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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 VIOLETTA MAILYAN, an individual,) **Case No.:**
14 on behalf of herself and all others)
15 similarly situated;) **CLASS ACTION ALLEGATION**
16) **COMPLAINT**
17 Plaintiffs,) **1. Fraud through Concealment**
18 v.) **2. Unfair Competition under**
19) **California Business and Professions**
20) **Code § 17200 et seq.**
21 APPLE INC., a California corporation;)
22 and DOES 1-100, inclusive;)
23)
24 Defendants.)
25) **JURY TRIAL DEMANDED**
26)

23 Violetta Mailyan (collectively “Plaintiff”), individually and on behalf of a class
24 of all similarly situated (“Class”) asserts the following claims against Apple Inc.
25 (“Defendant”) and in support thereof, states as follows:

26 **PARTIES**

27 1. Plaintiff is an individual who at all times relevant herein resided in the
28 State of California, County of Los Angeles.

1 2. Defendant is a California corporation, with its principal place of business
2 in Cupertino, California.

3 3. Plaintiff is informed and believes and thereon alleges that Does 1 through
4 100 are persons, corporations, partnerships, or other entities that were alter egos of
5 Defendant or have directed, approved, committed, participated in, or added and
6 abetted the acts and transactions alleged in this complaint. Each is therefore liable for
7 the acts alleged in this complaint. The true names, capacities and/or roles of Does 1-
8 100 are unknown to Plaintiff, and Plaintiff will amend this complaint when their true
9 names, capacities and roles are known.

10 **JURISDICTION AND VENUE**

11 4. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 because the
12 Class consists of more than 100 members, the amount at issue is more than \$5 million
13 exclusive of interest and costs; and minimal diversity exists because at list one
14 Plaintiff is a citizen of a different state than Defendant.

15 5. Venue is proper under 28 U.S.C. § 1391 because Defendant conducts a
16 large amount of its business in this District, Defendant has substantial relationship to
17 this District, and a substantial part of the events and omissions giving rise to this
18 action occurred in this District.

19 **STATEMENT OF FACTS**

20 6. Defendant is manufacturing famous smartphones under the trade name
21 iPhone. Almost every year Defendant introduces a new model of iPhone.

22 7. Plaintiff and Class have owned different iPhone models for years,
23 including, but not limited to iPhone 4, iPhone 5, iPhone 6, iPhone 7, and iPhone 8.

24 8. Before or after a new iPhone was announced or introduced in the market,
25 Plaintiff and Class noticed that the performance of their older iPhone models slowed
26 down either after downloading iPhone operating system (“iOS”) updates or otherwise
27 for unknown or undisclosed technical reasons.

28 9. Defendant, through iOS updates or otherwise, purposefully slowed down

1 the performance of older iPhone models.

2 10. On December 20, 2017, Defendant admitted that it intentionally slowed
3 down the operating speed of older iPhones.

4 11. In its official statement Defendant declared:

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

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

15 12. Defendant’s statement was released in response to a report by Primate
16 Labs stating that the processors in iPhones slow down and decrease in performance as
17 batteries age and lose capacity.

18 13. Defendant’s iOS updates never informed Plaintiff and Class that
19 Defendant was purposefully slowing down the operation of their devices.

20 14. When Plaintiff and Class bought their iPhones they were expecting that
21 their iPhones would work properly, and that the performance of their iPhones would
22 not slow down for unapparent reasons.

23 15. Defendant’s iOS updates were engineered to intentionally slow down the
24 performance speed of older iPhone models.

25 16. Defendant’s iOS updates never disclosed that the slowdown in older
26 iPhone models might be remedied by replacing the battery in these devices or by
27 avoiding the download of iOS updates.

28 17. Plaintiff and Class noticed remarkable slowdowns in the operation of their

1 iPhones before and after downloading iOS updates.

2 18. Defendant's intentional slowdown of the performance of older models of
3 iPhones greatly diminished the effectiveness, usefulness and utility of these devices.

4 19. As a result of the slowdown of the performance of their older iPhone
5 models, Plaintiff and Class bought newer iPhone models in order to have a properly
6 functioning smartphone.

7 20. Plaintiff and Class lost value of older iPhone models because of the
8 slowdown of performance. Plaintiff and Class expended money to purchase newer
9 iPhone models in order to avoid the slowdown of their older iPhone models.

10 21. The slowdown of older iPhone models was material in impact, thus
11 prompting Plaintiff and Class to purchase newer iPhone models to avoid the
12 slowdown.

13 22. If Plaintiff and Class knew that the performance of their iPhones would
14 slow down after the introduction of a new iPhone model or an iOS update, they would
15 not purchase an iPhone.

16 23. If Plaintiff and Class knew that the slow performance of their iPhones
17 could be remedied by purchasing a new battery, they would buy a new battery instead
18 of a new iPhone model.

19 24. If Plaintiff and Class knew that the slow performance of their iPhone
20 could be avoided by refusing to download the iOS update, they would not buy a new
21 iPhone model.

22 25. Defendant knew and intentionally failed to disclose that it was
23 purposefully slowing down the performance of older iPhones models and that the
24 slowdown could be remedied by purchasing a new battery, by avoiding to download
25 the iOS update or otherwise.

26 26. Prior to the purchase of their newer iPhone models, Defendant never
27 informed Plaintiff and Class that the performance of their old iPhone models could by
28 improved by purchasing a new battery.

1 27. Defendant knew how to remedy or avoid the slowdown of older iPhone
2 models. Defendant purposefully slowed down the speed of older iPhone models
3 through unknown ways.

4 28. Defendant purposefully concealed and failed to disclose the fact that a
5 battery replacement would improve the performance of older iPhone models.

6 29. The fact that the performance of older iPhone models could be remedied
7 by a battery replacement was a material information for a reasonable consumer who
8 wanted to improve the performance of his or her iPhone.

9 30. Defendant’s wrongful actions directly and proximately caused damages to
10 Plaintiff and Class.

11 **CLASS ACTION ALLEGATIONS**

12 31. Plaintiff brings this action on behalf of herself and all other members of
13 the Class, and alleges all claims herein on a common, class-wide basis, pursuant to
14 Fed. R. Civ. P. 23.

15 32. The Class is defined as follows: All persons residing in the United States
16 who have owned iPhone models older than iPhone 8 and who have purchased a newer
17 iPhone model as a result of slowdown caused by Defendant through an iOS update or
18 otherwise.

19 33. The Plaintiff is a member of the Class as defined above.

20 34. Excluded from the class are all attorneys for the Class, officers of
21 Defendant, including officers and members of any entity with an ownership interest in
22 Defendant, any judge who sits on the case, and all jurors and alternate jurors who sit on
23 the case.

24 35. Plaintiff is informed and believes that the proposed class comprises
25 millions of persons. Therefore, the Class is so numerous and geographically dispersed
26 that joinder of all members in one action is impracticable.

27 36. There are substantial questions of law and fact common to the Class that
28 predominate over questions affecting only individual Class members including, but not

1 limited to, the following: whether Defendant intentionally slowed down the
2 performance of older iPhone models through iOS updates or otherwise; whether
3 Defendant intentionally concealed material information from Class members; whether
4 Defendant's conduct was the direct and proximate cause of the damages suffered by
5 Class members; whether the Plaintiff and Class suffered monetary damages as a result
6 of Defendant's conduct; whether Defendant violated California Business and
7 Professions Code §17200 et seq.; whether punitive damages should be awarded to
8 Plaintiff and Class.

9 37. Plaintiffs' claims are typical of the claims of the Class. Each member of
10 the Class had to buy a newer iPhone model because the performance of their older
11 iPhone model had slowed down as a result of Defendant's purposeful conduct. Each
12 member of Class was denied the use, utility and value of the older iPhone model
13 because of the slowdown of performance. The injuries of the Plaintiff and Class are
14 identical, and Plaintiff's claims for relief are based upon the same legal theories as the
15 claims of other Class members.

16 38. Plaintiff will fairly and adequately protect and represent the interests of
17 the Class because her claims are typical of the claims of the Class, she is represented
18 by locally respected attorneys who have experience handling consumer litigation, who
19 are qualified and competent, and who will vigorously prosecute this litigation, and her
20 interests are not antagonistic or in conflict with the interest of the Class.

21 39. A class action is superior to all other available methods for the fair and
22 efficient adjudication of this lawsuit because individual litigation of the other Class
23 members' claims is economically unfeasible and procedurally impracticable. Litigating
24 the claims of the Class together will prevent varying, inconsistent, or contradictory
25 judgments, and will prevent delay and unnecessary expense to the parties and the
26 courts. A class action will be an efficient method of adjudicating the claims of the
27 Class members who have suffered relatively small damages as a result of the same
28 conduct of Defendant.

FIRST COUNT

(Fraud through Concealment)

1
2
3 40. Plaintiff incorporates and realleges all allegations set forth in paragraphs 1
4 to 39.

5 41. Defendant intentionally failed to disclose to Plaintiff and similarly
6 situated class members that Defendant was purposefully slowing down the
7 performance of older iPhone models through iOS updates or otherwise.

8 42. Defendant intentionally failed to disclose that the slow performance of
9 older iPhone models could be remedied by purchasing a new battery or otherwise.

10 43. Only Defendant knew that it was purposefully slowing down the
11 performance of older iPhone models and that the slow performance of older iPhone
12 models could be remedied by purchasing a new battery or otherwise.

13 44. Plaintiff and similarly situated Class members did not know and could not
14 have discovered that Defendant was purposefully slowing down the performance of
15 older iPhone models and that the slow performance of older iPhone models could be
16 remedied by purchasing a new battery or otherwise.

17 45. Defendant intended to deceive Plaintiff and Class by concealing the fact
18 that it was purposefully slowing down the performance of older iPhone models and
19 that the slow performance of older iPhone models could be remedied by purchasing a
20 new battery or otherwise.

21 46. If Defendant disclosed that it would purposefully slow down the
22 performance of older iPhone models Plaintiff and Class would not buy these iPhone
23 models. Further, if Defendant disclosed that the slow performance of older iPhone
24 models could be remedied by purchasing a new battery, Plaintiff and similarly situated
25 Class members would buy a new battery instead of buying a newer iPhone model.

26 47. Plaintiff and similarly situated Class members suffered damages because
27 they bought newer iPhone models as a result of the slow performance of their older
28 iPhones models caused by Defendant's conduct.

1 48. Defendant's concealment of the fact that it was purposefully slowing
2 down the performance of older iPhone models and that the slow performance of older
3 iPhone models could be remedied by purchasing a new battery or by avoiding the
4 download of the iOS update was a substantial factor in causing damages to Plaintiff
5 and Class.

6 49. Defendant's conduct was intentional and malicious, causing damages to
7 Plaintiff and Class.

8 **COUNT TWO**

9 **(Unfair Competition under**

10 **California Business and Professions Code § 17200 et seq.)**

11 50. Plaintiff incorporates and realleges all allegations set forth in paragraphs
12 1 to 39.

13 51. Pursuant to California Business and Professions Code § 17200, unfair
14 competition shall mean and include any unlawful, unfair or fraudulent business act or
15 practice.

16 52. Defendant's above described conduct was unfair and fraudulent because
17 Defendant purposefully slowed down the performance of older iPhone models through
18 iOS updates or otherwise.

19 53. As a result of Defendant's unfair and fraudulent business practices,
20 Plaintiff and Class suffered damages because they had to purchase a newer iPhone
21 model in order to replace their slow older model.

22 54. Defendant's conduct was intentional and malicious.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff, individually and on behalf of the proposed Class,
25 respectfully request that the Court enter judgment in their favor as follows:

- 26 1. Certifying the Class under Fed. R. Civ. P. 23 and appointing Plaintiff and
27 her counsel to represent the class;
28 2. Awarding Plaintiff and the Class monetary damages as allowable by law;

- 1 3. Awarding Plaintiff and the Class appropriate equitable relief;
- 2 4. Awarding attorneys' fees, costs and litigation expenses, as allowable by
- 3 law;
- 4 5. Awarding punitive damages as allowable by law;
- 5 6. Awarding all such further relief as allowable by law.

6 **JURY TRIAL DEMANDED**

7 Plaintiff, on behalf of herself and the Class, demands a trial by jury on all
8 triable issues.

9 DATED: December 23, 2017

KAASS LAW

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11 By: /s/ Armen Kiramijyan
12 Armen Kiramijyan, Esq.
13 Lead Attorney for Plaintiff

14 Hovsep Hovsepyan, Esq.
15 Attorney for Plaintiff
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