintiff at this time, Plaintiff believes that there
17 are millions of putative members. Class members may be identified through objective means. Class
18 members may be notified of the pendency of this action by recognized, Court-approved notice
19 dissemination methods, which may include U.S. mail, electronic mail, internet postings, and/or
20 published notice.

21 34. Commonality: Consistent with Fed. R. Civ. P. 23(a)(2) and with 23(b)(3)'s
22 predominance requirement, this action involves common questions of law and fact that
23 predominate over any questions affecting individuals. The common questions include:

24 a. Whether Apple failed to disclose that its iOS updates caused slowdowns in older
25 iPhone models' performance;

26 b. Whether Apple interfered with the use and/or lowered the value of Devices;

27 c. Whether Apple's iOS modifications were implemented in order to profit from
28 Plaintiff and putative class members by inducing them to purchase new iPhones as replacements for

1 their Devices;

2 d. Whether Apple is subject to liability for fraudulently concealing material facts
3 from Plaintiff and putative class members;

4 e. Whether Apple was unjustly enriched as a result of its fraudulent conduct, such
5 that it would be inequitable for Apple to retain benefits conferred upon it by Plaintiff and
6 putative class members;

7 f. Whether Plaintiff and putative class members were injured and suffered damages or
8 other acceptable losses because of Apple's fraudulent behavior; and,

9 g. Whether Plaintiff and other members of the proposed classes are entitled to relief.

10 35. Typicality: Consistent with Fed. R. Civ. P. 23(a)(3), Plaintiff's claims are typical of
11 those of the other class members. Plaintiff's damages and injuries are akin to the other class
12 members and Plaintiff seeks relief consistent with the relief of putative class members.

13 36. Adequacy: Consistent with Fed. R. Civ. P. 23(a)(4), Plaintiff is an adequate
14 representative because Plaintiff is a member of the Classes and is committed to pursuing this
15 matter against Apple to obtain relief for the Classes. Plaintiff has no conflict of interest with the
16 Classes. Plaintiff's counsel are competent and experienced in litigating class actions such as this.
17 Plaintiff intends to vigorously prosecute this case and will fairly and adequately protect the
18 interests of putative class members.

19 37. Superiority: Consistent with Fed. R. Civ. P. 23(b)(3), a class action is superior to any
20 other available means for the fair and efficient adjudication of this controversy, and no unusual
21 difficulties are likely to be encountered in the management of this class action. The quintessential
22 purpose of the class action mechanism is to permit litigation against wrongdoers even when
23 damages to individual plaintiffs may not be sufficient to justify individual litigation. Here, the
24 damages suffered by Plaintiff and putative class members are relatively small compared to the
25 burden and expense required to individually litigate their claims against Apple, and thus individual
26 litigation to redress Apple's wrongful conduct would be impracticable. Individual litigation by
27 each class member would also strain the court system. Individual litigation creates the potential for
28 inconsistent or contradictory judgments, and increases the delay and expense to all parties and the

1 court system. By contrast, the class action device presents far fewer management difficulties and
2 provides the benefits of a single adjudication, economies of scale, and comprehensive supervision
3 by a single court.

4 38. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(2) and (c). Apple,
5 through its uniform conduct, has acted or refused to act on grounds generally applicable to the
6 classes as a whole, making injunctive and declaratory relief appropriate to the classes as a whole.

7 39. Likewise, particular issues under Rule 23(c)(4) are appropriate for certification
8 because such claims present only particular, common issues, the resolution of which would
9 advance the disposition of this matter and the parties' interests therein.

10 40. Finally, all members of the proposed classes are readily ascertainable by records
11 maintained by Apple. Using this information, the members of the Class can be identified and their
12 contact information ascertained for purposes of providing notice to the Class.

13 **CAUSES OF ACTION**

14 **FIRST CAUSE OF ACTION**

15 **FRAUDULENT MISREPRESENTATION**

16 41. Plaintiff incorporates and re-alleges the allegations contained in the preceding and
17 subsequent paragraphs as if fully set forth herein.

18 42. Prior to and at the time that Plaintiff and putative class members decided to update
19 their Devices with iOS updates, Apple knew that iOS updates would slow down the performance
20 of Devices and could interfere with Devices' performance, and that a battery replacement would
21 improve the performance of Devices.

22 43. Prior to and at the time that putative class members decided to purchase their
23 phones, Apple knew that its iOS updates would slow down the performance of Devices and could
24 interfere with Devices' performance, and that a battery replacement would improve the
25 performance of their older model Devices.

26 44. Apple intentionally misrepresented the iOS updates, touting the new software's
27 improvements to performance while failing to disclose the negative aspects of the updates,
28 including slowing of the Devices.

1 45. These representations were material to Plaintiff and proposed class members.

2 46. Apple intentionally made these misrepresentations and material omissions in order to
3 defraud and/or mislead Plaintiff and proposed class members into updating their Devices with iOS
4 updates and subsequently purchasing newer model replacement iPhones.

5 47. Plaintiff and proposed class members relied upon Apple's misrepresentations and
6 material omissions in updating their phones with iOS updates and subsequently purchasing newer
7 model replacement phones.

8 48. Had Apple disclosed that the iOS updates could and would slow Devices'
9 processing, and/or that performance could have been improved with a replacement battery,
10 Plaintiff and putative class members would have, to the extent possible, declined the iOS updates
11 and/or would not have purchased replacement iPhones.

12 49. As a result of Apple's misrepresentations and material omissions, Plaintiff and
13 proposed class members lost material value, function, and use in their Devices and/or were
14 required to expend material sums of money to replace their Devices with fully functioning and
15 performing phones.

16 50. As a direct and proximate cause of the Apple's material omissions, Plaintiff and
17 putative class members suffered ascertainable losses consisting of lost material value, function,
18 and use in their Devices and/or the purchase price of new replacement phones.

19 **SECOND CAUSE OF ACTION**

20 **FRAUDULENT CONCEALMENT**

21 51. Plaintiff incorporates and re-alleges the allegations contained in the preceding and
22 subsequent paragraphs as if fully set forth herein.

23 52. At all relevant times herein, Apple had a duty to disclose material information to
24 putative class members regarding their Devices, including information regarding degraded
25 batteries, iOS updates, and their effects on processing, operations, performance, functionality,
26 and/or ordinary use.

27 53. Apple intentionally concealed and/or failed to disclose the aforementioned material
28 facts to Plaintiff and putative class members.

1 54. Plaintiff and putative class members did in fact rely on Apple to disclose this
2 information, which the Plaintiff and members of the proposed classes were unaware of at all
3 relevant times, including at the time they accepted iOS updates and/or when they purchased
4 replacement phone devices.

5 55. Plaintiff and putative class members relied upon Apple's misrepresentations and
6 material omissions in updating their phones with iOS updates and/or purchasing newer model
7 phones.

8 56. Had Apple not concealed the fact that the iOS updates could and would slowdown
9 Devices, and/or that the slowdowns could have been fixed with a replacement battery, Plaintiff and
10 putative class members would have, to the extent possible, declined the iOS updates and not have
11 purchased replacement phones.

12 57. As a result of Apple's material concealment, Plaintiff and putative class members
13 lost material value, function, and use in their Devices and/or were required to expend material
14 sums of money or value to replace their Devices with fully functioning and performing phones.

15 58. As a direct and proximate cause of the Apple's material omissions, Plaintiff and
16 putative class members suffered ascertainable losses consisting of lost material value, function,
17 and use in their Devices and/or the purchase price of replacement phones.

18 **THIRD CAUSE OF ACTION**

19 **BREACH OF IMPLIED CONTRACT**

20 59. Plaintiff incorporates and re-alleges the allegations contained in the preceding and
21 subsequent paragraphs as if fully set forth herein.

22 60. Plaintiff and putative class members entered into implied contracts with Apple when
23 they purchased and/or acquired their Devices, in which Apple agreed to not purposefully interfere
24 with speed, operation, and/or usage of their Devices.

25 61. Plaintiff and putative class members fully performed their obligations under the
26 implied contracts with Apple.

27 62. Apple breached the implied contracts it made with the Plaintiff and putative class
28 members by providing iOS updates which purposefully slowed the operation and performance of

1 Devices, and by failing to properly disclose the truth regarding these iOS updates at the time the
2 parties entered into the implied agreements.

3 63. The damages to Plaintiff and putative class members as described herein were the
4 direct and proximate result of Apple's breach of these implied contracts.

5 **FOURTH CAUSE OF ACTION**

6 **TRESPASS TO CHATTELS**

7 64. Plaintiff incorporates and re-alleges the allegations contained in the preceding and
8 subsequent paragraphs as if fully set forth herein.

9 65. Common law prohibits the intentional intermeddling with personal property in
10 possession of another without consent, which results in either i) the deprivation of the use of
11 personal property, or ii) the impairment of the condition, quality, or usefulness of the property.

12 66. At Apple's urging, Plaintiff and putative class members installed iOS updates on
13 their Devices, without knowing that Apple had secretly included performance-throttling in these
14 iOS updates. Because they were unaware of these aspects of the iOS updates, they did not consent
15 to installation of them on their devices.

16 67. Apple intentionally interfered with, and committed trespass to, Plaintiff and putative
17 class members' property by installing performance-throttling software on their Devices without
18 their knowledge.

19 68. Apple acted intentionally because it knew that Plaintiff and putative class members
20 were downloading software to their Devices that reduced the performance of the Devices. Plaintiff
21 and putative class members only consented to the installation of software that would improve
22 performance, not diminish performance.

23 69. Apple intentionally impaired the condition, quality, and usefulness of Devices
24 without the knowledge or consent of Plaintiff and putative class members.

25 70. Apple's interference was the actual, direct, and proximate cause of injury to Plaintiff
26 and putative class members because it slowed their Devices. This harm to the functioning of the
27 Devices significantly impaired the devices' condition, quality, and value.

28 71. Plaintiff and putative class members have lost use, value, and/or had to purchase new

1 devices due to Apple's conduct.

2 72. Apple's trespass and interference was malicious and oppressive. Apple hid
3 performance-degrading software in iOS updates. Apple did not obtain the permission of Plaintiff
4 and putative class members to trespass on or interfere with their Devices. Apple knew and
5 intended that its conduct would cause injury to Plaintiff and putative class members, including by
6 way of diminishing the performance of their Devices. Apple thus acted despicably and with
7 conscious disregard of the rights of Plaintiff and putative class members.

8 73. As a result of Apple's trespass to, and interference with, their devices, Plaintiff and
9 members of the proposed class are entitled to recover the actual damages they suffered in amounts
10 to be determined at trial.

11 74. Plaintiff and putative class members are also entitled to punitive damages in an
12 amount to be determined at trial.

13 **FIFTH CAUSE OF ACTION**

14 **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW**

15 **(CAL. BUS. & PROF. CODE § 17200, ET SEQ.)**

16 75. Plaintiff incorporates and re-alleges the allegations contained in the preceding and
17 subsequent paragraphs as if fully set forth herein.

18 76. California's Unfair Competition Law proscribes acts of unfair competition, including
19 "any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue or
20 misleading advertising." Cal. Bus & Prof. Code § 17200, *et seq.*

21 77. Apple's conduct, policies, and actions were undertaken or performed in, and
22 therefore emanated from, California.

23 78. Apple's conduct, as alleged herein, was unlawful, unfair, and fraudulent.

24 79. Apple behaved as alleged in order to gain unfair commercial advantage over its
25 competitors, even if it meant disregarding the rights and expectations of customers.

26 80. Apple's conduct, as alleged herein, which emanated from its headquarters in
27 California, caused harm to Plaintiff and putative class members. Had Plaintiff and putative class
28 members known that Apple would engage in this unfair, unlawful, and fraudulent behavior, they

1 would not have purchased their Devices, and/or they would not have purchased these Devices at
2 the prices they paid.

3 81. Accordingly, Plaintiff and putative class members have suffered injury in fact,
4 including lost money or property, as a result of Apple's unfair, unlawful, and fraudulent behavior.

