

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

CASE No.: 0:18-cv-60128

ALEX SENS, individually and on behalf of all  
others similarly situated,

Plaintiff,

v.

APPLE, INC.,

Defendant.

**CLASS ACTION COMPLAINT AND  
DEMAND FOR JURY TRIAL**

Plaintiff Alex Sens (hereinafter, "Plaintiff"), individually and on behalf of the Classes defined below, allege the following against Apple, Inc. ("Apple") based upon personal knowledge with respect to himself and on information and belief derived from, among other things, investigation of counsel and review of public documents as to all other matters:

**NATURE OF THE ACTION**

1. Plaintiff brings this class action case against Apple for its failure to disclose that Apple has been purposely slowing down the processor of certain models of its iPhone and iPad devices ("Affected Devices") through its iOS 10 updates and iOS 11 updates (the "iOS updates") that were released on January 23, 2017 through December 13, 2017. On December 20, 2017,

Apple confirmed that the company had in fact been slowing the performance of these iPhone and iPad devices.

2. The following iPhone models support and are compatible with the iOS updates and have been affected by the iOS updates: iPhone 5, iPhone 5c, iPhone 5s, iPhone 6, iPhone 6 Plus, iPhone 6s, iPhone 6s Plus, iPhone SE, iPhone 7 and iPhone 7 Plus (“Affected iPhones”).

3. The following iPad models support and are compatible with the iOS updates and have been affected by the iOS updates: 12.9-inch iPad Pro (2<sup>nd</sup> generation), 12.9-inch iPad Pro (1<sup>st</sup> generation), 10.5-inch iPad Pro, 9.7-inch iPad Pro, iPad air 2, iPad Air, iPad (5<sup>th</sup> generation), iPad (4<sup>th</sup> generation), iPad mini 4, iPad mini 3, iPad mini 2 (“Affected iPads”).

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

5. Instead of enhancing the performance of the Affected devices through iOS updates which are compatible and supportive of the devices’ operating systems, as Apple had represented, Apple distributed iOS updates which significantly and negatively interfered with the Affected Devices performance, including the slowing of the Affected iPhones and Affected iPads to the point of significant lag time and/or interference of ordinary use. Moreover, by failing to disclose previously that it was intentionally slowing down performance of older devices to compensate for and protect devices from the damaging effects of battery degradation, Apple disregarded the rights of Plaintiff and members of the proposed classes in order to push people to upgrade their iPhones and iPads faster. In doing so, it also intentionally failed to inform class iPhone owners of better

ways to safely and efficiently use their phones with aging batteries, such as replacing the battery of an older iPhone

6. As a result of Defendant's wrongful actions, Plaintiff and members of the proposed class have been injured.

### **JURISDICTION AND VENUE**

7. This Court has subject matter jurisdiction over this action under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2). The amount in controversy exceeds \$5 million, exclusive of interest and costs. There are more than 100 putative class members. And, at least some members of the proposed Class have a different citizenship from Apple.

8. This Court has personal jurisdiction over Apple because Apple is incorporated under the laws of the State of California and is headquartered in Cupertino, California.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because Apple resides in this District and a substantial part of the events, acts, and omissions giving rise to Plaintiff's claims occurred in this District.

### **THE PARTIES**

#### **Plaintiff**

10. Plaintiff Alex Sens ("Plaintiff and/or Sens") is a resident of the State of Florida. Prior to purchasing his iPhone 7s, Sens owned and operated an iPhone 6s. Over time, Sens noticed significant slowdowns of the speed in the operation of his iPhone 6s as well as other operational issues that negatively affected the performance of his iPhone 6s after certain iOS updates were issued to his phone. Plaintiff dealt with iPhone randomly shutting off, freezing, automatically rebooting itself, slow performance, and a plethora of other issues. As a result of the diminished

performance of his iPhone 6s, Banks purchased the iPhone7. Presently, his iPhone 7 is experiencing the same slowdowns and operational issues that he experienced with his iPhone 6s.

**Defendant**

11. Defendant Apple is a corporation that was created under the laws of the State of California and has its principal place of business in Cupertino, California.

**STATEMENT OF FACTS**

12. Apple periodically releases iOS updates for their iPhones and iPads to the public. Following iOS updates to the Affected Devices, Plaintiff and the putative class members began to experience significant slowdowns with their iPhones and iPads, delayed responses to touch interactions and application (“Apps”) launches, and other performance problems.

13. In early 2017 Apple iPhone owners of the iPhone 5, 6, 6s, and 6s Plus and 7 devices complained to Apple that their phones were spontaneously shutting down, even though they had sufficient battery. This usually occurred when the user was using your phone for something that required a burst of power — like in the middle of a game, or when downloading an app. In order to fix this bug, Apple introduced an update to its operating system software, iOS 10.2.1. This update fixed the shutdown issue in some cases but also slowed those iPhones down significantly causing Plaintiff and members of the proposed class to experience issues such as delays in typing in messages and the lag in the loading of emails to name just a few.

14. In a Reddit post, in and around the second week in December, an iPhone user suggested that the iPhone battery might be to blame for the slowness problems. He stated the following:

My iPhone 6S has been very slow these past few weeks, and even after updating multiple times, it was still slow. Couldn't figure out why, but just thought that iOS 11 was still awful to me. Then I used my brother's iPhone 6 Plus and his was... faster than mine? This is when I knew something was wrong. So, I did some

research, and decided to replace my battery. Wear level was somewhere around 20% on my old battery. I did a Geekbench score, and found I was getting 1466 Single and 2512 Multi. This did not change whether I had low power mode on or off. After changing my battery, I did another test to check if it was just a placebo. Nope. 2526 Single and 4456 Multi. From what I can tell, Apple slows down phones when their battery gets too low, so you can still have a full days charge. This also means your phone might be very slow for no discernible reason. Check your Geekbench scores and see what you get if your phone is still slow!

15. Following this Reddit post, John Poole, founder of Primate Labs and Geekbench developer, analyzed data of approximately 100,000 phones with different iOS versions. He looked at the versions before Apple fixed the bug and at versions after Apple fixed the bug and discovered that the phone processors slowed down after the system update and that the problem was widespread and “likely to get worse as phones (and their batteries) continue to age.”

16. It took a viral Reddit post and an independent investigation by Poole for Apple to finally admit that Apple had intentionally slowed the performance of older iPhones stating the following on December 20, 2017:

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

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

17. In other words, Apple slowed down the processors in order to avoid overloading the batteries. While Apple’s battery explanation may be legitimate, Apple was anything but forthcoming about the slower speeds until December 20, 2017 and failed to disclose that this diminished performance could be remedied by replacing the battery in older iPhone and iPad models.

18. Apple purposefully concealed, fraudulently omitted and/or failed to warn or disclose to owners of the Affected Devices that their iOS updates were intended to limit the maximum performance of some system components when needed to prevent a shutdown due to their degraded batteries. In doing such, Apple failed to warn or disclose to owners of the Affected Devices that their iOS updates were designed to slow launch times for apps and inevitably create reductions in the iPhones and iPads' many areas of performance.

19. Apple purposefully concealed, fraudulently omitted and/or failed to warn or disclose to owners of the Affected Devices that their iOS updates would or could significantly and negatively interfere with the Affected Devices' performance and ordinary functions.

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

21. Apple also purposefully concealed, fraudulently omitted and/or failed to warn or disclose to owners of the Affected Devices that another contributor to the slowing of their phone performance is and/or was the continued chemical aging of their original and now degraded batteries, and that a battery replacement in older iPhone and iPad models could serve as a better remedy to the problem of phone shutdowns and degraded performance without the further slowing and interfering with performance that the iOS updates have caused.

