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6 Apple Inc.

7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 JERRY JACOBSON, individually, and
on behalf of all others similarly situated,

12 Plaintiff,

13 v.

14 APPLE INC., a California Corporation;
15 and DOES 1 - 50 inclusive,

16 Defendants.
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Case No. 2:15-cv-01099

(Los Angeles County Superior
Court Case No. BC572077)

**DEFENDANT APPLE INC.'S
NOTICE OF REMOVAL**

(28 U.S.C. §§ 1332, 1441, and 1453)

**TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA:**

PLEASE TAKE NOTICE that Defendant Apple Inc. (“Apple”) hereby files this Notice of Removal of the state action described below pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453. Removal is proper because this is a putative class action “brought in a State court of which the district courts of the United States have original jurisdiction.” 28 U.S.C. §§ 1441(a) & 1453(b). Specifically, this action satisfies the jurisdictional prerequisites under the Class Action Fairness Act (“CAFA”). Minimal diversity exists because Apple is a citizen of California and the putative class includes citizens of other states who purchased certain Apple devices. Additionally, the amount in controversy exceeds \$5,000,000. This Notice of Removal is timely because it has been filed within thirty days of the date Defendant received a copy of the complaint. *See* 28 U.S.C. § 1446(b). Thus, this Court has original jurisdiction over this action based upon diversity of citizenship. 28 U.S.C. § 1332(d)(2).

PROCEDURAL HISTORY AND TIMELINESS OF REMOVAL

1. On February 10, 2015, Plaintiff Jerry Jacobson (“Plaintiff”) commenced this action by filing a Class Action Complaint in the Superior Court of the State of California for Los Angeles County, captioned *Jacobson v. Apple, Inc., et al.*, No. BC572077 (“State Court Action”).

2. As of the date of this Notice of Removal, Apple has not yet been served in the State Court Action.

3. Pursuant to 28 U.S.C. § 1446(a), true and correct copies of all process, pleadings, and orders in the State Court Action, including the Complaint, are attached as **Exhibit A**.

4. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b). Here, although Apple has not yet been served, only three days have elapsed since the Complaint was filed in the State Court Action.

ALLEGATIONS IN THE COMPLAINT

5. Plaintiff purports to bring this action on behalf of all purchasers of Apple's iPhone, iPod or iPad devices (the "Devices") with 16 GB or less of storage and on which Apple's iOS 8 operating system (which was made available starting September 17, 2014) came pre-installed or was later installed as an upgrade. (Compl. ¶ 29.) Plaintiff does not limit the scope of this putative class to purchasers from California; instead, Plaintiff purports to represent "all persons or entities in the United States" who purchased the Devices and then upgraded to iOS 8 or who bought their device with iOS 8 pre-installed. (Compl. ¶ 29.)

6. Plaintiff alleges that Apple "employs false, deceptive and misleading practices in connection with marketing, selling, and distributing the Device[s]" because (according to Plaintiff) iOS 8 consumes more storage space on the Devices than customers "reasonabl[y] expect[]." (Compl. ¶ 10, 22–23).

7. On behalf of Plaintiff and the putative classes, the Complaint purports to state claims for (1) violations of the California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200 *et seq.*, (2) violations of the California False Advertising Law ("FAL"), Cal. Bus. & Prof. Code §§ 17500 *et seq.*, and (3) violations of the California Consumer Legal Remedies Act ("CLRA"), Cal. Civil Code § 1750, *et seq.* The Complaint seeks, *inter alia*, damages, restitution, disgorgement of profits, cost of suit, attorneys' fees, interest, and injunction. (Compl. ¶¶ 46, 58, 63, Prayer for Relief b–d.)

8. Apple disputes Plaintiff's allegations, believes the Complaint lacks merit, and denies that Plaintiff or the putative class members have been harmed in any way.

BASIS FOR REMOVAL

9. This action is within the original jurisdiction of this Court, and removal is therefore proper under the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1332(d), which grants district courts original jurisdiction over class

actions (1) involving a plaintiff class of 100 or more members; (2) in which the amount in controversy exceeds \$5,000,000 in the aggregate, exclusive of interests and costs; and (3) where any member of the class of plaintiffs is a citizen of a State different from any defendant. As set forth below, this action satisfies each of the requirements of Section 1332(d)(2) for original jurisdiction under CAFA. *See Lowdermilk v. U.S. Bank, N.A.*, 479 F.3d 994, 997 (9th Cir. 2007).

THE PLAINTIFF CLASS CONSISTS OF OVER 100 MEMBERS

10. Plaintiff's putative classes purport to include all customers "in the United States" who purchased an iPad, iPhone, or iPod and either (1) upgraded their Device to iOS 8 from a previous version of iOS or (2) purchased the Device with iOS 8 pre-installed. Although Plaintiff does not know "the exact size or identities of the proposed Classes," Plaintiff contends that "the Classes encompass at least tens of thousands of individuals." (Compl. ¶ 32.) Although Apple denies that any class exists here or that any class could be certified under Federal Rule of Civil Procedure 23, Plaintiff's allegations in the Complaint satisfy the 100 person requirement of CAFA. *See* 28 U.S.C. § 1332(d)(5)(B).

DIVERSITY OF CITIZENSHIP

11. Diversity of citizenship exists between Apple and the members of the putative class. Under CAFA, diversity of citizenship is satisfied where "any member of a class of plaintiffs is a citizen of a State different from any defendant." 28 U.S.C. § 1332(d)(2)(A).

12. Apple is a California corporation and Plaintiff alleges "its principal place of business [is] in Cupertino, California." (Compl. ¶ 6.) Based on this allegation, Apple is a citizen of California for diversity purposes. *See Hertz Corp. v. Friend*, 559 U.S. 77, 92–93 (2010).

13. Plaintiff purports to represent a nationwide class of all "persons or entities in the United States who purchased an iPhone, iPod or iPad with represented storage capacity of 16 GB or less" and who either purchased their

1 Devices with iOS 8 pre-installed or who later upgraded their Devices to use iOS 8.
 2 (Compl. ¶ 29.) The iPhone, iPad, and iPod are sold throughout the United States,
 3 including in states other than California. Accordingly, at least one putative class
 4 member is a citizen of a state different from the state of Apple's citizenship, thereby
 5 satisfying minimal diversity for purposes of CAFA jurisdiction. 28 U.S.C. §
 6 1332(d)(2)(A).

7 AMOUNT IN CONTROVERSY

8 14. Under CAFA, the claims of the individual class members are
 9 aggregated to determine if the amount in controversy exceeds the required "sum or
 10 value of \$5,000,000, exclusive of interest and costs." 28 U.S.C. §§ 1332(d)(2),
 11 (d)(6). Here, Plaintiff seeks damages "in the millions of dollars," restitution,
 12 disgorgement of profits, cost of suit, attorneys' fees, interest, and injunction.
 13 (Compl. ¶¶ 36, 46, 58, 63, Prayer for Relief b–d.) And as the Supreme Court
 14 recently made clear, Apple need not provide evidence that the amount in
 15 controversy exceeds the CAFA threshold. Instead, "a defendant's notice of
 16 removal need include only a plausible allegation that the amount in controversy
 17 exceeds the jurisdictional threshold." *Dart Cherokee Basin Operating Co. v.*
 18 *Owens*, 135 S. Ct. 547, 554 (2014).

19 15. Apple contends that the allegations in the Complaint are without merit
 20 and that neither Plaintiff nor the putative class members have suffered any injury
 21 whatsoever. Nevertheless, the amount in controversy satisfies CAFA's
 22 jurisdictional threshold. *See Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d
 23 1199, 1205 (E.D. Cal. 2008) ("The ultimate inquiry is what amount is put 'in
 24 controversy' by the plaintiff's complaint, not what a defendant will *actually* owe.").
 25 Plaintiff alleges that he and the putative class members suffered unspecified
 26 "damages," and seeks unspecified restitution because he and the putative class
 27 members "would not have purchased the Devices, or would have paid significantly
 28 less for them" (Compl. ¶¶ 46, 52, 58, 63, Prayer for Relief.)

16. Here, the amount in controversy easily meets the \$5 million threshold. Although retail prices can vary, the Devices at issue typically cost hundreds of dollars apiece. (See, e.g., <http://store.apple.com/us/buy-ipod/ipod-touch> (\$199 16GB iPod Touch); <http://store.apple.com/us/buy-ipad/ipad-air-2> (\$499 16 GB iPad Air 2).) And the Devices have been extremely popular—since February 11, 2011, Apple has sold far in excess of 5 million such Devices in the United States. Thus, while Apple disputes that it is liable to Plaintiff or any putative class member—or that Plaintiff or the putative class members suffered injury or incurred damages in any amount whatsoever—to the extent Plaintiff seeks to recover “damages, restitution, or disgorgement of profits” for every Device sold in the United States, the matter in controversy clearly exceeds \$5 million for purposes of satisfying the jurisdictional prerequisites of CAFA.¹

NO EXCEPTION TO CAFA APPLIES.

17. CAFA contains a number of exceptions which, where applicable, prevent the Court from exercising jurisdiction over a class action, even where that class action meets CAFA’s threshold requirements for diversity jurisdiction. It is Plaintiff’s burden—not Apple’s—to demonstrate that an exception applies. See *Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1023–24 (9th Cir. 2007) (requiring the party seeking remand to demonstrate the applicability of the ‘home state’ and ‘local controversy’ exceptions to CAFA); *Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1206 (E.D. Cal. 2008) (same).

18. Here, Plaintiff will be unable to demonstrate that either exception applies because California citizens do not comprise two-thirds of the putative

¹ Plaintiff also seeks an award of attorneys’ fees, (Compl. ¶ 46, Prayer for Relief,) which are included in the amount in controversy calculation. See *Mo. State Life Ins. Co. v. Jones*, 290 U.S. 199, 202 (1933); *Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005), *amended by* 2006 U.S. App. LEXIS 3376 (9th Cir. Feb. 13, 2006); *Sanchez v. Wal-Mart Stores, Inc.*, 2007 U.S. Dist. LEXIS 33746, at *5-6 (E.D. Cal. May 8, 2007).

1 nationwide class. Both the home state and the local controversy exception require
 2 that at least two-thirds of the putative class members be citizens of the same state as
 3 Apple. *See* 28 U.S.C. §1332(d)(4)(A) (local controversy), (d)(4)(B) (home state).
 4 Since the Devices were sold throughout the United States, this putative nationwide
 5 class is not primarily comprised of Californian citizens and no exception to CAFA
 6 jurisdiction applies.

7 VENUE

8 19. The Superior Court for the State of California, County of Los Angeles,
 9 is located within the Central District of California. 28 U.S.C. § 84(c). This Notice
 10 of Removal is therefore properly filed in this Court pursuant to 28 U.S.C.
 11 §§ 1441(a), 1446(a) and 1453(b).

12 NO JOINDER NECESSARY

13 20. Because there are no other named defendants in this action, no consent
 14 to removal is necessary. The Doe defendants have not yet been named or served.
 15 The consent of these unserved Doe defendants to this Notice of Removal is
 16 therefore not required. *See Soliman v. Phillip Morris, Inc.*, 311 F.3d 966, 971 (9th
 17 Cir. 2002); *Salveson v. Western States Bancard Ass'n*, 731 F.2d 1423, 1429 (9th
 18 Cir. 1984).

19 NOTICE

20 21. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is
 21 being filed with the Clerk of the Superior Court for the State of California for the
 22 County of Los Angeles and served upon counsel for Plaintiff. A copy of this
 23 Notice being filed in state court is attached hereto (without exhibits) as **Exhibit B**.

24 CONCLUSION

25 22. For all of the reasons stated above, this action is within the original
 26 jurisdiction of this Court pursuant to 28 U.S.C. § 1332(d). Accordingly, this action
 27 is removable pursuant to 28 U.S.C. § 1441(a) and § 1453.

28 23. This case is removed subject to and without waiver of any challenges

1 that Apple may have as to personal jurisdiction, proper venue, or any other claims
2 or defenses that may be available to Apple, all of which are expressly reserved.

3 24. Apple respectfully reserves the right to further amend or supplement
4 this Notice of Removal as may be appropriate.

5
6 WHEREFORE, Defendant Apple Inc. respectfully removes this action from
7 the Superior Court of the State of California, County of Los Angeles, to this
8 Honorable Court, pursuant to 28 U.S.C. §§ 1441 and 1446.

9 Dated: February 13, 2015

10 MATTHEW D. POWERS
11 O'MELVENY & MYERS LLP

12 By: Matthew D. Powers /MEB
13 Matthew D. Powers
14 Attorneys for Defendant
15 Apple Inc.
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6 Apple, Inc.

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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 JERRY JACOBSON, individually, and
on behalf of all others similarly situated,

12 Plaintiff,

13 v.

14 APPLE, INC., a California Corporation;
15 and DOES 1 - 50 inclusive,

16 Defendant.

Case No. 2:15-cv-01099

**DECLARATION OF MARK E.
BERGHAUSEN IN SUPPORT OF
NOTICE OF REMOVAL**

DECLARATION OF MARK E. BERGHAUSEN

I, Mark E. Berghausen, declare and state as follows:

1. I am an attorney licensed to practice in the State of California and a member in good standing of this Court. I am an associate at the law firm of O'Melveny & Myers LLP, counsel for the defendant Apple Inc. ("Apple") in this matter. I make this declaration in support of Apple's Notice of Removal. I have personal knowledge of the matters set forth in this declaration, and if called as a witness, I would testify competently to them.

2. The complaint in *Jacobson v. Apple, Inc.* (Los Angeles Sup. Ct. No. BC572077) was filed on February 10, 2015. A true and correct copy of that complaint and civil cover sheet are attached as **Exhibit A** to Apple's Notice of Removal, filed concurrently with this Declaration.

3. Concurrent with the filing of the Notice of Removal, Apple is filing a copy of the Notice of Removal with the Clerk of the Superior Court for the State of California for the County of Los Angeles and will serve a copy upon counsel for Plaintiff. A true and correct copy of the Notice being filed in state court is attached hereto (without exhibits) as **Exhibit B**.

I declare under penalty of perjury under the laws of the United States and the state of California that the foregoing is true and correct.

Executed this 13th day of February, 2015, at Menlo Park, California.

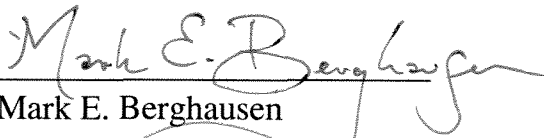

Mark E. Berghausen

EXHIBIT A

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 and all others similarly situated

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 91302

FILED
 Superior Court of California
 County Of Los Angeles

FEB 10 2015

Sherri K. [Signature] Executive Officer/Clerk
 By [Signature] Deputy
 Judi Lam

DEPT. 322
 WILLIAM F.
 H14130602

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

JERRY JACOBSON, individually, and on
 behalf of all others similarly situated,

Plaintiff,

v.

APPLE, INC., a California Corporation; and
 DOES 1 – 50 inclusive.

Defendant.

Case No. **BC 5 72 07 7**

CLASS ACTION COMPLAINT FOR:

1. VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW (§ 17200);
2. VIOLATIONS OF CALIFORNIA'S FALSE ADVERTISING LAW (§ 17500, et seq.);
3. VIOLATIONS OF CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT (§ 1750, et seq.)

DEMAND FOR JURY TRIAL

Plaintiff, Jerry Jacobson, individually and on behalf of all others similarly situated ("Plaintiff"), files this Class Action Complaint for Damages against Defendant, Apple, Inc. ("Defendant", "Apple" or "Defendant Apple"). Plaintiff alleges as follows, based upon personal knowledge and upon information and belief, based upon the investigation of his attorneys as to all other facts alleged:

CIT/CASE: BC572077
 LEA/DEF#:

RECEIPT #: CCH520872045
 DATE PAID: 02/10/15 01:56 PM
 PAYMENT: \$1,435.00
 RECEIVED: 310

\$1,435.00
 \$0.00
 \$0.00
 \$0.00
 \$0.00

Class Action Complaint

NATURE OF THE ACTION

1. This class action involves misrepresentations and omissions relating to the storage capacity of Apple's iOS 8 operating system. As set forth in greater detail below, the iOS 8 uses a deceptively, and unreasonably significant percentage of the storage capacity of 8 GB and 16 GB iPhones, iPads and iPods (the "Devices") which is and has been unanticipated by consumers.

2. Defendant fails to disclose to consumers that a significant percentage of the advertised storage capacity of the devices will be used by the iOS 8 and therefore by inaccessible for consumers when consumers purchase Devices that have the iOS 8 installed. Reasonable consumers, such as the Plaintiff, do not expect this material and significant discrepancy between the advertised level of storage capacity and the actual accessible capacity of the Devices, since the operating system and other storage space which is inaccessible to consumers occupies a material and significant percentage of their Devices' already limited storage capacity.

3. Further, after the Defendant provides materially less than the advertised capacity on the Devices, Defendant aggressively advertises to the same consumers a monthly storage system called iCloud which Defendant offers for additional payment to consumers. Using these pre-planned, intentional and knowing business tactics, Defendant gives less storage capacity than advertised, only to offer to sell that capacity at a time when Device users need the storage most: during compromised situations such as saving or recording important moments in time when there is no other alternative. After all, Defendant's business model relies on their Device users becoming dependent on their Devices for all manner of personal and business matters.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the entire action by virtue of the fact that this is a civil action wherein the matter in controversy, exclusive of interest and costs, exceeds the jurisdictional minimum of the Court. The acts and omissions complained of in this action took place, in whole or in part, in the State of California. Defendant's obligations and liabilities all arise in the State of California. Venue is proper because Plaintiff purchased the products in question in 2012 and 2013, within the venue of this Court. Defendant transacts business within

1 the County of Los Angeles and this Judicial District. Defendant resides in California and its
2 principle place of business and headquarters is in the State of California.

3 **PARTIES**

4 5. Plaintiff, Jerry Jacobson, at all times relevant hereto has been a resident of the
5 State of California, residing in Los Angeles County.

6 6. Defendant, Apple, Inc., is a California corporation with its principal place of
7 business in Cupertino, California. Apple regularly and systematically conducts business
8 throughout the State of California, including in Los Angeles.

9 **BACKGROUND**

10 7. The standard metric for storage capacity in computing and telecommunications
11 devices is a digital unit called a byte. A kilobyte ("KB") is one thousand bytes, a megabyte
12 ("MB") is one million bytes and a gigabyte ("GB") is one billion bytes. These "decimal"
13 definitions of KB, MB, and GB are recognized by the International System of Quantities
14 ("ISQ"). The ISQ is a measurement system jointly promulgated by the International
15 Organization for Standardization ("ISO") and the International Electrotechnical Commission
16 ("IEC").

17 8. In layman's terms, a gigabyte is approximately 1,000 megabytes. One gigabyte of
18 data is almost twice the amount of data that a CD-ROM can hold. One gigabyte could hold the
19 contents of about 10 yards of books on a shelf. One hundred gigabytes could hold the entire
20 library floor of academic journals.

21 9. Defendant advertises the Devices using the "GB" decimal definition of gigabyte.
22 Therefore the capacity of 8 GB Devices is advertised by Defendant as 8 billion bytes. The
23 storage capacity of 16 GB devices is advertised as 16 billion bytes.
24

25 10. In reality, the capacity of the Devices available to end users is far less than the
26 advertised capacity. The difference between advertised and actual accessible capacity is
27 significant, material, substantial and beyond any possible reasonable expectation of consumer.
28 The shortfall ranges from 18.1-23.1%.

11. What is more problematic is that Defendant advertises based upon the decimal-based system of measurement, meanwhile, upon information and belief, the Devices actually display the available capacity based upon the binary definitions.

12. The binary system is compared to the decimal system as follows:

Binary System	Decimal System
· 1 Bit = Binary Digit	· 1 Bit = Binary Digit
· 8 Bits = 1 Byte	· 8 Bits = 1 Byte
· 1024 Bytes = 1 Kilobyte	· 1000 Bytes = 1 Kilobyte
· 1024 Kilobytes = 1 Megabyte	· 1000 Kilobytes = 1 Megabyte
· 1024 Megabytes = 1 Gigabyte	· 1000 Megabytes = 1 Gigabyte

Exacerbating this confusion is the fact that rather than using the GiB representation, as suggested by the ISQ, the graphic interface used on the Devices uses the abbreviation GB, even though it is apparently referring to gibibytes and not gigabytes. The gibibyte is closely related to the gigabyte (GB), which is defined as 10^9 bytes = 1000000000 bytes, but has been used as a synonym for gibibyte in some contexts. One GiB \approx 1.074GB.

FACTUAL ALLEGATIONS –

13. Apple is in the business of, *inter alia*, manufacturing and marketing its line of “iPhone” cellular telephones, with the first model released on or about released on June 29, 2007. Apple currently markets and sells the iPhone 6 and 6+ introduced on or about September 9, 2014. Predecessor models include the iPhone 5S and 5C introduced on or about September 10, 2013, and the iPhone 4S introduced on or about October 10, 2011.

14. Apple also manufactures and markets a line of “iPad” tablet devices, first introduced on April 3, 2010. Apple also manufactures and markets a line of “iPod” audio players, first introduced on October 23, 2001. As noted above, 8 GB and 16 GB versions of the iPhones, iPods and iPads are collectively referred to herein as “the Devices.” Apple represents in its advertising that the iPhone 6 and 6+ are available with a hard drive capacity of 16 GB. Apple made similar representations with respect to earlier models of the iPhone, albeit with respect to lesser storage capacities of 8 GB, as well. Apple also makes, and has made at all times during

1 the relevant time period, representations concerning the storage capacities of its 8 GB and 16 GB
2 iPads and iPods.

3 15. In 2013, Plaintiff Jerry Jacobson purchased an iPhone 4 and an iPhone 5C
4 represented by Apple to have 16 gigabytes ("16GB") of purported storage capacity from the
5 Best Buy located in Woodland Hills, California. Plaintiff purchased devices primarily for
6 personal, family or household use. The iPhones were purchased with iOS installed.

7 16. In 2013, Plaintiff purchased two iPad "Minis" represented by Apple to have 16
8 gigabytes ("16GB") of purported storage capacity from the Best Buy located in Woodland Hills,
9 California. Plaintiff purchased devices primarily for personal, family or household use. The
10 iPhones were purchased with iOS installed.

11 17. In 2012, Plaintiff purchased an iPad "Mini" represented by Apple to have 8
12 gigabytes ("8GB") of purported storage capacity from the Best Buy located in Woodland Hills,
13 California. Plaintiff purchased devices primarily for personal, family or household use. The
14 iPhones were purchased with iOS installed.

15 18. Plaintiff purchased his Devices in reliance on Defendant's claims, on its website,
16 advertisements, product packaging, and other promotional materials, that the devices came
17 equipped with 16 GB of storage space. Plaintiff tried to upgraded to the new software, iOS 8,
18 with the belief that the upgrade would not substantially inhibit his available storage capacity.
19 Defendant did not disclose in conjunction with upgrades to iOS 8 the additional storage capacity
20 that would be consumed by the upgrade.

21 20. Defendant employs false, deceptive and misleading practices in connection with
22 marketing, selling, and distributing the Devices. For example, in its advertising, marketing, and
23 promotional materials, including Apple's Internet website, product packaging, and product
24 displays, Defendant presently misrepresents the iPhone 6 as having 16 GB of storage capacity.

25 21. Defendant knows, but conceals and fails to disclose in its advertising, marketing
26 or promotional materials, that the operating system and other pre-installed software consumes a
27 substantial portion of the represented storage capacity of each of the Devices. The represented
28 capacity, is not, therefore, storage space that the consumer can actually use to store files after

1 purchase. Thus, for a consumer who purchases a "16 GB" iPhone, iPad, or iPod with iOS 8 pre-
2 installed, or who upgrades to iOS 8, as much as 23.1% of the represented storage capacity is
3 inaccessible and unusable.

4 22. Apple's misrepresentations and omissions are deceptive and misleading because
5 they omit material facts that an average consumer would consider in deciding whether to
6 purchase its products, namely, that when using iOS 8, as much as 3.7 GB of the represented
7 storage capacity on a device represented to have 16 GB of storage capacity is, in fact, not
8 available to the purchaser for storage. For example, Apple misrepresents that an iPhone 6+ with
9 the base level of storage has 16 GB of storage space while concealing, omitting and failing to
10 disclose that, on models with iOS 8 pre-installed, in excess 20% of that space is not available
11 storage space that the purchaser can access and use to store his or her own files.

12 23. In addition to making material misrepresentations and omissions to prospective
13 purchasers of Devices with iOS 8 pre-installed, Apple also makes misrepresentations and
14 omissions to owners of Devices with predecessor operating systems. These misrepresentations
15 and omissions cause these consumers to "upgrade" their Devices from iOS 7 (or other operating
16 systems) to iOS 8. Apple fails to disclose that upgrading from iOS 7 to iOS 8 will cost a Device
17 user between 600 MB and 1.3 GB of storage space – a result that no consumer could reasonably
18 anticipate.

19 24. At present, Apple does not enable users who have upgraded to iOS 8 to revert
20 back to iOS 7 or another operating system.

21 25. The most popular storage option, for each of the Devices, is presently, and has
22 been at all times, the base level of storage, currently represented to be 8 or 16 GB depending on
23 the Device. At least a plurality (and perhaps a majority) of purchasers make the determination
24 that the storage afforded by the base model, which is priced lower than models with higher
25 storage capacity, will be sufficient for their purposes, based on Apple's representations as to the
26 Devices' storage capacities. The shortfall in actual storage capacity is most acute, and most
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1 material, on the base models, as the unexpected shortfall in storage will cause some purchasers to
 2 exhaust the Devices' storage capacities, and/or to do so earlier than expected.

3 26. Apple exploits the discrepancy between represented and available capacity for its
 4 own gain by offering to sell, and by selling, cloud storage capacity to purchasers whose internal
 5 storage capacity is at or near exhaustion. In fact, when the internal hard drive approaches "full,"
 6 a pop up ad opens up offering the purchaser the opportunity to purchase "iCloud" cloud storage.
 7 For this service, Apple charges prices ranging from \$0.99 to \$29.99 per month. It does not
 8 appear that Apple permits users of its devices to access cloud storage from other vendors, nor do
 9 any of the Devices permit the user to insert SD cards or other supplemental, non-Apple, storage
 10 units. Apple also does not permit users to freely transfer files between the Devices and a
 11 (notebook or desktop) PC using a "file manager" utility – an option available to most users of
 12 Android or Windows-based portable devices.

13 27. Plaintiff hereby bring this class action seeking redress for Defendant's unfair
 14 business practices, false or deceptive or misleading advertising, and violations of the Consumers
 15 Legal Remedies Act ("CLRA").

16 CLASS ACTION ALLEGATIONS

17 28. This action may properly be maintained as a class action pursuant to Code of
 18 Civil Procedure section 382.

19 29. Plaintiffs bring this action as a class action on behalf of themselves and the
 20 following classes ("the Classes"): (1) (a) an "iOS 8 Purchaser Class" consisting of all persons or
 21 entities in the United States who purchased an iPhone, iPod or iPad with represented storage
 22 capacity of 16 GB or less with iOS 8 pre-installed for purposes other than resale or distribution,
 23 and (b) an "iOS 8 Purchaser CLRA Subclass" consisting of all persons in the United States who
 24 purchased an iPhone, iPod or iPad with represented storage capacity of 16 GB or less with iOS 8
 25 pre-installed for personal, family or household use within the four years preceding the filing of
 26 this Complaint, (2)(a) an "Upgrade Class" consisting of all persons or entities in the United
 27 States who upgraded an iPhone, iPod or iPad with represented storage capacity of 16 GB or less
 28

1 to iOS 8, and (b) an "Upgrade CLRA Subclass" consisting of all persons or entities in the United
2 States who upgraded an iPhone, iPod or iPad used for personal, family or household use with
3 represented storage capacity of 16 GB or less to iOS 8.

4 30. Upon information and belief, the scope of these Class definitions, including their
5 purchase dates, may be further refined after discovery of Defendant's and/or third party records.

6 31. Excluded from the Classes are the Defendant, and all officers, directors,
7 employees, or agents of the Defendant.

8 32. The members of the Classes are so numerous that joinder of all members would
9 be impracticable. Plaintiffs do not know the exact size or identities of the proposed Classes,
10 since such information is in the exclusive control of Defendant. Plaintiffs, however, believe that
11 the Classes encompass at least tens of thousands of individuals.

12 33. There are common questions of law or fact, among others, including

- 13 a. The nature, scope and operations of the wrongful practices of
14 Apple;
15 b. Whether Defendant's advertising, marketing, product packaging,
16 and other promotional materials were untrue, misleading, or reasonably likely to
17 deceive;
18 c. Whether Defendant knew that its representations and/or omissions
19 regarding the Devices' storage capacity were false or misleading, but continued
20 to make them.
21 d. Whether Defendant's failure to disclose the amount of storage
22 space consumed by its operating system and other pre-installed software was a
23 material fact;
24 e. Whether, by the misconduct as set forth in this Complaint, Apple
25 engaged in unfair or unlawful business practices, pursuant to California
26 Business and Professions Code § 17200, *et seq.*;
27
28

1 f. Whether Defendant's conduct violated the California Consumer
2 Legal Remedies Act;

3 g. Whether Defendant's conduct violated the California Business and
4 Professions Code § 17500, *et seq.*;

5 h. Whether, as a result of Apple's misconduct as set forth in this
6 Complaint, Plaintiffs and the Classes are entitled to damages, restitution,
7 equitable relief and other relief, and the amount and nature of such relief; and

8 i. Whether Apple has acted on grounds generally applicable to the
9 Class, making injunctive relief appropriate.

10 34. Plaintiff's claims are typical of the members of the Classes because Plaintiff and
11 all members of the Classes were injured by the same wrongful practices of Apple as described in
12 this Complaint. Plaintiff's claims arise from the same practices and course of conduct that gives
13 rise to the claims of the Classes members, and are based on the same legal theories. Plaintiffs
14 have no interests that are contrary to or in conflict with those of the Classes he seeks to represent.

15 35. Plaintiff will fairly and adequately represent the interests of the members of the
16 Classes. Plaintiff's interests are the same as, and not in conflict with, the other members of the
17 Classes. Plaintiff's counsel is experienced in class action and complex litigation.

18 36. Questions of law or fact common to the members of the Classes predominate and
19 a class action is superior to other available methods for the fair and efficient adjudication of this
20 lawsuit, because individual litigation of the claims of all members of the Classes is economically
21 unfeasible and procedurally impracticable. While the aggregate damages sustained by Classes
22 members are likely to be in the millions of dollars, the individual damages incurred by each
23 Class member resulting from Apple's wrongful conduct are, as a general matter, too small to
24 warrant the expense of individual suits. The likelihood of individual members of the Classes
25 prosecuting separate claims is remote and, even if every Class member could afford individual
26 litigation, the court system would be unduly burdened by individual litigation of such cases.
27 Individualized litigation would also present the potential for varying, inconsistent, or
28 contradictory judgments and would magnify the delay and expense to all parties and to the court

1 system resulting from multiple trials of the same factual issues. Plaintiffs know of no difficulty
 2 to be encountered in the management of this action that would preclude its maintenance as a
 3 class action and certification of the Classes is proper.

4 37. Relief concerning Plaintiff's rights under the laws herein alleged and with respect
 5 to the Classes would be proper on the additional ground that Apple has acted or refused to act on
 6 grounds generally applicable to the Classes, thereby making appropriate final injunctive relief or
 7 corresponding declaratory relief with regard to members of each Class as a whole.

8 **FIRST CAUSE OF ACTION**

9 **Violations of California Unfair Competition Law ("UCL")**

10 **(Cal. Bus. & Prof. Code § 17200, *et seq.*)**

11 **(By Plaintiff and all Class Members against Defendant)**

12
 13 38. Plaintiffs repeat and reallege the allegations set forth above as if fully contained
 14 herein.

15 39. Plaintiff brings this cause of action individually and on behalf of the Classes.

16 40. Defendant has violated California Business and Professions Code § 17200 by
 17 engaging in unfair, unlawful, and fraudulent business acts or practices as described in this
 18 Complaint, including but not limited to, disseminating or causing to be disseminated from the
 19 State of California, unfair, deceptive, untrue, or misleading advertising as set forth above in this
 20 Complaint.

21 41. Defendant's practices are likely to deceive, and have deceived, members of the
 22 public.

23 42. Defendant knew, or should have known, that its misrepresentations, omissions,
 24 failure to disclosure and/or partial disclosures omit material facts and are likely to deceive a
 25 reasonable consumer.

26 43. Defendant continued to make such misrepresentations despite the fact it knew or
 27 should have known that its conduct was misleading and deceptive.
 28

1 44. By engaging in the above-described acts and practices, Defendant committed one
 2 or more acts of unfair competition within the meaning of Unfair Competition Law, Cal. Bus. &
 3 Prof. Code § 17200, *et seq.*

4 45. Plaintiff and all members of the Classes suffered injury in fact as a result of
 5 Defendant's unfair methods of competition. As a proximate result of Defendant's conduct,
 6 Plaintiff and members of the Classes were exposed to these misrepresentations and omissions,
 7 purchased a Device(s) in reliance on these misrepresentations, and suffered monetary loss as a
 8 result.

9 46. Plaintiffs, individually and on behalf of the Classes, seek an order of this Court
 10 against Defendant awarding restitution, disgorgement, injunctive relief and all other relief
 11 allowed under § 17200, *et seq.*, plus interest, attorneys' fees and costs.

12 **SECOND CAUSE OF ACTION**

13 **Violations of California False Advertising Law ("FAL")**

14 **(Cal. Bus. & Prof. Code § 17500, *et seq.*)**

15 **(By Plaintiff and all Class Members against Defendant)**

16 47. Plaintiff repeats and realleges the allegations set forth above as if fully contained herein.

17 48. Plaintiff brings this cause of action individually and on behalf of the Classes.

18 49. Apple is a California company disseminating advertising from California throughout the
 19 United States.

20 50. Defendant has engaged in a systematic campaign of advertising and marketing the
 21 Devices as possessing specific storage capacities. In connection with the sale of the Devices,
 22 and the promotion of iOS 8, Defendant disseminated or caused to be disseminated false,
 23 misleading, and deceptive advertising regarding storage capacity to the general public through
 24 various forms of media, including but not limited to product packaging, product displays,
 25 labeling, advertising and marketing. However, Defendant knew or reasonably should have
 26
 27
 28

1 known that the Devices do not make available to users the advertised storage space, and that the
2 failure to disclose the storage space consumed by iOS 8 (both to prospective purchasers of
3 Devices with iOS 8 pre-installed and to prospective upgraders) was a material omission.

4 51. When Defendant disseminated the advertising described herein, it knew, or by the
5 exercise of reasonable care should have known, that the statements concerning iOS 8 and the
6 storage capacity of its Devices were untrue or misleading, or omitted to state the truth about the
7 Devices' storage capacity, in violation of the False Advertising Law, Cal. Bus. & Prof. Code
8 § 17500, *et seq.*

9 52. As a proximate result of Defendant's conduct, Plaintiff and members of the Class were
10 exposed to these misrepresentations, omissions and partial disclosures, purchased the Devices in
11 reliance on these misrepresentations, omissions and partial disclosures, and suffered monetary
12 loss as a result. They would not have purchased the Devices, or would have paid significantly
13 less for them, and/or would not have upgraded their Devices to iOS 8, had they known the truth
14 regarding the actual storage capacities of the Devices when equipped with iOS 8.

15 53. Defendant made such misrepresentations despite the fact that it knew or should have
16 known that the statements were false, misleading, and/or deceptive.

17 54. There were reasonably available alternatives to further Defendant's legitimate business
18 interests, other than the conduct described herein.

19 55. Pursuant to Business and Professions Code §§ 17203 and 17535, Plaintiff and the
20 members of the Class seek an order of this Court enjoining Defendant from continuing to
21 engage, use, or employ the above-described practices in advertising the sale of the Devices and
22 promoting iOS 8.

23 56. Likewise, Plaintiff seeks an order requiring Defendant to make full corrective disclosures
24 to correct its prior misrepresentations, omissions, failures to disclose, and partial disclosures.

57. On information and belief, Defendant has failed and refused, and in the future will fail and refuse, to cease its deceptive advertising practices, and will continue to do those acts unless this Court orders Defendant to cease and desist pursuant to California Business and Professions Code § 17535.

58. Plaintiffs, individually and on behalf of the Class, seek restitution, disgorgement, injunctive relief, and all other relief allowable under § 17500, *et seq.*

THIRD CAUSE OF ACTION

Violations of California Consumer Legal Remedies Act ("CLRA")

(Cal. Civil Code § 1750, *et seq.*)

(Plaintiff and Purchaser and Upgrader CLRA Class Members against Defendant)

59. Plaintiff repeats and realleges the allegations set forth above as if fully contained herein.

60. Plaintiff brings this cause of action individually and on behalf of the Purchaser and Upgrader CLRA Subclasses.

61. The acts and practices described in this Complaint were intended to result in the sale of goods, specifically a cellular phone, in a consumer transaction.

62. The Defendant's acts and practices violated, and continue to violate, the Consumer Legal Remedies Act ("CLRA") in at least the following respects:

- a. Defendant violated California Civil Code § 1770(a)(5) by representing that Devices and iOS 8 had characteristics, uses, and benefits that they did not have, including representations that they had specific storage capacities when that is not, in fact, the case.
- b. Defendant violated California Civil Code § 1770(a)(9) by advertising the Devices as having specific storage capacities with the intent not to sell them as advertised.

63. At this time, Plaintiff asserts claims for damages under the CLRA, and pursuant to California Civil Code § 1780, seeks an order of this Court enjoining Defendant from continuing to engage, use, or employ any act prohibited by California Civil Code § 1770 *et seq.*

69. Plaintiff expressly reserves the right to amend this Complaint to seek damages.

Prayer for Relief

WHEREFORE, Plaintiff prays:

a. That this matter be certified as a class action with the Class defined as set forth above under pursuant to Code of Civil Procedure section 382 and that the Plaintiff be appointed Class Representative, and his attorneys be appointed Class Counsel.

b. That the Court enter an order requiring Defendant to immediately cease the wrongful conduct as set forth above; enjoining Defendant from continuing to conduct business via the unlawful and unfair business acts and practices complained of herein; and ordering Defendant to engage in a corrective notice campaign;

c. That judgment be entered against Defendant for restitution, including disgorgement of profits received by Defendant as a result of said purchases, cost of suit, and attorneys' fees, and injunction; and

d. For such other equitable relief and pre- and post-judgment interest as the Court may deem just and proper.

DATED: February 2, 2015

KABATECK BROWN KELLNER LLP

By: 

Brian S. Kabateck

Joshua H. Haffner

Peter Klausner

Attorneys for Plaintiff and all others similarly situated

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands trial by jury of all issues that may be so tried.

DATED: February 2, 2015

KABATECK BROWN KELLNER LLP

By: 

Brian S. Kabateck

Joshua M. Haffner

Jennifer Duffy

Peter Klausner

Attorneys for Plaintiff and all others similarly
situated

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number and address): Joshua H. Haffner, SBN: 188652 Kabateck Brown Kellner, LLP 644 S. Figueroa Street Los Angeles, CA 90017 TELEPHONE NO.: 213-217-5000 FAX NO.: 213-217-5010 ATTORNEY FOR (Name):		FOR COURT USE ONLY FILED Superior Court Of California County Of Los Angeles FEB 10 2015 Sherri K. [Signature] Clerk/Clerk By [Signature] Deputy	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 600 S. Commonwealth Avenue MAILING ADDRESS: CITY AND ZIP CODE: Los Angeles, CA 90005 BRANCH NAME: Central Civil West			
CASE NAME: Jacobson vs Apple, Inc.			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)		<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	
<input type="checkbox"/> Counter		<input type="checkbox"/> Joinder	
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		CASE NUMBER: BC 572077 JUDGE: DEPT:	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input checked="" type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| a. <input type="checkbox"/> Large number of separately represented parties
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input checked="" type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify):
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: February 2, 2015
 Joshua H. Haffner

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTION ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

- Auto (22)—Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
 - Asbestos Property Damage
 - Asbestos Personal Injury/Wrongful Death
- Product Liability (not asbestos or toxic/environmental) (24)
- Medical Malpractice (45)
 - Medical Malpractice—Physicians & Surgeons
 - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
 - Premises Liability (e.g., slip and fall)
 - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
 - Intentional Infliction of Emotional Distress
 - Negligent Infliction of Emotional Distress
- Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
 - Legal Malpractice
 - Other Professional Malpractice (not medical or legal)
- Other Non-PI/PD/WD Tort (35)

Employment

- Wrongful Termination (36)
- Other Employment (15)

Contract

- Breach of Contract/Warranty (06)
 - Breach of Rental/Lease
 - Contract (not unlawful detainer or wrongful eviction)
 - Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)
 - Negligent Breach of Contract/Warranty
 - Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
- Collection Case—Seller Plaintiff
- Other Promissory Note/Collections Case
- Insurance Coverage (not provisionally complex) (18)
 - Auto Subrogation
 - Other Coverage
- Other Contract (37)
 - Contractual Fraud
 - Other Contract Dispute

Real Property

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
 - Writ of Possession of Real Property
 - Mortgage Foreclosure
 - Quiet Title
 - Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

Judicial Review

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
 - Writ—Administrative Mandamus
 - Writ—Mandamus on Limited Court Case Matter
 - Writ—Other Limited Court Case Review
- Other Judicial Review (39)
 - Review of Health Officer Order
 - Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

Enforcement of Judgment

- Enforcement of Judgment (20)
- Abstract of Judgment (Out of County)
- Confession of Judgment (non-domestic relations)
- Sister State Judgment
- Administrative Agency Award (not unpaid taxes)
- Petition/Certification of Entry of Judgment on Unpaid Taxes
- Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

- RICO (27)
- Other Complaint (not specified above) (42)
 - Declaratory Relief Only
 - Injunctive Relief Only (non-harassment)
- Mechanics Lien
- Other Commercial Complaint Case (non-tort/non-complex)
- Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition

- Partnership and Corporate Governance (21)
- Other Petition (not specified above) (43)
 - Civil Harassment
 - Workplace Violence
 - Elder/Dependent Adult Abuse
 - Election Contest
 - Petition for Name Change
 - Petition for Relief From Late Claim
- Other Civil Petition

SHORT TITLE:

Jerry Jacobson vs Apple, Inc.

CASE NUMBER

BC 572077

**CIVIL CASE COVER SHEET ADDENDUM AND
STATEMENT OF LOCATION
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? ☐ YES CLASS ACTION? ☒ YES LIMITED CASE? ☐ YES TIME ESTIMATED FOR TRIAL 10 ☐ HOURS/ ☒ DAYS

Item II. Indicate the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4):

Step 1: After first completing the Civil Case Cover Sheet form, find the main Civil Case Cover Sheet heading for your case in the left margin below, and, to the right in Column **A**, the Civil Case Cover Sheet case type you selected.

Step 2: Check one Superior Court type of action in Column **B** below which best describes the nature of this case.

Step 3: In Column **C**, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Local Rule 2.0.

Applicable Reasons for Choosing Courthouse Location (see Column C below)

- | | |
|----------------------------------------------------------------------------------|------------------------------------------------------------|
| 1. Class actions must be filed in the Stanley Mosk Courthouse, central district. | 6. Location of property or permanently garaged vehicle. |
| 2. May be filed in central (other county, or no bodily injury/property damage). | 7. Location where petitioner resides. |
| 3. Location where cause of action arose. | 8. Location wherein defendant/respondent functions wholly. |
| 4. Location where bodily injury, death or damage occurred. | 9. Location where one or more of the parties reside. |
| 5. Location where performance required or defendant resides. | 10. Location of Labor Commissioner Office |

Step 4: Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
Other Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2. 2.
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 4. 1., 4.
	Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1., 4.
		<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1., 4.
		<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress	1., 3.
		<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 4.

SHORT TITLE:

Jerry Jacobson vs Apple, Inc.

CASE NUMBER

Non-Personal Injury/Property
Damage/ Wrongful Death Tort

Employment

Contract

Real Property
Unlawful Detainer

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 3.
Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.
Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1., 2., 3. 10.
Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5., 6. 2., 5.
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input checked="" type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. ① 2., 3., 8.
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels_____	2.
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 6. 2., 6.
Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer- Post-Foreclosure (34)	<input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure	2., 6.
Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.

SHORT TITLE:

Jerry Jacobson vs Apple, Inc.

CASE NUMBER

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above	
Judicial Review	Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2., 6.	
	Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.	
	Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2., 8. 2. 2.	
	Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2., 8.	
Provisionally Complex Litigation	Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.	
	Construction Defect (10)	<input type="checkbox"/> A6007 Construction Defect	1., 2., 3.	
	Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1., 2., 8.	
	Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.	
	Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1., 2., 3., 8.	
	Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.	
Enforcement of Judgment	Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 9. 2., 6. 2., 9. 2., 8. 2., 8. 2., 8., 9.	
	RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1., 2., 8.	
	Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8. 2., 8. 1., 2., 8. 1., 2., 8.	
	Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.	
	Miscellaneous Civil Petitions	Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition	2., 3., 9. 2., 3., 9. 2., 3., 9. 2. 2., 7. 2., 3., 4., 8. 2., 9.

SHORT TITLE:

Jerry Jacobson vs Apple, Inc.

CASE NUMBER

Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected for this case. <input checked="" type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.		ADDRESS: 4220 Old Topanga Canyon Rd.
CITY: Calabasas	STATE: CA	ZIP CODE: 91302

Item IV. Declaration of Assignment: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Stanley Mosk courthouse in the Central District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., § 392 et seq., and Local Rule 2.0, subds. (b), (c) and (d)].

Dated: February 2, 2015

(SIGNATURE OF ATTORNEY/FILING PARTY)

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 03/11).
5. Payment in full of the filing fee, unless fees have been waived.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

02/10/2015

EXHIBIT B

1 MATTHEW D. POWERS (S.B. #212682)
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2 O'MELVENY & MYERS LLP
Two Embarcadero Center, 28th Floor
3 San Francisco, California 94111-3823
Telephone: (415) 984-8700
4 Facsimile: (415) 984-8701

5 Attorneys for Defendant
Apple Inc.
6
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**
10

11 JERRY JACOBSON, individually, and on
behalf of all others similarly situated,

12 Plaintiff,
13

14 v.

15 APPLE, INC., a California Corporation; and
DOES 1 - 50 inclusive,

16 Defendant.
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Case No. BC572077

**DEFENDANT APPLE INC.'S NOTICE
TO STATE COURT AND ADVERSE
PARTIES OF REMOVAL TO THE
UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF
CALIFORNIA**


1 **TO THE CLERK OF THE ABOVE COURT AND ALL ADVERSE PARTIES:**

2 **PLEASE TAKE NOTICE** that on February 13, 2015, Defendant Apple Inc. filed a
3 Notice of Removal of this action to the United States District Court for the Central District of
4 California. Attached as **Exhibit 1** is a true and correct copy of the Notice of Removal and
5 supporting papers filed with the United States District Court in connection with this removal.

6 **PLEASE TAKE FURTHER NOTICE** that, pursuant to 28 U.S.C. § 1446, the filing of
7 said Notice of Removal effects the removal of this action to the United States District Court, and
8 this Court is directed to “proceed no further unless and until the case is remanded.” 28 U.S.C.
9 § 1446(d).

10 Dated: February __, 2015

11 MATTHEW D. POWERS
12 O'MELVENY & MYERS LLP

13 By: 
14 Matthew D. Powers
15 Attorneys for Defendant
16 Apple Inc.