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12
 13
 14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

16 **NOAM LAZEBNIK, M.D.**, ON BEHALF
 17 OF HIMSELF AND ALL OTHERS
 SIMILARLY SITUATED

18
19 Plaintiff

20 vs.

21 **APPLE, INC.**

22
23 Defendant

) CASE NO.

) JUDGE

) **CLASS ACTION COMPLAINT**

) [Jury Demand Endorsed Hereon]

24
 25 Plaintiff Noam Lazebnik, M.D., through undersigned counsel, on behalf of himself
 26 and all consumers nationwide who are similarly situated, alleges the following based on
 27 personal knowledge as to allegations regarding the Plaintiff and on information and
 28 belief and the investigation of his attorneys as to other allegations.

INTRODUCTION

1
2 1. When a consumer buys a ticket to a football game, he does not have to
3 leave at halftime. When a consumer buys an opera ticket, he does not get kicked out at
4 intermission. When a consumer buys a “Season Pass” to a full season of a television
5 show on iTunes, that consumer should get access to the whole season.
6

7 2. Defendant Apple, Inc. (“Apple”) apparently disagrees. This case is about
8 Apple’s deceptive and unfair sales practices with regard to Season 5 of the popular
9 television program “Breaking Bad,” which is produced by AMC Networks, Inc., marketed
10 by AMC and Apple and sold through Apple’s iTunes platform.

11 3. From the time Season 5 of Breaking Bad was first announced, it was
12 referred to as the “Final Season” and was slated to include 16 episodes.
13

14 4. For example, AMC issued the following press release on May 12, 2012:

15 AMC announced today its summer programming slate, including the
16 highly anticipated premiere of the first part of *Breaking Bad's* final
17 season on Sun., Jul. 15 at 10/9c. The final season of the Emmy®
18 Award-winning and critically acclaimed drama, produced by Sony
Pictures Television, consists of 16 episodes, with the first eight
episodes beginning July 15th and culminating with the series’ final
eight episodes next summer 2013.

19 [http://blogs.amctv.com/breaking-bad/2012/05/season-5-premiere-
announced/](http://blogs.amctv.com/breaking-bad/2012/05/season-5-premiere-announced/)

20 5. In describing the current season, their website indicates that:

21 AMC's Emmy® Award-winning drama *Breaking Bad* returns to AMC
22 for its final eight episodes on Sun., Aug. 11 at 9/8c. **At the end of
23 the first half of Season 5**, Jesse (Aaron Paul) has abandoned the
meth business and parted ways with Walt, who claims to Skyler
24 (Anna Gunn) that he, too, is finished.

25 6. AMC, in presenting video clips and summaries from past and current
26 episodes on its website, continues to present the 8 episodes that aired in 2012 and the 8
27 episodes currently airing collectively as “Season 5.” (Ex. 1)
28

1 7. AMC’s website identifies and numbers the episodes currently airing on
2 AMC as Season 5, Episode 9 (509), Season 5, Episode 10 (510), etc. (Ex. 2)

3 8. Breaking Bad’s creators, writers and actors have consistently referred to
4 the final 16 episodes as “Season 5,” sometimes describing the two 8-episode runs as
5 “Part 1” and “Part 2” of Season 5, but never as two separate seasons. (Ex. 3)

6 9. On or around the time the first episode of Season 5 became available on
7 iTunes, Apple began selling a “Season Pass” for the program.

8 10. Customers would pay a one-time charge, in this case \$21.99 for high
9 definition (“HD”) and \$13.99 for standard definition (“SD”), and in exchange they were
10 promised: “[t]his Season Pass includes all current and future episodes of Breaking Bad,
11 Season 5.”
12

13 11. The iTunes informational page regarding the “Season Pass” option
14 explained (and still explains, as of the date of the filing of this Complaint) that
15 “[p]urchasing a Season Pass gets you **every episode in that season** and at a better
16 price than if you were to purchase it one at a time.” (Ex. 4) (emphasis added)
17

18 12. Therefore, customers who purchased a “Breaking Bad: Season 5” Season
19 Pass from iTunes reasonably believed that they would receive access to all 16 episodes
20 of Season 5, as announced and promoted by AMC, the network responsible for
21 producing and airing the program on “live” TV, just as Apple had promised.
22

23 13. However, when the second half of Season 5 started to air on AMC and
24 became available on iTunes in early August of 2013, iTunes customers who had
25 purchased a Season Pass did **not** have access to the new episodes.

26 14. Instead, Apple chose to treat the final 8 episodes – what AMC is calling the
27 second half of Season 5 – as a **different season**. (Ex. 5)
28

1 15. Apple deemed the new episodes a “Final Season” that it did not consider
2 part of Season 5, and expected individuals who had already purchased Season 5 to
3 pony up another \$22.99 or \$14.99 in order to access it.¹

4 16. Apple made this decision despite the fact that its customers who
5 purchased a Season Pass prior to the release of Episode 9 of Season 5 were
6 specifically informed in writing that they were paying for “all current and future” episodes
7 of Season 5.
8

9 17. In fact, up until the very point in time that Apple first made the final
10 8 episodes available, Apple was still evidently informing its customers who inquired that
11 “Season 5” would include all 16 episodes.²
12

13 ¹ This is one of several complaints regarding this practice currently posted on the product page for
14 Breaking Bad “The Final Season” on iTunes:

15 **Great Show/Shame on iTunes**

16 by Lambert of NC

17 It is too bad that BB will suffer from this poor delivery (unless this was their intention all
18 along.) This season was billed as “the end” long before it began last fall. They
19 announced it, and iTunes new [sic] that. Why would they go and split it in half with a
20 shady title like “the final season.” The first 8 episodes ARE part of the final season.
I bought a season pass and I feel completely betrayed. Again, it is too bad that Breaking
Bad was the vehicle of this train wreck.

21 <https://itunes.apple.com/us/tv-season/breaking-bad-the-final-season/id665386598>
22 Retrieved September 2, 2013

23 ² See the following, e.g., which is a response a customer received from iTunes customer service regarding
this issue in July of 2013 and posted to a discussion board on Apple’s website:

24 “Dear Don,

25 Welcome to iTunes Store Customer Support. My name is Bibin and I am glad to help you
26 today.

27 I understand that you would like to know more about a season pass you purchased.
I understand the issue and I am happy to provide you necessary information.

28 Don, as you have purchased season pass, whenever an episode aired, you will be
notified. **You do not have to purchase the remaining episodes again as well.**

1 18. Apple's behavior was deceptive, fraudulent and undertaken only to
2 maximize its revenue with regard to Season 5 of Breaking Bad, the most popular TV
3 program on iTunes, all at the expense of its customers.

4 **JURISDICTION AND VENUE**

5 19. This Court has original jurisdiction of this action under the Class Action
6 Fairness Act of 2005. Pursuant to 28 U.S.C. 1332(d)(2) and (6), this Court has original
7 jurisdiction because the aggregate claims of the putative Class members exceed
8 \$5 million, exclusive of interest and costs, and at least one of the members of the
9 proposed Class is a resident of a different state than the Defendant.

10 20. Venue is proper in the Northern District of California, pursuant to 28 U.S.C.
11 1391, because Apple is headquartered in this District, is subject to personal jurisdiction
12 here, and regularly conducts business here, and because a substantial part of the
13 events or omissions giving rise to the claims asserted herein occurred and continue to
14 occur in that District.

15 21. Further, the terms and conditions that govern the use of Apple's iTunes
16 service dictate that:

17 All transactions on the iTunes Service are governed by California
18 law, without giving effect to its conflict of law provisions. Your use
19 of the iTunes Service may also be subject to other laws. You

22 I hope that this will resolve your issue.

23 If you have any further questions, feel free to contact us and we will be happy to assist
24 you.

25 Have a nice day!

26 Sincerely,

27 Bibin
28 iTunes Store Customer Support"

<https://discussions.apple.com/thread/5184008?start=15&tstart=0>

Retrieved September 2, 2013.

1 expressly agree that exclusive jurisdiction for any claim or dispute
2 with Apple or relating in any way to your use of the iTunes Service
3 resides in the courts in the State of California.

4 **THE PARTIES**

5 22. The named Plaintiff is an Ohio resident

6 23. Defendant Apple, Inc., is a publicly-traded Delaware corporation.

7 24. Apple's principal place of business is in Cupertino, California.

8 **THE CONSUMER TRANSACTION BETWEEN PLAINTIFF AND APPLE**

9 25. On or about September 20, 2012, Plaintiff purchased a "Season Pass" for
10 Season 5 of Breaking Bad on Apple's iTunes service.

11 26. The purchase was made by Plaintiff, Dr. Noam Lazebnik.

12 27. The purchase was paid for using a credit card belonging to Plaintiff, but his
13 son-in-law, Jeremy Tor, actually completed the transaction, using his iTunes account.

14 28. Plaintiff and Mr. Tor were fans of the show and had watched the previous
15 four seasons.

16 29. When he purchased his "Season Pass," Plaintiff and Mr. Tor were pleased
17 that his purchase would include all "current and future" episodes of Season 5. Mr. Tor
18 saw and specifically relied upon Apple's promise that the "Season Pass" would include
19 all current and future episodes of Season 5.

20 30. Plaintiff and Mr. Tor understood, from AMC's announcement and
21 advertising and press reports based on AMC's announcement, that Season 5 would
22 constitute 16 episodes.

23 31. Prior to Plaintiff's purchase, Mr. Tor related to Plaintiff Apple's promise on
24 the iTunes site that the Season Pass would include all of Season 5.

1 32. The Plaintiff and Mr. Tor watched the first 8 episodes of Season 5 and
2 waited for the second half of the season to become available.

3 33. However, when the second half of Season 5 first started to air on AMC and
4 become available on iTunes, Plaintiff and Mr. Tor realized that the “future episodes” of
5 Season 5 Plaintiff had been promised and had paid for were not, in fact, being provided
6 to him.
7

8 34. Instead, Plaintiff realized he was being asked to pay anew for the second
9 8 episodes of Season 5, notwithstanding Apple’s clear representations that Plaintiff had
10 already purchased access to the full season.

11 35. Plaintiff and Mr. Tor purchased Episode 9 of Season 5 for \$2.99.

12 36. Mr. Tor later reached out to Apple and indicated that he felt Plaintiff had not
13 received what he had paid for and that Plaintiff should be given access to the second
14 half of Season 5.
15

16 37. Apple informed him that it considered the second half of Season 5 to be a
17 different season, which it refers to as the “Final Season,” and which it was then selling
18 on iTunes for an additional \$22.99.

19 38. Apple grudgingly refunded the \$2.99 Plaintiff had spent to purchase
20 Episode 9 of Season 5, but it told Mr. Tor that if Plaintiff wanted to watch the remaining
21 7 episodes, he would have to pay for them - again. (Ex. 5)
22

23 39. As such, Plaintiff was deprived of the benefit of the bargain he struck with
24 Apple and was unfairly deceived, misled and taken advantage of by Apple’s promise to
25 deliver something it never intended to provide.
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**THE CONSUMER TRANSACTIONS BETWEEN
THE PUTATIVE CLASS AND APPLE**

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3 40. Each member of the putative Class entered into a consumer transaction
4 with Apple identical to the one entered into by Plaintiff; that is, Class members
5 purchased Season 5 of Breaking Bad on iTunes at a time when Apple represented that a
6 purchase of Season 5 included all 16 episodes of Season 5.

7 41. For each Class member, Apple has breached that contract by refusing to
8 provide access to all 16 episodes of Season 5.

9 42. In each case, the putative Class member was induced to enter into the
10 transaction with Apple because of a material misrepresentation – specifically, that the
11 consumer was purchasing “all current and future episodes” of Season 5.³
12

13
14
15 ³ A few salient examples of complaints regarding this issue currently posted on a discussion board on
16 Apple’s website:

17 suspendedrain

18 Currently Being Moderated

19 **Re: Breaking Bad Season 5/Final Season**

20 Aug 12, 2013 3:16 PM (in response to Kevin Maness)

21 I agree. I too purchased season 5 with the understanding that it would contain the entire
22 5th season. I will never subscribe to programming before it is complete again. This is
23 very unethical... Very disappointing iTunes! You should stand by your descriptions... not
24 change them after the fact! 😞

25 insert_name_here somewhere

26 Currently Being Moderated

27 **Re: Breaking Bad Season 5/Final Season**

28 Aug 16, 2013 12:51 PM (in response to epruss)

 I'll say this one last time to apple. It's simple, you advertised season 5 (all episodes) and
 we bought it. If the content provider changed their minds you tell them it is too late or you
 honor the agreement you made to us and pay for it yourselves. If you made the mistake
 in your advertising than you pay for the mistake. 100% it wasn't our fault so we should not
 pay for it.

 Having said all that, I have no expectation of anything from Apple and I just won't buy
 through iTunes in the future.

1 43. In each case, Apple’s misrepresentation and failure to live up to its word
2 has harmed the putative Class members in a quantifiable amount.

3 44. All of Apple’s Breaking Bad Season 5 Season Pass advertisements during
4 the relevant Class Period contain a false representation and/or omit a material fact.

5 45. Apple intended for Plaintiff and Class members to rely upon and trust
6 Apple’s advertisements.
7

8 46. Plaintiff makes the following specific fraud allegations with as much
9 specificity as possible:

- 10 a. **Who:** Defendant Apple, Inc.
- 11 b. **What:** Apple expressly represented that the Season 5 Season Pass
12 entitled customers to all 16 episodes of Season 5 by stating, *inter alia*, that
13 “[p]urchasing a Season Pass gets you **every episode in that season** and
14 at a better price than if you were to purchase it one at a time.” (Ex. 4)
15 (emphasis added). Likewise, Apple never said that a Season 5 Season
16 Pass would only entitle consumers to half of Season 5.
- 17 c. **When:** Starting no later than August 2012.
- 18 d. **Where:** On Apple’s iTunes Store page for Season 5 of Breaking Bad,
19 available to all registered users of the iTunes service.
20
- 21 e. **How:** Apple has affirmatively misrepresented whether customers who
22 purchased the Season 5 Season Pass would be entitled to all 16 episodes
23 of the season.
24
- 25 f. **Why:** For the purpose of inducing Plaintiff and Class members to
26 purchase the Season 5 Season Pass.
27
28

CLASS CERTIFICATION IS APPROPRIATE

1
2 47. Plaintiff brings this lawsuit as a class action on behalf of himself and all
3 others similarly situated as a Class pursuant to Fed. R. Civ. P. 23(a), (b)(2), and/or
4 (b)(3), as described below.

5
6 48. This action satisfies the numerosity, commonality, typicality, adequacy,
7 predominance and superiority requirements of Fed. R. Civ. P. 23.

8 49. The Class is so numerous that the individual joinder of all its members, in
9 this or any action, is impracticable. The exact number or identification of Class members
10 is presently unknown to Plaintiff, but based on Apple's own representation that Breaking
11 Bad is the most popular television show downloaded via the iTunes service, it is likely to
12 number at least in the tens or hundreds of thousands, making joinder impractical. The
13 Class is composed of an easily ascertainable set of individuals who purchased the
14 Season Pass for Season 5 of Breaking Bad.
15

16 50. Common questions of fact and law that are capable of class-wide
17 resolution exist as to all Class members and predominate over questions affecting only
18 individual Class members. The answers to these common questions will advance this
19 litigation significantly. Common questions capable of generating common answers apt
20 to drive the resolution of the litigation include, but are not limited to, the following:
21

- 22 a. Whether Apple's advertising and marketing of the Season Pass to
23 Season 5 of Breaking Bad represented that customers would be
24 entitled to the entirety of Season 5;
- 25 b. Whether Apple's refusal to allow purchasers of the Season Pass for
26 Season 5 to access the 2013 episodes constitutes deception, fraud,
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1 false pretense, false promise, misrepresentation, or the
2 concealment, suppression, or omission of a material fact;

3 c. Whether Apple advertised the Season Pass for Season 5 with the
4 intent that others rely on the representation that customers would
5 be entitled to the entire 16-episode season; and

6
7 d. Whether Plaintiff and the Class are entitled to damages and/or
8 declaratory relief.

9 51. The answers to these questions will be the same for Plaintiff and Class
10 members, and will establish (or not establish) elements of Plaintiff's and Class members'
11 claims.

12 52. Plaintiff's claims are typical of the claims of other Class members, in that
13 Plaintiff, like all Class members, was sold a Season Pass for Season 5 of Breaking Bad
14 that Apple has not fully honored.

15
16 53. The factual bases of Apple's misconduct are common to all Class
17 members and represent a common thread of fraudulent misconduct resulting in injury to
18 all Class members. Plaintiff is asserting the same rights, making the same claims, and
19 seeking the same relief for him and all other Class members.

20
21 54. Plaintiff is an adequate representative of the Class because he is a Class
22 member and does not have interests that conflict with those of the other Class members
23 he seeks to represent. Plaintiff is represented by experienced counsel who have
24 litigated numerous class action lawsuits, including class actions involving consumer
25 claims similar to this one, and Plaintiff's counsel intend to prosecute this action
26 vigorously for the benefit of the entire Class. Plaintiff and Plaintiff's counsel can fairly
27 and adequately protect the interests of all Class members.
28

1 55. Class certification is also appropriate pursuant to Fed. R. Civ. P. 23(b)(2)
2 because Apple has acted and/or refused to act on grounds generally applicable to the
3 Class, making appropriate declaratory and injunctive relief with respect to Plaintiff and
4 the Class as a whole.

5 56. Class certification is also appropriate pursuant to Fed. R. Civ. P. 23(b)(3)
6 because common questions of fact and law predominate over any questions affecting
7 only individual members of the class, and because a class action is superior to other
8 available methods for the fair and efficient adjudication of this litigation. The Class
9 members have been damaged and are entitled to recovery as a result of Apple's refusal
10 to fully honor its Season Pass for Season 5 of Breaking Bad. Apple has computerized
11 customer data that will make calculation of damages for specific Class members
12 relatively simple.
13

14 57. A class action is the best available method for the efficient adjudication of
15 this litigation. It would be impracticable and undesirable for each member of the Class
16 who has suffered or may suffer harm to bring a separate action for these claims. In
17 addition, the commencement of separate actions would put a substantial and
18 unnecessary burden on the courts, while a single class action can determine the rights of
19 all Class members with judicial economy.
20

21 58. The Class should be defined as follows:
22

- 23 • **All persons who purchased Season 5 of Breaking Bad**
24 **through Apple's iTunes service on or before**
25 **approximately August 12, 2013, which is the last date**
26 **prior to when Episode 9 of that season became available**
27 **on iTunes.**

28 59. Excluded from the Class are (1) Apple, any entity in which Apple has a
controlling interest, and its legal representatives, officers, directors, employees, assigns

1 and successors; (2) the judge to whom this case is assigned and any member of the
2 judge's immediate family; and (3) claims for emotional distress.

3 60. Plaintiff reserves the right to modify the Class definition after discovery and
4 at any time up to and including trial.

5 61. The Class should be certified and each Class member should be
6 compensated in a manner that will put the Class member in the position the member
7 would have been in had Apple delivered the service it had promised.
8

9 **COUNT I: BREACH OF CONTRACT**
10 **(Individually And On Behalf Of The Class)**

11 62. Plaintiff incorporates by reference the preceding paragraphs.

12 63. Apple entered into a contract with the Plaintiff and each member of the
13 putative Class when Plaintiff and Class members purchased Season 5 of "Breaking Bad"
14 through Apple's iTunes service.

15 64. That contract provided that in exchange for a fixed sum, \$21.99 in the case
16 of the Plaintiff, Apple would provide the purchaser with access to "all future and current
17 episodes" of Season 5 of Breaking Bad.
18

19 65. "Season 5" of Breaking Bad consists of the 16 episodes airing over the
20 course of 2012 and 2013. It is so defined by the individuals writing, producing and airing
21 the program and has been advertised as such.

22 66. Prior to their purchase of the Season 5 Season Pass, Apple never
23 informed Plaintiff or Class members that when **Apple** referred to "Season 5," unlike the
24 producers, writers, and directors of the show and the network on which it airs, **it** meant
25 something other than all 16 episodes of Season 5.
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67. Thus, when Apple failed to make the final 8 episodes of Season 5 of Breaking Bad available to the Plaintiff and the putative Class, pursuant to the terms of the contract, Apple breached that contract.

68. Because the Plaintiff and each member of the putative Class were deprived the benefit of the bargain and either forced to pay an additional \$22.99 for those episodes or simply not allowed to view them, they were damaged by the breach.

WHEREFORE, Plaintiff and the Class demand judgment as follows:

- 1. Compensatory damages in an amount according to proof;
- 2. Prejudgment interest at the maximum rate permitted by applicable law; and
- 3. Such other relief as this Court deems just and proper.

COUNT II: VIOLATION OF THE CALIFORNIA CONSUMERS LEGAL REMEDIES ACT
(Individually And On Behalf Of The Class)

69. Plaintiff incorporates by reference the preceding paragraphs.

70. Pursuant to § 1770 of the California Consumers Legal Remedies Act:

(a) The following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful:

(5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation or connection which he or she does not have....

(9) Advertising goods or services with intent not to sell them as advertised....

(14) Representing that a transaction confers or involves rights, remedies or obligations which it does not have or involve, or which are prohibited by law....

71. The Plaintiff is a “consumer” as defined by California Civil Code § 1761(d).

1 72. Similarly, all members of the putative Class are U.S. residents and each is
2 a “consumer” as defined by California Civil Code § 1761(d).

3 73. Each putative Class member’s purchase of Season 5 of Breaking Bad from
4 Apple was a “transaction” as defined by California Civil Code § 1761.

5 74. Apple represented to the Plaintiff and the putative Class that the service
6 Plaintiff was purchasing – electronic access to Season 5 of Breaking Bad through the
7 Defendant’s iTunes service – contained a greater quantity of episodes (16) than were in
8 fact provided, in violation of § 1770(a)(5).

9 75. Apple represented to the Plaintiff and the putative Class that the service
10 Plaintiff was purchasing – electronic access to Season 5 of Breaking Bad through the
11 Defendant’s iTunes service – had a characteristic of being the complete Season 5 of
12 Breaking Bad when, in fact, it was not. This was done in violation of § 1770(a)(5).

13 76. Apple advertised that in exchange for a fixed fee, the Plaintiff and the
14 putative Class would receive “all current and future episodes” of Breaking Bad:
15 Season 5. Apple had no intention of providing those episodes. This was done in
16 violation of § 1770(a)(9).

17 77. Apple represented to the Plaintiff and the putative Class that it would have
18 the right to download all current and future episodes of Breaking Bad, Season 5. But
19 Apple never intended to grant Plaintiff the right to download all 16 episodes of Season 5,
20 in violation of § 1770(a)(14).

21 78. § 1781 of the California Consumers Legal Remedies Act indicates that:

22 (a) Any consumer entitled to bring an action under Section 1780
23 may, if the unlawful method, act, or practice has caused damage to
24 other consumers similarly situated, bring an action on behalf of
25 himself and such other consumers to recover damages or obtain
26 other relief as provided for in Section 1780. (b) The court shall
27 permit the suit to be maintained on behalf of all members of the
28 represented class if all of the following conditions exist:

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- (1) It is impracticable to bring all members of the class before the court.
- (2) The questions of law or fact common to the class are substantially similar and predominate over the questions affecting the individual members.
- (3) The claims or defenses of the representative plaintiff are typical of the claims or defenses of the class.
- (4) The representative plaintiff will fairly and adequately protect the interests of the class.

79. Thus, the General Assembly has specifically provided for class treatment of cases of this nature.

80. Plaintiff explicitly seeks only equitable relief under the California Consumers Legal Remedies Act.

WHEREFORE, Plaintiff and the Class demand judgment as follows:

- 1. A declaration that Apple’s sales practices as described herein are wrongful, unfair, unconscionable and in violation of California law;
- 2. Enjoining Apple from further use of misrepresentative descriptions and claims in the advertising in violation of California law;
- 3. Costs and disbursements assessed by Plaintiff in connection with this action, including reasonable attorneys’ fees, pursuant to applicable law; and
- 4. Such other relief as this Court deems just and proper.

COUNT III: VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION ACT
(On Behalf Of Plaintiff and on behalf of the Class)

- 81. Plaintiff incorporates by reference the preceding paragraphs.
- 82. Bus. & Prof. Code § 17200 states, in relevant part, that:

[U]nfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.

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83. Apple's acts, conduct and practices, as alleged herein, were unlawful in that Apple's conduct violated the Consumer Legal Remedies Act, California Civil Code §§ 1750, *et seq.*, as specified and alleged in Count II of this Complaint.

84. Apple's acts, conduct and practices, as alleged herein, were unfair in that Apple affirmatively misrepresented at all times to Plaintiff and Class members that a Season Pass to Season 5 of Breaking Bad would entitle the consumer to all 16 of the Season 5 episodes when, in fact, the 8 episodes aired in 2013 would be available only after purchasing a new Season Pass. This misrepresentation and/or omission offends established public policy and/or is immoral, unethical, oppressive, unscrupulous and/or substantially injurious to Plaintiff and Class members in that they were led to believe that the Season Pass for Season 5 of Breaking Bad had qualities and benefits that it does not have.

85. The injury to Plaintiff and Class members greatly outweighs any alleged countervailing benefit to consumers or competition under all of the circumstances, and served no purpose but to mislead the public and line Apple's pockets.

86. There were reasonably available alternatives to further Apple's legitimate business interests, other than the conduct described herein.

87. Apple's statements regarding the sale of Season 5 of Breaking Bad on its iTunes service were also fraudulent in that they deceived and/or likely to have deceived Plaintiff and Class members. Specifically, Apple intentionally and misleadingly advertised that the Season Pass for Season 5 of Breaking Bad would entitle customers to the entire 16-episode season, when that was not the case.

88. Because Apple has violated the unfair competition law, Bus. & Prof. Code §§ 17200, *et seq.*, an action under Bus. & Prof. Code § 17206 is proper and necessary

1 to prevent Apple from continuing to engage in deceptive advertising practices and
2 preying on consumers.

3 89. As a result of Apple’s unlawful, unfair and fraudulent business practices,
4 Plaintiff and Class members have suffered injury in fact and have lost money or property.
5 Pursuant to California Bus. and Prof. Code § 17203, Plaintiff and Class members are
6 therefore entitled to equitable relief, including restitution of all monies paid to and/or
7 received by Apple; disgorgement of all profits accruing to Apple because of its unfair and
8 improper business practices; a permanent injunction enjoining Apple from its unfair
9 business activities; and any other equitable relief the Court deems proper.
10

11 WHEREFORE, Plaintiff and the Class demand judgment as follows:

- 12 1. Declaration that Apple’s sales practices as described herein are
13 wrongful, unfair, unconscionable and in violation of California law;
- 14 2. Enjoining Apple from further use of misrepresentative descriptions
15 and claims in its advertising in violation of California law;
- 16 3. Restitution and disgorgement of profits;
- 17 4. Costs and disbursements assessed by Plaintiff in connection with
18 this action, including reasonable attorneys’ fees, pursuant to
19 applicable law; and
20
- 21 5. Such other relief as this Court deems just and proper.
22

23 **DAMAGES**

24 90. Plaintiff and each member of the putative Class – whether they ultimately
25 spent additional monies to purchase additional individual episodes (among Episodes 9-
26 16 of Season 5) or the entire second half of Season 5 or not – were deprived of services,
27
28

1 specifically access to Episodes 9-16 of Season 5, that Apple itself values between
2 \$14.99 and \$22.99, depending on format.

3 91. Plaintiff was denied access to the HD version of Episodes 9-16, despite
4 having paid for them, and was therefore damaged in the amount of \$22.99. However,
5 Plaintiff did receive a refund of \$2.99 from Apple, which appropriately reduces his right to
6 recover by that amount.
7

8 92. Plaintiff's damages are therefore \$20.

9 93. Each Class member's damages can be similarly calculated –
10 mathematically and from Apple's own records, by taking the cost of the episodes they
11 were or will be inappropriately denied access to and, where applicable, reducing that
12 amount by any related rebates they might have received.
13

14 **JURY DEMAND**

15 Now comes Plaintiff, by and through counsel, and hereby requests that the within
16 matter be tried by a jury of the maximum number allowed by law.

17 September 6, 2013

18 s/ Matthew R. Wilson
19 MATTHEW R. WILSON (CA Bar No. 290473)
20 MICHAEL J. BOYLE, JR. (CA Bar No. 258560)
21 **MEYER WILSON CO., LPA**
22 1320 Dublin Road, Suite 100
23 Columbus, OH 43215
24 (614) 224-6000
25 (614) 224-6066 (FAX)
26 *mwilson@meyerwilson.com*
27 *mboyle@meyerwilson.com*
28

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NICHOLAS DICELLO (OH Bar No. 075745)
(Pro Hac Vice To Be Filed)
DANIEL FRECH (OH Bar No. 0082737)
(Pro Hac Vice To Be Filed)
SPANGENBERG SHIBLEY & LIBER LLP
1001 Lakeside Avenue East, Suite 1700
Cleveland, OH 44114
(216) 696-3232
(216) 696-3924 (FAX)
ndicello@spanglaw.com
dfrech@spanglaw.com

Counsel for Plaintiff and the Proposed Class



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Season 1

- Pilot
- Cat's in the Bag...
- ...And the Bag's in the River
- Cancer Man
- Gray Matter
- Crazy Handful of Nothin'
- A No-Rough-Stuff-Type Deal
- Season 1 Recap

Season 2

- Seven Thirty-Seven
- Grilled
- Bit by a Dead Bee
- Down
- Breakage
- Peekaboo
- Negro Y Azul
- Better Call Saul
- 4 Days Out
- Over
- Mandala
- Phoenix
- ABQ
- Season 2 Recap

Season 3

- No Mas
- Caballo Sin Nombre
- I.F.T.
- Green Light
- Mas
- Sunset
- One Minute
- I See You
- Kafkaesque
- Fly
- Abiquiu
- Half Measures
- Full Measure
- Season 3 Recap

Season 4

- Box Cutter
- Thirty-Eight Snub
- Open House
- Bullet Points
- Shotgun
- Cornered
- Problem Dog
- Hermanos
- Bug
- Salud
- Crawl Space
- End Times
- Face Off
- Season 4 Recap

Season 5

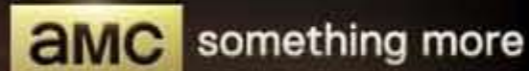
- Live Free or Die
- Madrigal
- Hazard Pay
- Fifty-One
- Dead Freight
- Buyout
- Say My Name
- Gliding Over All
- Blood Money
- Buried
- Confessions
- Rabid Dog
- To'hajiilee
- Season 5 Recap

EIGHT SEASON 5
2012 EPISODES

2013 ONGOING
EPISODES

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Season: 5 4 3 2 1

All Episodes All Types

sort by Recent

RJ Mitte and Betsy Brandt on Hank and Marie: Talking Bad
 Interview Season 5 Episode 12

Betsy Brandt and RJ Mitte answer a fan's question about Hank and Marie's relationship.

Episode 512 Bonus Video: Talking Bad
 Interview Season 5 Episode 12

Guests RJ Mitte and Betsy Brandt discuss Breaking Bad Episode 512: Rabid Dog with host Chris Hardwick.

Next on Breaking Bad: Episode 513
 Teaser Trailer Season 5 Episode 13

Don't miss the next episode of Breaking Bad. Sun Sept 8 at 9PM.

(SPOILERS) Inside Episode 512 Breaking Bad: Rabid Dog

Behind the Scenes Season 5 Episode 12
 Walt considers extreme measures to remove the threat of Jesse.

(SPOILERS) Making of Episode 512, Rabid Dog: Breaking Bad

Behind the Scenes Season 5 Episode 12
 See what went into filming the showdown scene in the Civic Plaza in downtown Albuquerque.

Talked About Scene Episode 512 Rabid Dog: Breaking Bad

Excerpt Season 5 Episode 12
 Hank stops Jesse from making a terrible move in an attempt to get back at Walt.

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- Breaking Bad
- Comic Book Men
- Freakshow
- Hell on Wheels
- Immortalized
- Low Winter Sun
- Mad Men
- Owner's Manual
- Showville
- Small Town Security
- Talking Dead
- The Killing
- The Pitch
- The Trivial Pursuits of Arthur Banks
- The Walking Dead

Bryan Cranston: 'Breaking Bad' will split final season

By Dave Karger | Updated on 4/8/13 | [Twitter](#) [Facebook](#)



VIDEO



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The question of whether AMC will indeed split the final season of *Breaking Bad* close to an official verdict. Emmy-winning series star Bryan Cranston says AMC will break the award-winning drama's final 16-episode season into two separate runs, as has been speculated for months. "We're splitting it," says Cranston, who's currently shooting the fifth season premiere in New Mexico. "We're going to shoot the first eight, then take a four-month production break, then the rest will air next year."

The network has not announced a premiere date for *Breaking Bad*, though actors on the show say the drama will return in July.

AMC and Sony Pictures TV have maintained radio silence on the show's return and distribution plan. A studio spokesperson says the four-month production hiatus is "one scenario" that's being considered. The network wants to divide the final season over a strong summer drama airing this year and the next; it would also presumably allow *Breaking Bad* to be eligible for two award-season cycles. With *Breaking Bad* production under way and summer right around the corner, obviously, the schedule should get firm'd up soon, though AMC has shown a willingness to engage in some production hanky-panky in the past.



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'Breaking Bad' Creator Vince Gilligan Unsure How Series Will End

By Kevin Yeoman




Like it or not, come the end of its fifth season, *Breaking Bad* will be no more. And while series creator Vince Gilligan is determined to bow out gracefully, he is, understandably, somewhat at odds with just how to wrap up Walter White's epic downward spiral.

Of course, ending such a beloved and critically acclaimed series comes with a notorious bag of challenges that frequently finds creatives at odds with the very audience that adores them. A fact Gilligan is all too aware.

"[It] keeps me awake at night. It gives me nightmares. The closer we get to the final episode, I assume the worse it'll be. But that's why we're ending after 16. You want to go out with fans of the show still being fans. The best we can do is be disciplined and honest in our storytelling, and not go for the bells and whistles. Let the chips fall where they may."





TOP GALLERIES

- Comic-Con Cosplay Babes Gallery
- Comic-Con Cosplay Gallery
- Comic-Con Experience Gallery

After some tense negotiations with AMC, Gilligan and Sony Pictures Television came to an agreement that would close the series out with a lengthened 16-episode fifth season. Through it all, there was the underlying belief that, whatever happened, *Breaking Bad's* finale was on the horizon – which makes Gilligan's disclosure that he still doesn't know the final details somewhat unexpected.

"Wish I did," Gilligan says. "I have certain hopes and dreams for how the characters will wind up, but I don't have anything nailed down plot-wise."

With luck, fans won't take that as an admission that Gilligan is entering this climactic season flying blind. Historically, *Breaking Bad* has put on a clinic of tight, concise storytelling, which has never lacked purpose or a sense of destination – so it stands to reason that, for Gilligan and the writers assembled around him, not having anything "nailed down" is still far more concrete than the finished scripts of other programs.

For example, over the course of four seasons, fans have watched Walter White (Bryan Cranston) emerge from the grip of a terminal illness as a progressively hardened and pitiless person, who, in his quest to leave his wife and children in comfort and wealth, has, ironically, robbed them of the man they knew and loved. And, after witnessing the depths to which Walter has sunk – especially in the season 4 finale – the question remains: how much further down can he go?



'Breaking Bad' creator Vince Gilligan and Aaron Paul

SPECIAL FEATURES



'Riddick' Interview: Katee Sackhoff



2013 Fall Movie Preview



Thor 2 Villain Poster (Malekith)



Interview: Todd McFarlane Talks 'Spawn' Reboot

MOST SHARED



Benedict Cumberbatch As A Sith?



Robocop



'Doctor Who' Season 8 Won't Premiere Until Fall 2014



True Blood Ending



Masterpiece
Downton Abbey, Season 3

Add Show to Favorites

Buy Season Pass \$19.99

Other seasons

Season Pass

Buying a Season Pass gets you all the episodes from season 3 and also lets you watch the full season at once. It's the best deal if you're watching the whole season before the season ends.

Complete My Season

Complete My Season will give you the complete 11th season of the show. The season has 11 episodes. It's available on DVD for \$19.99.

HD SD

Regular Price: \$19.99



From: **iTunes Store** <iTunesStoreSupport@apple.com>

Date: Wed, Aug 21, 2013 at 2:01 PM

Subject: Re: EL : (en_US) Purchases, Billing & Redemption; Follow-up: 285435976

To: jeremyaarontor@gmail.com, profetor@gmail.com

Dear Jeremy,

Mark here again. I can understand your frustration. However, as mentioned iTunes does not decided how to deliver these seasons, or to split up a season.

The studio decides how to have their content delivered.

However, After reviewing the circumstances of your case, we determined that issuing you a refund for your unintentional purchase of "Buried" is an appropriate exception to the iTunes store Terms and Conditions, which state that all sales are final. In seven to ten business days, a credit of 2.99 should be posted to the credit card that appears on the receipt for that purchase.

This is a one time exception and if you would like to receive the remaining episodes you will need to purchase them.

Thank you for being an important part of the Apple family.

Sincerely,

Mark

iTunes Store Support

<http://www.apple.com/support/itunes/ww/>

I meant to link this article, which expresses the same outrage I am feeling:

<http://www.smh.com.au/entertainment/tv-and-radio/breaking-bad-fans-repulsed-by-rotten-apple-deal-20130815-2rxx5.html>

On Wed, Aug 21, 2013 at 11:17 AM, iTunes Store <iTunesStoreSupport@apple.com>

> wrote:

> Dear Jeremy,

>

> Thanks for contacting iTunes Store support to let me know you need some

> help. I understand that you have purchased a season pass of season 5 of

> "Breaking Bad" and would like to be able to receive the remaining episodes.

> I can imagine you must be concerned. My name is Mark and I would be happy

> to provide some information today.

>

> The latest episodes are not part of season five, but rather a separate

> season, as AMC as labeled it, "The Final Season".

>
> The iTunes store provides the content as it is provided to us by the
> studio. As the studio has decided to deliver the remaining episodes as part
> of a different package, we cannot provide this to you free of charge. If
> you would like to have access to these episodes, you will need to purchase
> them.
>
> I would recommend contacting the studio to express any comments you have
> about how they have decided to release the remaining episodes.
>
> Thank you for your understanding.
>
> Sincerely,
>
> Mark
> iTunes Store Support
> <http://www.apple.com/support/itunes/ww/>
>
> First Name : Jeremy
> Last Name : Tor
> Email : Profetor@gmail.com
> Lang_Country : en_US
> Product : iTunes Store
> Support Subject : Purchases, Billing & Redemption
> Sub Issue : Refund
> GCRM Case ID : 495423302
> See additional info below
> Choose the iTunes Store or App Store for your country: United States
> Item title: Breaking Bad
> Order number:
> Details:
> I am requesting a refund for the Breaking Bad episode I purchased on
> August 19. This episode was included in the Season 5 pass I previously
> bought. But for some reason this was unavailable yesterday. I am therefore
> requesting a refund of the \$2.99 that I needlessly spent on the episode. I
> also want to ensure the remaining episodes of Breaking Bad Season 5 will be
> available to me.

JS 44 (Rev. 12/12)
Cand rev (1/15/13)

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.)

<p>I. (a) PLAINTIFFS Lazebnik, Noam, M.D., on behalf of himself and all others similarly situated.</p> <p>(b) County of Residence of First Listed Plaintiff <u>Cuyahoga (Ohio)</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) Meyer Wilson Co., LPA, 1320 Dublin Road, Suite 100, Columbus, OH 43215 (614) 224-6000 Spangenberg Shibley & Liber LLP, 1001 Lakeside Avenue East, Suite 1700, Cleveland, OH 44114 (216) 696-3232</p>	<p>DEFENDANTS Apple, Inc.</p> <p>County of Residence of First Listed Defendant <u>Santa Clara</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input checked="" type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td>PTF</td> <td>DEF</td> <td></td> <td>PTF</td> <td>DEF</td> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td><input type="checkbox"/> 4</td> <td><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input checked="" type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4	Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

<p>CONTRACT</p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans <i>(Excludes Veterans)</i></p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p>TORTS</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury - Medical Malpractice</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p>PERSONAL PROPERTY</p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p>FORFEITURE/PENALTY</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p>LABOR</p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Management Relations</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 751 Family and Medical Leave Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Employee Retirement Income Security Act</p> <p>IMMIGRATION</p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p>BANKRUPTCY</p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p>PROPERTY RIGHTS</p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p>SOCIAL SECURITY</p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p>FEDERAL TAX SUITS</p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>	<p>OTHER STATUTES</p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input checked="" type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>
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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

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

Brief description of cause:
Breach of contract, California Consumer Legal Remedies Act, and California Unfair Competition Act claims against Apple in connection with the sale via iTunes of the "Season Pass" of Season 5 of the TV show Breaking Bad.

VII. REQUESTED IN COMPLAINT:

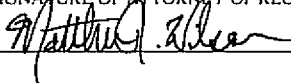
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ 5,000,000 or as determined via proof

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 L.R. 3-2)
(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA

DATE: September 6, 2013 SIGNATURE OF ATTORNEY OF RECORD: 

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 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.
 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. (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.
- 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.