

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

<b>PETER A. SCHROEDER</b> , individually )	JURY TRIAL DEMANDED
and on behalf of all others similarly )	
situated, )	CLASS ACTION COMPLAINT
)	
Plaintiff, )	
)	
vs. )	No. 1:17-cv-4750
)	
<b>APPLE INC.</b> , )	
)	
Defendant. )	

**CLASS ACTION COMPLAINT**

Plaintiff, Peter A. “Pete” Schroeder, by counsel, individually and on behalf of all others similarly situated, alleges as follows:

**NATURE OF THIS ACTION**

1. This is a class action seeking injunctive relief and damages arising from Defendant Apple Inc.’s unlawful failure to inform consumers that updating their iPhone versions prior to the iPhone 8 (the “Legacy Devices”) to iOS 10.2.1 (and/or later to iOS 11.2) would dramatically and artificially reduce the performance of the Legacy Devices. Apple also failed to inform consumers that phone performance would be restored—by as much as 70 percent—if affected individuals simply replaced the phone’s lithium-ion battery. Replacing the battery at an Apple store costs approximately \$79. The cost of the new iPhone X is over \$1,000.

2. Batteries “wear” over time. The lithium-ion battery used by Apple slowly diminishes its ability to hold a charge with time and use. However, normal

lithium-ion battery wear does not reduce performance; a weakening battery has no effect on performance unless there is software that links the two. And that is precisely what Apple did.

3. In rolling out iOS 10.2.1, Apple claimed to provide “bug fixes and improve[ ] the security of [the] iPhone or iPad” and “improve[ ] power management during peak workloads to avoid unexpected shutdowns on the iPhone.”<sup>1</sup> What Apple purposefully failed to disclose, however, was that the update would act as a latent time-bomb that slowly eroded the phone’s performance to the frustration of the user—the software update throttled the iPhone’s performance.

4. The effect of Apple’s actions was to a) purposefully reduce device performance with time, and b) deprive consumers of material information concerning the cause of the decline in performance of the Legacy Devices.

5. Plaintiff and the Class he seeks to represent in this lawsuit are consumers who purchased the Legacy Devices and installed the relevant upgraded operating system software. This lawsuit is brought to challenge Apple’s deceptive consumer sales practices, trespass to chattels, breach of the duty of good faith and fair dealing, and breach of implied contract.

## **PARTIES**

6. Plaintiff Peter A. “Pete” Schroeder is a citizen of Indiana, and lives in Indianapolis. He purchased a Legacy Device. Mr. Schroeder upgraded to iOS 10.2.1

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<sup>1</sup> Download iOS 10.0 – iOS 10.3.3 Information, Apple Inc., [https://support.apple.com/kb/DL1893?locale=en\\_US](https://support.apple.com/kb/DL1893?locale=en_US) (last visited Dec. 27, 2017).

and has since suffered material and increasing degradation in the performance of his iPhone.

7. Defendant Apple Inc. (“Apple”) is a California resident, being a California corporation headquartered at 1 Infinite Loop, Cupertino, California. Apple designs, manufacturers, and sells a wide range of products, including mobile devices such as iPhones, throughout the world.

### **JURISDICTION**

8. This Court has subject matter jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2), because this is a civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and is a class action in which at least one member of a class of plaintiffs is a citizen of a State different from any defendant.

9. This Court has personal jurisdiction over Apple because: (1) Apple has systematic and continuous contacts within this State because it systematically and continuously does business in this state and communicates via telephone, mail, and the internet with persons in this State in furtherance of its activities; and (2) Apple consummated the transactions at issue in this case within this State thereby purposefully availing itself of the privilege of conducting business within this State, and Plaintiff’s and Class members’ claims arise out of Apple’s in-State activities.

### **FACTUAL ALLEGATIONS**

10. Plaintiff and Class Members are Apple iPhone users. Many Class Members are not new to the iPhone franchise, but are loyal followers of Apple, having purchased various iterations of the mobile device.

11. On January 23, 2017, Apple released iOS 10.2.1. The update specifically addressed aging batteries, and expressly represented that the purpose was to prolong the useful life of the Device. Apple promised to “deliver the best experience for customers, which includes overall performance and prolonging the life of their devices.”<sup>2</sup>

12. For example, the update specifically sought to prevent the handset from shutting down if a performance spike drew too much power—i.e., turning off unexpectedly as if the phone was dead while the phone’s battery still had a charge. While the battery issue was a reported problem at the time,<sup>3</sup> the iOS update did far more than address shutdowns on those few phones that experienced shutdowns – it also surreptitiously and purposefully throttled the performance speed on Legacy Devices by as much as 70 percent.