5 82. Plaintiff and putative class members ask that this Court restore to Plaintiff and
6 putative class members all money that Apple acquired or retained by way of unfair, unlawful, and
7 fraudulent competition and activities, including restitution and/or disgorgement, as provided in
8 California Bus. & Prof. Code §§ 17203 and 3345, and for other such relief as is appropriate

9 83. Plaintiff and putative class members seek to enjoin further unfair, unlawful, and
10 fraudulent acts or practices by Apple.

11 **SIXTH CAUSE OF ACTION**

12 **UNJUST ENRICHMENT**

13 84. Plaintiff incorporates and re-alleges the allegations contained in the preceding and
14 subsequent paragraphs as if fully set forth herein.

15 85. In the event that no adequate legal remedy is available, Plaintiff brings this court in
16 order to pursue restitution based on Apple's unjust enrichment.

17 86. Apple has unjustly received and retained monetary benefits from Plaintiff and
18 putative class members and inequity has resulted.

19 87. Apple sold consumers Devices marketed as having a premium level of performance.
20 The prices of these Devices reflected their promised premium performance. Once Apple
21 consciously throttled their performance as alleged herein, the value of these Devices dropped. Yet,
22 Apple has retained all of the funds that consumers paid. Further Apple has induced sales of new
23 phones due to its throttling that Plaintiff and putative class members misinterpreted as
24 obsolescence.

25 88. Plaintiff and putative class members have conferred a benefit on Apple.

26 89. Apple has knowingly accepted, and has retained, the benefits of its unjust conduct,
27 with full knowledge and awareness that retention of such profits and benefits is unlawful.

28 90. It is inequitable under the circumstances for Apple to retain these benefits.

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91. Plaintiff and putative class members were not aware of the true facts and did not benefit from Apple’s conduct.

92. Apple has been unjustly enriched at the expense of Plaintiff and putative class members, who are entitled to, and hereby seek, the disgorgement and restitution of Apple’s wrongful profits, revenue, and benefits, to the extent and in the amount deemed appropriate by the Court.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all putative class members, respectfully requests that the Court enter judgment in their favor and against Apple as follows:

- a. For an Order certifying the Classes, as defined herein, and appointing Plaintiff and Plaintiff’s counsel to represent class members;
- b. For an award of damages, as allowed by law in an amount to be determined;
- c. For an Order enjoining Apple’s unfair, unlawful, and fraudulent acts or practices;
- d. For an award of attorneys’ fees costs and litigation expenses, as allowable by law;
- e. For prejudgment interest on all amounts awarded; and
- f. Such other and further relief as this court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demand a trial by jury on all applicable claims.

Dated: March 13, 2018

Respectfully submitted,

MINAMI TAMAKI LLP

By: 
SEAN TAMURA-SATO
Attorneys for Plaintiff

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

RICKY FUNG, individually and on behalf of all others similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Sean Tamura-Sato, Lisa P. Mak,
Minami Tamaki, LLP, 360 Post Street, 8th Floor, San Francisco,
California, 94108, Telephone: (415) 788-9000

DEFENDANTS

APPLE INC., a California corporation,

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

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

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

Click here for: [Nature of Suit Code Descriptions](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Overpayment Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS--Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

Brief description of cause:

Fraudulent Misrepresentation and Concealment; Breach of Implied Contract; Trespass to Chattels

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

CHECK YES only if demanded in complaint:

JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Edward J. Davila

DOCKET NUMBER 5:17-cv-07274-EJD

DATE

03/13/2018

SIGNATURE OF ATTORNEY OF RECORD

/s/ Sean Tamura-Sato

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of California

RICKY FUNG, individually and on behalf of all others
similarly situated,

Plaintiff(s)

v.

APPLE INC., a California corporation,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) APPLE INC.,
1 Infinite Loop
Cupertino, CA 95014

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Sean Tamura-Sato
Minami Tamaki, LLP,
360 Post Street, 8th Floor,
San Francisco, California, 94108,
Tel: (415) 788-9000
Fax: (415) 398-3887

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk