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SARA HAWES

9
10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 SARA HAWES, individually and on behalf of all
13 others similarly situated,

14 Plaintiff,

15 v.

16 APPLE INC., a California corporation,

17 Defendant.

Case No. 5:18-cv-1339

CLASS ACTION COMPLAINT AND
COMPLAINT FOR DAMAGES
(Demand for Jury Trial)

1 Plaintiff Sara Hawes (“Plaintiff”), acting individually and on behalf of all others similarly
2 situated, brings this action for damages and equitable relief against Defendant Apple Inc. (“Apple”):

3 **NATURE OF THE CASE**

4 1. This is a class action brought against Apple on behalf of all consumers who had their
5 older iPhone models “throttled,” or the phones’ performance secretly stifled, by Apple to compel the
6 consumers to upgrade to the latest model iPhone.

7 2. Apple releases new iPhone models annually and typically updates the phones’ operating
8 software, or iOS, around the same of the new iPhone releases. Once it is available, Apple pushes the
9 new iOS software for download and installation on the new and older model iPhones.

10 3. Apple’s decision to impose performance requirements for new iOS software that exceed
11 the hardware capabilities of older model iPhones (namely, the iPhone 6, 6 Plus, 6s, 6s Plus, 7, 7 Plus,
12 and SE) and caused the older phones to experience sudden shutdowns. These problems became most
13 significant after the rollout of iOS 10 in the fall of 2016. Rather than restoring the older model iPhones
14 to previous performance capability after the iOS 10 problems arose, Apple released a series of update
15 patches to iOS 10 in 2017 that throttled the older iPhones’ performance by up to 60% to avoid
16 unexpected shutdowns.

17 4. Apple’s throttling practices concealed to owners of older model iPhones that it was
18 Apple’s conduct to blame for their phones’ performance issues, instead leading consumers to believe
19 the older phones were simply nearing the end of their useful lives. Consequently, many owners of older
20 iPhones upgraded to newer models.

21 5. After Apple’s throttling practices were exposed, Apple admitted to the conduct and
22 deceptively represented to consumers that these performance restrictions were actually a “feature” for
23 older models to prevent unexpected shutdowns. In addition, Apple is offering discounted battery
24 replacements on the older models to compensate for the performance issues. In addition to wrongfully
25 reaping more profits on battery sales, replacing the battery on the older models is a temporary solution
26 that does not rectify the fact that the older phones’ hardware is incompatible with the iOS updates.

27 6. Plaintiff brings thus action pursuant to Fed. R. Civ. P. (“Rule”) 23 for damages and other
28 relief arising from Apple’s throttling practices and misrepresentations.

PARTIES

1
2 7. Plaintiff Sara Hawes is a citizen and resident of California and had an iPhone 6 that was
3 throttled by Apple. In or around October of 2016, Plaintiff upgraded to the iPhone 7 Plus, which also
4 has been throttled by Apple.

5 8. Defendant Apple Inc. is an American technology company that designs, develops, and
6 sells electronics, computer software, and online services to consumers, including Plaintiff and Class
7 members, which include sales of iPhones and interrelated software services. Apple’s principal place of
8 business is located at 1 Infinite Loop, Cupertino, California 95014. Apple conducts business and
9 operates retail locations throughout the State of California and the United States.

10 9. Based on information and belief, Apple’s decisions relating to developing, marketing,
11 and implementing the actions complained of herein originated from Apple, Inc. in Cupertino, California,
12 and all plans and decisions that originated at Apple business locations outside of Cupertino required
13 approval from Apple’s Cupertino headquarters, thereby providing Apple authority and control over the
14 actions complained about herein.

JURISDICTION AND VENUE

15
16 10. This Court has jurisdiction over this action under the Class Action Fairness Act
17 (“CAFA”), 28 U.S.C. § 1332(d). There are at least 100 members in the proposed class, the aggregated
18 claims of the individual Class Members exceed the sum or value of \$5,000,000.00 exclusive of interest
19 and costs, and Members of the Proposed Class are citizens of states different from Apple.

20 11. This Court may exercise jurisdiction over Apple because Apple’s principal place of
21 business is located within this District and Apple operates retail locations within this District. Thus,
22 Apple has established sufficient contacts in this District such that personal jurisdiction is appropriate.

23 12. Venue is proper in this District under 28 U.S.C. § 1391(a) because a substantial part of
24 the events or omissions giving rise to Plaintiff’s claims occurred in this District. Specifically, Apple’s
25 throttling practices complained about herein were developed and implemented from Apple’s Cupertino,
26 California headquarters within this District.

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

4 **FACTUAL ALLEGATIONS**

5 14. In addition to designing and selling iPhones, Apple designs accompanying iOS operating
6 software for its iPhones. When a new iOS is available for download, Apple will send push notifications
7 to all iPhone users, including owners of older model iPhones, to download and install the software
8 update.

9 15. Apple's software updates are the only option for iPhone owners to maintain the latest
10 security updates for their devices, and from a functional standpoint use of the latest iOS essentially is
11 mandatory to, *inter alia*, maintain active use of the App Store and current versions of applications (many
12 of which will not function unless the latest version is downloaded).

13 16. Apple released iOS 10 in September 2016, followed by several patch updates to address
14 issues with the new software update. As early as October 2016, iPhone owners began noticing sudden
15 shutdowns that would occur when battery life was well above normal shutdown range, often still having
16 over 30% power remaining. These shutdown issues were not rectified by further patch updates through
17 early 2017, when iOS 10.2.1 implemented Apple's throttling practice. *See generally* Gordon Kelly,
18 *Apple iOS 10.2.1 Has A Nasty Surprise*, FORBES, Jan. 24, 2017, available at
19 [https://www.forbes.com/sites/gordonkelly/2017/01/24/apple-ios-10-2-1-serious-security-problem-](https://www.forbes.com/sites/gordonkelly/2017/01/24/apple-ios-10-2-1-serious-security-problem-fixed/#5f27ceca134b)
20 [fixed/#5f27ceca134b](https://www.forbes.com/sites/gordonkelly/2017/01/24/apple-ios-10-2-1-serious-security-problem-fixed/#5f27ceca134b) (last visited Jan. 11, 2018).

21 17. In November 2016, Apple admitted that there was a problem which led the phones to
22 "unexpectedly shut down," but claimed the problem affected only a "very small number of iPhone 6s
23 devices" and suggested an issue with the phones' batteries was the root cause of the problem. Apple
24 offered iPhone 6s purchasers a free replacement battery within "the first three years after the first retail
25 sale of the unit."

26 18. Despite its acknowledgment that any iPhone should have a usable life of at least three
27 years, Apple soon discovered that the shutdowns were not solely a battery degradation issue, but actually
28 a lack of compatibility of the older iPhones' hardware with the newer iOS updates' software. The

1 shutdown problem was even affected iPhone 7 models, which were brand new in the late 2016 and early
2 2017 timeframe. Apple failed to extend its free battery replacement offer to those owners.

3 19. On or around December 18, 2017, Primate Labs, an independent tech developer, released
4 data charts on its Geekbench website showing how older iPhones were performing slower than when
5 they were launched. *See generally* John Poole, *iPhone Performance and Battery Age*, GEEKBENCH,
6 Dec. 18, 2017, *available at* [https://www.geekbench.com/blog/2017/12/iphone-performance-and-](https://www.geekbench.com/blog/2017/12/iphone-performance-and-battery-age/)
7 [battery-age/](https://www.geekbench.com/blog/2017/12/iphone-performance-and-battery-age/) (last visited Jan. 11, 2018).

8 20. Apple subsequently admitted to the throttling practices, confirming that it has been
9 throttling the performance of older iPhone models since at least 2017. Apple confirmed that its iOS
10 operating system deliberately slows the processor speeds of iPhones as they get older and the batteries
11 deteriorate.

12 21. Despite the admission, Apple continued to deceive consumers by attempting to explain
13 away its throttling practices as an altruistic “feature” that prevents the older iPhone models from
14 “unexpectedly shutting down.” *See* Tom Warren and Nick Statt, *Apple confirms iPhones with older*
15 *batteries will take hits in performance*, THE VERGE, Dec. 20, 2017, *available at*
16 <https://www.theverge.com/2017/12/20/16800058/apple-iphone-slow-fix-battery-life-capacity> (last
17 visited Dec. 22, 2017).

18 22. Further, Apple’s throttling technology actually reduces battery life, which then prompts
19 owners to more frequently and continually charge their older iPhones to further erode battery life.

20 23. Apple’s shut-down prevention representation is misleading and fraudulent, as its actual
21 intent and purposes behind Apple’s throttling practices is to induce consumers with older iPhone models
22 to upgrade to the latest version iPhone. Apple has been engaging in this deceptive throttling practice
23 for at least three generations of iPhone models to increase iPhone sales and reap more profits.

24 CLASS ACTION ALLEGATIONS

25 24. Plaintiff brings this lawsuit individually and as a class action on behalf all others similarly
26 situated pursuant to Federal Rules of Civil Procedure (“Rule”) 23(a), (b)(2), and/or (b)(3). This action
27 satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority
28 requirements of Rule 23.

1 25. The Nationwide Class and Sub-Class are defined as:

2 Nationwide Class:

3 All purchasers or lessees of an iPhone SE, 6, 6 Plus, 6s, 6s Plus, 7, or 7 Plus prior to
4 December 20, 2017.

5 Nationwide Sub-Class:

6 All purchasers or lessees of an iPhone SE, 6, 6 Plus, 6s, 6s Plus, 7, or 7 Plus who purchased
7 or leased a newer model iPhone prior to December 20, 2017.

(collectively, the “Nationwide Classes”).

8 26. The alternative California Class and Sub-Class are defined as:

9 California Class:

10 All purchasers or lessees in California of an iPhone SE, 6, 6 Plus, 6s, 6s Plus, 7, or 7 Plus prior
11 to December 20, 2017.

12 California Sub-Class:

13 All purchasers or lessees in California of an iPhone SE, 6, 6 Plus, 6s, 6s Plus, 7, or 7 Plus who
14 purchased or leased a newer model iPhone prior to December 20, 2017.

(collectively, the “California Classes,” and collectively with the Nationwide Classes, the “Classes”).

15 27. Excluded from the Classes are: (1) Apple, any entity or division in which Apple has a
16 controlling interest, and its legal representatives, officers, directors, assigns, and successors; (2) the
17 Judge to whom this case is assigned and the Judge’s staff; and (3) those persons who have suffered
18 personal injuries as a result of the facts alleged herein. Plaintiff reserves the right to amend the Class
19 definitions if discovery and further investigation reveal that the Classes should be expanded or otherwise
20 modified.

21 28. Numerosity: Although the exact number of Class Members is uncertain and can only be
22 ascertained through appropriate discovery, the number is great enough such that joinder is impracticable.
23 The disposition of the claims of these Class Members in a single action will provide substantial benefits
24 to all parties and to the Court. The Class Members are readily identifiable from information and records
25 in Apple’s possession, custody, or control.

26 29. Typicality: The claims of the representative Plaintiff are typical in that Plaintiff, like all
27 Class Members, is or was an owner of an older iPhone model that was throttled by Apple. Plaintiff, like
28 all Class Members, has been damaged by Apple’s misconduct in that, *inter alia*, he has improperly had

1 his iPhone throttled. Furthermore, the factual bases of Apple’s misconduct are common to all Class
2 Members and represent a common thread of fraudulent, deliberate, and negligent misconduct resulting
3 in injury to all Class Members.

4 30. Commonality: There are numerous questions of law and fact common to Plaintiff and
5 Class Members that predominate over any individual questions. These common legal and factual issues
6 include the following:

- 7 a. Whether Apple deliberately throttled performance of older iPhone models;
- 8 b. Whether, through its throttling practices, Apple intended to induce its customers to
9 upgrade to newer iPhone models;
- 10 c. Whether Apple’s statement that its throttling practices are a shut-down prevention
11 “feature” is misleading and deceptive; and
- 12 d. Whether Plaintiff and other Class Members have sustained damages as a result of Apple’s
13 wrongful business practices described herein, and the proper measure of damages.

14 31. Adequate Representation: Plaintiff will fairly and adequately protect the interests of
15 Class Members. Plaintiff has retained attorneys experienced in the prosecution of class actions,
16 including consumer and product defect class actions, and Plaintiff intends to prosecute this action
17 vigorously.

18 32. Predominance and Superiority: Plaintiff and Class Members have all suffered and will
19 continue to suffer harm and damages as a result of Apple’s unlawful and wrongful conduct. A class
20 action is superior to other available methods for the fair and efficient adjudication of the controversy.
21 Absent a class action, Class Members would likely find the cost of litigating their claims prohibitively
22 high and would therefore have no effective remedy at law. Because of the relatively small size of Class
23 Members’ individual claims, it is likely that few Class Members could afford to seek legal redress for
24 Apple’s misconduct. Absent a class action, Class Members will continue to incur damages, and Apple’s
25 misconduct will continue without remedy. Class treatment of common questions of law and fact would
26 also be a superior method to multiple individual actions or piecemeal litigation in that class treatment
27 will conserve the resources of the courts and the litigants and will promote consistency and efficiency
28 of adjudication.

1 **FIRST CAUSE OF ACTION**
2 **Violation of the California Consumers Legal Remedies Act**
3 **Cal. Civ. Code § 1750, et seq.**
4 **(On behalf of the Nationwide Classes or, in the Alternative, the California Classes)**

5 33. Plaintiff hereby incorporates by reference the allegations contained in the preceding
6 paragraphs of this Complaint.

7 34. Plaintiff brings this cause of action individually and on behalf of the National Classes or,
8 in the alternative, the California Classes against Apple.

9 35. Apple is a “person” as defined by Cal. Civ. Code § 1761(c).

10 36. Plaintiff and Class Members are “consumers” within the meaning of Cal. Civ. Code §
11 1761(d).

12 37. Plaintiff’s and Class Members’ iPhones constitute “goods” as defined by Cal. Civ. Code
13 § 1761(a).

14 38. Plaintiff’s and Class Members’ purchases of iPhones constitute “transactions,” as defined
15 by Cal. Civ. Code § 1761(e).

16 39. Plaintiff’s and Class Members’ use of their iPhones were for personal, family, and
17 household purposes as meant by Cal. Civ. Code § 1761(d).

18 40. Venue is proper under Cal. Civ. Code § 1780(d) because a substantial portion of the
19 transactions at issue occurred in this District. (*See* Declaration of Robert Ahdoot, attached hereto.)

20 41. Apple deceived consumers in that it deceptively throttled the performance of older
21 iPhone models to induce consumers to purchase new iPhones. Further, Apple misrepresented the
22 purpose of its throttling practices once they were revealed to the public, indicating that the throttled
23 performance was a “feature,” not a deceptive ploy to induce iPhone upgrades and more sales.

24 42. Apple’s active concealment, failure to disclose, and subsequent misrepresentations
25 violated the California Consumers Legal Remedies Act (“CLRA”) in the following manner:

26 a. In violation of Section 1770(a)(5), Apple misrepresented that its older iPhone
27 models had characteristics, benefits, or uses that they did not have (by first deceptively throttling the
28 iPhones and then misrepresenting the throttling as an altruistic “feature”);

1 b. In violation of Section 1770(a)(7), Apple misrepresented that its older iPhone
2 models were of a particular standard, quality, and/or grade when they were of another (by first
3 deceptively throttling the iPhones and then misrepresenting the throttling as an altruistic “feature”);

4 c. In violation of Section 1770(a)(9), Apple advertised its older iPhone models with
5 an intent not to sell them as advertised (by first deceptively throttling the iPhones and then
6 misrepresenting the throttling as an altruistic “feature”);

7 d. In violation of Section 1770(a)(14), Apple misrepresented that its older iPhone
8 models conferred or involved rights, remedies, or obligations that they did not have (by first deceptively
9 throttling the iPhones and then misrepresenting the throttling as an altruistic “feature”); and

10 e. In violation of Section 1770(a)(16), Apple misrepresented that its older iPhone
11 models were supplied in accordance with previous representations when they were not (by first
12 deceptively throttling the iPhones and then misrepresenting the throttling as an altruistic “feature”).

13 43. Apple’s misrepresentations and nondisclosures regarding its iPhone throttling practices
14 were undisclosed from at least 2016 to December 2017, and were material to Plaintiff and Class
15 Members because a reasonable person would have considered these practices important in deciding
16 whether or not to purchase an older iPhone model and/or upgrade to a new iPhone.

17 44. Plaintiff and Class Members relied upon Apple’s material nondisclosures and
18 misrepresentations, and had Plaintiff and Class Members known the truth about its throttling practices,
19 they would not have purchased their iPhones and/or been induced to upgrade to newer models.

20 45. As a direct and proximate result of Apples’s material nondisclosures and
21 misrepresentations, Plaintiff and Class Members have been irreparably harmed.

22 46. On behalf of the Class, Plaintiff seeks injunctive relief in the form of an order enjoining
23 Apple from making such material misrepresentations and failing to disclose or actively concealing its
24 aforementioned practices. Plaintiff also seeks attorneys’ fees and costs.

25 47. In accordance with Cal. Civ. Code § 1782(a), on March 1, 2018, Plaintiff’s counsel
26 served Apple with notice of the CLRA violations by certified mail, return receipt requested.

1 48. If Apple fails to provide appropriate relief for its CLRA violations within 30 days of
2 receipt of Plaintiff's notification letter, Plaintiff will amend this Complaint to also seek compensatory
3 and exemplary damages as permitted by Cal. Civ. Code §§ 1780 and 1782(b).

4 **SECOND CAUSE OF ACTION**
5 **Violations of the California Unfair Competition Law**
6 **Cal. Bus. & Prof. Code § 17200, et seq.**
7 **(On behalf of the Nationwide Classes or, in the Alternative, the California Classes)**

8 49. Plaintiff hereby incorporates by reference the allegations contained in the preceding
9 paragraphs of this Complaint.

10 50. Plaintiff brings this cause of action individually and on behalf of the National Classes or,
11 in the alternative, the California Classes against Apple.

12 51. California Business & Professions Code § 17200, *et seq.* ("UCL") prohibits acts of
13 "unfair competition," including any "unlawful, unfair or fraudulent business act or practice" and "unfair,
14 deceptive, untrue or misleading advertising."

15 52. Apple deliberately throttled the performance of older iPhone models to induce consumers
16 to purchase newer models.

17 53. In failing to disclose its iPhone throttling practices, Apple knowingly, intentionally,
18 and/or negligently concealed material facts and breached its duty not to do so.

19 54. Apple was under a duty to Plaintiff and Class Members to disclose its throttling practices
20 because:

- 21 a) Apple was in a superior position to know the true state of facts about how its throttling
22 practices affected older iPhone models;
23 b) Apple actively concealed its throttling practices from Plaintiff and Class Members; and
24 c) Apple made affirmative representations about how its throttling practices were an
25 altruistic "feature" for older iPhones when in fact they were designed to induce upgrades
26 to newer models.

27 55. The facts concealed by Apple to Plaintiff and Class Members are material in that
28 reasonable persons would have considered them to be important in deciding whether to purchase an

1 iPhone. Had Plaintiff and Class Members known about Apple's throttling practices, they would not
2 have purchased their iPhones and/or upgraded to newer iPhones.

3 56. Apple concealed the upgrade-inducing purpose behind its throttling practices even after
4 the practices were independently exposed to consumers. Apple continues to cover up and conceal the
5 true purpose behind these practices.

6 57. Apple has violated and continues to violate the UCL's prohibition against engaging in
7 "unlawful" business acts or practices, by, among other things, violating the CLRA.

8 58. Apple's acts, omissions, and conduct also violate the unfair prong of the UCL because
9 Apple's acts, omissions, and conduct, as alleged herein, offended public policy and constitutes immoral,
10 unethical, oppressive, and unscrupulous activities that caused substantial injury, including to Plaintiff
11 and Class Members. The gravity of Apple's conduct outweighs any potential benefits attributable to
12 such conduct and there were reasonably available alternatives to further Apple's legitimate business
13 interests, other than Apple's conduct described herein.

14 59. By failing to disclose and actively concealing its throttling practices, Apple engaged in a
15 fraudulent business practice that is likely to deceive a reasonable consumer.

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

18 61. Apple has been unjustly enriched and should be required to make restitution to Plaintiff
19 and the Class pursuant to Sections 17203 and 17204 of the UCL.

20 **THIRD CAUSE OF ACTION**
21 **Trespass to Chattels**
22 **(On behalf of the Nationwide Classes or, in the Alternative, the California Classes)**

23 62. Plaintiff hereby incorporates by reference the allegations contained in the preceding
24 paragraphs of this Complaint.

25 63. Plaintiff brings this cause of action individually and on behalf of the National Classes or,
26 in the alternative, the California Classes against Apple.

27 64. Plaintiff's and Class Members' iPhones were their personal property.
28

1 65. Apple interfered with their personal property by pushing software updates that
2 substantially impeded their iPhones' performance and utility.

3 66. Apple pushed these software updates with the knowledge that the older model iPhones'
4 hardware was incompatible with newer iOS software updates, that it was throttling those older phones'
5 performance, and that it was prematurely degrading the battery life of the older phones.

6 67. Apple failed to disclose these negative ramifications of updating to the latest iOS
7 software to Plaintiff and Class Members, instead functionally forcing them to upgrade to ensure security
8 vulnerabilities on the devices were fixed and applications would function.

9 68. As a direct and proximate result of Apple's interference with their iPhones, Plaintiff and
10 Class Members suffered damages, including permanent degradation of their iPhones' performance and
11 utility, and/or being induced to purchase new iPhones and/or new batteries from Apple.

12 **FOURTH CAUSE OF ACTION**
13 **Breach of the Covenant of Good Faith and Fair Dealing**
14 **(On behalf of the Nationwide Classes or, in the Alternative, the California Classes)**

15 69. Plaintiff hereby incorporates by reference the allegations contained in the preceding
16 paragraphs of this Complaint.

17 70. Plaintiff brings this cause of action individually and on behalf of the National Classes or,
18 in the alternative, the California Classes against Apple.

19 71. Plaintiff and Class Members entered into contracts with Apple in connection with their
20 use of their iPhones and Apple's accompanying iOS software.

21 72. Plaintiff and Class Members gave fair and reasonable consideration and performed all
22 their material obligations under the contracts.

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

25 74. Apple's contracts with Plaintiff and Class Members gave Apple discretion to make
26 available future iOS software updates.

1 75. Plaintiff and Class Members had a reasonable expectation that, when Apple used its
2 discretion to create and push iOS software updates to their iPhones, the updates would benefit the
3 iPhones' functionality, not worsen the phones' functionality.

4 76. Apple used its discretion to push iOS updates to Plaintiff's and Class Members' iPhones
5 that were incompatible with the phones' hardware, throttled the phones' performance, degraded the
6 phones' battery life, and negatively impacted the phones' functionality.

7 77. Plaintiff and Class Members had no reason to know Apple was utilizing its contractual
8 discretion to negatively affect their iPhones.

9 78. By pushing its iOS updates as described above, Apple breached the covenant of good
10 faith and fair dealing and breached its contractual duty to Plaintiff and Class Members.

11 79. As a direct and proximate result of Apple's breach, Plaintiff and Class Members suffered
12 damages, including permanent degradation of their iPhones' performance and utility, and/or being
13 induced to purchase new iPhones and/or new batteries from Apple.

14 **RELIEF REQUESTED**

15 Plaintiff, individually and on behalf of all others similarly situated, requests the Court enter
16 judgment against Apple, and accordingly requests the following:

- 17 A. An order certifying the proposed Classes and designating Plaintiff as the named
18 representative of the Classes and designating the undersigned as Class Counsel;
- 19 B. A declaration that Apple is financially responsible for notifying all Class Members about
20 their deceptive iPhone throttling practices;
- 21 C. An order enjoining Apple from further deceptive throttling practices;
- 22 D. An award to Plaintiff and Class Members of compensatory, actual, exemplary, and statutory
23 damages, including interest, in an amount to be proven at trial;
- 24 E. A declaration that Apple must disgorge, for the benefit of Plaintiff and Class Members, all
25 or part of the ill-gotten profits it received from its deceptive throttling practices, or make full
26 restitution to Plaintiff and Class Members;
- 27 F. An award of attorneys' fees and costs pursuant to all applicable laws;
- 28 G. An award of pre-judgment and post-judgment interest, as provided by law;

1 H. Leave to amend the Complaint to conform to the evidence produced at trial; and

2 I. Such other relief as may be appropriate under the circumstances.

3 **DEMAND FOR JURY TRIAL**

4 Plaintiff, individually and on behalf of all others similarly situated, hereby demands a trial by
5 jury as to all matters so triable.

6
7 Dated: March 1, 2018



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Counsel for Plaintiff Sara Hawes

DECLARATION OF ROBERT AHDOOT

I, Robert Ahdoot, declare as follows:


1. I am an attorney with the law firm of Ahdoot & Wolfson, PC, counsel for Plaintiff in the above-captioned action. I am admitted to practice law in California and before this Court and am a member in good standing of the State Bar of California. This declaration is made pursuant to California Civil Code section 1780(d). I make this declaration based on my research of public records and upon personal knowledge and, if called upon to do so, could and would testify competently thereto.

2. Venue is proper in this Court because Plaintiff suffered injuries as a result of Apple's acts in this District, including Apple's decision to engage in its iPhone throttling practices in this District. Apple regularly operates retail locations in this District and is registered to do business in California.

3. Plaintiff Sara Hawes is a resident of West Hollywood, California, in Los Angeles County.

4. Defendant Apple Inc. is a California corporation registered to do business in California with its principal place of business located at One Apple Park Way, Cupertino, California 95014.

I declare under penalty of perjury under the laws of the United States and the State of California this 1st day of March, 2018 in Los Angeles, California that the foregoing is true and correct.



Robert Ahdoot

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

SARA HAWES, individually and on behalf of 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) Robert Ahdoot, AHDOOT & WOLFSON, PC 1016 Palm Avenue, West Hollywood, CA 90069 T: (310) 474-9111 F: (310) 474-8585 E: rahdoot@ahdootwolfson.com

DEFENDANTS

APPLE INC., a California corporation,

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

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

Attorneys (If Known)

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

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

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

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

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

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332(d); Cal. Civ. Code § 1750; Cal. Bus. & Prof Code § 17200

Brief description of cause:

Deceptive conduct arising from slowing performance and damaging batteries of older model iPhones

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ 5,000,000.00

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE DOCKET NUMBER

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

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

DATE 03/01/2018

SIGNATURE OF ATTORNEY OF RECORD

/s/ Robert Ahdoot

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

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

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.