13. Furthermore, the update did not even fully address the purported battery “shutdown” issue on all devices: 20 percent of iPhone 6s and 30 percent of iPhone 6 devices that previously experienced unexpected shut down issues continued to experience those issues, according to a statement released by Apple.<sup>4</sup>

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<sup>2</sup> Jason Koebler, *Apple Throttles iPhones that Have Old Batteries (But Didn’t Tell You About It)*, Motherboard (Dec. 20, 2017), [https://motherboard.vice.com/en\\_us/article/3k5bdw/apple-throttles-iphones-bad-batteries?utm\\_source=vicefbus](https://motherboard.vice.com/en_us/article/3k5bdw/apple-throttles-iphones-bad-batteries?utm_source=vicefbus) (last visited Dec. 27, 2017).

<sup>3</sup> A Message from Apple about iPhone and Unexpected Shutdowns, Apple, Inc. (June 12, 2016), <https://support.apple.com/zh-cn/HT207414> (last visited Dec. 27, 2017)

<sup>4</sup> Matthew Panzarino, *Apple says IOS 10.2.1 has reduced unexpected iPhone 6s shutdown issues by 80%*, Techcrunch (Feb. 23, 2017), <https://techcrunch.com/2017/02/23/apple-says-ios-10-2-1-has-reduced-unexpected-iphone-6s-shutdown-issues-by-80/> (last visited Dec. 27, 2017).

At the time the iPhone 7 was not impacted. However, it is now known that the feature at the center of the iOS 10.2.1 update was later extended to iPhone 7 with the release of iOS 11.2, and will be added to other products in the future.

14. Apple also informed consumers that for those who need it, a message will appear on the screen inside Settings if that phone's "battery needs service." Apple did this to "add a bit more transparency to people wondering when Apple considers the battery worn down enough to get swapped out." Apple even offered consumers tips regarding when to swap out a battery.<sup>5</sup>

15. However, despite all of these disclosure opportunities, Apple never informed consumers that the 10.2.1 update reduced unexpected phone shutdowns by slowing the device's performance dramatically.

16. Moreover, consumers experiencing these issues were never notified by Apple (as it represented it would) that "the [device's] battery needs service."

17. Because Apple failed to inform consumers that the performance issues were artificially caused by the iOS update in conjunction with an older (but still perfectly functional) battery, consumers were denied the opportunity to make an informed decision regarding whether to upgrade their device or instead simply replace the battery.

18. Apple's failure to disclose the impact of the iOS update 10.2.1 (and the later iOS 11.1) and remedy the issues it produced (and purported to resolve)

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<sup>5</sup> *Maximizing Battery Life and Lifespan*, Apple Inc., <https://www.apple.com/batteries/maximizing-performance/> (last visited Dec. 27, 2017).

constitutes a deceptive consumer sales practice and breach of the covenant of good faith and fair dealing implied in Apple's contracts with Plaintiff and the class. Plaintiff and the class were harmed as a direct and proximate result of Apple's actions.

### **CLASS ACTION ALLEGATIONS**

19. Plaintiff brings this action individually and on behalf of all others similarly situated, as members of a nationwide class preliminarily defined as:

All consumers who (a) reside in the United States, (b) owned an Apple Legacy Device and upgraded to iOS 10.2.1 or a later version prior to the date of this Complaint, and (c) who purchased that iPhone within the United States.

In addition, Plaintiff brings this action on behalf of an Indiana sub-Class preliminarily defined as:

All consumers who (a) reside in the Indiana, (b) owned an Apple Legacy Device and upgraded to iOS 10.2.1 or a later version prior to the date of this Complaint, and (c) who purchased that iPhone within the United States.

20. This action is properly maintainable as a class action under Federal Rule of Civil Procedure 23.

21. The class consists of hundreds of thousands or more persons, such that joinder of all Class members is impracticable.

22. There are questions of law and fact that are common to the Class members that relate to Apple's uniform conduct.

23. The claims of the Plaintiff are typical of the claims of the proposed Class because they are based on the same legal theories, and Plaintiff has no interests that are antagonistic to the interests of the Class members.

24. The Plaintiff is an adequate representative of the Class and has retained competent legal counsel experienced in class actions and complex litigation.

25. The questions of law and fact common to the Class predominate over any questions affecting only individual Class members, particularly because the focus of the litigation will be on the conduct of Apple. The predominant questions of law and fact in this litigation include, but are not limited to:

- a. Whether iOS 10.2.1 in fact affected device performance;
- b. Whether Apple purposefully designed iOS 10.2.1 to affect device performance or otherwise did so knowingly;
- c. The extent to which iOS 10.2.1 affected device performance;
- d. Whether and to what extent Apple disclosed the effect of iOS 10.2.1 on device performance;
- e. Whether the aspects of iOS 10.2.1 affecting device performance were extended to iOS 11.2; and
- f. Whether Apple notified customers that the artificial reduction in device performance could be remedied by simply replacing the battery.

26. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, as the pursuit of hundreds of individual lawsuits would not be economically feasible for individual Class members, and certification as a class action will preserve judicial resources by allowing the

common issues of the Class members to be adjudicated in a single forum, avoiding the need for duplicative hearings and discovery in individual actions that are based on an identical set of facts.

27. This proposed class action does not present any unique management difficulties.

**FIRST CAUSE OF ACTION  
VIOLATIONS OF INDIANA’S DECEPTIVE CONSUMER SALES ACT**

28. Plaintiff incorporates the preceding paragraphs of this Complaint as if fully set forth below.

29. The purposes and policies of the Indiana Deceptive Consumer Sales Act (the “DCSA” or the “Act”), Indiana Code § 24-5-0.5-1 to -12, are to:

- (1) simplify, clarify, and modernize the law governing deceptive and unconscionable consumer sales practices;
- (2) protect consumers from suppliers who commit deceptive and unconscionable consumer sales practices; and
- (3) encourage the development of fair consumer sales practice.

Ind. Code § 24-5-0.5-1(b).

30. The Indiana General Assembly has instructed courts to construe the DCSA liberally to promote these purposes and policies. Ind. Code § 24-5-0.5-1(a).

31. Apple is a “supplier” as defined in the DCSA because it is a seller or other person who regularly engages in or solicits consumer transactions, which are defined to include sales of personal property, services, and intangibles that are primarily for a personal, familial, or household purpose, such as those at issue in this action. Ind. Code § 24-5-0.5-2(1), (3).

32. The DCSA provides that “[a] supplier may not commit an unfair, abusive, or deceptive act, omission, or practice in connection with a consumer transaction. Such an act, omission, or practice by a supplier is a violation of [the DCSA] whether it occurs before, during, or after the transaction. An act, omission, or practice prohibited by this section includes both implicit and explicit misrepresentations.” Ind. Code § 24-5-0.5-3(a).

33. Apple committed deceptive acts as described above, including but not limited to surreptitiously affecting the performance of the Legacy Devices after purchase.

34. Apple’s violations were willful and were done as part of a scheme, artifice, or device with intent to defraud or mislead, and therefore are incurable deceptive acts under the DCSA. The violations were formulated and carried out by Apple as part of a business model focused on driving sales of newer model iPhones and other products.

35. The DCSA provides that “[a] person relying upon an uncured or incurable deceptive act may bring an action for the damages actually suffered as a consumer as a result of the deceptive act or five hundred dollars (\$500), whichever is greater. The court may increase damages for a willful deceptive act in an amount that does not exceed the greater of: (1) three (3) times the actual damages of the consumer suffering the loss; or (2) one thousand (\$1,000). Ind. Code § 24-5-0.5-4(a)

36. The DCSA provides that “[a]ny person who is entitled to bring an action under subsection (a) on the person’s own behalf against a supplier for

damages for a deceptive act may bring a class action against such supplier on behalf of any class of persons of which that person is a member . . . .” Ind. Code § 24-5-0.5-4(b).

**SECOND CAUSE OF ACTION  
TRESPASS TO CHATTELS**

37. Plaintiff incorporates the preceding paragraphs of this Complaint as if fully set forth below.

38. State common law prohibits the intentional intermeddling with personal property in the possession of another, without consent, that results in either the impairment of the condition, quality, or value of the personal property or the deprivation of use of the personal property for a substantial time.

39. Defendant impaired the condition, quality and usefulness of the Plaintiff’s and Class Members’ Legacy Devices, or parts of them, without their knowledge or consent. Such acts constituted an intentional interference with the use and enjoyment of the devices.

40. Defendant acted intentionally, because it knew that Plaintiff and Class Members were downloading computer software to their Legacy Devices that reduced the performance of the devices. Plaintiff and the other Class Members only consented to the installation of software that would improve performance, not diminish performance.

41. Defendant engaged in deception to gain access to the Legacy Devices and install the new computer software.

42. Plaintiff and other Class Members thus suffered actual damages as a result of Defendant's actions in an amount to be determined at trial.

**THIRD CAUSE OF ACTION  
BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**

43. Plaintiff incorporates the preceding paragraphs of this Complaint as if fully set forth below.

44. In every contract or agreement there is an implied promise of good faith and fair dealing under common law.

45. In dealings between Apple and its customers, Apple has power affecting the rights of its users.

46. Apple entered into a contract with Plaintiff and the Class at the time of purchase of each Legacy Device, and at the time of download of iOS 10.2.1 and later iOS versions.

47. Apple contractually promised in the iOS 10.2.1 update and later updates to "deliver the best experience for customers, which includes overall performance and prolonging the life of their devices."

48. Plaintiff did all, or substantially all, of the things that the contracts required him to do.

49. Despite its contractual promises to prolong the life of the devices, Apple instead purposefully took actions to reduce the life of the devices, and purposefully failed to notify customers that replacing the battery would restore performance that had been artificially throttled by iOS 10.2.1 and later updates to iOS.