22. Upon information and belief, Apple does not allow iPhone and iPad owners to revert their iOS updates, including the iOS 10 and iOS 11 updates, to previous, better functioning versions of iOS. However, Defendant does not warn the consumer that the update is irreversible.

23. Upon information and belief, Apple does not allow iPhone and iPad owners to revert their iOS updates, including the iOS 10 and iOS 11 Updates, to previous, better functioning versions of iOS. However, Defendant does not warn the consumer that the update is software.

24. Thus, following Apple's iOS updates, Plaintiff and owners of the Affected Devices are and/or were forced to either use a slowed and poor performing iPhone and iPad, or pay hundreds of dollars for a new iPhone and iPad.

25. Apple also purposefully concealed, fraudulently omitted and/or failed to disclose to owners of the Affected Devices the fact that a battery replacement – which cost approximately \$65-79 – would improve the performance of older iPhones and iPads in order to require consumers to purchase newer iPhone and iPad models after their Affected Devices had slowed and prevented their ordinary phone use.

26. Had Plaintiff and putative class members been informed by Apple that a simple battery replacement would have improved the performance of their iPhones and iPads, Plaintiff would have chosen to replace their batteries which was clearly a more cost-effective method rather than upgrading to a new iPhone or iPad that was extremely costly.

27. In addition, Apple has failed now and in the past to give any explanation as to why their older iPhones and iPads become a lot more sluggish after a new iPhone or iPad model comes out. Apple's admissions demonstrate that Apple's practice to get iPhone and iPad users to upgrade to a new iPhones and iPads.

28. Apple's wrongful actions directly and proximately caused the interference and loss of value to Plaintiff and members of the proposed class's Affected devices causing them to suffer economic harm as well as other harm for which they are entitled to compensation for, including replacement of old iPhone and iPad; loss of use; loss of value; purchase of new batteries;

ascertainable losses in the form of deprivation of the value of their iPhone and iPad; and overpayment of their iPhones and iPads in that Plaintiff and members of the proposed class did not get what they paid.

### **CLASS ALLEGATIONS**

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

All persons residing in the United States who (1) own or have owned an Affected Device model that is or was experiencing performance problems as a result of Apple's iOS updates or (2) have owned an Affected Device and have replaced them with a new device because they were experiencing performance problems as a result of Apple's iOS updates (the "Nationwide Class").

30. Pursuant to Fed. R. Civ. P. 23, and in the alternative to claims asserted on behalf of the Nationwide Class, Plaintiff asserts claims under the laws of Florida, and on behalf of similarly situated persons, defined as follows:

All persons residing in Florida who (1) own or have owned an Affected Device that is or was experiencing performance problems as a result of Apple's iOS updates or (2) have owned an Affected Device and have replaced them with a new device because they were experiencing performance problems as a result of Apple's iOS updates (the "Statewide Classes").

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

32. Plaintiff hereby reserves the right to amend or modify the class definition with greater specificity or division after having had an opportunity to conduct discovery.

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



34. Numerosity. Fed. R. Civ. P. 23(a)(1). Consistent with Rule 23(a)(1), the members of the Class are so numerous and geographically dispersed that the joinder of all members is impractical. While the exact number of Class members is unknown to Plaintiff at this time, Plaintiff believes the proposed Class comprises millions of members. Class members may be identified through objective means. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. mail, electronic mail, internet postings, and/or published notice.

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

- a. Whether Apple failed to disclose that its iOS updates caused slowdowns in older iPhone and iPad model's performance;
- b. Whether Apple interfered or otherwise lowered the use or value of older iPhone and iPad models; and
- c. Whether Apple's iOS modifications were implemented in order to profit from Plaintiff and other members of the proposed classes by inducing them to purchase new iPhones and iPads to replace their older iPhone and iPad models;
- d. Whether Apple is subject to liability for fraudulently concealing material facts from Plaintiff and other members of the proposed classes;
- e. Whether Apple's conduct constituted deceptive trade practices under state law;

- f. Whether Apple was unjustly enriched as a result of its fraudulent conduct, such that it would be inequitable for Apple to retain benefits conferred upon it by Plaintiff and other members of the proposed classes;
- g. Whether Plaintiff and the other members of the proposed classes were injured and suffered damages or other acceptable losses because of Apple's fraudulent behavior; and,
- h. Whether Plaintiff and other members of the proposed classes are entitled to relief.

36. Typicality. Fed. R. Civ. P. 23(a)(3). Consistent with Fed. R. Civ. P. 23(a)(3), Plaintiff's claims are typical of those of the other Class members. Plaintiff's damages and injuries are akin to the other Class members and Plaintiff seeks relief consistent with the relief of the Class.

37. Adequacy. Fed. R. Civ. P. 23(a)(4). Consistent with Fed. R. Civ. P. 23(a)(4), Plaintiff is an adequate representative of the Class because Plaintiff is a member of the Class and is committed to pursuing this matter against Apple to obtain relief for the Class. Plaintiff has no conflict of interest with the Class. Plaintiff's Counsel are competent and experienced in litigating class actions, including privacy litigation. Plaintiff intends to vigorously prosecute this case and will fairly and adequately protect the Class' interests.

38. Superiority. Fed. R. Civ. P. 23(b)(3). Consistent with Fed. R. Civ. P. 23(b)(3), a class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The quintessential purpose of the class action mechanism is to permit litigation against wrongdoers even when damages to individual plaintiffs may not be sufficient to justify individual litigation. Here, the damages suffered by Plaintiff and the other members of the Class are relatively small compared to the burden and expense required to individually litigate their claims against

Apple, and thus, individual litigation to redress Apple's wrongful conduct would be impracticable. Individual litigation by each Class member would also strain the court system. Individual litigation creates the potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties and provides the benefits of a single adjudication, economies of scale, and comprehensive supervision by a single court.

39. Injunctive and Declaratory Relief. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(2) and (c). Defendant, through its uniform conduct, has acted or refused to act on grounds generally applicable to the Class as a whole, making injunctive and declaratory relief appropriate to the Class as a whole.

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

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

## **COUNT I**

### **FRAUDULENT CONCEALMENT**

42. Plaintiff incorporates and re-alleges the allegations contained in the preceding paragraphs 1 through 41 as if fully set forth herein.

43. Prior to and at the time that Plaintiff and members of the proposed class decided to purchase an upgraded iPhone or iPad device, the Defendant knew and had full knowledge and

information that its iOS updates would slow down the performance of their older model iPhones and iPads that a simple battery replacement would improve the performance.

44. At all relevant times herein the Defendant, who had a duty to disclose the above information, intentionally concealed and/or failed to disclose the aforementioned material facts to the Plaintiff and members of the proposed class.

45. Plaintiff and members of the proposed class did in fact rely on the Defendant to disclose this information which the Plaintiff and members of the proposed classes were unaware of at the time of the purchase of their upgraded Affected Devices.

46. Had Defendant disclosed that their old iPhones could have easily been fixed with a replacement battery, Plaintiff and members of the proposed class would not have purchased new Affected Devices.

47. As a direct and proximate cause of the Defendant's material omissions, Plaintiff and members of the proposed class suffered ascertainable losses consisting of the purchase price of new Affected Devices.

WHEREFORE, Plaintiff and the other members of the Class are entitled to damages and injunctive relief, including costs of suit and reasonable attorneys' fees.

## **COUNT II**

### **BREACH OF IMPLIED CONTRACT**

48. Plaintiff incorporates and re-allege the allegations contained in the preceding paragraphs 1 through 41 as if fully set forth herein.

49. Plaintiff and members of the proposed class entered into implied contracts with Apple, when they purchased their Affected Devices, to which Apple agreed to not purposefully interfere with Plaintiff and members of the proposed class's usage or speed.

50. Plaintiff and members of the proposed class fully performed their obligations under the implied contracts with Apple.

51. Defendant breached the implied contracts it had made with the Plaintiff and members of the proposed class by purposefully slowing down older iPhone models and iPad models when new models came out and by failing to properly disclose that at the time the parties entered into an agreement.

52. The damages to Plaintiff and members of the proposed class as described herein were the direct and proximate result of the Defendants' breaches of these implied contracts.

WHEREFORE, Plaintiff and the other members of the Class are entitled to damages and injunctive relief, including costs of suit and reasonable attorneys' fees.

### **COUNT III**

#### **VIOLATION OF FLORIDA'S UNFAIR TRADE PRACTICES ACT, FLA. STAT. § 501.201, *ET SEQ.***

53. Plaintiff incorporates and re-alleges the allegations contained in paragraphs 1-41 as if fully set forth herein.

54. At all relevant times, the Plaintiff and the proposed Class Members were "consumers" within the meaning of FDUPTA.

55. Apple engaged in trade and commerce in Florida.

56. As alleged herein this Complaint, Apple engaged in unfair or deceptive acts or practices in the conduct of consumer transactions, in violation of the FDUTPA by failing to disclose that (a) it was purposefully slowing down the performance speed of older iPhone models and/or that (b) a battery replacement would improve the iPhone performance.

57. As a direct and proximate result of Apple's violation of the FDUTPA, the Florida Plaintiff and the other members of the Class suffered damages.

58. Plaintiff brings this action on behalf of themselves and the other similarly situated members of Florida for the relief requested above and for the public benefit in order to promote the public interests in the provision of truthful, fair information to allow consumers to make informed purchasing decisions and to protect Plaintiff and other members of the Florida Class and the public from Apple's unfair methods of competition and unfair, deceptive, fraudulent, unconscionable and unlawful practices. Apple's wrongful conduct as alleged in this Complaint has had widespread impact on the public at large.

59. The Plaintiff and other members of the class seek actual damages under Fla. Stat. § 501.211 (2) and all fees, costs, and expenses allowed by law, including attorney's fees and costs, pursuant to Federal Rule of Civil Procedure 23 and Fla. Stat. §§ 501.2105 and 501.211, to be proven at trial.

WHEREFORE, Plaintiff and the other members of the Class are entitled to damages and injunctive relief, including costs of suit and reasonable attorneys' fees

#### **REQUEST FOR RELIEF**

**WHEREFORE**, Plaintiff, individually and on behalf of all members of the proposed classes in this Complaint, respectfully requests that the Court enter judgment in their favor and against Apple as follows:

- A. For an Order certifying the Classes, as defined herein, and appointing Plaintiff and his Counsel to represent the Nationwide Class, or in the alternative the Statewide Classes;
- B. For an award of damages, as allowed by law in an amount to be determined;
- C. For an award of attorneys' fees costs and litigation expenses, as allowable by law;
- D. For prejudgment interest on all amounts awarded; and
- E. Such other and further relief as this court may deem just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury on all issues so triable.

**Dated: January 22, 2018**

/s/ Joshua H. Eggnatz

Joshua H. Eggnatz, Esq.

Fla. Bar No.: 0067926

Michael J. Pascucci

Fla. Bar No.: 83397

Steven Saul

Fla. Bar No.: 1002827

JEggnatz@JusticeEarned.com

MPascucci@JusticeEarned.com

SSaul@JusticeEarned.com

**EGGNATZ | PASCUCCI**

5400 S. University Drive, Ste. 417

Davie, FL 33328

Tel: (954) 889-3359

Fax: (954) 889-5913

*Attorneys for Plaintiff and the Class*

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 THE REVERSE OF THE FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

<b>I. (a) PLAINTIFFS</b> Alex Sens, Individually and on behalf of all others similarly situated  <b>(b)</b> County of Residence of First Listed Plaintiff <u>Broward County</u> (EXCEPT IN U.S. PLAINTIFF CASES)  <b>(c)</b> Attorney's (Firm Name, Address, and Telephone Number) Joshua H. Eggnatz, Eggnatz   Pascucci. 5400 S University Drive, Suite 417, Davie, FL, 33328; 954-889-3359	<b>DEFENDANTS</b> Apple, Inc.  County of Residence of First Listed Defendant <u>Santa Clara County</u> (IN U.S. PLAINTIFF CASES ONLY)  NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT LAND INVOLVED.  Attorneys (If Known)
--	---

(d) Check County Where Action Arose:  MIAMI-DADE  MONROE  BROWARD  PALM BEACH  MARTIN  ST. LUCIE  INDIAN RIVER  OKEECHOBEE HIGHLANDS

<b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)  <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only) <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;"><b>PTF</b></td> <td style="width:10%; text-align: center;"><b>DEF</b></td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td>Incorporated <i>or</i> Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td>Incorporated <i>and</i> Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>		<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>	Citizen of This State	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Incorporated <i>or</i> Principal Place of Business In This State	<input type="checkbox"/>	<input type="checkbox"/>	Citizen of Another State	<input type="checkbox"/>	<input type="checkbox"/>	Incorporated <i>and</i> Principal Place of Business In Another State	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Citizen or Subject of a Foreign Country	<input type="checkbox"/>	<input type="checkbox"/>	Foreign Nation	<input type="checkbox"/>	<input type="checkbox"/>
	<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>																				
Citizen of This State	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Incorporated <i>or</i> Principal Place of Business In This State	<input type="checkbox"/>	<input type="checkbox"/>																				
Citizen of Another State	<input type="checkbox"/>	<input type="checkbox"/>	Incorporated <i>and</i> Principal Place of Business In Another State	<input type="checkbox"/>	<input checked="" type="checkbox"/>																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/>	<input type="checkbox"/>	Foreign Nation	<input type="checkbox"/>	<input type="checkbox"/>																				

IV. NATURE OF SUIT (Place an "X" in One Box Only)					
<b>CONTRACT</b>	<b>TORTS</b>		<b>FORFEITURE/PENALTY</b>	<b>BANKRUPTCY</b>	<b>OTHER STATUTES</b>
<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 (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 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  <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 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 type="checkbox"/> 385 Property Damage Product Liability		<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <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"/> 840 Trademark  <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	<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"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice  <input type="checkbox"/> 950 Constitutionality of State Statutes
<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"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act  <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions		

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

1 Original Proceeding  
  2 Removed from State Court  
  3 Re-filed- (see VI below)  
  4 Reinstated or Reopened  
  5 Transferred from another district (specify)  
  6 Multidistrict Litigation  
  7 Appeal to District Judge from Magistrate Judgment

**VI. RELATED/RE-FILED CASE(S).**

a) Re-filed Case  YES  NO      b) Related Cases  YES  NO

(See instructions second page): JUDGE unassigned      DOCKET NUMBER 0:18-cv-60111-xxxx

**VII. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):

VIOLATION OF FLORIDAS DECEPTIVE AND UNFAIR TRADE PRACTICES ACT, et al.

LENGTH OF TRIAL via \_\_\_\_\_ days estimated (for both sides to try entire case)

**VIII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23      DEMAND \$ 5,000,001.00      CHECK YES only if demanded in complaint: JURY DEMAND:  Yes  No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD: Steven Saul      DATE: January 22, 2018

FOR OFFICE USE ONLY

AMOUNT \_\_\_\_\_ RECEIPT # \_\_\_\_\_ IFP \_\_\_\_\_



## 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)".

(d) Choose one County where Action Arose.

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.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; 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 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 clerks 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 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.

**Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.**

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. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Related/Refiled Cases.** This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

**VII. 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

**VIII. 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 dollar amount (in thousands of dollars) 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.

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



Civil Action No. 0:18-cv-60128

**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:

**Print**

**Save As...**

**Reset**