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8
9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

11 RENDELL ROMAN, Individually)
12 And On Behalf of All Others) CASE NO.
13 Similarly Situated,)
14 Plaintiff,) **CLASS ACTION COMPLAINT**
15 v.)
16 APPLE, INC.,)
17 Defendant.) **DEMAND FOR JURY TRIAL**

18 Plaintiff, Rendell Roman (“Plaintiff” or “Roman”), individually and on behalf of all
19 others similarly situated, by and through his attorneys, alleges on personal knowledge as to all
20 facts related to himself and upon information and belief as to all other matters, as follows:

21 **PRELIMINARY STATEMENT**

22 1. This is a class action lawsuit brought by Plaintiff, and on behalf of a nationwide
23 class of individuals who purchased an Apple product that came equipped with the Apple
24 Lightning connector (“Lightning”) from Defendant, Apple, Inc. (“Apple” or “Defendant”). To
25 date, the Apple products that can be charged and connected to the computer exclusively by the
26 Lightning include: the iPhone 5, iPad (fourth generation), iPad Mini, iPod Nano (seventh
27 generation), and iPod Touch (fifth generation) (collectively “Apple devices”).

1 2. On September 12, 2012, Apple introduced Lightning as the new cable used to
2 charge and synchronize content for its new hardware devices, including the highly anticipated
3 iPhone 5, which sold in excess of five million units over the weekend following its launch.

4 3. In its official press release materials on September 12, 2012, Apple touted the new
5 Lightning cable as being “designed for today’s uses” and “smaller, smarter and more durable
6 than the previous connector.”

7 4. In Apple’s press release and advertising videos, the Lightning connectors were
8 shown to easily plug in and out of the iPhone device, without issues of deterioration, breakage, or
9 failure. These images and representations understandably and intentionally led consumers to
10 believe that one could use the Lightning cables repeatedly during normal use to plug and unplug
11 the cable in order to recharge or sync their Apple devices.

12 5. Based upon Apple’s representations, Plaintiff and members of the Class
13 purchased the new Apple devices with the Lightning connectors.

14 6. However, contrary to Apple’s representations, advertisements, and statements, the
15 Lightning is defective and is prone to fraying, breakage, deterioration, and failure, and does
16 substantially fray, break, deteriorate, and fail.

17 7. In particular, the Lightning end that plugs into the Apple device deteriorates,
18 externally and/or internally, to such a degree so as to make charging the Apple device completely
19 impossible, or possible only by positioning the cord in a specific manner, using electric tape, or
20 something similar, to hold the Lightning cable together, or other means to maintain the
21 connection and angle between the Lightning and the Apple device. The deterioration can and
22 does become so severe that the exposed wires of the eroded Lightning create a safety hazard.
23 These exposed wires have led to sparks and fires, endangering the health and safety of consumers
24 and the public.

25 8. To the best of Plaintiff’s knowledge and information, the failure occurs because of
26 the poor quality and manufacture of the Lightning connectors, regardless of the level of care
27 taken by consumers in using the Lightning.

28

1 9. This defect is common to all Lightning cables, even when consumers use and care
2 for the cable as recommended and intended by Apple.

3 10. The defect in the Lightning renders it unsuitable for its principal and intended
4 purpose; namely, being the exclusive means for synchronizing data for and charging the battery
5 of the associated Apple devices.

6 11. The consistent failure of the Lightning leaves consumers with useless, expensive
7 Apple devices, unless and until they purchase a replacement Lightning. Due to the Lightning's
8 proprietary nature, consumers are forced to purchase replacements directly from Apple, the sole
9 manufacturer of the Lightning, in order to recharge and continue using their Apple devices.

10 12. Apple, which has acknowledged the problem with the Lightning, responded to
11 users' complaints by denying coverage beyond the warranty period for the associated devices and
12 requiring them to purchase replacement cables from Apple.

13 13. In addition to the hundreds of dollars paid to purchase the Apple devices charged
14 by the Lightning Connector, Plaintiff and members of the Class paid either \$19 or \$29 for
15 replacement Lightning cables, expecting, in return, that Apple would provide fully functioning,
16 durable cables. Instead, Apple delivered an admittedly defective product that fails to adequately
17 perform its intended function, requiring Plaintiff and Class members to purchase multiple
18 replacement Lightning cables—oftentimes once every two or three months—in order to continue
19 using their Apple devices.

20 14. Apple's conduct violates, *inter alia*, California warranty laws.

21 15. Moreover, Apple possessed knowledge of the defect prior to distributing the
22 Lightning, in violation of California consumer protection laws. In 2012, Apple spent
23 approximately \$3.4 billion on research and development, recently stating that “focused
24 investments in research and development are critical to its future growth and competitive
25 position in the marketplace and are directly related to timely development of new and enhanced
26 products.” Prior to release, Apple undergoes stringent in-house testing of its hardware devices,
27 which would have revealed the Lightning's defect. In failing to disclose the defect at the same
28 time it was promoting the brilliant design and superior durability of the Lightning, Apple

1 committed fraud upon the millions of unsuspecting customers who purchased Apple products
2 chargeable only by the Lightning without any knowledge of the defect.

3 **JURISDICTION AND VENUE**

4 16. This Court has original jurisdiction of this action under the Class Action Fairness
5 Act of 2005. The amount-in-controversy exceeds the sum or value of \$5,000,000, exclusive of
6 interest and other costs, and there is minimal diversity because certain members of the class are
7 citizens of a different state than any defendant, as required by 28 U.S.C. § 1332(d)(2).

8 17. Venue is appropriate in this District pursuant to 28 U.S.C. § 1391(b) because
9 Apple's principal place of business is in Cupertino, California, and a substantial portion of the
10 events and conduct giving rise to the violations alleged in this Complaint occurred in this
11 District.

12 **INTRADISTRICT ASSIGNMENT**

13 18. Pursuant to Local Rules 3-2(c) and 3-5(b), this action should be assigned to the
14 San Jose Division of the Northern District of California because Apple resides in the County of
15 Santa Clara and, upon information and belief, a substantial part of the acts, events, or omissions
16 giving rise to Plaintiff's claims were performed in Santa Clara County.

17 **THE PARTIES**

18 19. Plaintiff, a resident and citizen of the City of Escondido, San Diego County, in the
19 State of California, purchased an iPhone 5 with the Lightning in or around October 2012.
20 Plaintiff's Declaration pursuant to Cal. Civ. Code §1780(c) is attached hereto as Exhibit "A."

21 20. Apple is a California corporation that is licensed to, and is doing business in
22 California and throughout the United States. Apple is a citizen of the State of California, with its
23 principal place of business located in Cupertino, California. At all relevant times, Apple
24 designed, manufactured, promoted, marketed, distributed, and/or sold the Lightning with its
25 Apple devices throughout the United States and California.

1 26. Specifically, the end that connects to the Apple device becomes damaged, frayed,
2 and/or deteriorated within a few months during the course of its normal and intended use,
3 eventually rendering the cable unable to continue charging or syncing the device. Thereafter,
4 users are required to purchase costly replacement Lightning cables directly from Apple in order
5 to continue using their Apple devices.

6 27. To further boost its sales of the proprietary Lightning, Apple has embedded
7 authentication chips in official Apple-manufactured Lightning cables to make it difficult for
8 third-party manufacturers to produce unofficial Lightning cables and accessories. Moreover,
9 Apple's new operating system for its devices, iOS 7, released on September 18, 2013, works in
10 conjunction with the authentication chip to block all unauthorized, third-party Lightning cables
11 from charging the Apple devices.

12 28. In order to continue using Apple devices that already cost consumers several
13 hundreds of dollars, consumers must pay either \$19 or \$29 to replace their defective Lightning
14 cables, only to have the replacement cables break again within a few months. Consumers often
15 have to purchase multiple Lightning cables to ensure the continued use of their Apple devices.
16 One consumer reported going through 12 Lightning cables in less than a year.

17 29. Many consumers have complained of the Lightning's tendency to break during
18 normal use on various Internet forums, including Apple's official online support communities.
19 One consumer noted, "With all the cellphones I've had in the past, I've never had a problem
20 where the charger cord starts to break away where you could see the wires. This is the worst
21 charger ever! I don't mishandle it but just from daily wear it weakens (SO easily) and you have to
22 wiggle the cord so that the phone will recognize it...I've taped it now and still not working
23 properly...ridiculous. Apple needs to make a better charger that will last more than a year. . . ."
24 (Somi L from Forest Hills, Oct 6, 2013). Another consumer complained, "I have now gone
25 through 3 cables since getting the phone in February. That's a little over 2 months of use for a
26 cable. I don't mistreat my stuff or pull the cables out by the cable instead of the plug I don't twist
27 them or tie them up. I don't do stuff with the phone plugged in. The only movement is picking
28 up and putting the phone down while plugging and unplugging. And these cables just start

1 fraying on the lightning side.” (Paul S from Seffner, Sep 12, 2013). One consumer experienced
2 a more severe incident and warned, “Beware these are very dangerous, picked up my charging
3 phone in my car and was shocked by exposed wires [of my iPhone 5 cable]. I then began
4 checking mine and my husbands other iphone 5 cables to realized that they are all breaking in the
5 same exact spot. Not worth \$19.99 Apple needs to recall these cables and introduce a new
6 reinforced design. NOT HAPPY!” (Kasey B from Baytown, Sep 6, 2013), *See, e.g.*,
7 <http://store.apple.com/us/reviews/MD818ZM/A/lightning-to-usb-cable?page=1>;
8 <https://discussions.apple.com>. Several videos of the Lightning’s failure to charge Apple devices
9 have also been posted on YouTube. *See, e.g.*, <http://www.youtube.com/watch?v=qj64ToNygSE>;
10 <http://www.youtube.com/watch?v=VLFMDohdwRo> (showing sparks flying out of the Lightning
11 end of the cable).

12 30. The issue is so pervasive that there have also been YouTube videos on how to
13 prevent the Lightning from breaking. *See, e.g.*, www.youtube.com/watch?v=VMsy-xSbPNI
14 (using the spring from a ballpoint pen to reinforce the Lightning cable).

15 31. The defect in the Lightning cable affects every unit, including units that have yet
16 to be shipped to their purchasers.

17 32. To this day, Apple has not corrected or recalled the faulty Lightning cables, and
18 consumers continue to experience problems with the Lightning, which they must replace at
19 significant out-of-pocket cost to them.

20 **Plaintiff’s Experience**

21 33. In or around October 2012, Roman purchased a new iPhone 5 equipped with the
22 Lightning from an AT&T store in Escondido, California. He purchased the phone as an upgrade
23 for \$199, plus taxes and activation fees.

24 34. At all pertinent times, Roman has maintained and used the Lightning as
25 recommended and intended by Apple. Although Roman has used the Lightning normally, the
26 cable began to deteriorate and fail. However, because of the defect described herein, Roman has
27 been unable to properly charge or sync his Apple device.

28

1 35. In or around July 2013, Roman began experiencing problems using the Lightning
2 cable to charge his iPhone. He noticed that his phone had the same amount of battery remaining,
3 despite being plugged in for several hours to a working outlet via the Lightning cable.

4 36. Roman's Lightning cable deteriorated to the point that he has to tape the end that
5 plugs into the iPhone with electrical tape. However, Roman continues to experience faulty
6 charges such that his phone does not fully charge or the Lightning connector disconnects from
7 the phone's connection port, despite being left undisturbed.

8 37. On October 5, 2013, Roman contacted Apple via telephone and requested a
9 replacement Lightning cable. He was informed that his one-year warranty on his iPhone 5
10 (which also covers its accessories) expired ten days prior, and, thus, he would have to incur out-
11 of-pocket expenses to purchase a new Lightning cable from Apple.

12 **Class Members' Experiences**

13 38. As set forth above, Plaintiff's experience mirrors those of numerous other users of
14 Apple's Lightning cable. The Internet is replete with references to the common and profound
15 problems that consumers have experienced with the Lightning as a result of its defective
16 manufacture. The problem with the Lightning is both significant and widespread. Consumers
17 have made the following representative complaints about the Lightning:

- 18 • iphone5 charger wire
19 Written by Eva Louise T from Tamworth - Sep 16, 2013

20 Apple seriously need to address this issue!!!! while charging my phone last nite I
21 lay on my bed reading only to turn round to see smoke coming from the charger
22 and an orange glow which made it hot to the touch!!! I have three small children
23 in my house what if I hadn't noticed? or even fallen asleep the consequences to
24 which do not even bare thinking of!!!! whilst I am in general appreciation of the
25 iphon5 itself having had them since there release I am disgusted at the poor
26 quality the new style of wire has brought to the product.

- 27 • iPhone 5 lightening charging cable.. HORRIBLE
28 Written by Tina R from Margate - Sep 22, 2013

29 I've had my iPhone 5 since Dec 2012. It was replaced in March. When they also
30 gave me a new lightning cable bcs the one I used for under 4 months was twisted
31 and frayed and did not charge properly. (Although other things were wrong as
32 well which is why the phone was replaced) since then. I've been thru 12 cables.
33 Original apple cables. Which last about 3 months. It's ridiculous. I've turned to
34 my mophie as my only dependable way of charging whether at home or on the go.
35 I've thought about using the adapter the small lightning adapter that can be

1 plugged into a micro USB cable and can charge the phone that way. Has anyone
 2 used this adapter and found it to be more helpful. Bcs micro USB cables are much
 3 more reliable.. So my next trial and error test probably will be that. But for a
 4 product like apple.. I'm very surprised by the lack of quality to some of the
 5 accessories primarily the cable for my iPhone 5. It's had me so frustrated. Over
 6 and over again, the cables only last so long. Now I'm down to the last one. Which
 7 as of today. Only charges from a certain angle and if it's moved. It stops charging.
 8 Infuriating!!

- 9 • 4 broken cables
 10 Written by Michael W from Maple Grove - Sep 23, 2013

11 This cable is the worst thing that has ever been made by Apple!

12 The cables become worthless in Months. I have had 4 of them and all of them
 13 have gone bad. They start out by being finicky and then slowly downgrade until
 14 they just don't work at all. I have to admit that first one I treated the same way as
 15 my older 30 pin cables (which were nearly indestructible) pulling it out by the
 16 wire or just not being careful. But the remaining 3 cables I have treaded extremely
 17 gently and still no luck. I have no idea why Apple can't come out with a decent
 18 cable for their own devices. Everyone that asks about by Apple device I tell them
 19 everything was fine until Lightning came out and it's time for them to look at
 20 Non-Apple devices.

- 21 • WORST CHARGER EVER MADE
 22 Written by Amy R from Lansdowne - Aug 29, 2013

23 My family has 5 different Apple products that use the new lightening cable and
 24 after only 4 months, we are down to one. Each one has split, broken or just
 25 stopped working. We have bought several replacements and each break within
 26 weeks. They bend too easily and the heads pop off the cord too easily. You would
 27 think with a 500 dollar phone they would make something with better quality,
 28 built to last as long as the phone. Never had this problem with the old chargers.
 They need to upgrade or at least offer free trade ins with the broken chargers.
 Unfortunately, I am off, once again, to the Apple store to shell out another 20
 dollars on these awful chargers.

- 29 • Dangerous.
 30 Written by James R from Fargo - Aug 28, 2013

31 The original cord shocked me because it fell apart at the end. Being an electrician
 32 its nothing new to me but out of a consumer product that kids can get their hands
 33 on it made me a wee bit enraged. I deal with wire daily and I don't understand
 34 why apple uses such junk. Its not that hard apple! Listen to your loyal people!

35 <http://store.apple.com/us/reviews/MD818ZM/A/lightning-to-usb-cable?page=0>.

- 36 • Has anyone else had any issues with their lightning connectors? I just bought an
 37 iPad 4 two weeks ago, and unfortunately the lightning connector broke off inside
 38 the iPad last night. I took it to the Apple Store, and they charged me \$300 for a
 replacement iPad.

It appears that the lightning connector is significantly more flimsy and fragile than
 the old wide connector. Please be careful! (smarkle, Feb 6, 2013 2:29 PM).

1 <https://discussions.apple.com/thread/4783147?start=0&tstart=0>.

- 2 • My snooze alarm went off this morning. As I reached to my night table to silent
3 my Harpsichord by touching the snooze button, a strong electronic burn smell
4 accompanied several dual vibes (the ones that happen when you plug your phone
5 in and its on vibrate mode) occurred. I jumped up from my bed to notice smoke
6 coming from the end of the cable just before the lightning connector! Is this a
7 known issue? This is the cord that came with the iPhone5 when I purchased it. I
8 noticed the second cord I purchased from Apple store two months later is
9 reinforced at that section. Was there a recall that no one mentioned? Thank God I
10 unplugged it before it damaged my phone or worse, set my bed on fire;
11 considering I usually put it under my pillow once I hit snooze. (KPW photo, Feb
12 6, 2013 8:50 AM).

13 <https://discussions.apple.com/thread/4782185?start=0&tstart=0>.

14 **CLASS ACTION ALLEGATIONS**

15 39. Plaintiff brings this action as a class action pursuant to Federal Rules of Civil
16 Procedure 23(a), 23(b)(2), and 23(b)(3) seeking injunctive and other relief on behalf of himself
17 and all others similarly situated members of the Class consisting of all persons who purchased an
18 Apple device with the Lightning and/or purchased the Lightning in the United States between
19 September 12, 2012 and the present.

20 40. Specifically excluded from the Class is Apple, its officers, directors, agents,
21 trustees, parents, children, corporations, trusts, representatives, employees, principals, servants,
22 partners, joint ventures, or entities controlled by Apple, and their heirs, successors, assigns, or
23 other persons or entities related to or affiliated with Apple and/or their officers and/or directors,
24 or any of them.

25 41. The members of the Class are so numerous that joinder of all members is
26 impracticable. Plaintiff is informed and believes, and on that basis alleges, that the proposed
27 Class currently contains well over two million members. Although the exact number of
28 members of the Class is unknown to Plaintiff at the present time, the precise number of Class
members is known by Apple and, thus, Class members may be ascertained and notified of the
pendency of this action by first class mail, electronic mail, and/or by published notice.

42. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff
and all members of the Class purchased Apple devices with the Lightning and have sustained
damages arising out of the same wrongful course of conduct.

1 43. Common questions of law and fact exist as to all members of the Class and
2 predominate over any questions solely affecting individual Class members. Among the questions
3 of law and fact common to the Class are:

- 4 a. Whether Defendant advertised and sold the Apple devices by promoting
5 the durability and superiority of the Lightning;
6 b. Whether the Lightning exhibits an inherent design defect resulting in
7 abnormal deterioration and eventual failure to charge or sync the Apple
8 device;
9 c. Whether Apple had a knowledge of this defect before advertising and
10 releasing the Lightning for sale along with the associated Apple devices;
11 d. Whether Apple made false and misleading representations about the
12 Lightning;
13 e. Whether Apple failed to disclose material facts about the frailty and
14 unreliability of the Lightning to consumers; and
15 f. Whether such a failure violates statutory and common law prohibitions
16 against such conduct, as detailed more fully below.

17 44. Plaintiff will fairly and adequately represent and protect the interests of the
18 members of the Class. Plaintiff has retained counsel highly experienced in complex consumer
19 class action litigation and intends to prosecute this action vigorously. Plaintiff is a member of
20 the Class and does not have interests antagonistic to, or in conflict with, the other members of the
21 Class.

22 45. A class action is superior to all other available methods for the fair and efficient
23 adjudication of this controversy since, among other things, joinder of all members of the Class is
24 impracticable. Furthermore, as the damages suffered by many individual Class members may be
25 relatively small, the expense and burden of individual litigation make it virtually impossible for
26 Class members individually to seek redress for the wrongful conduct alleged. Plaintiff does not
27 foresee any difficulty in the management of this litigation that would preclude its maintenance as
28 a class action.

1 46. The claims asserted herein are applicable to all individuals and entities throughout
2 the United States who purchased an Apple device equipped with the Lightning. The State of
3 California has sufficient state interest through a significant contact or aggregation of contacts to
4 the claims asserted by each member of the Class so that the choice of California law is not
5 arbitrary or unfair.

6 47. Certification of the Class under the laws of California is appropriate because:

- 7 a. Apple is a corporation conducting substantial business in and from
8 California;
- 9 b. Apple's principal place of business and corporate headquarters are located
10 in California;
- 11 c. Decisions regarding Apple's representations and omissions regarding the
12 Lightning were made in California;
- 13 d. Apple's marketing, promotional activities and literature, as well as its
14 warranties, are coordinated at, emanate from and/or are developed at its
15 California headquarters;
- 16 e. The statutory consumer protection claims asserted in this Complaint may
17 be appropriately brought on behalf of California and out-of-state Class
18 members; and
- 19 f. A significant number of Class members reside in the State of California.

20 48. Adequate notice can be given to Class members directly using information
21 maintained in Apple's records, or through notice by publication.

22 49. The Class may be certified pursuant to Rule 23(b)(2) of the Federal Rules of Civil
23 Procedure because Apple has acted on grounds generally applicable to the putative Class, thereby
24 making final injunctive relief and corresponding declaratory relief appropriate with respect to the
25 claims raised by the Class.

26 50. The Class may be certified pursuant to Rule 23(b)(3) of the Federal Rules of
27 Civil Procedure because questions of law and fact common to Class members will predominate
28 over questions affecting individual members, and a class action is superior to all other methods

1 for fairly and efficiently adjudicating the controversy and causes of action described in this
2 Complaint.

3 **FIRST CAUSE OF ACTION**
4 **(Violation of Consumers Legal Remedies Act –**
5 **California Civil Code § 1750, *et seq.*)**

6 51. Plaintiff incorporates by reference each and every preceding paragraph as though
7 fully set forth herein.

8 52. This cause of action is brought under the Consumers Legal Remedies Act,
9 California Civil Code § 1750, *et seq.* (“CLRA”). Plaintiff and the Class are consumers as
10 defined by California Civil Code § 1761(d), and the Lightning constitutes goods and services
11 within the meaning of the CLRA.

12 53. Defendant violated and continues to violate the CLRA by engaging in the
13 following deceptive practices proscribed by California Civil Code § 1770(a) in connection with
14 transactions intended to result in, and that did result in, the sale of the Apple devices with the
15 Lightning and/or the Lightning cables at issue herein to Plaintiff and members of the Class in
16 violation of, *inter alia*, the following provisions:

- 17 a. Representing the goods and services have characteristics, uses, or benefits
18 which they do not have (Cal. Civ. Code § 1770(a)(5));
- 19 b. Representing the goods and services are a particular standard, quality, or
20 grade if they are of another (Cal. Civ. Code § 1770(a)(7));
- 21 c. Advertising goods and services with the intent not to sell them as
22 advertised (Cal. Civ. Code § 1770(a)(9));
- 23 d. Representing a transaction involves rights, remedies, or obligations that it
24 does not have or involve (Cal. Civ. Code § 1770(a)(14)); and
- 25 e. Representing the goods and services have been supplied in accordance
26 with a previous representation when they have not (Cal. Civ. Code §
27 1770(a)(16)).

28 54. Plaintiff and other Class members, in purchasing and using the Lightning as
herein alleged, did reasonably act in response to Defendant’s above representations or would

1 have considered the omitted facts detailed herein material to their purchase decision. Plaintiff
2 and the Class have suffered damage by the wrongful acts and practices of Defendant that are in
3 violation of California Civil Code § 1781.

4 55. The representations regarding the Lightning were material to Plaintiff and
5 members of the Class. Defendant intended that Plaintiff and Class members would rely on these
6 representations and they did, in fact, rely on the representations.

7 56. Under Civil Code § 1782(a), Plaintiff provided the required 30-day notice, on
8 October 17, 2013, before filing the Complaint pursuant to Civil Code § 1782(d). Following
9 receipt of the notice, Apple refused to provide the requested remedies to the Classes.

10 57. Plaintiff is also entitled to recover actual or statutory compensatory/monetary
11 damages as authorized by Civil Code § 1780(a)(1) and Civil Code § 1781(a)(1), restitution as
12 applicable and authorized under Civil Code § 1780(a)(3), and punitive damages as authorized by
13 Civil Code § 1780(a)(4), which are appropriate in this case in light of Defendant's knowing,
14 intentional, malicious, fraudulent and unconscionable conduct; Defendant's reckless disregard of
15 its legal obligations to Plaintiff and the members of Class; and/or as otherwise recoverable under
16 Civil Code § 1780(a)(4).

17 58. Plaintiff and the members of Class also are entitled to recover attorneys' fees and
18 costs pursuant to Civil Code §§ 1780 and 1781.

19 **SECOND CAUSE OF ACTION**
20 **(False and Misleading Advertising in Violation of**
California Business and Professions Code § 17500, et seq.)

21 59. Plaintiff incorporates by reference each and every preceding paragraph as though
22 fully set forth herein.

23 60. Defendant's acts and practices as described herein have deceived and/or are likely
24 to deceive members of the Class and the public. Apple has spent millions of dollars to advertise,
25 including through its website and on the Internet, to call attention to, or give publicity to,
26 Lightning's improved durability and functionality. Apple uniformly advertises the Lightning
27 cable as being "designed for today's uses" and "smaller, smarter and more durable than the
28 previous connector." These representations are accompanied by images of the Lightning being

1 plugged and unplugged into various Apple devices without issue, despite the fact that it knew or
2 should have known of the poor quality and inability of the Lightning to endure normal use over a
3 prolonged period of time. In reality, the Lightning is not more durable than the previous 30-pin
4 charger cable because Plaintiff and Class members have experienced severe deterioration and
5 eventual failure of the Lightning, requiring consumers to incur out-of-pocket expenses to replace
6 the defective Lightning cables.

7 61. By its actions, Apple is disseminating uniform advertising concerning its products
8 and services, which by its nature is unfair, deceptive, untrue, or misleading within the meaning of
9 California Business & Professions Code § 17500, *et seq.* Such advertisements are likely to
10 deceive, and continue to deceive, the consuming public for the reasons detailed above.

11 62. The above-described false, misleading, and deceptive advertising Apple
12 disseminated continues to have the likelihood to deceive in that Apple has failed to disclose the
13 true and actual performance and durability of the Lightning. Apple has failed to initiate a public
14 information campaign to alert consumers of the Lightning's deficiencies, which continues to
15 create a misleading perception of the Lightning's performance and durability.

16 63. In making and disseminating the statements alleged herein, Apple should have
17 known its advertisements were untrue and misleading, in violation of California Business &
18 Professions Code § 17500, *et seq.* Plaintiff and the Class members based their decisions to
19 purchase Apple devices equipped with the Lightning in substantial part on Defendant's
20 misrepresentations and omitted material facts regarding the defect in the Lightning required for
21 the continued use of their Apple devices. The revenues to Apple attributable to products sold in
22 those false and misleading advertisements amount to millions of dollars for the Apple devices
23 equipped with the Lightning and/or the Lightning cables itself. Plaintiff and the Class were
24 injured in fact and lost money or property as a result.

25 64. Defendant intended for Plaintiff and Class members to rely on these
26 representations and omissions and Plaintiff and Class members consequently did rely on
27 Defendant's misrepresentations and omissions.
28

1 knowledge is Apple's need to replace thousands of cables under warranty, as well as the
2 additional sales of the Lightning since its release in September 2012.

3 72. The acts and practices of Apple are an unlawful business act or practice because
4 they violate, *inter alia*, California Civil Code §§ 1668, 1709, 1710, and 1750 *et seq.*, California
5 Commercial Code § 2313, and California Business and Professions Code § 17560.

6 73. As discussed above, Plaintiff and the members of the Class purchased Apple
7 devices and/or Lightning cables directly from Apple and/or their authorized agents. Plaintiff and
8 members of the Class were injured in fact and lost money or property as a result of such acts of
9 unfair competition.

10 74. The injuries suffered by Plaintiff and Class members are greatly outweighed by
11 any potential countervailing benefit to consumers or to competition. Nor are they injuries that
12 Plaintiff and Class members should have or could have reasonably avoided.

13 75. Apple received the funds paid by Plaintiff and the members of the Class. Apple
14 profited enormously by misrepresenting the durability of the Lightning and not disclosing
15 material problems and quality of the Lightning. Apple's revenues attributable thereto are thus
16 directly traceable to the millions of dollars paid out by Plaintiff and the Class for the Apple
17 devices and replacement Lightning cables.

18 76. Unless Apple is enjoined from continuing to engage in the unlawful, unfair, and
19 fraudulent business acts and practices as described herein, Plaintiff and the Class will continue to
20 be injured by Apple's conduct.

21 77. Apple, through its acts of unfair competition, has acquired money from Class
22 members. Plaintiff and the Class request this Court to enjoin Apple from continuing to violate
23 California Business and Professions Code § 17200, *et seq.*

24 78. The unlawful, unfair, and fraudulent conduct described herein is ongoing and
25 continues to this date. Plaintiff and the Class, therefore, are entitled to relief described below as
26 appropriate for this cause of action.

27

28

FOURTH CAUSE OF ACTION
(Violations of Magnuson-Moss Warranty Act –
15 U.S.C. §§ 2301-2312)

1
2
3 79. Plaintiff incorporates by reference each and every preceding paragraph as though
4 fully set forth herein.

5 80. This cause of action is brought under the Magnuson-Moss Warranty Act, 15
6 U.S.C. §§ 2301-2312 (“MMWA”).

7 81. The Lightning cables are “consumer products” as defined by 15 U.S.C. § 2301(1).

8 82. At all relevant times, Plaintiff and Class members are “consumers” as defined by
9 15 U.S.C. § 2301(3).

10 83. At all relevant times, Apple is a “supplier” as defined by 15 U.S.C. § 2301(4).

11 84. At all relevant times, Apple is a “warrantor” as defined by 15 U.S.C. § 2301(5).

12 85. Apple provided Plaintiff and Class members with “implied warranties” as defined
13 by 15 U.S.C. § 2301(7).

14 86. Apple’s implied warranty of merchantability accompanied the sale of the Apple
15 devices equipped with the Lightning cables to Plaintiff and Class members.

16 87. Apple is a merchant with respect to the sale of the Apple Lightning cables that
17 came with the select Apple devices sold in 2012 onwards.

18 88. Apple provided Plaintiff and the Class members with an implied warranty that the
19 Lightning cables were merchantable and fit for the ordinary purpose for which they were sold.

20 89. The Lightning cables are not fit for their ordinary purpose because, *inter alia*, the
21 Lightning is defective and prone to substantial breakage and failure, and has substantially broken
22 and failed, and there is currently no fix for the defective Lightning cables.

23 90. The alleged defects are so basic that they render the Lightning unfit for the
24 ordinary purpose for which they are sold and used. In some cases, the defects are so severe that
25 the resulting exposed wires of deteriorated Lightning cables pose a serious safety hazard.

26 91. Apple knew, or had reason to know, that Plaintiff and Class members purchased
27 the Lightning cables to reliably recharge and sync data for their Apple devices, so that the Apple
28 devices retain their use and functionality, under conditions of normal handling of the cables.

1 devices, and entered into agreements with Apple or its agents and received uniform warranties in
2 connection with the purchase of such devices.

3 101. The Lightning cannot perform its ordinary and represented purpose because the
4 Lightning does not provide consistent power to recharge the associated Apple devices during
5 typical and intended use and handling of the cable.

6 102. When Defendant placed the Lightning into the stream of commerce, it knew,
7 reasonably should have known, or was obligated to understand that the intended and ordinary
8 purpose of the Lightning is to recharge and sync data for Apple devices.

9 103. Plaintiff and the Class purchased their Apple devices with the reasonable
10 expectation that they would be able to continue using those devices by recharging with the
11 included Lightning cables without the need to purchase multiple replacement Lightning cables.
12 The advertisements Defendant disseminated constitute a warranty that the Lightning would
13 operate as advertised during its useful life, upon which Plaintiff and the Class reasonably acted.

14 104. The Lightning is not fit for its warranted, advertised, ordinary, and intended
15 purpose of recharging and syncing Apple devices and is in fact defective, or would not pass
16 without objection in the trade or industry in terms of its poor quality and propensity to
17 deteriorate, fray, break, and fail to charge and sync the associated Apple devices. The defect has
18 manifested for Plaintiff and Class members as they cannot continue charging their Apple devices
19 using the Lightning cables supplied by Apple. The defect has also been so severe in some cases
20 that the exposed wires of the deteriorated cable poses serious safety hazards by causing sparks,
21 electric shocks, and fires.

22 105. Defendant's breach of warranty described above also constitutes a violation of
23 Cal. Civ. Code § 1792, *et seq.*

24 **SIXTH CAUSE OF ACTION**
25 **(Unjust Enrichment)**

26 106. Plaintiff incorporates by reference each and every preceding paragraph as though
27 fully set forth herein.
28

1 112. Plaintiff requests a judicial determination and declaration of the rights of Class
2 members, and the corresponding responsibilities of Defendant.

3 113. A judicial declaration is necessary and appropriate at this time under the
4 circumstances so the parties may ascertain their respective rights and duties.

5 114. Class members will be irreparably harmed unless the unlawful actions of the
6 Defendant are enjoined, because Apple will continue to advertise false and misleading statements
7 regarding the Lightning. To that end, Plaintiff requests an order compelling disclosures and/or
8 disclaimers on the outside of the Apple device boxes or advertising materials prior to making any
9 electronic device purchase. Absent injunctive relief, Defendant will continue to market,
10 distribute, and sell Apple devices and/or Lightning cables to the detriment of its customers.
11 Plaintiff has not previously asked for such injunctive relief from the Court.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff, on behalf of himself and on behalf of the members of the Class
14 defined herein, as applicable, prays for judgment and relief as follows as appropriate for the
15 above causes of action:

- 16 A. An order certifying this case as a class action and appointing Plaintiff and his
17 counsel to represent the Class;
- 18 B. A temporary, preliminary, and/or permanent order for injunctive relief enjoining
19 Defendant from pursuing the policies, acts, and practices complained of herein;
- 20 C. A temporary, preliminary, and/or permanent order for injunctive relief requiring
21 Defendant to undertake an informational campaign to inform members of the
22 general public as to the wrongfulness of Defendant's practices; and
- 23 D. Such other and further relief as the Court may deem necessary or appropriate.

24 **JURY DEMAND**

25 Plaintiff demands a trial by jury on all issues so triable.
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27
28

1 Dated: November 22, 2013

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By: 
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nfinkelman@sfmslaw.com

Attorneys for Plaintiff and
the Proposed Class

DECLARATION OF RENDELL ROMAN

I, Rendell Roman, declare under penalty of perjury as follows:

1. I make this declaration based upon my personal knowledge except as to those matters stated herein that are based upon information or belief, which I believe to be true.
2. I am an adult citizen of the State of California. I reside in the City of Escondido, San Diego County, California, and I am a named Plaintiff in this litigation.
3. I purchased a new iPhone 5 with the Apple Lightning connector in or around October 2012.
4. To the best of my knowledge, information, and belief, Defendant, Apple, Inc., is a California corporation with its principal place of business and executive offices located in Cupertino, Santa Clara County, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 20 day of November, 2013 at San Diego County, California.



Rendell Roman

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 RENDELL ROMAN, Individually And On Behalf of All Others Similarly Situated</p> <p>(b) County of Residence of First Listed Plaintiff <u>San Diego</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) Rose F. Luzon (SBN 221544) Shepherd, Finkelman, Miller & Shah, LLP 401 West A Street, Suite 2350, San Diego, CA, 92101, 619-235-2416</p>	<p>DEFENDANTS APPLE, INC.</p> <p>County of Residence of First Listed Defendant <u>Santa Clara</u> (IN U.S. PLAINTIFF CASES ONLY)</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 (Place an "X" in One Box Only)</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 (U.S. Government Not a Party)</p> <p><input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" 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 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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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																				

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<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 (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <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 <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p>PERSONAL INJURY</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input checked="" 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"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p style="text-align: center;">PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <p style="text-align: center;">LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <p style="text-align: center;">IMMIGRATION</p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 375 False Claims Act <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"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	FEDERAL TAX SUITS		
<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	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p>Habeas Corpus:</p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p>Other:</p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609		

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(d)

Brief description of cause:
Consumer class action for, inter alia, violations of state consumer laws, false advertising, breach of warranty

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ TBD CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 11/22/2013 SIGNATURE OF ATTORNEY OF RECORD

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