50. Apple's actions were objectively unreasonable given Apple's promises.

51. Apple's conduct evaded the spirit of the bargain made between Apple and the Plaintiff.

52. As a result of Apple's misconduct and breach of its duty of good faith and fair dealing,

53. Plaintiff and the Class suffered damages. Plaintiff and the Class members did not receive the benefit of the bargain for which they contracted and for which they paid valuable consideration.

**FOURTH CAUSE OF ACTION  
BREACH OF IMPLIED CONTRACT**

54. Plaintiffs incorporate the substantive allegations contained in each and every paragraph of this Complaint.

55. Defendant solicited and invited Plaintiff and the members of the Class to buy new iPhones. Plaintiff and Class Members accepted Defendant's offers and bought iPhones from Defendant.

56. When Plaintiff and Class Members bought iPhones from Defendant, they paid for their iPhones. In so doing, Plaintiff and Class Members entered into implied contracts with Defendant to which Defendant agreed to not purposefully interfere with Plaintiff and Class Members' usage or speed of the device.

57. Each purchase made with Defendant by Plaintiffs and Class Members was made pursuant to the mutually agreed-upon implied contract with Defendant under which Defendant agreed to not purposefully interfere with Plaintiffs and Class Members' usage or value of their iPhones.

58. Plaintiffs and Class Members would not have bought iPhones from Defendant in the absence of the implied contract between them and Defendant.

59. Plaintiffs and Class Members fully performed their obligations under the implied contracts with Defendant.

60. Defendant breached the implied contracts it made with Plaintiff and Class Members by purposefully slowing down older iPhone models when new models come out and by failing to properly disclose that at the time of that the parties entered into an agreement.

61. As a direct and proximate result of Defendant's breaches of the implied contracts between Defendant and Plaintiff and Class Members, Plaintiff and Class Members sustained actual losses and damages as described in detail above.

### **REQUEST FOR RELIEF**

WHEREFORE, the Plaintiff, individually and on behalf of all others similarly situated, respectfully requests:

A. Certification of the Class requested above and appointment of the Plaintiff as the Class Representative and his counsel as Class Counsel;

B. An order and/or judgment enjoining Defendant from writing programs to throttle device performance without disclosure;

C. An order and/or judgment requiring Defendant to transparently notify customers when device performance can be restored by the installation of a new battery;

D. An order and/or judgment requiring Defendant to make restitution to Plaintiff of money that may have been acquired by means of Defendant's unfair practices;

E. An order and/or judgment awarding Plaintiff and the Class Members all statutory and/or punitive damages permitted by law;

F. An order granting reasonable attorneys' fees and costs, as well as pre- and post-judgment interest at the maximum legal rate; and

G. Such other and further relief as the Court finds just and proper.

### **JURY DEMAND**

Plaintiffs, by counsel, demand trial by jury.

Dated: December 28, 2017

Respectfully submitted,

/s/ Richard E. Shevitz

Irwin B. Levin, No. 8786-49  
Richard E. Shevitz, No. 12007-49  
Vess A. Miller, No. 26495-53  
Lynn A. Toops, No. 26386-49A  
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***Counsel for the Plaintiff and  
Proposed Class***

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

PETER A. SCHROEDER, individually and on behalf of all others similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Irwin B. Levin, Richard E. Shevitz, Vess A. Miller, Lynn A. Toops Cohen & Malad, LLP, One Indiana Square, Suite 1400, Indianapolis, IN 46204; (317) 636-6481

DEFENDANTS

APPLE INC.

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

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

Attorneys (If Known)

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

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

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

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location. Includes categories like Citizen of This State, Citizen of Another State, and Foreign Nation.

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

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, BANKRUPTCY, 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)(2)
Brief description of cause: Violations relating to the deliberate throttling of iPhone Legacy Device performance through software updates

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 12/28/2017 SIGNATURE OF ATTORNEY OF RECORD /s/ Richard E. Shevitz

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.

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

UNITED STATES DISTRICT COURT

for the

Southern District of Indiana

PETER A. SCHROEDER, individually and on behalf of all others similarly situated,

Plaintiff(s)

v.

APPLE INC.,

Defendant(s)

Civil Action No. 1:17-cv-4750

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Apple Inc.
CT Corporation System
150 West Market Street, Suite 800
Indianapolis, IN 46204

A lawsuit has been filed against you.

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

Irwin B. Levin, Richard E. Shevitz, Vess A. Miller, Lynn A. Toops
COHEN & MALAD, LLP
One Indiana Square, Suite 1400
Indianapolis, Indiana 46204

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

CLERK OF COURT

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

Signature of Clerk or Deputy Clerk

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

Civil Action No. 1:17-cv-4750

**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: