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MICHAEL HAKIMI

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

12 MICHAEL HAKIMI, on behalf of himself, all  
13 others similarly situated,

14 *Plaintiff,*

15 vs.

16 APPLE INC., a California corporation; and  
DOES 1 through 10, inclusive,

17 *Defendants.*

Case No.

**CLASS ACTION**

**COMPLAINT**

1. Strict Products Liability;
2. Negligence – Products Liability;
3. Violation of Consumer Legal Remedies Act;
4. Unfair Competition;
5. Breach of Written Warranty Pursuant to the Magnuson-Moss Warranty Act;
6. Breach of Express Warranty;
7. Breach of Implied Warranty of Merchantability;
8. Breach of the Implied Warranty of Fitness For a Particular Purpose;
9. Violation of California’s False Advertising Laws;
10. Fraud;
11. Unjust Enrichment

**JURY TRIAL DEMANDED**

1 COMES NOW, Plaintiff MICHAEL HAKIMI (“Plaintiff”), on behalf of himself and all  
2 others similarly situated, complains and alleges against Defendant APPLE INC., a California  
3 corporation (“Apple”); and DOES 1 through 50, inclusive (collectively referred to as  
4 “Defendants”), as follows:

5 **INTRODUCTION**

6 1. Plaintiff brings this action individually and on behalf of all similarly situated persons  
7 who purchased an iPhone 6, 6S, SE and 7 models (“Covered iPhones”).

8 2. Apple has now conceded that it pushed out software updates to consumers’ Covered  
9 iPhones that limit the speed and performance of these devices thereby causing significant slow  
10 performance, dropped calls, and excessive battery drain (the “Defect”). But this was never  
11 disclosed to its consumers.

12 3. As a result of Apple’s conduct, millions of consumers may believe that the Covered  
13 iPhones have become obsolete and deceived into upgrading to the newest iPhone models – the  
14 iPhone 8 and/or iPhone X.

15 **PARTIES**

16 4. Plaintiff MICHAEL HAKIMI is, and at all relevant times mentioned herein, an  
17 individual residing in the State of California.

18 5. Defendant APPLE INC. is, and at all relevant times mentioned herein, a corporation  
19 organized under the laws of California and doing business in this state.

20 6. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as  
21 DOES 1 through 50, inclusive, and therefore sue these defendants by such fictitious names.  
22 Plaintiff will amend this Complaint to allege the true names and capacities of the DOE defendants  
23 when ascertained. Plaintiff is informed and believes, and thereupon alleges that each of the  
24 fictitiously named defendants are responsible in some manner for the occurrences, acts and  
25 omissions alleged herein and that Plaintiff’s alleged damages were proximately caused by these  
26 defendants, and each of them.

27 7. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times  
28 mentioned herein, some or all of the defendants were the representatives, agents, employees,

1 partners, directors, associates, joint venturers, principals or co-participants of some or all of the  
2 other defendants, and in doing the things alleged herein, were acting within the course and scope of  
3 such relationship and with the full knowledge, consent and ratification by such other defendants.

4 **JURISDICTION AND VENUE**

5 8. This Court has jurisdiction over this class action under the Class Action Fairness  
6 Act, 28 U.S.C. section 1332(d). The aggregated claims of the individual Class Members exceed the  
7 sum or value of \$5,000,000, exclusive of interest and costs, and this is a class action in which  
8 Plaintiff and members of the class, on the one hand, and Apple, on the other, are citizens of  
9 different states.

10 9. This Court has jurisdiction over Apple because Apple maintains its principal  
11 headquarters in California, is registered to conduct business in California, and has sufficient  
12 minimum contacts in California. Apple intentionally avails itself of the California consumer market  
13 through the promotion, sale, marketing, and distribution of its products to California residents. As a  
14 result, jurisdiction in this court is proper and necessary. Moreover, Apple's wrongful conduct, as  
15 described herein, emanates from California and foreseeably affects consumers in California and  
16 nationwide. Most, if not all, of the events complained of below occurred in or emanated from  
17 Apple's corporate headquarters located in Cupertino, California. Plaintiff's counsel's Declaration,  
18 as required under California Code of Civil Procedure section 1780(d), is attached as Exhibit 1.

19 10. Venue is proper in this District under 28 U.S.C. section 1391(a)-(c) because, inter  
20 alia, substantial parts of the events or omissions giving rise to the claim occurred in the District  
21 and/or a substantial part of property that is the subject of the action is situated in the District.

22 **CLASS ALLEGATIONS**

23 11. This action has been brought and may be maintained as a class action pursuant to  
24 Federal Rules of Civil Procedure 23 because there is a well-defined community of interest among  
25 the persons who comprise the readily ascertainable classes defined below and because Plaintiff is  
26 unaware of any difficulties likely to be encountered in managing this case as a class action.

27 12. **Relevant Time Period:** The relevant time period is defined as the time period  
28 beginning four years prior to the filing of this action until judgment is entered.

1        **National iPhone Class:** All persons and entities in the United States (including its  
2        Territories and the District of Columbia) who currently or formerly owned an iPhone 6, 6S,  
3        SE and 7 during the **Relevant Time Period**.

3        **California iPhone Sub-Class:** All **National iPhone Class** members who currently  
4        or formerly resided in California.

5        13.        Excluded from the class are: (1) Apple, its subsidiaries, and its legal representatives,  
6        officers, directors, assigns and successors; and (2) all state and/or federal court judges who may  
7        preside over this case, their staff, and their immediate family members.

8        14.        **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the  
9        right to amend or modify the class definitions with greater specificity, by further division into sub-  
10        classes and/or by limitation to particular issues.

11        15.        **Numerosity:** The class members are so numerous that the individual joinder of each  
12        individual class member is impractical. While Plaintiff does not currently know the exact number  
13        of class members, Plaintiff is informed and believes, and thereupon alleges that the actual number  
14        exceeds the minimum required for numerosity under California law.

15        16.        **Commonality and Predominance:** Common questions of law and fact exist as to  
16        all class members and predominate over any questions which affect only individual class members.

17        These common questions include, but are not limited to:

- 18            A.        Whether Defendants are liable under strict products liability for damages to  
19            Plaintiff and the Class Members;
- 20            B.        Whether Defendants are liable for negligence for products liability and  
21            damages to Plaintiff and Class Members;
- 22            C.        Whether Defendants reasonably should have notified consumers before it  
23            implemented any kind of software update that limited the speed and/or  
24            performance of consumers' iPhones;
- 25            D.        Whether Defendants had a duty to disclose the nature of any defect to  
26            Plaintiff and the Class Members;
- 27            E.        Whether Defendants failed to disclose or concealed material information  
28            concerning any defects;

- 1 F. Whether Defendants' conduct and business practices violate the Consumer  
2 Legal Remedies Act ("CLRA") Civil Code section 1750 *et seq.*;
- 3 G. Whether Defendants' conduct and business practices violate the Unfair  
4 Competition Law ("UCL") Business and Professions Code section 17200 *et*  
5 *seq.*;
- 6 H. Whether Defendants breached any express or implied warranties;
- 7 I. Whether Defendants violated California false advertising laws;
- 8 J. Whether Defendants engaged in fraud;
- 9 K. Whether Defendants are liable for unjust enrichment to Plaintiff and the Class  
10 Members;
- 11 L. Whether Plaintiff and the Class Members are entitled to relief, and the  
12 amount and nature of such relief, including relief in the form of an injunction  
13 and/or restitution.

14 17. **Typicality**: Plaintiff's claims are typical of the other class members' claims.  
15 Plaintiff and all members of the Class have been damaged by the same wrongful conduct by  
16 Defendants. Like the other Class Members, Plaintiff purchased a defective iPhone.

17 18. **Adequacy of Class Representative**: Plaintiff is an adequate class representative in  
18 that he has no interests that are adverse to, or otherwise conflict with, the interests of absent class  
19 members and is dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly  
20 and adequately represent and protect the interests of the other class members.

21 19. **Adequacy of Class Counsel**: Plaintiff's counsel are adequate class counsel in that  
22 they have no known conflicts of interest with Plaintiff or absent class members, are experienced in  
23 complex class action litigation, and are dedicated to vigorously prosecuting this action on behalf of  
24 Plaintiff and absent class members.

25 20. **Superiority**: A class action is vastly superior to other available means for fair and  
26 efficient adjudication of the class members' claims and would be beneficial to the parties and the  
27 Court. Class action treatment will allow a number of similarly situated persons to simultaneously  
28 and efficiently prosecute their common claims in a single forum without the unnecessary

1 duplication of effort and expense that numerous individual actions would entail. In addition, the  
2 monetary amounts due to many individual class members are likely to be relatively small and would  
3 thus make it difficult, if not impossible, for individual class members to both seek and obtain relief.  
4 Moreover, a class action will serve an important public interest by permitting class members to  
5 effectively pursue the recovery of monies owed to them. Further, a class action will prevent the  
6 potential for inconsistent or contradictory judgments inherent in individual litigation.

7 **GENERAL ALLEGATIONS**

8 21. Plaintiff owns an iPhone and encountered many of the issues encountered by other  
9 iPhone owners such as significantly slow performance, dropped calls and excessive battery drain  
10 when using his device.

11 22. Apple designs, manufactures, distributes, and sells the iPhones. On information and  
12 belief, Apple has sold, directly or indirectly through other retailers, millions of iPhones in  
13 California, the United States and throughout the world.

14 23. The Covered iPhones are defective, including but not limited to the Defect in the  
15 design and manufacture of the device causing it to shut down unexpectedly.

16 24. Apple responded with an official statement as follows:

17 Our goal is to deliver the best experience for customers, which includes overall performance and  
18 prolonging the life of their devices. Lithium-ion batteries become less capable of supplying peak current  
19 demands when in cold conditions, have a low battery charge or as they age over time, which can result in  
20 the device unexpectedly shutting down to protect its electronic components.

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

22 **FIRST CAUSE OF ACTION**

23 **STRICT PRODUCTS LIABILITY**

24 25. Plaintiff incorporates by reference the preceding paragraphs of the Complaint as if  
25 fully alleged herein.

26 26. At all times mentioned herein, Defendants designed, manufactured, assembled,  
27 analyzed, recommended, merchandised, advertised, promoted, distributed, supplied, and sold to  
28 distributors and retailers for sale, smartphones known as "iPhones" and/or its component parts.

1 27. Defendants manufactured, designed, promoted and/or sold the Covered iPhones and  
2 their component parts to the public, knowing that the Covered iPhones would be purchased or used  
3 without inspection for defects by the general public, including Plaintiff and the Class Members.

4 28. The Covered iPhones were defective and did not function according to its intended  
5 use by reason of defects in its manufacture, design, testing, components and constituents, so that it  
6 would not properly serve its purpose, but would instead slow down significantly, drop calls, and  
7 cause excessive battery drain because of the failure of Defendants to properly design and  
8 manufacture the Covered iPhones.

9 29. Defendants designed and manufactured the Covered iPhones defectively, causing it  
10 to fail to perform as an ordinary consumer would expect when used in an intended or reasonably  
11 foreseeable manner.

12 30. Defendants knew or should have known of the defects that would arise in the  
13 reasonably foreseeable use of the Covered iPhones, whose defective design, manufacturing, and  
14 lack of sufficient warnings caused them to have an unreasonably propensity to suffer from  
15 component failure, thereby causing significantly slow performance, dropped calls, and excessive  
16 battery drain.

17 31. Defendants failed to adequately warn of the defects known or knowable at the time  
18 of the defective Covered iPhones design, manufacture, and distribution.

19 32. Defendants failed to provide adequate warnings, instructions, guidelines or  
20 admonitions to members of the consuming public, including Plaintiff and the Class Members, of the  
21 design and manufacturing defects, which Defendants knew, or in the exercise of reasonable care  
22 should have known, to have existed in the Covered iPhones, and its component parts.

23 33. Plaintiff and the Class Members were not aware of the aforementioned defects at any  
24 time regarding the Covered iPhones prior to purchasing and/or upgrading to the newer iPhone 8  
25 and/or iPhone X.

26 34. As a direct and proximate result of the aforementioned defects in the Covered  
27 iPhones, Plaintiff and the Class Members sustained injures and damages in an amount according to  
28 proof at trial.

**SECOND CAUSE OF ACTION**

**NEGLIGENCE – PRODUCTS LIABILITY**

1  
2  
3 35. Plaintiff incorporates by reference the preceding paragraphs of the Complaint as if  
4 fully alleged herein.

5 36. At all times mentioned, Defendants designed, manufactured, assembled, analyzed,  
6 recommended, merchandised, advertised, promoted, distributed, supplied, and sold to distributors  
7 and retailers for sale, smartphones known as “iPhones” and/or its component parts.

8 37. Defendants manufactured, designed, promoted and/or sold the Covered iPhones and  
9 its component parts to the public, including to Plaintiff and the Class Members.

10 38. Defendants owed Plaintiff and the Class Members a duty to exercise reasonable care  
11 in the design, testing, manufacture, assembly, sale, distribution and servicing of the Covered  
12 iPhones, including a duty to assure that the Covered iPhones were free of defects and/or to repair  
13 any defects that are discovered.

14 39. Defendants knew or should have known that the Covered iPhones were defectively  
15 designed and manufactured and was therefore prone to problems under normal operating conditions,  
16 potentially causing consumers to spend money for repairs and ultimately for replacing their devices.

17 40. Defendants failed to exercise ordinary care and breached its duty by, among other  
18 things:

- 19 a. Failure to use due care in the manufacture, distribution, design, sale, testing,  
20 and servicing of the Covered iPhones and its component parts in order to  
21 avoid the aforementioned risks to individuals;
- 22 b. Failure to provide adequate warning of component failure, thereby causing  
23 significantly slow performance, dropped calls, and excessive battery drain;
- 24 c. Failure to incorporate within the Covered iPhones and its design reasonable  
25 safeguards and protections against component failure, thereby causing  
26 significantly slow performance, dropped calls, and excessive battery drain;
- 27 d. Failure to make time correction to the design of the Covered iPhones to  
28 correct the component failure, thereby causing significantly slow



1 performance, dropped calls, and excessive battery drain;

2 e. Failure to adequately identify and mitigate the hazards associated with  
3 component failure, thereby causing significantly slow performance, dropped  
4 calls, and excessive battery drain;

5 f. Such other acts of negligence as discovery shall reveal.

6 41. As a direct and proximate result of the aforementioned negligence, carelessness, and  
7 other tortious, unlawful and wrongful acts and omissions of Defendants, and its respective agents,  
8 servants, employees and authorized representatives as mentioned above, Plaintiff has suffered  
9 damages in an amount to be proven at trial.

10 **THIRD CAUSE OF ACTION**

11 **VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT**

12 **(Cal. Civ. Code § 1750 *et seq.*)**

13 42. Plaintiff incorporates by reference the preceding paragraphs of the Complaint as if  
14 fully alleged herein.

15 43. Apple is a “person” within the meaning of Civil Code sections 1761(d) and 1770,  
16 and it provides “goods” within the meaning of Civil Code section 1761(a) and 1770.

17 44. Plaintiff and the Class Members are “consumers” who purchased an iPhone for  
18 business purposes and personal, family, or household purposes within the meaning of California  
19 Civil Code section 1761(d) and 1770. Plaintiff and the Class Member’s purchase of an iPhone  
20 constitutes a “transaction” within the meaning of Civil Code section 1761(e) and 1770.

21 45. By failing to disclose and concealing the defects in the iPhones from Plaintiff and the  
22 Class Members, Apple violated California Civil Code section 1770(a), as it represented that the  
23 iPhones had characteristics and benefits they do not have and represented that the iPhones were of a  
24 particular standard, quality, or grade when they were of another. See, Cal. Civ. Code § 1770(a)(5)  
25 and (7).

26 46. Apple has engaged in business practices that violate the CLRA including, without  
27 limitation, failing to disclose or concealing that the iPhones were manufactured with certain defects.  
28 Apple’s unfair and deceptive acts or practices occurred repeatedly in Apple’s trade or business and

1 were capable of deceiving a substantial portion of the purchasing public.

2 47. Apple knew that the iPhones contained certain defects, yet it instead released  
3 software updates that would slow down the speed and performance of iPhones without notifying its  
4 consumers or obtaining their consent.

5 48. Apple has duty to Plaintiff and the Class Members to disclose the nature of any  
6 defects along with the scope of software update it released to compensate for those defects because:

- 7 a. Apple was in a superior position to know the true state of facts about any  
8 defects and the software updates it created to compensate for those defects;  
9 b. Plaintiff and the Class Members could not reasonably have been expected to  
10 learn or discover the true nature of any defects until they experienced the  
11 defects without the software updates masking those defects;  
12 c. Apple knew that Plaintiff and the Class Members could not reasonably have  
13 been expected to learn about or discover the change made by the software  
14 updates.

15 49. By failing to disclose the nature of the software updates and by limiting the speed  
16 and performance of the Covered iPhones, Apple has knowingly and intentionally concealed  
17 materials facts and breached its duty not to do so.

18 50. The facts concealed or not disclosed by Apple to Plaintiff and the Class Members are  
19 material because a reasonable consumer would have considered them to be important in deciding  
20 whether or not to replace their Covered iPhones with a newer model. Had Plaintiff and the Class  
21 Members known that the speed and performance of the Covered iPhones were intentionally affected  
22 by the software updates released by Apple, they would not have purchased a newer iPhone model  
23 nor would they have upgraded to the iPhone 8 or X.

24 51. Plaintiff and the Class Members are reasonable consumers who do not expect the  
25 speed and performance of their Covered iPhones to slow down with normal use. That is the  
26 reasonable and objective consumer expectation for smartphones.

27 52. As a result of Apple's acts and practices alleged herein, Plaintiff and the Class  
28 Members suffered actual damages in that their Covered iPhones are now slower and do not perform

1 as well as it otherwise would have absent the software updates imposed by Apple limiting the speed  
2 and performance of the Covered iPhones.

3 53. Plaintiff and the Class Members are entitled to equitable relief.

4 54. Plaintiff has provided Apple with notice of its alleged violations of the CLRA  
5 pursuant to California Civil Code section 1782(a). If, within 30 days of the date of the notification  
6 letter, Apple fails to provide appropriate relief for its violation of the CLRA, Plaintiff will amend  
7 this Complaint to seek monetary, compensatory, and punitive damages, in addition to the injunctive  
8 and equitable relief that Plaintiff seeks now.

9 **FOURTH CAUSE OF ACTION**

10 **UNFAIR COMPETITION**

11 **(Bus. and Prof. Code § 17200 *et seq.*)**

12 55. Plaintiff incorporates by reference the preceding paragraphs of the Complaint as if  
13 fully alleged herein.

14 56. Apple knew the Covered iPhones' were defective and that it would ultimately cause  
15 the Covered iPhones to slow down significantly, drop calls, cause excessive battery drain and shut  
16 down unexpectedly.

17 57. In failing to disclose the Defect, Apple knowingly and intentionally concealed  
18 material facts and breached its duty not to do so.

19 58. Apple was under a duty to Plaintiff and the Class Members to disclose the defective  
20 nature of the Covered iPhones because:

21 d. Apple was in a superior position to know the true state of facts about the  
22 Defect;

23 e. Apple made partial disclosures about the quality of the Covered iPhones  
24 without revealing the defective nature of the Covered iPhones and the fact  
25 that the device would become defective with normal use;

26 f. Apple actively concealed the defective nature of the Covered iPhones from  
27 Plaintiff and the Class Members;

28 g. Apple knew that Plaintiff and the Class Members could not reasonably have

1                   been expected to learn about or discover the Defect.

2           59.     The facts concealed or not disclosed by Apple to Plaintiff and the Class Members are  
3 material because a reasonable person would have considered them to be important in deciding  
4 whether or not to purchase or upgrade to the newer iPhone 8 or X. Had Plaintiff and the Class  
5 Members known that the Covered iPhones suffered from the Defect described in the Complaint,  
6 they would not have purchased the Covered iPhones; and if they had already purchased a Covered  
7 iPhones they would not have purchased or upgraded to the newer iPhone 8 or X.

8           60.     Apple continued to conceal the defective nature of the Covered iPhones even after  
9 Class Members began to report problems. Indeed, Apple continues to cover up and conceal the true  
10 nature of the problem and deny valid warranty claims.

11           61.     By this conduct, Apple has engaged in unfair competition and unlawful, unfair, and  
12 fraudulent business practices.

13           62.     Apple's unfair or deceptive acts or practices occurred repeatedly in Apple's trade or  
14 business and were capable of deceiving a substantial portion of the purchasing public.

15           63.     As a direct and proximate result of Apple's unfair and deceptive practices, Plaintiff  
16 and the Class Members have suffered and will continue to suffer actual damages.

17           64.     Apple has been unjustly enriched and should be required to make restitution to  
18 Plaintiff and the Class Members pursuant to Bus. and Prof. Code sections 17203 and 17204.

19                                   **FIFTH CAUSE OF ACTION**

20                                   **BREACH OF EXPRESS WARRANTY UNDER THE**

21                                   **MAGNUSON-MOSS WARRANTY ACT**

22                                   **(15 U.S.C. § 2301 *et seq.*)**

23           65.     Plaintiff incorporates by reference the preceding paragraphs of the Complaint as if  
24 fully alleged herein.

25           66.     Plaintiff and the Class Members are "consumers" within the meaning of the  
26 Magnuson-Moss Warranty Act, 15 U.S.C. section 2301(3).

27           67.     Apple is a "supplier" and "warrantor" within the meaning of 15 U.S.C. sections  
28 2301(4)-(5).

1           68.     The Covered iPhones are “consumer products” within the meaning of 15 U.S.C.  
2 section 2301(1).

3           69.     Apple’s Warranty is a “written warranty” within the meaning of 15 U.S.C. section  
4 2301(6).

5           70.     Apple breached the Warranty by:

- 6           h.     Extending a one-year limited warranty with the purchase of Covered iPhones,  
7                 thereby warranting to repair or replace Covered iPhones defective in material  
8                 or workmanship at no cost to the owner;
- 9           i.     Selling the Covered iPhones with defective design and/or manufacture such  
10                that the devices would shut down unexpectedly with normal use, requiring  
11                repair or replacement within the warranty period;
- 12           j.     Refusing to honor the express warranty by refusing to proper to properly  
13                repair or replace the Covered iPhones with properly functioning devices,  
14                instead pushing software updates which failed to repair the defect; and
- 15           k.     Refusing to honor the express warranty by repairing or replacing the Covered  
16                iPhones with non-defective parts.

17           71.     Apple’s breach of the express warranty deprived Plaintiff and the Class Members of  
18 the benefits of their bargains.

19           72.     The amount in controversy of Plaintiff’s individual claim meets or exceeds the sum  
20 or value of \$50,000. In addition, the amount in controversy meets or exceeds the sum or value of  
21 \$50,000 (exclusive of interests and costs) computed on the basis of all claims to be determined in  
22 this suit.

23           73.     Apple has been afforded a reasonable opportunity to cure its breach of written  
24 warranty, including when Plaintiff and the Class Members notified Apple of the defect and  
25 requested a proper repair.

26           74.     As a direct and proximate result of Apple’s breach of written warranty, Plaintiff and  
27 the Class Members sustained damages and other losses in an amount to be determined at trial.  
28 Apple’s conduct damaged Plaintiff and the Class Members, who are entitled to recover damages,

1 consequential damages, specific performance, diminution in value, costs, attorneys' fees, rescission,  
2 and/or other relief as appropriate.

3 **SIXTH CAUSE OF ACTION**

4 **BREACH OF EXPRESS WARRANTY**

5 75. Plaintiff incorporates by reference the preceding paragraphs of the Complaint as if  
6 fully alleged herein.

7 76. Apple warranted that each Covered iPhones was free of defects when it sold the  
8 devices to Plaintiff and the Class Members as described in this Complaint. Under the terms of  
9 Apple's Warranty, each Covered iPhones came with an express Warranty that warrants that the  
10 device will be free from defects in materials and workmanship under normal use during the  
11 warranty period.

12 77. This Warranty because part of the basis of the bargain. Accordingly, Apple's  
13 Warranty is an express warranty.

14 78. Apple breached the express warranty by:

- 15 l. Extending a one-year limited warranty with the purchase of a Covered  
16 iPhones, thereby warranting to repair or replace devices defective in material  
17 or workmanship at no cost to the owner;
- 18 m. Selling Covered iPhones with defective design and/or manufacture such that  
19 the devices would develop battery issues with normal use, requiring repair or  
20 replacement within the warranty period;
- 21 n. Refusing to honor the express warranty by repairing or replacing the Covered  
22 iPhones free of charge, instead pushing out software updates that masked the  
23 problem and which failed to repair the defect; and
- 24 o. Refusing to honor the express warranty by repairing or replacing the Covered  
25 iPhones with non-defective parts.

26 79. Plaintiff provided Apple with timely notice of its breach of warranty. Apple was  
27 also on notice of the Defect from the complaints and service requests it received from Class  
28 Members, internet message boards and support forums maintained by Apple, and from published

1 product reviews.

2 80. As a direct and proximate result of Apple's breach of warranty, Plaintiff and each of  
3 the Class Members have suffered damages and continue to suffer damages, including economic  
4 damages at the point of sale, *i.e.*, the difference between the value of the Covered iPhones as  
5 promised and the value of the devices as delivered. Additionally, Plaintiff and the Class Members  
6 either have incurred or will incur economic damages at the point of repair in the form of the cost of  
7 repair and/or the cost of purchasing a non-defective device to replace the Covered iPhones.

8 81. Plaintiff and the Class Members are entitled to legal and equitable relief against  
9 Apple, including damages, consequential damages, specific performance, rescission, attorneys' fees,  
10 costs of suit, and other relief as appropriate.

11 **SEVENTH CAUSE OF ACTION**

12 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**

13 82. Plaintiff incorporates by reference the preceding paragraphs of the Complaint as if  
14 fully alleged herein.

15 83. Apple impliedly warranted to members of the general public, including Plaintiff and  
16 the Class Members, that the Covered iPhones was of merchantable quality and safe for the use for  
17 which it was intended by Defendants, namely, for the purpose of use as a mobile cellphone device  
18 used to make calls, listening to music, accessing the internet, taking photos and videos, and for  
19 other related activities.

20 84. The Covered iPhones were not merchantable and fit for its ordinary purpose, because  
21 the battery used to power it had a propensity to degrade over time thereby causing the device to shut  
22 down unexpectedly. The Covered iPhones were not of merchantable quality as warranted by  
23 Defendant, in that it was defectively designed and manufactured, thereby causing it to shut down  
24 and stop working.

25 85. In order resolve the Defects, Defendants pushed a software update that slowed down  
26 the speed and performance of the Covered iPhones thereby concealing the deteriorated and  
27 degraded batteries. From all outward appearances, consumers were led to believe that their  
28 Covered iPhones were still operating albeit slower and with significantly less performance which

1 undoubtedly led millions of consumers to believe that their devices were obsolete and therefore they  
2 should replace them with a newer iPhone model.

3 86. Plaintiff reasonably relied on Defendants' representations that the Covered iPhones  
4 were free of defects.

5 87. As a direct and proximate result of the breach of the implied warranty of  
6 merchantability, Plaintiff and the Class Members suffered damages herein and are therefore entitled  
7 to damages in an amount according to proof at trial.

8 **EIGHTH CAUSE OF ACTION**

9 **BREACH OF IMPLIED WARRANTY OF FITNESS**

10 **FOR A PARTICULAR PURPOSE**

11 88. Plaintiff incorporates by reference the preceding paragraphs of the Complaint as if  
12 fully alleged herein.

13 89. Apple impliedly warranted to members of the general public, including Plaintiff and  
14 the Class Members, that the Covered iPhones was fit for the particular purpose for which it was  
15 intended by the Defendants, namely, for the purpose of use as a mobile cellphone device used to  
16 make calls, listening to music, accessing the internet, taking photos and videos, and for other related  
17 activities.

18 90. The Covered iPhones were not fit for the particular purpose for which it was  
19 intended because the battery used to power it had a propensity to degrade over time thereby causing  
20 the device to shut down unexpectedly. The Covered iPhones were not fit for the particular purpose  
21 for which it was intended, in that it was defectively designed and manufactured, thereby causing it  
22 to shut down and stop working.

23 91. In order resolve the Defects, Defendants pushed a software update that slowed down  
24 the speed and performance of the Covered iPhones thereby concealing the deteriorated and  
25 degraded batteries. From all outward appearances, consumers were led to believe that their  
26 Covered iPhones were still operating albeit slower and with significantly less performance which  
27 undoubtedly led millions of consumers to believe that their devices were obsolete and therefore they  
28 should replace them with a newer iPhone model.





**TENTH CAUSE OF ACTION**

**FRAUD**

1  
2  
3 100. Plaintiff incorporates by reference the preceding paragraphs of the Complaint as if  
4 fully alleged herein.

5 101. Defendants made material misrepresentations that were false and that were either  
6 known to be false when made or were asserted without knowledge of their truth. Defendants has in  
7 the possession adverse incident reports, warranty work orders and other documentation about the  
8 defects in the Covered iPhones yet made the following misrepresentations:

- 9 a. Misrepresentations regarding the existence, occurrence and frequency of  
10 occurrences, severity and extent of the defects causing significantly slow  
11 performance, dropped calls, and excessive battery drain;  
12 b. Misrepresentations as to the root cause of the defects causing significantly  
13 slow performance, dropped calls, and excessive battery drain;  
14 c. Misrepresentations as to the nature, seriousness, severity of adverse incident  
15 reports regarding significantly slow performance, dropped calls, and  
16 excessive battery drain;

17 102. Defendants intended that these misrepresentations be relied upon by the general  
18 consuming public, including Plaintiff and the Class Members. Plaintiff and the Class Members did  
19 rely upon the misrepresentations that ultimately caused Plaintiff to purchase and/or upgrade to a  
20 newer iPhone 8 and/or iPhone X.

21 103. Plaintiff is informed and believes and thereupon alleges that Defendants and each of  
22 them in doing the things herein alleged acted willfully, maliciously, oppressively and despicably  
23 with the full knowledge of the adverse effect of their actions on Plaintiff and the Class Members,  
24 and with willful and deliberate disregard of the consequences to Plaintiff and the Class Members.  
25 By reason thereof, Plaintiff and the Class Members are entitled to recover punitive and exemplary  
26 damages from Defendants in an amount according to proof at trial.

27 ///

28 ///

**ELEVENTH CAUSE OF ACTION**

**UNJUST ENRICHMENT**

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2  
3 104. Plaintiff incorporates by reference the preceding paragraphs of the Complaint as if  
4 fully alleged herein.

5 105. Plaintiff and the Class Members conferred benefits on Defendants by purchasing the  
6 Covered iPhones.

7 106. Defendants have been unjustly enriched in retaining the revenues derived from  
8 Plaintiff and the Class Members' purchases of the defective devices that were improperly  
9 manufactured, supplied, and/or distributed into the stream of commerce. Retention of those monies  
10 under these circumstances is unjust and inequitable because Defendants misrepresented that the  
11 Covered iPhones were of a quality fit for the purpose for which they were intended. These  
12 misrepresentations caused injuries to Plaintiff and the Class Members because they would not have  
13 purchased the Covered iPhones if the true facts had been known.

14 107. Because Defendants' retention of the benefits conferred on them by Plaintiff and the  
15 Class Members is unjust and inequitable, Defendants must pay restitution to Plaintiffs and the Class  
16 members for their unjust enrichment, as ordered by the Court.

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- (1) An order certifying that this action may be maintained as a class action;
- (2) An order that Plaintiff be appointed Class Representative;
- (3) An order that Plaintiff's counsel be appointed Class Counsel;
- (4) For general and special damages, according to proof;
- (5) For restitution and other equitable relief;
- (6) For pre- and post-judgment interest, according to proof;
- (7) For costs of suit, including reasonable attorneys' fees, as permitted by law;  
and
- (8) For such other and further relief as the Court may deem just and proper.

DATED: December 22, 2017

SETAREH LAW GROUP

/s/ Shaun Setareh  
SHAUN SETAREH  
Attorneys for Plaintiff  
MICHAEL HAKIMI



AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

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**

MICHAEL HAKIMI, on behalf of himself, all others similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Shaun Setareh (SBN 204514)  
SETAREH LAW GROUP  
9454 Wilshire Boulevard, Suite 907, Beverly Hills, CA 90212

**DEFENDANTS**

APPLE INC.

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

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

Attorneys (If Known)

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

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

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

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input 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 Defaulted 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 Tort Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <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	<b>PERSONAL INJURY</b> <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 <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input checked="" type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark	<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
<b>REAL PROPERTY</b> <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	<b>CIVIL RIGHTS</b> <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	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <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 <b>Other:</b> <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	<b>LABOR</b> <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	<b>SOCIAL SECURITY</b> <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))	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			<b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 377 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	

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

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

**VI. CAUSE OF ACTION**

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

15 U.S.C. section 2301  
Brief description of cause:  
breach of express warranty

**VII. REQUESTED IN COMPLAINT:**

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

**VIII. RELATED CASE(S) IF ANY**

(See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE SIGNATURE OF ATTORNEY OF RECORD

12/22/2017 /s/ Shaun Setareh

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

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